

## UNIFORM FRANCHISE REGISTRATION APPLICATION

File No. 633317  
(Insert file number of  
immediately preceding filing  
of Applicant)

State: Wisconsin

Fee: \$400.00

APPLICATION FOR (Check only one):

- INITIAL REGISTRATION OF AN OFFER AND SALE OF FRANCHISES  
 RENEWAL APPLICATION OR ANNUAL REPORT  
 PRE-EFFECTIVE AMENDMENT  
 POST-EFFECTIVE MATERIAL AMENDMENT

1. Full legal name of Franchisor:  
**H&H Bagels Franchising LLC**
2. Name of the franchise offering:  
**H&H Bagels**
3. Franchisor's principal business address:  
**109 W. 27th St., Suite #3B, New York, NY 10001**
4. Name and address of Franchisor's agent in this State authorized to receive service of process:  
**Wisconsin Commissioner of Securities, P.O. Box 1768, 345 W. Washington Avenue, 4th Floor, Madison, WI 53703**
5. The states in which this application is or will be shortly on file:  
**California, Hawaii, Indiana, Maryland, Michigan, Minnesota, New York, Rhode Island, Virginia, Washington, and Wisconsin**
6. Name, address, telephone and facsimile numbers, and e-mail address of person to whom communications regarding this application should be directed:

**Kendal Tyre**  
**Nixon Peabody LLP**  
**799 Ninth Street NW, Suite 500**  
**Washington, D.C. 20001**  
**Direct Dial: (202) 585-8368**  
**Direct Fax: (855) 505-9076**  
**[franchise@nixonpeabody.com](mailto:franchise@nixonpeabody.com)**

Certification

I certify and swear under penalty of law that I have read and know the contents of this application, including the Franchise Disclosure Document with an issuance date of May 13, 2024 attached as an exhibit, and that all material facts stated in all those documents are accurate and those documents do not contain any material omissions. I further certify that I am duly authorized to make this certification on behalf of the Franchisor and that I do so upon my personal knowledge.

Executed at New York, NY

on

5/16/2024

Franchisor:

**H&H Bagels Franchising LLC**

DocuSigned by:

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

*Jay Rushin*

CE1E1F0EAD3343D...

Name: Jay Rushin

Title: Chief Executive Officer

## UNIFORM FRANCHISE CONSENT TO SERVICE OF PROCESS

H&H Bagels Franchising LLC, a limited liability company organized under the laws of New York, irrevocably appoints the officers of the States designated below and their successors in those offices, its attorney in those States for service of notice, process or pleading in an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of that State, and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within that State by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of that State and had lawfully been served with process in that State. We have checked below each state in which this application is or will be shortly on file, and provided a duplicate original bearing an original signature to each state.

<input type="checkbox"/> California: Commissioner of Financial Protection and Innovation	<input type="checkbox"/> North Dakota: Securities Commissioner
<input type="checkbox"/> Hawaii: Commissioner of Securities	<input type="checkbox"/> Rhode Island: Director of Business Regulation
<input type="checkbox"/> Illinois: Attorney General	<input type="checkbox"/> South Dakota: Director of the Division of Securities
<input type="checkbox"/> Indiana: Secretary of State	<input type="checkbox"/> Virginia: Clerk, Virginia State Corporation Commission
<input type="checkbox"/> Maryland: Securities Commissioner	<input type="checkbox"/> Washington: Director of Financial Institutions
<input type="checkbox"/> Minnesota: Commissioner of Commerce	<input checked="" type="checkbox"/> Wisconsin: Administrator, Division of Securities, Department of Financial Institutions
<input type="checkbox"/> New York: Secretary of State	

Please mail or send a copy of any notice, process or pleading served under this consent to:

**Kendal Tyre**  
**Nixon Peabody LLP**  
**799 Ninth Street NW, Suite 500**  
**Washington, D.C. 20001**  
**Direct Dial: (202) 585-8368**  
**Direct Fax: (855) 505-9076**  
**[franchise@nixonpeabody.com](mailto:franchise@nixonpeabody.com)**

Dated: 5/16/2024

Franchisor:

**H&H Bagels Franchising LLC**

By:  CE1E1F0EAD5345D...

Name: Jay Rushin

Title: Chief Executive Officer

## FRANCHISE DISCLOSURE DOCUMENT

**H&H BAGELS FRANCHISING LLC**  
a New York Limited Liability Company  
109 W. 27th Street, Suite #3B  
New York, NY 10001  
646-669-9165  
franchising@hhbagels.com  
[www.hhbagels.com](http://www.hhbagels.com)

# H&H BAGELS

The franchise being offered is to establish and operate an H&H Bagels restaurant. The original H&H Bagels restaurant, in operation since 1972, is an iconic NYC bagel shop serving authentic, fresh-baked bagels along with signature spreads, smoked fish, and prepared salads for take-out, dine-in, or delivery.

The total investment necessary to begin operation of a single H&H Bagels restaurant is approximately \$566,000 to \$829,500. This includes \$40,000 that must be paid to us or our affiliates. If you enter into a multi-unit development agreement, we and you will agree on the number of H&H Bagels restaurants to be developed, which will typically be at least three. The total investment necessary to enter into a development agreement and develop a minimum of three H&H Bagels restaurants is \$1,688,000 to \$2,478,500. This includes \$110,000 that must be paid to us or our affiliates.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Jay Rushin, H&H Bagels Franchising LLC, 109 W. 27th Street, Suite #3B, New York, NY 10001, or call 646-669-9165.

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 to 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. 20590. 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: **May 13, 2024**

## How to Use This Franchise Disclosure Document

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

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

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

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

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

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

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

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

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

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

### Some States Require Registration

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

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

## Special Risks to Consider About *This Franchise*

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

1. **Out-of-State Dispute Resolution.** The franchise agreement and development agreement require you to resolve disputes with the franchisor by litigation only in the State of New York. Out-of-state litigation may force you to accept a less favorable settlement for disputes. It may also cost more to litigate with the franchisor in New York than in your own state.
2. **Short Operating History.** The franchisor is at an early stage of development and has a limited operating history. This franchise is likely to be a riskier investment than a franchise in a system with a longer operating history.
3. **Financial Condition.** The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support you.
4. **Supplier Control.** You must purchase all or nearly all of the inventory or supplies that are necessary to operate your business from the franchisor, its affiliates, or suppliers that the franchisor designates, at prices the franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchise business.

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



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**EXHIBITS**

Exhibit A – Franchise Agreement	Exhibit G – Conditional Assignment of Telephone and Directory Listings
Exhibit B – Development Agreement	Exhibit H – Sample General Release
Exhibit C – Financial Statements	Exhibit I – Table of Contents of Manuals
Exhibit D – List of Current and Former Franchisees	Exhibit J – Franchise Disclosure Questionnaire
Exhibit E – List of State Regulatory Authorities and Registered Agents	Exhibit K – Acknowledgment of Receipt of Completed Agreements
Exhibit F – State Addenda	Exhibit L – State Effective Dates
	Exhibit M – Receipt of Disclosure Document

# H&H BAGELS FRANCHISING LLC

## Item 1.

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

To simplify the language in this Disclosure Document, “H&H Bagels,” “we,” “us,” or “our” means H&H Bagels Franchising LLC, the franchisor. “You” means the person or persons, including legal entities and their owners, which buy the franchise.

You will operate your H&H Bagels restaurant only under the “H&H BAGELS” mark and related logos as approved by us, including color combination, typeface, and other features and only in the prescribed manner and without any infringement or modification to the mark.

The Franchisor and its Parent and Affiliates. We are a New York limited liability company formed on May 6, 2021. We do business under the name “H&H Bagels” and under our entity name. We have no predecessors. Our principal business address, and that of our parent and affiliates described below, is 109 W. 27th Street, Suite #3B, New York, NY 10001. Our agents for service of process, and their addresses, are listed in Exhibit E.

Our parent H&H Bagels Group, Inc. (“H&H Bagels Group”) is a New York corporation formed on March 11, 2020.

Our affiliate Marks Bakery LLC (“Marks Bakery”) is a New York limited liability company formed on December 9, 2019. It owns the proprietary marks used in our business system (“System”). Marks Bakery licenses the proprietary marks to us and authorizes us to sublicense those marks to you.

Our affiliate Midtown Bakery LLC (“Midtown Bakery”) is a New York limited liability company formed on September 2, 2021. Since January 2024, Midtown Bakery has acted as the wholesale supplier of bagels for the System. Currently, you must purchase the bagels you use in your restaurant only from our approved third-party distributor, which purchases its supply of those bagels from Midtown Bakery.

Prior Business Experience of Franchisor, Parent and Affiliates. We have offered franchises of the type being offered in this Disclosure Document since September 2021. We have never conducted the type of business you will operate and never offered franchises in any other line of business.

Our parent H&H Bagels Group and our affiliates Marks Bakery and Midtown Bakery have never conducted the type of business you will operate and have never offered franchises of the type you will operate or in any other line of business. We have no other affiliates that offer franchises in any line of business or provide products or services to franchisees.

Franchisor’s Business and Franchises to be Offered. We offer the right to establish and operate an H&H Bagels franchised restaurant, using our System, know-how, and trademarks, under a franchise agreement entered into with us (“Franchise Agreement”) in the form included in this Disclosure Document as Exhibit A. You will operate a retail restaurant which currently features and offers for sale to the public authentic, fresh-baked bagels along with signature spreads,

smoked fish, and prepared salads for take-out, dine-in and delivery, under the trade name “H&H Bagels” and related marks and logos. Our corporate-owned restaurants have used our original, signature bagel recipe since the H&H Bagels brand launched in 1972, and you will receive these authentic bagels as a par-baked bagel product that will require baking at your franchised location.

For qualified candidates, we also offer the right to develop multiple H&H Bagels restaurants under a development agreement (“Development Agreement”) in the form included in this Disclosure Document as Exhibit B. We and you will agree on the number of restaurants to be developed under your Development Agreement, which we expect will typically be three or more. Your development rights will be non-exclusive, but you will be given a right of first refusal as to any H&H Bagels restaurant we propose to locate in your specified development area during the term of the Development Agreement. For each restaurant developed under the Development Agreement, you must sign a separate, then-current H&H Bagels franchise agreement, the terms of which may differ from those contained in the Franchise Agreement included within this Disclosure Document.

The market for your products or services is well-developed and competitive. Your sales are not typically seasonal. You will have to compete with national, regional, and local businesses including company-owned and franchised chains, independently owned restaurants, as well as other H&H Bagels locations owned and operated by other franchisees, H&H Bagels, or its affiliates. You may also compete with H&H Bagels’ continuing e-commerce sales.

Industry Specific Laws and Regulations. The business of operating an H&H Bagels restaurant franchise is subject to all of the laws, codes, ordinances, and regulations normally applicable to retail and food businesses. These include federal, state, and in most instances, city, county, parish, borough, municipality, or other local laws.

A few examples of other federal laws affecting many businesses are wage and hour, occupational health and safety, equal employment opportunity, taxes, hazardous materials communication to employees, hazardous waste and environmental, menu labeling and nutrition, and the Americans with Disabilities Act. State and federal privacy laws may require covered companies to maintain or completely destroy documents containing certain personal information. State laws may cover the same topics as federal laws. A few examples of other state laws affecting many businesses include environmental, occupational health and safety, fire, taxes, health, and building and construction laws. Local laws may cover the same topics as federal and state laws. A few examples of other local laws affecting many businesses include health and sanitation, building and zoning, fire safety, other business permits and licenses, and waste disposal.

Some jurisdictions have special industry laws and licensing and certification requirements with which you may have to comply. For example, state regulations may govern the storage and handling of food. There may also be local ordinances and regulations governing food storage, menu labeling, food preparation, and serving. Your H&H Bagels restaurant is subject to local food and health permits and inspection laws. Health laws are intended in part to reduce food borne illnesses and may cover such issues as: requiring employees to take a test and obtain a license as a food service worker, having accessible sinks and bathrooms for certain size establishments, inspections for cleanliness and compliance, equipment cleaning, storage and packaging, size of facilities, allowed foods, refrigeration, etc.

The foregoing are examples of some, but not all, of the laws that may be applicable to the franchised business described in this Disclosure Document. The Franchise Agreement places the responsibility for knowing and complying with all applicable laws and regulations upon you, the franchisee. You should research these requirements before you invest and should consult with your own legal counsel.

## **Item 2.** **BUSINESS EXPERIENCE**

### **Chief Executive Officer: Jay Rushin**

Mr. Rushin has served as our Chief Executive Officer, in New York, New York, since the date of our formation in May 2021. He has also served as Chief Executive Officer of H&H Bagels Group since March 2020, and as President of our affiliates P.V. Bakery, Inc. (since January 2014) and Columbus Bakery LLC (since November 2016). These positions are also based in New York, New York.

### **Director of Restaurant Operations: Ryan Klepper**

Mr. Klepper has served as Director of Restaurant Operations for H&H Bagels Group since September 2020 in New York, New York. From January 2017 through March 2020, Mr. Klepper served as Director of Operations for The Emerald Green Group in New York, New York.

### **Director of Business Development: Michael Wharry**

Mr. Wharry will lead the management of our franchise sales. He has served as the Director of Business Development for H&H Bagels Group since March 2018 in New York, New York. Mr. Wharry was the Owner and Operator of LLL, LLC (d/b/a Alder Inn) from November 2015 through November 2019 in South Lake Tahoe, California.

### **Director of Marketing: Jesse Stein**

Mr. Stein has served as Director of Marketing for H&H Bagels Group since May 2023, in New York, New York. From October 2017 to February 2023, Mr. Stein served as Digital Creative Lead for Apple Inc. in Los Angeles, California.

### **Director of Bakery Operations: JD Gross**

Mr. Gross has served as Director of Bakery Operations for H&H Bagels Group since July 2021, in New York, New York. From September 2020 through June 2021, Mr. Gross served as QC Director for Esti Foods in Rutherford, New Jersey. Prior to that, Mr. Gross served as Operations Manager for ESquared Hospitality Group from August 2016 through March 2020 in New York, New York.

## **Item 3.** **LITIGATION**

No litigation is required to be disclosed in this Item.

**Item 4.**  
**BANKRUPTCY**

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

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

Initial Franchise Fee. You must pay us a \$40,000 lump sum initial franchise fee when you sign the Franchise Agreement for a single H&H Bagels restaurant franchise (“Initial Franchise Fee”). If you enter into a Development Agreement to develop multiple H&H Bagels restaurants, we and you will agree on the number of restaurants to be developed, which we expect will typically be at least three. Each such restaurant will be established and operated pursuant to a separate Franchise Agreement. The initial franchise fee for each of those franchised restaurants will be paid upon execution of the associated Franchise Agreement and will be in the following amounts: \$40,000 for the first restaurant to be developed; \$35,000 for the second through the fifth restaurants; and \$30,000 for the sixth and any additional restaurants.

Development Fee. If you enter into a Development Agreement to develop multiple H&H Bagels restaurants, and you do not have an existing restaurant in the development area, you must pay us, when you sign the Development Agreement, a development fee of \$20,000 (“Development Fee”) for each of the second and subsequent restaurants you are granted the right to develop. For the first restaurant to be developed, you will sign the Franchise Agreement and pay us the \$40,000 Initial Franchise Fee at the same time you sign the Development Agreement.

We will credit \$20,000 of your total Development Fee against the initial franchise fee for each of the second and subsequent H&H Bagels restaurants you develop under the Development Agreement. For example, the initial franchise fee for your second restaurant will be \$35,000, minus the \$20,000 Development Fee credit, which leaves a remaining balance of \$15,000. This credit will be applied only for those locations being developed for opening during the development schedule (“Development Schedule”) and in the development area (“Development Area”) specified in the Development Agreement. Any such credit will be applied upon your execution of the Franchise Agreement for each such restaurant.

Any remaining balance of an initial franchise fee due under a Franchise Agreement for a second or subsequent restaurant to be developed will be paid to H&H Bagels at the earlier of the date specified in the Development Agreement, 90 days prior to the scheduled opening date of the restaurant, or the date the lease is signed for the restaurant. No H&H Bagels location will be allowed to open until all fees have been paid and the Franchise Agreement has been signed.

If you have met your development obligations in advance of the ending date of the Development Schedule and you elect to open additional locations in the Development Area, subject to H&H Bagels’ approval and subject to you being able to develop and open those additional locations in the time remaining in the Development Schedule, the initial franchise fee for each of those additional locations will be reduced to \$20,000. H&H Bagels may elect, upon

your request, to extend the Development Schedule, but H&H Bagels is not required to do so and generally will not extend the Development Schedule for more than six months.

Veterans/First Responders Incentive Program. If requested by you prior to execution of the Franchise Agreement, H&H Bagels may, in its sole discretion, provide qualified individuals (i) who are actively serving in or who were honorably discharged from any branch of the U.S. military (“Veterans”) or (ii) who serve as first responders (e.g., police, fire, emergency medical technicians) (“First Responders”) a \$5,000 discount on the Initial Franchise Fee (“Veterans/First Responders Incentive Program”). If you are a limited liability company, corporation, partnership or other entity, then you must be at least 51% directly owned by one or more Veterans or First Responders in order to participate in the Program. The reduction of the Initial Franchise Fee under the Veterans/First Responders Incentive Program is a one-time discount on the first Initial Franchise Fee paid by you to H&H Bagels. The Program applies only to the initial franchised restaurant opened by you; it will not apply to any additional locations opened by you under a Development Agreement or any other Franchise Agreement. We may modify or discontinue the Veterans/First Responder Incentive Program at any time.

Refundability and Financing. The Initial Franchise Fee and Development Fee are not refundable unless you (or your operating principal, if franchisee is an entity) fail to complete initial training to H&H Bagels’ satisfaction. If you (or your operating principal) fail initial training, H&H Bagels will refund 50% of the Initial Franchise Fee and Development Fee paid by you, less H&H Bagels’ costs (including advertising, training, travel, sales commissions paid, etc.). The franchise fees for the second and subsequent restaurants developed under a Development Agreement are not refundable under any circumstances. The Initial Franchise Fee, Development Fees, and other fees are not financed by the franchisor.

**[Remainder of Page Intentionally Left Blank]**

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

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty	6% of Gross Sales for each H&H Bagels location	Weekly by Electronic Funds Transfer	See Note 1
Brand Fund Contribution	2% of Gross Sales	Weekly by Electronic Funds Transfer	See Note 2
Local Advertising Expenditure	If established, as specified by us, but not greater than 2% of prior month's Gross Sales	Monthly	See Note 3
Regional Advertising Cooperative	If established, 1% of Gross Sales, up to a maximum of 2% of Gross Sales	Weekly by Electronic Funds Transfer	See Note 4
Initial Training Fee	Cost of travel and living expenses for you and your employees attending training	As incurred	Franchisees that become franchisees as the result of a transfer will be required to pay a fee for their initial training of \$5,000.
On-going and/or Remedial Training	\$500 a day for on-going or remedial training of your trainer or assistance with your training of your staff	As incurred	You will also be responsible for travel and living expenses of our staff if training is done at your location.
Attorney Fees and Costs	Reimbursement to us for all costs and expenses incurred if we prevail in litigation regarding enforcement of the terms of any agreement	As incurred	
Collection Costs and Expenses	Reimbursement to us of collections costs and expenses including costs and commissions paid to a collection agency and reasonable attorneys' fees	As incurred	
Renewal Fee	25% of the then-current Initial Franchise Fee	Before approval of renewal	A condition of renewal.
Joint Employment or Change of Relationship Fee	All initial and continuing costs incurred by us	As incurred	
Testing and Evaluation Costs	Reasonable cost of inspection, evaluating or testing (likely \$500 or less)	As incurred	Payable to us or a third party as we require, if you request supplier approval.

<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Interest	18% per annum or highest rate of interest allowed by law, whichever is less; due on all overdue amounts to us or our affiliates	As incurred	See Note 5
Technology and Website Services Fee	\$250/month	Monthly	Payable to us to cover certain technology and website services you will receive and use, including operational support and training through FranConnect, a customer loyalty and ordering app now being developed, an online ordering platform, and ongoing website development and maintenance.
Convention Fee	Registration fee for annual convention: currently at \$700, but we reserve the right to increase amount, not to exceed \$1,500 per attendee	As incurred	
Audit Fee	Based on percentage of understated Gross Sales	Upon billing after audit	See Note 6
Relocation Fee	\$5,000 or such greater amount necessary to reimburse us for costs associated with a franchisee relocating their location	As incurred	
Post-termination and Post-expiration Expenses	All costs associated with ceasing to be a franchisee and de-identification of the business	As incurred	You will not have any post-termination rights to continue in a similar business.
Transfer Fee	25% of the then-current initial franchise fee, plus costs for reviewing transfer	As incurred	See Note 7
Liquidated Damages	Present value of the Continuing Royalty and Brand Fund contribution due for 3 years	As incurred	See Note 8
Franchisee's Public Offering Fee	\$10,000 or such higher cost as necessary for us to review your documents for a public offering including legal and accounting fees	As incurred	
Insurance	Cost of insurance and, if not obtained and maintained, reimbursement of our costs if we elect to obtain the insurance for you	As requested by vendor	See Note 9



Type of Fee	Amount	Due Date	Remarks
Indemnification Fee	Cost of liability	As incurred	See Note 10
Fees on Default and Indemnity	Cost of collection and attorneys' fees	As incurred	See Note 11
Maintenance of Premises / Refurbishment	Approximately \$500 to \$5,000 per year	As incurred	See Note 12

Except as stated above, you pay all fees to us. All fees are non-refundable and are uniformly imposed on all franchisees.

**NOTES:**

**Note 1 - Royalty:** “Gross Sales” means all revenue from the sale of all products, merchandise, and services and all other income of every kind and nature at or from your franchised restaurant or otherwise related to the restaurant, including, without limitation, any proceeds, whether for cash or credit, and regardless of collection in the case of credit, of sales to employees and managers, family members, or other businesses owned or controlled by you, not reduced by any discounts in connection with the transaction of business with such employees and managers, family members or other businesses. Such sales should be included, based on the pricing generally paid by your other customers. Gross Sales shall not include (i) any sales taxes or other taxes collected from customers by you and paid directly to the appropriate taxing authority, (ii) the amount of any shipping, freight or similar expenses charged to customers, (iii) the amount of any proceeds from insurance with respect to your property damage or liability, or proceeds from any civil forfeiture, condemnation, or seizure by governmental entities, or (iv) the amount of any returns, credits, allowances, adjustments, or uncollectible amounts, subject to the limitation that uncollectible amounts cannot exceed 0.5% (i.e., ½ of 1.0%) of Gross Sales for any of your fiscal years. Subsequent collections of charged off amounts must be included in Gross Sales when collected.

If you have signed a Development Agreement, as a developer, you can earn a royalty credit of 0.5% upon opening your fourth franchise, as long as you are in good standing and have the required management and training infrastructure. Such royalty credit is only available to developers and not to single unit franchisees that acquire additional franchises. Suspension or elimination of the royalty credit does not reduce a franchisee’s obligations to support its location. The royalty credit will expire the earlier of ten years after its grant or its earlier termination.

The royalty begins on the date your restaurant opens to the public and continues for the duration of the term of the Franchise Agreement. The royalty is currently payable weekly, and is withdrawn electronically from your designated bank account, but we may change the time and the manner of payment.

**Note 2 - Brand Fund Contribution:** You must contribute 2% of your weekly Gross Sales to the franchise System’s advertising fund (“Brand Fund”) for advertising, marketing, public relations,

and related expenses. The amounts will be paid at the same time and in the same manner as the ongoing royalty.

**Note 3 - Local Advertising Expenditure:** Currently, we do not require franchisees to spend any specified amounts on local advertising of their restaurants, other than for their initial market introduction campaign, which is discussed below in Item 7. However, we reserve the right, on 30 days' written notice, to require you to either: (1) make monthly expenditures in an amount we specify, but not greater than 2% of your prior month's Gross Sales, on local marketing, advertising, and promotion (in the manner we may specify in our confidential manuals (the "Manuals") or otherwise in writing); or (2) make monthly payments to us in an amount we specify but not greater than 2% of your prior month's Gross Sales, which we will then spend on local marketing, advertising, and promotion on your behalf. At such time as a regional Cooperative (as described in Note 4, below) is established, any contributions you make to such Cooperative will be credited towards your these local advertising expenditures (if any).

**Note 4 - Regional Advertising Cooperative:** If we establish a regional advertising and promotional cooperative ("Cooperative"), you must become a member and must make contributions to the Cooperative in an amount equal to 1% of weekly Gross Sales. Upon 30 days' written notice to you, we can increase the amount of such contributions, but not in excess of an amount equal to 2% of your weekly Gross Sales. Any contributions you make to the Cooperative will be credited towards your required local advertising expenditures (if any).

**Note 5 - Interest:** Our entitlement to interest is in addition to any other remedies we may have. You may not set off any payments due under the Franchise Agreement against any monetary claim you may have against us.

**Note 6 - Audit Fee:** If any audit discloses that you have understated Gross Sales in any report or statement by:

- 2% or less – you must immediately pay the full amount owed with interest.
- More than 2% but less than 5% – you must immediately pay the full amount owed with interest and pay the cost of conducting the audit including, without limitation travel, lodging, meals, wages, expenses and reasonable accounting and legal fees incurred.
- More than 5% – in addition to the above penalties, we may terminate your franchise without opportunity to cure.
- More than 2% three times in any 36-month period – we may terminate your franchise without opportunity to cure.

**Note 7 - Transfer Fee:** There will be no transfer of a Development Agreement. For the transfer of a Franchise Agreement, there is no transfer fee if the transferee:

- Is an entity controlled by you;
- Has been a franchisee in good standing for at least five years;

- Has managed a franchised or corporate-owned H&H Bagels location for at least five years; or
- Obtains the business as a result of the franchisee's death or disability.

The transferee is responsible for the initial training fee, which currently is \$5,000.

**Note 8 - Liquidated Damages:** If we terminate the Franchise Agreement as a result of your default or you abandon the franchise, you will pay to H&H Bagels the present value of the royalty and Brand Fund contribution due for three years based upon the most recent 12 months of operation.

**Note 9 - Insurance:** Before you open your restaurant, you must procure and maintain at all times during the term of the Franchise Agreement, at your expense, comprehensive general liability insurance, property and casualty insurance, business interruption insurance, statutory workers' compensation insurance, employer's liability insurance, product liability insurance, and automobile insurance coverage for all vehicles used in connection with the operation of your restaurant. These insurance policies must name us as an additional named insured and must provide at least the types and minimum amounts of coverage as we may specify in the Manuals. If you fail to obtain or maintain the insurance required, we will have the right and authority (but not the obligation) to procure and maintain the required insurance in your name and to charge you for it, which charges, together with a reasonable fee for our expenses in so acting, will be payable by you immediately upon notice. We may change these insurance requirements, upon reasonable notice to you, to conform to prudent business practices.

**Note 10 - Indemnification Fee:** You must protect, indemnify, and hold us and our officers, directors, and employees harmless against all claims, losses, costs, expenses, liabilities, and damages arising directly or indirectly from the operation of the franchised business, as well as the costs, including attorneys' fees, of the indemnified party in defending against them.

**Note 11 - Fees on Default and Indemnity:** If you default under the Franchise Agreement or any other agreement between us, and we engage an attorney for collection or enforcement, you must pay all our damages and costs to the extent permitted by law.

**Note 12 – Maintenance of Premises / Refurbishment:** You must, at your expense, maintain the premises of your restaurant in a clean, orderly condition and in excellent repair, and make such additions, alterations, repairs, and replacements as may be required for that purpose, including, for example, periodic repainting and/or replacement of obsolete signs, furnishings, equipment, and décor as we may reasonably direct. You must also, at your expense, update and refurbish your restaurant and comply with changes to the System that we may periodically require, including changes to System standards, policies and procedures; additions/deletions to the products and services that we authorize you to sell; modifications to the System standards and specifications for restaurant construction, design, appearance and operations (e.g., building, premises, equipment, signage, trade dress, décor, color schemes); and changes, improvements, or substitutions of the trademarks.

**Item 7.**  
**ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type of Expenditure</b>	<b>Low Estimated</b>	<b>High Estimated</b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment is to be Made</b>
Initial Franchise Fee (Note 1)	\$40,000	\$40,000	Lump sum	At signing of Franchise Agreement	Us
Real Estate (Note 2)	--	--	As arranged	Before opening	Suppliers
Construction and Leasehold Improvements (Note 3)	\$200,000	\$300,000	As arranged	Before opening as requested by contractors	Contractors, Architects, Suppliers
Furniture and Fixtures (Note 4)	\$10,000	\$ 20,000	As incurred	Before opening	Suppliers
Equipment (Note 5)	\$175,000	\$200,000	As incurred	Before opening	Suppliers
Architects and Engineering	\$30,000	\$45,000	As incurred	Before opening	Suppliers
Professional Services Fees (Note 6)	\$10,000	\$20,000	As incurred	Before opening	Suppliers
Opening Inventory (Note 7)	\$7,500	\$15,000	As incurred	Before opening	Suppliers
Opening Supplies (Note 7)	\$5,000	\$10,000	As incurred	Before opening	Suppliers
Computers, Telecommunications, and Security System (Note 8)	\$10,000	\$20,000	As incurred	Before opening	Suppliers
Interior and Exterior Signs (Note 9)	\$10,000	\$20,000	As incurred	Before opening	Suppliers
Training (Note 10)	\$2,500	\$7,500	As incurred	Before opening	Suppliers
Market Introduction (Note 11)	\$2,500	\$5,000	As incurred	Before opening	Suppliers

Type of Expenditure	Low Estimated	High Estimated	Method of Payment	When Due	To Whom Payment is to be Made
Insurance (Note 12)	\$2,500	\$5,000	As incurred	Before opening	Suppliers
Utility Deposits	\$1,000	\$2,000	As incurred	Before opening	Suppliers
Permits and Deposits (Note 13)	\$2,500	\$5,000	As incurred	Before opening	Suppliers
Lease Deposit	\$7,500	\$15,000	As incurred	Before opening	Suppliers
Additional Funds (Note 14)	\$50,000	\$100,000	As incurred	After opening	Various
<b>Total</b>	<b>\$566,000</b>	<b>\$829,500</b>			

The table above provides an estimate of the initial investment for one H&H Bagels restaurant, and of the costs necessary to begin operation. All costs and payments listed in the table are estimates only, and are non-refundable unless otherwise stated or permitted by the payee. We do not offer financing of any of the initial investment costs.

**NOTES:**

**Note 1 - Initial Franchise Fee:** As discussed in Item 5, the Initial Franchise Fee paid by you and other similarly situated franchisees will be the same. Our Initial Franchise Fee for a single-unit franchisee is \$40,000. To the extent required by state franchise administrators, certain states may require that we defer the Initial Franchise Fee and/or other pre-opening payments until our initial obligations are met and you have opened for business.

**Note 2 - Real Estate:** We anticipate that you will lease the premises of your restaurant, so no estimated purchase cost for real estate has been provided. See also Note 3 (Construction and Leasehold Improvements) and the corresponding disclosures for that expenditure, as well as the “Lease Deposit” entry in the table above.

**Note 3 - Construction and Leasehold Improvements:** If you do not already own a site for your restaurant, you must lease or acquire a site for the term of the Franchise Agreement. The approximate size of the premises and the building for your restaurant will range from 1200 to 1900 square feet. You must build out and/or renovate your restaurant in accordance with our specifications. The build-out and/or renovation costs will vary depending on the site, but may include the costs of installation or upgrade of HVAC systems and venting for food preparation; installation or improvement of flooring, ceilings, and wallcoverings; construction and/or installation of interior walls, bathrooms, and counters; and storefront improvements. The estimate in the table assumes that base plumbing, electricity, and heat or air conditioning exists on the premises. The estimate does not include any amount for the purchase of real property, as it is not anticipated that you will purchase real property. Your net construction and leasehold improvement

costs will be dependent on the condition of your location as provided by your landlord, and any tenant improvement allowance and/or free rent that you may receive from your landlord.

It is your responsibility to ensure that your business meets your requirements and that your location and equipment are maintained throughout the term of your franchise. You are responsible for compliance with all federal, state, and local laws and regulations, including zoning and building codes.

**Note 4 - Furniture and Fixtures:** The type and number of pieces of furniture and fixtures you require will be based on the size of the location you select and the number of employees hired. The figures in the table are an estimate of the cost of the tables, chairs, bar and barstools, light fixtures and related items required in a typical H&H Bagels restaurant. We may negotiate with vendors for the price, warranties, guarantees, delivery costs, maintenance contracts, etc., of certain furnishings and fixtures. We do not represent that we will be able to obtain for you the lowest costs or best terms available.

**Note 5 - Equipment:** We will provide specifications for the models of equipment you will be required to purchase for your H&H Bagels restaurant. The figures in the table are an estimate of the cost of this equipment (e.g., grill, toasters, refrigerated service units, refrigerators, coffee machines, ovens, beverage cooler, etc.) required for a typical H&H Bagels restaurant. You will purchase your equipment from third-party suppliers we have approved. Currently, neither we nor our affiliates are approved suppliers of any required equipment, but we reserve the right to designate ourselves and/or our affiliates as approved suppliers, or the only approved suppliers, of certain equipment you must use in your restaurant.

**Note 6 - Professional Services Fees:** We recommend strongly that you engage the services of professionals to assist you in evaluating our franchise opportunity and to help you establish your business. This will include your lawyer and accountant, etc.

**Note 7 – Opening Inventory & Opening Supplies:** The figures in the table are an estimate of the cost of the opening inventory and initial supplies, respectively, that you will need to purchase to support the opening of your restaurant. Your actual amount purchased will depend on your anticipated sales, which will depend on a variety of factors such as the size and location of your restaurant and overall anticipated demand. Opening inventory will include all the food items necessary to open and operate your restaurant, including, for example, bagels, cream cheese, smoked fish, meats, cheeses, coffee, beverages, and produce. Opening supplies will include all the packaging supplies, cleaning supplies, and other supplies needed to operate the restaurant. Currently, you must purchase the bagels you use in your restaurant only from our approved third-party distributor, which purchases its supply of those bagels only from our affiliate Midtown Bakery.

**Note 8 – Computers, Telecommunications, and Security System:** You will be required to purchase or lease the computer system and operating software we specify. The type and number of computers and other hardware, software, cameras, and telecommunications equipment may vary depending on your location. We will specify the required computer hardware, software, and telecommunications equipment in the Manuals. Currently, each franchised restaurant will need at least two point-of-sale (“POS”) stations, one PC/laptop, 6-10 cameras, 1-2 WiFi routers/access

points, one network router, and two telephones, the POS software system Toast, and Microsoft Office and QuickBooks software.

**Note 9 - Interior and Exterior Signs:** You will need to purchase signs for your location. All signage must be in compliance with our standards and your local building and other codes.

**Note 10 – Training:** You (or your operating principal, if franchisee is an entity), your designated manager and your trainer must attend and successfully complete, to our satisfaction, an initial training program for franchisees. We will provide training for up to three people without any additional fee. Initial training will be a combination of classroom and on-the-job training and may include training provided electronically and remotely. Training will be approximately two weeks in duration, will be provided in New York City or in another location designated by us, and will be provided in connection with your initial location only. (We will also provide up to five days of assistance and training at your location and for your initial location only.) In addition to incurring the costs of salaries for your staff, you will incur the cost for travel and other expenses during training. The estimate in the table above includes the costs of travel, lodging, meals and local transportation for you and your staff during training. These costs vary greatly based on the time of year and the choices you make for hotels, locations, etc. The estimate also includes the cost of the ServSafe® food safety training and certification program that you and your required personnel must attend prior to the initial training program. (See Item 11 for more information on this program.)

**Note 11 - Market Introduction:** You must spend at least \$2,500 for your initial market introduction advertising campaign. During the initial training program, we and you will collaborate to develop a plan for your market introduction, and you will then execute the agreed-upon plan. You will be responsible for securing any needed vendors or suppliers and will be responsible for any expenditures in excess of the \$2,500 minimum amount.

**Note 12 - Insurance:** Before you open your restaurant, you must procure (and maintain at all times during the term of the Franchise Agreement) at least the types and minimum amounts of insurance coverage as we specify in the Manuals. See Item 8 for more information on the types and minimum amounts of insurance coverage required.

**Note 13 - Permits and Deposits:** You will need to acquire the necessary permits, bonds, utilities, merchant accounts and licenses, and to make any required deposits or pre-payments for rent, utilities, etc., in order to open and operate your location. Rent and utility costs can vary greatly depending on your location. The estimate in the table above is based on two months' rent as deposit, plus deposits for commercial lease parking.

**Note 14 - Additional Funds:** The figures in the table are an estimate of the additional funds needed during the one-month period prior to your restaurant opening and of the start-up expenses incurred during the first three months of operation (less income earned, and not including any salary, finance costs, debt service, or reimbursements or other payments to you). This estimate also includes initial costs of employee recruitment, pre- and post-opening wages, other variable costs (e.g., ongoing electricity, telephone, heat, etc.), and general and administrative costs. The figures in the table above are estimates only, and we cannot guarantee that you will not have higher

costs. We have based this estimate on the experience of our affiliates in operating our corporate-owned H&H Bagels restaurants.

\* \* \* \* \*

**YOUR ESTIMATED INITIAL INVESTMENT – DEVELOPER**

If you enter into a Development Agreement, we and you will agree on the number of restaurants to be developed, which we expect will typically be at least three. The table below provides an estimate of the initial investment costs you will incur to open three franchised H&H Bagels restaurants under a Development Agreement. If you are granted the right to develop more than three restaurants, your estimated initial investment will increase accordingly. All costs and payments listed in the table are estimates only, and are non-refundable unless otherwise stated or permitted by the payee. We do not offer financing of any of the initial investment costs.

Type of Expenditure	Estimated Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee & Development Fee	\$80,000 (Note 1)	Lump sum	On signing Development Agreement	Us
Franchise Fees for 2 <sup>nd</sup> and 3 <sup>rd</sup> Restaurants (with Development Fee credit)	\$30,000 (Note 2)	Lump sum	At signing of Franchise Agreements	Us
Total Initial Investment remaining for three restaurants	\$1,578,000 to \$2,368,500 (Note 3)	See above in this Item 7	See above in this Item 7	See above in this Item 7
<b>Total</b>	<b>\$1,688,000 to \$2,478,500</b>			

**NOTES:**

**Note 1 – Initial Franchise Fee & Development Fee:** As discussed in Item 5, if you enter into a Development Agreement with us, and you do not have an existing restaurant in the development area, you must pay us, when you sign the Development Agreement, a Development Fee of \$20,000 for each of the second and subsequent restaurants you are granted the right to develop. When you enter into the Development Agreement, we and you will agree on the number of restaurants to be developed, which we expect will typically be at least three. For the first restaurant to be developed, you will sign the Franchise Agreement and pay us the \$40,000 Initial Franchise Fee at the same time you sign the Development Agreement. The figure in the table above represents the sum of the \$40,000 Initial Franchise Fee for the first restaurant, plus a total Development Fee of \$40,000 (i.e., \$20,000 in development fees for the second restaurant and \$20,000 in development fees for the third restaurant). The balance of your estimated initial investment costs for each restaurant is described in the first table in this Item 7, above. To the extent required by state franchise administrators, certain states may require that we defer your payment of the Development Fee until our initial obligations are met.



The Initial Franchise Fee and Development Fee are not refundable unless you (or your operating principal, if franchisee is an entity) fail to complete initial training to H&H Bagels' satisfaction. If you (or your operating principal) fail initial training, H&H Bagels will refund 50% of the Initial Franchise Fee and Development Fees paid by you, less H&H Bagels' costs.

**Note 2 – Franchise Fees for 2<sup>nd</sup> and 3<sup>rd</sup> Restaurants:** As discussed in Item 5, if you are a developer, the franchise fees for each of your second through fifth restaurants will be \$35,000 and for each of your sixth and subsequent locations will be \$30,000. We will credit \$20,000 of your total Development Fee against the initial franchise fee for each of the second and subsequent restaurants you develop under the Development Agreement. The figure in the table above represents the sum of:

- the \$35,000 franchise fee for the second restaurant, minus the \$20,000 Development Fee credit, which leaves a remaining balance of \$15,000 (paid upon execution of the second Franchise Agreement); and
- the \$35,000 franchise fee for the third restaurant, minus the \$20,000 Development Fee credit, which leaves a remaining balance of \$15,000 (paid upon execution of the third Franchise Agreement).

The franchise fees for the second and subsequent restaurants developed under the Development Agreement are not refundable under any circumstances.

If you elect to develop additional locations, during the term of the Development Agreement but separate and apart from what was initially agreed to, and we approve, then the franchise fee for each of those additional locations will be \$20,000.

**Note 3 – Total Initial Investment:** This estimate is based on the initial investment figures for a single H&H bagels restaurant, as shown in the first table in this Item 7, except for the Initial Franchise Fee. We have multiplied those figures by three to estimate the initial investment for three restaurants. If you develop more than three restaurants, your initial investment will be higher.

## **Item 8.**

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

Required Purchases or Leases of Goods, Services, Supplies, Fixtures, Equipment, Inventory, Computer Software and Hardware, Real Estate, and Other Items. We will provide specifications for the equipment you will be required to purchase for your H&H Bagels restaurant. The initial equipment package includes restaurant equipment (including refrigerators and freezers); a point-of-sale system; office equipment (computers and furniture); a music system; and an audio/visual surveillance system. In order to maintain brand integrity, ensure consistency in quality, and consolidate purchasing power, you must purchase your initial equipment package from third-party suppliers we have approved. Currently, neither we nor our affiliates are approved suppliers of any required equipment, but we reserve the right to designate ourselves and/or our affiliates as approved suppliers, or the only approved suppliers, of certain equipment you must use in your restaurant.

You must sell or offer for sale only such products, merchandise, and services as we have expressly approved for sale; sell or offer for sale all types of products, services, and merchandise we specify; refrain from any deviation from our standards and specifications without our prior written consent; and discontinue selling and offering for sale any products, merchandise, and services that we disapprove at any time. You must maintain in sufficient supply (as we may prescribe in the Manuals or otherwise in writing) and always use only those products and ingredients acquired from suppliers we designate or approve, and such other materials, supplies, fixtures, furnishings, and signs that conform to our standards and specifications. You may not deviate from our standards and specifications by the use of nonconforming items without our prior written consent.

As of the date of this Disclosure Document, you must purchase the bagels you use in your restaurant only from our approved third-party distributor, which purchases its supply of those bagels only from our affiliate Midtown Bakery. Neither we nor our affiliates are approved suppliers of any other goods or services. In an effort to identify potential cost savings for franchisees, we and our affiliates are evaluating the possibility of eliminating our third-party distributor and allowing Midtown Bakery to supply bagels directly to franchisees. We have not yet determined whether the benefits of such a change, to both franchisees and the System, would outweigh the related implementation costs. We expect to continue evaluating the potential benefits and costs until a clearer picture emerges and a sound decision can be made. In addition, we may in the future offer or designate others to offer certain supplies or services, and we or our affiliates may become approved suppliers or the only approved supplier(s) for other goods and services (including, for example, our signature spreads). We do not have any current plans, however, to become an approved or the only approved supplier(s) of any other goods or services.

You may be required to participate in Internet and multi-area marketing programs, including national accounts programs, yellow pages, directory, affinity, gift card and loyalty programs, contests and awards, and co-branding programs that we develop in the future. We may be the only approved supplier of these programs. Such programs may require your cooperation (including refraining from certain channels of marketing and distribution), participation (including payment of commissions or referral fees), and adherence to pricing to the extent permitted by law.

We may permit or require you to provide online ordering or delivery off the premises of your restaurant, either directly or through a specified online or digital ordering and delivery platform (collectively “Delivery Service”). You must not provide any online ordering or delivery without our prior, written approval. If we permit or require you to provide online ordering or delivery, we have the right to require that it be conducted in accordance with the then-current delivery standards set out in our Manuals or as we may otherwise direct in writing. Those standards may include, for example, the specified Delivery Service, the requirement that such Delivery Service report sales directly to us, minimum delivery hours, acceptable methods of payment, product handling, packaging, and food safety standards, other customer service standards, and our specification of the minimum and maximum delivery area.

Before you open your restaurant, you must procure and then maintain at all times during the term of the Franchise Agreement, at your expense, insurance coverage providing the types and

minimum amounts of coverage as we specify in the Manuals. Our current minimum insurance requirements are as follows:

- comprehensive general liability and professional liability insurance, with limits no less than \$1 million per occurrence and \$2 million in the aggregate;
- products/completed operations insurance with aggregate limit not less than \$2,000,000;
- business income/interruption insurance covering at least 50% of annual Gross Sales;
- personal and advertising injury insurance with aggregate limit no less than \$1,000,000;
- fire damage legal liability insurance with aggregate limit no less than \$1,000,000 per occurrence;
- automobile insurance coverage for all vehicles used in connection with the operation of your restaurant, with limits no less than \$1 million;
- cybersecurity coverage in an amount not less than \$1 million;
- statutory workers' compensation insurance with limits no less than those required by law;
- business personal property coverage;
- tenant improvement coverage;
- employer's liability bodily injury - \$500,000/\$500,000/\$500,000; and
- employment practices - \$500,000/\$500,000.

These insurance policies must name us as an additional named insured. We may change these insurance requirements, upon reasonable notice to you, to conform to prudent business practices. If you fail to obtain or maintain the insurance required, we will have the right and authority (but not the obligation) to procure and maintain the required insurance in your name and to charge you for it, which charges, together with a reasonable fee for our expenses in so acting, will be payable by you immediately upon notice.

We do not require you to do business with us or purchase supplies from us or from any designated source other than as we describe above.

How We Issue Supplier Approvals. We base our specifications and product and supplier approvals on our discretionary determination of quality, value, and appearance. There are no written criteria for supplier approval. We must approve all of your supply sources in writing before their use. We may require suppliers to provide certain information, sign a non-disclosure agreement, guarantee our level of quality, and produce sufficient samples to allow us to test the sample at your expense. If you request us to approve a new supplier, there is no fee for supplier approval unless we require third-party testing, in which case you will pay the actual cost of the tests. We may issue specifications in the Manuals or directives, in writing or electronically, and we may modify them at any time. We will respond to a written request to approve a supplier within 60 days of its receipt. We may revoke our approval of a supplier, in our sole discretion, at any time.

Our Specifications and Standards. To maintain uniform standards of quality, appearance, and marketing, it is essential that you conform to our standards and specifications. Our

specifications are in our Manuals. Therefore, you must conform all of your leases, fixtures, goods, services, inventory, equipment, software, advertising, marketing, trademark usage, trade dress, suppliers, and materials required for the operation of the franchised business, to our standards and specifications. You must follow our trademark and copyright usage directions. You will manage your own operations and employees.

Payments to Us and Affiliates from Suppliers and from Sales to You.

*Payments to Us or Affiliates from Suppliers.* Third-party suppliers may pay us or our affiliates money in the form of license fees, commissions, promotional fees, advertising allowances, rebates, our annual convention promotions, payments for purchases of goods, or other payments, based on required purchases by franchisees. Three of our current officers each own an interest in our parent H&H Bagels Group, which is the sole owner of our affiliate Midtown Bakery.

*Revenue from Sales by Us or Affiliates to You.* Our affiliate Midtown Bakery will derive revenue from your purchases of bagels from our approved third-party distributor.

*Amounts of These Payments from Suppliers and from Sales to You.* In the fiscal year ended December 31, 2023, neither we nor our affiliates derived any revenue from required franchisee purchases or leases of goods and services, whether from us or our affiliates or from third-party suppliers.

Extent of Required Purchases Compared to Your Total. We estimate that the cost of required purchases or leases from us or our affiliates, or from suppliers we specify or approve, will be approximately 95% of the total cost of purchases or leases required to establish your franchised restaurant. During the operation of the restaurant, we estimate that the cost of required purchases or leases from us or our affiliates, or from suppliers we specify or approve, will be approximately 85% of your total annual cost of purchases and leases. In both establishing and operating your restaurant, the majority of required purchases will be from third parties that we specify or approve.

Cooperatives and Associations. There are no franchisee purchasing or distribution cooperatives.

Negotiated Prices. We may negotiate purchase arrangements with suppliers for the benefit of franchisees.

Material Benefits. We do not provide material benefits to you based solely on your use of designated or approved sources, other than that you will not be in default, will be able to renew or transfer, and will have the intangible benefit of uniform quality standards.

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

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

<b>OBLIGATION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>DISCLOSURE DOCUMENT ITEM</b>
a. Site selection and acquisition/lease	1.2, 5.1, and 5.3	1.1 and 3	Item 11
b. Pre-opening purchases/leases	7.6	3.2, 3.3 and 3.4	Items 5, 6, 7 and 8
c. Site development and other pre-opening requirements	5.1, 5.2, 5.3, 5.4, 5.5 and 7.6	1.1, 3 and 5.1	Items 8 and 11
d. Initial and ongoing training	5.4 and 6	Not Applicable	Items 6, 7 and 11
e. Opening	5.3 and 7.6	3.5	Item 11
f. Fees	4	2 and 7.3.10	Items 5, 6 and 7
g. Compliance with standards and policies/Operating Manuals	7.3 and 9.1	8.2	Items 8 and 11
h. Trademarks and proprietary information	8 and 10	1.5 and 8	Items 13 and 14
i. Restrictions on products/services offered	7.2, 7.3, 7.5, and 7.19	Not Applicable	Items 8 and 16
j. Warranty and customer service requirements	Not Applicable	Not Applicable	Item 11
k. Territorial development and sales quota	2.2	1	Item 12
l. Ongoing product/service purchases	7.3	Not Applicable	Item 8
m. Maintenance, appearance and remodeling requirements	2.2, 7.9 and 7.10	Not Applicable	Items 8 and 11
n. Insurance	13	Not Applicable	Items 6 and 7
o. Advertising	12	Not Applicable	Items 6, 7 and 11
p. Indemnification	20.3	10.3	Item 6
q. Owner’s participation/management/staffing	7.11 and 7.12	8.1	Items 11 and 15
r. Records/reports	11	Not Applicable	Item 6
s. Inspections/audits	7.7 and 11.4	Not Applicable	Items 6 and 11
t. Transfer	14	7	Item 17
u. Renewal	2.2	Not Applicable	Item 17
v. Post-termination obligations	16	6.3 and 8.5	Item 17
w. Non-competition covenants	17	8.4 and 8.5	Item 17
x. Dispute resolution	26	14	Item 17
y. Security interest in your business assets to secure your obligations to us	22	Not Applicable	Item 15
z. Guarantee of franchisee obligations (Note 1)	18.4 and Exhibit E	5.4 and Exhibit D	Item 15

**Item 10.**  
**FINANCING**

Neither we nor any of our agents or affiliates offer any direct or indirect financing to you or guarantee any note, lease, or obligation for you.

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

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

**Our Obligations Before You Open.** Before you open your business, we will:

Development Agreement

For each restaurant developed under the Development Agreement, we will approve or disapprove a proposed site within 30 days of receiving all required information and materials regarding the site (Development Agreement, Section 3.2).

Franchise Agreement

1) Approve your proposed site within 30 days of receiving all required information and materials regarding the site; provided, however, that you will be solely responsible for conforming the site to local ordinances and building codes and obtaining any required permits (Franchise Agreement, Section 1.2 and Site Selection Addendum).

2) Make available to you standard design plans and specifications for a prototypical restaurant (Franchise Agreement, Section 3.1).

3) Train you (or your operating principal, if franchisee is an entity) and your designated manager and trainer in the initial training program, free of charge (Franchise Agreement, Sections 5.4 and 6; see below in this Item 11 for information on the initial training program).

4) Make available to you advertising and promotional materials at your expense (Franchise Agreement, Sections 3.4 and 12).

5) Lend you a copy of the confidential Manuals, in one or more volumes, or in electronic media, or on an Intranet or password-protected portion of the Internet, once you and your designated manager complete the initial training program to our satisfaction (Franchise Agreement, Sections 3.5 and 9).

6) Provide you a written list of initial equipment for the restaurant, for purchase, along with written specifications for the supplier designated by us for such equipment; provided, however, that we are not required to provide detailed specifications for each piece of equipment, and we are not responsible for delivery or installment of such equipment (Franchise Agreement, Section 3.7).

7) Provide you a template document created by us for reporting sales, payroll, and inventory; and other management tools (Franchise Agreement, Sections 3.8).

Length of Time between Signing of Franchise Agreement and Opening. The typical length of time between the signing of the Franchise Agreement or the first payment of any consideration for the franchise, and the opening of the franchised business is approximately nine to 12 months. The factors that affect this length of time are the time it takes to mutually schedule and satisfactorily train you before the opening of the business, and the length of time of your pre-opening preparations, including your ability to obtain an acceptable location. You must acquire or lease a location for your restaurant, subject to our approval, within 120 days after the date of the Franchise Agreement and must open your restaurant within 365 days after the date of the Franchise Agreement. If you and we cannot agree on a site and have such site open and operating within 365 days after signing the Franchise Agreement, we may terminate the Franchise Agreement, and your initial fees will not be refunded. We have the right, but not the obligation, to provide you with reasonable extensions at our sole discretion.

**Our Obligations During Your Operation of the Franchised Business.** After you open your business, we will, at no additional charge, except as described below:

#### Development Agreement

Under the Development Agreement, we do not have to furnish any assistance to you after the opening of each restaurant.

#### Franchise Agreement

- 1) Make available to you advertising and promotional materials at your expense (Franchise Agreement, Sections 3.4 and 12).
- 2) Review and approve advertising submitted to us by you (Franchise Agreement, Section 12.5).
- 3) Conduct, as we deem advisable, inspections of your operation of the restaurant, at our cost (Franchise Agreement, Section 3.6).
- 4) Provide you with advice and loan you written materials about cooking, cleaning, storage methods, preparation and advertising of products, new recipes, and operation of the franchised business (Franchise Agreement, Section 3.9).
- 5) Administer the Brand Fund and expend amounts in the Fund on development of advertising and promotion (Franchise Agreement, Section 3.10).
- 6) Designate or approve suppliers who will make available to you for sale, ingredients, supplies, materials, and other products and equipment used or offered for sale at the franchised business as we may designate in writing (Franchise Agreement, Section 7.5).
- 7) At our option, set maximum and minimum prices for the products and services you offer, to the extent permitted by applicable law (Franchise Agreement, Section 7.16).

Brand Fund. You must contribute to the Brand Fund a payment equal to 2% of your weekly Gross Sales (see Section 12.3 of the Franchise Agreement). We may adjust or discontinue the Brand Fund contributions and related expenditures. Any increase will not raise the total fee to more than 2% of your weekly Gross Sales. You pay the Brand Fund contribution at the same time and under the same terms as the royalty. We may use the Brand Fund for marketing research and development; regional, national, or international advertising; administration (including our salaries, accounting, collection, legal and other costs); related expenses; and any media or agency costs. We make the expenditures at our discretion. We make no representations that any particular level of expenditure will be made for particular programs or to benefit particular franchisees or franchised locations.

The Brand Fund is described as follows:

a. The media in which advertising may be disseminated may be print, mail, telephone, radio, television, computer, Internet, electronic, or any other media. Coverage of the media may be local, regional, or national.

b. An in-house advertising department or a national or local advertising agency may produce the advertising.

c. You may use your own advertising material, but subject to our review and approval prior to use.

d. All franchisees contribute to the Brand Fund and do so on an equivalent basis. Our company-owned restaurants contribute to the Brand Fund at the same rate as franchisees, but we reserve the right to contribute at a different rate or not to make any contribution, at any time and without notice, in our sole discretion. We collected no Brand Fund contributions from franchisees during our last fiscal year (ended December 31, 2023), and neither we nor our affiliates contributed to the Brand Fund during our last fiscal year.

e. We will place the Brand Fund contributions in a separate bank account. We administer the Brand Fund, which is not audited. Upon your written request, we will provide you with an accounting of how the Brand Fund was spent in the prior fiscal year. The accounting is available within 60 days of the close of the fiscal year. We may charge the Fund for the reasonable costs and overhead we may incur in administering the Fund and in creating and implementing branding and advertising programs for franchisees and the System. Other than this, neither we nor our affiliates receive payment for providing goods or services to the Fund.

f. We may spend, on behalf of the Brand Fund, more or less than all of the contributions paid to the Fund in a given year. If all Brand Fund contributions paid are not spent in the fiscal year when they accrue, we can use the remaining amounts, and any interest accrued on the contributions, for the same purposes in future years. We are not required to spend any amount on advertising in the area or territory where your restaurant is located.

g. The Brand Fund may not be spent for activities that are related to solicitation for the sale of franchises. Accordingly, in the fiscal year ended December 31, 2023, there were no Brand Fund expenditures used for such solicitation.



h. We have the right to incorporate the Brand Fund or operate it through a separate entity.

Regional Advertising Cooperative. We have the right to require you to join, participate in, and pay into, multi-area marketing programs administered by us or by one or more advertising and promotional Cooperatives for a designated region. If a Cooperative has been established in your area prior to opening your restaurant, you must become a member of the Cooperative no later than 30 days after opening the restaurant. If a Cooperative is established after you open your restaurant, you must become a member of the Cooperative no later than 30 days after the date on which the Cooperative commences operation. If your restaurant is within the territory of more than one Cooperative, you will not be required to be a member of all the Cooperatives within that territory. (Franchise Agreement, Section 12.7.) Corporate-owned restaurants may, but are not required to, join advertising Cooperatives.

The purpose of the Cooperative will be solely to administer regional advertising programs and to develop standardized advertising materials for use by the members in local advertising, subject to our approval. The H&H Bagels restaurants involved in each Cooperative will be responsible for administering the Cooperative. Each Cooperative will operate pursuant to written governing documents, which we must approve and which will be available for your review upon reasonable request. We may form, change, dissolve, or merge any Cooperative.

We have the right to require you to make contributions to the Cooperative in an amount equal to 1% of weekly Gross Sales. Upon 30 days' written notice to you, we can increase the amount of such contributions, but not in excess of an amount equal to 2% of your weekly Gross Sales. Any contributions you make to the Cooperative will be credited towards your local advertising requirement, if any (described below in this Item 11). Each member of the Cooperative (including any member that is a corporate-owned restaurant) will contribute the same percentage amount of its weekly Gross Sales. The Cooperative must prepare annual unaudited financial statements, which must be available for your and our review by 60 days after our fiscal year end.

Advisory Council. We reserve the right to form a franchise Advisory Council to advise us with respect to national and local advertising issues and decisions, to coordinate franchisee efforts, and to promote the exchange of ideas and problem-solving methods. If we created an Advisory Council, it would serve in an advisory capacity only and would not have authority to directly modify policies of the System. However, we would weigh the input of this group in formulating plans, programs, and policies that affect franchisees. The Council would consist of four to six members comprised of franchisees from separate designated market areas. Members would be elected by the popular vote of other franchisees in the System. You would be required to participate in all Advisory Council programs we approve and, if implemented by the Advisory Council, to pay a fee to the Council to support its efforts. We would have the right to form, change, dissolve, or merge the Advertising Council.

Franchisee's Minimum Local Advertising and Promotion. Currently, we do not require franchisees to spend any specified amounts on local advertising of their restaurants, other than for their initial market introduction campaign, which is discussed below. However, we reserve the right, on 30 days' written notice, to require you to either: (1) make monthly expenditures in an amount we specify, but not greater than 2% of your prior month's Gross Sales, on local marketing, advertising, and promotion (in the manner we may specify in the Manuals or otherwise in writing);

or (2) make monthly payments to us in an amount we specify but not greater than 2% of your prior month's Gross Sales, which we will then spend on local marketing, advertising, and promotion on your behalf. These local advertising expenditures or payments (if any) will be in addition to the 2% Brand Fund contribution summarized above in this Item 11. (Franchise Agreement, Section 12.2.)

Market Introduction Advertising. Upon registration for the initial training program, you must spend at least \$2,500 for your initial market introduction advertising campaign. During the initial training program, we and you will collaborate to develop a plan for your market introduction advertising, and you will then execute the agreed-upon plan. You will be responsible for securing any vendors or suppliers needed to carry out the plan, and responsible for any expenditures in excess of the \$2,500 minimum amount. (Franchise Agreement, Section 12.1.)

Additional Advertising Efforts. You must make reasonable efforts to participate in and cooperate with all advertising and marketing programs selected by us, including those conducted via Internet or electronic media. All expenses of this independent advertising will be yours. In addition, we may (but are not obligated to) develop and run national and regional advertising promotions, either through the Brand Fund or otherwise. You are required to participate fully in any such promotions, on terms we may reasonably require. (Franchise Agreement, Section 12.6.) Other than as described in this Item 11, we are not obligated to conduct advertising for the franchise system.

Our Approval. You must obtain our prior review and written approval for any marketing or use of our trademarks in any media (including Internet or electronic media), except when using materials approved by us within the preceding three months. If we do not disapprove the material within 15 days of the date of our receipt, we will be deemed to have approved them. (Franchise Agreement, Section 12.5.) You must follow our trademark and copyright usage directions. We control all Internet access, marketing, and usage, and you may not advertise on the Internet or a worldwide web page, including any social media platform, without our prior consent.

Website. Unless approved by us or permitted in the Manuals, you may not establish a separate Website in connection with your franchised business. However, we have the right to establish one or more webpages within our Website, which is currently [www.hhbagels.com](http://www.hhbagels.com), but may be changed by us in our sole discretion. You must update and add content to your webpage(s) as we require. We have the right to restrict your ability to edit your webpage(s), in our sole discretion. The term "Website" means an interactive electronic document contained in a network of computers linked by communications software, commonly referred to as the Internet or World Wide Web, including any account, page, or other presence on a social or business networking media site, such as Facebook, Twitter, LinkedIn, and on-line blogs and forums ("Networking Media Sites"). You may not make any posting or other contribution to a Networking Media Site relating to us, the System, our trademarks, or your franchised Business that (a) is derogatory, disparaging, or critical of us, (b) is offensive, inflammatory, or indecent, (c) harms the goodwill and public image of the System and/or our trademarks, or (d) violates our policies relating to the use of Networking Media Sites. (Franchise Agreement, Section 8.4.)

Computer, Communications and POS Systems. You must acquire, maintain, and upgrade a POS recordkeeping and control system and information processing and communication system,

including software and hardware. Currently, we require you to acquire and use Toast as your POS system. We estimate the initial cost to acquire this system to be approximately \$4,000. Prior to attending training, you must purchase a computer with Microsoft Office, and QuickBooks software. We estimate the cost of the computer to be approximately \$750 to \$1500. You must also purchase and install an audio and video surveillance system as designated or approved by us, including all hardware, software, maintenance, and updates. You must post signs in the restaurant approved in writing in advance by us that notify your employees and occupants of the restaurant of the existence of those systems. We may require you to provide us all data and images captured by the surveillance system. We estimate the cost of the surveillance system to be approximately \$1,500 to \$3,500. The cost for these purchases is included in the equipment cost in Item 7 above.

You must maintain, upgrade and update hardware, software, and ISP or other systems during the term of the Franchise Agreement, as we periodically determine, at your expense. There are no contractual limits on the cost or frequency of your obligation to do so. We estimate the ongoing cost to be approximately \$2,000 to \$3,000 per year.

The POS recordkeeping and control system and information processing and communications system will be used to record sales and items sold and to provide a breakdown of eat-in, take-out, call-in and delivery sales; to report to and communicate with us; for your accounting; and for other tasks that we may designate. You must transmit information to us weekly or at other intervals that we specify in the form and manner that we specify. We will have independent access to the information set forth in the POS recordkeeping and control system and information processing and communications system. There are no contractual limitations on our access to this information and data.

Computer systems are vulnerable in varying degrees to computer viruses, bugs, worms, spyware, power disruptions, communication line disruptions, Internet access failures, Internet content failures, hardware and software failures, and attacks by hackers and other unauthorized intruders and other disruptions. It is your responsibility to protect yourself from these problems. This may include taking reasonable steps to secure your systems (including continually updating firewalls, password protection, and anti-virus systems), and to use backup systems.

Table of Contents of the Manuals. In order to protect our reputation and goodwill and to maintain high standards of operation under the System, you must operate your restaurant in accordance with the standards, methods, policies, and procedures specified in the Manuals. The Manuals are confidential and remain our property. We may revise the contents of the Manuals periodically, and you must comply with each new or changed standard. The table of contents of the Manuals is attached to this Disclosure Document as Exhibit I. The current total number of pages is 165 and the number of pages devoted to each subject is stated in Exhibit I.

Methods Used to Select Your Restaurant's Location. H&H Bagels franchises will generally operate out of 1,200 to 1,900 square foot locations in Class A real estate. We do not expect to own or lease locations for franchisees' restaurants. In addition, we do not select the location of your franchised restaurant; it is your responsibility to do so. However, you must obtain our approval of the location. You must submit your proposed site to us for approval and acquire the site within 120 days after the date of the Franchise Agreement. In evaluating your proposed site, we will base our approval/disapproval on factors such as cost, distance between locations,

demographics of the surrounding area, traffic patterns, accessibility, general location and neighborhood, parking, and similar factors that we analyze based on our experience and our own subjective judgment. We may conduct on-site evaluations of your proposed site as we deem necessary and appropriate. If we conduct an on-site evaluation, we reserve the right to require you to reimburse us for our expenses, including costs of travel, lodging, and meals. We cannot predict, represent, or warrant success, suitability, or income levels for any location. We will notify you in writing of our approval or disapproval of your proposed site within 30 days. If you and we cannot agree on a site and have such site open and operating within 365 days after the date of the Franchise Agreement, we may terminate the Franchise Agreement, and your initial fees will not be refunded. We have the right, but not the obligation, to provide you with reasonable extensions at our sole discretion.

If you enter into a Development Agreement with us to establish and operate multiple H&H Bagels franchised restaurants in a designated Development Area, we will approve or disapprove the proposed site of each of your restaurants based on our then-current site evaluation factors (which will be the same or similar to those described above) and similar factors that we analyze based on our experience and our subjective judgment.

### Training Program

*Pre-Training Requirements.* Prior to our own initial mandatory training, we may require the completion of certain pre-training activities. For example, we may require pre-training, web-based training modules that can be complete at home. When developed, these modules will familiarize you with H&H Bagels and our affiliates, as well as our history, culture, products, and services. In addition, the pre-training components may also provide training on how to prepare menu items and review the use of our software and other aspects of operating the H&H Bagels business. The purpose of the web-based training is to lessen the need and expense for you to attend live training while increasing the quality and consistency of the training provided to you and your personnel.

Pre-training will include attendance and successful completion of courses conducted by third parties, such as the ServSafe® certification program. You (and your required personnel) must attend this program at your sole expense. You must provide us with a copy of all certificates evidencing completion of the ServSafe® course. As of the issuance date of this Disclosure Document, the tuition was approximately \$160 per person. ServSafe® is a comprehensive food safety training and certification program offered by the National Restaurant Association Educational Foundation and is designed for the food service professional. The ServSafe® course provides accurate, up-to-date information on all aspects of handling food, from receiving and storing to preparing and serving. The duration is one day for approximately eight hours, and classes are held periodically at various locations throughout the United States. If a ServSafe® course is not available within your local area, you may substitute a comparable course in your local area.

If pre-training is not completed to our reasonable expectations, and initial mandatory training needs to be rescheduled for any of the scheduled persons, you will pay us a fee of \$5,000 per person to schedule the replacement initial mandatory training.

Upon arrival at initial training and prior to attending the balance of the program, you will be required to pass a test on the pre-training material provided by us, provide attendance records of any required pre-training courses, and present evidence of any third-party certifications obtained during the pre-training phase.

*Initial Training.* Upon completion of the pre-training modules and any required courses given by third parties, you (or your operating principal, if franchisee is an entity), your designated manager, and your trainer for your initial H&H Bagels location will attend the next regularly scheduled initial mandatory training program conducted by us. Additional individuals may attend training, but must pay our then-current training fee designated in the Manuals or otherwise by us in writing. We have the right to approve those persons who attend the initial training. You must pay the cost of accommodations and travel for all individuals attending training.

The initial mandatory training program will take place in New York City (at our corporate offices and/or one of our corporate-owned restaurants) or at another location that we choose. Initial training is approximately two weeks in duration, which is in addition to the time required for you to complete the third-party courses and the pre-training modules described above.

The initial training program is conducted after the signing of the Franchise Agreement and payment of the Initial Franchise Fee, and approximately four to eight weeks before the franchised business is opened. We provide initial training on a quarterly basis, but will increase the number of sessions as needed. All training (i.e., third-party courses, pre-training modules, and the initial training program) must be completed before the franchised business is opened.

If you become a developer, we will provide developer training without charge for your first H&H Bagels restaurant. Such training is currently voluntary, but we reserve the right to make it mandatory as the System matures. At our option, subsequent managers for developers must be trained by us, at your cost.

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Our initial training program is further described in the chart below.

<b>TRAINING PROGRAM</b>			
<b>SUBJECT</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-The-Job Training</b>	<b>Location</b>
Brand History and Culture	3	1	Virtual, in-person at one of our affiliate-owned locations, or in one of our New York, NY locations unless otherwise designated
Pre-Opening Marketing and Sales	4	2	(same)
POS Training	4	4	(same)
Menu Recipes, Kitchen and Cooking Procedures	4	15	(same)
Position Training, Customer Service and Quality Control	4	15	(same)
Administration & Inventory Management	4	3	(same)
Personnel Management	4	1	(same)
Marketing, Advertising and Promotion	4	2	(same)
Financial Management	4	2	(same)
<b>Totals</b>	<b>35</b>	<b>45</b>	

Training will be under the direction of Ryan Klepper, who has over a decade of experience in the restaurant operations and management industry. In 2014, while serving as Operations Manager for The Emerald Green Group, Ryan oversaw the reopening of Tavern on the Green. From 2017 to 2020, he served as Director of Operations at Tavern on the Green. Ryan joined H&H Bagels Group as its Director of Retail Operations in 2020. Ryan is a well-informed and well-versed hospitality professional whose passion is geared toward maximizing business performance through organized budgeting, effective training, and efficient operations.

Other instructors may include managers or trained staff members at current H&H Bagels restaurant locations, and their identities are unknown at the present.

The instructional materials are our Manuals.

*Subsequent Training.* Satisfactory completion of the initial mandatory training program, as determined by us in our sole discretion, is mandatory. If you request additional initial training or we require your personnel to take subsequent initial training, training may be provided at our next scheduled initial training program and will be provide at the then-current training fee.

We may also require you, your unit manager or your operating principals to receive or attend additional or advanced training as we may reasonably require, and you must pay our then-current training fee, or whatever charge is made by third party trainers, plus travel, food, and accommodations, and all other necessary expenses, subject to increase. The training may be web-based or may be conducted in a classroom or on-the-job setting at our location in New York City, your H&H Bagels location, or another designated location, including conferences or conventions, as determined by us.

If, in our opinion, your trainer is not capable of performing the duties of training your staff after re-training, we will not conduct a train-the-trainer program a third time for that person. We will request that you appoint an alternative trainer and have that person attend the H&H Bagels trainer program in New York City or another location selected by us. You will pay the then-current fee for trainer training and all costs for your trainer's attendance. The failure to have an approved trainer will disqualify you from receiving a royalty credit and based on the continuing performance of the H&H Bagels location, may lead to a default if the H&H Bagels location does not perform to brand standards. There is no restriction on your retaining the former trainer as a manager, employee, or in any other role other than as trainer.

Failure to complete training, re-training if required, and replacement personnel training, if required, to our satisfaction, may result in termination of the Franchise Agreement at our sole discretion. Re-training and replacement training of you, your unit manager, or your operating principals will be provided at a fee of \$5,000 per person.

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

Franchise Agreement. You will not receive an exclusive territory under the Franchise Agreement. You may face competition from other franchisees, from outlets we own, or from other channels of distribution or competitive brands that we control. There are no restrictions on us from soliciting or accepting orders anywhere. You are not entitled to any compensation from us from our solicitation or acceptance of orders anywhere.

You do not have the right to make sales using other channels of distribution, such as the Internet, telemarketing, or other direct marketing, unless permitted by us in the Manuals or otherwise in writing. We may permit or require you to provide online ordering or delivery off the premises of your restaurant, either directly or through a Delivery Service. You must not provide any online ordering or delivery without our prior, written approval. If we permit or require you to provide online ordering or delivery, we have the right to require that it be conducted in accordance with the then-current delivery standards set out in the Manuals or as we may otherwise direct in writing. Those standards may include, for example, our specification of the minimum and maximum delivery area. In addition, your delivery rights will not be exclusive, and other H&H Bagels restaurants may accept delivery orders and provide delivery at any location, including to customers in proximity to your restaurant.

The franchise is granted for a specific location approved by us. You will not receive a right of first refusal to acquire additional franchises or other rights under the Franchise Agreement. You

may not open or operate another franchised location or relocate your existing franchise premises without our prior, written consent, which may be withheld in our sole discretion. We do not have a policy or list of conditions of approval. There are no other circumstances that permit us to modify your territorial rights.

Development Agreement. You will not receive an exclusive territory under the Development Agreement. You may face competition from other franchisees, from outlets we own, or from other channels of distribution or competitive brands that we control. You will receive a Development Area in which to develop restaurants under a Development Schedule. The Development Area will be described in a schedule attached to the Development Agreement and will be determined based on the number of locations we project to be opened within a specific geographic area. Before you sign a lease for the premises of each restaurant you develop in the Development Area, we will approve or disapprove the proposed site based on our then-current site evaluation factors (which will be the same or similar to the site evaluation factors described in Item 11) and similar factors that we analyze based on our experience and our subjective judgment. Unless sooner terminated in accordance with its terms, the Development Agreement will expire on the earlier of the last date specified in the Development Schedule or the date when you have open and in operation all of the H&H Bagels restaurants required by the Development Schedule.

During the term of the Development Agreement, you will have a right of first refusal to establish, own and operate any H&H Bagels restaurants that we propose to have located within your Development Area, if you are in compliance with all other terms and conditions in the Development Agreement and any Franchise Agreement signed by you. We will give you written notice of our intent to establish, own and operate, or license another to establish, own and operate, an H&H Bagels restaurant within the Development Area, and you will have 15 days to exercise your right of first refusal by written notice to us. Within 15 days after providing written notice to us, you must enter into our then-current form of franchise agreement being offered to new franchisees of the System generally, the terms of which may be different from the Franchise Agreement attached to this Disclosure Document. Your ownership and operation of the H&H Bagels restaurant will be on the terms and conditions then being offered to new franchisees of the System generally, which may vary in form and substance from the terms, conditions and economics of this Disclosure Document or any Franchise Agreement signed by you. Any H&H Bagels restaurant opened by you under a right of first refusal will apply towards your development obligations under the Development Agreement. If you do not exercise your right of first refusal or enter into our then-current form of franchise agreement within the time periods above, then we will have the right to establish, own and operate, or license another to establish, own and operate, the H&H Bagels restaurant in your Development Area. If our written notice to you of our intent to locate an H&H Bagels restaurant within the Development Area identifies a specific site or vicinity in which the proposed H&H Bagels restaurant will be located, then you, upon exercising your right of first refusal, must locate the H&H Bagels restaurant at, or within 3 miles of, that site or vicinity. If you fail to comply with this requirement, then we will have the right to establish, own and operate, or license another to establish, own and operate, an H&H Bagels restaurant in that site or vicinity without providing you any additional right of first refusal.

Notwithstanding the foregoing, or any right of first refusal granted to you for a development area, we reserve and retain the development rights to establish and operate, and to license others to establish and operate, H&H Bagels restaurants in the development area at



Restricted Locations. For the purposes of this Disclosure Document and the Franchise Agreement, a “Restricted Location” means any location in the development area at United States military bases or other non U.S. military facilities, which are now, or may at any time hereafter, be located within the development area; hospitals; schools; mass transportation vehicles, including, without limitation, airplanes, trains, buses, and ferries and ships; travel facilities, including, without limitation, airports, train stations, bus terminals, highway travel plazas, and port facilities; sports facilities and entertainment facilities, and related events, including, without limitation, stadia, arenas, amphitheaters, theme parks, amusement parks, zoos, concert venues, and drive ins and theaters; governmental cooperatives; institutional facilities and government facilities, including, without limitation, those related to education, health care, the military, and any facility owned by, operated by, or under contract with any government agency.

Subject to the Restricted Locations and certain other exceptions, you will receive a non-exclusive Development Area. The rights we reserve, are as follows. We and our affiliates may:

1) Purchase, or be purchased by, or merge or combine with, competing businesses, wherever located.

2) Establish, own, franchise, license or operate units at any location outside your Development Area.

3) Establish, own, franchise, license or operate units at any location within your Development Area, subject to your right of first refusal described above.

4) Establish, own, franchise, license or operate units at any Restricted Location within your Development Area described above.

5) Provide dissimilar services anywhere.

6) Serve national accounts and implement other multi-area marketing programs, which may allow us or others to solicit or sell customers anywhere.

7) Sell products and services over the Internet and may sell products or services anywhere through channels of distribution other than the fixed-location type of business. We may also enter into agreements with third-party digital platforms and/or virtual kitchen, ghost kitchen, or other commercial kitchen models for the online ordering, delivery, and/or pick-up of products or services offered under the System and/or using our trademarks.

8) Establish, operate, own, or franchise any business, including competitive businesses, and sell and produce any products or services anywhere, and using any channel of distribution. We currently do not have plans to operate or franchise a business that sells or will sell goods or services similar to those that you will offer.

We do not have to compensate you for soliciting or accepting orders in your Development Area.

Customer Restrictions. You or we may solicit customers anywhere, except as described in this Item 12 and in any policies we may develop regarding the impact of new outlets on existing

outlets, taking into account factors relevant to our business. In addition, we reserve the right to develop and run national and regional advertising promotions, either through the Brand Fund or otherwise, and to require you to participate fully in any such promotions, on terms we may reasonably require.

Continuation of Franchise & Development Area. Continuation of the franchised business under a Franchise Agreement is not dependent on achievement of a certain sales volume, market penetration or other contingency. Continuation of your area development rights is dependent on your ability to develop and operate the minimum number of franchised businesses within the time determined between you and us and described in a Development Schedule in the Development Agreement. If you fail to develop and open the specified number of H&H Bagels restaurants within the agreed-upon time frame, we may reduce the size of your Development Area, terminate your rights of first refusal to develop new restaurants within your Development Area, reduce the number of restaurants that you may develop under the Development Agreement, terminate the credit towards initial franchise fees granted to you under the Development Agreement, or terminate the Development Agreement and your rights to open additional businesses for which no Franchise Agreement has yet been signed.

**Item 13.**  
**TRADEMARKS**

Development Agreement

The Development Agreement does not grant you any right to use or license others to use the trademarks.

Franchise Agreement

We license to you the trademark “H&H BAGELS” and other trademarks we may designate as part of the System. These trademarks are owned by our affiliate, Marks Bakery. By “trademark”, we mean trade names, trademarks, service marks, logos, trade dress, and other commercial symbols used to identify the business. Some of our trademarks are registered with the United States Patent and Trademark Office (“PTO”), and Marks Bakery has applied for registration of certain others. We also claim common law rights in our trademarks based on our prior usage.

The following trademarks are registered with the PTO on the Principal Register or are the subject of pending registration applications:

Trademark	Registration / Application Number	Registration / Filing Date	Status
H&H BAGELS	5998120	February 25, 2020	Registered

Trademark	Registration / Application Number	Registration / Filing Date	Status
H&H BAGELS	5998121	February 25, 2020	Registered
H&H BAGELS	5998122	February 25, 2020	Registered
	98252990	November 2, 2023	Pending
	98253007	November 2, 2023	Pending
	98253020	November 2, 2023	Pending
H&H BAGELS EST. 1972	98253025	November 2, 2023	Pending
H&H BAGELS EST. 1972	98253034	November 2, 2023	Pending
H&H BAGELS EST. 1972	98253042	November 2, 2023	Pending

All required affidavits pertaining to these registrations and applications have been filed or will be filed by the applicable deadlines. There are no currently effective material determinations of the PTO, the Trademark Trial and Appeal Board, or any state trademark administrator or court; nor any pending infringement, opposition, or cancellation proceedings involving these trademarks.

There is no pending material federal or state court litigation regarding our use or ownership rights in any of these trademarks. We are not aware of any infringing uses or superior prior rights that could materially affect your use of these trademarks. Marks Bakery does not yet have a federal registration for the trademarks listed above as “Pending”. Therefore, those trademarks do not have many legal benefits and rights as federally registered trademarks. If our, or Marks Bakery’s, right to use these trademarks is challenged, you may have to change to an alternative trademark, which may increase your expenses.

Marks Bakery, our affiliate, owns the trademarks described in this Item 13. Under an Intercompany License Agreement between us and Marks Bakery, we have been granted the exclusive right to sublicense the trademarks to franchisees throughout the United States. The Intercompany License Agreement is of perpetual duration. It may be modified only by mutual consent of the parties. It may be canceled by Marks Bakery only if (1) we materially misuse the trademarks and fail to correct the misuse, or (2) we discontinue commercial use of the trademarks for a continuous period of more than one year. The Intercompany License Agreement specifies that if it is ever terminated, your franchise rights will remain unaffected. Except for the Intercompany License Agreement, there are no agreements currently in effect that significantly limit our rights to use or license the use of our trademarks in a manner material to the franchise.

You must promptly notify us of any suspected unauthorized use of our trademarks, any challenge to their validity, or any challenge to our affiliate’s ownership of, our right to use and to license others to use, or your right to use, these trademarks. We have the sole right to direct and control any administrative proceeding or litigation involving the trademarks, including any settlements. We have the right, but not the obligation, to take action against uses by others that may constitute infringement of the trademarks. We will defend you against any third-party claim, suit, or demand arising out of your use of the trademarks. If we, in our sole discretion, determine that you have used the trademarks in accordance with the Franchise Agreement, we will bear the cost of defense, including the cost of any judgment or settlement. If we, in our sole discretion, determine that you have not used the trademarks in accordance with the Franchise Agreement, you must bear the cost of defense, including the cost of any judgment or settlement.

We reserve the right to modify, add to, or discontinue use of any of these trademarks, or to substitute different trademarks, for use in identifying the System and the businesses operating under the System. You must comply with any such changes, revisions and/or substitutions, and must bear the costs of modifying your signs, advertising materials, interior graphics and any other items to conform to the new trademarks. You may not use any of our trademarks as part of your business entity name or Internet domain name or online address. We control all Internet access, marketing, and usage.

You must not contest Marks Bakery’s ownership of the trademarks, or our right to use and to license others to use, these trademarks. Upon termination of the Franchise Agreement for any reason, you must cease using these trademarks in any manner.

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

**Patents and Copyrights**

We do not own or license the rights to any patents or registered copyrights that are material to the H&H Bagels franchise, and there are no pending patent applications that are material to the franchise. Accordingly, there are no currently effective material determinations of the PTO, U.S. Copyright Office, or the courts regarding any patents or registered copyrights that are material to the franchise, and no material proceedings pending in the PTO or any court.

While we have not filed an application for copyright registration with the United States Copyright Office, we claim copyright protection for the original materials used in the System, including our Manuals and any software, webpages, marketing materials, designs, creative works, and other original works, in any media. There is no currently effective agreement that limits our right to use and/or license our copyrights. We have no actual knowledge of any infringements that could materially affect your use of our copyrighted material. We are not obligated by the Franchise Agreement or the Development Agreement, or otherwise, to protect our copyrights or to defend you against claims arising from your use of our copyrighted material.

**Confidential Operating Manuals**

In order to protect our reputation and goodwill and to maintain high standards of operation under the System, you must operate your restaurant in accordance with the standards, methods, policies, and procedures specified in the Manuals. Upon completion by you and your designated manager of the initial training program to our satisfaction, we will loan you a copy of the confidential Manuals, in one or more volumes, or in electronic media, or on an Intranet or password-protected portion of the Internet.

You must treat the Manuals (any other manuals created for or approved for use in the operation of your restaurant) and the information contained in the Manuals as confidential, and must use all reasonable efforts to maintain this information as secret and confidential. You must not copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or otherwise make them available to any unauthorized person. The Manuals will remain our sole property and must be kept in a secure place at your restaurant.

We may revise the contents of the Manuals at any time, and you must comply with each new or changed standard. You must ensure that the Manuals are kept current at all times. In the event of any dispute as to the contents of the Manuals, the terms of the master copy maintained by us at our home office shall be controlling.

**Confidential Information**

We also claim trade secret protection with respect to our knowledge, trade secrets, methods, products, System, supplier lists, Manuals, proprietary software (if any), confidential electronic and other communications, methods of Internet and trademark usage, marketing programs, and research and development programs and initiatives.

You must not, during or after the term of the Franchise Agreement, communicate, divulge, or use for the benefit of any other person or entity any confidential information, knowledge, or know-how concerning the methods of operation of H&H Bagels restaurants (including, for example, recipes, cooking methods, preparation of menu items, drawings, architectural plans, suppliers, equipment, product costs, accounting methods, or advertising which may be communicated to you or of which you may be apprised by virtue of your operation under the Franchise Agreement. You may divulge such confidential information only to those of your employees that must have access to it in order to operate your restaurant. Any and all information, knowledge, know-how, techniques, and other data that we designate as confidential will be deemed confidential for purposes of the Franchise Agreement.

You must follow our security procedures, which may require you (and any agent or employee who is allowed access) to sign any non-disclosure and/or Intranet, Extranet, and Internet usage agreements that we require. You must promptly tell us when you learn about unauthorized use of our confidential or proprietary information.

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

You or your designated manager who has completed our initial training program must devote full time and best efforts to the management and operation of the franchised business. You or your designated manager must be on the premises operating the restaurant during peak hours of restaurant operation as we specify in writing. We do not require that your designated manager maintain an equity interest in a franchisee entity. Each equity or voting owner who owns 5% or more of the franchised business must personally guarantee the Franchise Agreement, including confidentiality and non-competition covenants. A copy of the Guarantee is attached to the Franchise Agreement. All owners of an entity developer must personally guarantee the Development Agreement, including confidentiality and non-competition covenants. A copy of the Guarantee is attached to the Development Agreement.

The restaurant must at all times be under the direct, on-premises supervision of an individual who has satisfactorily completed the training as we specify in writing. If you wish to change your designated manager, you must notify us of this fact, and we must approve it in writing. Your new designated manager must satisfactorily complete the training program at your expense.

You and your owners and managers must sign the confidentiality and non-compete agreements attached as Exhibit D to the Franchise Agreement (which is Exhibit A to this Disclosure Document); and, if you sign a Development Agreement, as Exhibit E to the Development Agreement (which is attached to this Disclosure Document as Exhibit B).

**Item 16.**  
**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

To maintain uniform quality standards, you must follow our directions concerning the services and products you provide. You are not limited in the customers to whom you may sell, except as to a multi-area marketing program. You may sell only those approved services and products consistent with the image and product line as have been expressly approved by us. You must sell all products and services we authorize. You must sell all menu items and other products at retail and not sell those products and merchandise at wholesale or for resale, except upon our prior written approval.

We may recommend your prices to your customers, set resale prices, and determine pricing strategy of multi-area marketing and loyalty programs, each to the extent permitted by law.

We may change the types of goods or services we authorize, and there are no limits on our right to do so.

**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.**

Franchise Agreement

	<b>PROVISION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>SUMMARY</b>
a.	Length of the franchise term	2.1	10 years.
b.	Renewal or extension	2.2	You have the right to renew the Franchise Agreement for 2 consecutive terms of 5 years each.
c.	Requirements for franchisee to renew or extend	2.2	Give written notice between 6 and 9 months before the end of the current term; make or provide for renovation of the premises of the restaurant as we reasonably require; not be in default of any agreement between us and you, or between any of our affiliates and you; complied with those agreements during their terms; satisfied all monetary obligations owed to us or to our affiliates, and met those obligations throughout the term of the Franchise Agreement; show to us that you have the right to remain in possession of the premises for the duration of the renewal period; sign our then-current franchise agreement that may have terms that are materially different from those in your original Franchise Agreement; sign a general release of us and our affiliates; comply with our then-current qualification and training requirements; and pay us a renewal fee of 25% of our then-current initial franchise fee.
d.	Termination by franchisee	None	Subject to state law.

	PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
e.	Termination by franchisor without cause	None	Not applicable.
f.	Termination by franchisor with cause	15	We have the right to terminate the Franchise Agreement if you default. Depending upon the reason for termination, we may not provide you an opportunity to cure. See this Item 17(g) and (h) for further description.
g.	Cause defined – curable defaults	15.3	You have 15 days to cure all defaults, except those described below in Item 17(h). Defaults capable of cure include (1) failure to comply with the requirements of the Franchise Agreement or the Manuals; (2) failure, refusal or neglecting to promptly pay monies owing to us or our affiliates when due; (3) failure to maintain and observe standards or procedures prescribed in the Franchise Agreement, the Manuals or otherwise in writing; (4) failure to obtain required approvals; (5) acting in a manner that is inconsistent with or contrary to your lease or sublease for the premises, or jeopardizing your right to renew the lease or sublease; (6) engaging in any business that uses a confusingly similar mark; (7) buying or accepting disapproved products, or products from disapproved suppliers; or (8) failing to comply with all applicable laws.
h.	Cause defined – non-curable defaults	15.1, 15.2	Your rights will automatically terminate without notice if you become insolvent, file for bankruptcy, or are subject to various legal actions or proceedings. We may terminate the Franchise Agreement, without any opportunity to cure the default, effective immediately upon notice, if (1) you fail to locate an approved site or to construct and open the restaurant within the time prescribed by the Franchise Agreement or the Site Selection Addendum; (2) you or your designated manager fails to complete the training program, or you fail to provide training to your employees as required by the Franchise Agreement; (3) you cease to operate the Franchised Business or you lose the right to possession of the premises of the Franchised Business; (4) you are convicted of certain crimes; (5) a threat to public health or safety results from the operation of the Franchised Business; (6) you attempt to transfer your rights under the Franchise Agreement or in Franchisee or the Franchised Business without our consent; (7) an approved transfer is not made within the time provided following death or mental incapacity; (8) you fail to comply with the covenants relating to non-disclosure and non-competition or fail to obtain execution of covenants from others, as required by the Franchise Agreement; (9) you disclose the contents of the Manuals or other confidential information; (10) you submit false reports or knowingly maintain false books or records; (11) you misuse the Proprietary Marks or damage the goodwill in the Proprietary Marks; (12) you refuse to let us inspect the premises of the Franchised Business, or your books, records or accounts; (13) you receive a notice of default and do not initiate a cure immediately; (14) a supplier withholds deliveries or refuses to supply to the Franchised Business because you have violated its credit terms; or (15) if after you cure any default, you commit the same default again.
i.	Franchisee’s obligations on termination/ non-renewal	16	You must cease to operate the Franchised Business, pay past due and future amounts, de-identify your restaurant, cease to use and return Manuals and confidential information associated with the System, cancel any assumed name registration, and comply with non-disclosure and non-competition obligations.



	<b>PROVISION</b>	<b>SECTION IN FRANCHISE AGREEMENT</b>	<b>SUMMARY</b>
j.	Assignment of contract by franchisor	14.1	We have the right to transfer or assign all or any part of our rights or obligations under the Franchise Agreement to any person or legal entity.
k.	“Transfer” by franchisee – defined	14.2	You may not transfer an interest in the Franchise Agreement or Franchisee or sell substantially all of the assets of the Franchised Business, without our prior written consent.
l.	Franchisor approval of transfer by franchisee	14.2	You must obtain our prior written consent before any assignment or transfer, by operation of law or otherwise of any interest in you or the Franchise Agreement.
m.	Condition for franchisor approval of transfer	14.3	We may impose any or all of the following conditions on our approval of your proposed transfer: you notify us of any proposed transfer at least 90 days prior to when the transfer is proposed to take place; you have satisfied your accrued monetary obligations and other obligations to us and our affiliates; you sign a general release of us; you and transferee execute a mutual general release of all claims against each other; the transferee enters into a written assignment, assuming and agreeing to perform your obligations under the Franchise Agreement, guarantees the performance of all those obligations, and/or signs our then-current form of franchise agreement (which may have materially different terms than those in your Franchise Agreement); the transferee meets our standards; you remain liable for all of your obligations to us in connection with the Franchised Business that arose before the transfer; the transferee completes any training programs then in effect; the transferee successfully completes any training we reasonably require; you pay us a transfer fee of 25% of the then-current initial franchise fee; and you first offer to sell the interest to us.
n.	Franchisor’s right of first refusal to acquire franchisee’s business	14.5	We will have the option to purchase the seller’s interest on the same terms and conditions offered by a third party.
o.	Franchisor’s option to purchase franchisee’s business	16.9	We have the option to purchase from you any or all of the equipment, signs, fixtures and customer lists related to the operation of the Franchised Business (excluding your costs for professional services, such as architectural costs and legal costs), at fair market value or for 50% of the amount of your original investment, exclusive of supplies and inventory, whichever is less, and to purchase any or all supplies and inventory of the Franchised Business at your cost or at fair market value, whichever is less.
p.	Death or disability of franchisee	14.6	Upon your death, physical or mental incapacity, your executor, administrator, or personal representative must transfer your interest in the Franchise Agreement, the Franchisee, or the Franchised Business to a third party approved by us within 6 months after your death or mental incapacity. Those transfers will be subject to the same conditions as any other transfer except that transferee may assume existing agreement and not sign a new agreement, and no transfer fee is required but you must reimburse our out-of-pocket costs.

	PROVISION	SECTION IN FRANCHISE AGREEMENT	SUMMARY
q.	Non-competition covenants during the term of the franchise	17.2	Subject to state law, you must not: (a) divert or attempt to divert any present or prospective business or customer of any restaurant to any competitor, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; or (b) own, maintain, operate, engage in, be employed by, provide any assistance to, or have any interest in (as owner or otherwise) any business that offers or sells products, merchandise, or services which are the same as or similar to the products, merchandise, and services being offered by the restaurant under the System.
r.	Non-competition covenants after the franchise is terminated or expires	17.3	Subject to state law, for a continuous uninterrupted period of 2 years following the transfer, expiration, or termination of the Franchise Agreement, or of a final order of a duly authorized arbitrator, panel of arbitrators or court of competent jurisdiction regarding any of the foregoing, you may not own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any business that: (i) offers or sells products, merchandise, or services which are the same as or similar to the products, merchandise, and services offered by the Franchised Business under the System; and (ii) is, or is intended to be, located at or within the county or municipality in which the Approved Location is located; 25 miles of the Approved Location; or 25 miles of any business operating under the Proprietary Marks.
s.	Modification of Agreement	24	No amendment, change, or variance from the Franchise Agreement will be binding on either party unless mutually agreed to by the parties and signed in writing.
t.	Integration/merger clause	24	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to applicable state law.) Any representations or promises outside of the Disclosure Document and Franchise Agreement may not be enforceable. Nothing in the Franchise Agreement or any related agreement is intended to disclaim the representations made in the latest franchise disclosure document furnished to you.
u.	Dispute resolution by arbitration or mediation	--	Not applicable.
v.	Choice of forum	26.2, 26.3	All actions brought by you must be brought in the judicial district in which we have our principal place of business; we have the right to commence an action against you in any court of competent jurisdiction (subject to applicable state law).
w.	Choice of law	26.1	New York law and the U.S. Federal Trademark Act (Lanham Act) apply (subject to applicable state law).

Development Agreement

	<b>PROVISION</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>SUMMARY</b>
a.	Length of the franchise term	4.1	The earlier of (1) the last date specified in the Development Schedule; or (2) the date when you have open and in operation all of the restaurants required by the Development Schedule.
b.	Renewal or extension	None	Not applicable.
c.	Requirements for franchisee to renew or extend	None	Not applicable.
d.	Termination by franchisee	None	Subject to state law.
e.	Termination by franchisor without cause	None	Not applicable.
f.	Termination by franchisor with cause	6	We have the right to terminate with cause.
g.	Cause defined – curable defaults	None	Not applicable.
h.	Cause defined – non-curable defaults	6.1, 6.2	Non-curable defaults include: insolvency, bankruptcy, dissolution, foreclosure or other similar filings or proceedings; final or unsatisfied judgments; your non-compliance with the Development Agreement, Franchise Agreement or any other agreement with us; or transfer or attempted transfer in violation of the Development Agreement. Note that a default and termination under the Development Agreement shall not constitute a default under any Franchise Agreement; however, a default and termination of a Franchise Agreement will constitute a non-curable default under the Development Agreement.
i.	Franchisee’s obligations on termination/ non-renewal	6.3	Obligations include loss of rights granted under the Development Agreement.
j.	Assignment of contract by franchisor	7.1	No restriction on our right to transfer or assign Development Agreement.
k.	“Transfer” by franchisee – defined	7.2	Includes transfer of the Development Agreement, any direct or indirect interest in the Developer, or all or substantially all of the assets of the restaurants developed under the Development Agreement.
l.	Franchisor approval of transfer by franchisee	7.2	You must obtain our prior written consent before any assignment or transfer, by operation of law or otherwise of any interest in you or the Development Agreement.

	<b>PROVISION</b>	<b>SECTION IN DEVELOPMENT AGREEMENT</b>	<b>SUMMARY</b>
m.	Condition for franchisor approval of transfer	7.3	You notify us of any proposed transfer at least 90 days prior to when the transfer is proposed to take place; you have satisfied your accrued monetary obligations and other obligations to us and our affiliates; you are not in default of any provisions of the Development Agreement; you sign a general release of us; you and transferee execute a mutual general release of all claims against each other; the transferee enters into a written assignment, assuming and agreeing to perform your obligations under the Development Agreement, guarantees the performance of all those obligations, and/or signs our then-current form of development agreement (which may have materially different terms); the transferee meets our standards; you remain liable for all of your obligations that arose before the transfer; each restaurant opened under the Development Agreement is in full compliance with the applicable Franchise Agreement; you pay us a transfer fee of 25% of the then-current franchise fee for each restaurant being transferred; and you first offer to sell the interest to us.
n.	Franchisor's right of first refusal to acquire franchisee's business	7.5	We have a right of first refusal for any proposed transfer of interest.
o.	Franchisor's option to purchase franchisee's business	None	Not applicable.
p.	Death or disability of franchisee	7.6	Upon the death, physical incapacity, or mental incapacity of any person holding any interest in the Development Agreement, in Developer, or in all or substantially all of the assets of the Developer, an approved transfer must occur within 6 months. Transferee may assume existing agreement and not sign a new agreement, and no transfer fee is required but you must reimburse our out-of-pocket costs.
q.	Non-competition covenants during the term of the franchise	8.4	Subject to state law, during the term of the Development Agreement you may not own, maintain, operate, engage in, be employed by, provide assistance to, or have interest in any retail business which is substantially similar to an H&H Bagels restaurant or sells substantially similar products as an H&H Bagels restaurant.

	PROVISION	SECTION IN DEVELOPMENT AGREEMENT	SUMMARY
r.	Non-competition covenants after the franchise is terminated or expires	8.5	Subject to state law, for 2 years after transfer, termination or expiration of the Development Agreement, or of a final order of a duly authorized, arbitrator, panel of arbitrators or court of competent jurisdiction regarding any of the foregoing you may not own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any business that (1) is substantially similar to an H&H Bagels restaurant or sells substantially similar products an H&H Bagels restaurant, and (2) is, or is intended to be, located at or within the Development Area; the county or municipality in which a restaurant developed by you is located; 25 miles of any restaurant developed by you; or 25 miles of any business operating under the Proprietary Marks.
s.	Modification of Agreement	13	All amendments, changes, or variances from the Development Agreement must be in writing.
t.	Integration/merger clause	13	Subject to applicable state law, the Development Agreement and all referenced and attached documents constitute the entire, full, and complete agreement between the parties. Nothing in the Development Agreement or any related agreement is intended to disclaim the representations made in the latest franchise disclosure document furnished to you.
u.	Dispute resolution by arbitration or mediation	--	Not applicable.
v.	Choice of forum	14.2, 14.3	All actions brought by you must be brought in the judicial district in which we have our principal place of business; we have the right to commence an action against you in any court of competent jurisdiction (subject to applicable state law).
w.	Choice of law	14.1	New York law and the U.S. Federal Trademark Act (Lanham Act) apply (subject to applicable state law).

The State Addenda in Exhibit F describe certain state laws that, to the extent applicable, may supersede the Franchise Agreement and Development Agreement in your relationship with us. There may also be court decisions that may supersede the Franchise Agreement and Development Agreement in your relationship with us.

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

We do not use any public figure or personality to promote the franchise in any way.

**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 this 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.

As of the date of this Disclosure Document, we do not have any franchised locations open and operating. Our affiliates, however, have operated three corporate-owned restaurants for many years: one located at 1551 2nd Avenue, New York, NY 10028 (“Upper East Side Location”); one located at 526 Columbus Avenue, New York, NY 10024 (“Upper West Side Location”); and one located in Moynihan Train Hall, 421 8th Avenue, New York, NY 10199 (“Moynihan Train Hall Location”). The tables below present certain historical performance information for these three locations, which are referred to collectively as the “Corporate Locations”. The H&H Bagels brand has been operating at the Upper East Side Location since 1974. Our affiliate, P.V. Bakery, Inc. has owned and operated that location since 1989. The Upper West Side Location has been owned and operated by our affiliate Columbus Bakery LLC since 2016. The Moynihan Train Hall Location is owned by our affiliate MTH Bakery LLC and has been operating since December 2021. In addition, our affiliate Kips Bay Bakery LLC opened a corporate-owned restaurant in April 2024, located at 429 3rd Avenue, New York, NY 10016 (“Kips Bay Location”). Since this location has just opened, and we do not yet have any meaningful information on its performance, we have not included it in this Item 19.

While the Corporate Locations are similar to the franchised restaurant you will operate, they differ in at least the following respects. The Corporation Locations have no obligation to pay royalties. In addition, prior to fiscal year 2021, the Upper East Side Location and Upper West Side Location had no obligation to contribute to the Brand Fund, and the Moynihan Train Hall Location was not yet operating. The Corporate Locations are also in highly competitive, urban residential areas, and your franchised restaurant may not be located in that type of environment. In addition, the Upper East Side Location conducts wholesale business operations, but your franchised restaurant will not do so. Lastly, the H&H Bagels brand has achieved iconic status in New York City, and the Corporate Locations benefit from the associated customer goodwill.

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The following data provide some insights into the operations of the Corporate Locations:

**Upper East Side Location<sup>1,2,3</sup>**

	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>
<b>UES Gross Sales<sup>2</sup></b>	\$3,101,587	\$2,562,844	\$3,390,942	\$3,998,563	\$3,711,448
<b>Transactions</b>	226,638	176,899	216,526	231,735	205,507
<b>Average Ticket</b>	\$13.69	\$14.49	\$15.66	\$17.25	\$18.06
<b>Imputed Royalty Fees (6% of Gross Sales)</b>	\$186,095	\$153,771	\$203,457	\$239,914	\$222,687
<b>Imputed Brand Fund Contribution (2% of Gross Sales)</b>	\$62,032	\$51,257	\$67,819	\$79,971	\$74,229
<b>Cost of Goods Sold (COGS)</b>	35.7%	33.5%	33.2%	38.2%	37.1%
<b>Labor Costs (Incl. Payroll Taxes)</b>	29.9%	27.5%	26.1%	26.3%	25.0%

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### Upper West Side Location<sup>1,2</sup>

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
<b>UWS Gross Sales<sup>2</sup></b>	\$1,861,146	\$1,410,168	\$1,730,621	\$1,540,439	\$1,644,575
<b>Transactions</b>	146,893	104,047	115,280	100,373	106,713
<b>Average Ticket</b>	\$12.67	\$13.55	\$15.01	\$15.35	\$15.41
<b>Imputed Royalty Fees (6% of Gross Sales)</b>	\$111,669	\$84,610	\$103,837	\$92,426	\$98,575
<b>Imputed Brand Fund Contribution (2% of Gross Sales)</b>	\$37,223	\$28,203	\$34,612	\$30,809	\$32,892
<b>Cost of Goods Sold (COGS)</b>	38.0%	31.8%	29.6%	36.3%	37.3%
<b>Labor Costs (Incl. Payroll Taxes)</b>	30.5%	28.1%	25.8%	19.5%	17.5%

### Moynihan Train Hall Location<sup>1,2</sup>

Fiscal Year	MTH Gross Sales	Transactions	Average Ticket	Imputed Royalty Fees (6% of Gross Sales)	Imputed Brand Fund Contribution (2% of Gross Sales)	Cost of Goods Sold (COGS)	Labor Costs (Incl. Payroll Taxes)
2022	\$2,026,055	214,448	\$9.45	\$121,563	\$40,521	36.0%	17.8%
2023	\$2,928,831	285,271	\$10.27	\$175,730	\$58,577	36.2%	15.3%



## NOTES:

1. As noted above, the Corporation Locations have no obligation to pay royalties. In addition, prior to fiscal year 2021, the Upper East Side Location and Upper West Side Location had no obligation to contribute to the Brand Fund, and the Moynihan Train Hall Location was not yet operating. However, for your reference, we have included imputed royalty amounts (6% of Gross Sales) and Brand Fund contributions (2% of Gross Sales) in the tables above. We reserve the right to contribute to the Brand Fund at a different rate or not to make any contribution, at any time and without notice, in our sole discretion.

2. The UES Gross Sales, UWS Gross Sales, and MTH Gross Sales figures in the respective tables above represent all retail sales at the applicable Corporate Location, excluding discounts, returns, and sales taxes.

3. The UES Gross Sales, Transactions, and Average Ticket figures in the table relate only to the retail sales operations at the Upper East Side Location, but the Cost of Goods Sold and Labor Costs figures are inclusive of the costs of the wholesale business operations conducted at that location.

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

You should conduct an independent investigation of the costs and expenses you will incur in operating your franchised restaurant. Franchisees or former franchisees listed in this disclosure document may be one source of information.

Written substantiation of the data used in preparing this financial performance representation will be made available to you upon reasonable written request.

Other than the financial performance representation in this Item 19, 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 Jay Rushin, H&H Bagels Franchising LLC at 109 W. 27th Street, Suite #3B, New York, NY 10001, 646-669-9165; the Federal Trade Commission, and the appropriate state regulatory agencies.

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

**(Table No. 1)**  
**System-wide Outlet Summary**  
**For Years 2021 to 2023\***

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets Operating at the Start of the Year</b>	<b>Outlets Operating at the End of the Year</b>	<b>Net Change</b>
Franchised	2021	0	0	0
	2022	0	0	0
	2023	0	0	0
Company-Owned	2021	2	3	+1
	2022	3	3	0
	2023	3	3	0
Total Outlets	<b>2021</b>	<b>2</b>	<b>3</b>	<b>+1</b>
	<b>2022</b>	<b>3</b>	<b>3</b>	<b>0</b>
	<b>2023</b>	<b>3</b>	<b>3</b>	<b>0</b>

\* All numbers are as of December 31 for each year.

**(Table No. 2)**  
**Transfers of Outlets from Franchisees to New Owners (other than Us)**  
**For Years 2021 to 2023\***

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
[State]	2021	0
	2022	0
	2023	0
Totals	<b>2021</b>	<b>0</b>
	<b>2022</b>	<b>0</b>
	<b>2023</b>	<b>0</b>

\* All numbers are as of December 31 for each year.

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**(Table No. 3)**  
**Status of Franchised Outlets**  
**For Years 2021 to 2023\***

State	Year	Outlets Operating at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations – Other Reasons	Outlets Operating at End of Year
[State]	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
[State]	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
	2023	0	0	0	0	0	0	0
<b>Totals</b>	<b>2021</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2022</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2023</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\* All numbers are as of December 31 for each year.

**(Table No. 4)**  
**Status of Company-Owned Outlets**  
**For Years 2021 to 2023\***

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
New York	2021	2	1	0	0	0	3
	2022	3	0	0	0	0	3
	2023	3	0	0	0	0	3
<b>Totals</b>	<b>2021</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
	<b>2022</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>
	<b>2023</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>

\* All numbers are as of December 31 for each year.

**(Table No. 5)**  
**Projected Openings as of December 31, 2023**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
California	1	1	0
Connecticut	1	1	0
District of Columbia	1	1	0
Florida	4	4	0
New York	0	0	4
Illinois	0	0	1
Tennessee	1	1	0
Massachusetts	0	0	1
Texas	1	1	0
<b>Totals</b>	<b>9</b>	<b>9</b>	<b>6</b>

As of the date of this Disclosure Document, we have two franchisees, neither of whom have yet opened their restaurant. The name and contact information of these franchisees are listed in Exhibit D. No current or former franchisees signed confidentiality clauses during the last three fiscal years.

There were no franchisees who had an outlet transferred, terminated, canceled, or not renewed, or who otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the prior fiscal year, or who have not communicated with us within 10 weeks of the issuance date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

There are no trademark-specific franchisee organizations associated with the franchise System being offered, that we have created, sponsored, or endorsed and that have asked to be included in this Disclosure Document.

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

Our fiscal year end is December 31 each year. Exhibit C contains our audited financial statements for the fiscal years ended December 31, 2023; December 31, 2022; and December 31, 2021 (for the period from our formation on May 6, 2021 to December 31, 2021); along with unaudited financial statements as of March 31, 2024.

**Item 22.**  
**CONTRACTS**

You will be asked to sign the following:

- Exhibit A Franchise Agreement
- Exhibit B Development Agreement
- Exhibit F State Addenda
- Exhibit G Conditional Assignment of Telephone and Directory Listings
- Exhibit H Sample General Release
- Exhibit J Franchise Disclosure Questionnaire
- Exhibit K Acknowledgment of Receipt of Completed Agreements
- Exhibit M Receipt of Disclosure Document

**Item 23.**  
**RECEIPTS**

A receipt in duplicate is attached to this Disclosure Document as Exhibit M. You should sign both copies of the receipt. Keep one copy for your own records and return the other signed copy to us at 109 W. 27th Street, Suite #3B, New York, NY 10001.

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit A**

**Franchise Agreement**

**H&H BAGELS FRANCHISING LLC**  
**FRANCHISE AGREEMENT**

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**EXHIBITS**

EXHIBIT A – APPROVED LOCATION; OWNERS

EXHIBIT B -- SITE SELECTION ADDENDUM

EXHIBIT C -- ADA CERTIFICATION

EXHIBIT D -- CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

EXHIBIT E -- GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

EXHIBIT F -- LEASE ADDENDUM

EXHIBIT G -- ADDENDUM FOR FRANCHISEES WHO OBTAIN SBA FINANCING

**H&H BAGELS  
FRANCHISE AGREEMENT**

This Franchise Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, 20\_\_\_\_ by and between H&H Bagels Franchising LLC, a New York limited liability company with its principal place of business at 109 W. 27<sup>th</sup> Street, Suite #3B, New York, NY 10001 (the “Franchisor”); and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (the “Franchisee”).

**WITNESSETH:**

**WHEREAS**, Franchisor, as the result of the expenditure of time, skill, effort, and money, has developed, and continues to develop, a distinctive system relating to the establishment and operation of H&H Bagels restaurants, which currently feature and offer for sale to the public iconic, high quality bagels from a par-baked H&H Bagels product authentically “Made in NYC” and baked fresh daily and high quality signature spreads, smoked fish, and prepared salads under the trade name “H&H Bagels” (the “System”), which Franchisor may change from time to time;

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior designs, décor, color scheme, fixtures, and furnishings; standards and specifications for the production of H&H Bagels products; uniform standards; specifications and procedures for operations and take-out, curb-side pick-up and delivery services; training and assistance, and branding, advertising and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time;

**WHEREAS**, the System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited to, the mark “H&H BAGELS”, as is now designated and may hereafter be designated by Franchisor in writing for use in connection with the System (collectively, the “Proprietary Marks”);

**WHEREAS**, Franchisee desires to enter into the business of operating an H&H Bagels restaurant under Franchisor’s System and Proprietary Marks, and wishes to enter into an agreement with Franchisor for that purpose, and to receive the training and other assistance provided by Franchisor in connection therewith; and

**WHEREAS**, Franchisee understands and acknowledges the importance of Franchisor’s high standards of quality, cleanliness, appearances, and service and the necessity of operating the business franchised hereunder in conformity with Franchisor’s standards and specifications.

**NOW, THEREFORE**, the parties agree as follows:

**1. GRANT**

1.1 Grant of Franchise. Franchisor grants to Franchisee the right and Franchisee undertakes the obligation, upon the express terms and conditions set forth in this Agreement, to establish and operate an H&H Bagels restaurant under the Proprietary Marks and the System (the

“Restaurant” or “Franchised Business”), and to use the Proprietary Marks and the System, as they may be changed and improved from time to time at Franchisor’s sole discretion, solely in connection therewith and only at the location set forth in Section 1.2 hereof.

1.2 Approved Location. Franchisee shall operate the Franchised Business only at a location approved by Franchisor (the “Approved Location”). If, at the time of execution of this Agreement, the parties hereto have agreed on an Approved Location, the exact street address of the Approved Location shall be set forth in Exhibit A attached hereto. If, at the time of execution of this Agreement, a location for the Franchised Business has not been obtained by Franchisee and approved by Franchisor, Franchisee shall lease or acquire a location within one hundred twenty (120) days after the date of this Agreement, subject to the Franchisor’s approval, as provided for in the Site Selection Addendum attached hereto as Exhibit B. Franchisee shall have the location open and operating no later than three hundred sixty-five days (365) days after the date of this Agreement. Franchisee shall not relocate the Restaurant without the prior written approval of Franchisor. Franchisor shall have the right, in its sole discretion, to withhold approval of relocation and, in connection with such approval, Franchisee shall pay Franchisor Five Thousand U.S. Dollars (\$5,000) or such greater amount necessary to reimburse Franchisor for its costs associated with Franchisee relocating its location. Franchisee hereby acknowledges and agrees that Franchisor’s approval of the site for the Restaurant does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the Restaurant’s site or for any other purpose, or of its compliance with any applicable zoning or land-use regulations or ordinances and any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the Americans with Disabilities Act (the “ADA”) regarding the construction, design and operation of the Restaurant.

1.3 Franchisee’s Territory. Franchisee will not receive an exclusive territory under the Franchise Agreement. Franchisor and its affiliates retain the rights, among others, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein to (a) to establish and operate, and license others to establish and operate, a Restaurant under the System and the Proprietary Marks at any location; (b) to establish minimum and maximum pricing and pricing guidelines for all Restaurants as part of its marketing strategy; (c) to establish, acquire, franchise, or operate any business or restaurant of any kind, including competitive businesses, at any location; (d) to sell products and services over the Internet or produce and sell any products or services anywhere through any channel of distribution, including products under the same or different proprietary marks, which may compete with Franchisee; further, Franchisor and its affiliates provide no assurances that those alternative distribution channels will be offered as franchises or, if offered as franchises, that they will be offered to H&H Bagels franchisees in those market areas; (e) to sell to or solicit customers anywhere, and to allow others to sell to or solicit customers anywhere; (f) to enter into agreements with third party digital platforms for the online ordering, delivery, and/or pick-up of products or services offered under the System and/or using the Proprietary Marks; and (g) to purchase, or be purchased by, or merge or combine with, competing businesses, wherever located.

1.4 Supplementing the System. Franchisee acknowledges that the System may be supplemented, improved, and otherwise modified from time to time by Franchisor; and Franchisee agrees to comply with all reasonable requirements of Franchisor in that regard, including, without

limitation, offering and selling new or different products, services, or merchandise as specified by Franchisor.

## 2. **TERM AND RENEWAL**

2.1 **Term.** This Agreement shall be in effect the earlier of (i) the date the Restaurant opens or (ii) 210 days following the signing of this Agreement, and, except as otherwise provided herein, the term of this Agreement shall be ten (10) years from such date (“Initial Term”).

2.2 **Successor Agreement.** When the Initial Term of this Agreement expires (or when a Successor Term (as defined herein) expires), if Franchisor is still offering franchises in Franchisee’s market area and Franchisee was in material compliance during such expired term, Franchisee may enter into a successor agreement, at its election, if it is eligible. After the Initial Term, Franchisee may be eligible for two (2) additional consecutive terms of five (5) years each (each a “Successor Term”). At the end of a term, Franchisee’s performance during such term shall be assessed for its entire organization during a business review to determine its eligibility for a Successor Term. Franchisee may request a business review in writing no more than thirty (30) months prior to the end of the Initial Term and twenty-four (24) months before the end of any Successor Term. Franchisee’s eligibility for a successor agreement shall be assessed during the business review conducted approximately twenty-four (24) months prior to the end of its initial term and eighteen (18) months prior to the end of any Successor Term. Eligibility for a successor agreement shall depend upon whether Franchisor has determined, in its sole discretion, that Franchisee is in good standing, which determination may include the satisfaction of any or all of the following conditions:

2.2.1 Franchisee shall be in substantial compliance with the terms and conditions of this Agreement.

2.2.2 Franchisee, if party to a multi-unit development agreement with Franchisor (or an affiliate of Franchisor) shall be in substantial compliance with the terms and conditions of such agreement (“Development Agreement”) and each of its franchise agreements (“Franchise Agreement”).

2.2.3 Franchisee shall make or provide for, in a manner satisfactory to Franchisor, (i) such renovation and modernization of the premises of the Restaurant (the “Premises”) as Franchisor may reasonably require, including, without limitation, installation of new equipment and renovation of signs, furnishings, fixtures, and décor to reflect the then-current image of the System and (ii) such services, products, methods and procedures of doing business as a Franchised Business to reflect the then-current standards of the System;

2.2.4 Franchisee shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee and Franchisor or its affiliates; and Franchisee shall have substantially complied with all the terms and conditions of such agreements during the terms thereof;

2.2.5 Franchisee shall have satisfied all monetary obligations due and owed by Franchisee to Franchisor and its affiliates and to third party suppliers, and shall have timely met those obligations throughout the term of this Agreement;

2.2.6 Franchisee shall have had not more than one payment breach, cured or uncured, during the initial 12-month period of any Development Agreement or Franchise Agreement; for the purposes of this Agreement, “Payment Breach” is defined as the failure to make any required payment to Franchisor and its affiliates on or before the specified due date;

2.2.7 Franchisee shall have had not more than one Payment Breach, cured or uncured, during any rolling 24-month period of this Agreement, any Development Agreement or Franchise Agreement;

2.2.8 Franchisee shall not have had an uncured Material Breach during the initial 12-month period of any Development Agreement or Franchise Agreement; for the purposes of this Agreement, “Material Breach” is defined as Franchisee’s failure to perform any agreement, term, covenant, or condition of this Agreement, any Development Agreement or Franchise Agreement, or any breach of any warranty or representation in such agreement;

2.2.9 Franchisee shall not have had more than one Material Breach, cured or uncured, in any rolling 24-month period during the term of this Agreement, any Development Agreement or Franchise Agreement;

2.2.10 Franchisee shall not have had an uncured Infringing Use; for the purposes of this Agreement, “Infringing Use” shall mean Franchisee’s use of properties of Franchisor or its affiliates, including but not limited to, franchise materials or other intellectual properties in a manner not in accordance with the terms and conditions of this Agreement (or any Development Agreement or Franchise Agreement), without the prior written approval of Franchisor;

2.2.11 Franchisee shall not have had more than one Infringing Use during the term, cured or uncured during the initial 12-month period of this Agreement, any Development Agreement or Franchise Agreement.

2.2.12 Franchisee shall not have had more than one Infringing Use, cured or uncured, during any rolling 24-month period during the term of this Agreement, any Development Agreement or Franchise Agreement.

2.2.13 Franchisee shall have maintained control of the Premises and shall present evidence, satisfactory to Franchisor, that Franchisee has the right to remain in possession of the Premises for the duration of the Successor Term.

2.2.14 Franchisee shall be able to maintain licenses and permits necessary to operate the Franchised Business.

2.2.15 Neither Franchisee nor its Restaurant shall be in violation of any applicable law, including not having been subject to any material health code violations during the prior thirty-six (36) months.

2.2.16 Franchisee must execute, as it relates to the Franchised Business, the then-current form of successor franchise agreement and any ancillary agreements which Franchisor is then customarily offering for successor franchises, which shall supersede this Agreement in all respects, and the terms of which may differ materially from the terms of this Agreement, including

a higher royalty rate, different royalty calculation, additional royalty, different branding, advertising expenditure requirements, except that such agreement shall provide that Franchisee shall not be required to pay an initial franchise fee and such successor franchise agreement shall provide only for such additional Successor Terms as are provided by this Agreement;

2.2.17 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective officers, directors, agents, and employees;

2.2.18 Franchisee shall comply with Franchisor's then-current qualification and training requirements; and

2.2.19 Franchisee shall pay Franchisor a successor franchise fee in an amount equal to twenty-five percent (25%) of Franchisor's then-current single unit initial franchise fee at the time of entering into a successor franchise agreement.

2.3 If a Successor Term is not granted by Franchisor, Franchisee shall be notified that it is not eligible for a successor agreement. Franchisor shall provide Franchisee with the opportunity to sell its franchise to a qualified buyer prior to the expiration date of its current agreement. The new buyer will receive the then-current Franchise Agreement for a full term.

### **3. DUTIES OF FRANCHISOR**

3.1 Plans and Specifications. Franchisor shall make available, at no charge to Franchisee, standard design plans and specifications for a prototypical Restaurant, including interior design and layout, fixtures, furnishings, and signs.

3.2 Training. Franchisor shall provide training as set forth in Sections 5.4 and 6 hereof.

3.3 On-Site Assistance. Franchisor shall provide such on-site, pre-opening and post-opening supervision and assistance as Franchisor determines in its sole discretion. Direct support may also be provided by field consultants, which may be employees of Franchisor or third parties engaged by Franchisor.

3.4 Advertising and Promotional Materials. Franchisor shall make available to Franchisee branding, advertising and promotional materials at Franchisee's expense as provided in Section 12 hereof.

3.5 Manuals. Franchisor shall make available to Franchisee through a password protected website one copy of Franchisor's Confidential Operating Manuals (the "Manuals"), as more fully described in Section 9 hereof.

3.6 Inspections. Franchisor shall conduct, as it deems advisable, inspections of Franchisee's operation of the Restaurant, at Franchisor's cost. Any follow-up inspections conducted by Franchisor to ensure Franchisee's compliance with operational standards shall be at Franchisee's cost.

3.7 Equipment. Franchisor shall provide to Franchisee a list of initial equipment for the Restaurant for purchase from a supplier designated by Franchisor.

3.8 Reporting Template. Franchisor shall provide to Franchisee a template document, or other reporting tool, created by Franchisor for reporting sales, payroll, inventory, and other management tools.

3.9 Ongoing Advice. After the Franchised Business opens, Franchisor shall provide up to an additional week of opening support, including but not limited to, observing and coaching Franchisee's trainer in its training of Franchisee's initial personnel. Franchisor shall also provide to Franchisee from time to time, at the Franchisor's sole discretion, advice and written materials about cooking, cleaning and storage methods, preparation and advertising of products, new recipes, customer service and retention, business performance and operation of the Franchised Business; provided, however, support shall be based upon the availability of Franchisor's personnel and shall not include any support for Franchisee's personnel policies and practices, except where they violate Franchisor's brand standards. Additional opening support after the initial Restaurant for any subsequent locations shall be charged at the then-current fee charged by Franchisor. Franchisee shall also pay the travel, payroll, and local expenses of Franchisee's personnel.

3.10 H&H Bagels Brand Fund. Franchisor shall administer the H&H Bagels Brand Fund in the manner set forth in Section 12 hereof.

3.11 Fulfilling Franchisor's Obligations. Franchisee acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any employee, or agent of Franchisor, as Franchisor may direct.

#### **4. FEES**

4.1 Initial Franchise Fee. In consideration of the franchise granted herein, Franchisee shall pay to Franchisor, on execution of this Agreement, an initial franchise fee of Forty Thousand U.S. Dollars (\$40,000) ("Initial Franchise Fee"), receipt of which is hereby acknowledged. Except as provided in this Section 4.1 herein, such fee is fully earned and non-refundable in consideration of administrative and other expenses incurred by Franchisor in entering into this Agreement and for Franchisor's lost or deferred opportunity to enter into this Agreement with others; provided, however, if Franchisee (or if Franchisee is a corporation, partnership or limited liability company, an operating principal who manages the Franchised Business and is approved by Franchisor ("Operating Principal") fails to complete Initial Training Program to Franchisor's satisfaction, as detailed in Section 6 herein, Franchisor shall (i) refund fifty percent (50%) of the Initial Franchise Fee paid by Franchisee, less Franchisor's costs including training, travel, sales commissions paid, etc., (ii) terminate this Agreement, and (iii) provide Franchisee a general release, which shall be signed by Franchisee.

If requested by Franchisee prior to the execution of this Agreement, Franchisor shall, in its sole discretion, provide qualified individuals (i) who are actively serving in or who were honorably discharged from any branch of the U.S. military ("Veterans") or (ii) who serve as first responders (e.g., police, fire, emergency medical technicians) ("First Responders") a Five Thousand U.S.

Dollar (\$5,000) discount on the Initial Franchise Fee (“Veterans/First Responders Incentive Program”). If Franchisee is a limited liability company, corporation, partnership or other entity, then Franchisee must be at least fifty-one percent (51%) directly owned by one or more Veterans or First Responders in order to participate in the Veterans/First Responders Incentive Program. The reduction of the Initial Franchise Fee under the Veterans/First Responders Incentive Program is a one-time discount on the first Initial Franchise Fee paid by Franchisee to Franchisor. Further, such Program shall only apply to the initial Restaurant opened by Franchisee, and it will not apply to additional locations opened by Franchisee under a Development Agreement or any other Franchise Agreement. Franchisee and Franchisor agree and acknowledge that Franchisor may modify or discontinue the Veterans/First Responder Incentive Program at any time.

Franchisee and Franchisor agree and acknowledge that the Initial Franchise Fee is not in exchange for any services provided to Franchisees by Franchisor but rather is paid to Franchisor as an entry cost for Franchisee to join the System and for the use of its intellectual property in the operation of the Restaurant. There is no other purpose or intent for such fees.

4.2 Royalty Fee. For the period of time commencing on the date the Restaurant opens to the public, and for the duration of the term of this Agreement, Franchisee must pay Franchisor a weekly royalty fee equal to six percent (6%) of Gross Sales (as defined below (the “Royalty Fee”).

The Royalty Fee shall be due and payable no later than Thursday of each week for the week ending on the preceding Sunday in which applicable Gross Sales were earned from the Franchised Business. The weekly Royalty Fee shall be paid by electronic funds transfer, as detailed below in Sections 4.4 and 4.5.

As used in this Agreement, “Gross Sales” means all revenue from the sale of all products, merchandise, and services and all other income of every kind and nature at or from the Restaurant or otherwise related to the Restaurant, including, without limitation, any proceeds, whether for cash or credit, and regardless of collection in the case of credit, of sales to employees and managers, family members, or other businesses owned or controlled by Franchisee not reduced by any discounts in connection with the transaction of business with such employees and managers, family members or other businesses. Such sales should be included, based on the pricing generally paid by Franchisee’s other customers. Gross Sales shall not include (i) any sales taxes or other taxes collected from customers by Franchisee and paid directly to the appropriate taxing authority, (ii) the amount of any shipping, freight or similar expenses charged to customers, (iii) the amount of any proceeds from insurance with respect to Franchisee’s property damage or liability, or proceeds from any civil forfeiture, condemnation, or seizure by governmental entities, or (iv) the amount of any returns, credits, allowances, adjustments, or uncollectible amounts, subject to the limitation that uncollectible amounts cannot exceed 0.5% (i.e., ½ of 1.0%) of Gross Sales for any fiscal year of Franchisee. Subsequent collections of charged-off amounts must be included in Gross Sales when collected.

Franchisee and Franchisor agree and acknowledge that the Royalty Fee is not in exchange for any services provided to Franchisee by Franchisor but rather is a recurring payment by Franchisee to Franchisor to continue the use of Franchisor’s intellectual property in the operation of a Restaurant. There is no other purpose or intent for such fees.



4.3 Branding and Advertising Expenditures. Franchisee shall make monthly expenditures and weekly contributions for branding, advertising, and promotion as specified in Section 12 hereof.

4.4 Payments. Franchisee is required to report Gross Sales to Franchisor, as directed by Franchisor in the Operations Manual, by the close of business on each Monday for the week ending the preceding Sunday, commencing on the date the store opens to the public and continuing through the term of this Agreement. Payment of Royalty Fees and all other fees due under this Agreement to Franchisor shall be made via electronic transfer of funds as described in Section 4.5 below. If Franchisee does not submit a report on any Monday, Franchisor may estimate the Royalty Fee, and the branding and advertising contribution required by Section 12.3, based upon prior reports. Franchisor will return any overage within 30 days of receipt of Franchisee's report(s). Franchisor shall not be responsible to Franchisee for any interest charges for any overage collected due to Franchisee's failure to timely report its sales. Additionally, Franchisor shall not be responsible for any bank service charges incurred by Franchisee which result in the withdrawal of funds from Franchisee's depository account. Franchisee shall pay Franchisor Fifty U.S. Dollars (\$50.00) for each electronic funds transfer attempted from Franchisee's depository account pursuant to this Section 4.4 that is returned for non-sufficient funds. Franchisee shall also reimburse Franchisor for all extraordinary costs incurred by Franchisor in collecting or attempting to collect funds due Franchisor from the depository account (for example, without limitation, charges for non-sufficient funds, uncollected funds, or other discrepancies in deposits or reporting). In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor shall have the right to establish, in writing, reasonable new methods of reporting and payment; and Franchisee agrees that it shall abide by those reasonable new methods established by Franchisor in the Manual or otherwise in writing from time to time.

4.5 Electronic Funds Transfer. All Payments to Franchisor required under Sections 4 and 12 hereof will be made by electronic funds transfer. Franchisee shall deposit all revenues from operation of the Restaurant into one bank account within three (3) days of receipt, including cash, checks, credit card receipts, or the value of other forms of payment. Franchisee shall furnish to Franchisor, upon Franchisor's request, such bank and account number, a voided check from such bank account, and written authorization for Franchisor to withdraw funds from such bank account via electronic funds transfer without further consent or authorization for Franchisee's Royalty Fees due to Franchisor for the relevant time periods. Franchisee agrees to execute any and all documents as may be necessary to effectuate and maintain the electronic funds transfer arrangement, as required by Franchisor. In the event Franchisee changes banks or accounts for the bank account required by this Section 4.5, Franchisee shall, prior to such change, provide such information concerning the new account and an authorization to make withdrawals therefrom. Franchisee's failure to provide such information concerning the bank account required by this Section 4.5 or any new account, or Franchisee's withdrawal of consent to withdrawals for whatever reason and by whatever method shall be a breach of this Agreement. If any payment is overdue, Franchisee shall pay Franchisor immediately upon demand, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is less. Entitlement to such interest shall be in addition to any other remedies Franchisor may have. Franchisee shall not be

entitled to set-off any payments required to be made under this Section 4 against any monetary claim it may have against Franchisor.

## **5. OPENING OF FRANCHISED BUSINESS**

5.1 Construction. Franchisee shall renovate or construct, and equip, the physical building in which the Restaurant is located (the “Premises”) at Franchisee’s own expense. Before commencing any renovation or construction of the Restaurant, Franchisee, at its expense, shall arrange for preparation of preliminary and final architectural drawings and specifications of the Premises in accordance with the standard construction plans and sample architectural drawing provided by Franchisor for adaption by Franchisee, using only architects and contractors which Franchisor has designated or approved in writing in advance. Such preliminary and final drawings and specifications shall be submitted to Franchisor for its prior written approval relating only to layout and design compliance and not relating to American with Disabilities Act (“ADA”) or local zoning compliance. The drawings and specifications shall not thereafter be changed or modified without the prior written approval of Franchisor. Franchisee or its approved contractor shall obtain such insurance, as described in Section 13.1, prior to commencement of construction of the Restaurant.

5.2 Permits. Franchisee shall be responsible, at Franchisee’s expense, for obtaining all zoning classifications, permits, and clearances, including, but not limited to, certificates of occupancy and certificates of health, which may be required by federal, state or local laws, ordinances, or regulations, or which may be necessary or advisable owing to any restrictive covenants relating to the Premises or required by the lessor.

5.3 Opening Deadline. Franchisee shall have one hundred twenty (120) days after execution of this Agreement to lease or acquire a location in accordance with Exhibit B hereto and shall open and operate the Restaurant within three hundred sixty-five days (365) days after execution of this Agreement. The parties agree that time is of the essence in the opening of the Restaurant. Franchisor has the right, but not the obligation to, provide Franchisee with reasonable extensions of time for those deadlines set forth in this Section 5.3, at its sole discretion.

5.4 Initial Training Program. Franchisee (or, if Franchisee is a corporation, partnership or limited liability company, an Operating Principal) and Franchisee’s designated manager and trainer approved by Franchisor shall successfully complete the Initial Training Program described in Section 6 hereof.

5.5 ADA Certification. Prior to opening the Restaurant, and after any renovation, as described in Section 5.1 above, Franchisee shall execute and deliver to Franchisor an ADA Certification in the form attached to this Agreement as Exhibit C, to certify to Franchisor that the Restaurant and any proposed renovations comply with the ADA.

## **6. TRAINING**

6.1 Initial Training Program. Approximately eight (8) weeks prior to opening the Restaurant, Franchisee (or an Operating Principal) and Franchisee’s designated manager and trainer approved by Franchisor, shall attend and successfully complete, to Franchisor’s satisfaction, an initial training program for franchisees offered by Franchisor (the “Initial Training”).

Program”) at Franchisor’s facilities in New York, NY or at such other location as designated by Franchisor, without any additional fee. No additional initial training will be provided to Franchisee and its management and staff after the first Restaurant, if Franchisee is operating under a Development Agreement to open and operate more than one H&H Bagels location. If Franchisee requests additional initial training or Franchisor requires Franchisee’s personnel to take subsequent initial training, such training may be provided at Franchisor’s next scheduled Initial Training Program at the then-current training fee designated in the Manuals or otherwise in writing from time to time by Franchisor. Franchisee shall be responsible for any and all other expenses incurred by Franchisee in connection with the Initial Training Program, including, without limitation, the costs of transportation, lodging, meals, and wages.

6.2 Retraining Program. Franchisee and any Operating Principal that fail the Initial Training Program may, at the sole discretion of Franchisor, be allowed to attend a second training program at the next scheduled Initial Training Program at the then-current fee charged by Franchisor. Managers and trainers of Franchisee that fail to complete the Initial Training Program, to Franchisor’s satisfaction, may also be required to attend re-training at the then-current fee charged by Franchisor.

If in Franchisor’s opinion Franchisee’s trainer is not capable of performing the duties of training Franchisee’s staff after re-training, Franchisor shall not conduct a train-the-trainer program for a third time for that person. Franchisor shall request that Franchisee appoint an alternative trainer and have that person attend the H&H Bagels trainer program in New York, NY or another location selected by Franchisor. Franchisee shall pay the then-current fee for trainer training and all costs for its trainer’s attendance. The failure to have an approved trainer will disqualify Franchisee from receiving a Royalty Credit under any Development Agreement, and based on the continuing performance of the Restaurant, may lead to a default if the Restaurant does not perform to brand standards. There is no restriction on Franchisee retaining the former trainer as a manager, employee, or in any other role other than as trainer.

Franchisor does not train Franchisee’s personnel. However, if Franchisee requests and space is available in regularly scheduled training programs, Franchisee may request and Franchisor may, but shall not be obligated to, train Franchisee’s restaurant managers and other personnel. Training will be conducted at H&H Bagels’ location in New York, NY or at a location selected by Franchisor at its then-current training fee.

If Franchisee requests that training is conducted at Franchisee’s Restaurant, and subject to the availability of Franchisor personnel, Franchisee shall pay Franchisor the then-current fee as provided in the Manual or otherwise in writing from time to time by Franchisor. In addition, Franchisee shall be responsible for travel, lodging, meals, and other expenses for Franchisor’s training personnel.

6.3 Subsequent Employees. At Franchisor’s option, any persons subsequently employed by Franchisee in a management position or other position as Franchisor determines in its sole discretion, shall, prior to the assumption of duties, also attend and complete to Franchisor’s satisfaction such training programs as Franchisor may require and pay the then-current training fee designated in the Manuals or otherwise in writing from time to time by Franchisor. Franchisee shall be responsible for any and all other expenses incurred by Franchisee or Franchisee’s

employees in connection with such program, including, without limitation, the costs of transportation, lodging, meals, and wages.

6.4 Additional Programs. Franchisee, or Operating Principal, Franchisee's manager, Franchisee's assistant manager, or other designees who attend the Initial Training Program or other training programs shall attend such additional courses, seminars and other training programs as Franchisor may reasonably require from time to time at such places as may be designated by Franchisor. Franchisee shall pay the then-current training fee designated in the Manuals or otherwise in writing from time to time by the Franchisor for Franchisee's or Franchisee's designees' attendance at such additional courses, seminars, and other training programs; and Franchisee shall be responsible for any and all other expenses incurred by Franchisee in connection with such program, including, without limitation, the costs of transportation, lodging, meals, and wages.

6.5 Pre-Training Modules and Certifications. Prior to attending the initial mandatory training, Franchisor may require that the proposed attendees of such training complete courses conducted by third parties and any required pre-training web-based modules. Training attendees will be required to bring evidence of any third-party certifications and attendance records required and to pass a test on any pre-training materials provided by Franchisor prior to attending the balance of the initial training. If the third party courses and pre-training are not completed to Franchisor's reasonable expectations, and initial mandatory training needs to be rescheduled for any of the scheduled attendees of such training, Franchisee shall pay a fee of Five Thousand U.S. Dollars (\$5,000) per person to schedule the replacement initial mandatory training.

## **7. DUTIES OF FRANCHISEE**

7.1 Operating Standards. Franchisee understands and acknowledges that every detail of the Franchised Business is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the products sold by all franchised businesses operating under the System, and to protect Franchisor's reputation and goodwill.

7.2 Restaurant Operations. Franchisee shall use the Premises solely for the operation of the business franchised hereunder; shall keep the Restaurant open and in normal operation for such minimum hours and days and under such weather conditions as Franchisor may specify in the Manuals or otherwise in writing by Franchisor; shall refrain from using or permitting the use of the Premises for any other purpose or activity at any time without first obtaining the written consent of Franchisor; and shall operate the Restaurant in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Franchisee shall refrain from deviating from such standards, specifications, and procedures without Franchisor's prior written consent.

7.3 Adherence to Standards and Specifications. To ensure that the highest degree of quality and service is maintained, Franchisee shall operate the Restaurant in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Franchisee agrees:

7.3.1 To maintain in sufficient supply as Franchisor may prescribe in the Manuals or otherwise in writing, and to use at all times, only such products and ingredients acquired from a supplier or suppliers designated or approved by Franchisor in the manner prescribed by Franchisor, and such other ingredients, products, materials, supplies, paper goods, cleaning products, chemicals, fixtures, furnishings, equipment, signs and menu items, as conform with Franchisor's standards and specifications, and to refrain from deviating therefrom by the use of nonconforming items, without Franchisor's prior written consent;

7.3.2 To sell or offer for sale only such products, merchandise, and services as have been expressly approved for sale in writing by Franchisor; to sell or offer for sale all types of products, services, and merchandise specified by Franchisor; to refrain from any deviation from Franchisor's standards and specifications without Franchisor's prior written consent; and to discontinue selling and offering for sale any products, merchandise, and services which Franchisor may, in its discretion, disapprove in writing at any time;

7.3.3 To purchase all products from such suppliers and in such manner of delivery as Franchisor designates in the Manuals or otherwise in writing from time to time;

7.3.4 To use and display only the standard menu format required by Franchisor, as the same may be revised by Franchisor from time to time. Any change in the menu format must be approved in writing by Franchisor prior to use;

7.3.5 To sell all menu items, and other products hereunder at retail and not sell such products and merchandise at wholesale or for re-sale (without Franchisor's prior written consent), and to refrain from selling any H&H Bagels products, merchandise, or other products or services at any location other than the Approved Location;

7.3.6 To use, in the operation of the Franchised Business, such standards, specifications, and procedures as prescribed by Franchisor;

7.3.7 To refrain from selling, offering to sell, or permitting any other party to sell or offer to sell alcoholic beverages on the Premises, except beer and wine;

7.3.8 To refrain from selling or advertising any H&H Bagels products, merchandise, or services hereunder on the Internet without Franchisor's prior, written approval; and

7.3.9 To equip the Franchised Business with an initial equipment package from a supplier designated by Franchisor.

7.4 Fixtures, Furnishings and Equipment. Franchisee shall purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment (including, without limitation, a facsimile machine, telephone(s), computer, printer, and cash register, point-of-sale recording system, and an audio and video surveillance system), décor, and signs as Franchisor may reasonably direct from time to time; and shall refrain from installing or permitting to be installed on or about the Premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, décor, signs or other items not previously approved as meeting Franchisor's standards and specifications.

7.5 Sources of Products. All products sold or offered for sale at the Restaurant, and other products, materials, supplies, paper goods, fixtures, furnishings, and equipment used at the Restaurant, shall meet Franchisor's then-current standards and specifications, as established in the Manuals or otherwise in writing. Franchisee shall purchase all food items, ingredients, supplies, materials, and other products and equipment used or offered for sale at the Restaurant for which Franchisor has established standards or specifications solely from suppliers (including distributors and other sources) which demonstrate, to the continuing reasonable satisfaction of Franchisor, the ability to meet Franchisor's standards and specifications, who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably, and who have been approved by Franchisor in the Manuals or otherwise in writing. If Franchisee desires to purchase products from a party other than an approved supplier, Franchisee shall submit to Franchisor a written request to approve the proposed supplier, together with such evidence of conformity with Franchisor's specifications as Franchisor may reasonably require. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered for evaluation and testing either to Franchisor or to an independent testing facility designated by Franchisor. A charge not to exceed the reasonable cost of the evaluation, inspection, and testing shall be paid by Franchisee. Franchisor shall use its best efforts, within sixty (60) days after its receipt of such completed request and completion of such evaluation and testing (if required by Franchisor), to notify Franchisee in writing of its approval or disapproval of the proposed supplier. Franchisee shall not sell or offer for sale any products of the proposed supplier until Franchisor's written approval of the proposed supplier is received. Franchisor may from time to time revoke its approval of particular products or suppliers when Franchisor determines, in its sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee shall cease to sell any disapproved products and cease to purchase from any disapproved supplier. Franchisee agrees that it shall use products purchased from approved suppliers solely for the purpose of operating the Restaurant and not for any other purpose, including, without limitation, resale. Nothing in the foregoing shall be construed to require Franchisor to make available to prospective suppliers, standards, and specifications for formulas, including, without limitation, the recipes for bagels, that Franchisor, in its sole discretion, deems confidential.

7.6 Initial Inventory. At the time the Restaurant opens, Franchisee shall stock the initial inventory of products, accessories, equipment, and supplies as prescribed by Franchisor in the Manuals or otherwise in writing. Thereafter, Franchisee shall stock and maintain all types of approved products in quantities sufficient to meet reasonably anticipated customer demand. Franchisee agrees to immediately notify Franchisor if an approved supplier substitutes or attempts to substitute an unapproved product in place of an approved product. Franchisee shall refuse to accept any such unapproved products, or products from any unapproved suppliers.

7.7 Inspections. Franchisee shall permit Franchisor and its agents to enter upon the Premises at any time during normal business hours for the purpose of conducting inspections; shall cooperate with representatives of Franchisor in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents, and without limiting Franchisor's other rights under this Agreement, shall take such steps as may be necessary to correct immediately any deficiencies in the operation of the Restaurant or the facility itself detected during any such inspection. Should Franchisee, for any reason, fail to correct such deficiencies within a reasonable time as determined by Franchisor, Franchisor shall have the right, but not the

obligation, to correct any deficiencies which may be susceptible to correction or repair by Franchisor and to charge Franchisee a reasonable fee for Franchisor's expenses in so acting, including the cost of such inspections, payable to Franchisor upon demand. The foregoing shall be in addition to such other remedies Franchisor may have.

7.8 Branding, Advertising, and Promotional Materials. Franchisee shall ensure that all branding, advertising, and promotional materials, signs, decorations, and other items specified by Franchisor bear the Proprietary Marks in the form, color, location, and manner prescribed by Franchisor.

7.9 Maintenance of Premises. Franchisee shall maintain the Premises (including the adjacent public areas) in a clean, orderly condition and in excellent repair; and, in connection therewith, Franchisee shall, at its expense, make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and décor as Franchisor may reasonably direct.

7.10 Refurbishment. Franchisee understands and agrees that the System must not remain static if it is to meet (without limitation) presently unforeseen changes in technology, competitive circumstances, demographics, populations, consumer trends, social trends, and other marketplace variables, and if it is to best serve the interests of Franchisor, Franchisee, and all other franchisees. Accordingly, Franchisee expressly understands and agrees that Franchisor may from time to time change the components of the System, including, without limitation, altering the products, programs, services, methods, standards, forms, policies and procedures of that System; abandoning the System altogether in favor of another system in connection with a merger, acquisition, or other business combination or for other reasons; adding to, deleting from, or modifying those products, programs and services which the Franchised Business is authorized and required to offer, modifying or substituting entirely the building, Premises, equipment, signage, trade dress, décor, color schemes, and uniform System Standards and specifications and all other unit constructions, design, appearance, and operation attributes which Franchisee are required to observe hereunder; and, changing, improving, modifying, or substituting the Proprietary Marks. Franchisee expressly agrees to comply with any such modifications, changes, additions, deletions, substitutions, and alterations at its own cost. Franchisee shall accept, use, and effectuate any such changes or modifications to, or substitution of, the System as if they were part of the System at the time that this Agreement was executed. Except as provided herein, Franchisor shall not be liable to Franchisee for any expenses, losses, or damages sustained by Franchisee as a result of any of the modifications contemplated hereby.

7.11 On-Premises Supervision. The Restaurant shall at all times be under the direct, on-premises supervision of Franchisee, an Operating Principal, or another individual who has satisfactorily completed the training as required by Section 5.4, 6.1, 6.2, 6.3, 6.4 or 6.5 hereof. Franchisee shall maintain a competent, conscientious, trained staff, including management who have completed the training described in Section 5.4, 6.1, 6.2, 6.3, 6.4 or 6.5 hereof. Franchisee shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards, including, without limitation, such attire as Franchisor reasonably requires, as Franchisor may establish from time to time in the Manuals. Franchisee and its employees shall

handle all customer complaints, refunds, returns, and other adjustments in a manner that will not detract from the name and goodwill of Franchisor. Franchisee shall be solely responsible for all employment decisions and functions of the Restaurant, including, without limitation, those related to hiring, firing, training, wage and hour requirements, record-keeping, supervision, and discipline of employees.

7.12 Active Participation. Franchisee (or an Operating Principal) or Franchisee's manager approved by Franchisor who has received training shall take an active role in the operation of the Restaurant and shall be on the Premises operating the Restaurant during peak hours of restaurant operation specified by Franchisor in writing in the Manuals or otherwise in writing from time to time.

7.13 Changes to the System. Franchisee shall not implement any change, amendment, or improvement to the System without the express prior written consent of Franchisor. Franchisee shall notify Franchisor in writing of any change, amendment, or improvement in the System which Franchisee proposes to make and shall provide to Franchisor such information as Franchisor requests regarding the proposed change, amendment, or improvement. Franchisee acknowledges and agrees that Franchisor shall have the right to incorporate the proposed change, amendment, or improvement into the System and shall thereupon obtain all right, title, and interest therein without compensation to Franchisee.

7.14 Compliance with Lease. Franchisee shall comply with all the terms of its lease or sublease and all other agreements affecting the operation of the Restaurant; shall promptly furnish Franchisor a copy of its lease, upon request; shall undertake best efforts to maintain a good and positive working relationship with its landlord and/or lessor; and shall refrain from any activity which may jeopardize Franchisee's right to remain in possession of, or to renew the lease or sublease for, the Premises.

7.15 Health and Safety Standards. Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. Franchisee shall furnish to Franchisor within three (3) business days after receipt thereof, a copy of all health inspection reports and any violation or citation which indicates Franchisee's failure to maintain local health or safety standards in the operation of the Restaurant.

7.16 Pricing and Coupon Sales. Unless prohibited by applicable law, Franchisor has the right to set maximum and minimum prices for the products and services Franchisee offers and sells. Franchisee shall strictly adhere to the prices Franchisor establishes. Franchisor retains the right to modify the prices from time-to-time in its reasonable discretion. Franchisee must comply with all of Franchisor's policies regarding branding, advertising, and promotion, including the use and acceptance of coupons, participation in special offers, and participation in loyalty programs.

7.17 Surveillance System. Franchisee must purchase and equip the Franchised Business with an audio and video surveillance system approved in writing in advance by Franchisor, including all required hardware, software, maintenance, and updates. Franchisee must post signs in the Restaurant, in size and form approved in writing in advance by Franchisor, notifying all employees and occupants of the Restaurant of the presence of such equipment.



Franchisee agrees and acknowledges that, upon Franchisor's request, Franchisee shall provide Franchisor any and all data and images captured, recorded, or stored on such equipment.

7.18 Customer Surveys. Franchisor reserves the right to establish reasonable customer satisfaction standards and a scoring system for customer satisfaction ratings as prescribed from time to time in the Manuals or otherwise in writing, based on customer surveys conducted by Franchisor or its designee. Franchisee shall continuously maintain acceptable customer satisfaction ratings (as reasonably determined by Franchisor and described in the Manuals or otherwise in writing) throughout the term hereof. Franchisee acknowledges and agrees that its maintenance of such customer satisfaction ratings throughout the term hereof is a material obligation of Franchisee hereunder.

7.19 Online Ordering/Delivery Services.

7.19.1 Franchisee shall not, without Franchisor's prior, written approval, provide any online ordering or delivery off the Restaurant premises, either directly or through a specified online or digital ordering and delivery platform (collectively "Delivery Service"), of any food or beverage items. Franchisor further reserves the right to require that Franchisee provide Delivery Service of all approved menu items to customers during the term of this Agreement.

7.19.2 Franchisee acknowledges and agrees that:

(a) Franchisor has the right to condition its approval of any Delivery Service proposed by Franchisee, or Franchisor's required use of a Delivery Service, to be in accordance with Franchisor's then-current delivery standards as set forth in the Manual or as Franchisor otherwise directs in writing from time-to-time;

(b) Such standards may include, but are not limited to, the specified Delivery Service, the requirement that such Delivery Service report sales directly to Franchisor, minimum delivery hours, acceptable methods of payment, product handling, packaging, and food safety standards, other customer service standards, and Franchisor's specification of the minimum and maximum delivery area; and

(c) Franchisee's delivery rights are not exclusive, and other H&H Bagels Restaurants may accept delivery orders and provide delivery at any location, including to customers in proximity to Franchisee's Restaurant.

7.20 Mobile Applications. Franchisor may establish or use, and require Franchisee to use, one or more mobile applications (a "Mobile App") for online ordering or electronic payments, or any similar or related application for use in connection with the System. The term "Mobile App" shall include any application for use on smart phones, tablets, other mobile devices, computers and/or other electronic devices, and may include a loyalty or reward program or other features. If Franchisor requires Franchisee to use a Mobile App, then Franchisee shall comply with Franchisor's requirements (as set forth in the Manuals or otherwise in writing) for connecting to, and utilizing, such technology in connection with Franchisee's operation of the Franchised Business. We reserve the right to require that you pay us or a third party for the development or use of any such Mobile App.

## 7.21 Computer System and Required Software.

7.21.1 Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by Franchisee, including without limitation: (a) back office and point of sale systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at the Restaurant; (b) printers and other peripheral hardware or devices; (c) archival back-up systems; (d) Internet access mode and speed; and (e) physical, electronic, and other security systems (collectively, the “Computer System”).

7.21.2 Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate: (a) computer software programs, cloud computing systems, or remote storage systems, that Franchisee must use in connection with the Computer System (the “Required Software”), which Franchisee shall access and utilize at Franchisee’s expense; (b) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall access and utilize at Franchisee’s expense; (c) the tangible and remote media upon which Franchisee records data; and (d) the database file structure of the Computer System. Franchisee shall not use or download any software that has not been approved by Franchisor in writing prior to use.

7.21.3 At Franchisor’s request, Franchisee shall purchase or lease, and thereafter maintain, the Computer System and, if applicable, the Required Software. Franchisor shall have the right at any time to remotely retrieve and use such data and information from Franchisee’s Computer System or Required Software that Franchisor deems necessary or desirable. Franchisee shall provide Franchisor with all usernames and passwords required to access files and other information contained on the Computer System. Franchisee shall maintain all financial and other information as specified by Franchisor on the Computer System. Franchisee expressly agrees to strictly comply with Franchisor’s standards and specifications for all items associated with Franchisee’s Computer System and any Required Software in accordance with Franchisor’s standards and specifications. Franchisee agrees, at its own expense, to keep its Computer System in good maintenance and repair and install such additions, changes, modifications, substitutions, and/or replacements to Franchisee’s Computer System or Required Software as Franchisor directs from time to time in writing. Franchisee agrees that its compliance with this Section 7.21 shall be at Franchisee’s sole cost and expense.

7.21.4 Franchisor reserves the right to charge Franchisee a reasonable monthly license fee for the Required Software or for other related services.

7.22 Protection of Customer Information. Franchisee shall use its best efforts to protect customers against a cyber-event, identity theft, or theft of personal information. Franchisee must at all times be in compliance with (a) the Payment Card Industry Data Security Standards (“PCI DSS”), (b) the Fair and Accurate Credit Transactions Act (“FACTA”); (c) regional, national, and local laws and regulations relating to data and personal privacy, data security (including but not limited to the use, storage, transmission, and disposal of data regardless of media type), security breaches, and electronic payments, (d) the operating rules and regulations of all credit card, debit card and/or ACH processors and networks that are utilized in the System, and (e) Franchisor’s security policies and guidelines, all as may be amended from time to time. Franchisee must notify

Franchisor immediately, but no more than three (3) business days, after Franchisee becomes aware of or is notified about, any cyber-event, identity theft, or theft of personal information related to any customer or employee of the Franchised Business or that relates to the Franchised Business, and agree, upon Franchisor's request, to immediately provide notice to all customers, employees, and any other individuals of such event in such form Franchisor may direct.

7.23 Consumer Data. Subject to applicable law, Franchisor shall be the sole owner of all Consumer Data and Franchisee shall disclaim any ownership interest in such data. For the purposes of this Agreement, "Consumer Data" is defined as all personally identifiable information (names, addresses, email addresses, telephone numbers, corporate information, transaction data, demographic data, behavioral data, customer service data, correspondence, and other documents and information) obtained from consumers, suppliers, or others in connection with any Restaurant.

Franchisees shall not use any Consumer Data for activities not related to its Restaurant, without the prior written approval of Franchisor, which shall in all likelihood be denied. Franchisees shall not transfer any Consumer Data to any third party other than to Franchisor, its affiliates or Franchisor approved third parties providing operational or marketing services to the Restaurant. Third parties shall not gain any ownership rights or interest in Consumer Data; may have access to the information only for the purpose of providing services to the Restaurant; are prohibited from copying or distributing the information without Franchisor's written permission; and shall return any Consumer Data it had access to, to Franchisee or Franchisor after it has provided its services, or upon Franchisor's request.

Any and all Consumer Data not automatically collected by Franchisee shall be transferred to Franchisor on a monthly basis or upon Franchisor's request. Routine monthly transfers shall be made no later than twenty (20) days following the end of each month. A final transfer of Consumer Data to Franchisor will be made at the termination or expiration of this Agreement and Franchisee is prohibited from retaining any of Consumer Data. All costs associated with transferring Consumer Data to Franchisor by Franchisee shall be paid by Franchisee.

Franchisee shall comply with all federal, state, and local laws concerning the handling, distribution and use of Consumer Data.

Franchisee shall also preserve Consumer Data for at least seven (7) years in the form and manner prescribed by Franchisor from time to time in the Manuals or otherwise in writing.

7.24 Conferences and Conventions. Franchisee is required to attend conventions, regional meetings, and conferences, as specified by Franchisor, at its own cost. Franchisor reserves the right to establish convention and conference fees from time to time to offset System costs.

## **8. PROPRIETARY MARKS**

8.1 Franchisor Representations. Franchisor represents with respect to the Proprietary Marks:

8.1.1 Franchisor has the right to use, and to license others to use, the Proprietary Marks;

8.1.2 As between Franchisee and Franchisor, Franchisor is the owner of the Proprietary Marks; and

8.1.3 Franchisor has taken and will take all steps reasonably necessary to preserve and protect the ownership and validity of the Proprietary Marks.

8.2 Franchisee's Use of Marks. With respect to Franchisee's use of the Proprietary Marks, Franchisee agrees that:

8.2.1 Franchisee shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor, including, but not limited to, with respect to color combination, typeface or other features and without any infringement or modification;

8.2.2 Franchisee shall use the Proprietary Marks only for the operation of the Restaurant and only at the Approved Location, or in advertising for the Restaurant conducted at or from the Approved Location;

8.2.3 Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Restaurant only under the name "H&H Bagels" and shall use all Proprietary Marks without prefix or suffix. Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name and shall file, in a timely fashion, and maintain, any fictitious name registration as locally required;

8.2.4 During the term of this Agreement and any renewal or extension hereof, Franchisee shall identify itself as the owner of the Restaurant (in the manner required by Franchisor) in conjunction with any use of the Proprietary Marks, including, but not limited to, on invoices, order forms, receipts, human resource materials, business stationery, credit applications, and contracts with all third parties or entities, as well as the display of such notices in such content and form and at such conspicuous locations as Franchisor may designate in writing;

8.2.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of Franchisor's rights and will entitle Franchisor to exercise all of its rights under this Agreement in addition to all rights available at law or in equity;

8.2.6 Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor;

8.2.7 Franchisee shall execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability;

8.2.8 Franchisee shall promptly notify Franchisor of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to Franchisor's ownership of, Franchisor's right to use and to license others to use, or Franchisee's right to use, the Proprietary Marks. Franchisee acknowledges that Franchisor has the sole right to direct and control any administrative proceeding or litigation involving the Proprietary

Marks, including any settlement thereof. Franchisor has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. Franchisor shall defend Franchisee against any third-party claim, suit, or demand arising out of Franchisee's use of the Proprietary Marks. If Franchisor, in its sole discretion, determines that Franchisee has used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by Franchisor. If Franchisor, in its sole discretion, determines that Franchisee has not used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by Franchisee. In the event of any litigation relating to Franchisee's use of the Proprietary Marks, Franchisee shall execute any and all documents and do such acts as may, in the opinion of Franchisor, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket costs in doing such acts; and

8.2.9 Except as otherwise required by Franchisor pursuant to this Section 8, Franchisee shall not attempt to register or otherwise obtain any interest in any Internet domain name or URL containing any of the Proprietary Marks or any other word, name, symbol, or device which is likely to cause confusion with any of the Proprietary Marks.

8.3 Franchisee Acknowledgements. Franchisee expressly understands and acknowledges that:

8.3.1 Franchisee will not challenge that, as between Franchisee and Franchisor, Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with them, and Franchisee will not challenge that Franchisor has the right to use, and license others to use, the Proprietary Marks;

8.3.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System;

8.3.3 During the term of this Agreement and after its expiration or termination, Franchisee shall not directly or indirectly contest the validity of the trademark owner's ownership of, or Franchisor's right to use and to license others to use, the Proprietary Marks;

8.3.4 Franchisee's use of the Proprietary Marks does not give Franchisee any ownership interest or other interest in or to the Proprietary Marks specifically including, but not limited to, any claims of equity in any Proprietary Mark;

8.3.5 Any and all goodwill arising from Franchisee's use of the Proprietary Marks shall inure solely and exclusively to the benefit of the trademark owner, and upon expiration or termination of this Agreement and the license granted herein, no monetary amount shall be assigned to Franchisee or any of its principals, affiliates, subsidiaries, successors, licensees or assigns as attributable to any goodwill associated with Franchisee's use of the System or the Proprietary Marks;

8.3.6 Except as specified in Section 1.3 hereof, the license of the Proprietary Marks granted hereunder to Franchisee is nonexclusive, and Franchisor thus has and retains the rights, among others: (a) to use the Proprietary Marks itself in connection with selling products, merchandise, and services; (b) to grant other licenses for the Proprietary Marks; (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks; and (d) to grant licenses thereto without providing any rights therein to Franchisee; and

8.3.7 Franchisor reserves the right, in Franchisor's sole discretion, to modify, add to, or discontinue use of the Proprietary Marks, or to substitute different proprietary marks, for use in identifying the System and the businesses operating thereunder. Franchisee agrees promptly to comply with such changes, revisions and/or substitutions, and to bear all the costs of modifying Franchisee's signs, advertising materials, interior graphics, and any other items which bear the Proprietary Marks to conform therewith.

8.4 Websites. Unless otherwise approved in writing by Franchisor or set forth in the Manual, Franchisee shall not establish a separate Website in connection with the Franchised Business. However, Franchisor shall have the right to establish one or more webpages within Franchisor's Website, which is currently [www.hhbagels.com](http://www.hhbagels.com) but may be changed by Franchisor in its sole discretion. Franchisee must maintain a high-speed Internet access connection and shall update and add content to such webpage(s) from time-to-time as Franchisor directs. Franchisor shall have the right to restrict Franchisee's ability to edit its webpage(s) in Franchisor's sole discretion. The term "Website" means an interactive electronic document contained in a network of computers linked by communications software, commonly referred to as the Internet or World Wide Web, including, but not limited to, any account, page, or other presence on a social or business networking media site, such as Facebook, Twitter, LinkedIn, and on-line blogs and forums ("Networking Media Sites"). Franchisor shall have the right to require Franchisee to establish accounts or "pages," and maintain an active presence, on such Networking Media Sites as Franchisor designates or approves in the Manual or otherwise in writing. Franchisee shall not make any posting or other contribution to a Networking Media Site relating to Franchisor, the System, the Proprietary Marks, or the Franchised Business that (a) is derogatory, disparaging, or critical of Franchisor, (b) is offensive, inflammatory, or indecent, (c) harms the goodwill and public image of the System and/or the Proprietary Marks, or (d) violates Franchisor's policies relating to the use of Networking Media Sites. Franchisor shall have the right to require that Franchisee not have any Website other than the webpage(s), if any, made available on Franchisor's Website.

8.5 Domain Names. Franchisee acknowledges and agrees that if Franchisor grants its approval for Franchisee's use of a generic, national, and/or regionalized domain name, Franchisor shall have the right to own and control said domain name at all times and may license it to Franchisee for the term of this Agreement on such terms and conditions as Franchisor may reasonably require (including, but not limited to, the requirement that Franchisee reimburse Franchisor's costs for doing so). If Franchisee already owns any domain names, or hereafter registers any domain names, then Franchisee agrees that it shall notify Franchisor in writing and assign said domain names to Franchisor and/or a designee that Franchisor specifies in writing.

8.6 Online Use of Proprietary Marks and E-mail Solicitations. Franchisee shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Franchisee in any electronic medium, except as set forth in the Manual. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail or other electronic media without first obtaining Franchisor's written consent as to: (a) the content of such e-mail advertisements or solicitations; and (b) Franchisee's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Franchisee shall be solely responsible for compliance with all laws pertaining to e-mails, including, but not limited to, the U.S. Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM Act of 2003").

8.7 No Outsourcing without Prior Written Approval. Franchisee shall not hire any third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, or any other of Franchisee's obligations without Franchisor's prior written approval. Franchisor's consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor's entry into a confidentiality agreement with Franchisor and Franchisee in a form that is provided by Franchisor. The provisions of this Section 8.7 are in addition to and not instead of any other provision of this Agreement.

8.8 Changes to Technology. Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and Franchisee agrees that it shall abide by those reasonable new standards established by Franchisor as if this Agreement were periodically revised by Franchisor for that purpose.

## **9. OPERATING MANUALS**

9.1 Standards of Operation. In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under the System, Franchisee shall operate the Restaurant in accordance with the standards, methods, policies, and procedures specified in the Manuals, which Franchisor shall loan to Franchisee, or make available to Franchisee through a password protected website, for the term of this Agreement upon completion by Franchisee and the Franchisee's designated manager of the Initial Training Program, each to Franchisor's satisfaction.

9.2 Confidentiality. Franchisee shall treat the Manuals any other manuals created for or approved for use in the operation of the Restaurant, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. Further, access to the Manuals shall be limited to authorized personnel that have signed a confidentiality agreement, as specified by Franchisor. Franchisee shall not copy, duplicate, record or otherwise reproduce the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person.

9.3 Exclusive Property. The Manuals shall remain the sole property of Franchisor and shall be kept in a secure place on the Premises.

9.4 Revisions to Manuals. Franchisor may from time to time revise the contents of the Manuals, and Franchisee expressly agrees to comply with each new or changed standard. Franchisee shall ensure that the Manuals are kept current at all times. In the event of any dispute as to the contents of the Manuals, the terms of the master copy maintained by Franchisor at Franchisor's home office shall be controlling.

## **10. CONFIDENTIAL INFORMATION**

10.1 Confidential Information. Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, limited liability company or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised hereunder, including, without limitation, recipes, cooking methods, preparation of menu items, drawings, architectural plans, suppliers, equipment, product costs, accounting methods, including both paper and electronic spreadsheets, or advertising which may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation under the terms of this Agreement. Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate the Franchised Business. Any and all information, knowledge, know-how, techniques, and other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement.

10.2 Confidentiality Agreements. At Franchisor's request, Franchisee shall require Franchisee's manager (if any) and other such personnel having access to any of Franchisor's confidential information as Franchisor requires to execute non-competition covenants and covenant that they will maintain the confidentiality of information they receive in connection with their employment by Franchisee at the Restaurant. Such covenants shall be in the form attached hereto as Exhibit D.

10.3 Irreparable Injury. Franchisee acknowledges that any failure to comply with the requirements of this Section 10 will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 10, or such other relief sought by Franchisor.

## **11. ACCOUNTING AND RECORDS**

11.1 Weekly Gross Sales. Franchisee shall record all sales on a point-of-sale record keeping and control system designated by Franchisor, or on any other equipment specified by Franchisor in the Manuals or otherwise in writing. Franchisee shall maintain a record of all Sales and payroll on spreadsheets or other reporting system provided by Franchisor. Franchisee shall provide Franchisor with such weekly record by the close of business on each Monday for the week ending the preceding Sunday by e-mail or such other means as designated by Franchisor in writing, including, but not limited to, an intranet website. Franchisee shall prepare and shall preserve for at least seven (7) years from the dates of their preparation, daily cash register reports, complete



and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by Franchisor from time to time in the Manuals or otherwise in writing.

11.2 Recording of Gross Sales. All Gross Sales, sales tax, and charges collected on behalf of third parties shall be recorded by Franchisee in accordance with the procedures prescribed in the Manuals.

11.3 Annual Financial Statements. Franchisee shall submit to Franchisor an annual balance sheet and income statement, as defined under generally accepted accounting principles, prepared by an independent accounting firm for each preceding fiscal year within two and a half (2 ½) months after the end of Franchisee's tax year.

11.4 Audits. Franchisor and its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records, accounts, and tax returns of Franchisee. Franchisor shall have the right at all reasonable times to remove such books, records, accounts, and tax returns for copying. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an inspection should reveal that any payments have been understated:

11.4.1 by two percent (2%) or less in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of eighteen percent (18%) per annum, or the maximum rate permitted by law, whichever is more;

11.4.2 by more than two percent (2%) but less than five percent (5%), then Franchisee shall immediately pay Franchisor the full amount owed with interest, plus all of Franchisor's costs and expenses in connection with the inspection, including, without limitation, travel costs, lodging, and wage expenses, and reasonable accounting and legal costs.

11.4.3 by more than five percent (5%), then, in addition to the above penalties imposed on Franchisee in Section 11.4.2., Franchisor may terminate franchisee without cure.

11.4.4 by more than two percent (2%) three times in any 36-month period, then Franchisor may terminate franchisee without cure.

The foregoing remedies shall be in addition to any other remedies Franchisor may have.

11.5 Spreadsheets. As required by Franchisor, Franchisee shall submit to Franchisor spreadsheets reflecting the Restaurant's sales, payroll, and inventory.

11.6 Point-of-Sale System. Franchisor reserves the right to require Franchisee at any time to make required upgrades to Franchisee's point-of-sale system, at Franchisee's sole cost and expense, to provide Franchisor with immediate and online access to business information or data collected and generated on Franchisee's point-of-sale system, as described in Section 11.1 hereof, and images or data captured or recorded by the audio and video surveillance system, as described in Section 7.17 hereof.

11.7 Vendors and Suppliers. Franchisee shall explicitly notify all vendors, suppliers, and third parties that Franchisor is a separate entity from Franchisee, and Franchisor has no obligation to satisfy, or liability for, any of Franchisee's indebtedness. Franchisee agrees and acknowledges that Franchisor may obtain from any vendors or suppliers any information regarding Franchisee's account terms, arrangements, balances, and payment history.

## 12. BRANDING, ADVERTISING, AND PROMOTION

Recognizing the value of advertising and promotion, and the importance of the standardization of advertising and promotion programs to the furtherance of the goodwill and public image of the System, the parties agree as follows:

12.1 Market Introduction Advertising. Upon Franchisee's registration for the initial training program, as set forth in Section 6.1 hereof, Franchisee must spend at least Two Thousand Five Hundred U.S. Dollars (\$2,500) for initial market introduction advertising ("Market Introduction Fee"). During the initial training program, Franchisor and Franchisee agree to collaborate and develop a plan for Franchisee's market introduction advertising. Franchisee shall be responsible for securing any vendors or suppliers associated with the market introduction plans. Franchisee acknowledges and agrees that it shall be solely responsible for any expenditures in excess of the Market Introduction Fee.

12.2 Local Advertising and Promotion. Franchisor reserves the right, in its sole discretion, upon thirty (30) days written notice to Franchisee, to require Franchisee to comply with the provisions of either the following Section 12.2.1 or the following Section 12.2.2:

12.2.1 If required by Franchisor, Franchisee shall make monthly expenditures in an amount specified by Franchisor in its sole discretion, but not greater than two percent (2%) of the prior month's Gross Sales, on local marketing, advertising, and promotion in such manner as Franchisor may specify in the Manuals or otherwise in writing from time to time. Franchisee shall provide satisfactory evidence of all such expenditures in such manner as Franchisor may direct in the Manuals or otherwise in writing.

12.2.2 If required by Franchisor, Franchisee shall make monthly payments to Franchisor in an amount specified by Franchisor in its sole discretion but not greater than two percent (2%) of the prior month's Gross Sales, which Franchisor shall then spend on local marketing, advertising, and promotion on Franchisee's behalf. Franchisee shall pay such monies to Franchisor in accordance with Section 4.5 hereof.

For the avoidance of doubt, Franchisee acknowledges and agrees that any amounts expended or paid by Franchisee pursuant to this Section 12.2 shall be in addition to the market introduction advertising required by Section 12.1 hereof.

12.3 H&H Bagels Brand Fund. In addition to the minimum advertising expenditures described in Sections 12.1 and 12.2 hereof, for each week during the term of this Agreement, Franchisee shall contribute an amount equal to two percent (2%) of the weekly Gross Sales to the H&H Bagels Brand Fund in accordance with Section 4.5 hereof. Franchisor may adjust or discontinue the H&H Bagels Brand Fund contributions and related expenditures. Any increase

will not raise the total fee to more than 2% of weekly Gross Sales. The H&H Bagels Brand Fund shall be maintained and administered by Franchisor as follows:

12.3.1 Franchisor shall direct all programs to advance, enhance, and protect the H&H Bagels brand and System as well as all advertising programs, with sole discretion over the activities, concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the H&H Bagels Brand Fund is intended to protect and promote the brand and maximize general public recognition, acceptance, and use of the System; and that Franchisor is not obligated, in administering the H&H Bagels Brand Fund, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution, or to ensure that any particular franchisee benefits directly or from expenditures by the H&H Bagels Brand Fund;

12.3.2 The H&H Bagels Brand Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, and preparing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which Franchisor believes will enhance the image of the System and protect the brand as a whole, including, among other things, the costs of preparing and conducting radio, cable television, print, and Internet-based advertising campaigns; utilizing Networking Media Sites (as defined in Section 8.4 above) and other emerging media or promotional tactics; developing, maintaining, and updating any Website(s) on the Internet; direct mail advertising; marketing surveys; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; and providing promotional and other marketing materials and services to the businesses operating under the System; as well as market research, sponsorships and competitions; celebrity endorsements and personalities engaged as spokespersons; mystery shoppers; logo wear; affinity program development; and signage.

12.3.3 Franchisee shall contribute by separate payment to the H&H Bagels Brand Fund in accordance with Section 4.5 hereof. All sums paid by Franchisee to the H&H Bagels Brand Fund shall be maintained in an account separate from the other monies of Franchisor and shall not be used to defray any of Franchisor's expenses, except for such reasonable costs and overhead, if any, as Franchisor may incur in activities reasonably related to the direction and implementation of the H&H Bagels Brand Fund and branding and advertising programs for franchisees and the System, including, among other things, costs of personnel for creating and implementing branding, advertising, promotional and marketing programs, and a pro rata portion of the salaries of Franchisor's personnel who spend time on H&H Bagels Brand Fund-related matters. Further, the H&H Bagels Brand Fund shall not be used to pay for the direct cost of recruiting franchisees when those costs are exclusively for the purpose of franchisee recruitment. However, if the expenditure includes some costs related to franchisee recruitment, so long as the main purpose of the expenditure is for other purposes, it is an allowed expenditure. The H&H Bagels Brand Fund and any earnings thereon shall not otherwise inure to the benefit of Franchisor. Franchisor may spend on behalf of the H&H Bagels Brand Fund, in any fiscal year, an amount that is greater or less than the aggregate contribution of all Restaurants to the H&H Bagels Brand Fund in that year and the H&H Bagels Brand Fund may borrow from Franchisor or others to cover deficits or invest any surplus for future use.

12.3.4 Any money loaned to the H&H Bagels Brand Fund by Franchisor (or its affiliate) may earn interest at a rate to be reasonably determined by Franchisor's management. All interest earned on monies contributed to the H&H Bagels Brand Fund will be used to pay branding and advertising costs before other assets of the H&H Bagels Brand Fund are expended. Franchisor shall not be obligated to audit the H&H Bagels Brand Fund. Franchisor has the right to cause the H&H Bagels Brand Fund to be incorporated or operated through a separate entity at such time as Franchisor deems appropriate and such successor entity will have all of the rights and duties specified herein. Franchisor shall maintain separate bookkeeping accounts for the H&H Bagels Brand Fund. Franchisor shall prepare annually a statement of contribution and expenditures of the H&H Bagels Brand Fund that shall be made available to Franchisee upon its written request within sixty (60) days of the end of Franchisor's fiscal year. Franchisee acknowledges that Franchisor is not a fiduciary to Franchisee of the monies in the H&H Bagels Brand Fund.

12.3.5 It is anticipated that all contributions to and earnings of the H&H Bagels Brand Fund will be expended for branding, advertising, and/or promotional purposes during the taxable year within which the contributions are made. If, however, excess amounts remain in the H&H Bagels Brand Fund at the end of such taxable year, all expenditures in the following taxable year(s) will be made first out of accumulated earnings from previous years, next out of earnings in the current year, and finally from contributions.

12.3.6 The H&H Bagels Brand Fund shall be of perpetual duration. Franchisor maintains the right to terminate the H&H Bagels Brand Fund. The H&H Bagels Brand Fund may not be terminated, however, until all monies in the H&H Bagels Brand Fund have been expended for branding, advertising, and/or promotional purposes or returned to contributors, who are not in default, on the basis of their respective contributions. Franchisees in default shall not be eligible for any fund rebate.

12.4 Branding and Advertising. All branding, advertising, and promotion by Franchisee shall be such activities and in media of such type and format as Franchisor may approve, shall be conducted in a dignified manner, and shall comply with federal and local laws and regulations, including but not limited to the Lanham Act, 15 U.S.C. § 1125 et seq. and the Telephone Consumer Protection Act, 47 U.S.C. §227 et seq. (the "TCPA"), and conform to such standards and requirements as Franchisor may specify. Franchisee shall not engage in any branding nor use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 12.5 hereof. Franchisor may make available to Franchisee from time to time, at Franchisee's expense, such branding and promotional materials, including logo wear, coupons, merchandising materials, point-of-purchase materials, special promotions, and similar advertising and promotional materials.

12.5 Approval of Branding and Advertising. Franchisee shall submit to Franchisor samples of all advertising as well as branding and promotional plans and materials for any promotional activities or any print, broadcast, cable, electronic, computer, or other media (including, without limitation, the Internet) that Franchisee desires to implement or use and that have not been prepared or previously approved by Franchisor within the preceding three (3) months (as provided in Section 21 hereof), for Franchisor's prior approval. Franchisee shall not use such plans or materials until they have been approved in writing by Franchisor. If written

notice of approval is not received by Franchisee from Franchisor within ten (10) business days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have not approved them. Franchisor reserves the right to require Franchisee to discontinue the use of any branding, advertising, or marketing material that was previously approved upon notice.

12.6 Branding and Advertising Promotions. Franchisor reserves the right, from time-to-time, to develop and run national and regional branding and advertising promotions that promote the H&H Bagels System and Proprietary Marks, either through the H&H Bagels Brand Fund or otherwise. Franchisee shall participate fully in such promotions in such manner and on such terms as Franchisor shall require in its reasonable discretion which shall be in accordance with Section 7.16 hereof.

12.7 Advertising Cooperative. Franchisor shall have the right, in its discretion, to designate any geographical area for purposes of establishing a regional advertising and promotional cooperative (“Cooperative”), and to determine whether a Cooperative is applicable to the Restaurant. If a Cooperative has been established in Franchisee’s area prior to opening the Restaurant, Franchisee shall become a member of the Cooperative no later than thirty (30) days after opening the Restaurant. If a Cooperative is established subsequent to Franchisee’s opening of the Restaurant, Franchisee shall become a member of the Cooperative no later than thirty (30) days after the date on which the Cooperative commences operation. If the Restaurant is within the territory of more than one Cooperative, Franchisee shall not be required to be a member of all Cooperatives within that territory:

12.7.1 Each Cooperative shall be organized and governed in a form and manner, shall commence operation on a date, and shall operate pursuant to written governing documents, all of which must be approved in advance by Franchisor in writing;

12.7.2 Each Cooperative shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor’s approval, standardized advertising materials for use by the members in local advertising;

12.7.3 No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without the prior approval of Franchisor. All such plans and materials shall be submitted to Franchisor in accordance with the procedure set forth in Section 12.5 hereof;

12.7.4 Franchisor shall have the right to require members of each Cooperative to make contributions to the Cooperative in an amount equal to one percent (1%) of weekly Gross Sales at such times as determined by Franchisor. Franchisor may increase the amount of such contributions upon thirty (30) days written notice to Franchisee; provided, however, that such contributions shall not exceed an amount equal to two percent (2%) of weekly Gross Sales. Any contributions to the Cooperative shall be credited towards Franchisee’s local advertising requirement set forth in Section 12.2 hereof.

12.7.5 All contributions to the Cooperative shall be expended on regional advertising and promotion as directed by the Cooperative member duly-elected by the other members to represent the Cooperative;

12.7.6 Franchisor, in its sole discretion, may grant to any franchisee an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating the reasons supporting such exemption. Franchisor's decision concerning such request for exemption shall be final; and

12.7.7 Franchisor shall have the power to require the Cooperative to be formed, changed, dissolved, or merged.

12.8 Advisory Council. Franchisee shall participate actively in such franchise advisory council ("Advisory Council") as Franchisor designates and participate in all Advisory Council programs approved by Franchisor. The Franchisor reserves the right to prepare and amend the governing documents for the Advisory Council from time to time, in its sole discretion, at any time. Franchisor, in its sole discretion, will determine the boundaries of the Advisory Council. The purposes of the Advisory Council shall include, but are not limited to, exchanging ideas and problem-solving methods, advising Franchisor on expenditures for system-wide advertising, and coordinating franchisee efforts. Franchisee shall pay the Advisory Council a fee, as determined by the Advisory Council, and Franchisor has the right to enforce this obligation. Amounts and expenditures may vary from time to time due to variations in Advisory Council participation and costs, as determined by the Advisory Council, and as approved by Franchisor.

12.9 Branding and Advertising Allocation. Franchisor, in its sole discretion, reserves the right to reallocate the required percentages of Gross Sales contributions in connection with H&H Bagels Brand Fund, local advertising, and Cooperative expenditures upon thirty (30) days' notice to Franchisee.

### **13. INSURANCE**

13.1 Minimum Insurance. Franchisee shall procure, prior to the commencement of any operations under this Agreement, and shall maintain in full force and effect at all times during the term of this Agreement, at Franchisee's expense, an insurance policy or policies protecting Franchisee, Franchisor, and their respective officers, directors, partners, agents, and employees against any demand or claim with respect to personal injury, death or property damage, business interruption, or any loss, liability, or expense whatsoever arising or occurring upon or in connection with the Restaurant, including, but not limited to, comprehensive general liability insurance, property and casualty insurance, business interruption insurance, statutory workers' compensation insurance, employer's liability insurance, auto and product liability insurance. Such policy or policies shall be written by a responsible carrier or carriers acceptable to Franchisor, shall name Franchisor as an additional named insured as specified by Franchisor, and shall provide at least the types and minimum amounts of coverage specified in the Manuals.

13.2 Non-Waiver. Franchisee's obligation to obtain and maintain the policy or policies in the amounts specified in the Manuals shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 20.3 of this Agreement.

13.3 Franchisor Entitled to Recover. All public liability and property damage policies shall contain a provision that Franchisor, although named as an insured, shall nevertheless be

entitled to recover under such policies on any loss occasioned to Franchisor or its servants, agents, or employees by reason of the negligence of Franchisee or its servants, agents, or employees.

13.4 Certificates of Insurance. Prior to the commencement of any construction, and thereafter at least thirty (30) days prior to the expiration of any policy, Franchisee shall deliver to Franchisor Certificates of Insurance evidencing the proper types and minimum amounts of coverage. All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given Franchisor in the event of material alteration to, or cancellation of the coverages evidenced by such Certificates.

13.5 Franchisor's Right to Procure Insurance. Should Franchisee, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by Franchisor in the Manuals or otherwise in writing, Franchisor shall have the right and authority (but not the obligation) to procure and maintain such insurance in Franchisee's name and to charge same to Franchisee, which charges, together with a reasonable fee for Franchisor's expenses in so acting, shall be payable by Franchisee immediately upon notice. The foregoing remedies shall be in addition to any other remedies Franchisor may have.

## 14. TRANSFER OF INTEREST

14.1 Franchisor's Right to Transfer. Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any person or legal entity, and any designated assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. Franchisee shall execute such documents of attornment or otherwise as Franchisor shall request.

14.2 Franchisee's Conditional Right to Transfer. Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's (or, if Franchisee is a corporation, partnership, or limited liability company, its principals') business skill, financial capacity, and personal character. Accordingly, neither Franchisee nor any immediate or remote successor to any part of Franchisee's interest in this Agreement, nor any individual, partnership, limited liability company, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee or in the Franchised Business shall sell, assign, transfer, convey, pledge, encumber, merge, or give away (collectively, "transfer") this Agreement, any direct or indirect interest in Franchisee, or in all or substantially all of the assets of the Franchised Business without the prior written consent of Franchisor. Any purported assignment or transfer not having the written consent of Franchisor required by this Section 14.2 shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Section 15.2.6 of this Agreement.

14.3 Conditions of Transfer. Franchisee shall notify Franchisor in writing of any proposed transfer of this Agreement, any direct or indirect interest in Franchisee, or in all or substantially all of the assets of the Franchised Business at least ninety (90) days before such transfer is proposed to take place. Franchisor shall not unreasonably withhold its consent to any transfer. Franchisor may, in its sole discretion, require any or all of the following as conditions of its approval:

14.3.1 That all of Franchisee's accrued monetary obligations and all other outstanding obligations to Franchisor and its affiliates have been satisfied;

14.3.2 That Franchisee is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee and Franchisor or its affiliates;

14.3.3 That the transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, and their respective officers, directors, agents, shareholders, and employees;

14.3.4 That the transferor and transferee have executed a mutual general release, relieving all claims against each other, excluding only such claims relating to any provision or covenant of this Agreement which imposes obligations beyond the expiration of this Agreement;

14.3.5 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as Franchisor may request) (a) enter into a written assignment, in a form satisfactory to Franchisor, assuming and agreeing to discharge all of Franchisee's obligations under this Agreement, (b) guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor, and/or (c) execute, for a term ending on the expiration date of this Agreement and with such renewal term(s) as may be provided by this Agreement, Franchisor's then-current form of franchise agreement and other ancillary agreements as Franchisor may require for the Franchised Business, which agreements shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher Royalty Fee, advertising contribution and other fees, as determined by Franchisor, except that the transferee shall be required to pay twenty-five (25%) of the then-current franchise fee;

14.3.6 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as Franchisor may request) demonstrate to Franchisor's satisfaction that it meets Franchisor's educational, managerial, and business standards; possesses a good moral character, business reputation, and credit rating; has the aptitude and ability to operate the Franchised Business, and has adequate financial resources and capital to operate the Franchised Business;

14.3.7 That Franchisee remain liable for all of the obligations to Franchisor in connection with the Franchised Business which arose prior to the effective date of the transfer and execute any and all instruments reasonably requested by Franchisor to evidence such liability;

14.3.8 That the transferee (or, if the transferee is a corporation, partnership or limited liability company, a principal of the transferee acceptable to Franchisor), or the transferee's manager (if transferee or transferee's principal will not manage the Restaurant), at the transferee's expense, complete any training programs then in effect upon such terms and conditions as Franchisor may reasonably require and pay Franchisor the then-current training fee;

14.3.9 That the transferee satisfactorily completes such training as Franchisor reasonably requires;



14.3.10 That Franchisee pay to Franchisor a transfer fee of twenty-five percent (25%) of the then-current Initial Franchise Fee; provided, however, no transfer fee shall be due to Franchisor if transferee:

- (a) Is an entity controlled by Franchisee;
- (b) Has been an H&H Bagels franchisee in good standing for at least five (5) years;
- (c) Has managed a franchised or company-owned H&H Bagels location for at least five (5) years; or
- (d) Obtains the business as a result of Franchisee's death or disability.

Notwithstanding the foregoing, Franchisee shall reimburse Franchisor for its actual out of pocket costs and expenses (including, without limitation, any legal fees) incurred from the transfer; and

14.3.11 That the transferor shall have first offered to sell such interest to Franchisor pursuant to Section 14.6 hereof.

14.4 Familial Transfer. Notwithstanding Sections 14.3.5 and 14.3.10, in the event of a transfer of an ownership interest by a direct or indirect owner of a Franchised Business to a spouse or adult child of such owner or to a trust, estate, or beneficiary of such deceased owner, there will be no requirement for the transferee to execute the Franchisor's then-current form of development agreement, franchise agreement, or other ancillary agreements, and there shall be no transfer fee for such transfer. The transferor shall be obligated in such instances to reimburse Franchisor for Franchisor's reasonable out-of-pocket costs and expenses, including but not limited to reasonable attorneys' fees, incurred with respect to such transfer. The transferee shall be obligated and bound by all of the provisions of the transferred Franchise Agreement, including but not limited to the Confidentiality and Non-Competition Agreements, and Franchisor reserves the right to require such parties as it may reasonably require to sign a new Guarantee, Indemnification, and Acknowledgement, in the form attached hereto as Exhibit E.

14.5 No Security Interest. Franchisee shall not grant a security interest in the Restaurant or in any of the assets of the Restaurant unless the secured party agrees that in the event of any default by Franchisee under any documents related to the security interest, Franchisor shall have the right and option (but not the obligation) to be substituted as obligor to the secured party and to cure any default of Franchisee, and, in the event Franchisor exercises such option, any acceleration of indebtedness due to Franchisee's default shall be void.

14.6 Franchisor's Right of First Refusal. If any party holding any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business desires to accept any bona fide offer from a third party to purchase such interest, Franchisee shall notify Franchisor as provided in Section 14.3 hereof and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within sixty (60) days after receipt of such written notification, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to

purchase the seller's interest, closing on such purchase shall occur within ninety (90) days from the date of notice to the seller of the election to purchase by Franchisor. If Franchisor elects not to purchase the seller's interest, Franchisee has sixty (60) days or as stipulated by law to complete the sale. Any material change in the terms of the offer from a third party shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 14.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 14, with respect to a proposed transfer. In the event the consideration, terms and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by the third party, an independent appraiser shall be designated by Franchisor at Franchisor's expense, and the appraiser's determination shall be binding. Franchisor reserved the right to assign to a third party, its right of first refusal provided in this Section 14.6.

14.7 Death or Mental Incapacity. Upon the death, physical or mental incapacity of any person with an interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by Franchisor within six (6) months after such death, physical incapacity, or mental incapacity. For purposes of this Section 14.7, "physical or mental incapacity" exists if Franchisor determines that the usual participation of such person in the Franchised Business is for any reason curtailed for a cumulative period of ninety (90) days in any twelve (12) month period during the term of this Agreement, including any renewal terms. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer. In the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 14, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by Franchisor within a reasonable time, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within a reasonable time, Franchisor may terminate this Agreement, pursuant to Section 15.2.7 hereof.

14.8 Non-Waiver. Franchisor's consent to a transfer of any interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

14.9 Offerings by Franchisee. Securities or partnership interests in Franchisee may be offered to the public, by private offering or otherwise, only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. All materials required for such offering by applicable law shall be submitted to Franchisor for review prior to their being filed with any governmental agency; and any materials to be used in any exempt offering shall be submitted to Franchisor for review prior to their use. No offering of such securities shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in the underwriting, issuance, or offering of securities by Franchisee; and Franchisor's review of any offering shall be

limited solely to the subject of the relationship between Franchisee and Franchisor. Franchisee and the other participants in the offering shall fully indemnify Franchisor in connection with the offering. For each proposed offering, Franchisee shall pay to Franchisor a non-refundable fee of Ten Thousand U.S. Dollars (\$10,000) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees. Franchisee shall give Franchisor written notice at least sixty (60) days prior to the date of commencement of any offering or other transaction covered by this Section 14.9.

## **15. DEFAULT AND TERMINATION**

15.1 Automatic Termination. Franchisee shall be deemed to be in default under this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or make a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; if Franchisee is adjudicated bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); if Franchisee is dissolved; if execution is levied against Franchisee's business or property; if suit to foreclose any lien or mortgage against the Premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of the Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.

15.2 Notice Without Opportunity to Cure. Upon the occurrence of any of the following events of default, Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the provision of notice to Franchisee (in the manner provided under Section 23 hereof):

15.2.1 If Franchisee fails to locate an approved site or to construct and open the Restaurant within the time limits provided in the Site Selection Addendum or Section 5.3 hereof;

15.2.2 If Franchisee fails to complete the Initial Training Program to Franchisor's satisfaction or if Franchisee fails to attend and complete additional training to Franchisor's satisfaction;

15.2.3 If Franchisee at any time ceases to operate or otherwise abandons the Franchised Business, or loses the right to possession of the Premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Business is located. However, if, through no fault of Franchisee, the Premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within sixty (60) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the Premises;

15.2.4 If Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith or Franchisor's interest therein;

15.2.5 If a threat or danger to public health or safety results from the operation of the Franchised Business;

15.2.6 If a local health department or related regulatory authority determines that the Franchised Business must be closed due to health code violations;

15.2.7 If any purported assignment or transfer of any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Franchised Business is made to any third party without Franchisor's prior written consent, contrary to the terms of Section 14 hereof;

15.2.8 If an approved transfer is not effected within the time provided following death, physical incapacity, or mental incapacity, as required by Section 14.6 hereof;

15.2.9 If Franchisee fails to comply with the covenants in Section 17.2 hereof or fails to obtain execution of the covenants required under Section 10.2 hereof;

15.2.10 If, contrary to the terms of Sections 9 or 10 hereof, Franchisee, its management or staff disclose or divulge the contents of the Manuals or other confidential information provided to Franchisee by Franchisor;

15.2.11 If Franchisee knowingly maintains false books or records or submits any false reports to Franchisor;

15.2.12 If Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impairs the goodwill associated therewith or Franchisor's rights therein;

15.2.13 If Franchisee refuses to permit Franchisor to inspect the Premises, or the books, records or accounts of Franchisee upon demand;

15.2.14 If Franchisee, upon receiving a notice of default under Section 15.3 hereof, fails to initiate immediately a remedy to cure such default;

15.2.15 If Franchisee violates the payment or credit terms of a vendor or supplier which results in such vendor or supplier refusing to deliver or supply any goods or services to the Franchised Business;

15.2.16 If Franchisee, after curing any default pursuant to Section 15.3 hereof, commits the same default again, whether or not cured after notice;

15.2.17 If Franchisee understates its Gross Sales in any report or statement (i) by more than five percent (5%) or (ii) by more than two percent (2%) three times in any thirty-six (36) month period; or

15.2.18 If Franchisee does not have sufficient inventory on hand more than twice in any thirty-six (36) month period due to its failure to order and pay for products on a timely fashion, or for any other reason other than Franchisor's inability to supply.

15.3 Notice With Opportunity to Cure. Except as otherwise provided in Sections 15.1 and 15.2 of this Agreement, upon any other default by Franchisee, Franchisor may terminate this Agreement by giving written notice of termination (in the manner set forth under Section 23 hereof) stating the nature of the default to Franchisee at least fifteen (15) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the fifteen (15) day period. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the fifteen (15) day period or such longer period as applicable law may require. Defaults which are susceptible of cure hereunder include the following illustrative events:

15.3.1 If Franchisee fails to substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be supplemented by the Manuals, or failure to carry out the terms of this Agreement in good faith;

15.3.2 If Franchisee fails, refuses, or neglects promptly to pay any monies owing to Franchisor or its affiliates when due, fails to submit the financial or other information required by Franchisor under this Agreement;

15.3.3 If Franchisee fails to maintain or observe any of the standards or procedures prescribed by Franchisor in this Agreement, the Manuals or otherwise in writing;

15.3.4 Except as provided in Section 15.2.6 hereof, if Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by this Agreement;

15.3.5 If Franchisee acts, or fails to act, in any manner which is inconsistent with or contrary to its lease or sublease for the Premises, or in any way jeopardizes its right to renewal of such lease or sublease;

15.3.6 If Franchisee engages in any business or markets any service or product under a name or mark which, in Franchisor's opinion, is confusingly similar to the Proprietary Marks;

15.3.7 If Franchisee buys or accepts any disapproved products, or products from any disapproved suppliers;

15.3.8 If Franchisee fails to comply with all applicable laws, rules and regulations related to the operation of the Restaurant (including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Restaurant);

15.3.9 If Franchisee or a guarantor of this Agreement defaults under any other agreement with Franchisor or its affiliates, or with a major supplier to the System; or

15.3.10 If Franchisee fails to maintain acceptable customer satisfaction scores as prescribed by Franchisor from time to time in the Manual or otherwise in writing, based on customer surveys conducted by Franchisor or its designee.

15.4 Liquidated Damages. If Franchisor terminates this Agreement as a result of Franchisee's default (or if Franchisee abandon the franchise), then within ten (10) days thereafter Franchisee shall pay to Franchisor a lump sum (as liquidated damages and not as a penalty) an amount equal to the present value of the Royalty Fee and Brand Fund contribution due for three (3) years based on the most recent twelve (12) months of operation. Franchisee acknowledges that a precise calculation of the full extent of Franchisor's damages under these circumstances is difficult to determine and the method of calculation of such damages as set forth in this Section 15.4 is reasonable. Franchisee's payment to Franchisor under this Section will be in lieu of any direct monetary damages that Franchisor may incur as a result of Franchisor's loss of Royalty Fees and Brand Fund contributions that would have been owed to Franchisor after the date of termination. Franchisee's payment of this lump sum shall be in addition to any other right or remedy that Franchisor may have under this Agreement or otherwise.

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

Upon termination or expiration of this Agreement for any reason, all rights granted hereunder to Franchisee shall forthwith terminate, and:

16.1 Cease Operations. Franchisee shall immediately cease to operate the Franchised Business, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a franchisee of Franchisor. Immediately upon the expiration or termination hereof, Franchisee shall dispose of, and not sell, any H&H Bagels product or other products sold hereunder.

16.2 Cease Use of Confidential Information and Proprietary Marks. Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System; Proprietary Marks; the trade name "H&H Bagels"; and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, products, and any other articles which display the Proprietary Marks.

16.3 Cancellation of Registrations. Franchisee shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the mark "H&H BAGELS", or any other Proprietary Marks, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within fifteen (15) days after termination or expiration of this Agreement.

16.4 Assignment of Lease. Franchisee shall, at Franchisor's option, assign to Franchisor any interest which Franchisee has in any lease or sublease for the Premises. In the event Franchisor does not elect to exercise its option to acquire the lease or sublease for the Premises, Franchisee shall make such modifications or alterations to the Premises (including, without limitation, the changing of, and the assigning to Franchisor of, the telephone number) immediately upon

termination or expiration of this Agreement as may be necessary to distinguish the appearance of the Premises from that of the Restaurant under the System, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. In the event Franchisee fails or refuses to comply with the requirements of this Section 16.4, Franchisor shall have the right to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

16.5 Subsequent Use of Proprietary Marks Prohibited. Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit, copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in Franchisor's sole discretion, is likely to cause confusion, mistake or deception, or which, in Franchisor's sole discretion, is likely to dilute Franchisor's rights in and to the Proprietary Marks. Franchisee further agrees not to utilize any designation of origin, description, or representation (including but not limited to reference to the Franchisor, the System or the Proprietary Marks) which, in Franchisor's sole discretion, suggests or represents a present or former association or connection with Franchisor, the System or the Proprietary Marks.

16.6 Payment. Franchisee shall promptly pay all sums owing to Franchisor and its affiliates. In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid-in-full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by Franchisee and on the Premises operated hereunder at the time of default.

16.7 Return Manuals. Franchisee shall immediately deliver to Franchisor the Manuals, paper and electronic spreadsheets, and checklists and all other records, correspondence, and instructions containing confidential information relating to the operation of the Restaurant (and any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor, and shall retain no copy or record of any of the foregoing, with the exception of Franchisee's copy of this Agreement, any correspondence between the parties and any other documents which Franchisee reasonably needs for compliance with any provision of law.

16.8 Websites. Franchisee may not establish or maintain any Website or any accounts or pages on any Networking Media Site using any similar or confusing domain name and/or home page address.

16.9 Franchisor's Option to Purchase Equipment. Franchisor shall have the option, to be exercised within thirty (30) days after termination or expiration, to purchase from Franchisee any or all of the tangible equipment, signs, and fixtures related to the operation of the Restaurant at the lesser of: (a) fair market value; or (b) fifty percent (50%) of Franchisee's original investment, exclusive of supplies, inventory, and costs for professional services (such as architectural costs and legal costs), and to purchase any or all supplies and inventory of the Franchised Business at the lesser of: (a) Franchisee's cost; or (b) fair market value. If the parties cannot agree on the price

of any such items within a reasonable time, an independent appraisal shall be conducted at Franchisor's expense, and the appraiser's determination shall be binding. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee, and the cost of the appraisal, if any, against any payment therefor.

16.10 Cross-Default. Upon a default and a subsequent termination of this Agreement, Franchisor, at its election, may terminate that certain Development Agreement dated as of \_\_\_\_\_ and any other Franchise Agreement between Franchisor and Franchisee or an affiliate of Franchisee.

16.11 Comply With Covenants. Franchisee shall comply with the covenants contained in Section 17.3 of this Agreement.

## **17. COVENANTS**

17.1 Best Efforts. Franchisee covenants that, during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or, if Franchisee is a corporation, partnership or limited liability company, a principal, general partner, or member of Franchisee) or Franchisee's fully trained manager shall devote full time and best efforts to the management and operation of the Restaurant.

17.2 In-Term Covenants. Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable, specialized training and confidential information, including without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity:

17.2.1 Divert or attempt to divert any present or prospective business or customer of any H&H Bagels restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; or

17.2.2 Own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any retail business which: (a) is the same as, or substantially similar to, an H&H Bagels restaurant; or (b) offers to sell or sells any products, merchandise, or services offered by an H&H Bagels restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business.

17.3 Post-Term Covenants. Franchisee covenants that, except as otherwise approved in writing by Franchisor, Franchisee shall not, for a continuous uninterrupted period of two (2) years commencing upon the date of: (a) a transfer permitted under Section 14 of this Agreement; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 17.3; or (e) any or all of the foregoing; either directly



or indirectly, for itself, or through, on behalf of, or in conjunction with any person or legal entity, own, maintain, operate, engage in, be employed by, provide assistance to, or have any interest in (as owner or otherwise) any business that: (i)(a) is the same as, or substantially similar to, an H&H Bagels restaurant, or (b) offers to sell or sells any products, merchandise, or services offered by an H&H Bagels restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business; and (ii) is, or is intended to be, located at or within:

17.3.1 the county or municipality in which the Approved Location is located;

17.3.2 twenty-five (25) miles of the Approved Location; or

17.3.3 twenty-five (25) miles of any business operating under the Proprietary Marks; provided, however, that Sections 17.2.3 and this Section 17.3 shall not apply to the operation by Franchisee of any business under the System which may be franchised by Franchisor to Franchisee under a written Franchise Agreement.

17.4 No Application to Equity Securities. Sections 17.2.2 and 17.3 shall not apply to ownership by Franchisee of a less than five percent (5%) beneficial interest in the outstanding equity securities of any corporation which has securities registered under the Securities Exchange Act of 1934.

17.5 Reduction of Scope of Covenants. Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 17.2 and 17.3, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 23 hereof.

17.6 Enforcement. Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 17. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 17.

## **18. CORPORATE, PARTNERSHIP, OR LIMITED LIABILITY COMPANY FRANCHISEE**

18.1 Franchisee Corporation. If Franchisee is a corporation, Franchisee shall comply with the following requirements:

18.1.1 Franchisee shall be newly organized, and its charter shall at all times provide that its activities are confined exclusively to operating the Franchised Business;

18.1.2 Copies of Franchisee's Articles of Incorporation, Bylaws, and other governing documents, and any amendments thereto, including the resolution of the Board of Directors authorizing entry into this Agreement, shall be promptly furnished to Franchisor;

18.1.3 Franchisee shall maintain stop-transfer instructions against the transfer on its records of any equity securities; and each stock certificate of Franchisee shall have conspicuously endorsed upon its face a statement in a form satisfactory to Franchisor that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon assignments by this Agreement; provided, however, that the requirements of this Section 18.1.3 shall not apply to a publicly-held corporation; and

18.1.4 Franchisee shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities or securities convertible into voting securities of Franchisee and shall furnish the list to Franchisor upon request.

18.2 Franchisee Partnership. If Franchisee or any successor to or assignee of Franchisee is a partnership, it shall comply with the following requirements:

18.2.1 Franchisee shall furnish Franchisor with a copy of its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto;

18.2.2 The partnership agreement shall at all times note conspicuously that partnership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Franchise Agreement; and

18.2.3 Franchisee shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners in Franchisee.

18.3 Franchisee Limited Liability Company. If Franchisee or any successor to or assignee of Franchisee is a limited liability company, it shall comply with the following requirements:

18.3.1 Franchisee must be newly organized, and the articles of incorporation must at all times provide that the Franchisee's activities are confined exclusively to operating the Franchised Business;

18.3.2 Franchisee shall furnish Franchisor with a copy of its articles of organization and operating agreement as well as such other governing documents as Franchisor may reasonably request, and any amendments thereto;

18.3.3 The articles of organization or operating agreement shall at all times note conspicuously that membership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Franchise Agreement; and

18.3.4 Franchisee shall prepare and furnish to Franchisor, upon request, a list of all members in Franchisee or parties that hold any ownership interest in the Franchisee.

18.4 Guaranty and Indemnification. If Franchisee is a corporation, partnership, or limited liability company, or if any successor to or assignee of Franchisee is a partnership or limited liability company, then all of the principals thereto shall execute a Guarantee, Indemnification, and Acknowledgment in the form attached hereto as Exhibit E.

## **19. TAXES, PERMITS, AND INDEBTEDNESS**

19.1 Payment of Taxes. Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, employer's portion of employment-related taxes (FICA, Medicare, and unemployment taxes) and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business. Franchisee shall pay to Franchisor an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement.

19.2 Contesting Taxes. In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall Franchisee permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises, or any improvements thereon.

19.3 Permits and Licenses. Franchisee shall comply with all federal, state, and local laws, rules, and regulations, including without limitation, the applicable provisions of the ADA regarding the construction, design, and operation of the Franchised Business and applicable provisions of Section 4205 of the Patient Protection and Affordable Care Act of 2010 and related regulations regarding disclosure of nutritional information on menus and menu boards, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Franchised Business, including, without limitation, licenses to do business, fictitious name registrations, occupancy licenses, sales tax permits, construction permits, health permits, food service permits, building permits, handicap permits, and fire clearances. Franchisee shall comply with all federal and state laws requiring disclosure of nutritional information on menus and menu boards, including, but not limited to, the requirements of Section 4205 of the Patient Protection and Affordable Care Act of 2010.

19.4 Notification of Adverse Action. Franchisee shall immediately notify Franchisor in writing of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of the Franchised Business.

## **20. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

20.1 Independent Contractor. Franchisor and Franchisee agree that this Agreement does not create a fiduciary relationship between them, that Franchisee shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, joint employer, partner, employee, or servant of the other for any purpose whatsoever. During the term of this Agreement, Franchisee shall hold itself out to the public as an independent contractor operating the Franchised Business pursuant to a franchise agreement from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Premises of the Franchised Business and in all e-mails sent by Franchisee, the content of which Franchisor reserves the right to specify. Further, such notification should appear on, but not be limited to, well positioned signage at each H&H Bagels location; on vehicles, forms, invoices,

business cards and letterhead. Finally, Franchisee shall not include the H&H Bagels Proprietary Marks on any personnel forms or methods of payment to its employees. Franchisee acknowledges and agrees that Franchisor's usual business is the offering and selling rights to operate H&H Bagels restaurants using the Proprietary Marks and System, developing enhancements to the System, and providing assistance to franchisees, and, accordingly, Franchisor's usual business is different from Franchisee's usual business of operating an H&H Bagels restaurant. Notwithstanding any other provision of this Agreement, Franchisor and Franchisee acknowledge and agree that Franchisee has the sole authority, and that it is the Franchisee's obligation under this Agreement, to make all personnel and employment decisions relating to the Franchised Business, including, without limitation, decisions related to hiring, training, firing, discharging and disciplining employees, and to supervising Franchisee's employees, settling their wages, hours of employment, record-keeping and any benefits, and that Franchisor shall have no direct or indirect authority or control over any employment-related matters for Franchisee's employees. Franchisee shall require each of its employees to acknowledge in writing that Franchisee (and not Franchisor) is the employer of such employee.

20.2 No Authority to Contract. Nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Franchisee in its operation of the business franchised hereunder or for any claim or judgment arising therefrom against Franchisee or Franchisor.

20.3 Indemnification. Franchisee shall indemnify and hold harmless Franchisor and its affiliates, and their respective officers, directors, and employees against any and all claims, losses, costs, expenses, liabilities, and damages arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Restaurant, the business conducted under this Agreement, or Franchisee's breach of this Agreement, including, but not limited to, those alleged to be caused by Franchisor's negligence, unless (and then only to the extent that) the claims, obligations, and damages are determined to be caused solely by Franchisor's gross negligence or willful misconduct according to a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction, as well as the costs, including reasonable attorneys' fees, of defending against them. In the event Franchisor incurs any costs or expenses, including, without limitation, legal fees, travel expenses, and other charges, in connection with any proceeding involving Franchisee in which Franchisor is not a party, Franchisee shall reimburse Franchisor for all such costs and expenses promptly upon presentation of invoices. Franchisee acknowledges and agrees that Franchisee's indemnification and hold harmless obligations under this Section shall survive the termination or expiration of this Agreement. Nothing herein shall preclude Franchisor from choosing its own legal counsel to represent it in any lawsuit, arbitration, or other dispute resolution.

## **21. APPROVALS AND WAIVERS**

21.1 Approval and Consent. Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.

21.2 No Warranties or Guarantees. Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

21.3 No Waiver. No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms hereof. Waiver by Franchisor of any particular default of Franchisee shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar, or different nature; nor shall any delay, force, or omission of Franchisor to exercise any power or right arising out of any breach of default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair Franchisor's right to exercise the same, nor shall such constitute a waiver by Franchisor of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee of any terms, covenants, or conditions of this Agreement.

21.4 Force Majeure. Neither Franchisor, Franchisor's affiliates, nor Franchisee shall be responsible or liable for any delays in the performance of any duties under this Agreement which are not the fault or within the reasonable control of that party including, but not limited to, fire, flood, natural disasters, acts of God, terrorist strikes, governmental acts or orders, civil disorders, or strikes and any other labor-related disruption, and in any event said time period for the performance of an obligation hereunder shall be extended for the amount of time of the delay or impossibility; provided, however, this clause shall not apply to and not result in an extension of: (1) the time for payments to be made by Franchisee as required by Section 4.5 hereof; or (2) the term of this Agreement.

## **22. GRANT OF SECURITY INTEREST**

As security for the payment of all amounts from time to time owing by Franchisee to Franchisor under this Agreement and all other agreements between the parties, and performance of all obligations to be performed by Franchisee, Franchisee hereby grants to Franchisor a security interest in all of the assets of Franchisee, including, without limitation, all equipment, furniture, fixtures, and building and road signs, as well as all proceeds of the foregoing (the "Collateral"). Franchisee warrants and represents that the security interest granted hereby is prior to all other security interests in the Collateral, except bona fide purchase money security interests or security interests held by financial institutions, if any. Franchisee agrees not to remove the Collateral, or any portion thereof, from the Premises without the prior written consent of Franchisor. Upon the occurrence of any event entitling Franchisor to terminate this Agreement or any other agreement between the parties, Franchisor shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State in which the Franchised Business is located, including, without limitation, the right to take possession of the Collateral. Franchisor may file financing statements or such other documents as Franchisor reasonably deems necessary to perfect Franchisor's interest in the Collateral. Any notices delivered or mailed in accordance with Section 23 hereof at least fifteen (15) days prior to disposition of the Collateral, or any portion

thereof, and, in reference to a private sale, need state only that Franchisee intends to negotiate such a sale.

**23. NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or sent by other means which affords the sender evidence of delivery or rejected delivery, including, without limitation, private delivery or courier service, but which shall not include electronic communication such as e-mail, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:           H&H Bagels Franchising LLC  
  109 W. 27<sup>th</sup> Street, Suite #3B  
  New York, NY 10001  
  Attn: Mr. Jay Rushin

Notices to Franchisee:           \_\_\_\_\_

  \_\_\_\_\_

  \_\_\_\_\_

  Attn: \_\_\_\_\_

Any notice by a means which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given and received at the date and time of receipt or rejected delivery.

**24. ENTIRE AGREEMENT**

This Agreement, the attachments hereto, and the documents referred to herein constitute the entire Agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede any prior agreements, no other representations having induced Franchisee to execute this Agreement. However, nothing in this Agreement or related agreements is intended to disclaim any representation that Franchisor may have made in the latest franchise disclosure document that Franchisor delivered to Franchisee prior to signing the Agreement. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

**25. SEVERABILITY AND CONSTRUCTION**

25.1 Severability. If, for any reason, any section, part, term, provision, and/or covenant herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, provisions, and/or covenants of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement.

25.2 Survival. Any provision or covenant in this Agreement which expressly or by its nature imposes obligations beyond the expiration, termination, or assignment of this Agreement (regardless of cause for termination), shall survive such expiration, termination, or assignment, including but not limited to Sections 10, 17, 20.3, and 25.

25.3 No Rights or Remedies Conferred. Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, Franchisor's officers, directors, shareholders, agents, and employees, and such of Franchisor's successors and assigns as may be contemplated by Section 14 hereof, any rights or remedies under or by reason of this Agreement.

25.4 Promises and Covenants. Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

## **26. APPLICABLE LAW AND DISPUTE RESOLUTION**

26.1 Applicable Law. This Agreement and any claim, controversy or dispute arising out of or related to this Agreement is governed by the laws of the State of New York. In the event of any conflict of law, the laws of New York shall prevail, without regard to the application of New York conflict-of-law rules. If, however, any provision of this Agreement would not be enforceable under the laws of New York and if Franchisee is located outside of New York and such provision would be enforceable under the laws of the state in which Franchisee is located, then such provision shall be interpreted and construed under the laws of that state. This choice of laws will not affect the scope of any state statute that by its terms is inapplicable to this Agreement, and nothing in this Agreement will extend the scope of application of any statute.

26.2 Jurisdiction and Venue. Any action, whether or not arising out of, or relating to, this Agreement, brought by Franchisee (or any principal thereof) against Franchisor shall be brought in the judicial district in which Franchisor has, at the time of commencement of such action, its principal place of business. Franchisor shall have the right to commence an action against Franchisee in any court of competent jurisdiction. Franchisee hereby waives all objections to personal jurisdiction or venue for purposes of this Section 26.2 and agrees that nothing in this Section 26.2 shall be deemed to prevent Franchisor from removing an action from state court to federal court.

26.3 No Exclusivity. No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

26.4 WAIVER OF RIGHTS AND PUNITIVE DAMAGES. FRANCHISOR AND FRANCHISEE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY AGREE AS FOLLOWS:

26.4.1 FRANCHISOR AND FRANCHISEE BOTH EXPRESSLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY OR AGAINST EITHER PARTY; AND

26.4.2 FRANCHISOR AND FRANCHISEE BOTH EXPRESSLY WAIVE ANY CLAIM FOR PUNITIVE, MULTIPLE, AND/OR EXEMPLARY DAMAGES, EXCEPT THAT FRANCHISOR SHALL BE FREE AT ANY TIME HEREUNDER TO BRING AN ACTION FOR WILLFUL TRADEMARK INFRINGEMENT AND, IF SUCCESSFUL, TO RECEIVE AN AWARD OF MULTIPLE DAMAGES AS PROVIDED BY LAW.

26.4.3 FRANCHISOR AND FRANCHISEE AGREE THAT ANY CLAIMS SHALL BE ARBITRATED, LITIGATED, OR OTHERWISE RESOLVED ON AN INDIVIDUAL BASIS, AND WAIVE ANY RIGHT TO ACT ON A CLASS-WIDE BASIS.

26.5 Limitation of Claims. Franchisee agrees that any and all claims and actions by Franchisee against Franchisor arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee's operation of the Franchised Business, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

26.6 Injunctive Relief. Nothing herein contained shall bar Franchisor's right to obtain injunctive relief from a court of competent jurisdiction against threatened conduct that will cause it loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.

26.7 Franchisor's Costs and Expenses. Franchisee shall pay to Franchisor all damages, costs, and expenses, including all court costs, and reasonable attorney's fees, and all other expenses incurred by Franchisor in enforcing any obligation or in defending against any claim, demand, action, or proceeding related to this Agreement, including, but not limited to, the obtaining of injunctive relief.

## 27. ACKNOWLEDGMENTS

27.1 Independent Investigation. Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Franchisee (or, if Franchisee is a corporation, partnership or limited liability company, the ability of its principals) as an independent businessperson. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

27.2 Acknowledgment of Receipt. Franchisee acknowledges that Franchisee has received a copy of the complete Franchise Agreement, the attachments hereto, and agreements



relating thereto, if any, at least seven (7) calendar days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it has received Franchisor's Franchise Disclosure Document at least fourteen (14) calendar days prior to the date on which this Agreement was executed. **NO STATEMENT WAS MADE, WHETHER ORAL, WRITTEN, OR OTHERWISE, THAT CONTRADICTS THE FRANCHISE DISCLOSURE DOCUMENT.**

27.3 Acknowledgment of Understanding and Opportunity to Consult. Franchisee acknowledges that it has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

27.4 Compliance With Anti-Terrorism Laws. Franchisee acknowledges that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (the "Order"), Franchisor is prohibited from engaging in any transaction with any Specially Designated National or Blocked Person. "Specially Designated National" or "Blocked Person" shall mean (1) those persons designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time-to-time as a "specially designated national" or "blocked person" or similar status, (2) a person engaged in, or aiding any person engaged in, acts of terrorism, as defined in the Order, or (3) a person otherwise identified by government or legal authority as a person with whom Franchisor is prohibited from transacting business. Currently, a listing of such designations and the text of the Order are published at the Internet website address, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac). Accordingly, Franchisee represents and warrants to Franchisor that as of the date of this Agreement, neither Franchisee nor any person holding any ownership interest in Franchisee, controlled by Franchisee, or under common control with Franchisee is a Specially Designated National or Blocked Person, and that Franchisee (1) does not, and hereafter shall not, engage in any terrorist activity; (2) is not affiliated with and does not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and (3) is not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

27.5 Consent to Maintenance of Electronic Records and to Electronic Signatures. Franchisee expressly consents and agrees that Franchisor may provide and maintain all disclosures, agreements, amendments, notices, and all other evidence of transactions between Franchisor and Franchisee in electronic form. Franchisee expressly agrees to execution of the Franchise Agreement and related agreements by electronic means and that such execution shall be legally binding and enforceable as an "electronic signature" and the legal equivalent of Franchisee's handwritten signature. Franchisee expressly agrees that electronic copies of the Franchise Agreement and related agreements between Franchisor and Franchisee are valid. Franchisee expressly agrees not to contest the validity of the originals or copies of the Franchise Agreement and related agreements, absent proof of altered data or tampering.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate on the date first above written.

**H&H BAGELS FRANCHISING LLC**

**FRANCHISEE**

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

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

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

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

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

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

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

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

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

**EXHIBIT A  
TO  
H&H BAGELS FRANCHISE AGREEMENT**

**APPROVED LOCATION; OWNERS**

1. **Approved Location.** The Approved Location under this Agreement shall be: \_\_\_\_\_  
\_\_\_\_\_.

2. **Owners.** The following is a complete list of all of your shareholders, partners, or members (“Owners”) and the percentage ownership interest of each such Owner:

<u>Name</u>	<u>Position</u>	<u>Interest (%)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**H&H BAGELS FRANCHISING LLC**

**FRANCHISEE**

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT B  
TO  
H&H BAGELS FRANCHISE AGREEMENT**

**SITE SELECTION ADDENDUM**

H&H Bagels Franchising LLC (hereinafter the “Franchisor”) and \_\_\_\_\_ (hereinafter “Franchisee”), have of this date, \_\_\_\_\_, 20\_\_\_\_\_, entered into a certain H&H Bagels Franchise Agreement (the “Franchise Agreement”) and desire to supplement its terms, as set forth below. The parties hereto therefore agree as follows:

1. Within one hundred twenty (120) days after Franchisee’s execution of the Franchise Agreement, Franchisee shall obtain a site, at Franchisee’s expense, for the H&H Bagels restaurant (the “Restaurant”) franchised under the Franchise Agreement, which premises shall be approved by Franchisor as hereinafter provided. The premises shall be within the following territory (“Site Selection Territory”): \_\_\_\_\_.

2. Failure by Franchisee to obtain a premises for the Restaurant within the time required in Paragraph 1 hereof shall constitute a default under the Franchise Agreement and this Site Selection Addendum. Time is of the essence.

3. It is Franchisee’s responsibility to locate, evaluate, and select the site for its Restaurant. Franchisor will provide Franchisee with site criteria and review and visit Franchisee’s selected location either directly or through a third-party designee for their initial location only. Prior to Franchisee’s acquisition by lease or purchase of a site for the Restaurant, Franchisee shall submit to Franchisor, in the form specified by Franchisor, a completed site review form, such other information or materials as Franchisor may reasonably require, and a letter of intent or other evidence satisfactory to Franchisor which confirms Franchisee’s favorable prospects for obtaining the proposed site. Recognizing that time is of the essence, Franchisee agrees that Franchisee must submit a proposed site, together with the information and materials required by this Paragraph 3, to Franchisor for its approval within ninety (90) days after execution of the Franchise Agreement. Franchisor shall have thirty (30) days after receipt of such information and materials from Franchisee to approve or disapprove, in Franchisor’s sole discretion, the site as a location for the Restaurant. No proposed site shall be deemed approved unless it has been expressly approved in writing by Franchisor. Franchisor has the right, but not the obligation to provide Franchisee with reasonable extensions of the time frames set forth in this Paragraph 3 at its sole discretion.

4. Franchisor shall furnish to Franchisee the following:

- a. Such site selection guidelines and consultation as Franchisor deems advisable;
- b. Such on-site evaluation as Franchisor deems advisable as part of its evaluation of Franchisee’s request for site approval; provided, however, that Franchisor shall not provide on-site evaluation for any proposed site prior to Franchisor’s receipt of the information or materials

required by Paragraph 3 hereof. If on-site evaluation is deemed necessary and appropriate by Franchisor, Franchisor shall conduct such on-site evaluation at Franchisee's expense; and

c. Such assistance for lease negotiation as Franchisor deems advisable.

5. If Franchisee will occupy the premises of the Restaurant under a lease, Franchisee, shall, prior to the execution thereof, (1) execute and obtain the Lessor's execution of a Lease Addendum (and exhibits thereto) in the form attached as Exhibit F to the Franchise Agreement, and (2) submit the lease to Franchisor for its prior written approval. Franchisor's approval of the lease may be conditioned upon the inclusion of the following terms and conditions:

a. That the initial term of the lease, or the initial term together with renewal terms, shall be for not less than twenty (20) years;

b. That the lessor consents to Franchisee's use of such Proprietary Marks and initial signage as Franchisor may prescribe for the Restaurant;

c. That the use of the premises be restricted solely to the operation of the Restaurant;

d. That Franchisee be prohibited from subleasing or assigning all or any part of its occupancy rights or extending the term of or renewing the lease without Franchisor's prior written consent;

e. That the lessor provides to Franchisor copies of any and all notices of default given to Franchisee under the lease;

f. That Franchisor has the right to enter the premises to make modifications necessary to protect the Proprietary Marks or the System or to cure any default under the Franchise Agreement or under the lease; and

g. That Franchisor has the option, upon default, expiration or termination of the Franchise Agreement, and upon notice to the lessor, to assume all of Franchisee's rights under the lease terms, including the right to assign or sublease.

6. Franchisee shall furnish Franchisor with a copy of any executed lease within five (5) days after execution thereof.

7. After a site for the Restaurant has been approved in writing by Franchisor and obtained by Franchisee pursuant to Paragraph 3 hereof, the site shall constitute the Approved Location referred to in Section 1.2 of the Franchise Agreement.

8. Franchisee hereby acknowledges and agrees that Franchisor's approval of a site does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the site for the Restaurant or for any other purpose or the site's compliance with any federal, state and local laws, codes and regulations, including, without limitation, the applicable provisions of the Americans with Disabilities Act regarding the construction, design, and operation of the Restaurant. Franchisor's approval of the site indicates only that Franchisor believes the site

complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation. Both Franchisee and Franchisor acknowledge that application of criteria that may have been effective with respect to other sites and premises may not be predictive of potential for all sites and that, subsequent to Franchisor's approval of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from Franchisor's criteria could change, thereby altering the potential of a site or lease. Such factors are unpredictable and are beyond Franchisor's control. Franchisor shall not be responsible for the failure of a site approved by Franchisee to meet Franchisee's expectations as to revenue or operational criteria. Franchisee further acknowledges and agrees that its acceptance of a franchise for the operation of the Restaurant at the site is based on its own independent investigation of the suitability of the site.

9. This Site Selection Addendum constitutes an integral part of the Franchise Agreement between the parties hereto, and the terms of this Site Selection Addendum shall be controlling with respect to the subject matter hereof. Except as modified or supplemented by this Site Selection Addendum, the terms of the Franchise Agreement are hereby ratified and confirmed.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties hereto have duly executed this Site Selection Addendum in duplicate on the date first above written.

**FRANCHISEE**

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

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

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

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

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

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

**H&H BAGELS FRANCHISING LLC**

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

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

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

**EXHIBIT C  
TO  
H&H BAGELS FRANCHISE AGREEMENT**

**ADA CERTIFICATION**

H&H Bagels Franchising LLC (“Franchisor”) and \_\_\_\_\_  
\_\_\_\_\_ (“Franchisee”) are parties to a franchise agreement dated \_\_\_\_\_, 20\_\_\_\_  
(the “Franchise Agreement”) for the operation of a retail food franchised business at \_\_\_\_\_  
\_\_\_\_\_ (the “Franchised Business”).

In accordance with Paragraph 5.5 of the Franchise Agreement, Franchisee certifies to Franchisor that, to the best of Franchisee’s knowledge, the Franchised Business and its adjacent areas comply with all applicable federal, state, and local accessibility laws, statutes, codes, rules, regulations, and standards, including but not limited to the Americans with Disabilities Act. Franchisee acknowledges that Franchisor has relied on the information contained in this certification. Furthermore, Franchisee agrees to indemnify Franchisor and the officers, directors, and employees of Franchisor in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Franchisee’s compliance with the Americans with Disabilities Act, as well as the costs, including attorneys’ fees, related to the same.

IN WITNESS WHEREOF, the undersigned has executed this ADA Certification on the date first written above.

**FRANCHISEE**

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

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

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

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

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

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



**EXHIBIT D**  
**TO**  
**H&H BAGELS FRANCHISE AGREEMENT**

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

In consideration of my position as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ (the “Franchisee”), and One Dollar,  
receipt of which is acknowledged, I hereby acknowledge and agree that:

1. H&H Bagels Franchising LLC (the “Franchisor”), as the result of the expenditure of time, skill, effort, and money, has developed, and continues to develop, a distinctive system relating to the establishment and operation of H&H Bagels restaurants, which currently feature and offer for sale to the public iconic, high quality bagels from a par-baked H&H Bagels product authentically “Made in NYC” and baked fresh daily, and high quality signature spreads, smoked fish, and prepared salads under the trade name “H&H Bagels” (the “System”) which Franchisor may change from time to time.

2. As an employee of the Franchisee, I will receive valuable confidential information, disclosure of which would be detrimental to the Franchisor and the Franchisee, such as information relating to recipes, cooking methods, preparation of menu items, drawings, suppliers, equipment, product costs, accounting methods, including both paper and electronic spreadsheets, or advertising of the Franchisor and the System related to the establishment and operation of H&H Bagels restaurants which are beyond the present skills and experience possessed by me. This list of confidential matters is illustrative only and does not include all matters considered confidential by the Franchisor and the Franchisee.

3. I will hold in strict confidence all information designated by the Franchisor or the Franchisee as confidential. Unless the Franchisor otherwise agrees in writing, I will disclose and/or use the confidential information only in connection with my duties as an employee of the Franchisee. My undertaking not to disclose confidential information is a condition of my position with the Franchisee and continues even after I cease to be in that position.

4. While in my position with the Franchisee, I will not do anything which may injure the Franchisee or the Franchisor, such as (a) divert or attempt to divert any present or prospective business or customer of any H&H Bagels restaurant to any competitor, by direct or indirect inducement or otherwise; or (b) do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Franchisor’s marks and the System.

5. While in my position with the Franchisee, I will not own, maintain, operate, engage in, be employed by, provide any assistance or advise to, or have any interest in (as owner or otherwise) any business that: (a) is the same as, or substantially similar to, an H&H Bagels restaurant; or (b) offers to sell or sells any products, merchandise, or services offered by an H&H Bagels restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business; provided, however, that this Paragraph 5 will not apply to my current position with the Franchisee.

6. For two (2) years after I cease to be in my position with the Franchisee, I will not own, maintain, operate, engage in, be employed by, provide any assistance or advice to, or have any interest in (as owner or otherwise) any business that: (i)(a) is the same as, or substantially similar to, an H&H Bagels restaurant, or (b) offers to sell or sells any products, merchandise, or services offered by an H&H Bagels restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business; and (ii) is, or is intended to be, located at or within: (a) the county or municipality in which the Franchisee's H&H Bagels restaurant is located; (b) twenty-five (25) miles of the Franchisee's H&H Bagels restaurant's location; or (c) twenty-five (25) miles of any business operating under the Franchisor's marks.

7. The Franchisor is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Franchisor and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisor and/or the Franchisee may apply for the issuance of an injunction preventing me from violating this Agreement in addition to any other remedies it may have hereunder, at law or in equity; and I agree to pay the Franchisor and the Franchisee all the costs it/they incur/s, including without limitation attorneys' fees, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisor and the Franchisee, any claim I have against the Franchisor or the Franchisee is a separate matter and does not entitle me to violate, or justify any violation of, this Agreement. I EXPRESSLY WAIVE ANY RIGHT I MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY OR AGAINST ME. If any part of this Agreement is held invalid by a court or agency having valid jurisdiction, the rest of the Agreement is still enforceable, and the part held invalid is enforceable to the extent found reasonable by the court or agency. I agree that all the words and phrases used in this Agreement will have the same meaning as used in the Franchise Agreement, and that such meaning has been explained to me.

8. The Franchisor may, in its sole discretion, reduce the scope of any covenant set forth in this Agreement, without my consent, effective immediately upon my receipt of written notice thereof; and I agree to comply with any covenant as so modified.

9. This Agreement and any claim, controversy or dispute arising out of or related to this Agreement is governed by the laws of the State of New York. The only way this Agreement can be changed is in a writing signed by both the Franchisee and me.

**[Signature page follows]**

**EMPLOYEE:**

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

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

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

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

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

**ACKNOWLEDGED BY FRANCHISEE**

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

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

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

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

**EXHIBIT E**  
**TO**  
**H&H BAGELS FRANCHISE AGREEMENT**

**GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT**

As an inducement to H&H Bagels Franchising LLC (“Franchisor”) to execute the Franchise Agreement between Franchisor and \_\_\_\_\_ (“Franchisee”) dated \_\_\_\_\_, 20\_\_ (the “Agreement”), the undersigned (the “Guarantors”), jointly and severally, hereby unconditionally guarantee to Franchisor and its successors and assigns that all of Franchisee’s obligations under the Agreement will be punctually paid and performed.

Upon demand by Franchisor, the undersigned will immediately make each payment to Franchisor required of Franchisee under the Agreement. The undersigned hereby waive any right to require Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement; (b) proceed against or exhaust any security from Franchisee; or (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. The undersigned waive notice of amendment of the Agreement, and notice of demand for payment by Franchisee, and agree to be bound by any and all such amendments and changes to the Agreement.

The undersigned hereby agree to defend, indemnify, and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys’ fees, reasonable costs of investigation, court costs, and arbitration fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the confidentiality provisions and non-competition covenants contained in Sections 10 and 17 of the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement and shall be interpreted and construed in accordance with Section 26

of the Agreement. This Guarantee and any claim, controversy or dispute arising out of or related to this Guarantee is governed by the laws of the State of New York. In the event of any conflict of law, the laws of New York shall prevail, without regard to, and without giving effect to, the application of the State of New York conflict of law rules. This choice of laws will not affect the scope of any state statute that by its terms is inapplicable to this Guarantee and nothing in this Guarantee will extend the scope of application of any statute.

The undersigned agree that the dispute resolution and attorney fee provisions in Section 26 of the Agreement are hereby incorporated into this Agreement by reference, and references to “Franchisee” and the “Franchise Agreement” therein shall be deemed to apply to “Guarantors” and this “Guarantee,” respectively, herein.

Any and all notices required or permitted under this Guarantee shall be in writing and shall be personally delivered, sent by registered mail, or sent by other means which afford the sender evidence of delivery or rejected delivery, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: H&H Bagels Franchising LLC  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attn: Mr. Jay Rushin

Notices to Guarantors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Any notice by a method which affords the sender evidence of delivery or rejected delivery shall be deemed to have been given at the date and time of receipt or rejected delivery.

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

**GUARANTORS**

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

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature

**EXHIBIT F  
TO  
H&H BAGELS FRANCHISE AGREEMENT**

**LEASE ADDENDUM**

(See attached.)

**LEASE ADDENDUM**

THIS LEASE ADDENDUM (the “Addendum”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between (“Landlord”), (“Tenant”), and H&H BAGELS FRANCHISING LLC (“Assignee”).

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to that certain Lease, dated \_\_\_\_\_ (the “Lease”) for the premises located at \_\_\_\_\_ (the “Premises”); and

WHEREAS, Tenant and Assignee are parties to that certain H&H Bagels Franchise Agreement, dated \_\_\_\_\_ (the “Franchise Agreement”), pursuant to which Assignee granted Tenant a license to operate an H&H Bagels restaurant (the “Restaurant”); and

WHEREAS, Tenant will operate the Restaurant at the Premises; and

WHEREAS, Landlord, Tenant and Assignee, desire to provide Assignee the opportunity to preserve the premises as an H&H Bagels restaurant, and to assure Landlord that, if Assignee exercises the option herein contained, any defaults of Tenant under the Lease will be cured by Assignee before it takes possession of the Premises; and

WHEREAS, Tenant and Landlord desire to amend the Lease for the mutual benefit of both parties, as more specifically set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises and representations contained herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

Any term not defined herein shall have the same meaning found in the Lease.

2. USE OF PREMISES

During the term of the Franchise Agreement, the Premises may only be used for the operation of the Restaurant. Tenant shall be permitted to use all equipment typical of other H&H Bagels restaurants and shall be permitted to sell all authorized H&H Bagels restaurant products as required by Assignee.

3. COLLATERAL ASSIGNMENT

Landlord, Tenant, and Assignee have entered into the Contingent Lease Assignment Agreement (the “Assignment”) attached hereto as Exhibit 1 to this Lease Addendum and incorporated herein by reference. The Assignment is for collateral purposes only and, except as specified therein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with the Assignment or the Lease unless Assignee takes possession of the Premises pursuant to

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord            Tenant            Assignee

the terms of the Assignment and assumes the obligations of Tenant under the Lease, it being the intent of the parties that Assignee may, but is not required, to take possession of the Premises.

#### 4. AMENDMENT OF LEASE

The Lease is hereby amended by the addition of the Rider to Lease which is attached hereto as Exhibit 2 and incorporated herein by reference.

#### 5. RENEWAL OF LEASE

Throughout the term of the Franchise Agreement and any renewals thereof, Tenant agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that the option must be exercised, unless Assignee otherwise agrees in writing. If Assignee does not otherwise agree in writing, and upon failure of Tenant to so elect to extend or renew the Lease as aforesaid, Tenant hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place, and stead of Tenant for the purpose of effecting such extension or renewal, provided, however, that Assignee shall have no obligation to renew the lease, or liability for renewing or failing to renew the Lease except as may be provided for in the Assignment.

#### 6. NO FURTHER MODIFICATION OF LEASE

Except as provided in this Addendum, Tenant and Landlord agree that neither party shall otherwise renew or extend the term of the Lease or make any other modifications or alterations to the Lease without the prior written consent of Assignee.

#### 7. ENTRY INTO PREMISES

Tenant and Landlord agree that Assignee shall have the right to enter the Premises to make any reasonable modifications or alterations necessary to protect Assignee's interest in Restaurant and proprietary marks or to cure any default under the Franchise Agreement or under the Lease, and Tenant and Landlord agree that Assignee shall not be liable for trespass or any other crime or tort.

#### 8. NOTICES

Notwithstanding anything contained in the Lease to the contrary, any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by overnight delivery by a nationally recognized courier service, or by placement in the United States Mail by registered or certified mail, return receipt request, postage prepaid. All notices and demands required to be delivered hereunder will be deemed so delivered when actually received by addressee and must be addressed to the party to be notified at the following addresses unless and until a different address has been designated by written notice to the other parties.

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord            Tenant            Assignee



If directed to Tenant, the notice shall be addressed to:

Attention:

With a copy to: The Premises

If directed to Landlord, the notice shall be addressed to:

Attention:

With a copy to:

If directed to Assignee, the notice shall be addressed to:

H&H BAGELS FRANCHISING LLC  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attention: Mr. Jay Rushin

With a copy to: The Premises

9. THIRD-PARTY BENEFICIARY

Landlord and Tenant each agree that Assignee is an express third-party beneficiary of this Addendum, and that Assignee may enforce its rights as third party beneficiary hereunder against Landlord and Tenant.

10. FULL FORCE AND EFFECT

Except as otherwise provided for herein, the terms and conditions of the Lease remain in full force and effect.

11. BINDING ON SUCCESSORS

The covenants, agreements, terms, provisions, and conditions contained in the Lease, as modified by this Addendum, shall bind and inure to the benefit of all parties hereto, and their respective successors and assigns.

**[Signature Page Follows]**

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

IN WITNESS WHEREOF, the parties have executed and delivered this Addendum the day and year first written above.

LANDLORD:

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

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

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

TENANT:

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

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

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

ASSIGNEE:

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

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

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

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

**Exhibit 1 to Lease Addendum**

**CONTINGENT LEASE ASSIGNMENT AGREEMENT**

This CONTINGENT LEASE ASSIGNMENT AGREEMENT (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (hereinafter referred to as “Landlord”); \_\_\_\_\_ (hereinafter referred to as “Tenant”); and H&H BAGELS FRANCHISING LLC (hereinafter referred to as “Assignee”).

Landlord has leased to Tenant certain premises located at \_\_\_\_\_ (the “Premises”), under the terms of a lease agreement dated \_\_\_\_\_, as amended thereafter (collectively, the “Lease”). Tenant intends to use the Premises as an H&H Bagels restaurant, under a Franchise Agreement between Assignee, as Franchisor, and Tenant, as Franchisee (the “Franchise Agreement”). This Agreement is entered into in connection with Assignee’s approval of the above location as an H&H Bagels restaurant and grant of a franchise to Tenant. It is intended to provide Assignee the opportunity to preserve the Premises as an H&H Bagels restaurant under circumstances hereinafter set forth, and to assure Landlord that, if Assignee exercises the option herein contained, any defaults of Tenant under the Lease will be cured by Assignee before it takes possession of the Premises.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows.

**ARTICLE 1 – GRANT OF OPTION**

Landlord grants to Assignee an option to lease the Premises, on the terms, covenants, and conditions hereinafter set forth (the “Option”) in the event of any or all of the following: (i) upon default of Tenant under the Lease, (ii) upon termination of the Franchise Agreement, and/or (iii) upon non-renewal of the Lease term, as more particularly described herein.

1.1 Upon Default of Tenant Under Lease. Landlord agrees to furnish Assignee with copies of any and all letters and notices sent to Tenant pertaining to the Lease and the Premises, at the same time that such letters and notices are sent to Tenant. Landlord further agrees that, if it intends to terminate the Lease, the Landlord will give Assignee thirty (30) days advance written notice of such intent, specifying in such notice all defaults that are the cause of the proposed termination. Assignee shall have, after the expiration of the period during which Tenant may cure such default, an additional fifteen (15) days (or if there is no cure period, at least fifteen (15) days) to cure, at its sole option, any such default. If Tenant fails to cure any defaults within the period specified in the Lease, Landlord shall promptly give Assignee written notice thereof, specifying the defaults Tenant has failed to cure and shall offer Assignee the Option to assume the Tenant’s interests in the Lease (the “Offer”). Landlord shall attach to the Offer a complete copy of the Lease, including any amendments thereto.

1.2 Upon Termination of the Franchise Agreement. If the Franchise Agreement is terminated for any reason during the term of the Lease, or any extension thereof, and if Assignee desires to exercise the Option, Assignee shall promptly give Landlord written notice thereof. Within thirty (30) days after receipt thereof, Landlord shall give Assignee written notice specifying

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord                  Tenant                  Assignee

any defaults of Tenant under the Lease and shall provide Assignee with the Offer as provided in Paragraph 1.1 above.

1.3 Upon Non-Renewal of the Lease Term. If the Lease contains term renewal or extension rights which are allowed to expire by Tenant without exercising said rights, Landlord shall promptly give written notice thereof to Assignee, but in no event later than thirty (30) days following expiration of the term or the renewal deadline provided in the Lease, whichever is sooner, and Assignee shall have the option, for an additional thirty (30) days after receipt thereof, to exercise the Tenant’s renewal or extension rights on the same terms and conditions as contained in the Lease. If Assignee elects to exercise such right to renew or extend the term of the Lease, Assignee shall so notify Landlord in writing, whereupon Landlord shall promptly execute and deliver to Assignee an acceptance of Assignee as assignee of Tenant and shall deliver possession of the Premises to Assignee at the commencement of the extended or renewed term of the Lease.

1.4 Assignee’s Acceptance of the Offer. In the event Landlord delivers the Offer to Assignee in the manner provided for herein, Assignee shall exercise the Option if at all, by written notice to Landlord and Tenant (the “Acceptance”) within thirty (30) days after receipt of the Offer from Landlord; provided, however, that Assignee shall have no duty or obligation to exercise the Option and shall have no duty or liability for failing to exercise the Option. If neither Tenant nor Assignee cures all defaults (if any) within said time periods (or such longer cure period as may be specifically permitted by the Lease), then the Landlord may terminate the Lease, re-enter the Premises, and exercise all of its other post-termination rights as set forth in the Lease, and the Offer shall be null and void, and Assignee shall have no right to succeed to Tenant’s interest in the Lease.

## ARTICLE 2 – TENANT’S COVENANTS

If Tenant fails to timely cure any defaults under the Lease, or in the event of termination of the Franchise Agreement during the Lease term or any extension thereof, Tenant shall, within ten (10) days after written demand by Assignee, assign all of its right, title, and interest in and to the Lease to Assignee. If Tenant fails to do so within said ten (10) days, Tenant hereby designates Assignee as its agent to execute any and all documents and agreements, and to take all action as may be necessary or desirable to effectuate the assignment of the Lease and the relinquishment of any and all of Tenant’s rights thereunder. Landlord hereby consents to such assignment, without the imposition of any assignment fee or similar charge, and agrees that if Assignee takes possession of the Premises and confirms to Landlord the assumption of the Lease by Assignee as tenant thereunder, Landlord shall recognize Assignee as tenant under the Lease, subject to Assignee executing an assumption of the Lease in the form attached hereto as Exhibit A, and curing all defaults of Tenant under the Lease before taking possession of the Premises. Tenant further agrees to promptly and peaceably vacate the Premises and remove its personal property, at the written request of Assignee. Any property not so removed by Tenant within ten (10) days following receipt of such written notice shall be deemed abandoned by Tenant.

2.1 Tenant agrees that termination of the Franchise Agreement during the Lease term or any extension thereof and failure of Tenant to assign its interests in the Lease to Assignee as set forth herein shall be a default under the Lease which will entitle, but not obligate, Landlord to

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

employ legal remedies available in summary process or otherwise, to evict Tenant from the Premises.

2.2 Tenant shall be and remain liable to Landlord for all of its obligations under the Lease, notwithstanding any assignment thereof to Assignee. Assignee shall be entitled to recover from Tenant all amounts it has paid to Landlord to cure Tenant's defaults under the Lease, including interest and the reasonable costs of collection.

### **ARTICLE 3 – DELIVERY OF POSSESSION OF THE PREMISES**

Upon receipt of the Acceptance from Assignee, or as soon as possible thereafter, Landlord shall evict Tenant from the Premises by diligent pursuit of summary process or by other and appropriate legal remedies and shall deliver possession of the Premises to Assignee free and clear of the possessory rights of Tenant or any third party ("Possession").

3.1 Assignee shall not be required to cure defaults and/or to begin paying rent until Landlord delivers Possession of the Premises to Assignee. If it becomes necessary for Landlord to pursue legal remedies in order to remove Tenant and deliver Possession of the Premises to Assignee, Assignee shall, upon written request of Landlord, pay into an escrow account with Landlord's attorney, bearing interest at the passbook rate, such amounts as are necessary to cure Tenant's defaults. If Landlord is unable to deliver Possession of the Premises to Assignee within three (3) months after the date Landlord receives the Acceptance, Assignee shall thereafter have the right at any time until Landlord delivers Possession of the Premises to rescind the Acceptance by written notice to Landlord, whereupon all amounts in escrow, including accrued interest, shall be returned to Assignee.

### **ARTICLE 4 – ASSIGNEE'S RIGHTS AND OBLIGATIONS UNDER THE LEASE**

Assignee, upon taking possession of the Premises, shall concurrently cure the defaults specified by Landlord in the Offer and shall execute and deliver to Landlord the assumption of the Tenant's rights and obligations under the Lease as specified in Article 2, above. Assignee shall pay, perform, and be bound by all of the duties and obligations of the Lease applicable to Tenant, except that Assignee shall not be required to assume or be bound by the terms of any amendment or modification to the Lease executed by Tenant without Assignee's prior written approval thereof.

4.1 Assignee, upon assuming Tenant's interests under the Lease may, simultaneously or thereafter, assign such interests, without Landlord's consent, to an affiliated company or a wholly owned subsidiary of Assignee, provided that Assignee shall remain liable for the payment of rent and performance of the Tenant's duties and obligations under the Lease only to the date of such assignment, except as set forth in Paragraph 4.2, below.

4.2 Assignee may, at any time after assuming the Tenant's interests under the Lease, without the consent of Landlord, assign without recourse its rights as tenant under the Lease to a franchisee of Assignee who meets the then-current standards and requirements for franchisees. Upon receipt by Landlord of the assumption agreement pursuant to which the Assignee agrees to assume the Lease and to observe the terms, conditions, and agreements on the part of Tenant to be performed under the Lease, Assignee shall thereupon be released from all liability as tenant under the Lease, from and after the date of assignment thereof, without any need of a written

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

acknowledgment by Landlord of such release. In such event, this Agreement shall remain in force and effect.

4.3 Assignee or its assignee may only use the Premises for the purpose(s) permitted under the terms of the Lease.

4.4 In the event Assignee shall elect to assume Tenant's rights and obligations under the Lease, Assignee, in addition to any other provision of the Lease, shall also have the right to terminate the Lease at any time, by giving Landlord at least one hundred twenty (120) days written notice. If Assignee shall exercise this right of termination, Assignee shall remove its equipment, trade fixtures, and signs from the Premises and shall return the Premises to Landlord, allowing to remain thereon all of Tenant's and/or Assignee's permanent improvements to the Premises.

### **ARTICLE 5 – DE-IDENTIFICATION AS AN H&H BAGELS RESTAURANT**

If the Lease or Franchise Agreement is terminated and Assignee fails to exercise the Option herein contained, Tenant agrees to de-identify the Premises as an H&H Bagels restaurant and to promptly remove the H&H Bagels trademarks and trade dress from the Premises, including, but not limited to, signs, décor, and other items that Assignee reasonably requests be removed as being distinctive and indicative of an H&H Bagels restaurant. Assignee may enter upon the Premises without being guilty of trespass or tort to effect such de-identification if Tenant fails to effect de-identification within ten (10) days after receipt of written demand from Assignee, following termination of the Franchise Agreement or Lease. Tenant shall reimburse Assignee for its reasonable costs and expenses in effecting such de-identification. Landlord and Tenant shall jointly and severally be obligated to pay Assignee for such costs, if Landlord shares with Tenant, one or more common owners, beneficiaries, or shareholders (as the case may be).

5.1 If the Lease or Franchise Agreement is terminated and Assignee fails to exercise the Option hereunder, Tenant and Tenant's principals agree that they shall comply with the post-termination covenants not to compete in the Franchise Agreement and shall not own, operate, or have an interest in any business which sells any food products identified in the Franchise Agreement at the Premises for the period set forth in the Franchise Agreement.

### **ARTICLE 6 – ADDITIONAL PROVISIONS**

Definitions. Any term not defined herein shall have the same meaning found in the Lease or Lease Addendum, as the case may be.

6.1 This Agreement shall run with the land and be binding upon the parties hereto and their successors, assigns, executors and administrators and representatives. The rights and obligations herein contained shall continue, notwithstanding changes in the persons or entity that may hold any leasehold or ownership in the land, building or Premises.

6.2 Assignee may assign its right under this Agreement, without the consent of Landlord, in connection with any transfer of its rights to an affiliate or a wholly owned subsidiary of Assignee.

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord                  Tenant                  Assignee

6.3 At the request of Landlord or Tenant, Assignee's rights hereunder may be subordinated to the lien of any mortgage or deed of trust hereinafter placed upon the Premises, provided that the mortgagee or trustee shall agree in writing not to disturb Assignee's right to exercise the Option and assume the Lease as set forth herein.

6.4 Any party hereto may record this Agreement or a memorandum hereof. Any party hereto may seek equitable relief or injunctive relief including, without limitation, specific performance for the actual or threatened violation or non-performance of this Agreement by any other party. Such remedies shall be in addition to all other rights provided for in this Agreement or by law.

6.5 Notices. Any notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, by overnight delivery by a nationally recognized courier service, or by placement in the United States Mail by registered or certified mail, return receipt request, postage prepaid. All notices and demands required to be delivered hereunder will be deemed so delivered when actually received by addressee and must be addressed to the party to be notified at the following addresses unless and until a different address has been designated by written notice to the other parties.

Notices to Landlord shall be sent to the following address:

Attention:

With a copy to:

Notices to Tenant shall be sent to the following addresses:

Attention:

With a copy to: The Premises

Notices to Assignee shall be sent to the following address:

**H&H BAGELS FRANCHISING LLC**  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attention: Mr. Jay Rushin

With a copy to: The Premises

**[Signature Page Follows]**

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

LANDLORD:

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

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

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

TENANT:

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

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

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

ASSIGNEE:

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

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

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

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee



**Exhibit A to Contingent Lease Assignment Agreement**

**ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT**

**ASSIGNMENT AND ASSUMPTION** made by (the “Assignor”), H&H BAGELS FRANCHISING LLC (the “Assignee”), and (the “Landlord”).

1. **Assignment.** Assignor hereby assigns to Assignee all of Assignor’s right, title, and interest in and with respect to that certain lease agreement, dated , between as Landlord and as Tenant, including any amendments thereto made with the knowledge and consent of Assignee (the “Lease”).
2. **Assumption.** Assignee hereby assumes all the terms and conditions of the Lease and agrees to perform and comply with all of the terms of the Lease as fully and to the same extent as if originally named as Tenant in the Lease.
3. **Landlord’s Consent.** Landlord hereby acknowledges and consents to this Assignment and Assumption of the Lease.
4. **Benefit.** This Assignment and Assumption is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
5. **Release.** Assignor hereby releases and discharges Assignee and its administrators, successors, and assigns from all actions, causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, contracts, controversies, agreements promises, damages, judgments, claims, and demands, known or unknown, whatsoever in law, admiralty or equity which against them Assignor or Assignor’s heirs, executors, administrators, successors, and assigns ever had, now have or hereinafter can, shall or may have for, upon or by any reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this Assignment and Assumption.

**IN WITNESS WHEREOF**, the parties have executed this Assignment and Assumption as of the date first above written.

ASSIGNOR:

ASSIGNEE: **H&H BAGELS  
FRANCHISING LLC**

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

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

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

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

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

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

LANDLORD:

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

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

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

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

**Exhibit 2 to Lease Addendum**

**RIDER TO LEASE**

1. **CONFLICTS.** In the event of any inconsistency between the provisions of this Rider to Lease (the “Rider”) and any other portion of this Lease, the provisions of this Rider shall prevail.

2. **DEFINITIONS.** Any term not defined herein shall have the same meaning found in the Lease.

3. **COOPERATION AND LANDLORD DEFAULT.**

(a) Landlord agrees to execute and deliver upon the request of Tenant any applications required by any governmental authority having jurisdiction thereover to enable Tenant to make alterations or installations in and to the Premises and to erect and maintain any signs in, on, or about the Premises and any documents to acknowledge ownership of any equipment lessor or any primary lien of any equipment financier, provided that any fees, charges, and expenses required in connection therewith be borne solely by Tenant.

(b) Wherever by the terms of this Lease it is specifically provided that Landlord’s consent or approval be required or is otherwise requested by Tenant, Landlord covenants that it will not unreasonably withhold, condition, or delay any such consent or approval.

(c) Except where otherwise provided for herein, Landlord shall be in default of this Lease for any failure of Landlord to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Landlord, where such failure shall continue for a period of thirty (30) days after written notice thereof from Tenant to Landlord; provided, however, that if the nature of Landlord’s default is such that more than thirty (30) days are reasonably required for its cure, then Landlord shall not be deemed to be in default if Landlord commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(d) If the default by Landlord has not been cured within the time limits prescribed herein, Tenant may, along with any other remedies available at law or in equity, terminate the Lease as a result of Landlord’s default, or cure the default and offset any amount paid by Tenant to cure such default, plus interest at eighteen percent (18%) per annum (provided, however, that such interest rate shall not exceed the maximum rate allowed by law) against any minimum or additional Rent as it becomes due.

4. **INFORMATION.** Landlord represents and warrants that, as of the date this Rider becomes effective, (a) pursuant to any exclusive use agreements, if any, granted by Landlord to any other tenant operating in the Building and/or Shopping Center, the Premises may be operated as an H&H Bagels restaurant for the retail sale of Franchisor authorized products; (b) Landlord is the fee owner of the property containing the Premises and the building or Shopping Center of which the Premises are a part; (c) Landlord has the right to make this Lease upon the terms and for the term as set forth herein; and (d) Landlord has granted no exclusive right to sell any of the menu items offered by an H&H bagels restaurant, including but not limited to, bagels of any type

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord                  Tenant                  Assignee

or kind whatsoever to any other tenant of the Building and/or Shopping Center. In the event of Landlord's breach of the representations and warranties as set forth herein, in addition to all other rights and remedies of Tenant pursuant to the Lease or by law, Landlord agrees to indemnify and hold harmless Tenant for all loss, cost, expense, and damage (including reasonable attorneys' fees) incurred as a result thereof.

5. USE.

(a) Tenant may sell all authorized H&H Bagels restaurant products as required by H&H Bagels Franchising LLC, its successors and assigns.

(b) Landlord agrees that throughout the term of this Lease and any renewals and extensions of the term of this Lease, Landlord will not allow the sale of bagels of any type or kind whatsoever (the "Exclusive Use"). Therefore, Landlord shall not lease, permit any assignment or sublet of any lease in the Building and/or Shopping Center, or otherwise permit any tenant to sell bagels of any type or kind whatsoever in any portion of the Shopping Center (including any pad sites or out parcels partially or fully owned by Landlord, their successors and assigns, or any entity of which the Landlord has a financial interest in, or is a member, officer, director, or employee of) or Building of which the Premises are a part, including free standing units, whether presently existing or created hereafter.

(c) In the event of a violation of subsection (b) above after any applicable notice and cure period, Tenant shall have the right to exercise any available right or remedy hereunder or allowed by law or in equity, including, but not limited to, the right to terminate the Lease if the Exclusive Use continues to be violated by such other tenant for a period three (3) consecutive months, provided that Tenant provides Landlord with notice of such violation. During any period of such violation of Tenant's Exclusive Use, so long as Tenant is operating its business in the Premises, Tenant's fixed minimum annual rent shall be reduced by fifty percent (50%) commencing with the first day of the month after such notice of violation of Tenant's Exclusive Use and such abatement shall continue until the earliest to occur of the following: (i) the effective date of this Lease is terminated; (ii) the effective date the violating tenant's lease is terminated; or (iii) the date such tenant ceases to violate Tenant's Exclusive Use.

6. ASSIGNMENT/SUBLETTING. Provided that the Premises continues to be operated as an H&H Bagels restaurant by a bona fide franchisee of H&H Bagels Franchising LLC, Tenant, its successors, assigns, or sublessees may assign the within Lease and/or sublet the Premises, in whole or in part, together with the Security Deposit thereunder, without Landlord's consent, on the following terms and conditions:

(a) the assignee or sublessee is a bona fide H&H Bagels Franchising LLC franchisee/licensee or affiliated company and there will be delivered to Landlord a duplicate original of the duly executed instrument of assignment, sublease, or sub-sublease and all related documents. In the event of an assignment of the Lease, by the terms of any such assignment, the assignee shall assume and undertake the performance of all of the terms of the Lease;

(b) no assignment, sublease or sub-sublease etc. shall in any way relieve, modify, or extinguish the liability of any such assignor, sublessor, or sub-sublessor etc., as the case

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Landlord Tenant Assignee

may be, or any of their predecessors in interest unless specifically agreed to in writing by all applicable parties; and

(c) no fee or any other consideration shall be payable in connection with the assignment of the Lease or the subletting of the Premises if for H&H Bagels restaurant use.

7. **CORPORATE INDICIA.** Landlord does hereby consent to the installation by Tenant of such proprietary marks, signs, color schemes, designs, interior decorations, and trade fixtures as are customary in connection with the operation of an H&H Bagels restaurant, provided the same are permitted by law.

8. **RENOVATIONS.** Tenant may make all non-structural, cosmetic renovations under Five Thousand U.S. Dollars (\$5,000.00) without Landlord's consent. Landlord agrees not to unreasonably withhold or delay its consent to any other alteration or renovation.

9. **EXCULPATION.**

(a) **LANDLORD ACKNOWLEDGES BEING INFORMED OF THE FOLLOWING FACTS: (i) TENANT IS A FRANCHISEE OF H&H BAGELS FRANCHISING LLC; (ii) H&H BAGELS FRANCHISING LLC MAY, AFTER EXERCISING ITS OPTION TO ASSUME THE LEASE, ASSIGN THE LEASE TO AN AFFILIATE OR SUBSIDIARY ENTITY, OR ASSIGN THE LEASE TO ANOTHER FRANCHISEE/LICENSEE OF H&H BAGELS FRANCHISING LLC; AND (iii) THAT THE SOLE AND EXCLUSIVE PERSON OR ENTITY AGAINST WHICH LANDLORD MAY SEEK DAMAGES OR ANY REMEDIES UNDER THIS OR ANY OTHER DOCUMENT IN WHICH LANDLORD AND TENANT ARE PARTIES, WHETHER FOR UNPAID RENT AND ASSOCIATED DAMAGES, CLAIMS OF UNJUST ENRICHMENT, CLAIMS OF UNFAIR TRADE PRACTICES, OR ANY OTHER THEORY OF RECOVERY OF ANY KIND OR NATURE, IS TENANT AND NOT H&H BAGELS FRANCHISING LLC.**

(b) **LANDLORD AGREES THAT THE LIABILITY OF TENANT HEREUNDER SHALL BE LIMITED TO TENANT'S ASSETS, IF ANY. TENANT'S STOCKHOLDERS IF A CORPORATION OR MEMBERS IF AN L.L.C., SHALL NOT BE LIABLE DIRECTLY OR INDIRECTLY FOR ANY OBLIGATION OF TENANT, AND LANDLORD AGREES NOT TO COMMENCE ANY LEGAL PROCEEDINGS AGAINST TENANT'S STOCKHOLDERS OR MEMBERS, OR H&H BAGELS FRANCHISING LLC AND ITS MEMBERS. H&H BAGELS FRANCHISING LLC STOCKHOLDERS OR MEMBERS, AND TENANT'S STOCKHOLDERS OR MEMBERS, SHALL BE DEEMED THIRD-PARTY BENEFICIARIES OF THIS PROVISION WHICH SHALL INURE TO THEIR BENEFIT. SUCH EXCULPATION OF LIABILITY SHALL BE ABSOLUTE AND WITHOUT ANY EXCEPTION WHATSOEVER.**

(c) **NOTHING IN THIS LEASE SHALL BE DEEMED TO EXEMPT LANDLORD FROM LIABILITY FOR DAMAGE OR INJURIES TO PERSONS OR PROPERTY CAUSED BY OR RESULTING FROM THE ACTS, OMISSIONS, OR**

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

**NEGLIGENCE OF LANDLORD, ITS AGENTS, SERVANTS, EMPLOYEES, INVITEES, OR LICENSEES.**

10. INTERFERENCE. Notwithstanding the provisions of any part of this Lease, Landlord shall not (a) interfere with the visibility, ingress, or egress of the Premises, (b) disrupt Tenant's business, (c) reduce the usable area of the Premises, (d) reduce the number of parking spaces that currently exist in the Shopping Center, or (e) expose any pipes, conduits, utility lines, or wires in the Premises. In the event of a violation of this paragraph after any applicable notice and cure period, the fixed minimum rent payable pursuant to this Lease shall be reduced in the same proportion as Tenant's gross sales are reduced as a result of Landlord's violation of this paragraph.

11. NOTICES. All notices and communications of whatever nature which Landlord may render pursuant to the terms of this Lease shall be delivered to Tenant by personal delivery, by overnight delivery by a nationally recognized courier service, or by registered or certified mail, return receipt request, postage prepaid. All notices and demands required to be delivered hereunder will be deemed so delivered when actually received by addressee and must be addressed to the party to be notified at the following addresses unless and until a different address has been designated by written notice to the other parties.

Notices to Landlord shall be sent to the following address:

Attention:

Notices to Tenant shall be sent to the following address:

Attention:

With a copy to: The Premises

Notices to Assignee shall be sent to the following address:

H&H BAGELS FRANCHISING LLC  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attention: Mr. Jay Rushin

With a copy to: The Premises

12. TENANT DEFAULT.

(a) Landlord shall not exercise any rights or invoke any remedies under this Lease upon the happening of any default unless notice of such default is delivered to Tenant as provided herein and thirty (30) days shall have elapsed subsequent to the receipt of such notice and such default be not cured or commenced to be cured within such time, unless the circumstances of such default require quicker compliance pursuant to a particular municipal or governmental

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Landlord Tenant Assignee

directive referable thereto. The time period herein provided may run contemporaneously with any other time period provided for in this Lease.

(b) Provided Tenant is in compliance with all other provisions of this Lease, including the payment of all rent and additional rent (after notice and time to cure), (i) Landlord agrees that it will not invoke any of the remedies set forth in this Lease in the event of bankruptcy or insolvency, and (ii) Tenant will not be joined as a party defendant in any action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease.

(c) No rentals shall be accelerated prior to their due date, however, nothing contained herein shall be deemed to limit any other right or remedy of the Landlord in the event of default as set forth in this Lease.

(d) Tenant shall not be deemed to be in default of the terms and conditions of this Lease, nor shall Tenant be charged any penalty, monetary or otherwise, as a result of (a) any temporary closing arising from renovations or repairs to the Premises, or (b) force majeure events.

13. UTILITIES. In the event the disruption of any utility service shall render the Premises untenable for a period in excess of three (3) consecutive days, then the fixed minimum annual rent, all items of additional rent, and any other charges payable pursuant to this Lease shall abate in full from the commencement of such three (3) day period until such time as the Premises are again tenantable.

14. HAZARDOUS MATERIALS.

(a) Landlord represents and warrants that (i) there are no hazardous or potentially hazardous materials in or about the Premises and/or the building or Shopping Center of which the Premises are a part, including but not limited to radon, radiation, asbestos, asbestos containing materials, chlorofluorocarbons, PCB's, and PCB containing materials (collectively, "Hazardous Materials"), and (ii) if any governmental authority requires that remedial action be taken with regard to any Hazardous Materials, it will be Landlord's responsibility to promptly take all such remedial action, unless such Hazardous Materials were placed on the Premises by Tenant.

(b) In the event of a breach of the representations and warranties as set forth in subparagraph (a) above, in addition to all other rights and remedies, Tenant may take such remedial action as is necessary at the sole cost and expense of Landlord and Tenant shall have the right to fund any such costs and offset such amounts funded against any fixed minimum annual rent, items of additional rent or any other charges due under the Lease and Landlord further agrees to indemnify and hold harmless Tenant for all loss, cost, expense and damage (including reasonable attorneys' fees) incurred as a result thereof.

15. LANDLORD'S WORK.

(a) Landlord represents and warrants that upon delivery of vacant possession of the Leased Premises to Tenant, with all of Landlord's work as provided herein, if any, duly completed, the building or Shopping Center of which the Premises are a part, the Premises, and all systems serving the Premises, including but not limited to the HVAC, plumbing, sewer, sprinkler, and electrical systems, will be in good working order and condition, in compliance with all laws

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Landlord Tenant Assignee

and building codes, including but not limited to the Federal Americans with Disabilities Act and those pertaining to the reduction, abatement, or elimination of Hazardous Materials, and that the roof will be free of leaks. All work to be performed by Landlord to the Premises and/or the building or Shopping Center of which the Premises are a part, shall be timely completed in a good and workmanlike manner in accordance with all applicable laws, rules, regulations, and requirements of any governmental or municipal department having jurisdiction thereunder. Upon Landlord's completion of its work as aforesaid, Landlord shall deliver to Tenant all required approvals and "sign offs" regarding Landlord's work as may be required by such governmental or municipal department having jurisdiction thereunder. Landlord represents that the HVAC, plumbing, sewer, sprinkler, and electrical systems will be in good working order and condition for a period of six (6) months after the commencement of the term of the Lease.

(b) In the event Landlord is unable to fund or complete any work, construction allowances, and/or negotiated improvements to the Premises and/or the building or shopping center of which the Premises are a part, in addition to all other rights and remedies Tenant may have pursuant to this Lease or by law, Tenant shall have the additional right to fund any such costs and offset such amounts funded against any fixed minimum annual rent, items of additional rent or other charges due under the Lease, together with interest thereon from the date Tenant would have been reimbursed until the date the rent offsets effect that result.

16. COMMON AREA MAINTENANCE COSTS. Common area maintenance costs, if any, shall not include depreciation or amortization of any buildings or equipment, interest on and amortization of debts, financing or refinancing costs, leasing commissions, legal expenses related to making or enforcing other leases, mortgages, ground rents or increases, Landlord's executive salaries, costs of goods and services provided disproportionately to any tenant(s), costs of tenant improvements made specifically for certain tenants of the building or Shopping Center, costs above market price for goods and services provided by entities related to Landlord, advertising and promotional expenses, inheritance, franchise, gains or income taxes, costs of remedial action for Hazardous Materials, costs of conversion of any HVAC systems utilizing chlorofluorocarbons, costs of curing violations of any laws and other requirements of any public authorities existing on the date hereof, and any fines or penalties payable with respect thereto, costs of constructing, expanding and improving the buildings, Shopping Center, common areas, and common facilities, and any other costs, capital improvements, or replacements properly chargeable to capital account under generally accepted accounting principles.

17. REAL ESTATE TAX EXCLUSIONS. Notwithstanding anything contained herein to the contrary, Real Property Taxes shall not include (i) taxes on unimproved parcels of land; (ii) impositions to pay for on-site or off-site improvements required by any governmental authority as a condition to the development, operation, expansion, or renovation of the Shopping Center or any part thereof; (iii) penalties and interest resulting from Landlord's delinquency in the payment thereof; (iv) any succession, transfer, gift, capital levy, or corporation tax levied against Landlord; (v) any real estate transfer tax, mortgage lien tax, documentary stamp tax, recording fees or the like, and (vi) reassessments due to a change in ownership or renovation of the Shopping Center.

18. MERCHANT'S ASSOCIATION. Tenant shall not be required to join a merchant's association or contribute to a marketing or promotional fund.

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord      Tenant      Assignee

19. TERMINATION. If (a) vacant possession of the Premises is not delivered to Tenant with all of Landlord's work as provided herein, if any, duly completed within one hundred twenty (120) days from the date of this Lease, or (b) at any time during the Term of this Lease, less than seventy percent (70%) of the gross leaseable space in the Shopping Center or building of which the Premises is a part is fully occupied and open for business, then in either of such events, Tenant shall have the right to cancel this Lease anytime thereafter upon thirty (30) days written notice to Landlord, in which event the Landlord shall promptly return to the Tenant the security deposit and any other sums which may be due the Tenant upon the natural expiration of this Lease.

20. DAMAGE/DESTRUCTION.

(a) In the event (i) all or any part of the Premises are damaged or destroyed by fire or other casualty, and as a result, the Premises or any part thereof are rendered unusable for Tenant's business, or (ii) if the damage or destruction occurs in the last three years of the then existing Term of the Lease, Tenant may terminate the Lease upon sixty (60) days' notice of termination to Landlord given within ninety (90) days after the date of such damage or destruction, and on such date provided in the notice, this Lease shall terminate and all rent and additional rent and other charges shall be paid up to the date of such damage or destruction.

(b) In the event all or any part of the Premises are damaged or destroyed by fire or other casualty and the Lease is not terminated as provided in (a) above or if the Premises or any part thereof is not rendered unusable for Tenant's business, this Lease shall continue in full force and effect and Landlord shall promptly repair, restore, and rebuild the Premises to its condition at the time immediately prior to the occurrence of the loss, and all rent and additional rent and other sums shall abate in proportion and to the extent that the Premises or any part thereof is so rendered unusable for Tenant's business. Any such abatement shall continue until ninety (90) days after Tenant receives notice from Landlord that the Premises or that part thereof is ready for re-occupancy.

21. RADIUS RESTRICTION. Tenant shall not be subject to a radius restriction against opening additional restaurants.

22. LANDLORD INDEMNITY. Except for the act, omission, or negligence of Tenant or its agents, Landlord shall indemnify and hold harmless Tenant, its shareholders, officers, directors, members, agents, contractors, employees, and invitees, from and against any and all claims arising from Landlord's use or ownership of the Shopping Center, or from activity, work, or things done permitted or suffered by Landlord in or about the common areas of the Shopping Center and shall further indemnify and hold harmless Tenant from and against any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Lease, or arising from any act, omission, or negligence of the Landlord, or any of Landlord's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case of action or proceeding be brought against Tenant by reason of any such claim, Landlord, upon written notice from Tenant, shall defend the same at Landlord's expense.

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee



23. CONDEMNATION. If the entire Premises or a portion of the Premises is condemned and the remainder of the Premises is not reasonably usable by Tenant for Tenant's purposes pursuant to the terms of this Lease, then this Lease shall terminate as of the date of such taking. If a portion of the Premises is condemned and the remainder of the Premises is still reasonably usable by Tenant for Tenant's purposes pursuant to the terms of this Lease, then this Lease shall continue in full force and effect except that Landlord shall restore the Premises to a single architectural unit and all rent and additional rent shall be adjusted pro rata as to that portion condemned. In the event of condemnation, nothing shall prevent Tenant from receiving any sums awarded on account of Tenant's damages and for or on account of any cost or loss to which Tenant may incur, including but not limited to, Tenant's moving expenses and loss of business, profits, leasehold interest, leasehold improvements, inventory, and trade fixtures.

24. FORCE MAJEURE. Landlord and Tenant shall be excused for the period of delay in the performance of any of their respective obligations hereunder, excepting monetary obligations hereunder, and shall not be considered in default, when prevented from so performing due to a labor strike, riot, war, fire, flood or other casualty, or Acts of God so extensive as to prevent Tenant from conducting business or preventing Tenant or Landlord from complying with their obligations under the Lease.

ASSIGNOR:

ASSIGNEE:

**H&H BAGELS FRANCHISING  
LLC**

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

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

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

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

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

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

LANDLORD:

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

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

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

Initials \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
Landlord Tenant Assignee

**EXHIBIT G  
TO  
H&H BAGELS FRANCHISE AGREEMENT**

**ADDENDUM FOR FRANCHISEES WHO OBTAIN SBA FINANCING**

(See attached.)

**ADDENDUM  
RELATING TO  
H&H BAGELS  
FRANCHISE AGREEMENT**

THIS ADDENDUM (Addendum) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by **H&H BAGELS FRANCHISING LLC**, located at **109 W. 27<sup>TH</sup> STREET, SUITE #3B, NEW YORK, NEW YORK 10001** (Franchisor), and \_\_\_\_\_, located at \_\_\_\_\_ (Franchisee).

**Recitals.** Franchisor and Franchisee entered into a Franchise Agreement on \_\_\_\_\_, 20\_\_, (Franchise Agreement). The Franchisee agreed among other things to operate and maintain a franchise located at \_\_\_\_\_ designated by Franchisor as Unit #\_\_\_\_\_ (Unit). Franchisee has obtained from a lender a loan (Loan) in which funding is provided with the assistance of the United States Small Business Administration (SBA). SBA requires the execution of this Addendum as a condition for obtaining the SBA assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured on the date hereof.
2. Notwithstanding anything in the Franchise Agreement or any ancillary document, if the Franchisor has the option to purchase business personal assets upon default or termination of the Franchise Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties.
3. Notwithstanding anything to the contrary in the Franchise Agreement or other ancillary document, Franchisor's (or any Third-Party Assignee of the Franchisor) right to elect its Right of First Refusal to exercise said option when the Franchisee decides to sell partial interest(s) in the business is amended. If the Franchisee (or any Third-Party Assignee of Franchisee) is proposing to transfer a partial interest in Franchisee and Franchisor has an option to purchase or a right of first refusal with respect to that partial interest, Franchisor may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of Franchisee.
4. Notwithstanding anything to the contrary in the Franchise Agreement, or other ancillary document, Franchisor will subordinate its interest in any lien on Franchisee's collateral to that of the lender/SBA.
5. Notwithstanding anything to the contrary in the Franchise Agreement or the Lease Addendum, if the Franchisee (or its affiliates) owns the real property upon which the business is located, Franchisee will not be required to sell the real estate upon default or

termination, but Franchisee may be required to lease the real estate for the remainder of the franchise term (excluding additional renewals) at fair market value.

6. Notwithstanding anything to the contrary in the Franchise Agreement or other ancillary document, franchisor's option or right to purchase real estate owned by the franchisee and used for the franchised business will not be recorded against real property.
7. The Lease Addendum may not be recorded against the real estate, and if done so it must be subordinated to any SBA loan and may not include any attornment language.
8. Notwithstanding anything to the contrary in the Franchise Agreement, or other ancillary document, Franchisor is not appointed as Franchisee's Attorney-in-Fact for Franchisee's interests regarding actions to be taken or execution of any documents that pertain to the lease/purchase of the business premises used in the franchised business.
9. Notwithstanding anything to the contrary in Paragraph 14.1 or any other provision in the Franchise Agreement, Franchisee shall only execute such documents as Franchisor may request that are reasonably necessary to permit Franchisor to transfer or assign the Franchise Agreement and all or any part of its rights or obligations therein. No documents of attornment may be used.
10. This Addendum automatically terminates on the earliest to occur of the following: (i) a Termination occurs under the Franchise Agreement; (ii) the Loan is paid-in-full; or (iii) SBA no longer has any interest in the Loan.

Franchisor and Franchisee acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. § 1001 (\$250,000 fine and/or up to 5 years imprisonment), 15 U.S.C. § 645(a) (\$5,000 fine and/or up to 2 years imprisonment), and, if submitted to a Federally insured institution, under 18 USC 1014 (up to \$1,000,000 fine and/or imprisonment of not more than 30 years), and civil penalty under 12 U.S.C. § 1833a (up to \$1,000,000), and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729-3733.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Addendum as of the day and year first above written.

**FRANCHISOR:**

**FRANCHISEE:**

H&H BAGELS  
FRANCHISING LLC

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

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

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

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

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

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

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit B**

**Development Agreement**

**H&H BAGELS FRANCHISING LLC**  
**DEVELOPMENT AGREEMENT**

**H&H BAGELS FRANCHISING LLC  
DEVELOPMENT AGREEMENT**

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**EXHIBITS**

**EXHIBIT A** – DEVELOPMENT FEE; DEVELOPMENT AREA; DEVELOPMENT SCHEDULE

**EXHIBIT B** – CURRENT FORM OF FRANCHISE AGREEMENT

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**EXHIBIT D** – GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGEMENT

**EXHIBIT E** – CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

**H&H BAGELS  
DEVELOPMENT AGREEMENT**

This Development Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, 20\_\_ by and between H&H Bagels Franchising LLC, a Delaware limited liability company with its principal place of business at 109 W. 27th Street, Suite #3B, New York, NY 10001 (the “Franchisor”); and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ (the “Developer”).

**RECITALS:**

**WHEREAS**, Franchisor, as the result of the expenditure of time, skill, effort, and money, has developed, and continues to develop, a distinctive system relating to the establishment and operation of H&H Bagels restaurants, which currently feature and offer for sale to the public iconic, high quality bagels from a par-baked H&H Bagels product authentically “Made in NYC” and baked fresh daily and high quality signature spreads, smoked fish, and prepared salads under the trade name “H&H Bagels” (the “System”), which Franchisor may change from time to time;

**WHEREAS**, the distinguishing characteristics of the System include, without limitation, distinctive exterior and interior designs, décor, color scheme, fixtures, and furnishings; standards and specifications for the production of H&H Bagels products; uniform standards; specifications and procedures for operations and take-out, curb-side pick-up and delivery services; training and assistance, and branding, advertising, and promotional programs; all of which may be changed, improved, and further developed by Franchisor from time to time;

**WHEREAS**, the System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited to, the marks “H&H BAGELS”, as is now designated and may hereafter be designated by Franchisor in writing for use in connection with the System (collectively, the “Proprietary Marks”); and

**WHEREAS**, Developer wishes to obtain certain development rights to open and operate H&H Bagels restaurants under the System, to be identified with the Proprietary Marks in the territory described in this Agreement.

**NOW, THEREFORE**, the parties, in consideration of the mutual covenants and commitments herein contained, hereby agree as follows:

**1. GRANT**

1.1 Grant of Development Rights. Franchisor hereby grants to Developer, pursuant to the terms and conditions of this Agreement, the non-exclusive right, and Developer hereby undertakes the obligation, to establish and operate \_\_\_\_\_ (\_\_\_\_\_) H&H Bagels restaurants under the Proprietary Marks and the System (the “Restaurants”), and to use the System solely in connection therewith at specific locations to be designated in separate H&H Bagels franchise agreements (the “Franchise Agreements”) executed by Developer as provided in Section 3.1 hereof, and pursuant to the development schedule set forth in Exhibit A attached hereto



(the “Development Schedule”). Each Restaurant developed hereunder shall be located in the geographic area described in Exhibit A attached hereto (the “Development Area”).

1.2 Franchise Agreements. Each Restaurant developed hereunder shall be established and operated pursuant to a separate Franchise Agreement entered into between Developer and Franchisor in accordance with Section 3.1 hereof.

1.3 Non-exclusive Development Area. Developer acknowledges and agrees that the development rights granted herein are non-exclusive and that Franchisor retains the rights, among others, on any terms and conditions Franchisor deems advisable, and without granting Developer any rights therein:

1.3.1 To establish, operate, and license others to establish and operate, a Restaurant under the System and the Proprietary Marks at any location outside the Development Area or at any Restricted Locations (as defined in Section 1.4 herein) within or outside the Development Area;

1.3.2 To sell to or solicit customers located in the Development Area, and to allow others to sell to or solicit customers in the Development Area;

1.3.3 To acquire and operate any business or restaurant of any kind at any location (notwithstanding its proximity to any Restaurant developed hereunder) whether located within or outside the Development Area;

1.3.4 To purchase, or be purchased by, or merge or combine with, competing businesses, wherever located;

1.3.5 To provide dissimilar services anywhere;

1.3.6 To serve national, System, and wholesale accounts, and implement other multi-area marketing programs, which may allow Franchisor or others to solicit or sell customers anywhere;

1.3.7 To sell products and services through other distribution points, including mass gathering locations, over the Internet or web-based sales, or retail locations in the Development Area, or sell products or services anywhere through any channel of distribution, including through mobile or other defined opportunities, other than the fixed-location type of business;

1.3.8 To establish, operate, own, or franchise any business, including competitive businesses, and sell and produce any products or services anywhere, and using any channel of distribution;

1.3.9 To enter into agreements with third-party digital platforms for the online ordering, delivery, and/or pick-up of products or services offered under the System and/or using the Proprietary Marks; and

1.3.10 To enter into agreements with third parties, and/or virtual kitchens, ghost kitchens, off-site or other commercial kitchen models, for fulfilling the online ordering, delivery,

and/or pick-up of products or services offered under the System and/or using the Proprietary Marks.

1.4 Developer's Right of First Refusal. During the term of this Agreement, if Developer is in compliance with all other terms and conditions in this Agreement and any executed Franchise Agreement, Developer shall have a right of first refusal to establish, own, and operate any Restaurant that Franchisor proposes to have located within the Development Area. Franchisor shall give Developer written notice of Franchisor's intent to establish, own, and operate, or license another to establish, own, and operate, a Restaurant within the Development Area, and Developer shall have fifteen (15) days to exercise its right of first refusal under this Section 1.4 by written notice to Franchisor. Within fifteen (15) days after providing such written notice to Franchisor, Developer shall enter into Franchisor's then-current form of franchise agreement being offered to new franchisees of the System generally, the terms of which may be different from the Franchise Agreement attached hereto as Exhibit B. Developer's ownership and operation of such Restaurant shall be on the terms and conditions then being offered to new franchisees of the System generally, which may vary in form and substance from the terms, conditions, and economics set forth in this Agreement or any Franchise Agreement executed by Developer hereunder. Any Restaurant opened by Developer pursuant to this Section 1.4 shall be credited towards Developer's development obligations hereunder. If Developer fails to exercise its right of first refusal or enter into Franchisor's then-current form of franchise agreement within the time periods set forth in this Section 1.4, then Franchisor shall have the right to establish, own, and operate, or license another to establish, own, and operate, the Restaurant in the Development Area. If Franchisor's written notice to Developer of Franchisor's intent to locate a Restaurant within the Development Area identifies a specific site or vicinity in which the proposed Restaurant will be located, then Developer, upon exercising its right of first refusal hereunder, shall be obligated to locate the Restaurant at, or within three (3) miles of, such site or vicinity. If Developer fails to comply with such requirement, then Franchisor shall have the right to establish, own, and operate, or license another to establish, own, and operate, a Restaurant in such site or vicinity without providing Developer any additional right of first refusal hereunder.

Notwithstanding the foregoing right of first refusal of Developer in the Development Area as provided in this Section 1.4, Franchisor reserves and retains the development rights to establish and operate, and to license others to establish and operate, Restaurants in the Development Area at United States military bases or other non-U.S. military facilities, which are now, or may at any time hereafter, be located within the Development Area; hospitals; schools; mass transportation vehicles, including, without limitation, airplanes, trains, buses, and ferries and ships; travel facilities, including, without limitation, airports, train stations, bus terminals, highway travel plazas, and port facilities; sports facilities and entertainment facilities, and related events, including, without limitation, stadia, arenas, amphitheaters, theme parks, amusement parks, zoos, concert venues, and drive-ins and theaters; governmental cooperatives; institutional facilities and government facilities, including, without limitation, those related to education, health care, the military, and any facility owned by, operated by, or under contract with any government agency ("Restricted Locations").

1.5 Limitation of Rights. Developer acknowledges and agrees that this Agreement is not a franchise agreement and does not grant to Developer any right to use in any manner

Franchisor's Proprietary Marks or System. Developer shall have no right under this Agreement to license others to use in any manner the Proprietary Marks or System.

## **2. DEVELOPMENT FEE**

2.1 Development Fee. In consideration of the development rights granted herein, Developer shall pay to Franchisor, upon execution of this Agreement, the development fee set forth in Exhibit A attached hereto (the "Development Fee"), receipt of which is hereby acknowledged by Franchisor. The Development Fee shall be deemed fully earned and non-refundable upon execution of this Agreement in consideration of the administrative and other expenses incurred by Franchisor and for the development opportunities lost or deferred as a result of the rights granted to Developer herein; provided, however, if Developer, or Operating Principal (as defined in Section 3.6) or their replacement, fail to complete initial training to Franchisor's satisfaction, Franchisor shall refund to Developer fifty percent (50%) of the Development Fee paid by Developer less Franchisor's costs including training, travel, sales commissions paid, etc.

If Developer has met its development obligations in advance of the ending date of the Development Schedule, and then elects to open additional H&H Bagels restaurants in the Development Area; subject to Franchisor's approval and subject to Developer being able to develop and open those additional restaurants in the remaining time available in this Agreement; the initial franchise fee for those additional restaurants will be reduced to Twenty Thousand Dollars (\$20,000). In such a situation, Franchisor may elect, upon Developer's request, to extend the Development Schedule, but Franchisor shall not be required to do so and generally shall not extend the Development Schedule for more than six (6) months.

The parties agree and acknowledge that the Development Fee is a fee and is not a deposit. Developer is credited the pro-rata portion of the Development Fee against the initial franchise fee for a Restaurant and only for those Restaurants being developed for opening during the Development Schedule and in the prescribed Development Area.

Further, Franchisor and Developer agree and acknowledge that the Development Fee paid by the Developer to Franchisor is to compensate Franchisor for reserving a territory for the benefit of Franchisee during the Development Schedule and to grant Developer the right and the obligation to open a fixed number of H&H Bagels restaurants in a precise period of time. There is no other purpose or intent for the Development Fee.

2.2 Initial Franchise Fee Credit. Except as otherwise provided herein, Franchisor shall credit the pro-rata portion of the Development Fee against the franchise fee due for the Restaurants being developed for opening during the Development Schedule and in the Development Area. Specifically, Franchisor shall credit Twenty Thousand Dollars (\$20,000) against the franchise fee payable under the second or any subsequent Franchise Agreement to be executed hereunder. Such credit shall be applied upon Developer's execution of each such Franchise Agreement.

Any remaining balance of an initial franchise fee due under a Franchise Agreement between the parties, beginning with the second scheduled franchise, shall be paid to Franchisor at the earlier of the date specified in this Agreement, ninety (90) days prior to the scheduled opening date for the applicable Restaurant or the date the lease is signed for such Restaurant. No Restaurant shall be

allowed to open until all fees have been paid and the Franchise Agreement has been signed. Franchise fees paid after the initial franchise fee are not refundable under any circumstances.

Developer shall be liable for liquidated damages for franchise fees, continuing royalty fees, and brand fund contributions for the term of the franchise for those Restaurants not opened as provided in this Agreement.

2.3 Royalty Credit. Developer must have the specified infrastructure as detailed in Section 3.6 herein commencing upon the opening of its second Restaurant. Assuming that infrastructure is in place and assuming that Developer is in compliance with all agreements entered into with Franchisor, then upon the opening of Developer's fourth Restaurant, Developer shall be eligible to earn a royalty credit of one-half percent (0.5%) of Gross Sales on a going-forward basis ("Royalty Credit") for all Franchise Agreements previously entered into by and between the parties. The Royalty Credit shall expire the earlier of ten (10) years after its grant or its termination pursuant to the terms of this Section 2.3.

So long as Developer remains in compliance on all locations and this Agreement the Royalty Credit shall remain in effect. However, if Developer fails to remain in compliance with the System, Franchisor may, in its sole discretion, suspend or terminate the Royalty Credit. If a suspension or termination of the Royalty Credit occurs, Developer's infrastructure requirements and the changes in Franchisor's support obligations shall remain unchanged. To be considered in compliance, Developer must adhere to brand standards for the System established by Franchisor.

The Royalty Credit shall not be retroactive. Once suspended or terminated, Franchisor is under no obligation to have the credit reinstated. The parties agree and acknowledge that the Royalty Credit is also not available to single-unit franchisees that acquire additional locations outside of a development agreement with Franchisor. For clarity, the Royalty Credit for all locations under this Agreement would be reduced from six percent (6%) to five and one-half percent (5.5%) while in effect. Other than the multi-unit initial franchise fee reduction and the Royalty Credit, all other fees will be uniform for all similarly situated franchisees.

### **3. DEVELOPMENT OBLIGATIONS**

3.1 Execution of Franchise Agreements. In exercising its development rights and fulfilling its development obligations under this Agreement, Developer shall execute a Franchise Agreement for each Restaurant at a site approved by Franchisor in the Development Area as hereinafter provided. The Franchise Agreement for the first Restaurant developed hereunder shall be in the form of the Franchise Agreement attached hereto as Exhibit B and shall be executed concurrently with this Agreement. The Franchise Agreement for each Restaurant developed hereunder shall be the then-current form of Franchise Agreement being used for new Restaurants, generally, by Franchisor at the time each such Franchise Agreement is executed, the terms of which agreement may be different from the Franchise Agreement attached hereto as Exhibit B; provided, however, the Initial Franchise Fee shall be Thirty-Five Thousand Dollars (\$35,000) for the second through the fifth Restaurant and Thirty Thousand Dollars (\$30,000) for the sixth and each subsequent Restaurant. At the time Developer submits to Franchisor Franchisor's fully executed then-current form of Franchise Agreement for each Restaurant developed under this Agreement,

Developer shall pay to Franchisor the Initial Franchise Fee in accordance with this Section 3.1, less any credit applicable pursuant to Section 2.2 hereof.

3.2 Site Approval. Prior to Developer's acquisition by lease or purchase of any site for a Restaurant to be developed hereunder, Developer shall submit to Franchisor such information or materials as Franchisor may reasonably require for Franchisor's approval of the site, including a letter of intent or other evidence satisfactory to Franchisor that confirms Developer's favorable prospects for obtaining the proposed site and written assurance that the proposed site has no conditions or restrictions on restaurant usage. Recognizing that time is of the essence, Developer agrees that Developer must submit to Franchisor (in accordance with Section 9 herein) a proposed site, together with the information and materials required by this Section 3.2, for Franchisor's approval within ninety (90) days after executing a Franchise Agreement for a Restaurant. Franchisor shall have thirty (30) days after receipt of such information and materials from Developer to approve or disapprove, in Franchisor's sole discretion, the site as a location for the Restaurant. No proposed site shall be deemed approved unless it has been expressly approved in writing by Franchisor.

3.3 Approval and Assignment of Lease. If Developer will occupy the premises of a Restaurant under a lease, Developer shall, prior to the execution thereof, (1) execute the Lease Addendum (and all exhibits thereto) attached to the Franchise Agreement as Exhibit F (or such other lease addendum as reasonably specified by Franchisor) and (2) submit the lease to Franchisor for its prior written approval. Franchisor's approval of the lease may be conditioned upon the inclusion in the lease such terms and conditions as Franchisor may reasonably require, including, without limitation:

- a. That the initial term of the lease, or the initial term together with renewal terms, shall be for not less than twenty (20) years;
- b. That the lessor consents to Developer's use of such Proprietary Marks and initial signage as Franchisor may prescribe for the Restaurant;
- c. That the use of the premises be restricted solely to the operation of the Restaurant;
- d. That Developer be prohibited from subleasing or assigning all or any part of its occupancy rights or extending the term of or renewing the lease without Franchisor's prior written consent;
- e. That the lessor provides to Franchisor copies of any and all notices of default given to Developer under the lease;
- f. That Franchisor has the right to enter the premises to make modifications necessary to protect the Proprietary Marks or the System or to cure any default under the Franchise Agreement or under the lease; and

g. That Franchisor has the option, upon default, expiration, or termination of the Franchise Agreement, and upon notice to the lessor, to assume all of Developer's rights under the lease terms, including the right to assign or sublease.

3.4 Delivery of Lease. Developer shall furnish Franchisor with a copy of any executed lease for a Restaurant within five (5) days after execution thereof.

3.5 Adherence to Development Schedule. Recognizing that time is of the essence, Developer agrees to develop, open, and operate in the Development Area the number of Restaurants designated herein by the dates described in the Development Schedule and Section 1.1 of this Agreement. Developer's failure to do so shall constitute a material default of this Agreement for which Franchisor shall have the right to all remedies described in Section 6.2 hereof.

3.6 Personnel. Franchisor may, in its discretion, require Developer to retain certain personnel necessary to support the network of Restaurants of Developer. Commencing with the Developer's second Restaurant, Franchisor shall provide support through Franchisee's Operating Principal and not directly to each individual Restaurant. Developer and Franchisee agree and acknowledge that it is not the right, responsibility, or obligation of Franchisor to define the human resource decisions made by Developer in meeting Franchisor's brand standards. However, Franchisor requires that the following "positions" be staffed:

a. An Operating Principal (which may be the Developer) who may act as general manager to oversee Franchisee's chain of Restaurants sufficient to meet Franchisor's brand standards ("Operating Principal"). The Operating Principal is the sole person that may make decisions as they relate to any material discussion with Franchisor and once appointed, can only be changed with Franchisor's prior written approval. Any entity, including partnerships, corporations, married or committed couples that are franchisees or developers, must appoint an Operating Principal upon signing this Agreement;

b. A unit manager (which may be the Developer, Operating Principal, or general manager) to oversee the operation of each Restaurant sufficient to meet the brand standards of Franchisor ("Unit Manager"); and

c. A trainer (which may be the Developer, Operating Principal, general manager, or Unit Manager) to train all management, staff, and other employees sufficient to meet the brand standards of Franchisor ("Trainer").

Developer must have the foregoing infrastructure in place commencing with the opening and operation of its second Restaurant. Assuming that infrastructure is in place and assuming that Developer is in compliance with all agreements, then upon the opening of Developer's fourth H&H Bagels location, Developer shall be eligible to earn a Royalty Credit of 0.5% on a going forward basis as further detailed in Section 2.3 herein.

3.7 Training. When and if established, developers shall be offered multi-unit developer training. Attendance at such training is currently voluntary, but Franchisor reserves the right to

make it mandatory as the System matures. Franchisor shall select the location for multi-unit developer training. There is no additional fee anticipated for such training.

#### **4. TERM**

4.1 Term. Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement and all rights granted hereunder shall expire on the earlier of: (1) the last date specified in the Development Schedule; or (2) the date when Developer has open, and in operation, all of the Restaurants required by the Development Schedule.

#### **5. DEVELOPER'S OBLIGATIONS**

5.1 If Developer is a corporation, it shall comply with the following requirements:

5.1.1 Developer shall be newly organized, and its charter shall at all times provide that its activities are confined exclusively to developing and operating the Restaurants;

5.1.2 Copies of Developer's Articles of Incorporation, Bylaws, and other governing documents, and any amendments thereto, including the resolution of the Board of Directors authorizing entry into this Agreement, shall be promptly furnished to Franchisor;

5.1.3 Developer shall maintain stop-transfer instructions against the transfer on its records of any equity securities; and shall issue no certificates for voting securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of a Development Agreement with H&H Bagels Franchising LLC dated \_\_\_\_\_. Reference is made to the provisions of the said Franchise Agreement and to the Articles and Bylaws of this Corporation.

Notwithstanding the above, the requirements of this Section 5.2.1.3 shall not apply to a "publicly held corporation." A "publicly held corporation" for purposes of this Agreement shall mean a corporation registered pursuant to the Securities and Exchange Act of 1934; and

5.1.4 Developer shall maintain a current list of all owners of record and all beneficial owners of any class of voting securities or securities convertible into voting securities of Developer and shall furnish the list to Franchisor upon request.

5.2 If Developer or any successor or assignee of Developer is a partnership, it shall comply with the following requirements:

5.2.1 Developer shall be newly organized and shall furnish Franchisor with a copy of its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto;

5.2.2 The partnership agreement shall at all times note conspicuously that partnership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Development Agreement; and

5.2.3 Developer shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners in Developer.

5.3 If Developer or any successor to or assignee of Developer is a limited liability company, it shall comply with the following requirements:

5.3.1 Developer must be newly organized, and the articles of incorporation must at all times provide that Developer's activities are confined exclusively to developing and operating the Restaurants;

5.3.2 Developer shall furnish Franchisor with a copy of its articles of organization and operating agreement as well as such other governing documents as Franchisor may reasonably request, and any amendments thereto;

5.3.3 The articles of organization or operating agreement shall at all times note conspicuously that membership rights are held subject to, and that further assignment or transfer thereof are subject to, all restrictions imposed upon assignments by the Development Agreement; and

5.3.4 Developer shall prepare and furnish to Franchisor, upon request, a list of all members in Developer or parties that hold any ownership interest in Developer.

5.4 If Developer is a corporation, partnership, or limited liability company, or if any successor to or assignee of Developer is a partnership or limited liability company, then Developer shall execute the Disclosure of Principals form attached hereto as Exhibit C, and all of Developer's principals shall execute a Guarantee, Indemnification, and Acknowledgment in the form attached hereto as Exhibit D.

5.5 Developer shall comply with all requirements of federal, state, and local laws, rules, and regulations.

5.6 Developer shall comply with all of the other terms, conditions, and obligations of Developer under this Agreement.

## **6. DEFAULT AND TERMINATION**

6.1 Automatic Termination. Developer shall be deemed in default under this Agreement, and all rights granted herein shall automatically terminate, without notice to Developer, if Developer becomes insolvent or makes a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Developer or such a petition is filed against and consented to by Developer; if Developer is adjudicated bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer's business or assets is filed and consented to by Developer; if a receiver or other custodian (permanent or temporary) of Developer's business or assets or any part thereof is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law should be instituted by or against Developer; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless supersedeas bond is filed); if execution is levied against Developer's business or assets; if suit to foreclose any lien or mortgage against the premises or equipment is instituted against Developer and not dismissed within thirty (30) days;



or if the real or personal property of any of Developer's Restaurants shall be sold after levy thereupon by any sheriff, marshal or constable.

6.2 Franchisor's Rights Upon Developer's Default. If Developer fails to comply with or to perform any of the terms, conditions, or obligations of this Agreement, including the development obligations described in Sections 1.1 and 3.5 hereof, or any Franchise Agreement or any other agreement between Developer or any of its affiliates and Franchisor, its affiliates or subsidiaries, or makes or attempts to make a transfer or assignment in violation of Section 7.2 hereof, such failure or action shall constitute a default under this Agreement. Upon such default, Franchisor shall have the right, in its sole discretion:

6.2.1 To terminate this Agreement and all rights granted hereunder without affording Developer any opportunity to cure the default, effective immediately upon receipt by Developer of written notice;

6.2.2 To terminate Developer's right of first refusal under Section 1.4 hereof, and thereafter to establish and operate, and license others to establish and operate, Restaurants within the Development Area without notice to Developer;

6.2.3 To terminate the credit for any or all Restaurants granted in Section 2.2 hereof;

6.2.4 To reduce the number of Restaurants which Developer has the right to develop pursuant to Section 1.1 hereof; and

6.2.5 To reduce the size of the Development Area for which Developer is granted a right of first refusal under Section 1.4 hereof.

Further, Franchisor also reserves the right to open and operate a company-own Restaurant or permit a third-party franchisee to open and operate a Restaurant in the Development Area, if, in the reasonable discretion of Franchisor, Developer fails to service a national, System, or wholesale account during any period after the first year Developer's initial Restaurant has been opened and operating, subject to providing Developer with a two (2) month period to cure any such default.

6.3 Obligations Upon Termination or Expiration. Upon termination or expiration of this Agreement, Developer shall have no right to establish or operate any Restaurants for which a Franchise Agreement has not been executed by Franchisor at the time of termination. Franchisor shall have the right to establish and operate, and to license others to establish and operate, Restaurants under the System and the Proprietary Marks in the Development Area, except as may be otherwise provided under any Franchise Agreement which has been executed between Franchisor and Developer.

6.4 Cross-Default. A default under any Franchise Agreement or any other Development Agreement between the parties hereto shall constitute a default under this Agreement. No default under this Agreement shall constitute a default under any Franchise Agreement between the parties hereto. Default under this Agreement shall constitute a default under any other Development Agreement between the parties hereto.

6.5 No Exclusive Right or Remedy. No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity.

## 7. TRANSFERS

7.1 Franchisor's Right to Transfer. Franchisor shall have the right to transfer or assign this Agreement and assign or delegate all or any part of its rights or obligations under this Agreement, to any person or legal entity, and any designated assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of the assignment. Developer shall execute such documents of attornment or other documents as Franchisor may request.

7.2 Developer's Conditional Right to Transfer. Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer, and that Franchisor has granted this franchise in reliance on Developer's (or, if Developer is a corporation, partnership, or limited liability company, its principals') business skill, financial capacity, and personal character. Accordingly, neither Developer nor any immediate or remote successor to any part of Developer's interest in this Agreement, nor any individual, partnership, limited liability company, corporation, or other legal entity which directly or indirectly owns any interest in Developer or in the Restaurants developed hereunder, shall sell, assign, transfer, convey, pledge, encumber, merge, or give away (collectively, "transfer") this Agreement, any direct or indirect interest in Developer, or in all or substantially all of the assets of the Restaurants developed hereunder without the prior written consent of Franchisor. Any purported assignment or transfer not having the written consent of Franchisor required by this Section 7.2 shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Section 6.2 of this Agreement. The foregoing remedies shall be in addition to any other remedies Franchisor may have under this Agreement or at law or in equity.

7.3 Conditions of Transfer. Developer shall notify Franchisor in writing of any proposed transfer of this Agreement, any direct or indirect interest in Developer, or in all or substantially all of the assets of the Restaurants developed hereunder, at least ninety (90) days before such transfer is proposed to take place. Franchisor shall not unreasonably withhold its consent to any transfer. Franchisor may, in its sole discretion, require any or all of the following as conditions of its approval:

7.3.1 That all of Developer's accrued monetary obligations and all other outstanding obligations to Franchisor and its affiliates have been satisfied;

7.3.2 That Developer is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Developer and Franchisor or its affiliates;

7.3.3 That the transferor shall have executed a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its affiliates, and their respective officers, directors, agents, shareholders, and employees;

7.3.4 That the transferor and transferee have executed a mutual general release, relieving all claims against each other, excluding only such claims relating to any provision or covenant of this Agreement which imposes obligations beyond the expiration of this Agreement;

7.3.5 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as Franchisor may request) (a) enter into a written assignment, in a form satisfactory to Franchisor, assuming and agreeing to discharge all of Developer's obligations under this Agreement, (b) guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor; and/or (c) execute, for a term ending on the expiration date of this Agreement, Franchisor's then-current form of development agreement and other ancillary agreements as Franchisor may require for the Franchised Business, which agreements may contain terms different than the terms in this Agreement and shall supersede this Agreement in all respects, except that the Development Schedule thereunder shall be the same as in this Agreement;

7.3.6 That the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as Franchisor may request) demonstrate to Franchisor's satisfaction that it meets Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to develop the Restaurants; has adequate financial resources and capital to develop the Restaurants; and has not operated a business in competition with Franchisor;

7.3.7 That transferor remains liable for all of the obligations of transferor prior to the effective date of the transfer and execute any and all instruments reasonably requested by Franchisor to evidence such liability;

7.3.8 That each Restaurant which has opened and been approved for operation by Franchisor is in full compliance with all the conditions and terms of the Franchise Agreements for such Restaurant;

7.3.9 That Developer shall pay to Franchisor a transfer fee of twenty-five percent (25%) of the then current franchise fee for each restaurant being transferred; provided, further, Developer shall reimburse Franchisor for its actual out of pocket costs and expenses (including, without limitation, any legal fees) incurred from the transfer; and

7.3.10 That the transferor shall have first offered to sell such interest to Franchisor pursuant to Section 7.6 hereof.

7.4 Familial Transfer. Notwithstanding Sections 7.3.7 and 7.3.10, in the event of a transfer of an ownership interest by a direct or indirect owner of Development Agreement rights to a spouse or adult child of such owner or to a trust, estate or beneficiary of such deceased owner, there will be no requirement for the transferee to execute the Franchisor's then-current form of development agreement, or other ancillary agreements, and there shall be no transfer fee for such transfer. The transferor shall be obligated in such instances to reimburse Franchisor for Franchisor's reasonable out-of-pocket costs and expenses, including but not limited to reasonable attorneys' fees, incurred with respect to such transfer. The transferee shall execute an updated Disclosure of Principals in the form attached hereto as Exhibit C, shall be obligated and bound by all of the provisions of the transferred Development Agreement, including but not limited to the

Confidentiality and Non-Competition Agreements, and Franchisor reserves the right to require such parties as it may reasonably require to sign a new Guarantee, Indemnification, and Acknowledgement in the form attached hereto as Exhibit D.

7.5 No Security Interest. Developer shall not grant a security interest in this Agreement or in any of the assets of any Restaurant developed hereunder without the express written consent of Franchisor. If Franchisor consents to such security interest, such consent shall be conditioned on, among other things, the secured party's agreement that in the event of any default by Developer under any documents related to the security interest, Franchisor shall have the right and option (but not the obligation) to be substituted as obligor to the secured party and to cure any default of Developer, and, in the event Franchisor exercises such option, any acceleration of indebtedness due to Developer's default shall be void. In the event Franchisor cures any such default of Developer, Developer shall reimburse Franchisor all amounts paid by Franchisor to cure the default, plus all costs and expenses incurred by Franchisor to cure such default, and Developer shall be deemed in default of this Agreement.

7.6 Franchisor's Right of First Refusal. If any party holding any direct or indirect interest in this Agreement, in Developer, or in all or substantially all of the assets of the Franchised Business desires to accept any bona fide offer from a third party to purchase such interest, Developer shall notify Franchisor and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of such written notification, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, closing on such purchase shall occur within ninety (90) days from the date of notice to the seller of the election to purchase by Franchisor. If Franchisor elects not to purchase the seller's interest, any material change thereafter in the terms of the offer from a third party shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 7.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 7, with respect to a proposed transfer. In the event the consideration, terms and/or conditions offered by a third party are not for a cash sum and are such that Franchisor may not reasonably be required to furnish the same consideration, terms and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by the third party, an independent appraiser shall be designated by Franchisor at Franchisor's expense, and the appraiser's determination shall be binding.

7.7 Death or Mental Incapacity. Upon the death, physical or mental incapacity of Developer or any person with an interest in Developer, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by Franchisor within six (6) months after such death or incapacity. For purposes of this Section 7.7, "physical or mental incapacity" exists if Franchisor determines that the usual participation of such person in the Developer or the Restaurants developed hereunder is for any reason curtailed for a cumulative period of ninety (90) days in any twelve (12) month period during the term of this Agreement. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer, except that there will be no requirement for the

transferee to execute the Franchisor's then-current form of Development Agreement, Franchise Agreement, or other ancillary agreements, and there will be no transfer fee. The transferor must reimburse Franchisor's reasonable out-of-pocket costs and expenses, including attorneys' fees, incurred with respect to the transfer. In the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 7, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by Franchisor within six (6) months, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within six (6) months, Franchisor may terminate this Agreement, pursuant to Section 6 hereof.

7.8 Non-waiver. Franchisor's consent to a transfer of any interest in this Agreement, in Developer, or in all or substantially all of the assets of the Restaurants developed hereunder shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

## 8. COVENANTS

8.1 Best Efforts. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or, if Developer is a corporation, partnership, or limited liability company, a principal of Developer approved by Franchisor) shall devote full time, energy, and best efforts to fulfilling Developer's obligations under this Agreement, including the development of the Restaurants pursuant to the Development Schedule.

8.2 Operating Manuals. In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under the System, all Restaurants shall be operated in accordance with the standards, methods, policies, and procedures specified in Franchisor's confidential operating manuals (the "Manuals"). If Franchisor, in its sole discretion, permits Developer to use or access a copy of the Manuals prior to Developer's execution of a Franchise Agreement, any such use by Developer shall be a loan by Franchisor to Developer of the Manuals and:

8.2.1 Developer shall treat the Manuals and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential pursuant to Section 8.3 below;

8.2.2 Developer shall not copy, duplicate, record, or otherwise reproduce the Manuals, in whole or in part, or otherwise make the same available to any unauthorized person;

8.2.3 The Manuals shall remain the sole property of Franchisor and shall be kept in a secure place by Developer;

8.2.4 Developer shall ensure that the Manuals are kept current at all times; and

8.2.5 Upon executing its first Franchise Agreement, Developer shall retain the Manuals pursuant to the terms and conditions of such Franchise Agreement.

8.3 Confidential Information. Developer shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership,

association, limited liability company, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business contemplated hereunder, including, without limitation, the Manuals, recipes, cooking methods, preparation of menu items, drawings, suppliers, equipment, product costs, accounting methods, including both paper and electronic spreadsheets, or advertising which may be communicated to Developer or of which Developer may be apprised by virtue of Developer's operation under the terms of this Agreement ("Confidential Information"). Developer shall divulge such Confidential Information only to such of its employees as must have access to it in order to comply with its obligations hereunder. Any and all information, knowledge, know-how, techniques, and other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement.

8.4 In-Term Covenant. Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable, specialized training and Confidential Information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, or legal entity:

8.4.1 Divert or attempt to divert any present or prospective business or customer of Developer's Restaurants or any Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System; or

8.4.2 Own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in any retail business which: (a) is the same as, or substantially similar to, a Restaurant; or (b) offers to sell or sells any products, merchandise, or services offered by a Restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business. The prohibitions in this Section 8.4 shall not apply to interests in or activities performed in connection with a Restaurant developed hereunder.

8.5 Post-Term Covenant. Developer covenants that, except as otherwise approved in writing by Franchisor, Developer shall not, for a continuous uninterrupted period of two (2) years commencing upon the date of (a) a transfer permitted under Section 7 of this Agreement, (b) expiration of this Agreement, (c) termination of this Agreement (regardless of the cause for termination), or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to enforcement of this Section 8.5, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or limited liability company, own, maintain, operate, engage in, act as a consultant for, perform services for, or have any interest in (as owner or otherwise) any business that: (a)(i) is the same as, or substantially similar to, a Restaurant; or (ii) offers to sell or sells any products, merchandise, or services which are the same as, or substantially similar to, any of the products, merchandise, or services offered by a Restaurant where the sale of such menu items or food products constitutes five percent (5%) or more of the gross sales of such retail business; and (b) is, or is intended to be, located within:

8.5.1 The Development Area;

8.5.2 The county or municipality in which a Restaurant developed hereunder is located;

8.5.3 Twenty-five (25) miles of a Restaurant developed hereunder; or

8.5.4 Twenty-five (25) miles of any business operating under the Proprietary Marks; provided, however, that Sections 8.4.3 and 8.5 shall not apply to the operation by Developer of any business under the System which may be franchised by Franchisor to Developer under a written Franchise Agreement.

8.6 No Application to Equity Securities. Section 8.5 shall not apply to ownership by Developer of less than a five percent (5%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities and Exchange Act of 1934.

8.7 Independent Covenants. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 8 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 8.

8.8 Reduction of Scope of Covenants. Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 8.3 and 8.4 in this Agreement or any portion thereof, without Developer's consent, effective immediately upon receipt by Developer of written notice thereof, and Developer agrees to comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 13 hereof.

8.9 No Defense. Developer expressly acknowledges that the existence of any claims which Developer may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 8.

8.10 Irreparable Injury. Developer acknowledges that Developer's violation of the terms of this Section 8 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available; and Developer accordingly consents to the issuance of and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, an injunction prohibiting any conduct by Developer in violation of the terms of this Section 8.

8.11 Confidentiality and Non-Compete Agreements. At Franchisor's request, Developer shall require Developer's manager, assistant manager, shift leaders, and other such personnel having access to any of Franchisor's Confidential Information to execute non-competition covenants and covenants that they will maintain the confidentiality of information they receive in connection with their employment by Developer. Such covenants shall be in the form attached hereto as Exhibit E.

**9. NOTICES**

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or sent by other means which affords the sender evidence of delivery or rejected delivery including, without limitation, private delivery or courier service, but which shall not include electronic communication, such as e-mail, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: H&H Bagels Franchising LLC  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attn: Mr. Jay Rushin

Notices to Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notices shall be deemed to have been given at the date and time of delivery or of attempted delivery.

**10. INDEPENDENT CONTRACTOR AND INDEMNIFICATION**

10.1 Independent Contractor. It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that Developer shall be an independent contractor; and, that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever. During the term of this Agreement, Developer shall hold itself out to the public to be an independent contractor operating pursuant to this Agreement. Developer agrees to take such affirmative action as shall be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the franchised premises, the content of which Franchisor reserves the right to specify.

10.2 No Authority to Contract. Developer understands and agrees that nothing in this Agreement authorizes Developer to make any contract, agreement, warranty, or representation on Franchisor’s behalf, or to incur any debt or other obligation in Franchisor’s name; and, that Franchisor shall in no event assume liability for, or be deemed liable as a result of, any such action, or by reason of any act or omission of Developer in Developer’s operations hereunder, or any claim or judgment arising therefrom against Franchisor or Developer.

10.3 Indemnification. Developer shall indemnify and hold harmless Franchisor and its affiliates, and their respective officers, directors, and employees against any and all claims, losses, costs, expenses, liabilities, and damages arising directly or indirectly from, as a result of, or in connection with Developer’s operations hereunder, Developer’s operation of the Restaurants, or Developer’s breach of this Agreement, including, but not limited to, those alleged to be caused by Franchisor’s negligence, unless (and then only to the extent that) the claims, obligations, and damages are determined to be caused solely by Franchisor’s gross negligence or willful



misconduct according to a final, unappealable ruling issued by a court or arbitrator with competent jurisdiction, as well as the costs, including reasonable attorneys' fees, of defending against them. In the event Franchisor incurs any costs or expenses, including, without limitation, legal fees, travel expenses, and other charges, in connection with any proceeding involving Developer in which Franchisor is not a party, Developer shall reimburse Franchisor for all such costs and expenses promptly upon presentation of invoices. Developer acknowledges and agrees that Developer's indemnification and hold harmless obligations under this Section shall survive the termination or expiration of this Agreement. Nothing herein shall preclude Franchisor from choosing its own legal counsel to represent it in any lawsuit, arbitration, or other dispute resolution.

## **11. APPROVALS AND WAIVERS**

11.1 Approval and Consent. Whenever this Development Agreement requires the prior approval or consent of Franchisor, Developer shall make timely written request to Franchisor therefor; and, except as otherwise provided herein, any approval or consent granted shall be in writing.

11.2 No Warranties or Guarantees. Franchisor makes no warranties or guarantees upon which Developer may rely, and assumes no liability or obligation to Developer, by providing any waiver, approval, advice, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

11.3 No Waiver. No failure of Franchisor to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Developer with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms herein. Waiver by Franchisor of any particular default by Developer shall not affect or impair Franchisor's rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance, or omission of Franchisor to exercise any power or right arising out of any breach or default by Developer of any of the terms, provisions or covenants hereof, affect or impair Franchisor's right to exercise the same, nor shall such constitute a waiver by Franchisor of any right hereunder, or the right to declare any subsequent breach or default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Developer of any terms, covenants, or conditions of this Agreement.

## **12. SEVERABILITY AND CONSTRUCTION**

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

12.2 No Rights or Remedies Conferred. Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Developer and such of their respective successors and assigns as may be contemplated by Section 7 hereof, any rights or remedies under or by reason of this Agreement.

12.3 Promises and Covenants. Developer expressly agrees to be bound by any promise or covenants imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

12.4 Captions and Headings. All captions and headings in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

12.5 Survival. All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration or termination of this Agreement, including but not limited to Sections 8, 10.3, 14, and 15.

### **13. ENTIRE AGREEMENT**

This Agreement, the documents referred to herein, and the exhibits hereto, if any, constitute the entire, full, and complete agreement between Franchisor and Developer concerning the subject matter hereof and supersede any and all prior agreements. However, nothing in this Agreement or related agreements is intended to disclaim any representation that Franchisor may have made in the latest franchise disclosure document that Franchisor delivered to Developer prior to signing the Agreement. Except as set forth in Section 8 hereof, no amendment, change, or variance from this Agreement shall be binding on either party unless executed in writing.

### **14. APPLICABLE LAW AND DISPUTE RESOLUTION**

14.1 Applicable Law. This Agreement and any claim, controversy, or dispute arising out of or related to this Agreement is governed by the laws of the State of New York. In the event of any conflict of law, the laws of New York shall prevail, without regard to the application of New York conflict-of-law rules. If, however, any provision of this Agreement would not be enforceable under the laws of New York and if Developer is located outside of New York and such provision would be enforceable under the laws of the state in which Developer is located, then such provision shall be interpreted and construed under the laws of that state. This choice of laws will not affect the scope of any state statute that by its terms is inapplicable to this Agreement, and nothing in this Agreement will extend the scope of application of any statute.

14.2 Jurisdiction and Venue. Any action whether or not arising out of, or relating to, this Agreement, brought by Developer (or any principal thereof) against Franchisor shall be brought in the judicial district in which Franchisor has, at the time of commencement of such action, its principal place of business. Franchisor shall have the right to commence an action

against Developer in any court of competent jurisdiction. Developer hereby waives all objections to personal jurisdiction or venue for purposes of this Section 14.2 and agrees that nothing in this Section 14.2 shall be deemed to prevent Franchisor from removing an action from state court to federal court.

14.3 No Exclusivity. No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

14.4 Injunctive Relief. Nothing herein contained (including, without limitation, Sections 14.2 and 14.3 above) shall bar Franchisor's right to obtain injunctive relief from any court of competent jurisdiction against threatened conduct that will cause it loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.

14.5 Limitation of Claims. Developer agrees that any and all claims by Developer against Franchisor arising out of, or relating to, this Agreement may not be commenced by Developer unless brought before the earlier of (a) the expiration of one (1) year after the act, transaction, or occurrence upon which such claim is based; or (b) one (1) year after this Agreement expires or is terminated for any reason. Developer agrees that any claim or action not brought within the periods required under this Section 14.7 shall forever be barred as a claim, counterclaim, defense, or set off.

14.6 Developer's Costs and Expenses. Except as expressly provided by Sections 14.2 and 14.3 hereof, Developer shall pay all expenses, including attorneys' fees and costs, incurred by Franchisor, its affiliates, and its successors and assigns (a) to remedy any defaults of, or enforce any rights under, this Agreement; (b) to effect termination of this Agreement; and (c) to collect any amounts due under this Agreement.

## **15. WAIVER OF RIGHTS**

15.1 WAIVER OF RIGHT TO A JURY AND PUNITIVE DAMAGES. FRANCHISOR AND DEVELOPER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY AGREE AS FOLLOWS:

15.1.1 FRANCHISOR AND DEVELOPER BOTH EXPRESSLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY; AND

15.1.2 FRANCHISOR AND DEVELOPER BOTH EXPRESSLY WAIVE ANY CLAIM FOR PUNITIVE, MULTIPLE, AND/OR EXEMPLARY DAMAGES, EXCEPT THAT FRANCHISOR SHALL BE FREE AT ANY TIME HEREUNDER TO BRING AN ACTION FOR WILLFUL TRADEMARK INFRINGEMENT AND, IF SUCCESSFUL, TO RECEIVE AN AWARD OF MULTIPLE DAMAGES AS PROVIDED BY LAW.

15.1.3 FRANCHISOR AND DEVELOPER AGREE THAT ANY CLAIMS WILL BE ARBITRATED, LITIGATED, OR OTHERWISE RESOLVED ON AN INDIVIDUAL BASIS, AND WAIVE ANY RIGHT TO ACT ON A CLASS-WIDE BASIS.

## 16. ACKNOWLEDGMENTS, REPRESENTATIONS, AND WARRANTIES

16.1 Independent Investigation. Developer acknowledges that it has conducted an independent investigation of the business contemplated hereunder and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Developer as an independent businessman, or if Developer is a corporation, partnership, or limited liability company, its owners as independent businessmen. Franchisor expressly disclaims the making of, and Developer expressly disclaims receiving any warranty, representation, or guarantee, express or implied, not contained expressly in this Agreement including, without limitation, as to the potential sales volume, profits, or success of the business venture contemplated by this Agreement. Developer also expressly disclaims relying upon any such warranty, representation, or guarantee in connection with Developer's independent investigation of the business contemplated hereunder.

16.2 Acknowledgment of Receipt. Developer acknowledges that Developer has received a copy of the complete Development Agreement, the attachments hereto, and agreements relating thereto, if any, at least seven (7) calendar days prior to the date on which this Agreement was executed. Developer further acknowledges that it has received Franchisor's Franchise Disclosure Document at least fourteen (14) calendar days prior to the date on which this Agreement was executed. **NO STATEMENT WAS MADE, WHETHER ORAL, WRITTEN, OR OTHERWISE, THAT CONTRADICTS THE FRANCHISE DISCLOSURE DOCUMENT.**

16.3 No Conflicting Agreements. Developer represents and warrants that it is not a party to or subject to any agreement that might conflict with the terms of this Agreement or prevent Developer from fully performing its obligations under this Agreement, and Developer agrees not to enter into any such agreement.

16.4 Compliance With Anti-Terrorism Laws. Developer acknowledges that under applicable U.S. law, including, without limitation, Executive Order 13224, signed on September 23, 2001 (the "Order"), Franchisor is prohibited from engaging in any transaction with any Specially Designated National or Blocked Person. "Specially Designated National" or "Blocked Person" shall mean (1) those persons designated by the U.S. Department of Treasury's Office of Foreign Assets Control from time-to-time as a "specially designated national" or "blocked person" or similar status, (2) a person engaged in, or aiding any person engaged in, acts of terrorism, as defined in the Order, or (3) a person otherwise identified by government or legal authority as a person with whom Franchisor is prohibited from transacting business. Currently, a listing of such designations and the text of the Order are published at the Internet website address, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac). Accordingly, Developer represents and warrants to Franchisor that as of the date of this Agreement, neither Developer nor any person holding any ownership interest in Developer, controlled by Developer, or under common control with Developer is a Specially Designated National or Blocked Person, and that Developer (1) does not, and hereafter shall not, engage in any terrorist activity; (2) is not affiliated with and does not support any individual or entity engaged in, contemplating, or supporting terrorist activity; and (3) is not acquiring the rights granted under this Agreement with the intent to generate funds to channel to any individual or entity engaged in, contemplating, or supporting terrorist activity, or to otherwise support or further any terrorist activity.

16.5 Acknowledgment of Understanding; Opportunity to Consult. Developer acknowledges that it has read and understood this Agreement, the attachments hereto, and agreements relating thereto; and, that Franchisor has accorded Developer ample time and opportunity to consult with advisors of its own choosing about the potential benefits and risks of entering into this Agreement.

16.6 Consent to Maintenance of Electronic Records and to Electronic Signatures. Developer expressly consents and agrees that Franchisor may provide and maintain all disclosures, agreements, amendments, notices, and all other evidence of transactions between Franchisor and Developer in electronic form. Developer expressly agrees to execution of the Development Agreement and related agreements by electronic means and that such execution shall be legally binding and enforceable as an “electronic signature” and the legal equivalent of Developer’s handwritten signature. Developer expressly agrees that electronic copies of the Development Agreement and related agreements between Franchisor and Developer are valid. Developer expressly agrees not to contest the validity of the originals or copies of the Development Agreement and related agreements, absent proof of altered data or tampering.

**[Signature page follows]**

IN WITNESS WHEREOF, the parties hereto have fully executed, sealed, and delivered this Agreement on the day and year first above written.

**H&H BAGELS FRANCHISING LLC**

**DEVELOPER**

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT A TO  
H&H BAGELS  
DEVELOPMENT AGREEMENT**

**DEVELOPMENT FEE; DEVELOPMENT AREA; DEVELOPMENT SCHEDULE**

1. Pursuant to Section 2.1 of this Agreement, Developer shall pay Franchisor a non-refundable Development Fee of Twenty Thousand Dollars (\$20,000) for each Restaurant, starting with the second Restaurant included in the Development Schedule.

2. Each Restaurant developed under this Agreement shall be located in the following Development Area: \_\_\_\_\_  
\_\_\_\_\_.

3. Recognizing that time is of the essence, Developer agrees to satisfy the Development Schedule set forth below. The Development Schedule shall be satisfied when each Restaurant has been opened and has commenced operations under a signed Franchise Agreement by the applicable date indicated below.

Development Period	Number of Restaurants to be Opened During Development Period	Cumulative number of Restaurants that must be open and in operation as of the end of the Development Period
Effective Date to _____, 20__		
_____, 20__ to _____, 20__		
_____, 20__ to _____, 20__		
_____, 20__ to _____, 20__		
_____, 20__ to _____, 20__		
_____, 20__ to _____, 20__		

Developer's Initials: \_\_\_\_\_

Franchisor's Initials: \_\_\_\_\_

**EXHIBIT B TO  
H&H BAGELS  
DEVELOPMENT AGREEMENT**

**CURRENT FORM OF FRANCHISE AGREEMENT**

**(See attached.)**



**EXHIBIT C TO  
H&H BAGELS  
DEVELOPMENT AGREEMENT**

**DISCLOSURE OF PRINCIPALS**  
**(To be completed only if Developer is a Corporation,  
Partnership, or Limited Liability Company)**

1. Date: \_\_\_\_\_

2. Developer Contact. The following individual is a shareholder, member, or partner of Developer and is the principal person to be contacted on all matters relating to the Development Agreement:

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

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

Daytime Telephone No.: \_\_\_\_\_

Evening Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

3. Developer Owners. The undersigned agree and acknowledge that the following is a complete list of all of the shareholders, partners, or members (“Owners”) of Developer and the percentage interest of each individual:

<u>Name</u>	<u>Position</u>	<u>Interest (%)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**DEVELOPER**

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

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

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

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

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

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

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

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

**EXHIBIT D TO  
H&H BAGELS  
DEVELOPMENT AGREEMENT**

**GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGEMENT**

As an inducement to H&H Bagels Franchising LLC (“Franchisor”) to execute the Development Agreement between Franchisor and \_\_\_\_\_ (“Developer”) dated \_\_\_\_\_, 20\_\_\_\_ (the “Agreement”), the undersigned (the “Guarantors”), jointly and severally, hereby unconditionally guarantee to Franchisor and its successors and assigns that all of Developer’s obligations under the Agreement will be punctually paid and performed.

Upon demand by Franchisor, the Guarantors will immediately make each payment required of Developer under the Agreement. The Guarantors hereby waive any right to require Franchisor to: (a) proceed against Developer for any payment required under the Agreement; (b) proceed against or exhaust any security from Developer; or (c) pursue or exhaust any remedy, including any legal or equitable relief, against Developer. Without affecting the obligations of the Guarantors under this Guarantee, Franchisor may, without notice to the Guarantors, extend, modify, or release any indebtedness or obligation of Developer, or settle, adjust, or compromise any claims against Developer. The Guarantors waive notice of amendment of the Agreement and notice of demand for payment by Developer and agree to be bound by any and all such amendments and changes to the Agreement.

The Guarantors hereby agree to defend, indemnify, and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys’ fees, reasonable costs of investigation, court costs, and arbitration fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Developer to perform any obligation of Developer under the Agreement, any amendment thereto, or any other agreement executed by Developer referred to therein.

The Guarantors hereby acknowledge and agree to be individually bound by all of the covenants contained in Section 8 of the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement or upon the transfer or assignment of the Agreement by Developer, except that all obligations and liabilities of the Guarantors which arose from events which occurred on or before the effective date of such termination, expiration, transfer, or assignment of the Agreement shall remain in full force and effect until satisfied or discharged by the Guarantors, and all covenants which by their terms continue in force after the termination, expiration, transfer, or assignment of the Agreement shall remain in force according to their terms. This Guarantee shall not terminate upon the transfer or assignment of the Agreement or this Guarantee by Franchisor. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement and shall be interpreted and construed in accordance with Section 14 of the Agreement. The Guarantors agree that the dispute resolution and attorney fee provisions in Sections 14 and 15 of the Agreement are hereby incorporated into this Guarantee by reference, and references to “Developer” and the “Development Agreement” therein shall be deemed to apply to “Guarantors” and this “Guarantee,” respectively, herein.

Any and all notices required or permitted under this Guarantee shall be in writing and shall be personally delivered, sent by registered mail, or sent by other means which affords the sender evidence of delivery or rejected delivery (including, without limitation, private delivery or courier service), which shall not include electronic communication, such as e-mail, to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: H&H Bagels Franchising LLC  
109 W. 27<sup>th</sup> Street, Suite #3B  
New York, NY 10001  
Attn: Mr. Jay Rushin

Notices to Guarantors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notices shall be deemed to have been given at the date and time of delivery or of attempted delivery.

IN WITNESS WHEREOF, each of the Guarantors has signed this Guarantee as of the date of the Agreement.

**GUARANTORS**

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

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

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

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

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

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

**EXHIBIT E TO  
H&H BAGELS  
DEVELOPMENT AGREEMENT**

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

In consideration of my position as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_ (the “Developer”), and One Dollar, receipt of which  
is acknowledged, I hereby acknowledge and agree that:

1. H&H Bagels Franchising LLC (the “Franchisor”), as the result of the expenditure of time, skill, effort, and money, has developed, and continues to develop, a distinctive system relating to the establishment and operation of Restaurants, which currently feature and offer for sale to the public iconic, high quality bagels from a par-baked H&H Bagels product authentically “Made in NYC” and baked fresh daily, and high quality signature spreads, smoked fish, and prepared salads under the trade name “H&H Bagels” (the “System”) which Franchisor may change from time to time.

2. As an employee of the Developer, I will receive valuable confidential information, disclosure of which would be detrimental to the Franchisor and the Developer, such as information relating to recipes, cooking methods, preparation of menu items, drawings, suppliers, equipment, product costs, accounting methods, including both paper and electronic spreadsheets, or advertising of the Franchisor and the System related to the establishment and operation of Restaurants which are beyond the present skills and experience possessed by me. This list of confidential matters is illustrative only and does not include all matters considered confidential by the Franchisor and the Developer.

3. I will hold in strict confidence all information designated by the Franchisor or the Developer as confidential. Unless the Franchisor otherwise agrees in writing, I will disclose and/or use the confidential information only in connection with my duties as an employee of the Developer. My undertaking not to disclose confidential information is a condition of my position with the Developer and continues even after I cease to be in that position.

4. While in my position with the Developer, I will not do anything which may injure the Developer or the Franchisor, such as (a) divert or attempt to divert any present or prospective business or customer of any Restaurant to any competitor, by direct or indirect inducement or otherwise; or (b) do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Franchisor’s marks and the System.

5. While in my position with the Developer, I will not own, maintain, operate, engage in, be employed by, provide any assistance or advise to, or have any interest in (as owner or otherwise) any business that: (a) is the same as, or substantially similar to, a Restaurant; or (b) offers to sell or sells any products, merchandise, or services offered by a Restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business. Provided, however, that this Paragraph 5 will not apply to my current position with the Developer.

6. For two (2) years after I cease to be in my position with the Developer, I will not own, maintain, operate, engage in, be employed by, provide any assistance or advise to, or have any interest in (as owner or otherwise) any business that: (i)(a) is the same as, or substantially similar to, a Restaurant, or (b) offers to sell or sells any products, merchandise, or services offered by a Restaurant where the sale of such products, merchandise, or services constitutes five percent (5%) or more of the gross sales of such retail business.; and (ii) is, or is intended to be, located at or within: (1) the Developer's Territory, the boundaries of which I acknowledge have been described to me; (2) the county or municipality in which the Developer's Restaurants are located; (3) twenty-five (25) miles of the Developer's Restaurants; or (4) twenty-five (25) miles of any business operating under the Franchisor's marks.

7. The Franchisor is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Developer. I am aware that my violation of this Agreement will cause the Franchisor and the Developer irreparable harm; therefore, I acknowledge and agree that the Franchisor and/or the Developer may apply for the issuance of an injunction preventing me from violating this Agreement in addition to any other remedies it may have hereunder, at law or in equity; and I agree to pay the Franchisor and the Developer all the costs it/they incur/s, including without limitation attorneys' fees, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisor and the Developer, any claim I have against the Franchisor or the Developer is a separate matter and does not entitle me to violate, or justify any violation of, this Agreement. I EXPRESSLY WAIVE ANY RIGHT I MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY OR AGAINST ME. If any part of this Agreement is held invalid by a court or agency having valid jurisdiction, the rest of the Agreement is still enforceable, and the part held invalid is enforceable to the extent found reasonable by the court or agency. I agree that all the words and phrases used in this Agreement will have the same meaning as used in the Development Agreement, and that such meaning has been explained to me.

8. The Franchisor may, in its sole discretion, reduce the scope of any covenant set forth in this Agreement, without my consent, effective immediately upon my receipt of written notice thereof; and I agree to comply with any covenant as so modified.

9. This Agreement and any claim, controversy or dispute arising out of or related to this Agreement is governed by the laws of the State of New York. This choice of laws will not affect the scope of any state statute that by its terms is inapplicable to this Agreement and nothing in this Agreement will extend the scope of application of any statute. The only way this Agreement can be changed is in a writing signed by both the Developer and me.

**[Signature page follows]**

**EMPLOYEE:**

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

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

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

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

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

**ACKNOWLEDGED BY DEVELOPER**

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

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

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

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

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit C**

**Financial Statements**

**H&H BAGELS FRANCHISING LLC**  
**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**



**H&H BAGELS FRANCHISING LLC**  
**DECEMBER 31, 2023 AND 2022**

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## INDEPENDENT AUDITORS' REPORT

To the Member  
of H&H Bagels Franchising LLC

### **Opinion**

We have audited the accompanying financial statements of H&H Bagels Franchising LLC which comprise the balance sheets as of December 31, 2023 and 2022 and the related statements of operations, member's equity and cash flows for the years ended and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of H&H Bagels Franchising LLC as of December 31, 2023 and 2022, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of Financial Statements section of our report. We are required to be independent of H&H Bagels Franchising LLC and to meet our other ethical responsibilities in ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

## Auditors' Responsibilities for the Audit of the Financial Statements

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

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgement 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 H&H Bagels Franchising LLCs 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 judgement, there are conditions or events, considered in the aggregate, that raise substantial doubt about H&H Bagels Franchising LLC's ability to continue as a going concern for a reasonable period of time.

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

*Perlson LLP*

CERTIFIED PUBLIC ACCOUNTANTS  
Woodbury, NY  
May 10, 2024



**H&H BAGELS FRANCHISING LLC**  
**BALANCE SHEETS**  
**AS OF DECEMBER 31,**

	<b>2023</b>	<b>2022</b>
<b>ASSETS</b>		
Current assets		
Cash	\$ 520,409	\$ 234,844
Accounts receivable, net of allowance for doubtful accounts of \$561 and \$1,122, respectively	21,887	21,327
Franchise and area development fee receivable	120,000	-
Equipment, net of accumulated depreciation of \$121 and \$0, respectively	606	-
Due from parent company	200,000	-
	\$ 862,902	\$ 256,171
<b>LIABILITIES AND MEMBER'S EQUITY</b>		
Current liabilities		
Accounts payable and accrued expenses	\$ 38,010	\$ 7,000
Credit card payable	2,749	7,169
Deferred franchise and area development fees	376,961	3,737
Total current liabilities	417,720	17,906
Deferred franchise and area development fees, net of current portion	421,121	32,368
Total liabilities	838,841	50,274
Member's equity	24,061	205,897
Total liabilities and member's equity	\$ 862,902	\$ 256,171

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENTS OF OPERATIONS**  
**FOR THE YEARS ENDED DECEMBER 31,**

	<u>2023</u>	<u>2022</u>
Revenue		
Franchisee fees	\$ 31,038	\$ 28,895
Area development fees	206,984	-
Other income	1,848	1,094
Total revenue	<u>239,870</u>	<u>29,989</u>
Operating expenses		
Professional services	255,630	141,231
Sales and marketing	81,897	31,915
Advertising and promotion	10,588	17,190
Computer and internet	3,756	20,394
Travel, meals and entertainment	70,275	10,872
Depreciation	121	-
Bad debt expense	-	1,122
Total operating expenses	<u>422,267</u>	<u>222,724</u>
Loss from operations	(182,397)	(192,735)
Other income:		
Recovery of bad debt	<u>561</u>	<u>-</u>
Net loss	<u>\$ (181,836)</u>	<u>\$ (192,735)</u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENTS OF MEMBER'S EQUITY**  
**FOR THE YEARS ENDED DECEMBER 31,**

Balance, as of December 31, 2021	\$ 198,632
Net loss	(192,735)
Member's capital contributions	<u>200,000</u>
Balance, as of December 31, 2022	205,897
Net loss	<u>(181,836)</u>
Balance, as of December 31, 2023	<u><u>\$ 24,061</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENTS OF CASH FLOWS**  
**FOR THE YEARS ENDED DECEMBER 31,**

	<b>2023</b>	<b>2022</b>
Cash flows from operating activities		
Net loss	\$ (181,836)	\$ (192,735)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities		
Depreciation	121	-
(Increase) decrease in operating assets:		
Accounts receivable	(560)	(21,327)
Area development fee receivable	(120,000)	-
Increase (decrease) in operating liabilities:		
Accounts payable and accrued expenses	31,010	(19,161)
Credit card payable	(4,420)	4,080
Deferred franchise and area development fees	761,977	36,105
Net cash provided by (used in) operating activities	486,292	(193,038)
 Cash flows from investing activities		
Purchase of equipment	(727)	-
Net cash used in investing activities	(727)	-
 Cash flows from financing activities		
Due from parent company	(200,000)	-
Member's capital contributions	-	200,000
Net cash (used in) provided by financing activities	(200,000)	200,000
 Net increase in cash	285,565	6,962
 Cash, beginning of year	234,844	227,882
 Cash, end of year	\$ 520,409	\$ 234,844

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 1 – NATURE OF BUSINESS**

H&H Bagels Franchising, LLC (the “Company”) was formed on May 6, 2021 in the State of New York. The Company is a wholly owned subsidiary of H&H Bagels Group, Inc. (the “Parent Company”). The Company was established to offer and sell “H&H Bagels” franchises throughout the United States. Such agreements provide for a non-exclusive license of trademarks, copyrights, and registrations related to its business activities (the “Franchise Agreement”). More specifically, the Franchise Agreement provides the franchisee the right to construct, own and operate an “H&H Bagels” restaurant upon site acceptance by the Company and to use the “H&H Bagel” system in connection with the operation of the restaurant at that site. The Franchise Agreement generally provides for a 10-year term and a 10-year renewal subject to certain conditions. The Company also offers area development agreements which conveys the non-exclusive rights to open a certain number of locations within a development area and schedule.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of presentation**

The accompanying financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Use of estimates**

The preparation of financial statements in conformity with U.S. GAAP requires the use of estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities and contingencies. Although actual results in subsequent periods will differ from these estimates, such estimates are developed based on the best information available to management and management’s best judgments at the time made. All significant assumptions and estimates underlying the reported amounts in the financial statements and accompanying notes are regularly reviewed and updated. Changes in estimates are reflected in the financial statements based upon ongoing actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. The most significant assumptions and estimates underlying these financial statements and accompanying notes involve revenue recognition.

**Cash**

For purposes of the statement of cash flows, the Company considers cash in bank accounts, cash on hand and demand deposits as cash.

**Equipment**

Equipment is recorded at cost. Depreciation is calculated using the straight-line method over the estimated useful lives of the assets. Upon retirement or disposal of asset, the accounts are relieved of cost and accumulated depreciation and any related gain or loss is reflected in the statement of operations. At least annually, the Company evaluates and adjusts, when necessary, the estimated useful lives of equipment.



**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Revenue**

The Company’s revenues consist of fees from franchised restaurants, which include franchise, area development, royalty, conference attendance and technology fees, as well as, brand development fund contributions from franchisees. The Company is involved in offering and selling franchise and area development agreements. As a result, the Company is dependent on the strength of the restaurant industry and its ability to collect amounts owed on franchise and areas development agreements. The Company recognizes revenue at a point in time and over time for financial reporting purposes.

**Disaggregation of revenue from contracts with franchisees**

Revenue is disaggregated by timing of revenue recognition for the years ended December 31, as follows:

	<u>2023</u>	<u>2022</u>
Services transferred at a point in time	\$ 1,848	\$ 1,094
Services transferred over time	<u>238,022</u>	<u>28,895</u>
	<u>\$ 239,870</u>	<u>\$ 29,989</u>

The Franchise Agreement requires that the franchisee pay a royalty fee and make contributions to the H&H Bagels Brand Fund (the “Brand Fund”) based on a percentage of the franchisee’s gross revenues and are both recognized as revenue when earned at a point in time. Additionally, the Franchise Agreement requires that the franchisee pay the Company convention/conference fees, market introduction fees and monthly license fees, which are all recognized as revenue when earned at a point in time. At December 31, 2023, there are no franchised locations open, therefore there are no royalty, brand development, convention/conference, market introduction, and monthly license fees during the year ended December 31, 2023.

Franchise fees are considered highly dependent upon, and interrelated with, the franchise right granted in the agreement, therefore these fees are recognized over the contractual term of the agreement over time. Payments for franchise fees are received when the agreements are signed.

The Company defers the recognition of a portion of the consideration received because the Company has to satisfy a future obligation (e.g., the franchise area right). The Company uses the initial franchise fee to determine the stand-alone “selling price” for separate performance obligations.

In accordance with Accounting Standards Update (“ASU”) ASU No. 2021-02, Franchisors - Revenue from Contracts with Customers (Subtopic 952-606), the Company has elected an accounting alternative available to private companies to use a practical expedient when identifying performance obligations in contracts with franchisees. This alternative allows the Company to treat certain preopening services provided to its franchisee as distinct from the franchise license, and any other goods or services performed in the contract.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

The Company has entered into area development agreements with various individuals to develop stores within specific geographic regions. These area development agreements generally stipulate that a certain number of stores are to be developed over a five to ten year period. These agreements will expire the earlier of: (1) the last date specified in the development schedule or (2) the date when the developer has open, and in operation, all of the restaurants required by the development schedule.

Area development fees are considered highly dependent upon, and interrelated with, the development right to open a location, therefore these fees are allocated to each material right to open a location in accordance with a development schedule over time. Payments for area development fees are received when the agreements are signed.

The Company deferred the recognition of a portion of the consideration received as the area development fees are allocated to each material right within an agreed on development schedule.

**Contract balances**

The following table provides information about assets and liabilities from contracts with customers:

	<b><u>January 1, 2023</u></b>		<b><u>December 31, 2023</u></b>
Accounts receivable, net of allowance for doubtful accounts	\$ 21,327	\$	21,887
Franchise and area development fee receivable	-		120,000
Deferred franchise and area development fees	36,105		798,082

**Brand fund**

The Brand Fund was established to advertise franchised restaurants on a regional and/or national basis. The Company will maintain and administer the fund. Expenses for marketing and advertising costs are expensed as incurred and recorded in the Brand fund.

**Marketing and advertising costs**

Marketing and advertising costs are expensed as incurred.

**Income taxes**

The Company has been organized as a limited liability company and is not a taxpaying entity for federal or state income tax purposes. As such, income of the Company is taxed on the member's tax returns. The Company has no deferred income tax assets or liabilities and there no provision for income taxes in the statement of operations.

Under U.S. GAAP, guidance is provided as to how uncertain tax positions should be recognized, measured, presented, and disclosed in the financial statements. U.S. GAAP requires the evaluation of tax positions taken to determine whether the tax positions are "more-likely-than-not" to be sustained upon examination by the applicable taxing authority.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

The Company has not identified any uncertain tax positions that could lead to possible tax liability or penalty upon examination by a taxing authority. The Company has not accrued any tax-related interest or penalties. The Company is not subject to income tax examinations by the U.S. federal and state tax authorities for the years before 2021, as the Company was formed on May 6, 2021.

**Recently adopted accounting pronouncements**

**ASC Topic 326 – Financial Instruments – Credit Losses**

In June 2016, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2016-13, Financial Instruments – Credit Losses Topic 326: Measurement of Credit Losses on Financial Instruments, as amended accounting standards codification (“ASC”) (“ASC 326”), which significantly changed how entities will measure credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. The most significant change in this standard is a shift from the incurred loss model to the expected loss model. Under the standard, disclosures are required to provide users of the financial statements with useful information in analyzing an entity’s exposure to credit risk and the measurement of credit losses, if material. Financial assets held by the Company that are subject to the guidance in ASC 326 were trade accounts receivable. The Company adopted ASC 326 on January 1, 2023 and the impact of the adoption was not considered material to the financial statements.

**NOTE 3 – EQUIPMENT**

As of December 31, 2023, equipment consists of the following:

		<b><u>Estimated Useful Life</u></b>
Computer hardware	<u>\$ 727</u>	<u>5 years</u>
Less: accumulated depreciation	<u>(121)</u>	
	<u>\$ 606</u>	

**NOTE 4 – RELATED PARTY TRANSACTIONS**

As of December 31, 2023, due from Parent Company in the amount of \$200,000 is related to intercompany funding that occurs in the ordinary course of business.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2023 AND 2022**

**NOTE 5 – CONCENTRATIONS OF CREDIT RISK**

The Company's financial instruments that are potentially exposed to concentrations of credit risk consist primarily of cash. The Company places its cash with what it believes to be quality financial institutions. The Company believes no significant concentration of credit risk exists with respect to its cash. From time to time, cash may be in excess of the Federal Deposit Insurance Corporation ("FDIC") insurance limit of \$250,000 per depositor, per insured bank, for each ownership category. At December 31, 2023, the Company had approximately \$270,000 in excess of FDIC insured limits. At December 31, 2022, the Company was not in excess of FDIC insured limits.

**NOTE 6 – SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through May 10, 2024, the date of which the financial statements were available to be issued. There have been no significant subsequent events identified by the Company.

**H&H BAGELS FRANCHISING LLC**  
**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022**

**H&H BAGELS FRANCHISING LLC**  
**DECEMBER 31, 2022**

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## **INDEPENDENT AUDITORS' REPORT**

To the Member  
of H&H Bagels Franchising LLC

### **Opinion**

We have audited the accompanying financial statements of H&H Bagels Franchising LLC which comprise the balance sheet as of December 31, 2022 and the related statements of operations, member's equity and cash flows for the year ended December 31, 2022 and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of H&H Bagels Franchising LLC as of December 31, 2022, and the results of its operations and its cash flows for the period then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of Financial Statements section of our report. We are required to be independent of H&H Bagels Franchising LLC and to meet our other ethical responsibilities in ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

## Auditors' Responsibilities for the Audit of the Financial Statements

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

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgement 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 H&H Bagels Franchising LLCs 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 judgement, there are conditions or events, considered in the aggregate, that raise substantial doubt about H&H Bagels Franchising LLC's ability to continue as a going concern for a reasonable period of time.

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

*Perlson LLP*

CERTIFIED PUBLIC ACCOUNTANTS

Woodbury, NY

March 8, 2023





**H&H BAGELS FRANCHISING LLC**

**BALANCE SHEET**

**AS OF DECEMBER 31, 2022**

ASSETS

Current assets	
Cash	\$ 234,844
Accounts receivable, net of allowance for doubtful accounts of \$1,122	<u>21,327</u>
Total assets	<u><u>\$ 256,171</u></u>

LIABILITIES AND MEMBER'S EQUITY

Current liabilities	
Accounts payable and accrued expenses	\$ 7,000
Credit card payable	7,169
Deferred franchise fees	<u>3,737</u>
Total current liabilities	17,906
Deferred franchise fees, net of current portion	<u>32,368</u>
Total liabilities	50,274
Member's equity	<u>205,897</u>
Total liabilities and member's equity	<u><u>\$ 256,171</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF OPERATIONS**  
**FOR THE YEAR ENDED DECEMBER 31, 2022**

Revenue	
Franchisee fees	\$ 28,895
Other income	1,094
Operating expenses	
Professional services	141,231
Sales and marketing	31,915
Advertising and promotion	17,190
Computer and internet	20,394
Travel, meals and entertainment	10,872
Bad debt expense	<u>1,122</u>
Total operating expenses	<u>222,724</u>
Net loss	<u><u>\$ (192,735)</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF MEMBER'S EQUITY**  
**FOR THE YEAR ENDED DECEMBER 31, 2022**

Balance, beginning of year	\$ 198,632
Net loss	(192,735)
Member's capital contributions	<u>200,000</u>
Balance, end of year	<u><u>\$ 205,897</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF CASH FLOWS**  
**FOR THE YEAR ENDED DECEMBER 31, 2022**

Cash flows from operating activities	
Net loss	\$ (192,735)
Adjustments to reconcile net loss to net cash used in operating activities	
(Increase) decrease in operating assets:	
Accounts receivable	(21,327)
Increase (decrease) in operating liabilities:	
Accounts payable and accrued expenses	(19,161)
Credit card payable	4,080
Deferred franchise fees	<u>36,105</u>
Net cash used in operating activities	<u>(193,038)</u>
Cash flows from financing activities	
Member's capital contributions	<u>200,000</u>
Net cash provided by financing activities	<u>200,000</u>
Net increase in cash	6,962
Cash, beginning of year	<u>227,882</u>
Cash, end of year	<u><u>\$ 234,844</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022**

**NOTE 1 – NATURE OF BUSINESS**

H&H Bagels Franchising, LLC (the “Company”) was formed on May 6, 2021 in the State of New York. The Company is a wholly owned subsidiary of H&H Bagels Group, Inc. (the “Parent Company”). The Company was established to offer and sell “H&H Bagels” franchises throughout the United States. Such agreements provide for a non-exclusive license of trademarks, copyrights, and registrations related to its business activities (the “Franchise Agreement”). More specifically, the Franchise Agreement provides the franchisee the right to construct, own and operate an “H&H Bagels” restaurant upon site acceptance by the Company and to use the “H&H Bagel” system in connection with the operation of the restaurant at that site. The Franchise Agreement generally provides for a 10-year term and a 10-year renewal subject to certain conditions.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of presentation**

The accompanying financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Use of estimates**

The preparation of financial statements in conformity with U.S. GAAP requires the use of estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities and contingencies. Although actual results in subsequent periods will differ from these estimates, such estimates are developed based on the best information available to management and management’s best judgments at the time made. All significant assumptions and estimates underlying the reported amounts in the financial statements and accompanying notes are regularly reviewed and updated. Changes in estimates are reflected in the financial statements based upon ongoing actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. The most significant assumptions and estimates underlying these financial statements and accompanying notes involve revenue recognition.

**Cash**

For purposes of the statement of cash flows, the Company considers cash in bank accounts, cash on hand and demand deposits as cash.

**Revenue**

The Company’s revenues consist of fees from franchised restaurants, which include franchise, restaurant development, royalty, conference attendance and technology fees, as well as, brand development fund contributions from franchisees. The Company is involved in offering and selling franchise agreements. As a result, the Company is dependent on the strength of the restaurant industry and its ability to collect amounts owed on franchise agreements. The Company recognizes revenue at a point in time and over time for financial reporting purposes.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Disaggregation of revenue from contracts with franchisees**

Revenue for the year ended December 31, 2022 is disaggregated by timing of revenue recognition, as follows:

Services transferred at a point in time	\$	1,094
Services transferred over time		28,895
	\$	29,989

The Franchise Agreement requires that the franchisee pay a royalty fee and make contributions to the H&H Bagels Brand Fund (the “Brand Fund”) based on a percentage of the franchisee’s gross revenues and are both recognized as revenue when earned at a point in time. Additionally, the Franchise Agreement requires that the franchisee pay the Company convention/conference fees, market introduction fees and monthly license fees, which are all recognized as revenue when earned at a point in time.

Franchise fees are considered highly dependent upon, and interrelated with, the franchise right granted in the agreement, therefore these fees are recognized over the contractual term of the agreement over time. Payments for franchise fees are received when the agreements are signed.

The Company defers the recognition of a portion of the consideration received because the Company has to satisfy a future obligation (e.g., the franchise area right). The Company uses the initial franchise fee to determine the stand-alone “selling price” for separate performance obligations.

In accordance with Accounting Standards Update (“ASU”) ASU No. 2021-02, Franchisors - Revenue from Contracts with Customers (Subtopic 952-606), the Company has elected an accounting alternative available to private companies to use a practical expedient when identifying performance obligations in contracts with franchisees. This alternative allows the Company to treat certain preopening services provided to its franchisee as distinct from the franchise license, and any other goods or services performed in the contract.

**Contract balances**

The following table provides information about assets and liabilities from contracts with customers:

	<b>January 1, 2022</b>	<b>December 31, 2022</b>
Accounts receivable, net of allowance for doubtful accounts	\$ -	\$ 21,327
Deferred franchise and restaurant development fees	-	36,105

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

**Brand fund**

The Brand Fund was established to advertise franchised restaurants on a regional and/or national basis. The Company will maintain and administer the fund. Expenses for marketing and advertising costs are expensed as incurred and recorded in the Brand fund.

**Marketing and advertising costs**

Marketing and advertising costs are expensed as incurred.

**Income taxes**

The Company has been organized as a limited liability company and is not a taxpaying entity for federal or state income tax purposes. As such, income of the Company is taxed on the member's tax returns. The Company has no deferred income tax assets or liabilities and there no provision for income taxes in the statement of operations.

Under U.S. GAAP, guidance is provided as to how uncertain tax positions should be recognized, measured, presented, and disclosed in the financial statements. U.S. GAAP requires the evaluation of tax positions taken to determine whether the tax positions are "more-likely-than-not" to be sustained upon examination by the applicable taxing authority.

The Company has not identified any uncertain tax positions that could lead to possible tax liability or penalty upon examination by a taxing authority. The Company has not accrued any tax-related interest or penalties. The Company is not subject to income tax examinations by the U.S. federal and state tax authorities for the years before 2021, as the Company was formed on May 6, 2021.

**New Accounting Pronouncements Not Yet Adopted**

**ASC Topic 326 – Financial Instruments – Credit Losses**

In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13 Measurement of Credit Losses on Financial Instruments ("ASU 2016-13"), creating Accounting Standards Codification ("ASC") ASC Topic 326 – Financial Instruments - Credit Losses. ASU 2016-13 requires entities to measure credit losses on most financial assets carried at amortized costs and certain other instruments using an expected credit loss model. For private companies, ASU 2016-13 is effective for fiscal years beginning after December 31, 2022, including interim periods within those fiscal years. The Company is currently evaluating the effect of the adoption of ASU 2016-13 on their results of operations, financial position and cash flows.

**NOTE 3 – CONCENTRATIONS**

The Company's financial instruments that are potentially exposed to concentrations of credit risk consist primarily of cash. The Company places its cash with what it believes to be quality financial institutions. The Company believes no significant concentration of credit risk exists with respect to its cash. From time to time, cash may be in excess of the Federal Deposit Insurance Corporation ("FDIC") insurance limit of \$250,000 per depositor, per insured bank, for

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2022**

**NOTE 3 – CONCENTRATIONS (CONTINUED)**

each ownership category. At December 31, 2022, the Company was not in excess of FDIC insured limits.

**NOTE 4 – SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through March 8, 2023, the date of which the financial statements were available to be issued. There have been no significant subsequent events identified by the Company.



**H&H BAGELS FRANCHISING LLC**  
**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2021**

**H&H BAGELS FRANCHISING LLC**  
**DECEMBER 31, 2021**

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## **INDEPENDENT AUDITORS' REPORT**

To the Member  
H&H Bagels Franchising LLC

### **Opinion**

We have audited the accompanying financial statements of H&H Bagels Franchising LLC which comprise the balance sheet as of December 31, 2021 and the related statements of operations, member's equity and cash flows for the period from inception (May 6, 2021) to December 31, 2021 and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of H&H Bagels Franchising LLC as of December 31, 2021, and the results of its operations and its cash flows for the initial period then ended in accordance with accounting principles generally accepted in the United States of America.

### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of Financial Statements section of our report. We are required to be independent of H&H Bagels Franchising LLC and to meet our other ethical responsibilities in ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

## Auditors' Responsibilities for the Audit of the Financial Statements

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

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgement and maintain professional skepticism throughout the audit.
- Identify and access 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 H&H Bagels Franchising LLCs 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 judgement, there are conditions or events, considered in the aggregate, that raise substantial doubt about H&H Bagels Franchising LLC's ability to continue as a going concern for a reasonable period of time.

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

*Perlson LLP*

Woodbury, NY  
February 25, 2022

**H&H BAGELS FRANCHISING LLC**  
**BALANCE SHEET**  
**AS OF DECEMBER 31, 2021**

ASSETS

Current assets	
Cash	\$ 227,882
	<hr/>
Total assets	\$ 227,882
	<hr/> <hr/>

LIABILITIES AND MEMBER'S EQUITY

Current liabilities	
Accounts payable and accrued expenses	\$ 26,161
Credit card payable	3,089
	<hr/>
Total current liabilities	29,250
	<hr/>
Member's equity	198,632
	<hr/>
Total liabilities and member's equity	\$ 227,882
	<hr/> <hr/>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF OPERATIONS**  
**FOR THE PERIOD MAY 6, 2021 TO DECEMBER 31, 2021**

Operating expenses	
Professional services	\$ 169,344
Sales and marketing	14,431
Advertising and promotion	9,200
Computer and internet	7,832
Travel, meals and entertainment	<u>561</u>
Total operating expenses	<u>201,368</u>
 Net loss	 <u><u>\$ (201,368)</u></u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF MEMBER'S EQUITY**  
**FOR THE PERIOD ENDED DECEMBER 31, 2021**

Balance, May 6, 2021	\$	-
Net loss		(201,368)
Member's capital contributions		<u>400,000</u>
Balance, December 31, 2021	\$	<u>198,632</u>

See accompanying notes to financial statements

**H&H BAGELS FRANCHISING LLC**  
**STATEMENT OF CASH FLOWS**  
**FOR THE PERIOD MAY 6, 2021 TO DECEMBER 31, 2021**

Cash flows from operating activities	
Net loss	\$ (201,368)
Adjustments to reconcile net loss to net cash used in operating activities	
Increase in operating liabilities:	
Accounts payable and accrued expenses	26,161
Credit card payable	<u>3,089</u>
Net cash used in operating activities	<u>(172,118)</u>
Cash flows from financing activities	
Member's capital contributions	<u>400,000</u>
Net cash provided by financing activities	<u>400,000</u>
Net increase in cash	227,882
Cash, May 6, 2021	<u>-</u>
Cash, December 31, 2021	<u><u>\$ 227,882</u></u>

See accompanying notes to financial statements



**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2021**

**NOTE 1 – NATURE OF BUSINESS**

H&H Bagels Franchising, LLC (the “Company”) was formed on May 6, 2021 in the State of New York. The Company is a wholly owned subsidiary of H&H Bagels Group, Inc. (the “Parent Company”). The Company was established to offer and sell “H&H Bagels” franchises throughout the United States. Such agreements provide for a non-exclusive license of trademarks, copyrights, and registrations related to its business activities (the “Franchise Agreement”). More specifically, the Franchise Agreement provides the franchisee the right to construct, own and operate a “H&H Bagels” restaurant upon site acceptance by the Company and to use the “H&H Bagel” system in connection with the operation of the restaurant at that site. The Franchise Agreement generally provides for a 10-year term and a 10-year renewal subject to certain conditions.

As of December 31, 2021, the Company has not entered into any Franchise Agreements.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of presentation**

The accompanying financial statements are prepared on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**Use of estimates**

The preparation of financial statements in conformity with U.S. GAAP requires the use of estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities and contingencies. Although actual results in subsequent periods will differ from these estimates, such estimates are developed based on the best information available to management and management’s best judgments at the time made. All significant assumptions and estimates underlying the reported amounts in the financial statements and accompanying notes are regularly reviewed and updated. Changes in estimates are reflected in the financial statements based upon ongoing actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. The most significant assumptions and estimates underlying these financial statements and accompanying notes involve revenue recognition.

**Cash**

For purposes of the statement of cash flows, the Company considers cash in bank accounts, cash on hand and demand deposits as cash.

**Revenue**

The Company’s revenues will consist of fees from franchised “H&H Bagels” restaurants, which include franchise fees and royalties, as well as, brand development fund contributions from franchisees. The Company is involved in offering and selling franchise agreements. As a result, the Company is dependent on the strength of the restaurant industry and its ability to collect amounts owed on franchise agreements. The Company recognizes revenue at a point in time and over time for financial reporting purposes.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2021**

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

The Franchise Agreement requires that the franchisee pay a royalty fee and make contributions to the H&H Bagels Brand Fund (the “Brand Fund”) based on a percentage of the franchisee’s gross revenues and are both recognized as revenue when earned at a point in time. Additionally, the Franchise Agreement requires that the franchisee pay the Company convention/conference fees, market introduction fees and monthly license fees, which are all recognized as revenue when earned at a point in time.

Franchise fees are considered highly dependent upon, and interrelated with, the franchise right granted in the agreement, therefore these fees are recognized over the contractual term of the agreement over time. Payments for franchise fees are received when the agreements are signed.

The Company defers the recognition of a portion of the consideration received because the Company has to satisfy a future obligation (e.g., the franchise area right). The Company uses the initial franchise fee to determine the stand-alone “selling price” for separate performance obligations.

**Brand fund**

The Brand Fund was established to advertise franchised restaurants on a regional and/or national basis. The Company will maintain and administer the fund. Expenses for marketing and advertising costs are expensed as incurred and recorded in the Brand fund.

**Income taxes**

The Company has been organized as a limited liability company and is not a taxpaying entity for federal or state income tax purposes. As such, income of the Company is taxed on the member’s tax returns. The Company has no deferred income tax assets or liabilities and there no provision for income taxes in the statement of operations.

Under U.S. GAAP, guidance is provided as to how uncertain tax positions should be recognized, measured, presented, and disclosed in the financial statements. U.S. GAAP requires the evaluation of tax positions taken to determine whether the tax positions are “more-likely-than-not” to be sustained upon examination by the applicable taxing authority.

The Company has not identified any uncertain tax positions that could lead to possible tax liability or penalty upon examination by a taxing authority. The Company has not accrued any tax-related interest or penalties. The Company is not subject to income tax examinations by the U.S. federal and state tax authorities for the years before 2021, as the Company was formed on May 6, 2021.

**H&H BAGELS FRANCHISING LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2021**

**NOTE 3 – CONCENTRATIONS**

The Company’s financial instruments that are potentially exposed to concentrations of credit risk consist primarily of cash. The Company places its cash with what it believes to be quality financial institutions. The Company believes no significant concentration of credit risk exists with respect to its cash. From time to time, cash may be in excess of the Federal Deposit Insurance Corporation (“FDIC”) insurance limit of \$250,000 per depositor, per insured bank, for each ownership category. At December 31, 2021, the Company was not in excess of FDIC insured limits.

**NOTE 4 – SUBSEQUENT EVENTS**

The Company has evaluated subsequent events through February 25, 2022, the date of which the financial statements were available to be issued. There have been no significant subsequent events identified by the Company.

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

**H&H Bagels Franchising LLC**  
**Profit & Loss**  
January through March 2024

	<u>Jan - Mar 24</u>
<b>Ordinary Income/Expense</b>	
Income	
Franchise Fees	150,174.54
<b>Total Income</b>	<u>150,174.54</u>
<b>Gross Profit</b>	150,174.54
Expense	
Advertising and Promotion	3,040.00
Business Licenses and Permits	9.00
Commissions Payable	67,000.00
Credit Card Fees	-253.29
Professional Fees	29,978.50
Reconciliation Discrepancies	2,164.69
Sales & Marketing Expenses	3,807.73
Subscription Expenses	8,816.51
Taxes	25.00
Travel Expenses	13,863.99
<b>Total Expense</b>	<u>128,452.13</u>
<b>Net Ordinary Income</b>	<u>21,722.41</u>
<b>Net Income</b>	<u><u>21,722.41</u></u>

## Balance Sheet

As of March 31, 2024

	Mar 31, 24
<b>ASSETS</b>	
Current Assets	
Checking/Savings	
Chase Operating	67,340.62
Total Checking/Savings	67,340.62
Other Current Assets	
Accounts Receivables	
Allowance for Doubtful accounts	-561.00
Accounts Receivables - Other	297,447.58
Total Accounts Receivables	296,886.58
Total Other Current Assets	296,886.58
Total Current Assets	364,227.20
Fixed Assets	
Accumulated Depreciation	-121.00
Furniture and Equipment	727.28
Total Fixed Assets	606.28
<b>TOTAL ASSETS</b>	<b>364,833.48</b>
<b>LIABILITIES &amp; EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts Payable	13,121.00
Total Accounts Payable	13,121.00
Credit Cards	
Amex HHBF	13,022.24
Total Credit Cards	13,022.24
Other Current Liabilities	
Deferred Franchise Fees	-670,697.69
Intercompany Due To/From	-127,790.00
Total Other Current Liabilities	542,907.69
Total Current Liabilities	569,050.93
Total Liabilities	569,050.93
Equity	
Member's Equity	-250,000.00
Members Equity	24,060.14
Net Income	21,722.41
Total Equity	-204,217.45
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>364,833.48</b>

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit D**

**List of Current and Former Franchisees**

**I. List of Current Franchisees\***

<b>Location of Franchised Restaurant**</b>	<b>Name</b>	<b>E-mail Address</b>
California	Phil Gross	phil@sesameholdings.com
Connecticut	Marc Schultz Chris Greco	marc@cam-hg.com chris.greco1@gmail.com
District of Columbia	Jean Gorospe	jean.gorospe@gmail.com
Florida	Marc Schultz Chris Greco	marc@cam-hg.com chris.greco1@gmail.com
Florida	Semi Gogliormella Jason Nardis	semi@yo-bagels.com jason@yo-bagels.com
Florida	Declan Walsh	dwalsh54@aol.com
Florida	Josh Witt	jwitt1413@aol.com
Tennessee	Diya Patel	diya02patel@gmail.com
Texas	Haziq Inayat	hqinayat@gmail.com

\* All franchisees are also multi-unit developers.

\*\* As of December 31, 2023, all franchisees were in the process of identifying locations for their first restaurants and had not yet opened for business.

**II. List of Former Franchisees**

None.

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit E**

**List of Certain State Regulatory Authorities and Registered Agents**

<b>STATE</b>	<b>AGENTS FOR SERVICE OF PROCESS</b>	<b>REGULATORY AUTHORITIES</b>
CALIFORNIA	Commissioner of Financial Protection and Innovation:  Los Angeles: 320 West 4th Street, Suite 750 Los Angeles, CA 90013-2344 (866) 275-2677  Sacramento: 2101 Arena Blvd. Sacramento, CA 95834 (866) 275-2677  San Francisco: One Sansome Street, Ste. 600 San Francisco, CA 94104-4428 (866) 275-2677  <a href="http://www.dfpi.ca.gov">www.dfpi.ca.gov</a> <a href="mailto:Ask.DFPI@dfpi.ca.gov">Ask.DFPI@dfpi.ca.gov</a>	Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West 4th Street, Suite 750 Los Angeles, CA 90013-2344 (866) 275-2677  <a href="http://www.dfpi.ca.gov">www.dfpi.ca.gov</a> <a href="mailto:Ask.DFPI@dfpi.ca.gov">Ask.DFPI@dfpi.ca.gov</a>
CONNECTICUT	Connecticut Department of Banking 260 Constitution Plaza Hartford, CT 06103-1800 (860) 240-8230	Banking Commissioner 260 Constitution Plaza Hartford, CT 06103-1800 (860) 240-8230
FLORIDA	[Not Applicable]	Senior Consumer Complaint Analyst Department of Agriculture and Consumer Services Division of Consumer Services 2005 Apalachee Pkwy. Tallahassee, Florida 32399-6500 (850)-922-2966 or (850) 488-2221
HAWAII	Commissioner of Securities Hawaii Dept. of Commerce & Consumer Affairs 335 Merchant Street, Room 205 Honolulu, HI 96813 (808) 586-2722	Business Registration Division Hawaii Dept. of Commerce & Consumer Affairs 335 Merchant Street, Room 205 Honolulu, HI 96813 (808) 586-2722



<b>STATE</b>	<b>AGENTS FOR SERVICE OF PROCESS</b>	<b>REGULATORY AUTHORITIES</b>
ILLINOIS	Illinois Attorney General Franchise Division 500 South Second Street Springfield, IL 62701 (217) 782-1090	Illinois Attorney General Franchise Division 500 South Second Street Springfield, IL 62701 (217) 782-1090
INDIANA	Secretary of State Administrative Offices of the Secretary of State Room E-111 302 West Washington Street Indianapolis, IN 46204 (317) 232-6681	Securities Commissioner Securities Division Room E-111 302 West Washington Street Indianapolis, IN 46204 (317) 232-6681
IOWA	[Not Applicable]	Director of Regulated Industries Unit Iowa Securities Bureau 340 East Maple Des Moines, Iowa 50319-0066 (515) 281-4441
MARYLAND	Maryland Securities Commissioner Securities Division 200 St. Paul Place Baltimore, MD 21202-2020 (410) 576-0368	Maryland Office of Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 (410) 576-0368
MICHIGAN	Michigan Dept. of Attorney General Consumer Protection Division Franchise Section 525 W. Ottawa Street G. Mennen Williams Bldg., 1 <sup>st</sup> Floor Lansing, MI 48913 (517) 335-7567	Franchise Administrator Michigan Dept. of Attorney General Consumer Protection Division Franchise Section 525 W. Ottawa Street G. Mennen Williams Bldg., 1 <sup>st</sup> Floor Lansing, MI 48913 (517) 335-7567
MINNESOTA	Commissioner of Commerce Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, MN 55101-2198 (651) 539-1500	Minnesota Department of Commerce 85 7 <sup>th</sup> Place East, Suite 280 St. Paul, MN 55101-2198 (651) 296-6328

<b>STATE</b>	<b>AGENTS FOR SERVICE OF PROCESS</b>	<b>REGULATORY AUTHORITIES</b>
NEBRASKA	[Not Applicable]	Staff Attorney Department of Banking and Finance Commerce Court 1200 N Street, Suite 311 PO Box 95006 Lincoln, NE 68509 (402) 471-3445
NEW YORK	Secretary of State 99 Washington Avenue Albany, NY 12231	NYS Department of Law Investor Protection Bureau 28 Liberty Street, 21st Floor New York, NY 10005 (212) 416-8222
NORTH DAKOTA	Securities Commissioner North Dakota Securities Department 600 East Boulevard Avenue State Capitol, 14th Floor, Dept. 414 Bismarck, ND 58505-0510	Franchise Examiner North Dakota Securities Department 600 East Boulevard Avenue State Capitol, 14th Floor, Dept. 414 Bismarck, ND 58505 (701) 328-4712
RHODE ISLAND	Director of Rhode Island Department of Business Regulation Division of Securities 1511 Pontiac Avenue John O. Pastore Complex – Bldg. 69-1 Cranston, RI 02920 (401) 462-9527	Associate Director and Superintendent of Securities Division of Securities 1511 Pontiac Avenue John O. Pastore Complex–Bldg. 69-1 Cranston, RI 02920 (401) 462-9527
SOUTH DAKOTA	Director of the Division of Securities Department of Labor and Regulation Division of Insurance – Securities Regulation 124 S. Euclid, Suite 104 Pierre, SD 57501 (605) 773-3563	Franchise Administrator Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, SD 57501 (605) 773-3563
TEXAS	[Not Applicable]	Secretary of State Statutory Document Section P.O. Box 12887 Austin, TX 78711 (512) 475-1769

STATE	AGENTS FOR SERVICE OF PROCESS	REGULATORY AUTHORITIES
UTAH	[Not Applicable]	Division of Consumer Protection Utah Department of Commerce 160 East Three Hundred South P.O. Box 45804 Salt Lake City, Utah 84114 (801) 530-6601
VIRGINIA	Clerk of the State Corporation Commission 1300 E. Main Street, 1st Floor Richmond, VA 23219 (804) 371-9733	State Corporation Commission Division of Securities and Retail Franchising 1300 E. Main Street, 9 <sup>th</sup> Floor Richmond, VA 23219 (804) 371-9051
WASHINGTON	Director of Department of Financial Institutions Securities Division 150 Israel Rd. SW Tumwater WA 98501 (360) 902-8760	Administrator Dept. of Financial Institutions Securities Division 150 Israel Rd. SW Tumwater WA 98501 (360) 902-8760
WISCONSIN	Wisconsin Commissioner of Securities P.O. Box 1768 345 W. Washington Avenue, 4 <sup>th</sup> Floor Madison, WI 53703 (608) 261-9555	Franchise Administrator Securities and Franchise Registration Wisconsin Securities Commission 345 W. Washington Avenue, 4 <sup>th</sup> Floor Madison, WI 53703 (608) 261-9555
FEDERAL TRADE COMMISSION		Franchise Rule Coordinator Division of Marketing Practices Bureau of Consumer Protection Pennsylvania Avenue at 6th Street, NW Washington, D.C. 20580 (202) 326-3128

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit F**

**State Addenda**

## EXHIBIT F

### **STATE LAW ADDENDA TO FRANCHISE DISCLOSURE DOCUMENT, FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT OF H&H BAGELS FRANCHISING LLC**

The following modifications are to the H&H Bagels Franchising LLC Franchise Disclosure Document and may supersede certain portions of the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_, the Development Agreement dated \_\_\_\_\_, 20\_\_\_\_, the Franchise Disclosure Questionnaire that you completed for us, and any other agreements related to the franchise relationship.

These states have statutes which may supersede the franchise agreements in your relationship with us including the areas of termination and renewal of your franchise: ARKANSAS (Stat. Section 70-807); CALIFORNIA (Bus. & Prof. Code Sections 20000-20043); CONNECTICUT (Gen. Stat. Section 42-133e et seq.); DELAWARE (Code tit. 6, Ch. 25, Sections 2551-2556); HAWAII (Rev. Stat. Section 482E-1); ILLINOIS (815 ILCS 705/1-44); INDIANA (Stat. Section 23-2-2.7 and 23-2-2.5); IOWA (Code Sections 523H.1-523H.17); MARYLAND (Maryland Franchise Registration and Disclosure Law, MD. CODE ANN., BUS. REG. Sections 14-201 to 14-233 (2010 Repl. Vol. and Supp. 2010)); MICHIGAN (Stat. Section 19.854 (27)); MINNESOTA (Stat. Section 80C.14); MISSISSIPPI (Code Section 75-24-51); MISSOURI (Stat. Section 407.400); NEBRASKA (Rev. Stat. Section 87-401); NEW JERSEY (Stat. Section 56:10-1); NORTH DAKOTA (N.D.C.C. Franchise Investment Law Section 51-19); RHODE ISLAND (19 R.I. Gen. Laws §19-28.1-14); SOUTH DAKOTA (Codified Laws Section 37-5B); VIRGINIA (§§13.1-557 through 13.1-574 of the Code of Virginia); WASHINGTON (Code Section 19.100.180); WISCONSIN (Stat. Section 135.03). These and other states may have court decisions that may supersede the franchise agreements in your relationship with the franchisor including the areas of termination and renewal of your franchise.

The following is applicable to you only if you are covered by the franchise law of the referenced state. If that law is applicable, see the last page of this Exhibit F for your signature.

### CALIFORNIA

**1. The registration of this franchise offering by the California Department of Financial Protection and Innovation does not constitute approval, recommendation, or endorsement by the Commissioner.**

2. The California Franchise Investment Law requires a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Franchise Disclosure Document.

3. Neither we, nor any person or franchise broker disclosed 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 these persons from membership in this association or exchange.

4. Item 17 of the Franchise Disclosure Document is hereby supplemented by the addition of the following language at the end of the Item:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i)

waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

5. California Business and Professions Code Sections 20000 through 20043 provide rights to you concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

6. The Franchise Agreement and Development Agreement provide for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec 101 et seq.).

7. The Franchise Agreement and Development Agreement contain a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

8. The Franchise Agreement and Development Agreement require application of the law of New York. This provision may not be enforceable under California law.

9. The Franchise Agreement and Development Agreement require you to execute a general release of claims upon renewal or transfer of the Franchise Agreement. California Corporations Code Section 31512 provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of that law or any rule or order is void. Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

10. The Franchise Agreement and Development Agreement contain a provision requiring you to waive your right to punitive or exemplary damages against the franchisor or any of its representatives, limiting your recovery to actual damages. Under California Corporations Code Section 31512, these provisions are not enforceable in California for any claims you may have under the California Franchise Investment Law.

11. Section 21.2 of the Franchise Agreement (entitled “No Warranties or Guarantees”) is hereby deleted in its entirety.

12. The first sentence of Section 24 of the Franchise Agreement is hereby deleted in its entirety and replaced with the following language:

This Agreement, the attachments hereto, and the documents referred to herein constitute the entire Agreement between Franchisor and Franchisee concerning the subject matter hereof and supersede any prior agreements.

13. The final sentence in Section 27.2 of the Franchise Agreement is hereby deleted in its entirety. For the avoidance of doubt, the deleted language reads as follows:

**NO STATEMENT WAS MADE, WHETHER ORAL, WRITTEN, OR OTHERWISE,  
THAT CONTRADICTS THE FRANCHISE DISCLOSURE DOCUMENT.**

14. Section 11.2 of the Development Agreement (entitled “No Warranties or Guarantees”) is hereby deleted in its entirety.

15. The final sentence in Section 16.1 of the Development Agreement is hereby deleted in its entirety. For the avoidance of doubt, the deleted language reads as follows:

Developer also expressly disclaims relying upon any such warranty, representation, or guarantee in connection with Developer’s independent investigation of the business contemplated hereunder.

16. The final sentence in Section 16.2 of the Development Agreement is hereby deleted in its entirety. For the avoidance of doubt, the deleted language reads as follows:

NO STATEMENT WAS MADE, WHETHER ORAL, WRITTEN, OR OTHERWISE, THAT CONTRADICTS THE FRANCHISE DISCLOSURE DOCUMENT.

17. Section 27 of the Franchise Agreement (under the heading “Acknowledgements”) and Section 16 of the Development Agreement (under the heading “Acknowledgements, Representations, and Warranties”) are hereby amended by adding the following language at the end of each section:

No statement, questionnaire, or acknowledgment signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

18. Section 31125 of the California Corporation Code requires us to give you a disclosure document, in the form and containing the information as the Commissioner may by rule or order require, before we ask you to consider a proposed material modification of your franchise agreement.

19. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

20. OUR WEB SITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEB SITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT [www.dfpi.ca.gov](http://www.dfpi.ca.gov).

## **HAWAII**

Item 17 of the Franchise Disclosure Document, Section 27 of the Franchise Agreement (under the heading “Acknowledgements”), and Section 16 of the Development Agreement (under the heading “Acknowledgements, Representations, and Warranties”) are each hereby amended by adding the following language:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## **MARYLAND**

Based upon our financial condition, the Maryland Securities Commission has imposed a fee deferral requirement. Accordingly, Item 5 of the Disclosure Document and Section 4 of the Franchise Agreement are amended to provide that all initial fees and payments will be paid by you when all of our pre-opening obligations to you are complete and the franchised restaurant is open for business. In addition, Item 5 of the Disclosure Document and Section 2 of the Development Agreement are amended to provide that all development fees and initial payments by area developers shall be deferred until the first franchise under the Development Agreement opens.

The Disclosure Document, the Franchise Agreement, and the Development Agreement are each amended to state that all representations requiring prospective franchisees to assent to a release, estoppel, or waiver of liability are not intended to nor shall they act as a release, estoppel, or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Disclosure Document and the applicable sections of the Franchise Agreement and Development Agreement are amended to state that the general release required as a condition of renewal, sale, and assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Disclosure Document and the applicable sections of the Franchise Agreement and Development Agreement are amended to state that any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise. This limitation of claims provision shall not act to reduce the three-year statute of limitations afforded to you for bringing a claim arising under the Maryland Franchise Registration and Disclosure Law.

Item 17 of the Disclosure Document and the applicable sections of the Franchise Agreement and Development Agreement are amended to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

The Franchise Disclosure Questionnaire, included in the Disclosure Document as Exhibit J, is deleted in its entirety.



Sections 27.1, 27.2, and 27.3 of the Franchise Agreement, under the heading “Acknowledgments,” are deleted in their entirety.

Sections 16.1, 16.2, and 16.5 of the Development Agreement, under the heading “Acknowledgments, Representations, and Warranties” are deleted in their entirety.

Item 17 of the Disclosure Document, Section 27 of the Franchise Agreement, and Section 16 of the Development Agreement are each amended to state that:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## **MICHIGAN**

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

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

- (a) A prohibition on your right to join an association of franchisees.
- (b) A requirement that you assent to a release, assignment, novation, waiver, or estoppel which deprives you of rights and protections provided in this act. This shall not preclude you, after entering into a Franchise Agreement, from settling any and all claims.
- (c) A provision that permits us to terminate a franchise before the expiration of its term except for good cause. Good cause shall include your failure to comply with any lawful provision of the Franchise Agreement and to cure the failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure the failure.
- (d) A provision that permits us to refuse to renew your franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration of your inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to us and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applied only if: (i) the term of the franchise is less than 5 years and (ii) you are 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 after the expiration of the franchise or you do not receive at least 6 months’ advance notice of our intent not to renew the franchise.

(e) A provision that permits us to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude you from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits us to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent us from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet our then current reasonable qualifications or standards.

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

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

(iv) You or your proposed transferee's failure to pay any sums owing to us or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

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

(i) A provision which permits us to directly or indirectly convey, assign, or otherwise transfer our obligations to fulfill contractual obligations to you unless provision has been made for providing the required contractual services.

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

**ESCROW REQUIREMENTS (IF ANY):** \_\_\_\_\_

Any questions regarding this notice should be directed to:

State of Michigan  
Department of Attorney General  
Consumer Protection Division  
Attn: Franchise Section  
525 W. Ottawa Street  
G. Mennen Williams Building, 1st Floor  
Lansing, Michigan 48933-1067  
Telephone Number: (517) 373-7117

## MINNESOTA

Minn. Stat. Sec. 80C.21 and Minn. Rule Part 2860.4400(J), may prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce (1) any of your rights as provided for in Minnesota Statutes, Chapter 80C or (2) your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

In accordance with Minn. Rule 2860.4400(J), to the extent required by Minnesota law, the Franchise Disclosure Document and Franchise Agreement are modified so that we cannot require you to waive your rights to a jury trial or to waive rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction, or to consent to liquidated damages, termination penalties, or judgment notes; provided that this part shall not bar an exclusive arbitration clause.

We will comply with Minn. Stat. Sec. 80C.14 subdivisions 3, 4, and 5, which require (except in certain specified cases) that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement; and that consent to the transfer of the franchise will not be unreasonably withheld.

Pursuant to Minn. Stat. Sec. 80C.12, Subd. 1(g), to the extent required by Minnesota law, the Franchise Agreement and Item 13 of the Franchise Disclosure Document are amended to state that we will protect your right to use the primary trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of our primary trade name.

Minn. Rule 2860.4400(D) prohibits us from requiring you to assent to a general release. The Franchise Disclosure Document and Franchise Agreement are modified accordingly, to the extent required by Minnesota law.

Any statements in the Franchise Disclosure Document and Franchise Agreement stating that we are entitled to injunctive relief are amended to read "we may seek injunctive relief"; and a court will determine if a bond is required.

Provisions in the Franchise Disclosure Document and Franchise Agreement limiting your right to file claims, that are inconsistent with Minn. Stat. Sec. 80C.17, Subd. 5, are amended to the extent required by Minnesota law.

Item 17 of the Franchise Disclosure Document, Section 27 of the Franchise Agreement (under the heading "Acknowledgements"), and Section 16 of the Development Agreement (under the heading "Acknowledgements, Representations, and Warranties") are each hereby amended by adding the following language:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## 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 E OR YOUR PUBLIC LIBRARY FOR SERVICES OR INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THIS FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND THE APPROPRIATE STATE OR PROVINCIAL AUTHORITY. THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

2. The following is added at the end of Item 3:

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

- A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.
- B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.
- C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.
- D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an

action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of the “Summary” sections of Item 17(c), titled “**Requirements for franchisee to renew or extend**,” and Item 17(m), entitled “**Conditions for franchisor approval of transfer**”:

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

4. The following language replaces the “Summary” section of Item 17(d), titled “**Termination by franchisee**”:

You may terminate the agreement on any grounds available by law.

5. The following is added to the end of the “Summary” sections of Item 17(v), titled “**Choice of forum**”, and Item 17(w), titled “**Choice of law**”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

6. The following is added at the end of Item 17:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. Receipts – Any sale made must be in compliance with § 683(8) of the Franchise Sale Act (N.Y. Gen. Bus. L. § 680 et seq.), which describes the time period a Franchise Disclosure Document (offering prospectus) must be provided to a prospective franchisee before a sale may be made. New York law requires a franchisor to provide the Franchise Disclosure Document at the earlier of the first personal meeting, ten (10) business days before the execution of the franchise or other agreement, or the payment of any consideration that relates to the franchise relationship.

## **OHIO**

In recognition of the requirements of the Ohio Business Opportunity Purchasers Protection Act, Ohio Revised Code §1334.01 et seq., the parties to the attached H&H Bagels Franchising LLC Franchise Agreement (“Franchise Agreement”) agree as follows:

1. Section 26 of the Franchise Agreement, entitled “Acknowledgements,” shall be amended by adding the following language at the end of the Section:

**You, the purchaser, may cancel this transaction at any time prior to midnight of the fifth business day after the date you sign this Agreement. See the attached notice of cancellation for an explanation of this right.**

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Ohio Business Opportunity Purchasers Protection Act, with respect to each such provision, are met independent of the Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

**[Notice of Cancellation form (in duplicate) follows]**

**Notice of Cancellation**

\_\_\_\_\_, 20 \_\_\_\_

**You may cancel this transaction, without penalty or obligation, within five business days from the above date. If you cancel, any payments made by you under the Agreement, and any negotiable instrument executed by you will be returned within ten business days following the seller’s receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this Agreement; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk. If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this Agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to H&H Bagels Franchising LLC at 109 W. 27<sup>th</sup> Street, Suite #3B, New York, NY 10001, or send a fax to H&H Bagels Franchising LLC at \_\_\_\_\_, or an e-mail to H&H Bagels Franchising LLC at \_\_\_\_\_, not later than midnight of \_\_\_\_\_, 20 \_\_\_\_.**

**I hereby cancel this transaction.**

\_\_\_\_\_, 20 \_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Purchaser’s signature)**

\_\_\_\_\_  
**(Print name)**

**Notice of Cancellation**

\_\_\_\_\_, 20 \_\_\_\_

**You may cancel this transaction, without penalty or obligation, within five business days from the above date. If you cancel, any payments made by you under the Agreement, and any negotiable instrument executed by you will be returned within ten business days following the seller’s receipt of your cancellation notice, and any security interest arising out of the transaction will be cancelled. If you cancel, you must make available to the seller at your business address all goods delivered to you under this Agreement; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller’s expense and risk. If you do make the goods available to the seller and the seller does not pick them up within twenty days of the date of your notice of cancellation, you may retain or dispose of them without further obligation. If you fail to make the goods available to the seller, or if you agree to return them to the seller and fail to do so, then you remain liable for the performance of all obligations under this Agreement. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to H&H Bagels Franchising LLC at 109 W. 27<sup>th</sup> Street, Suite #3B, New York, NY 10001, or send a fax to H&H Bagels Franchising LLC at \_\_\_\_\_, or an e-mail to H&H Bagels Franchising \_\_\_\_\_, not later than midnight of \_\_\_\_\_, 20 \_\_\_\_.**

**I hereby cancel this transaction.**

\_\_\_\_\_, 20 \_\_\_\_  
**(Date)**

\_\_\_\_\_  
**(Purchaser’s signature)**

\_\_\_\_\_  
**(Print name)**



## **RHODE ISLAND**

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this act.” The Franchise Disclosure Document, Franchise Agreement, and Development Agreement are amended accordingly to the extent required by law.

Item 17 of the Franchise Disclosure Document, Section 27 of the Franchise Agreement (under the heading “Acknowledgements”), and Section 16 of the Development Agreement (under the heading “Acknowledgements, Representations, and Warranties”) are each hereby amended by adding the following language:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## **VIRGINIA**

1. In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document shall be amended by adding the following statement to Item 17(h):

Under 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 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.

2. Item 17 of the Franchise Disclosure Document, Section 27 of the Franchise Agreement (under the heading “Acknowledgements”), and Section 16 of the Development Agreement (under the heading “Acknowledgements, Representations, and Warranties”) are each hereby amended by adding the following language:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

## WASHINGTON

1. Based upon our financial condition, the Washington Securities Division has imposed a fee deferral requirement. Accordingly, Item 5 of the Disclosure Document and Section 4.1 of the Franchise Agreement are amended to provide that payment of all initial franchise fees will be deferred until we have fulfilled our pre-opening obligations to you and the franchised restaurant is open for business. In addition, Item 5 of the Disclosure Document and Section 2 of the Development Agreement are amended to provide that the portion of the development fee attributable to each restaurant will be payable when that restaurant opens for business, and we have fulfilled our pre-opening obligations to you.

2. The “Special Risks to Consider About *This Franchise*” page is amended by adding the following risk factor:

5. **Use of Franchise Brokers.** The franchisor uses the services of franchise brokers to assist it in selling franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. Do not rely only on the information provided by a franchise broker about a franchise. Do your own investigation by contacting the franchisor’s current and former franchisees to ask them about their experience with the franchisor.

3. Notwithstanding anything to the contrary in Item 6 of the Franchise Disclosure Document or Section 14.9 of the Franchise Agreement, in the event you choose to offer to the public securities or partnership interests in the franchisee entity, the fee you must pay us under Section 14.9 of the Franchise Agreement will be limited to the amount necessary to reimburse us for our reasonable costs and expenses associated with reviewing the proposed offering.

3. Section 21.2 of the Franchise Agreement is hereby deleted in its entirety and replaced with the following language:

21.2 **No Warranties or Guarantees.** Franchisor makes no warranties or guarantees, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

4. Section 11.2 of the Development Agreement is hereby deleted in its entirety and replaced with the following language:

11.2 **No Warranties or Guarantees.** Franchisor makes no warranties or guarantees, and assumes no liability or obligation to Developer, by providing any waiver, approval, advice, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

5. The final sentence in Section 16.1 of the Development Agreement is hereby deleted in its entirety. For the avoidance of doubt, the deleted language reads as follows:

Developer also expressly disclaims relying upon any such warranty, representation, or guarantee in connection with Developer’s independent investigation of the business contemplated hereunder.

6. Item 17 of the Franchise Disclosure Document, Section 27 of the Franchise Agreement (under the heading “Acknowledgements”), and Section 16 of the Development Agreement (under the heading “Acknowledgements, Representations, and Warranties”) are each hereby amended by adding the following language:

No statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

7. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

8. RCW 19.100.180 may supersede the Franchise Agreement and Development Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement and Development Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

9. 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.

10. 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.

11. Transfer fees are collectible to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer, to the extent required by Washington law.

12. 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, Development Agreement, or elsewhere that conflict with these limitations are void and unenforceable in Washington.

13. 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, Development Agreement, or elsewhere are void and unenforceable in Washington.

**[Acknowledgment Page Follows]**

**ACKNOWLEDGMENT:**

If any one of the preceding Addenda for specific states (each an “Addendum”) is checked as an “Applicable Addenda” below, then that Addendum shall be incorporated into the Franchise Disclosure Document; the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_; the Development Agreement dated \_\_\_\_\_, 20\_\_\_\_; and any other specified agreement(s) entered into by us and the undersigned Franchisee. To the extent any terms of the Applicable Addenda conflict with the terms of the Franchise Disclosure Document, Franchise Agreement, Development Agreement, or other specified agreement(s), the terms of the Applicable Addenda shall control.

**Applicable Addenda:**

- |                          |            |                          |           |                          |              |
|--------------------------|------------|--------------------------|-----------|--------------------------|--------------|
| <input type="checkbox"/> | California | <input type="checkbox"/> | Minnesota | <input type="checkbox"/> | Rhode Island |
| <input type="checkbox"/> | Hawaii     | <input type="checkbox"/> | New York  | <input type="checkbox"/> | Virginia     |
| <input type="checkbox"/> | Maryland   | <input type="checkbox"/> | Ohio      | <input type="checkbox"/> | Washington   |
| <input type="checkbox"/> | Michigan   |                          |           |                          |              |

**H&H BAGELS FRANCHISING LLC**

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

**FRANCHISEE**

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

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

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

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

**(MUST BE SIGNED BY ALL OWNERS AND MANAGERS OF AN ENTITY FRANCHISEE)**

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit G**

**Conditional Assignment of Telephone and Directory Listings**

**H&H BAGELS FRANCHISING**

**CONDITIONAL ASSIGNMENT OF TELEPHONE AND DIRECTORY LISTINGS**

In consideration of H&H Bagels Franchising LLC (“Assignee”) concurrently granting a H&H Bagels franchise (“Franchised Business”) to \_\_\_\_\_ (“Assignor”), and other valuable consideration, Assignor assigns to Assignee all telephone numbers, directory listings, fax numbers, Internet Web site addresses and domain names, and other listings, whether in electronic or other media, used or to be used by Assignor in the operation of the Franchised Business. Assignee assumes the performance of all of the terms, covenants, and conditions of the telephone or directory company with respect to these listings with the same force and effect as if they had been originally issued to Assignee. This Assignment is valid on the effective date and is irrevocable. Assignee may fill in, add or change the effective date and the listings at any time. The telephone or directory company is authorized to rely on this Assignment. The parties will hold harmless and indemnify the telephone or directory company from any claims based on reliance on this Assignment.

Effective Date: \_\_\_\_\_, 20\_\_\_\_

**ASSIGNOR:**

**ASSIGNEE:**

\_\_\_\_\_

H&H Bagels Franchising LLC

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

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

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

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

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit H**

**Sample General Release**



**EXHIBIT H**

**SAMPLE MUTUAL GENERAL RELEASE**

[may be signed as a part of a transfer or renewal agreement – actual language may vary]

We, and our owners, successors, representatives, assigns and affiliates, release and forever discharge you, any Guarantors, and their owners, successors, representatives, assigns, and affiliates, of and from any and all obligations, liabilities, losses, damages, claims, actions, suits, proceedings, investigations, demands, assessments, judgments, costs, and causes of action, whether known or unknown, which we now have, or at any time have had, or may at any time have, arising prior to and including the date of this [renewal][transfer], except as otherwise stated in this [renewal][transfer].

You, any Guarantors, and each of them, for themselves, their owners, successors, representatives, assigns, and affiliates, release and forever discharge us and our owners, successors, representatives, assigns, affiliates, officers, managers, employees and agents, of and from any and all obligations, liabilities, losses, damages, claims, actions, suits, proceedings, investigations, demands, assessments, judgments, costs, and causes of action, whether known or unknown, which you or any Guarantors now have, or at any time have had, or may at any time have, arising prior to and including the date of this [renewal][transfer], except as otherwise stated in this [renewal][transfer]. This Release shall not apply to any claims arising under the Washington Franchise Investment Protection Act (RCW 19.100) and the rules adopted thereunder. You and any Guarantors represent that no third party claims an interest in any claim released by this Release.

All parties to this Release expressly agree to execution of this Release by electronic means and that such execution shall be legally binding and enforceable as an “electronic signature” and the legal equivalent of a handwritten signature.

Dated: \_\_\_\_\_, 20\_\_\_\_

Franchisor: \_\_\_\_\_

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

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

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

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

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

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit I**

**Table of Contents of Manuals**

**Brand Manual**

Chapter Title	Number of Pages
Preface and Introduction	15
Approved & Required Offerings	10
Financial Management	7
Customer Service & Quality Management	10
Operational Brand Standards	10
Safety and Security	8
Sample Employment Information	15
Marketing	20
Sales	10
<b>Total Pages</b>	<b>105</b>

**Start Up Manual**

Chapter Title	Number of Pages
Site Selection	7
Signage	7
Federal, State, and Local Regulations	3
Administrative Preparation	13
From Lease Signing To Opening	15
Appendix	15
<b>Total Pages</b>	<b>60</b>

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit J**

**Franchise Disclosure Questionnaire**

**EXHIBIT J**

**FRANCHISE DISCLOSURE QUESTIONNAIRE**

As you know, H&H Bagels Franchising LLC (“we,” “us” or “Franchisor”) and you are preparing to enter into a Franchise Agreement for the operation of an H&H Bagels franchised business (“Franchised Business”). Please review each of the following questions carefully and provide honest and complete responses to each question. (Note: Do not sign this Questionnaire if you are a resident of Maryland or the Franchised Business is to be operated in Maryland.)

1. Have you received and personally reviewed our Franchise Agreement and each exhibit and schedule attached to it?

Yes \_\_\_\_ No \_\_\_\_ Your Initials: \_\_\_\_\_

2. Do you understand all of the information contained in the Franchise Agreement and each exhibit and schedule attached to it?

Yes \_\_\_\_ No \_\_\_\_ Your Initials: \_\_\_\_\_

If “No,” what parts of the Franchise Agreement do you not understand? (Attach additional pages, if necessary)

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3. Have you received and personally reviewed the Disclosure Document we provided to you?

Yes \_\_\_\_ No \_\_\_\_ Your Initials: \_\_\_\_\_

**[Remainder of Page Intentionally Left Blank]**

4. Do you understand all of the information contained in the Disclosure Document?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

If “No”, what parts of the Disclosure Document do you not understand? (Attach additional pages, if necessary)

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5. Have you discussed the benefits and risks of operating a Franchised Business with an attorney, accountant or other professional advisor and do you understand those risks?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

6. Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a Franchised Business operated by us or our franchisees other than what is specifically described in Item 19 of the Disclosure Document?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

7. Has any employee or other person speaking on our behalf made any statement or promise concerning the Franchised Business that is contrary to, or different from, the information contained in the Disclosure Document?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

8. Has any employee or other person speaking on our behalf made any statement or promise regarding the amount of money you may earn in operating a Franchised Business?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

9. Has any employee or other person speaking on our behalf made any statement or promise concerning the total amount of revenue a Franchised Business will generate?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

10. Has any employee or other person speaking on our behalf made any statement or promise regarding the costs you may incur in operating a Franchised Business that is contrary to, or different from, the information contained in the Disclosure Document?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

11. Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Franchised Business?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

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

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

13. If you have answered “Yes” to any of questions six (6) through twelve (12), please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered “No” to each of such questions, please leave the following lines blank.

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14. Do you understand that in all dealings with you, our officers, directors, employees and agents act only in a representative capacity and not in an individual capacity and such dealings are solely between you and the Franchisor?

Yes \_\_\_ No \_\_\_ Your Initials: \_\_\_\_\_

**[Remainder of Page Intentionally Left Blank]**

This Questionnaire: (i) does not waive any liability arising under the Washington Franchise Investment Protection Act (RCW 19.100) and the rules adopted thereunder; and (ii) is not to be signed or used if you reside in Washington or if the Franchised Business will be located in Washington.

For the avoidance of doubt, no statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

You understand that your answers are important to us, and we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. You expressly agree to execution of this Questionnaire by electronic means and that such execution shall be the legal equivalent of your handwritten signature.

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FRANCHISE APPLICANT

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Print Name

Date: \_\_\_\_\_, 20\_\_

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FRANCHISE APPLICANT

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Print Name

Date: \_\_\_\_\_, 20\_\_

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit K**

**Acknowledgment of Receipt of Completed Agreements**



## **EXHIBIT K**

### **ACKNOWLEDGMENT OF RECEIPT OF COMPLETED AGREEMENTS**

The undersigned, personally and as an officer of or manager in the proposed franchisee, if applicable, does hereby acknowledge receipt of the following agreements:

- Exhibit A Franchise Agreement
- Exhibit B Development Agreement
- Exhibit F State Addenda
- Exhibit G Conditional Assignment of Telephone and Directory Listings
- Exhibit H Sample General Release
- Exhibit J Franchise Disclosure Questionnaire
- Exhibit K Acknowledgment of Receipt of Completed Agreements
- Exhibit M Receipt of Disclosure Document

with all blanks completely filled in and any and all exhibits or addenda in the completed form in which they are intended to be executed by the undersigned. (Note: This receipt must be signed and dated at seven calendar days (or longer in some states) before the undersigned executes the Franchise Agreement and related agreements. Do not sign and return documents until at least seven calendar days (or longer in some states) have elapsed from the date of this Acknowledgment of Receipt.)

I acknowledge that I should review all such documents personally or have my attorney or other advisor review such documents so that I am fully familiar with the franchise and documents prior to signing them or paying any money.

I hereby agree that all information and materials given to me will be used only in conjunction with my consideration of the franchise. All such information and materials shall not be disseminated other than to my advisors, and will be returned to H&H Bagels Franchising LLC promptly if I decide not to purchase an H&H Bagels franchise.

For the avoidance of doubt, no statement, questionnaire, or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of (i) waiving any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**[Signature Page Follows]**

DATE I RECEIVED THE COMPLETED AGREEMENTS: \_\_\_\_\_, 20\_\_.

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

\_\_\_\_\_  
NAME (Please print)

\_\_\_\_\_  
NAME (Please print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

(Attach additional signatures if necessary. If franchise is to be owned jointly or as community property by husband and wife, both must review all documents and sign. All partners of a partnership franchisee and the shareholders of a corporate franchise must review all documents and sign individually and on behalf of the entity.)

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit L**

**State Effective Dates**

## State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the states, 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	<i>Pending</i>
Hawaii	<i>Pending</i>
Indiana	<i>Pending</i>
Maryland	<i>Pending</i>
Michigan	<i>Pending</i>
Minnesota	<i>Pending</i>
New York	<i>Pending</i>
Rhode Island	<i>Pending</i>
Virginia	<i>Pending</i>
Washington	<i>Pending</i>
Wisconsin	<i>Pending</i>

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.

**H&H Bagels Franchising LLC  
Franchise Disclosure Document**

**Exhibit M**

**Receipt of Disclosure Document**

**Receipt**  
**(Our Copy)**

This disclosure document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If H&H Bagels Franchising LLC offers you a franchise, H&H Bagels Franchising LLC must provide this disclosure document to you at least 14 calendar days (or longer in some states) before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

New York and Rhode Island require that H&H Bagels Franchising LLC 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.

Michigan also requires that H&H Bagels Franchising LLC 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.

If H&H Bagels 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 to the relevant state agency listed in Exhibit E.

Our franchise seller is Michael Wharry, whose address and phone number is 109 W. 27th Street, Suite #3B, New York, NY 10001, (646) 669-9165. In certain regions, H&H Bagels Group may be authorized to act as a franchise broker on our behalf (if so, its address and phone number is 109 W. 27th Street, Suite #3B, New York, NY 10001, 646-669-9165) or we may use a franchisee referral source (if so, the name, address, and phone number of that person is: \_\_\_\_\_).

Issuance Date: May 13, 2024

Exhibit E is a list of H&H Bagels Franchising LLC's registered agents authorized to receive service of process.

I received the disclosure document dated May 13, 2024 that included the following Exhibits:

- Exhibit A Franchise Agreement
- Exhibit B Development Agreement
- Exhibit C Financial Statements
- Exhibit D List of Current and Former Franchisees
- Exhibit E List of Certain State Regulatory Authorities and Registered Agents
- Exhibit F State Addenda
- Exhibit G Conditional Assignment of Telephone and Directory Listings
- Exhibit H Sample General Release
- Exhibit I Table of Contents of Manuals
- Exhibit J Franchise Disclosure Questionnaire

- Exhibit K Acknowledgment of Receipt of Completed Agreements
- Exhibit L State Effective Dates
- Exhibit M Receipt of Disclosure Document

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

\_\_\_\_\_  
 NAME (Please print)

\_\_\_\_\_  
 NAME (Please print)

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 Address

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 Address

SIGNED: \_\_\_\_\_

SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

\_\_\_\_\_  
 NAME (Please print)

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 NAME (Please print)

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Address

Please sign and date this Receipt (with the date that you received the disclosure document). All owners of an entity franchisee, or two authorized officers, must review all documents and sign individually and on behalf of any legal entity. Attach additional signatures or use additional receipts if necessary.

**RETURN THIS COPY TO US**  
 H&H Bagels Franchising LLC  
 109 W. 27th Street, Suite #3B  
 New York, NY 10001

**Receipt**  
**(Your Copy)**

This disclosure document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If H&H Bagels Franchising LLC offers you a franchise, H&H Bagels Franchising LLC must provide this disclosure document to you at least 14 calendar days (or longer in some states) before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

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Issuance Date: May 13, 2024

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- Exhibit L State Effective Dates
- Exhibit M Receipt of Disclosure Document

SIGNED: \_\_\_\_\_

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Please sign and date this Receipt (with the date that you received the disclosure document). All owners of an entity franchisee, or two authorized officers, must review all documents and sign individually and on behalf of any legal entity. Attach additional signatures or use additional receipts if necessary.

**KEEP THIS COPY FOR YOUR RECORDS**