

## FRANCHISE DISCLOSURE DOCUMENT



Fourth Avenue Restaurant Group, LLC  
a Florida limited liability company  
200 2<sup>nd</sup> Ave. South, #464.  
St. Petersburg, Florida 33701  
(800) 656-0779  
[franchise@smokinoakpizza.com](mailto:franchise@smokinoakpizza.com)  
[www.smokinoakpizza.com](http://www.smokinoakpizza.com)

Franchisor franchises the right to operate a “Smokin’ Oak Wood-Fired Pizza” restaurant that (a) offers wood-fired pizza and other menu items primarily baked in a wood-fired oven, along with beverage items for dine-in or takeout, and (b) operates using certain proprietary marks and a business operations system developed and designated by franchisor (each, a “Restaurant,” “Business,” or “Franchised Business”).

The total estimated initial investment necessary to begin operation of a traditional Smokin’ Oak Wood-Fired Pizza restaurant ranges from \$254,000 to \$682,800, which includes between \$17,000 and \$57,500 that you must pay to franchisor or its affiliates prior to opening.

The total estimated initial investment necessary to begin operation of a takeout and delivery model Smokin’ Oak Wood-Fired Pizza restaurant ranges from \$193,000 to \$682,800, which includes between \$17,000 and \$57,500 that you must pay to franchisor or its affiliates prior to opening.

Franchisor also offers qualified parties the right to open and operate multiple businesses in accordance with a development schedule the parties agree to under Franchisor’s form of development agreement. The total investment necessary to begin operations under a development agreement will depend on the number of businesses we grant you the right to open. By way of example, the total investment necessary to begin operations under a development agreement for the right to open and operate three (3) traditional businesses ranges from \$357,500 to \$751,800, which includes \$118,500 that must be paid to the franchisor or its affiliates prior to opening. The total investment necessary to begin operations under a development agreement for the right to open and operate three takeout and delivery model businesses ranges from \$296,500 to \$751,800. These estimates include the appropriate development fee you must pay to franchisor upon execution of the development agreement, as well as the total estimated initial investment to open and commence operations of your first business.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact us at 200 2nd Ave. South, #464, St. Petersburg, Florida 33701, Attn: Matt Mongoven, via telephone at (800) 656-0779 or by emailing

[franchise@smokinoakpizza.com](mailto:franchise@smokinoakpizza.com).

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

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

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

The Issuance Date of this Franchise Disclosure Document ("FDD") is: August 16, 2021.

## How to Use This Franchise Disclosure Document

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

<b>QUESTION</b>	<b>WHERE TO FIND INFORMATION</b>
<b>How much can I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 or Exhibit H.
<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 Smokin' Oak Wood-Fired Pizza business in my area?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchise have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.
<b>What's it like to be a Smokin' Oak Wood-Fired Pizza franchisee?</b>	Item 20 or Exhibit H 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 that franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit A.

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

## Special Risks to Consider About *This* Franchise

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

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

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

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## EXHIBITS

- Exhibit A – List of State Administrators and Agents for Service of Process
- Exhibit B – Table of Contents of Operations Manual
- Exhibit C – Financial Statements
- Exhibit D – Franchise Agreement
- Exhibit E – Development Agreement
- Exhibit F – Sample Termination and Release Agreement
- Exhibit G – State Specific Addenda
- Exhibit H – List of Franchisees/List of Franchisees Who Have Left the System
- Exhibit I – State Effective Dates
- Exhibit J – Receipts

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

Company

To simplify the language in this Franchise Disclosure Document, “Company,” “Franchisor,” “we” or “us” means Fourth Avenue Restaurant Group, LLC, the franchisor of this business. “You” means the person who buys the franchise and includes your owners and principals if you are a corporation or other business entity.

Company’s Business Activities and the Franchise Offered under Franchise Agreement

We are a Florida limited liability company formed on November 19, 2015. Our principal business address is 200 2nd Ave. South, #464, St. Petersburg, Florida 33701 and our telephone number is (800) 656-0779. We do business under our corporate name Fourth Avenue Restaurant Group, LLC, the name “Smokin’ Oak Wood-Fired Pizza,” and the name Smokin Oak’ Wood-Fired Pizza & Taproom .

We grant franchises for the establishment, development, and operation of businesses offering wood-fired pizza and other menu items primarily baked in a wood-fired oven, and related and beverage items for (a) dine-in or takeout under our traditional restaurant model, or (b) takeout and delivery only under our takeout and delivery model, both of which utilize the “Smokin’ Oak Wood-Fired Pizza” name and mark (each, a “Restaurant,” “Franchised Business,” or “Business”). We do not currently operate any businesses that are of the type being franchised under this document.

If you currently own and operate a business similar to the type of business engaged by our Franchised Businesses, and you desire to convert your business to a Franchised Business (a “Conversion Franchisee”), you must sign the Conversion Addendum attached to the Franchise Agreement as Exhibit H. We do not engage in any other business activities, and do not offer franchises in any other line of business.

Each Franchised Business operates pursuant to our proprietary operating system, the characteristics of which include: (a) proprietary standards and specifications for food preparation and service; (b) interior and exterior designs, décor, and color schemes; (c) standards and specifications for the furniture, fixtures, and equipment necessary to operate a Franchised Business; (d) sales techniques, and merchandising, marketing, advertising, and inventory management systems; and (e) standardized procedures for operating and managing a Franchised Business (collectively, the “System”). Likewise, each Franchised Business operates in accordance with our information, know how, information, trade secrets and methods that we set forth in our confidential operations manual and other proprietary manuals we make available to you (collectively, the “Manuals”).

We identify the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited to, the mark “SMOKIN’ OAK WOOD-FIRED PIZZA”, distinctive trade dress, and any other trade names, trademarks, and service marks we may now or in the future designate in writing for use in connection with the System (collectively, the “Proprietary Marks”). We continue to develop, use, and control the Proprietary Marks in order to identify for the public the source of products and services marketed under the System, and to represent the System’s high standards of quality, appearance, and service.

You will operate your Franchised Business pursuant to our current form of Franchise Agreement, which

is attached to this Disclosure Document as Exhibit D. Under the Franchise Agreement, you are granted the right and obligation to open and operate a Franchised Business at a certain approved location (“Approved Location”) within a certain designated territory (“Territory”).

### Development Agreement

We also offer qualified individuals and entities the right to open and operate three (3) or more Franchised Businesses within a designated geographical area (the “Development Area”) under our current form of area development agreement that is attached to this Disclosure Document as Exhibit E (the “Development Agreement”), which will also outline a schedule or defined period of time in which you must open and commence operating each Franchised Business (a “Development Schedule”).

If we grant you the right to open multiple Franchised Businesses under a Development Agreement, you must execute a Franchise Agreement for the first Franchised Business that we grant you (the “Initial Franchised Business”) at the same time you execute your Development Agreement. You will also need to execute our then-current form of Franchise Agreement for each subsequent Franchised Business you open under the Development Schedule (each, an “Additional Franchised Business”).

You must pay us a one-time Development Fee upon executing your Development Agreement. The Development Fee will depend on the number of Franchised Businesses we grant you the right to open within the Development Area, and can be calculated as follows: (i) \$49,500 for the Initial Franchised Business that we will grant you the right to open and operate under the Development Agreement; plus (ii) \$39,500 for the second Franchised Business that we grant you right to open and operate; and (iii) \$29,500 for the third and each subsequent Additional Franchised Business thereafter.

### Parents, Predecessors and Affiliates

Our affiliate, Henry Wellington of Bloomington, Inc. owns the Business System and licenses to us the right to sublicense our Franchisees the right to use the Business System in connection with the offer and sale of Franchises and Area Development Rights. Henry Wellington of Bloomington, Inc. was incorporated on February 9, 2009. Henry Wellington of Bloomington, Inc. maintains its principal business address at 3932 Marketplace Drive NW, Rochester, MN 55901. Henry Wellington of Bloomington, Inc. has conducted a business of the type you will operate for 10 years but under a different trade name. Henry Wellington of Bloomington, Inc. has not offered franchises in any line of business.

Except as outlined above, none of our affiliates offer franchises in this line or any line of business or provide goods or services to franchisees.

Other than as disclosed above, we have no parents, predecessors, or additional affiliates that offer franchises in this line or any line of business or that provide goods or services to franchisees.

### Market and Competition

Your Franchised Business will offer its products to the general public, and sales are not seasonal, other than any seasonality resulting from the site’s physical and geographical location. The Franchised Business will compete primarily with local, regional, and national restaurants offering wood-fired pizza and other related menu



items, as well as other fast food and sit-down restaurants.

The pizza industry is mature and highly competitive. Your competitive advantage in the marketplace will be based on your adherence to our standards and guidelines, as well as your entrepreneurial and managerial abilities and focus on customer service.

### Industry Specific Regulations

Your Franchised Business will be subject to laws and regulations in your state, county, or municipality regarding the operation of a restaurant, including laws and regulations relating to the preparation and dispensation of food products, occupational hazards and health laws, sanitation laws, and consumer protection laws.

You will also be subject to laws or regulations that are not specific to the fast-casual dining industry, but applicable to businesses in general, including zoning laws, labor laws and the Fair Labor Standards Act, workers' compensation laws, business licensing laws, tax regulations, and the Americans with Disabilities Act.

We have not investigated the laws or regulations applicable to your Franchised Business. You are solely responsible for investigating all applicable federal, state, and local laws and regulations, and your cost to comply with such laws and regulations, and you should do so before purchasing a franchise from us. We strongly suggest that you consult with an attorney, consultant and/or financial advisor regarding such regulations prior to purchasing a franchise from us. Applicable laws and regulations are subject to change.

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

### Matt Mongoven: General Manager and Chief Executive Officer

Matt has served as our General Manager and Chief Executive Officer since our inception in November 2015. Matt previously served as the Managing Director of Bray Place Limited, a financial services consulting firm located in St. Petersburg, FL and London, England, from June 2011 to November 2015.

### Linda Black: Member and President/Chief Operations Officer

Linda has served as our Member and President/Chief Operations Officer since our inception in November 2015. Robin also has served as President and CEO of Henry Wellington of Bloomington, Inc. in Rochester, Minnesota since February 2009.

### Mike Currie: Senior Advisor

Mike has served as our Senior Advisor since our inception in November 2015. Mike has also served as the Owner and Strategic Advisor of Folden Farms, LLC in Rochester, Minnesota since July 2008.

## **ITEM 3** **LITIGATION**

No litigation is required to be disclosed in this Item.

**ITEM 4**  
**BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**ITEM 5**  
**INITIAL FEES**

Initial Franchise Fee (Traditional Model and Delivery/Takeout Only Model)

You must pay us a \$49,500 initial franchise fee when you sign the Franchise Agreement for a Franchised Business. If you currently own and operate a business similar to the type of business engaged by our Franchised Businesses, and you desire to convert your business to a Franchised Business (a “Conversion Franchisee”) you must pay us a \$15,000 initial franchise fee (the “Initial Franchise Fee”). Except as set forth above, the Initial Franchise Fee is uniform to all franchisees and deemed fully earned and nonrefundable upon payment.

Training, Lodging, Meals, Etc. for Initial Training (Traditional and Delivery/Takeout Only Model)

You must reimburse us for our costs to travel to your Franchised Business and provide the Initial Training Program to you. We estimate these costs to be between \$2,000 to \$8,000, which will cover our travel, lodging, meals, etc. during the Initial Training Program.

Veteran’s Discount

If you are a veteran that qualifies for the VetFran Program, we will proudly offer you a 10% discount on the Initial Franchise Fee you are required to pay in connection with the first Franchise Agreement you enter into with us to operate a single Franchised Business (meaning your reduced Initial Franchise Fee will be \$44,550).

Development Agreement

*Development Fee*

If we grant you the right to open multiple Franchised Businesses under a Development Agreement, you must pay us a one-time Development Fee upon executing your Development Agreement. The Development Fee will depend on the number of Franchised Businesses we grant you the right to open within the Development Area, and can be calculated as follows: (i) \$49,500 for the Initial Franchised Business that we will grant you the right to open and operate under the Development Agreement; plus (ii) \$39,500 for the second Franchised Business that we grant you right to open and operate; and (iii) \$29,500 for the third and each subsequent Additional Franchised Business thereafter.

The Development Fee is deemed fully earned upon execution of your Development Agreement, and will not be refundable under any circumstances. The Development Fees described above are calculated and imposed uniformly to all of our franchisees.

**ITEM 6  
OTHER FEES**

<b>TYPE OF FEE</b>	<b>AMOUNT</b>	<b>DUE DATE</b>	<b>REMARKS</b>
Royalty Fee	Six percent (6%) of your Net Sales	Paid to us on each Wednesday for the preceding week ending on Sunday via EFT	See Notes 1 and 2 below
Brand Fund Contribution	Two percent (2%) of your weekly Net Sales.	Weekly, at the same time and in the same manner as the Royalty Fee	See Note 3 below
Co-op Advertising	If established, up to two percent (2%) of your monthly Net Sales.	As the co-op determines, if established	See Note 4 below
Local Advertising Requirement	Two percent (2%) of your weekly Net Sales	As agreed upon with third parties.	See Note 5 below
Testing or Supplier Approval Fee	Actual costs and expenses incurred in testing. (estimated to be \$200 to \$1,000)	Upon request	See Note 6 below
Training, Assistance or Refresher Training	Our then-current training tuition fee (the "Tuition Fee"). Currently, \$500 per day if conducted at our training center, or \$750 per day plus all costs and expenses if conducted at your Restaurant.	As incurred.	See Note 7 below
Insurance	Cost to obtain and maintain required insurance under the Franchise Agreement, plus an administrative fee of 15% (if we are forced to obtain the required insurance for you on your behalf).	As incurred.	See Note 8 below
Mystery Shopper Fee	\$50 to \$100 (plus cost of Food purchases)	Immediately upon receipt of invoice	Our inspections and evaluations may include a "mystery shopper" program from time to time. We hire various suppliers who send the "mystery shoppers" into the Franchised Businesses. We may

TYPE OF FEE	AMOUNT	DUE DATE	REMARKS
			elect to charge you a fee for Mystery Shoppers conducted at your Franchised Business at our sole discretion.
Audit Costs	Actual costs of audit. (estimated to range from \$2,000 to \$10,000)	Upon receipt of bill.	See Note 9 below
Deficiencies	Actual cost to us plus a 15% Administrative fee	Immediately upon receipt of invoice	If you do not satisfy your obligations under the Franchise Agreement, we may perform your obligations for you. You must reimburse us for our costs in performing your obligations plus a 15% administrative fee.
Management Fee	\$1,000 per week plus 10% of Net Sales	Monthly	If we elect to operate your Franchised Business, we will account to you or your estate for all net income from the operation less our reasonable expenses incurred and a management fee for our management of your Franchised Business. Our operation and management will not continue for more than 30 days, but be renewable as necessary for up to 1 year.
Attorney Fees and Costs	Reimbursement of our actual fees and costs.	As incurred.	See Note 10 below
Renewal Fee	10% of the then-current Initial Franchise Fee	Upon signing new franchise agreement.	See Note 11 below
Transfer Fee	The greater of (i) \$15,000, or (ii) 50% of the then-current Initial Franchise Fee.	Prior to the time of the transfer.	See Note 12 below

<b>TYPE OF FEE</b>	<b>AMOUNT</b>	<b>DUE DATE</b>	<b>REMARKS</b>
Relocation Fee	Our costs incurred in assisting you with relocation plus a 15% administrative fee based on our actual costs (but not to exceed \$5,000)	When incurred.	If you must relocate your Franchised Business, you will reimburse us for our costs incurred in assisting you with relocation plus a 15% administrative fee.
Fee for Lost Operation & Policies Manual (hard copy)	\$500	Immediately upon receipt of invoice	Upon the theft, loss or destruction of any of the Operation & Policies Manual, we will loan you a replacement copy. We consider a partial loss or failure to update any of the Operation & Policies Manual as a complete loss.
Late Payment	\$100 plus the lesser of: (i) 18% per annum; or (ii) the maximum rate of interest permitted by law.	Immediately upon receipt of invoice	See Note 13 below
Insufficient Funds Charges	The greater of (i) \$50, or (ii) 5% of the face value of the check.	Immediately upon receipt of invoice	If you deliver a check which is returned due to insufficient funds or is otherwise not paid, we may assess you a service charge of \$50 or 5% of the face value of the check, whichever is greater, limited to the highest amount permitted by law.
Indemnification	Actual costs of indemnification.	When incurred.	See Note 14 below
Enforcement Costs	Actual cost to us	Immediately upon receipt of invoice	If any arbitration, legal action or other proceeding is begun for the enforcement of your Franchise Agreement, or for an alleged dispute, breach, default or misrepresentation under any provision of your Franchise Agreement, the prevailing party is entitled to recover reasonable pre-institution and post-institution attorneys' fees, court costs and all expenses even if not taxable as court costs. If we engage legal counsel for your failure to pay when due any monies owed under your

TYPE OF FEE	AMOUNT	DUE DATE	REMARKS
			Franchise Agreement or submit when due any reports, information or supporting records, or for any failure otherwise to comply with your Franchise Agreement, you must reimburse us for all of the Enforcement Costs we incur.

**Explanatory Notes**

1. General. The table above provides recurring or isolated fees or payments that you must pay to us or our affiliates or that we or our affiliates impose or collect in whole or in part on behalf of a third party or that you are required to spend by the Franchise Agreement. All fees and expenses described in this Item 6 are nonrefundable. Except as otherwise indicated in the chart above, we uniformly impose all fees and expenses listed and they are payable to us and are fully earned upon receipt by us.
  
2. Royalty.
  - a. *Net Sales*. “Net Sales” are defined to include all income of any type or nature and from any source that you derive or receive directly or indirectly from, through, by or on account of the operation of the Business at any time after the signing of your Franchise Agreement, in whatever form and from whatever source, including but not limited to cash, services, in kind from barter and/or exchange, on credit or otherwise as well as business interruption insurance proceeds, all without deduction for expenses including marketing expenses and taxes. However, the definition of Net Sales does not include sales tax that is collected from customers and actually transmitted to the appropriate taxing authorities.
  
  - b. *Manner of Payment*. With the exception of the Initial Franchise Fee, you must pay all fees and other amounts owed to us and/or our affiliates through an electronic funds transfer program (the “EFT Program”), under which we automatically deduct all payments owed to us and/or our affiliates, from the bank account you provide to us for use in connection with EFT Program (the “EFT Account”). You must immediately deposit all revenues from operation of your Business into this bank account within two days upon receipt, including cash, checks, and credit card receipts. At least 10 days prior to opening the Franchised Business, you must provide us with: (i) your bank’s name, address and account number; and (ii) a voided check from the bank account. You must immediately notify us of any change in your banking relationship, including any change to the EFT Account. We reserve the right to require you to pay any fees due under by other means as we may specify from time to time.
  
3. Brand Fund Contribution. You must pay us a Brand Fund Contribution equal to two percent (2%) of your total Net Sales each week in the same manner as you are required to pay your Royalty Fee. Please see Item 11 of this disclosure document for additional information regarding the Fund and your other advertising/marketing obligations.

4. Co-Op Advertising. If we establish a Co-Op Advertising program, all franchisees in the Co-Op market area will be required to contribute the amount which the Co-Op determines, which will not exceed two percent (2%) of Net Sales.
5. Local Advertising. Your Local Advertising Requirement is the minimum amount you must expend on the promotion, marketing and advertising of your Franchised Business within your Territory. You are required to expend the Local Advertising Requirement in accordance with our then-current directives, standards and specifications we set forth in the Manuals or otherwise in writing. By the 5<sup>th</sup> of each month, you must provide us with copies of all invoices and other documentation necessary to demonstrate how you expended the Local Advertising Requirement in the month prior
6. Testing or Supplier Approval Fee. You must reimburse us for our reasonable costs in connection with testing a particular product or evaluating an unapproved supplier at your request, which is estimated to be between \$200 to \$1,000, regardless of whether we subsequently approve the item or supplier.
7. Training. We will provide our initial training program (the “Initial Training Program”) to you. We may also establish additional and/or refresher training, as we deem necessary from time to time, and make your attendance at this training mandatory or discretionary. In the event you wish (or are required) to attend any additional or refresher training, we may charge you our then-current Training Fee to attend this training (subject to class availability and the schedule/availability of our personnel). You are responsible for all out-of-pocket expenses (including travel costs, if any) incurred in connection with our and any of our personnel’s attendance at the Initial Training Program, as well as any additional costs you may incur and/or refresher training you need and we conduct at our corporation location. We may also charge our Training Fee in connection with any on-site or other assistance we provide to you in connection with the establishment and/or operation of your Franchised Business, and you will be responsible for all out-of-pocket expenses (including travel costs, if any) we incur in providing any on-site assistance at your Franchised Business.
8. Insurance. In the event you fail to purchase the required insurance as described in Item 8, you must reimburse us for the cost of purchasing the required insurance on your behalf, as well as pay us a 15% administrative fee.
9. Audit Costs. You must maintain accurate business records, reports, accounts, books and data relating to the operation of your Franchised Business. We and our designees retain the right to inspect and/or audit your business records at any time during normal business hours, without notice, to determine whether you are current with suppliers and/or otherwise are operating in compliance with the terms of the Manuals. In the event any such audit discloses an understatement of amounts reported or paid to us, you agree to pay to us the amount due, plus interest (at the rate and on the terms provided for herein) from the date originally due until the date of payment. Furthermore, you must reimburse us for our costs and expenses associated with conducting the audit in the event: (i) such audit is made necessary by your failure to timely furnish reports, supporting records, other information or financial statements required under the Franchise Agreement; or (ii) if that audit reveals an understatement of greater than two percent (2%). These costs and expenses include, without limitation, our legal and accounting fees, travel, lodging and meal expenses and applicable per diem charges for our employees. The foregoing remedies are in addition to our other remedies and rights under the Franchise Agreement and/or applicable law. In the

event any audit reveals that your information has been inaccurately reported, we reserve the right to audit other entities owned, controlled by or affiliated with you.

10. Attorneys' Fees and Costs. If we prevail in any action or other legal/administrative proceeding brought against you arising out of the Franchise Agreement or any other agreement with us, you must reimburse us for our reasonable attorneys' fees and other costs paid that we incurred in such proceedings in the event we prevail. If you bring any legal action to interpret or enforce the terms of the Franchise Agreement or any other agreement with us, and your claim in such action is denied or the action is dismissed, then we are entitled to recover our reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending the matter, and to have such an amount awarded as part of the judgment in the proceeding.
11. Renewal Fee. Before we will approve the renewal of your Franchise Agreement, you must pay us a renewal fee equal to ten percent (10%) of the then-current Initial Franchise Fee. We have a number of additional conditions that you must meet in order to renew your Franchise Agreement, including without limitation: (i) providing us with written notice of your intent to renew no less than one hundred eighty (180) days prior to the expiration of the term of the then-current Franchise Agreement; (ii) executing our then-current form of Franchise Agreement, the terms of which may materially differ from your current agreement; (iii) substantially complying with your Franchise Agreement during the existing term; and (iv) executing our prescribed form of general release in favor of us. See Item 17 in this disclosure document for additional information regarding renewal.
12. Transfer Fee. You must pay us a transfer fee equal to the greater of: (i) Fifteen Thousand Dollars (\$15,000.00); or (ii) fifty percent (50%) of the then-current Initial Franchise. In the event you transfer multiple Territories at once, we reserve the right, but not the obligation, in our sole discretion, to reduce the transfer fee for any of the Territories being transferred, and by any amount. If a third-party broker locates the transferee, you will also be solely responsible for any broker fees associated with the transfer. There are other conditions for transfer and all conditions must be met before the transfer is approved by us. Provided certain conditions are met, we will not charge you a transfer fee if you are an individual and transfer ownership to a corporation or limited liability company that you control. See Item 17 in this disclosure document for additional information regarding transfer.
13. Late Payment. If you fail to timely pay your Royalty Fee or other fee owed to us (under the Franchise Agreement or otherwise), then you are subject to a late fee of \$100 per incident plus either: (i) eighteen percent (18%) interest per month of the unpaid balance; or (ii) the maximum permitted by law, whichever is higher.
14. Indemnification. You are solely responsible for and must indemnify and hold us harmless for all loss, damage, claims or demands arising out of, or related to, the operation of your Franchised Business. Your indemnification obligations are described more fully in the Franchise Agreement.



**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT<sup>1</sup>**

**A. SINGLE-UNIT FRANCHISE AGREEMENT (Standard Restaurant Model)**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Made
	Low	High			
Initial Franchise Fee <sup>(1)</sup>	\$15,000	\$49,500	Lump Sum	On signing the Franchise Agreement.	Us
Rent and Security Deposit <sup>(2)</sup>	\$0	\$16,000	As Incurred	Before beginning business	Per agreement with landlord
Leasehold Improvements <sup>(3)</sup>	\$75,000	\$292,300	As Incurred	Before beginning business	Various contractors/Suppliers
Architect's and Engineer's Fees <sup>(4)</sup>	\$7,000	\$18,000	Lump Sum	Before beginning business	Architect
Furniture & Fixtures <sup>(5)</sup>	\$16,000	\$29,000	As Incurred	Before beginning business	Third Party Vendors
Equipment <sup>(6)</sup>	\$65,000	\$130,000	As Incurred	Before beginning business	Third Party Vendors
POS System <sup>(7)</sup>	\$1,000	\$2,000	As Incurred	Before beginning business. Amount reflects up-front fees and travel expenses due to POS Provider	Third Party Vendors
Signage <sup>(8)</sup>	\$6,000	\$18,000	Lump Sum	Before beginning business	Third Party Vendors
Utility Deposits <sup>(9)</sup>	\$500	\$1,000	Lump Sum	Before beginning business	Utility companies
Office and Store Supplies <sup>(10)</sup>	\$500	\$1,000	As Incurred	Before beginning business	Third Party Vendor

Opening Inventory <sup>(11)</sup>	\$3,000	\$6,000	As Incurred	Before beginning business	Various Suppliers
Insurance <sup>(12)</sup>	\$6,000	\$10,000	Lump Sum	Before beginning business	Insurance Agent or Company
Liquor License <sup>(13)</sup>	\$0	\$5,000	Lump Sum	Before beginning business	Liquor License Authority
Licenses and Permits <sup>(14)</sup>	\$1,000	\$5,000	As Incurred	Before beginning business	Governmental Authorities
Attorney's Fees <sup>(15)</sup>	\$2,000	\$9,000	Lump Sum	Before beginning business	Attorney
Accountant's Fee <sup>(16)</sup>	\$1,000	\$3,000	Lump Sum	Before beginning business	Accountant
Travel, Lodging, Meals, Etc. for Initial Training <sup>(17)</sup>	\$2,000	\$8,000	As Incurred	Invoiced by Franchisor within 30 days after your opening	Airlines, Hotels, Restaurants, and Us
Grand Opening Marketing Campaign <sup>(18)</sup>	\$23,000	\$30,000	As Incurred	Up to 12 weeks before opening and the first 30 days after the opening of your Franchised Business	Designated Marketing Company, Various Media & Third Party Vendors
Additional Funds <sup>(19)</sup> (3 months)	\$30,000	\$50,000	As Incurred	During the first 3 months of operation	Third Parties
<b>TOTAL<sup>(20)</sup></b>	<b>\$254,000</b>	<b>\$682,800</b>			

## Notes:

All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. We do not finance any portion of your initial investment. All of our estimates assume that you will purchase the required items. Your costs may be lower if you choose to lease some items.

The costs set forth above do not include the cost incurred directly to iPourIt if you elect to do a self-serve tap wall. For costs on iPourIt and the top wall system, we will coordinate an introduction. In any case, the iPourIt system is not part of our standard franchise offering, but you may incorporate it if you choose.

These estimates apply to our current standard offering set forth in this document. You may request, and we may approve, that you open a larger footprint location than is contemplated in this offering and that sells beer. The investment estimates in this document do not reflect the additional costs you may incur to open a larger location and/or to sell beer (including but not limited to costs for applicable permits, costs to install a tap wall, etc).

1. Initial Franchise Fee. The initial franchise fee is discussed in detail in Item 5.
2. Rent and Security Deposit. Our estimates assume that you will lease space for your Franchised Business. The costs will be substantially more if you purchase a building or land and construct your Franchised Business. The typical size of the Franchised Business is 2,000 to 2,200 square feet. We assume that the landlord will require first and last months' rent and a security deposit equal to one months' rent. In addition, rent may be subject to tax. The tenant usually pays this tax. Lease costs will vary based upon variances in: (i) size in square feet leased; (ii) cost per square foot; (iii) amount of percentage rent, if any; (iv) the sales figure that percentage rent begins to apply (the "break point"); (v) common area maintenance costs; and (vi) merchant's association costs. The actual amount you pay under the lease will vary depending on the size of the space, the types of charges that are allocated to tenants under the lease, your ability to negotiate with landlords and the prevailing rental rates in the geographic region.
3. Leasehold Improvements. The cost of leasehold improvements will vary depending on many factors, including: (i) the size and configuration of the Approved Location; (ii) pre-construction costs (including demolition of existing walls and removal of existing improvements and fixtures); and (iii) cost of materials and labor, which may vary based on geography and location or whether you must use union labor for the build-out of your location. These amounts may vary substantially based on local conditions, including the availability and prices of labor and materials. These costs may also vary depending on whether certain of these costs will be incurred by the landlord or through landlord tenant improvement contributions, and the condition of the space before you take possession of the Approved Location. The low range assumes the required building systems are in place. Our estimate does not include any tenant improvement allowance that you may negotiate.
4. Design & Architect Fees. Our Approved Supplier for architecture will provide the concept layout for the proposed Franchised Business location. You will use a local architect for the layout, construction documents, etc., specific for your location who will become the architect of record (the "Architect of Record"). The Architect of Record means the registered professionals, including engineers, who prepare the sealed documents for compliance with the local jurisdiction as well as construction. If a local architect is chosen as the Architect of Record, then a design intent review of the construction documents by our Approved Supplier for architecture will occur before completion of the documents. The investment range stated reflects the costs you will incur for the services of our Approved Supplier and/or your local architect including investigation of the initial site information,

documenting existing conditions of proposed location (if needed), concept layouts, construction documents, permitting with local jurisdictions and health department, contractor bidding, and limited in-office construction administration.

5. Furniture and Fixtures. You must purchase and/or lease and install the furniture and fixtures necessary to operate your Franchised Business in accordance with our then-current trade dress specifications. The costs will vary according to local market conditions, the size of the Approved Location, your selections made from our approved line of items, price differences among suppliers, the location of the Franchised Business and other related factors.

6. Equipment. You must purchase and install the equipment necessary to operate your Franchised Business in accordance with our then-current equipment specifications. The costs will vary according to local market conditions, the size of the Approved Location, your selections made from our approved line of items, price differences among suppliers, the location of the Franchised Business and other related factors.

7. Point of Sale & Computer Equipment. You must lease the point of sale and computer system that we designate. Additional information regarding the required point of sale and computer system is included in Item 11.

8. Signage. These amounts represent your cost for interior and exterior signage. Your landlord or your local ordinances may have different restrictions it places on interior and exterior signage which may affect your costs.

9. Utility Security Deposit. You may need to provide security deposits for your utilities (such as gas, water and/or electric).

10. Supplies. We will only allow office and store supplies that support the image and positioning of the System in the marketplace. Supplies of this nature include the format, type, decoration and style as they relate to store and office supplies, particularly in the area of stationery, tissue, boxes, bags and forms. You agree to the importance of image and positioning to the Business System and agree to use only the supplies we specify or otherwise approve. These costs are based upon our estimate of the initial supplies.

11. Initial Inventory. These amounts represent your initial inventory of food and beverage supplies, paper products, and cleaning materials and supplies.

12. Insurance. These figures are estimates of the cost of the quarterly premiums for the insurance you must obtain and maintain for your Franchised Business, as described in Item 8. Insurance premiums may be payable monthly, quarterly, semi-annually or annually, based on the insurance company's practices and your creditworthiness.

13. Liquor License. If you elect to sell beer and wine at your franchise location, you must secure and maintain in force a beer and wine license that permits beer and wine sales 7 days a week. The cost of the license varies greatly depending on the licensing authority and the local resale market. In municipalities that use a quota-based system with no available licenses, the cost to acquire one from an existing licensee can be substantially higher. In municipalities that are not quota-based, the costs are usually limited to filing fees, attorneys' fees and fees from other service providers.

14. Business Licenses and Permits. These are estimates of the costs for obtaining local business licenses which typically remain in effect for one year. The cost of these permits and licenses will vary substantially depending on the location of the Franchised Business. We strongly recommend that you verify the cost for all licenses and permits required in your jurisdiction before signing the Franchise Agreement.

15. Attorney's Fees. We strongly recommend that you engage a franchise attorney to advise you in your evaluation of the franchise we are offering.

16. Accountant's Fees. We strongly recommend that you engage an accountant to advise you in your evaluation of the franchise we are offering.

17. Training Expenses. We provide Initial Training at your Franchise location. These estimates include our out-of-pocket costs including travel, lodging and meals. Our training program lasts for approximately 10 days prior to your grand opening and immediately after.

18. Grand Opening Marketing. You must use our Designated Supplier for to conduct a grand opening marketing campaign (the "Grand Opening Marketing Campaign") on your behalf during the period seventy-five (75) days immediately prior to opening your Business, which we estimate will cost between \$23,000 and \$30,000 for a Smokin' Oak Wood-Fired Pizza and Smokin' Oak Wood-Fired Pizza & Taproom restaurants. We may designate a different time period to conduct the Grand Opening Marketing Campaign. Currently, we require you to pay third party suppliers to carry out the Grand Open Marketing Campaign.

19. Additional Funds. You will need capital to support ongoing expenses, such as payroll, utilities, rent, and Royalty Fees, if these costs are not covered by sales revenue for your first three months of operation. Our estimate does not include any sales revenue you may generate. New businesses often generate a negative cash flow. We estimate that the amount given will be sufficient to cover ongoing expenses for the start-up phase of the business, which we calculate to be three months. This is only an estimate and there is no guarantee that additional working capital will not be necessary during this start-up phase or after.

20. Total. We relied upon our principals' and advisors combined 80 years of experience in restaurant businesses when compiling these estimates. Your actual costs may vary greatly and will depend on factors such as the size and condition of the space and cost, if applicable, to convert to a Smokin' Oak Wood-Fired Pizza franchise, your management skill, experience and business acumen; local economic conditions; the local market for the Smokin' Oak Wood-Fired Pizza products; the prevailing wage rate; competition; and the sales level reached during the start-up phase. These amounts do not include any estimates for debt service. These are only estimates and your costs may vary based on actual rental prices in your area, and other site-specific requirements or regulations. The costs outlined in this Item 7 are not intended to be a forecast of the actual cost to you or to any particular franchisee.

**B. SINGLE-UNIT FRANCHISE AGREEMENT (Take Out and Delivery Model)**

Type of Expenditure	Amount		Method of Payment	When Due	To Whom Payment is to be Made
	Low	High			
Initial Franchise Fee <sup>(1)</sup>	\$15,000	\$49,500	Lump Sum	On signing the Franchise Agreement.	Us
Rent and Security Deposit <sup>(2)</sup>	\$0	\$16,000	As Incurred	Before beginning business	Per agreement with landlord
Leasehold Improvements <sup>(3)</sup>	\$45,000	\$292,300	As Incurred	Before beginning business	Various contractors/ Suppliers
Architect's and Engineer's Fees <sup>(4)</sup>	\$7,000	\$18,000	Lump Sum	Before beginning business	Architect
Furniture & Fixtures <sup>(5)</sup>	\$4,000	\$29,000	As Incurred	Before beginning business	Third Party Vendors
Equipment <sup>(6)</sup>	\$65,000	\$130,000	As Incurred	Before beginning business	Third Party Vendors
POS System <sup>(7)</sup>	\$1,000	\$2,000	As Incurred	Before beginning business. Amount reflects up-front fees and travel expenses due to POS Provider	Third Party Vendors
Signage <sup>(8)</sup>	\$3,000	\$18,000	Lump Sum	Before beginning business	Third Party Vendors
Utility Deposits <sup>(9)</sup>	\$500	\$1,000	Lump Sum	Before beginning business	Utility companies
Office and Store Supplies <sup>(10)</sup>	\$500	\$1,000	As Incurred	Before beginning business	Third Party Vendor
Opening Inventory <sup>(11)</sup>	\$2,000	\$6,000	As Incurred	Before beginning	Various

				business	Suppliers
Insurance <sup>(12)</sup>	\$6,000	\$10,000	Lump Sum	Before beginning business	Insurance Agent or Company
Liquor License <sup>(13)</sup>	\$0	\$5,000	Lump Sum	Before beginning business	Liquor License Authority
Licenses and Permits <sup>(14)</sup>	\$1,000	\$5,000	As Incurred	Before beginning business	Governmental Authorities
Attorney's Fees <sup>(15)</sup>	\$2,000	\$9,000	Lump Sum	Before beginning business	Attorney
Accountant's Fee <sup>(16)</sup>	\$1,000	\$3,000	Lump Sum	Before beginning business	Accountant
Travel, Lodging, Meals, Etc. for Initial Training <sup>(17)</sup>	\$2,000	\$8,000	As Incurred	Invoiced by Franchisor within 30 days after your opening	Airlines, Hotels and Restaurants
Grand Opening Marketing Campaign <sup>(18)</sup>	\$8,000	\$30,000	As Incurred	Up to 12 weeks before opening and the first 30 days after the opening of your Franchised Business	Designated Marketing Company, Various Media & Third Party Vendors
Additional Funds <sup>(19)</sup> (3 months)	\$30,000	\$50,000	As Incurred	During the first 3 months of operation	Third Parties
<b>TOTAL<sup>(20)</sup></b>	<b>\$193,000</b>	<b>\$682,800</b>			

Notes:

All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. We do not finance any portion of your initial investment. All of our estimates assume that you will purchase the required items. Your costs may be lower if you choose to lease some items.

The costs set forth above do not include the cost incurred directly to iPourIt if you elect to do a self-serve tap wall. For costs on iPourIt and the top wall system, we will coordinate an introduction. In any case, the iPourIt

system is not part of our standard franchise offering, but you may incorporate it if you choose.

You also have the option to open a restaurant focused on the delivery and to-go market. This concept is approximately 980 square feet (minimum). Note that there is not yet a delivery / to-go concept in market. The low end of the investment range primarily shows the cost of opening a delivery / to-go concept.

These estimates apply to our current standard offering set forth in this document. You may request, and we may approve, that you open a larger footprint location than is contemplated in this offering and that sells beer. The investment estimates in this document do not reflect the additional costs you may incur to open a larger location and/or to sell beer (including but not limited to costs for applicable permits, costs to install a tap wall, etc).

1. Initial Franchise Fee. The initial franchise fee is discussed in detail in Item 5.
2. Rent and Security Deposit. Our estimates assume that you will lease space for your Franchised Business. The costs will be substantially more if you purchase a building or land and construct your Franchised Business. The typical size of the Franchised Business is 900 to 2,200 square feet. We assume that the landlord will require first and last months' rent and a security deposit equal to one months' rent. In addition, rent may be subject to tax. The tenant usually pays this tax. Lease costs will vary based upon variances in: (i) size in square feet leased; (ii) cost per square foot; (iii) amount of percentage rent, if any; (iv) the sales figure that percentage rent begins to apply (the "break point"); (v) common area maintenance costs; and (vi) merchant's association costs. The actual amount you pay under the lease will vary depending on the size of the space, the types of charges that are allocated to tenants under the lease, your ability to negotiate with landlords and the prevailing rental rates in the geographic region.
3. Leasehold Improvements. The cost of leasehold improvements will vary depending on many factors, including: (i) the size and configuration of the Approved Location; (ii) pre-construction costs (including demolition of existing walls and removal of existing improvements and fixtures); and (iii) cost of materials and labor, which may vary based on geography and location or whether you must use union labor for the build-out of your location. These amounts may vary substantially based on local conditions, including the availability and prices of labor and materials. These costs may also vary depending on whether certain of these costs will be incurred by the landlord or through landlord tenant improvement contributions, and the condition of the space before you take possession of the Approved Location. The low range assumes the required building systems are in place. Our estimate does not include any tenant improvement allowance that you may negotiate.
4. Design & Architect Fees. Our Approved Supplier for architecture will provide the concept layout for the proposed Franchised Business location. You will use a local architect for the layout, construction documents, etc., specific for your location who will become the architect of record (the "Architect of Record"). The Architect of Record means the registered professionals, including engineers, who prepare the sealed documents for compliance with the local jurisdiction as well as construction. If a local architect is chosen as the Architect of Record, then a design intent review of the construction documents by our Approved Supplier for architecture will occur before completion of the documents. The investment range stated reflects the costs you will incur for the services of our Approved Supplier and/or your local architect including investigation of the initial site information, documenting existing conditions of proposed location (if needed), concept layouts, construction documents, permitting with local jurisdictions and health department, contractor bidding, and limited in- office construction administration.



5. Furniture and Fixtures. You must purchase and/or lease and install the furniture and fixtures necessary to operate your Franchised Business in accordance with our then-current trade dress specifications. The costs will vary according to local market conditions, the size of the Approved Location, your selections made from our approved line of items, price differences among suppliers, the location of the Franchised Business and other related factors.

6. Equipment. You must purchase and install the equipment necessary to operate your Franchised Business in accordance with our then-current equipment specifications. The costs will vary according to local market conditions, the size of the Approved Location, your selections made from our approved line of items, price differences among suppliers, the location of the Franchised Business and other related factors.

7. Point of Sale & Computer Equipment. You must lease the point of sale and computer system that we designate. Additional information regarding the required point of sale and computer system is included in Item 11.

8. Signage. These amounts represent your cost for interior and exterior signage. Your landlord or your local ordinances may have different restrictions it places on interior and exterior signage which may affect your costs.

9. Utility Security Deposit. You may need to provide security deposits for your utilities (such as gas, water and/or electric).

10. Supplies. We will only allow office and store supplies that support the image and positioning of the System in the marketplace. Supplies of this nature include the format, type, decoration and style as they relate to store and office supplies, particularly in the area of stationery, tissue, boxes, bags and forms. You agree to the importance of image and positioning to the Business System and agree to use only the supplies we specify or otherwise approve. These costs are based upon our estimate of the initial supplies.

11. Initial Inventory. These amounts represent your initial inventory of food and beverage supplies, paper products, and cleaning materials and supplies.

12. Insurance. These figures are estimates of the cost of the quarterly premiums for the insurance you must obtain and maintain for your Franchised Business, as described in Item 8. Insurance premiums may be payable monthly, quarterly, semi-annually or annually, based on the insurance company's practices and your creditworthiness.

13. Liquor License. If you elect to sell beer and wine at your franchise location, you must secure and maintain in force a beer and wine license that permits beer and wine sales 7 days a week. The cost of the license varies greatly depending on the licensing authority and the local resale market. In municipalities that use a quota-based system with no available licenses, the cost to acquire one from an existing licensee can be substantially higher. In municipalities that are not quota-based, the costs are usually limited to filing fees, attorneys' fees and fees from other service providers.

14. Business Licenses and Permits. These are estimates of the costs for obtaining local business licenses which typically remain in effect for one year. The cost of these permits and licenses will vary substantially depending on the location of the Franchised Business. We strongly recommend that you verify the cost for all

licenses and permits required in your jurisdiction before signing the Franchise Agreement.

15. Attorney's Fees. We strongly recommend that you engage a franchise attorney to advise you in your evaluation of the franchise we are offering.

16. Accountant's Fees. We strongly recommend that you engage an accountant to advise you in your evaluation of the franchise we are offering.

17. Training Expenses. We provide Initial Training at your Franchise location. These estimates include our out-of-pocket costs including travel, lodging and meals. Our training program lasts for approximately 10 days prior to your grand opening and immediately after.

18. Grand Opening Marketing. You must use our Designated Supplier for to conduct a grand opening marketing campaign (the "Grand Opening Marketing Campaign") on your behalf during the period seventy-five (75) days immediately prior to opening your Business, which we estimate will cost between \$8,000 and \$30,000, depending on the square footage of your restaurant. We may designate a different time period to conduct the Grand Opening Marketing Campaign. Currently, we require you to pay third party suppliers to carry out the Grand Open Marketing Campaign.

19. Additional Funds. You will need capital to support ongoing expenses, such as payroll, utilities, rent, and Royalty Fees, if these costs are not covered by sales revenue for your first three months of operation. Our estimate does not include any sales revenue you may generate. New businesses often generate a negative cash flow. We estimate that the amount given will be sufficient to cover ongoing expenses for the start-up phase of the business, which we calculate to be three months. This is only an estimate and there is no guarantee that additional working capital will not be necessary during this start-up phase or after.

20. Total. We relied upon our principals' and advisors combined 80 years of experience in restaurant businesses when compiling these estimates. Your actual costs may vary greatly and will depend on factors such as the size and condition of the space and cost, if applicable, to convert to a Smokin' Oak Wood-Fired Pizza franchise, your management skill, experience and business acumen; local economic conditions; the local market for the Smokin' Oak Wood-Fired Pizza products; the prevailing wage rate; competition; and the sales level reached during the start-up phase. These amounts do not include any estimates for debt service. These are only estimates and your costs may vary based on actual rental prices in your area, and other site-specific requirements or regulations. The costs outlined in this Item 7 are not intended to be a forecast of the actual cost to you or to any particular franchisee.

**C. DEVELOPMENT AGREEMENT - TRADITIONAL MODEL (3-Pack)**

<b>Type of Expenditure</b>	<b>Amount<sup>1</sup></b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is to be Made</b>
Development Fee <sup>2</sup>	\$118,500	Lump Sum	Upon execution of Development Agreement	Franchisor
Initial Investment to Open Initial Franchised Business <sup>3,4</sup>	\$239,000 to \$633,300	See Chart A of this Item 7.		
<b>Total Estimated Initial Investment</b>	<b>\$357,500 to \$751,800</b>	This is the total estimated initial investment to enter into a Development Agreement for the right to own a total of three Franchised Businesses, as well as the costs to open and commence operating your initial Franchised Business for the first three months (as described more fully in Chart A of this Item 7). See Note 3.		

**D. DEVELOPMENT AGREEMENT – TAKEOUT AND DELIVERY MODEL (3-Pack)**

<b>Type of Expenditure</b>	<b>Amount<sup>1</sup></b>	<b>Method of Payment</b>	<b>When Due</b>	<b>To Whom Payment Is to be Made</b>
Development Fee <sup>2</sup>	\$118,500	Lump Sum	Upon execution of Development Agreement	Franchisor
Initial Investment to Open Initial Franchised Business <sup>3,4</sup>	\$178,000 to \$633,300	See Chart A of this Item 7.		
<b>Total Estimated Initial Investment</b>	<b>\$296,500 to \$751,800</b>	This is the total estimated initial investment to enter into a Development Agreement for the right to own a total of three Franchised Businesses, as well as the costs to open and commence operating your initial Franchised Business for the first three months (as described more fully in Chart A of this Item 7). See Note 3.		

## **Explanatory Notes to Tables C and D**

1. All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. This Chart details the estimated initial investment associated with executing a Development Agreement for the right to own and operate three (3) Franchised Businesses, as well as the initial investment to open your first Franchised Business under your Development Schedule.
2. The Development Fee is described in greater detail in Item 5 of this Disclosure Document, and this Development Fee is for the right to open and operate a total of three (3) Franchised Businesses (provided you comply with your development obligations under the Development Agreement). The Development Fee is calculated as follows: \$49,500 for the right to open the Initial Franchised Businesses, plus \$39,500 for the right to open the second Franchised Business, and \$29,500 for the right to open the third and each Additional Franchised Business thereafter.
3. This figure represents the total estimated initial investment required to open the initial Franchised Business you agreed to open and operate under the Development Agreement. You will be required to enter into our then-current form of franchise agreement for initial Franchised Business you open under your Development Agreement. The range includes all the items outlined in Chart 7.A. of this Item, except for the Initial Franchise Fee (because you are not required to pay any Initial Franchise Fee for those Franchised Businesses you open under the Development Agreement). It does not include any of the costs you will incur in opening any additional Franchised Business(es) that you are granted the right to open and operate under your Development Agreement.

## **ITEM 8**

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

You must operate your Business in strict conformance with our methods, standards, and specifications which we prescribe in our Manuals, which cover nearly all aspects of your Business's operations, such as food preparation and presentation techniques, employee training, and management. These standards are subject to change.

#### **Approved Products, Services, and Suppliers**

You may only offer approved products and services ("Approved Products and Services") through your Business. We will provide you with a list of Approved Products and Services prior to the opening of your Business. All Approved Products and Services must meet our standards and specifications. We have the right to require you to purchase certain Approved Products and Services only from us or other suppliers or distributors approved or designated by us ("Approved Suppliers") in order to (i) better assure the supply and quality of the Approved Products and Services, and/or (ii) enable us, in our sole discretion to take advantage of marketplace efficiencies. We may develop certain proprietary products that you must purchase from us and offer for sale at your Business. If you wish to offer products or services other than those we have authorized in connection with operating your Business, you must obtain our prior written consent.

You must at all times maintain sufficient levels of inventory to adequately meet consumer demand. You must purchase all food products, services, merchandise, ingredients, mixes, beverages, menus, furniture, equipment, forms, menu boards, paper and plastic products and the packaging and other materials from Approved

Suppliers if we designate them or that otherwise meet our standards and specifications. You must offer products and services in the manner we prescribe, provide quality customer service, and otherwise operate your Business in a manner which will enhance the image intended by us for the System. Currently, we have Approved Suppliers for the following items: accounting software, certain architectural services, pizza ovens, wood used with pizza ovens, proprietary dough packets, certain restaurant equipment, POS System, exterior signage, gift cards, marketing services for the grand opening of your Franchised Business, in-store marketing materials, uniforms, food supplies, credit card processing and in-store music system. Currently, neither we nor any affiliate of ours is an Approved Supplier for any item you are required to purchase or lease.

We reserve the right to designate ourselves or our affiliate as an Approved Supplier of any items, including uniforms, marketing and advertising materials, and certain proprietary spices, sauces and other food products. We may change the Approved Suppliers at any time. The current list of Approved Suppliers is listed in the Manuals.

We reserve the right to formulate and modify our standards and specifications for operating a Business based upon the collective experience of our principals. Our standards and specifications are described in the Franchise Agreement, the Manuals, and other written documents. We have the right, under the Franchise Agreement, to change the standards and specifications applicable to the operation of the franchise, including standards and specifications for products, signs, interior designs and furnishings, supplies, fixtures, inventory and equipment by written notice to you or through changes in the Manuals. We may issue our standards or specifications for goods and services directly to you or our approved supplier. You may incur an increased cost to comply with these changes at your own expense. We will notify you of any change to our standards and specifications by way of written amendments to the Manuals or otherwise in writing.

In the event you wish to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, you must provide us the name, address and telephone number of the proposed supplier, a description of the item you wish to purchase, and the purchase price of the item, if known. At our request, you must provide us with a sample of the item you wish to purchase for testing purposes. You must reimburse us for our reasonable costs in connection with testing a particular product or evaluating an unapproved supplier at your request, which typically ranges from \$200 to \$1,000, regardless of whether we subsequently approve the item or supplier.

We will use our best efforts to notify you of our approval or disapproval of a particular supplier or product within 10 days of receiving all requested information. If we do not respond within 10 days, the supplier or product is deemed disapproved. We are not required to approve any particular supplier or product. We may base our approval of a proposed item or supplier on considerations relating not only directly to the item or supplier, but also indirectly to the uniformity, efficiency, and quality of operation we deem necessary or desirable in our System as a whole. We have the right to receive payments from suppliers on account of their dealings with you and other franchisees and to use all amounts we receive without restriction (unless instructed otherwise by the supplier) for any purposes we deem appropriate. We will not approve an unreasonable number of suppliers for a given item, which approval might, in our reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Our criteria for approval of a particular supplier or product will be made available upon written request. We may revoke our approval of particular products or suppliers when we determine, in our sole discretion, that such products or suppliers no longer meet our standards. Upon receipt of written notice of such revocation, you must cease purchasing products from such suppliers. You must use products purchased from approved suppliers solely in connection with the operation of your Business and

not for any competitive business purpose. Although we do not presently do so, we reserve the right to negotiate purchasing arrangements with suppliers in the future. Currently, you do not receive a material benefit in the form of renewal rights or rights to additional territories based on the use of our approved products, services, or suppliers.

We estimate that your required purchases and leases will account for approximately 70% to 85% of all purchases and leases necessary to open your Business and approximately 25% to 45% of your annual costs to operate your Business on an ongoing basis.

In or fiscal year ending December 31, 2020, we derived \$14,003.84 or 7.84% of our total revenue of \$178,613 from franchisee required purchases and leases.

We did not derive revenues or other material consideration as a result of required purchases or leases to franchisees during the fiscal year ending December 31, 2019. We reserve the right to derive revenue from required franchisee purchases in any manner, including but not limited to volume and other rebates.

### Advertising

We must approve all advertising before first publication or use. Our advertising requirements are discussed more fully in Item 11 of this Disclosure Document.

### Insurance

You must purchase and maintain the types and amounts of insurance that we designate in our Manuals or otherwise in writing, including, without limitation, (i) general commercial liability with limits of \$2,000,000 for general aggregate, \$2,000,000 for products and completed operations aggregate, \$1,000,000 for personal and advertising injury, \$1,000,000 per occurrence, \$15,000 for medical expense, and \$5,000,000 for umbrella coverage; (ii) commercial property coverage with limits of \$300,000 for business personal property, \$100,000 for fire, \$1,000,000 for combined auto, \$5,000 for uninsured/underinsured motorist, \$5,000 for crime/employee dishonesty, \$5,000 each for money on and off premises, \$5,000 for valuable papers, \$20,000 for computers/POS systems including software, \$10,000 for spoilage, and \$500,000 for workers' compensation; (iii) liquor with limits of \$2,000,000 for general aggregate, \$1,000,000 for each occurrence and \$2,000 for liquor bond; (iv) business interruption insurance; and (v) other insurance required by the state or locality where you operate or as may be required by your lease or mortgage, all of which we may modify from time to time as we deem appropriate in our discretion.

All insurance policies must be written by an insurance company with a Best's Insurance Guide minimum rating of A-VIII or better. All policies must include a waiver of subrogation in favor of Fourth Avenue Restaurant Group, LLC. You must add us, and any parties we may designate, to all insurance contracts as additional insureds under your insurance policies at your cost.

If you fail to comply with our minimum insurance requirements, we have the right to obtain such insurance and keep same in force and effect and you shall pay us, on demand, the premium cost thereof and administrative costs of fifteen percent (15%) in connection with our obtaining the insurance. You must provide us with copies of any insurance claims or insurance cancellations within twenty-four (24) hours. You have a twenty-four (24) hour opportunity to cure any lapses in insurance coverage. No insurance policy must be subject to cancellation, termination, nonrenewal or material modification, except upon at least thirty (30) days prior

written notice to us from the insurance carrier. You must submit a certification of insurance that demonstrates compliance with these requirements. We have the right to increase or otherwise modify the minimum insurance requirements upon thirty (30) days prior written notice to you, and you shall comply with any such modification within the time specified in said notice.

Leases and Leasehold Improvements

You must lease a retail space for your Franchised Business which meets our standards and specifications for a Business. We must approve your location and lease terms before you sign a lease for a Franchised Business location. We will condition our approval of your lease upon, among other conditions, you and your landlord’s signing of a collateral assignment of lease (which is attached to the Franchise Agreement as Exhibit C), through which your landlord grants us the rights to assume your rights and obligations under the lease in the event that you breach your lease agreement or your Franchise Agreement is terminated or expires. You must also ensure that you comply with all of our System standards and specifications related to the build-out, remodeling and/or construction of your Business.

Plans and Specifications and/or Standard Recommended Floor Plan

We will loan to you our prototype floor plans for build out of the Franchised Business (which may include sample equipment and furnishings layouts) “(Drawings)”. We will also loan to you our specifications and standards pertaining to equipment, signage, fixtures, furnishings, accessory features and design and layout we make available to you. (collectively, the "Design Specifications"). The Drawings and Design Specifications may vary in their design and decor by region of the country, at our sole discretion. The Drawings and Design specifications are contained in the Manuals.

Computer Hardware and Software Components

You must purchase the computer hardware and software we designate for use in connection with the operation of your Business. Please see Items 6, 7, and 11 for more information regarding required computer hardware and software purchases.

**ITEM 9**  
**FRANCHISEE’S OBLIGATIONS**

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

OBLIGATION	SECTION IN FRANCHISE AGREEMENT	SECTION IN DEVELOPMENT AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site selection and acquisition/lease	1.3, 7.1 and Site Selection Addendum	1 and Exhibit A	Items 7, 11 and 12

b.	Pre-opening purchases/ leases	7.4 and 7.8	Not Applicable	Items 7 and 8
c.	Site development and other pre-opening requirements	7.1, 7.1.2, 7.1.3	1 and Exhibit A	Items 6, 7, 8 and 11
d.	Initial and ongoing training	7.2 and 8	Not Applicable	Item 11
e.	Opening	7.3	5	Item 11
f.	Fees	3, 7.8, 7.19, 12.5 and 12.7	2	Items 5 and 6
g.	Compliance with standards and policies/ operations manual	6.1, 7.5 and 7.6.4	Not Applicable	Items 8 and 11
h.	Trademarks and proprietary information	4 and 5	Not Applicable	Items 13 and 14
i.	Restrictions on products/ services offered	7.4 and 7.5	Not Applicable	Items 8, 12 and 16
j.	Warranty and customer service requirements	7.6.3	Not Applicable	Item 15
k.	Territorial development and sales quotas	7.10	1 and 5	Items 12 and 17
l.	Ongoing product/ service purchases	7.4, 7.5 and 7.6.7	Not Applicable	Items 8 and 11
m.	Maintenance, appearance and remodeling requirements	2.2.3, 6.2, 7.1.2, 7.1.3 and 7.19	Not Applicable	Items 6, 8 and 11
n.	Insurance	9	Not Applicable	Items 6 and 8
o.	Advertising	12	Not Applicable	Items 6 and 11
p.	Indemnification	13.2	Not Applicable	Item 6
q.	Owner's participation/ management/staffing	7.6.3, 7.6.4 and 7.6.5	Not Applicable	Items 11 and 15
r.	Records and reports	10 and 11	Not Applicable	Item 6
s.	Inspections and audits	7.1.3, 7.7, 7.8.4, 11 and 16.1.10	Not Applicable	Items 6 and 11



t.	Transfer	14	8	Item 17
u.	Renewal	2.2	Not Applicable	Item 17
v.	Post term obligations	16 and 17.2	Not Applicable	Item 17
w.	Noncompetition covenants	17	Not Applicable	Item 17
x.	Dispute resolution	18	12-15	Item 17

**ITEM 10**  
**FINANCING**

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

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

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

**Pre-Opening Obligations:**

Before you open the Business, we will perform the following obligations:

Manuals.

We will loan you a copy of (or provide you with electronic access to) our proprietary and confidential Manuals. (Section 6.1 of the Franchise Agreement). The Table of Contents for the Manuals is included as Exhibit B to this Franchise Disclosure Document. The Manuals contains a total of 782 pages.

Training.

We will conduct training with our Franchisees and their Managers. At least 6 weeks before opening, the corporate team will provide a training schedule to the Franchisee. This will include what training activities must be done prior to the training team arriving on-site, and what the training that will happen once the training team arrives on-site to help train the Franchisee, their Manager(s) and their team for opening.

We will provide instructors and training materials for the initial training of you, your General Manager, and/or any other employee you designate. If you are a partnership, corporation, or limited liability company, at least one of the trainees must be your general partner, principal shareholder, or manager as appropriate. We reserve the right to require one additional employee, other than yourself, to attend our initial training program along with you. You may also have additional personnel attend initial training, so long as you pay our then-current additional Training Fee in connection with each additional attendee. We will determine whether each training attendee has satisfactorily completed initial training, including, if applicable, each General Manager. If you have designated a General Manager, and that General Manager does not satisfactorily complete the initial training program or if we determine that this person cannot satisfactorily complete the training program, you

must designate a replacement to satisfactorily complete the training before you will be permitted to open your Franchise. Failure by you, the General Manager, or any replacement personnel to complete the initial training program to our satisfaction is a material breach of the Franchise Agreement and we may terminate the Franchise Agreement. (Section 8.1 of the Franchise Agreement).

Any General Managers designated by you at any time prior to or after opening the Franchised Business must receive and complete the initial training to our satisfaction, even if this requires sending that manager to the headquarters training program, at your expense. We reserve the right to charge our then-current Training Fee to provide initial training to a replacement or successor employee if we have not approved you to provide the training. You must also pay for all expenses you, your General Manager and other personnel incur for any training program, including costs of travel, lodging, meals and wages.

If, during the term of your Franchise Agreement, you request that we provide additional training on-site at your Franchise, or if we determine that you need additional training, you must pay our then-current Training Fee for each trainer we provide, and you must reimburse us for any expenses our trainers incur, such as costs of travel, lodging, and meals.

The instructional materials used in the initial training consist of our Manuals, marketing and promotion materials, and any other materials that we believe will be beneficial to our franchisees in the training process. The training schedule and activities of the initial training program are described below:

#### **TRAINING PROGRAM**

<b>Subject</b>	<b>Hours of Classroom Instruction</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b>
Corporate Introduction and Orientation	1	0	Webinar
Welcome to Training	0.5	0	At Franchisee's Location
Smokin' Oak Mission supported by The Six Basics	3	0	At Franchisee's Location
Cashier Training	0	4	At Franchisee's Location
Expo Training	0	8	At Franchisee's Location
Pizza Topper Training	0	15	At Franchisee's Location

<b>Subject</b>	<b>Hours of Classroom Instruction</b>	<b>House of On-the-Job Training</b>	<b>Location</b>
Oven Operator Training	0	15	At Franchisee's Location
Prep Training	0	27	At Franchisee's Location
Ordering and Receiving Orders	0	2	At Franchisee's Location
Accounting, Administration, bookkeeping and reporting	1	0	At Franchisee's Location
Human Resources and Management Training	8	0	At Franchisee's Location
Marketing and Social Media	4	0	At Franchisee's Location
Sales and Labor Goals	2	0	At Franchisee's Location
Maintenance	0	2	At Franchisee's Location
Safety and Security	0.5	0	At Franchisee's Location
<b>TOTAL HOURS</b>	<b>20</b>	<b>73</b>	

Our initial training program is overseen by Linda Black and/or Matt Mongoven. Ms. Black has over 28 years of restaurant management experience, and Mr. Mongoven has extensive marketing and business experience, as well as 5 years of experience with Fourth Avenue Restaurant Group, LLC. We reserve the right to make changes in our training staff as we deem necessary and advisable without prior notice.

After the initial training program, which is held at your location, your other employees may be trained by you, or at your request (and subject to the availability of our personnel) we will train your additional personnel at an affiliate-owned location or at the Franchised Business at our then-current Training Fee. (Section 8 of the Franchise Agreement). All training related expenses for your additional personnel, including transportation to and from the training site, lodging, meals, and salaries during training, are your sole responsibility. We will provide you with training materials for you to use in training your personnel. (Section 8 of the Franchise Agreement). You may only use the training materials that we provide to you to train your personnel. Updated training materials will be provided to you as they are developed. All training materials provided to you are our property, and you agree not to challenge our or our affiliates' title or rights in or to the training materials. You

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may not make any disclosure, duplication or other unauthorized use of any portion of the training materials. (Section 8 of the Franchise Agreement).

#### Pre-Opening On-Location Training.

The on-location training program will cover material aspects of the operation of the Franchise Business including financial control, marketing techniques, maintenance of quality standards, employee hiring, training and customer service, inventory control, security standards, merchandising techniques, promotional techniques, operations, purchasing and sales. You must give us at least 30 days' advanced written notice of the Opening Date to schedule on-location training. (Section 8.2 of the Franchise Agreement)

#### Approved Suppliers.

We will provide specifications for, and designate, sources of supply from which you agree to purchase the inventory, goods, and supplies necessary for the startup and ongoing operations of the Business. (Section 6.3 of the Franchise Agreement). We will continue to refine and develop our system, and reserve the right to create and designate proprietary products for sale at your Business. We may, in our sole discretion, provide you with assistance in establishing pricing.

#### Grand Opening Marketing.

Prior to opening, you must implement a grand opening marketing campaign (the "Grand Opening Marketing Campaign"), in which you will pay our Approved Supplier between \$23,000 and \$30,000 to conduct the Grand Opening Marketing Campaign in your Territory during the period 75 days immediately prior to opening your Franchised Business. You must conduct the Grand Opening Marketing Campaign in accordance with our Approved Supplier's guidance and recommendations (subject to our approval of the strategies used). Currently, we do not collect the grand opening marketing from you and implement grand opening marketing and promotions on your behalf, however we reserve the right to do so in the future. (Section 6.4 of the Franchise Agreement). We also require that you reimburse us for our cost to send any of our team members to support or assist you in implementing your Grand Opening Marketing Campaign, including costs for travel and lodging.

#### Site Selection and Opening

1. You will operate the Business at the Approved Location agreed upon by you and us. It is your responsibility to obtain a mutually acceptable site and negotiate a lease for your Business. We consider factors such as size, location, traffic patterns, visibility from roadways, parking space and outdoor seating in approving any given site. Your leased/purchased space should be between 2,000 – 2,200 square feet. We typically do not own the Approved Location and sublease it to you. (Sections 1.3 and 7.1 of the Franchise Agreement and the Site Selection Addendum to the Franchise Agreement).

2. We will advise you in your lease negotiations by communicating with you and providing you with materials to assist negotiations. You must provide us with a copy of your proposed lease and obtain our written approval of your lease prior to entering it. (Section 7.1 of the Franchise Agreement).

3. You are solely responsible for obtaining the applicable ordinances, building codes, and permits required to operate the Business from your Approved Location, and ensuring your compliance with all applicable

laws and regulations, including the Americans with Disabilities Act. All costs connected with the design, construction, leasehold improvements, equipment, furnishings, fixtures, and signs are your responsibility. We must approve all architects or contractors who are not designated by us and all subsequent and material changes to the plans and drawings before such changes are implemented (Section 7.1.2 of the Franchise Agreement).

4. You must submit at least one site to us for our approval within 120 days of signing the Franchise Agreement. Additionally, you must obtain a location acceptable to us within 180 days of signing the Franchise Agreement. Failure to do so may result in termination of your Franchise Agreement. We estimate that it will take approximately six (6) to nine (9) months from signing the Franchise Agreement for you to open your Business. The actual length of this period will depend upon factors such as your ability to obtain a mutually acceptable site and the lease for that site, financing arrangements, training schedules, delivery schedules for inventory and equipment and other factors including the time necessary to obtain zoning permits, licenses, and variances. Under the Franchise Agreement, you are required to open your Business no later than twelve (12) months after the parties sign the Franchise Agreement. If the Business has not been opened within this twelve (12) month time frame, we may, in our sole discretion, elect to terminate your Franchise Agreement. (Sections 7.3 and 15.3.4 of the Franchise Agreement, and the Site Selection Addendum to the Franchise Agreement).

### Post-Opening Assistance

1. We will provide you continuing consultation and advice, as we deem necessary and appropriate, regarding the management and operation of the Business. We will provide such assistance, in our discretion, by telephone, facsimile, and intranet communication. If you request on-site assistance from us, subject to the availability of our personnel, we will provide you with such assistance at our then-current Training Fee plus expenses, including our travel, lodging, and meal costs associated with providing such on-site service. (Section 6.5 of the Franchise Agreement).

2. We may offer additional training programs and/or refresher courses to you, your manager, and/or your employees. We may require you and your employees' attendance at these programs and/or courses, at a location designated by us. We reserve the right to charge a tuition fee for these additional training programs in the future in our sole discretion. You must pay for you and your employees' travel, meal, lodging, and payroll expenses while attending our additional training programs. (Sections 6.8 of the Franchise Agreement).

3. We may, in our discretion, hold an Annual Conference at a location to be selected by us to update franchisees on new developments, allow System franchisees to exchange information with each other and us regarding Business operations and programs, and recognize franchisees for their achievements. We will determine the topics and agenda for such conference. We will require you to attend the Annual Conference and pay our then-current registration fee. If you fail to attend our Annual Conference without our prior written consent, we reserve the right to charge you a fee. All expenses, including you and your employees' transportation to and from the Annual Conference, and lodging, meals, and salaries during the Annual Conference, are your sole responsibility. We may use Brand Development Fees from the Brand Fund for purposes related to the Annual Conference, including costs related to productions, programs, and materials. (Section 6.7 of the Franchise Agreement).

### Advertising

We have established a Brand Development Fund (the "Brand Fund") for the common benefit of System

franchisees. You must contribute two percent (2%) of your Net Sales to the Brand Fund in the manner we prescribe and participate in Brand Fund programs (“Brand Fund Contribution”). We have the right to use Brand Fund Contributions, in our sole discretion, to develop, produce, and distribute national, regional and/or local advertising, to create advertising and public relations materials which promote, in our sole judgment, the products offered by System franchisees, and to develop training and other programs that will enhance the reputation of the brand. We may use the Brand Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising, including: (a) the cost of preparing and producing television, radio, magazine, Internet, and newspaper advertising campaigns; (b) the cost of direct mail and outdoor billboard advertising; (c) the cost of public relations activities and advertising agencies; (d) the cost of developing and maintaining an Internet website, which may be used to collect customer orders, conduct surveys; and (e) personnel and other departmental costs for advertising that we internally administer or prepare. While we do not anticipate that any part of Brand Fund Contributions will be used for advertising which is principally a solicitation for franchisees, we reserve the right to use the Brand Fund for public relations or recognition of our brand, for the creation and maintenance of a web site, a portion of which can be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating “Franchises Available.” (Section 12.5 of the Franchise Agreement).

We also use Brand Fund Contributions to develop and prepare advertising which we distribute to System franchisees for their placement in the local media. The advertising is prepared by us and/or by outside sources. If we do not spend all Brand Fund Contributions by the end of each fiscal year, the funds will be carried forward into the next fiscal year. There is no requirement that the Brand Fund Contributions be audited. Upon your reasonable written request, we will provide you with an unaudited accounting of Brand Fund expenditures. (Section 12.5 of the Franchise Agreement).

We have the sole right to determine how to spend the Brand Fund Contributions, or funds from any other advertising program, and the sole authority to determine the selection of the advertising materials and programs; provided, however, that we will make a good faith effort to expend such funds in the general best interests of the System on a national or regional basis. We are not required, under the Franchise Agreement, to spend any amount of Brand Fund Contributions in your Territory and not all System franchisees will benefit directly or on a pro rata basis from our expenditures. We have the right to reimbursement from the Brand Fund Contributions for reasonable costs and overhead, if any, as we may incur in activities which are reasonably related to directing and implementing the Brand Fund and advertising programs for franchisees and the System, including costs of personnel for creating and implementing advertising, promotional and marketing programs. (Section 12.5 of the Franchise Agreement).

We did not collect or expend any Brand Fund Contributions during our 2020 fiscal year.

### Regional Advertising Cooperative

We have the right to designate any geographical area for purposes of establishing a Cooperative, and to determine whether a Cooperative is applicable to your Business. If a Cooperative is established applicable to the Franchised Business, you must participate in and contribute to such Cooperative. Each Cooperative will be organized for the exclusive purpose of administering regional advertising programs and developing, subject to our approval, standardized advertising materials for use by the members in local advertising. No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without our prior approval. All such plans and materials will be submitted to us in accordance with the procedure set forth in

Section 12.1 of the Franchise Agreement. If we establish a Co-Op Advertising program all franchisees in the Co-Op market area will be required to contribute the amount which the Co-Op determines, which may not exceed two percent (2%) of Net Sales. We may grant to any franchisee, in our sole discretion, an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating reasons supporting such exemption. Our decision concerning such request for exemption will be final. (Section 12.6 of the Franchise Agreement).

### Local Advertising

We require that you spend at least 2% of Net Sales per month on local advertising and promotions (the "Local Advertising Requirement"). (Section 12.7 of Franchise Agreement). You may be required to expend all or any portion of your Local Advertising Requirement on materials, products and services that are provided by one (1) or more of our Approved Suppliers (which may be us or our affiliate in the future).

### Computer and POS System

We have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by you. We reserve the right to change the supplier of the Computer System in our sole discretion. You will purchase, use and maintain any and all computer software programs ("Software") which we have developed or may develop and/or designate for use for the System, and will purchase such computer hardware as may be necessary for the efficient operation of the Software. You will strictly comply with our standards and specifications for all items associated with the Computer System and any Software. You agree, at your own expense, to keep your Computer System in good maintenance and repair and install such additions, changes, modifications, substitutions, and/or replacements to the Computer System or Software as we direct from time to time in writing. You will lease the system from our Approved Supplier at their then-current cost, which is currently \$400 per month plus \$155 per month for a third party inventory program.

If and at such time we develop and custom design any software programs for conducting scheduling, accounting, inventory and point-of-sale functions or related activities ("Proprietary Software Program"), you, at your own expense, agree to obtain the computer hardware required to implement the Proprietary Software Program into your Franchised Business, and to comply with all specifications and standards prescribed by us regarding the Proprietary Software Program, as provided in the Manuals or otherwise in writing. This Proprietary Software Program will be proprietary to us and confidential information of ours. It is possible that we might not be able to alter the Proprietary Software Program to accommodate each and every franchisee of the System, and therefore, at such time that we require the implementation of such software, you will only utilize the program as prescribed by us. At such time as we require the implementation of such Proprietary Software Program, we or our designee agree to provide ongoing service and support to you regarding the Proprietary Software Program and will lease such Proprietary Software Program to you at the then-current rates published by us. We reserve the right to have independent access to any data you collect electronically. You must install, at your expense, the necessary computer hardware and software to provide us with full and direct electronic access to all of your data, software systems, and related information. (Section 7.8 of the Franchise Agreement).

### Internet

You must have and maintain adequate hardware and software in order to access the Internet at the bit

speed we require from time to time. We may, but are not obligated to, establish an Internet website that provides information about the System and the products and services offered by Franchised Businesses. In the event we exercise our right to create such a website, we have sole discretion and control over the website (including timing, design, contents and continuation). We may, but are not obligated to, create interior pages on its website(s) that contain information about your and other Franchised Businesses. If we do create these pages, we may require you to prepare all or a portion of the page for your Franchised Business, at your expense, using a template that we provide. All such information will be subject to our approval prior to posting. (Sections 12.3.1 and 12.3.2 of the Franchise Agreement).

Except as approved in advance in writing by us, you may not establish or maintain a separate website, splash page, profile or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Franchised Business, including any profile on Facebook, Pinterest, Twitter, LinkedIn, Instagram, YouTube or any other social media and/or networking site. If such approval is granted by us, you must: (i) establish and operate such Internet site in accordance with System standards and any other policies we designate in the Manuals or otherwise in writing from time to time; and (ii) utilize any templates that we provide to you to create and/or modify such site(s). (Section 12.3.3 of the Franchise Agreement).

We have the right to modify our policies regarding both our and your use of Internet websites as we deem necessary or appropriate for the best interests of the System. You acknowledge that we and/or our affiliates are the lawful, rightful and sole owner of the Internet domain names [www.smokinoakpizza.com](http://www.smokinoakpizza.com) and [www.smokinoakfranchise.com](http://www.smokinoakfranchise.com), as well as any other Internet domain names registered by us, and you unconditionally disclaim any ownership interest in such domain names and any colorably similar Internet domain names. You agree not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by us or our affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words (Section 12.3.3 of the Franchise Agreement).

#### Computer Network, Intranet or Extranet Participation

You are required to participate in any System-wide computer network, intranet system or extranet system that we implement and may be required by us to use such computer network, intranet system, or extranet system to, among other things: (i) submit your reports due under the Franchise Agreement to us on-line; (ii) view and print portions of or updates to the Manuals; (iii) download approved local advertising materials; (iv) communicate with us and other System franchisees; and (v) complete training. You agree to use the facilities of any computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that we include in the Manuals, including those related to the encryption of confidential information and prohibitions against the transmission of libelous, derogatory or defamatory statements. (Section 7.8.6 of the Franchise Agreement).

#### Development Agreement

Our obligations regarding site selection assistance, training, computer hardware and software selections, and advertising for additional Franchised Business developed under a Development Agreement will be governed by the form of single-unit franchise agreement you sign for each additional Franchised Business.



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

### Franchise Agreement

You will operate the Franchised Business from only the Approved Location which will be identified on the Data Sheet of the Franchise Agreement. If you have secured a site for the Franchised Business that we approve at the time you sign the Franchise Agreement, you will establish the Franchised Business at the Approved Location. If you have not yet secured a site for the Franchised Business at the time you sign the Franchise Agreement, you will enter into our Site Selection Addendum, attached as Exhibit A to the Franchise Agreement, which will govern the site selection process. You may relocate your Franchised Business only with our prior written approval and payment of a relocation fee, which is currently our costs incurred in assisting you with relocation plus a 15% administrative fee based on our actual costs (but not to exceed \$5,000). Approval will not be unreasonably withheld provided that the proposed new location meets our then-current criteria for a Franchised Business.

You will operate your Franchised Business at the Approved Location within the Territory that is identified in the Data Sheet. We will determine the size and boundaries of your Protected Territory in our discretion, based upon factors including geographic area, population density, character of neighborhood, location and number of competing business in the surrounding area, and other factors. While there is no minimum territory size and the exact size of each territory varies based on the applicable factors, a typical territory will cover an area that contains a population of approximately 50,000. You may not solicit customers and/or advertise outside your Territory or deliver any products or services to any destination outside your Territory without our prior written consent.

Except as otherwise provided in and during the term of the Franchise Agreement, for so long as you comply with the terms and conditions of the Franchise Agreement, we will not establish and operate, nor license any party other than you to establish and operate, any Business under the System and the Proprietary Marks within your Territory. Your territorial rights are not dependent upon meeting a certain sales quota or the opening of additional Businesses. The boundaries of your Territory will not change, even if the population within your Territory increases or decreases, during the initial term of your Franchise Agreement.

Because we reserve the right to open Smokin' Oak Wood-Fired Pizza restaurants at non-traditional sites ("Non-Traditional Locations") within your Territory, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. We reserve the right to sell and distribute products or license others to sell and distribute products, within or outside the territory, through grocery or convenience stores. These products may include those bearing our Proprietary Marks and you acknowledge that you will not receive any compensation for these sales.

### Development Agreement

If you enter into a Development Agreement, you will obtain the right to own and operate a certain number of Businesses in the Development Area where you must open each Business in compliance with the Mandatory Development Schedule. The size of the Development Area will depend upon the number of Businesses you are obligated to open in the Development Area but will vary based on demographics and whether

the Development Area is primarily urban or suburban. Provided you comply with the terms of the Development Agreement, and any Franchise Agreements signed for Businesses within the Development Area, subject to our rights regarding Non-Traditional Locations, we will not locate another Franchised Business operating under the Proprietary Marks, whether franchised or company-owned, in your Development Area.

You must comply with your development obligations in the Mandatory Development Schedule in order to maintain your Development Area exclusivity. In the event that you fail to meet your development obligations and the Development Agreement is terminated, you will retain your rights to any previously owned Businesses, including the territorial rights described in the Franchise Agreement for such Businesses, provided that the Development Agreement was not terminated as a result of your failure to comply with the terms of your existing Franchise Agreement(s). Your rights to any Businesses for which there is no Franchise Agreement and your exclusivity in the Development Area will terminate immediately upon termination of the Development Agreement. Thereafter, we will have the right to develop the Development Area on our own or through third parties.

#### Reservation of Rights under the Franchise Agreement and Development Agreement


We and our affiliates will have the right, in our sole discretion, under the Franchise Agreement and Development Agreement to: (i) own and operate Businesses at any location(s) outside your Territory/Development Area under the same or different marks, or to license others the right to own and operate Businesses at any location(s) outside your Territory/Development Area under the same or different marks; (ii) use the Proprietary Marks and System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, including grocery stores, restaurants, retail stores, foodservice wholesalers, catering businesses (including, without limitation, catering businesses established by us) and via the Internet at any location, including within the Territory/Development Area; (iii) own and operate Businesses in “Non-Traditional Sites” including, but not limited to, special events centers, parks, stadiums, arenas, business and industrial complexes, museums, art centers, military bases, airports, other public transportation facilities, government offices or institutions, malls and other shopping complexes, health care facilities and other institutional food service facilities, hotels and motels, toll road or highway rest stops, colleges, universities, food concession stands, food service facilities, theaters, warehouse clubs, theme parks, amusement centers, truck stops, beaches, boardwalks and casinos both within or outside your Territory/Development Area; (iv) own and operate Franchised Businesses or other businesses, or market similar products and services, at any location(s) inside your Territory/Development Area under different marks, or to license others the right to own and operate Franchised Businesses or other businesses, or market similar products and services at any location(s) inside your Territory/Development Area under different marks; (v) acquire, or be acquired by, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with units located anywhere; and (vi) engage and license other parties to engage in any other activities not expressly prohibited by the Franchise Agreement.

The Franchise Agreement and Development Agreement do not grant you any options, rights of first refusal, or similar rights to acquire additional franchises within the Territory/Development Area granted or any contiguous territories. Any dispute as to whether a particular site is a Non-Traditional Site will be determined by us, and our determination will be final and binding. We have the exclusive right to negotiate and enter into agreements or approve forms of agreements to operate Franchised Businesses at Non-Traditional Sites, either directly or through our affiliates, licensees, or designees, and you will not be entitled to any compensation as a result of our operation of Franchised Businesses at Non-Traditional Sites.

Certain products or services from our affiliates, whether currently existing, in research and development, or developed in the future, may be distributed in your Territory by us or our affiliates, or our franchisees, licensees or designees, in such manner and through such channels of distribution as we determine, in our sole discretion. Such alternate channels of distribution will include, but are not limited to, sales of any products offered hereunder through grocery stores, fine dining restaurants, retail stores, foodservice wholesalers, and catering businesses. The Franchise Agreement grants you no rights: (i) to distribute the products as described above; or (ii) to share in any of the proceeds from our activities as outlined above.

**ITEM 13**  
**TRADEMARKS**

We grant you the right to operate the Business under the mark “Smokin' Oak Wood-Fired Pizza”. You may also use our other current or future trademarks we designate to operate your Business. The term “trademark” includes service marks, trade names, slogans, insignia, logos, labels and trade dress. We have filed/registered the following trademarks with the United States Patent and Trademark Office on the principal register and has filed all required affidavits:

MARK	REGISTRATION NUMBER	REGISTRATION DATE	REGISTER
SMOKIN' OAK WOOD-FIRED PIZZA	5,266,747	August 15, 2017	Principal
	5,302,482	October 3, 2017	Principal

There are currently no effective determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court; no pending interference, opposition or cancellation proceedings; nor any pending material litigation involving the Proprietary Marks.

You must promptly notify us of any suspected unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to our ownership of, our right to use and to license others to use, or your right to use, the Proprietary Marks. We have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including the right to settle the proceedings or litigation. We have the exclusive right, but not the obligation, to affirmatively prosecute actions against third parties for infringement or threatened infringement of the Proprietary Marks.

We have the right, though not the obligation, to defend you against any third-party claim, suit, or demand arising solely out of your use of the Proprietary Marks in a manner expressly authorized by us. If we, in our sole discretion, determine that you have used the Proprietary Marks in accordance with the Franchise Agreement and the Manuals, we will pay the cost of defending the action, including the cost of any judgment or settlement. If we, in our sole discretion, determine that you have not used the Proprietary Marks in accordance with the Franchise Agreement and the Manuals, you will be required to pay for the defense or to reimburse us for costs we incurred in providing the defense, including the cost of any judgment or settlement. In the event of any litigation relating to your use of the Proprietary Marks, you are required to sign all documents and assist us, as we deem necessary, to carry out the defense or prosecution including, without limitation, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner not in accordance with the terms of the Franchise Agreement, we will reimburse you for your out-of-pocket costs in performing such acts.

We are the lawful and sole owner of the domain name [www.smokinoakpizza.com](http://www.smokinoakpizza.com) and [www.smokinoakfranchise.com](http://www.smokinoakfranchise.com). You cannot register any of the Proprietary Marks owned by us or any abbreviation, acronym or variation of the Proprietary Marks, or any other name that could be deemed confusingly similar, as Internet domain names. We retain the sole right to advertise the System on the Internet and to create, operate, maintain and modify, or discontinue using of a website using the Proprietary Marks and you may access our website. Except as we may authorize in writing in advance, however, you cannot: (i) link or frame our website; (ii) conduct any business or offer to sell or advertise any products or services on the worldwide web; and (iii) create or register any Internet domain name in connection with your franchise.

You may use only the Proprietary Marks which we designate, and may use them only in the manner we authorize and permit. Any goodwill associated with Proprietary Marks, including any goodwill which might be deemed to have arisen through your activities, inures directly and exclusively to our benefit. You may use the Proprietary Marks only for the operation of the Franchised Business and only at the Approved Location or in advertising for the Franchised Business. You will use all Proprietary Marks without prefix or suffix and in conjunction with the symbols “SM,” “TM,” “S” or “R,” as applicable. You may not use the Proprietary Marks in connection with the offer or sale of any services or products which we have not authorized for use in connection with the System. You may not use the Proprietary Marks as part of your corporate or other legal name. We must approve your corporate name and all fictitious names under which you propose to do business in writing before use. You must use your corporate or limited liability company name either alone or followed by the initials “D/B/A” and a business name that we approve. You must promptly register at the office of the county in which your Franchised Business is located, or such other public office as provided for by the laws of the state in which your Franchised Business is located, as doing business under such assumed business name.

All of your advertising must prominently display the Proprietary Marks and must comply with our standards for using the Proprietary Marks. All such advertising is subject to our prior written approval, which we will not unreasonably withhold. We reserve the right to approve all signs, stationery, business cards, forms, and other materials and supplies bearing the Proprietary Marks. You may use the Proprietary Marks including, without limitation, trade dress, color combinations, designs, symbols, and slogans, only in the manner and to the extent specifically permitted by the Franchise Agreement or by our prior written consent. You must submit to us and we must approve all advertising, publicity, signs, decorations, furnishings, equipment or other materials employing the Proprietary Marks, or related marks, before first publication or use. You must identify yourself as the owner of the Business (in the manner we prescribe) in conjunction with any use of the Proprietary Marks including, without limitation, on invoices, order forms, receipts, and business stationery, as well as at such

conspicuous locations as we may designate in writing at the Franchised Business's premises.

We reserve the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. You must discontinue using all Proprietary Marks which we have notified you, in writing, have been modified or discontinued within ten days of receiving written notice and must promptly begin using such additional, modified or substituted Proprietary Marks at your sole expense

#### **ITEM 14**

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

We do not own any registered patents or copyrights which are material to the franchise, however, we claim common law copyright and trade secret protection for several aspects of the franchise System including our Manuals, recipes, advertising, and business materials.

There are no current determinations, proceedings or litigation involving any of our copyrighted materials. Should you become aware of any unauthorized third party using any of our copyrighted materials, we request that you notify us of such unauthorized use. We may revise our System and any of our copyrighted materials in our discretion, and may require that you cease using any outdated copyrighted materials. You will be responsible for printing any revised or new advertising, marketing or other business materials.

During the term of the Franchise Agreement, you will receive information which we consider trade secrets and confidential information. You may not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any trade secrets, operating procedures, sources of supply, supplier contracts, advertising materials, copyrighted materials, equipment specifications, any information contained in the Manuals, trade secrets, our proprietary recipes, and other methods, techniques and know-how concerning the operation of Franchised Businesses, and any and all other information related to your Franchised Business or other Smokin' Oak Wood-Fired Pizza businesses generally that is labeled proprietary or confidential (collectively, the "Confidential Information"). You acknowledge and agree that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, (iii) customer service purchasing histories, (iv) rates charged to customers, and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute the trade secrets and Confidential Information of us. You may divulge such Confidential Information only to your employees who must have access to it in order to perform their employment obligations. You must require your manager and any personnel having access to any of our Confidential Information to sign an agreement stating that they will maintain the confidentiality of information they receive in connection with their employment and restricting their right to work for a competitor while they are employed by you. Such agreement, which will be in a form that we prescribe, will identify us as a third-party beneficiary to the agreement and will give us independent enforcement rights.

The Franchise Agreement provides that if you, your employees, or principals develop any new concept, process or improvement in the operation or promotion of the Business, you will promptly notify us and provide us with all necessary related information, without compensation. Any such concept, process or improvement will become our sole property and we will be the sole owner of all patents, patent applications, trademarks, copyrights and other intellectual property rights related to such new concepts. You and your principals will assign to us any rights you may have or acquire in new concepts you or your employees develop, including the right to modify such concept, process or improvement, and otherwise will waive and/or release all rights of

restraint and moral rights to any new concepts you or your employees develop. You and your principals agree to assist us in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide us with all necessary documentation for obtaining and enforcing such rights. You and your principals will irrevocably designate and appoint us as your agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process or improvement. In the event that such provisions of the Franchise Agreement are found to be invalid or otherwise unenforceable, you and your principals will grant to us a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent the Franchise Agreement, directly or indirectly infringe on your rights to the new concepts.

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

Except as set forth below, you (or at least one of your principals if you are a corporation, partnership or other entity) must personally supervise the day-to-day operations of the Business. You must devote your personal full-time attention and best efforts to the management and operation of the Business. With our approval, however, you may delegate the day-to-day operation of your Business to your General Manager. We must approve your General Manager and your General Manager must successfully complete our initial training program before assuming any managerial responsibility. Your Business must, at all times, be staffed with at least one individual who has successfully completed our initial training program. You will keep us informed at all times of the identity of any employees acting as General Manager of the Business, and any change in their employment status. The General Manager does not need to have an ownership interest in the franchisee entity in order to serve as General Manager.

In the event that your General Manager resigns or is otherwise terminated, you must hire a replacement approved by us in writing who meets our then-current standards for General Managers and who is approved by us in writing, within thirty days after the resignation or termination of the former General Manager. You must ensure the new General Manager receives all required training within thirty days of hiring. Franchisor reserves the right, without the obligation, to train the new General Manager directly, in which case you will be responsible for paying the then-current Training Fee. Your General Manager will devote full time and best efforts to the day-to-day operation and management of the Business and will not engage in any other business activity without our prior written consent. Your General Manager and certain key employees and their spouses will be bound by the confidentiality and non-compete covenants of the Franchise Agreement and will execute the Confidentiality and Restrictive Covenant Agreement attached as Exhibit E to the Franchise Agreement.

If you are an entity, all of your owners/shareholders/partners/members/managers (as applicable) and their respective spouses, must execute the Personal Guaranty attached to the Franchise Agreement as Exhibit B. If you are an individual, your spouse must execute the Personal Guaranty attached to the Franchise Agreement as Exhibit B.

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

You must offer and sell all of the products which we require and only the products which we authorize for the System, in the manner we prescribe. You will not offer to sell or provide at or through the Business any merchandise, products or services that have not been approved in writing, or use the Approved Location for any other purpose other than the operation of the Business. You may not use nor sell any products, materials, ingredients, supplies, paper goods, uniforms, merchandise, fixtures, furnishings, signs, or equipment which do not meet our standards and specifications.

You will prepare and present all Approved Products and other menu items in accordance with our standards and specifications, using our proprietary recipes, ingredients and preparation techniques we prescribe. We have the right to require you to offer and sell additional or different goods or services as we may designate. There are no limits on our right to do so. You are not allowed to solicit or provide catering services to customers outside of your Territory without our prior written approval, however, you are allowed to provide dine-in services to any customer that visits your Franchised Business. You will at all times maintain sufficient levels of inventory to adequately satisfy consumer demand. You must stop offering disapproved products or services immediately upon notice that such services or products have been discontinued. If the law prohibits the use or sale of any product or service, use must cease immediately.

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

**This table lists important provisions of the Franchise Agreement. You should read these provisions in the Franchise Agreement attached to this Franchise Disclosure Document as Exhibit D.**

**A. SINGLE-UNIT FRANCHISE AGREEMENT**

	Provision	Section in Franchise Agreement	Summary
a.	Term of franchise	2.1	Ten years.
b.	Renewal or extension of the term	2.2	You have the right to renew the Franchise Agreement for two (2) additional five-year periods provided certain conditions are met.
c.	Requirements for you to renew or extend	2.2	You must: (i) timely notify us in writing of your intention to renew; (ii) have the right to operate the Business at the Approved Location for the duration of the renewal term or have secured an approved substitute location; (iii) have satisfactorily completed no later than ninety days before the expiration of the then-current term, all necessary maintenance, refurbishing, renovating, updating and remodeling of the Business premises to bring the Business and all equipment into full compliance with our then-current System standards and specifications; (iv) not be in breach of any provision of the Franchise Agreement, or

	Provision	Section in Franchise Agreement	Summary
			any other agreement between you and us, our affiliates, and/or our major suppliers and vendors, and you have substantially complied with all such agreements during their respective terms; (v) have satisfied all monetary obligations you owe us, our affiliates, and/or our major suppliers and vendors; (vi) execute our then-current form of franchise agreement, which may contain materially different key terms than the Franchise Agreement you initially sign; (vii) satisfy our then-current training requirements; (viii) sign a general release in the form we prescribe; and (ix) pay us a renewal fee of ten percent (10%) of the then-current Initial Franchise Fee.
d.	Termination by you	No Provision	You do not have the contractual right to terminate the Franchise Agreement.
e.	Termination by us without cause	No Provision	Not Applicable.
f.	Termination by us with cause	15	We have the right to terminate the Franchise Agreement with cause.
g.	Cause defined - default which can be cured	15.3  15.4	We have the right to terminate the Franchise Agreement after providing you a fifteen-day cure period if you: (i) fail to pay any monies you owe us or our affiliates or any of our system suppliers or vendors; (ii) fail to immediately endorse and deliver to us any payments due to us from any third party that is erroneously made to you; (iii) fail to maintain a sufficient inventory level; (iv) fail to open the Business within ten months from the date you execute the Franchise Agreement; (v) fail to operate the Business during the months, days and hours that we prescribe; (vi) fail to personally supervise operations or employ adequate personnel; (vii) fail to maintain our quality controls and standards; (viii) conduct yourself in a manner which reflects adversely on the System, the Proprietary Marks, or our products; or (ix) fail to procure or maintain any licenses, certifications, or permits necessary for the operation of your Business.  We have the right to terminate the Franchise Agreement after providing you a thirty-day cure period if you fail to perform or comply with any one or more of the terms or conditions of the Franchise Agreement or any ancillary agreement between you and us or our affiliates.
h.	Cause defined - default which cannot be cured	15.1	The Franchise Agreement will automatically terminate without notice or an opportunity to cure if: (i) you make an assignment for the benefit of creditors, file a voluntary petition in bankruptcy, are adjudicated bankrupt or insolvent, file or acquiesce in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consent to or acquiesce in the appointment of a trustee or receiver for you or the Business; (ii) proceedings are



	Provision	Section in Franchise Agreement	Summary
		15.2	<p>commenced to have you adjudicated bankrupt or to seek your reorganization under any state or federal bankruptcy or insolvency law, and such proceedings are not dismissed within sixty days, or a trustee or receiver is appointed for you or the Business without your consent, and the appointment is not vacated within sixty days; or (iii) you purport to sell, transfer or otherwise dispose of your interest in the Business without our written approval.</p> <p>We have the right to terminate the Franchise Agreement with notice but without providing you an opportunity to cure if: (i) you take part in criminal acts or misconduct; (ii) you commit fraud or misrepresentation in the operation of the Business; (iii) you make any misrepresentations or omission in connection with the franchise application; (iv) you fail to complete our initial training program; (v) you receive two or more written notices of default within any twelve-month period; (vi) you materially breach any other agreement with us or our affiliates; (vii) you misuse the Proprietary Marks or Confidential Information; (viii) you violate any health, safety or sanitation law; (ix) you violate the in-term restrictive covenants of the Franchise Agreement; (x) a lien or writ of attachment or execution is placed against you, your principals or assets and is not released or bonded against within thirty days; (xi) you are insolvent; (xii) you abandon the Business; (xiii) you offer any unauthorized or unapproved products or services in connection with the operation of your Business; (xiv) you order or purchase supplies from unapproved suppliers; (xv) you misuse our proprietary software; (xvi) you fail to maintain adequate insurance or otherwise comply with the insurance requirements contained in the Franchise Agreement; (xvii) you fail to comply with any governmental notice of non-compliance with any law or regulation within fifteen days of the notice; (xviii) any governmental action is taken against you that results in any obligation upon us; (xix) you fail to comply with any laws or regulations regarding terrorism; (xx) you take any assets or property of the Business for your personal use; (xxi) there are insufficient funds in your bank account to cover a check or EFT payment to us three or more times in any twelve month period; (xxii) any audit reveals that you have understated your Royalty Fee or marketing payments, or your local advertising expenditures, by more than 2%, or if you have failed to submit timely reports and/or remittances for any two reporting periods within any twelve-month period; or (xxiii) you default in obligations under the lease agreement for the Approved Location.</p>
i.	Your obligations on termination/	16.1	Upon termination or expiration of the Franchise Agreement, you must: (i) immediately cease all operations under the Franchise Agreement; (ii)

	Provision	Section in Franchise Agreement	Summary
	non-renewal		immediately pay all sums you owe us, our affiliates, suppliers or vendors; (iii) immediately cease using the Proprietary Marks and System; (iv) immediately return to us the Manuals and all other manuals, proprietary and Confidential Information, no later than 5 calendar days after termination or expiration; (v) immediately cease using your telephone number and listing and, if we exercise our rights under the collateral assignment of telephone numbers, transfer the numbers and listings to us within fifteen calendar days; (vi) vacate the Approved Location if we exercise our rights under the Collateral Assignment of Lease, no later than 15 days after the termination or expiration of the Franchise Agreement; (vii) return to us all items reflecting the Proprietary Marks and all items which are part of the trade dress within five days; (viii) immediately cease holding yourself out as our franchisee; (ix) take necessary action to amend or cancel any business name or equivalent registration which contains our trade name or Proprietary Marks; (x) allow us to inspect your financial records within one month of termination or expiration; (xi) comply with the post-term covenants contained in the Franchise Agreement; (xii) immediately cease to use in advertising or in any other manner any methods, procedures or techniques associated with us or the System; (xiii) immediately cease from engaging in any contacts with customers or former customers of the Business; and (xiv) execute periodically any papers, documents, and assurances necessary to effectuate termination or nonrenewal.
j.	Assignment of contract by us	14.5	We have the right to assign or transfer our rights under the Franchise Agreement.
k.	“Transfer” by you - definition	14.3	A sale, transfer or assignment requiring our prior written consent occurs: (i) if you are a corporation, upon any assignment, sale, pledge or transfer of any fractional portion of your voting stock, or any increase in the number of outstanding shares of your voting stock which results in a change in ownership; (ii) if you are a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if you are a limited liability company, upon any assignment, sale, pledge or transfer of any fractional portion of any interest in the limited liability company.
l.	Our approval of transfer by franchisee	14.1	You may not transfer any rights in the franchise without our prior written consent. We have the right to condition our approval of any sale, transfer, assignment or encumbrance as described below.
m.	Conditions for our approval of transfer	14.3.2	We will approve a proposed transfer if: (i) all of your accrued monetary obligations to us, affiliates, suppliers and vendors have been paid; (ii) all existing defaults under the Franchise Agreement have been cured; (iii) you and your transferee execute a general release in favor of us and

	Provision	Section in Franchise Agreement	Summary
			our affiliates; (iv) you provide us a copy of the executed purchase agreement; (v) the transferee meets our qualifications; (vi) the transferee executes our then-current franchise agreement; (vii) you or the transferee pay us a transfer fee equal to the greater of: (i) \$15,000; or (ii) 50% of the then-current Initial Franchise Fee; (viii) the transferee satisfactorily completes our training program; (ix) you comply with the post term provisions of the Franchise Agreement; (x) the transferee obtains all necessary licenses and permits required to operate the Business; (xi) to the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer; (xii) the transfer is made in compliance with all applicable laws; (xiii) the purchase price and terms of the proposed transfer are not so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Business and performance under its franchise agreement; (xiv) you must request that we provide the prospective transferee with our current form of disclosure document and we will not be liable for any representations not included in the disclosure document; (xv) our approval of the transfer will not constitute a waiver of any claims we may have against the transferring party; (xvi) we will have the right to disclose to any prospective transferee such revenue reports and other financial information concerning you and your Business as you have supplied us; and (xvii) we may withhold or condition our consent to any transfer as we deem appropriate based on the circumstances of the transfer or otherwise.
n.	Our right of first refusal to acquire your business	14.3.1	You must first offer to sell to us on the same terms and conditions as those offered by a third party. We will notify you, within thirty days after receiving the offer, whether we wish to exercise our right to purchase your business.
o.	Our option to purchase your business	16.2	We have an option to purchase any personal property related to your Business upon termination or expiration of the Franchise Agreement.
p.	Your death or disability	14.2	Upon your death or disability, your rights under the Franchise Agreement may pass to your heirs or legatees, provided that, within 45 days of your death or disability, they execute the then-current franchise agreement, successfully complete our initial training program, and otherwise receive our approval.
q.	Non-competition covenants during the term of the franchise	17.1	During the term of the Franchise Agreement, neither you, your principals, or General Managers, nor any member of the immediate family of you or your principals or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation: (i) own, maintain,

	Provision	Section in Franchise Agreement	Summary
			engage in, be employed by, lend money to, extend credit to or have any interest in any other business deriving more than 10% of its revenue from selling and offering pizza or other similar items or any other goods or services offered or authorized for sale by System franchisees; provided, however, that Section 17.1 does not apply to your operation of any other Business under the System; or (ii) divert or attempt to divert any business or customer of the Business 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 or the System.
r.	Non-competition covenants after the franchise is terminated or expires	17.2	For a period of two years after the expiration and nonrenewal, transfer or termination of the Franchise Agreement, regardless of the cause, neither you, your principals, General Managers nor any member of the immediate family of you, your principals or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with us granting franchises or licenses for businesses deriving 10% or more of their revenue from selling and offering pizza or other similar items or any other goods or services offered or authorized for sale by System franchisees at the time the Franchise Agreement is terminated or expires and is not renewed. For a period of two years after the expiration, transfer or termination of the Franchise Agreement, regardless of the cause, neither you, your principals, your General Managers nor any member of the immediate family of you, your principals or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation: (i) own, maintain, engage in, be employed by, or have any interest in any other business deriving more than 10% of its revenue from selling pizza or other similar items or any other goods or services offered or authorized for sale by System franchisees at the time the Franchise Agreement is terminated or expires and is not renewed, (a) at the Franchised Business, (b) within the Territory, or (c) within a radius of twenty-five miles of the perimeter of (1) the Territory being granted hereunder or (2) any other Territory licensed by us as of the date of expiration or termination of the Franchise Agreement or (3) any other Franchised Business; or (ii) solicit business from customers of your former Franchised Business or contact any of our suppliers or vendors for any competitive business purpose. The two-year time period will be tolled during any default of the non-compete and confidentiality covenants.
s.	Modification of the Franchise	22.1	The Franchise Agreement may only be modified or amended in writing signed by all parties.

	Provision	Section in Franchise Agreement	Summary
	Agreement		
t.	Integration/merger clauses	22.1	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises made outside of the Disclosure Document and the Franchise Agreement may not be enforceable.
u.	Dispute resolution by mediation	18.2, 18.3	You must bring all disputes before our Managers prior to bringing a claim before a third party. After exhausting this internal dispute resolution procedure, at our option, all claims or disputes between you and us must be submitted first to non-binding mediation in St. Petersburg, Florida, or our then-current corporate headquarters, in accordance with the American Arbitration Association's Commercial Mediation Rules then in effect.
v.	Choice of forum	18.4	All claims not subject to mediation must be brought before the court of general jurisdiction nearest St. Petersburg, Florida, or the United States District Court presiding over St. Petersburg, Florida. You consent to the personal jurisdiction and venue of any court of general jurisdiction in St. Petersburg, Florida and the United States District Court for the Middle District of Florida (subject to state law).
w.	Choice of law	18.1	The Franchise Agreement is governed by the laws of the State of Florida (subject to state law).

## B. DEVELOPMENT AGREEMENT

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

	Provision	Section in Development Agreement	Summary
a.	Length of the development agreement term	5	The Development Agreement will commence on the date it is fully-executed and end on the last day of the calendar month that the final Franchised Business is required to be opened and operating under the Mandatory Development Schedule.
b.	Renewal or extension of the term	No Provision	Not Applicable.
c.	Requirements for developer to renew or extend	No Provision	Not Applicable.
d.	Termination by developer	No Provision	Not Applicable.

	Provision	Section in Development Agreement	Summary
e.	Termination by franchisor without cause	No Provision	Not Applicable.
f.	Termination by franchisor with cause	6.2	We may terminate the Development Agreement for cause.
g.	Cause defined – curable defaults	6.2	We may terminate the Development Agreement if you fail to meet your development obligations under the Development Agreement during the Development Period and fail to cure such default within thirty days of receiving notice thereof.
h.	Cause defined – non-curable defaults	6.2	We may terminate the Development Agreement if: (i) you cease to actively engage in development activities in the Development Area or otherwise abandon your development business for three consecutive months, or any shorter period that indicates an intent by you to discontinue development of the Franchised Businesses within the Development Area; (ii) you become insolvent or are adjudicated bankrupt, or if any action is taken by you, or by others against the you, under any insolvency, bankruptcy or reorganization act, or if you make an assignment for the benefit of creditors or a receiver is appointed by you; or (iii) any Franchise Agreement that is entered into in order to fulfill your development obligations under the Development Agreement is terminated or subject to termination by us, pursuant to the terms of that Franchise Agreement.
i.	Developer’s obligations on termination/ non-renewal	Not Applicable	Not Applicable.
j.	Assignment of contract by us	8	We have the right to assign our rights under the Development Agreement.
k.	“Transfer” by you - definition	8	Any transfer in you (if you are an entity) or your rights/obligations under the Development Agreement.
l.	Our approval of transfer by developer	8	You may not transfer any rights or obligations under the Development Agreement without our prior written consent.
m.	Conditions for our approval of transfer	Not Applicable	Not Applicable.

	Provision	Section in Development Agreement	Summary
n.	Our right of first refusal to acquire your business	Not Applicable	Not Applicable.
o.	Our option to purchase your business	Not Applicable	Not Applicable.
p.	Your death or disability	Not Applicable	Not Applicable.
q.	Non-competition covenants during the term of the development business	Not Applicable	Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement.
r.	Non-competition covenants after the development business is terminated or expires	Not Applicable	Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement.
s.	Modification of the Development Agreement	27	Any modification of the Development Agreement must be in writing and signed by both parties.
t.	Integration/merger clauses	27	Only the terms of the Development Agreement are binding (subject to state law). Any representations or promises made outside of the Disclosure Document and the Development Agreement may not be enforceable.
u.	Dispute resolution by arbitration or mediation	12 and 13	You must bring all disputes before our Managers prior to bringing a claim before a third party. At our option, all claims or disputes between you and us must be submitted first to non-binding mediation in St. Petersburg, Florida in accordance with the American Arbitration Association's Commercial Mediation Rules then in effect and if mediation is not successful, then by litigation.
v.	Choice of forum	15	All claims not subject to mediation must be brought before a court of general jurisdiction in St. Petersburg, Florida, or the United States District Court presiding over St. Petersburg, Florida. You consent to the personal jurisdiction and venue of these courts (subject to state law).
w.	Choice of law	11	The Development Agreement is governed by the laws of the Commonwealth of Florida (subject to state law).

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

We do not use any public figures to promote our franchise, but we reserve the right to do so in the future.

**ITEM 19**  
**FINANCIAL PERFORMANCE REPRESENTATION**

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

Our affiliate, Henry Wellington of Bloomington, Inc., a Minnesota corporation ("HWB") has developed and owns a business system including operating manuals forms, materials and other proprietary and confidential information that is being used in connection with the operation of Pi Wood-Fired Pizza located in Rochester, MN. This business system has been in place and in use since August 2009, and is substantially similar to our current offering.

We have signed a License Agreement with HWB granting us the right to sublicense the use of the Business System as part of our sale of Smokin' Oak Wood-Fired Pizza Franchises and the initial and ongoing services we will provide.

As of December 31, 2020, there were 3 franchised locations in operation. The Financial Performance Representation in this Item 19 excludes (i) 1 franchised location that was terminated during the 2020 calendar year, and (ii) 3 franchised locations that opened up during the 2020 calendar year since each of those franchised locations did not have a full calendar year of data to report to us.

**Historical Representations**

The financial information used in the preparation of the information provided in this Item 19 was not audited, was prepared internally by us based on unaudited information provided to us from HWB, and is materially in conformity with generally accepted accounting principles.

The financial performance representation set forth in this Item 19 discloses the Net Sales, Cost of Goods Sold, Net Profits, employee wages and payroll tax and other expenses that that would have been incurred by our Affiliate (Royalties and Brand Fund Contribution) if our Affiliate was operating under our current form of franchise agreement.

You should carefully analyze the table on the next page with the assistance of your counsel, accountants or other advisors to determine whether the data realistically reflects costs and other factors affecting revenue with which you might be faced.



<b>Pi Wood-Fired Pizza, Statement of Income and Expenses (Unaudited)</b>						
	<b>2018</b>		<b>2019</b>		<b>2020</b>	
	<b>Sales/ Expenses</b>	<b>Percent of Net Sales</b>	<b>Sales/ Expenses</b>	<b>Percent of Net Sales</b>	<b>Sales/ Expenses</b>	<b>Percent of Net Sales</b>
<b>Net Sales</b>	\$731,581	100%	\$ 737,049	100%	\$755,929	100%
<b>Cost of Goods Sold</b>	\$139,265	19%	\$ 147,794	20%	\$154,291	20%
<b>Net Profit</b>	\$592,316	81%	\$ 589,254	80%	\$601,637	80%
<b>Employee Wages and Payroll Tax</b>	\$215,359	29%	\$ 225,300	31%	\$243,372	32%
<b>Royalties</b>	\$43,895	6%	\$ 44,223	6%	\$45,356	6%
<b>Local Marketing</b>	\$6,018	1%	\$ 17,741	2%	\$25,421	3%
<b>Brand Fund Contributions</b>	\$14,632	2%	\$ 14,741	2%	\$15,119	2%
<b>Other Expenses</b>	\$174,753	24%	\$ 172,447	23%	\$200,676	27%
<b>Income Before Owner's Salary</b>	<b>\$149,695</b>	<b>20%</b>	<b>\$ 114,802</b>	<b>16%</b>	<b>\$71,694</b>	<b>9%</b>

Notes:

1. In 2020, Pi Wood-Fired Pizza incurred approximately \$29,521 in third party delivery fees as a result of using third parties to deliver pizza and other menu items in response to the Covid-19 Pandemic.
2. In 2020, Employee Wages and Payroll Tax increased due to Pi Wood-Fired Pizza needing additional employees to manage curbside pick-up activities, which was a new distribution channel in 2020 in response to the Covid-19 Pandemic.
3. Pi Wood-Fired Pizza does not pay into a Brand Fund nor does it pay Royalty Fees, but the amounts here represent the amounts Pi Wood-Fired Pizza would pay toward the Brand Fund and in Royalty Fees under our current franchise offering.
4. The term "Net Sales" means food, beer and wine sales, less any discounts.
5. The term "Cost of Goods Sold" includes food, beer and wine sales, freight and non-food Items.
6. The historical information provided in this Item 19 does not include the owner's salary.
7. The Franchised Business's Net Sales will be affected, in large part, by your own operational ability, which may include your experience in managing a business, your capital and financing (including working capital), customer service orientation, service quality, your business plan and the use of experts to assist you in your business plan

8. The Franchised Business will be affected by a number of factors, including demographics of your DMA, competition, quality and services provided to your customers, and your individual marketing and sales efforts. Your Net Sales may also be negatively impacted by not adhering to the Business System. Other matters affecting your sales may be inflation, state of the economy, applicable laws, rules and regulations.
9. Your costs and expenses may be affected by the price of materials and supplies, government regulations, regional differences, seasonal and weather fluctuations, and fluctuations due to periodic marketing and advertising programs.
10. The Net Sales in this Item 19 reflect historical information for Pi Wood-Fired Pizza.
11. There are a number of factors that may affect sales and expenses at your Franchised Business. The factors listed in this Item 19 are not all-inclusive.

**One Affiliate-Owned Restaurant earned these amounts. Your individual results may differ. There is no assurance that you may earn as much.**

Written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

Other than the preceding financial performance representation, we do not make any other financial performance representations. We also do not authorize our employees or representatives to make any such other representations orally or in writing. If you are purchasing an existing Unit, however, we may provide you with the actual records of that Unit. If you receive any other information or projections of your future income, you should report it to our management by contacting Matt Mongoven at Fourth Avenue Restaurant Group, LLC, 200 2nd Ave. South, #464, St. Petersburg, Florida 33701 or via telephone at (800) 656-0779, the Federal Trade Commission and the appropriate state regulatory agencies.

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

**TABLE 1**  
**Systemwide Outlet Summary**  
**For Fiscal Years 2018, 2019, 2020**

OUTLET TYPE	YEAR	OUTLETS AT THE START OF THE YEAR	OUTLETS AT THE END OF THE YEAR	NET CHANGE
Franchised	2018	1	1	0
	2019	1	1	0
	2020	1	3	+2
Company/Affiliate Owned	2018	0	0	0
	2019	0	0	0
	2020	0	0	0
<b>Total Outlets</b>	<b>2018</b>	<b>1</b>	<b>1</b>	<b>0</b>
	<b>2019</b>	<b>1</b>	<b>1</b>	<b>0</b>
	<b>2020</b>	<b>1</b>	<b>3</b>	<b>+2</b>

**TABLE 2**  
**Transfers of Outlets from Franchisees to New Owners (other than Franchisor)**  
**For Fiscal Years 2018, 2019, 2020**

STATE	YEAR	NUMBER OF TRANSFERS
<b>Totals</b>	<b>2018</b>	0
	<b>2019</b>	0
	<b>2020</b>	0

**TABLE 3**  
**Status of Franchised Outlets**  
**For Fiscal Years 2018, 2019, 2020**

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	TERMINATIONS	NON-RENEWALS	REACQUIRED BY FRANCHISOR	CEASED OPERATIONS - OTHER REASONS	OUTLETS AT END OF THE YEAR
Colorado	2018	0	0	0	0	0	0	0
	2019	0	0	0	0	0	0	0
	2020	0	2	0	0	0	0	2
Iowa	2018	1	0	0	0	0	0	1
	2019	1	0	0	0	0	0	1

	2020	1	1	1	0	0	0	1
<b>Totals</b>	<b>2018</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2019</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	<b>2020</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>

**TABLE 4**  
**Status of Company-Owned and Affiliate-Owned Outlets**  
**For Fiscal Years 2018, 2019, 2020**

STATE	YEAR	OUTLETS AT THE START OF THE YEAR	OUTLETS OPENED	OUTLETS REACQUIRED FROM FRANCHISEES	OUTLETS CLOSED	OUTLETS SOLD TO FRANCHISEES	OUTLETS AT END OF THE YEAR
<b>Total</b>	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**TABLE 5**  
**Projected Openings as of December 31, 2020**

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
Colorado	1	1	0
Florida	1	1	0
Nebraska	1	1	0
<b>TOTAL</b>	<b>3</b>	<b>3</b>	<b>0</b>

As of the issuance date of this disclosure document, we do not have any franchisees. There are no franchisees that have left the System or who have not communicated with us within the 10-week period immediately preceding the effective date of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the System.

There is presently no trademark specific franchisee organization associated with the System. No franchisees have signed provisions during our last three fiscal years restricting their ability to speak openly about their experience with us.

Exhibit H contains the name, address and telephone number of our franchisees, including those who have not yet opened. Exhibit H also contains the names and information the franchisees that have been terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the most recently completed fiscal year or who have not communicated with us within 10 weeks of the effective date of this Franchise Disclosure Document.

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

Exhibit C of this Disclosure Document contains (i) our audited financial statements for the fiscal years ending December 31, 2020, December 31, 2019 and December 31, 2018, and (ii) our unaudited balance sheet and profit and loss statement as of April 30, 2021. Our fiscal year end is December 31 of each year.

**ITEM 22**  
**CONTRACTS**

Exhibits D, E and F of this Franchise Disclosure Document contain all contracts proposed for use or in use regarding the offer of our franchises, including the following agreements:

Exhibit D – Franchise Agreement

Exhibit A - Site Selection Addendum

Exhibit B - Personal Guaranty and Guaranty of Spouses

Exhibit C - Collateral Assignment of Lease

Exhibit D - Conditional Assignment of Franchisee's Telephone Numbers and Listings

Exhibit E - Confidentiality and Restrictive Covenant Agreement

Exhibit F – Electronic Funds Withdrawal Authorization

Exhibit G - Franchisee Questionnaire/Compliance Certification

Exhibit H - Conversion Addendum to Franchise

Exhibit E – Development Agreement

Exhibit F – Sample Termination and Release Agreement

**ITEM 23**  
**RECEIPTS**

Exhibit J of this Franchise Disclosure Document contains a detachable document, in duplicate, acknowledging receipt of this Franchise Disclosure Document by a prospective franchisee. You should sign both copies of the Receipt. You should retain one signed copy for your records and return the other signed copy to: Fourth Avenue Restaurant Group, LLC, 200 2nd Ave. South, #464, St. Petersburg, Florida 33701 or call (800) 656-0779.

**EXHIBIT A  
TO THE FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE DISCLOSURE DOCUMENT**

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

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

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

<b><u>CALIFORNIA</u></b>	<b><u>CONNECTICUT</u></b>
<p>(state administrators) Department of Financial Protection and Innovation: 320 West 4th Street, Suite 750 Los Angeles, CA 90013 (213) 576-7500 Toll Free (866) 275-2677</p> <p>1515 K Street, Suite 200 Sacramento, CA 95814 (916) 445-7205</p> <p>1350 Front Street San Diego, CA 92101 (619) 525-4233</p> <p>One Sansome Street, Suite 600 San Francisco, California 94104 (415) 972-8565</p> <p>(agents for service of process) California Commissioner of Financial Protection and Innovation 320 West 4<sup>th</sup> Street, Suite 750 Los Angeles, CA 90013-2344</p> <p>Commissioner of Financial Protection and Innovation One Sansome Street, Suite 600 San Francisco, California 94104</p> <p>Commissioner of Financial Protection and Innovation 1515 K Street, Suite 200 Sacramento, CA 95814</p>	<p>(state administrator) State of Connecticut Department of Banking Securities &amp; Business Investments Division 260 Constitution Plaza Hartford, CT 06103-1800 (860) 240-8230</p> <p>(agent for service of process) Banking Commissioner</p>

<p><b><u>HAWAII</u></b></p> <p>(state administrator)  Business Registration Division  Department of Commerce and Consumer Affairs  335 Merchant Street, Room 203  Honolulu, Hawaii 96813  (808) 586-2722</p> <p>(agent for service of process)  Commissioner of Securities  State of Hawaii  335 Merchant Street  Honolulu, Hawaii 96813  (808) 586-2722</p>	<p><b><u>ILLINOIS</u></b></p> <p>Franchise Bureau  Office of the Attorney General  500 South Second Street  Springfield, Illinois 62706  (217) 782-4465</p>
<p><b><u>INDIANA</u></b></p> <p>(state administrator)  Indiana Secretary of State  Securities Division, E-111  302 Washington Street  Indianapolis, Indiana 46204  (317) 232-6681</p> <p>(agent for service of process)  Indiana Secretary of State  201 State House  200 West Washington Street  Indianapolis, Indiana 46204  (317) 232-6531</p>	<p><b><u>MARYLAND</u></b></p> <p>(state administrator)  Office of the Attorney General  Securities Division  200 St. Paul Place  Baltimore, Maryland 21202-2021  (410) 576-6360</p> <p>(agent for service of process)  Maryland Securities Commissioner  200 St. Paul Place  Baltimore, Maryland 21202-2021  (410) 576-6360</p>



<p><b><u>MICHIGAN</u></b></p> <p>(state administrator)  Consumer Protection Division  Antitrust and Franchise Unit  Michigan Department of Attorney General  525 W. Ottawa Street  G. Mennen Williams Building, 1<sup>st</sup> Floor  Lansing, Michigan 48933  (517) 373-7117</p> <p>(agent for service of process)  Corporations Division  Bureau of Commercial Services  Department of Labor and Economic Growth  P.O. Box 30054  Lansing, Michigan 48909</p>	<p><b><u>MINNESOTA</u></b></p> <p>(state administrator)  Minnesota Department of Commerce  85 7<sup>th</sup> Place East, Suite 280  St. Paul, Minnesota 55101-2198  (651) 296-6328</p> <p>(agent for service of process)  Minnesota Commissioner of Commerce</p>
<p><b><u>NEW YORK</u></b></p> <p>(state administrator)  NYS Department of Law  Investor Protection bureau  28 Liberty St., 21<sup>st</sup> Floor  New York, NY 10005  (212) 416-8236</p> <p>(agent for service of process)  Attention: Uniform Commercial Code  New York Department of State  One Commerce Plaza  99 Washington Avenue, 6th Floor  Albany, NY 12231  (518) 472-2492</p>	<p><b><u>NORTH DAKOTA</u></b></p> <p>North Dakota Securities Department  State Capitol, Fifth Floor, Dept. 414  600 East Boulevard Avenue  Bismarck, North Dakota 58505  (701) 328-4712</p>
<p><b><u>OREGON</u></b></p> <p>Department of Insurance and Finance  Corporate Securities Section  Labor and Industries Building  Salem, Oregon 97310  (503) 378-4387</p>	<p><b><u>RHODE ISLAND</u></b></p> <p>Securities Division  Department of Business Regulation,  Bldg 69, First Floor  John O. Pastore Center  1511 Pontiac Avenue  Cranston, Rhode Island 02920  (401) 462-9582</p>

<p><b><u>SOUTH DAKOTA</u></b></p> <p>Division of Securities  Department of Labor &amp; Regulation  124 S. Euclid, Suite 104  Pierre, South Dakota 57501  (605) 773-3563</p>	<p><b><u>VIRGINIA</u></b></p> <p>(state administrator)  State Corporation Commission  Division of Securities and Retail Franchising  1300 East Main Street, 9th Floor  Richmond, Virginia 23219  (804) 371-9051</p> <p>(for service of process)  Clerk of the State Corporation Commission  1300 East Main Street, 1<sup>st</sup> Floor  Richmond, Virginia 23219  (804) 371-9733</p>
<p><b><u>WASHINGTON</u></b></p> <p>(state administrator)  Department of Financial Institutions  Securities Division  P.O. Box 9033  Olympia, Washington 98507-9033  (360) 902-8760</p> <p>(agent for service of process)  Director, Department of Financial Institutions  Securities Division  150 Israel Road S.W.  Tumwater, Washington 98501</p>	<p><b><u>WISCONSIN</u></b></p> <p>(state administrator)  Division of Securities  Department of Financial Institutions  201 W. Washington Avenue, 3<sup>rd</sup> Floor  Madison, Wisconsin 53703  (608) 266-1064</p> <p>(agent for service of process)  Administrator, Division of Securities  Department of Financial Institutions  201 W. Washington Ave., 3<sup>rd</sup> Floor  Madison, Wisconsin 53703</p>

**EXHIBIT B  
TO THE FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE DISCLOSURE DOCUMENT**

**TABLE OF CONTENTS OF OPERATIONS MANUAL**

## **INTRODUCTION (44 pages)**

- A. Welcome from the CEO
- B. Notice of Proprietary and Confidential Information
- C. Acknowledgement of Receipt
- D. Using the Confidential Operation and Policies Manual
- E. Our Mission and Objectives
- F. Our History
- G. Industry Overview and Competition
- H. Our Management Team
- I. Our Responsibilities to Franchisees
- J. Your Responsibilities

## **2. PRE-OPENING (30 pages)**

- A. Forming Your Franchise Legal Entity
- B. Use of Trademarks and Trade Names
- C. Insurance Requirements
- D. Licenses, Permits and Certifications
- E. Establishing a Bank Account and Merchant Account Services
- F. Establishing Phone and Internet Service
- G. Establishing Utility Services
- H. Establishing Vendor Accounts
- I. Franchise Email Addresses and Website Listing
- J. The Franchise Intranet System

## **3. DEVELOPING YOUR RESTAURANT (126 pages)**

- A. Restaurant Development Checklist
- B. Selecting Your Location
- C. Your Lease
- D. Restaurant Design and Layout
- E. Construction Specifications
- F. Inventory and Products List
- G. Materials and Supplies List
- H. POS System
- I. Preparing Your Restaurant for Opening

## **4. ADMINISTRATION AND FINANCIAL (63 pages)**

- A. Accounting and Bookkeeping
- B. Business and Financial Reporting
- C. Royalties, Fees and Payments
- D. Cost and Inventory Considerations & Controls
- E. Menu Pricing
- F. Guest Payment Acceptance Methods
- G. Discounts and Promotions
- H. *Smokin' Oak* Gift Card Program

**5. HUMAN RESOURCES (54 pages)**

- A. Employees
- B. Employment Guidelines

**6. RESTAURANT OPERATIONS (357 pages)**

- A. Daily Operations
- B. Managers' Responsibilities & Procedures
- C. Prep Cook Procedures
- D. Oven Operator Procedures
- E. Pizza Topper Procedures
- F. Expo Procedures
- G. Cashier Procedures
- H. Shift Change Procedures
- I. Closing Procedures
- J. Guest Relations
- K. Restaurant Safety and Security
- L. Restaurant Cleaning and Maintenance
- M. Manager Inspections
- N. Corporate Office Inspections
- O. Health Department Inspections
- P. Crises Management

**7. PRODUCTS, MATERIALS AND SUPPLIES (73 pages)**

- A. *Smokin' Oak* Menu
- B. New and Seasonal Menu Offerings
- C. Approved and Designated Vendors
- D. Requesting Approval for Alternative and Local Vendors
- E. Approved Brands List
- F. Obligations of a Vendor
- G. Working with Vendors
- H. Ordering and Receiving Products, Materials & Supplies

**8. ADVERTISING, MARKETING AND PROMOTION (35 pages)**

- A. Guidelines / Brand Identity Standards
- B. Advertising Your Restaurant
- C. Marketing and Promoting Your Restaurant
- D. Community Outreach / Promoting *Smokin' Oak* within Your Community
- E. Grand Opening Advertising and Marketing Plan
- F. Advertising and Marketing Activity Report
- G. *Smokin' Oak* Website
- H. The Media Fund
- I. Requesting Approval for Alternative Advertising and Marketing

**9. FORMS AND MATERIALS (4 pages)**

**782 TOTAL PAGES**

**EXHIBIT C**  
**TO THE FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE DISCLOSURE DOCUMENT**

**FINANCIAL STATEMENTS**

**EISNERAMPER**

**FOURTH AVENUE RESTAURANT GROUP, LLC**

**FINANCIAL STATEMENTS**

**DECEMBER 31, 2020 AND 2019**  
(with supplementary information)



**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**DECEMBER 31, 2020 AND 2019**

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## INDEPENDENT AUDITORS' REPORT

To the Members of  
Fourth Avenue Restaurant Group, LLC

### Report on the Financial Statements

We have audited the accompanying financial statements of Fourth Avenue Restaurant Group, LLC (a Florida limited liability company), which comprise the balance sheet as of December 31, 2020, and the related statements of operations, changes in members' deficit, and cash flows for the year then ended, and the related notes to the financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes 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.

### Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



## **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Fourth Avenue Restaurant Group, LLC as of December 31, 2020, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

## **Prior Year Financial Statements**

The financial statements of Fourth Avenue Restaurant Group, LLC for the year ended December 31, 2019, were audited by another auditor who expressed an unmodified opinion on those statements on April 27, 2020.

*EisnerAmper LLP*

EisnerAmper LLP  
Merchantville, New Jersey  
August 13, 2021

EISNERAMPER  
LLP



**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**BALANCE SHEETS**  
**DECEMBER 31, 2020 AND 2019**

	<u>2020</u>	<u>2019</u>
<b>ASSETS</b>		
<b>CURRENT ASSETS</b>		
Cash and cash equivalents	\$ 8,715	\$ 55,180
Accounts receivable	1,254	1,023
Prepaid expense	<u>1,683</u>	<u>1,259</u>
<b>TOTAL CURRENT ASSETS</b>	<b>11,652</b>	<b>57,462</b>
<b>OTHER ASSETS</b>		
Intangible asset, net	<u>4,431</u>	<u>5,091</u>
	<u><b>\$ 16,083</b></u>	<u><b>\$ 62,553</b></u>
<b>LIABILITIES AND MEMBERS' DEFICIT</b>		
<b>CURRENT LIABILITIES</b>		
Accounts payable and accrued expenses	\$ 7,746	\$ 7,147
Notes payable	171,733	172,496
Interest payable	81,454	57,493
Contract liabilities, current portion	10,620	23,400
Due to affiliate	<u>120,314</u>	<u>134,204</u>
<b>TOTAL CURRENT LIABILITIES</b>	<u><b>391,867</b></u>	<u><b>394,740</b></u>
<b>LONG-TERM LIABILITIES</b>		
Notes payable, net of current portion	22,063	-
Contract liabilities, net of current portion	<u>159,334</u>	<u>198,985</u>
<b>TOTAL LONG-TERM LIABILITIES</b>	<u><b>181,397</b></u>	<u><b>198,985</b></u>
<b>TOTAL LIABILITIES</b>	<b>573,264</b>	<b>593,725</b>
<b>MEMBERS' DEFICIT</b>	<u><b>(557,181)</b></u>	<u><b>(531,172)</b></u>
<b>TOTAL LIABILITIES AND MEMBERS' DEFICIT</b>	<u><b>\$ 16,083</b></u>	<u><b>\$ 62,553</b></u>

See accompanying notes.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**STATEMENTS OF OPERATIONS**  
**YEARS ENDED DECEMBER 31, 2020 AND 2019**

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	<u>2020</u>	<u>2019</u>
REVENUES		
Franchise and area development fees	\$ 96,981	\$ 56,901
Royalty fees	53,389	14,623
Other	<u>28,243</u>	<u>23</u>
<b>TOTAL REVENUES</b>	<u>178,613</u>	<u>71,547</u>
OPERATING EXPENSES	<u>180,001</u>	<u>122,425</u>
<b>LOSS FROM OPERATIONS</b>	<u>(1,388)</u>	<u>(50,878)</u>
OTHER EXPENSES		
Amortization	660	660
Interest	<u>23,961</u>	<u>21,841</u>
<b>TOTAL OTHER EXPENSES</b>	<u>24,621</u>	<u>22,501</u>
<b>NET LOSS</b>	<u>\$ (26,009)</u>	<u>\$ (73,379)</u>

See accompanying notes.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**STATEMENTS OF CHANGES IN MEMBERS' DEFICIT**  
**YEARS ENDED DECEMBER 31, 2020 AND 2019**

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	<u>2020</u>	<u>2019</u>
MEMBERS' DEFICIT		
Members' deficit, beginning	\$ (531,172)	\$ (452,507)
Implementation of ASU 606	<u>-</u>	<u>(5,286)</u>
Members' deficit, beginning	(531,172)	(457,793)
Net loss	<u>(26,009)</u>	<u>(73,379)</u>
TOTAL MEMBERS' DEFICIT, ending	<u>\$ (557,181)</u>	<u>\$ (531,172)</u>

See accompanying notes.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**STATEMENTS OF CASH FLOWS**  
**YEARS ENDED DECEMBER 31, 2020 AND 2019**

	<u>2020</u>	<u>2019</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net loss	\$ (26,009)	\$ (73,379)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities		
Amortization	660	660
(Increase) decrease in assets		
Accounts receivable	(231)	(119)
Prepaid expense	(424)	(1,259)
Increase (decrease) in liabilities		
Accounts payable and accrued expenses	599	(39,153)
Interest payable	23,961	21,841
Contract liabilities	(52,431)	217,099
Unearned revenue	-	(92,000)
Due to affiliate	(13,890)	(5,469)
<b>NET CASH (USED IN) PROVIDED BY OPERATING ACTIVITIES</b>	<u>(67,765)</u>	<u>28,221</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Proceeds from notes payable	<u>21,300</u>	<u>25,686</u>
<b>NET CASH PROVIDED BY FINANCING ACTIVITIES</b>	<u>21,300</u>	<u>25,686</u>
<b>NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS</b>	(46,465)	53,907
<b>CASH AND CASH EQUIVALENTS, BEGINNING</b>	<u>55,180</u>	<u>1,273</u>
<b>CASH AND CASH EQUIVALENTS, ENDING</b>	<u>\$ 8,715</u>	<u>\$ 55,180</u>

See accompanying notes.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2020 AND 2019**

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NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of Operations

Fourth Avenue Restaurant Group, LLC (the “Company”) was formed on November 19, 2015, with the principal place of business in St. Petersburg, Florida. Fourth Avenue Restaurant Group, LLC offers and sells franchises for the right to establish, develop and operate franchise businesses offering wood-fired pizza and other menu items primarily baked in a wood-fired oven, and related beverage items for dine-in or takeout under the “Smokin’ Oak Wood-Fired Pizza” name. The Company also offers, to certain qualified persons, rights to develop several Smokin’ Oak Wood-Fired Pizza franchises within a specific development area. The Company does not own or operate any businesses of the type being franchised.

As of December 31, 2020, there were seven (7) franchise agreements signed including one (1) area development agreement, and three (3) opened and operating locations.

Liquidity

The accompanying financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. Accordingly, the financial statements do not include any adjustments relating to the recoverability of assets and the classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

The Company incurred net losses of \$26,009 and \$73,379 during the years ended December 31, 2020 and 2019, respectively, and has experienced cash outflows from operating activities during 2020 in the amount of \$67,765. The Company also has a members’ deficit of \$557,181 and \$531,172 and negative working capital of \$380,215 and \$337,278 as of December 31, 2020 and 2019, respectively. These factors raise substantial doubt about the Company’s ability to continue as a going concern.

Management of the Company has implemented plans to address this liquidity uncertainty by: (i) restructuring the payment terms of its promissory notes payable with members originally due on demand, together with accrued interest thereon, in the aggregate amount of \$253,187 outstanding as of December 31, 2020, to be due no earlier than October 31, 2022 (Note 4); (ii) postponing the payment of interest on the outstanding balance of its promissory notes payable until October 31, 2022 (Note 4); and (iii) converting amounts due to affiliates of \$120,314 as of December 31, 2020, to permanent members’ equity (Note 6).

Management has implemented additional factors to address its liquidity position including rationalizing operating expenditures. Based on the implementation of its plans, management concludes that it will have sufficient liquidity to meet its financial obligations for a period of at least 12 months from August 13, 2021, the date the financial statements were available to be issued and therefore, further concludes that there is not substantial doubt about its ability to continue as a going concern.

Basis of Presentation

The Company's policy is to prepare its financial statements on the accrual basis of accounting in accordance with accounting principles generally accepted in the United States of America (“U.S. GAAP”).

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2020 AND 2019**

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NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Concentration of Credit Risk - Cash

The Company maintains cash balances at a financial institution, which at various times during the year may exceed the threshold for insurance provided by the Federal Deposit Insurance Corporation (“FDIC”). Accounts at the institution are insured by the FDIC up to \$250,000.

Revenue Recognition

The Company generates revenue from the sale of franchise licenses and area development agreements under various agreements. The initial franchise fee is due at signing and earned based on the recognition of specific performance obligations. The Company also generates revenue from royalty and other revenues. From time to time, the Company can charge various other fees as outlined in the Franchise Disclosure Document. See Note 2, “Revenue from Contracts with Customers” for further information regarding implementation and disclosures.

Accounts Receivable

Accounts receivable are reported at the amount management expects to collect from outstanding balances. Balances that are still outstanding after management has used reasonable collection efforts will be written off through a charge to the valuation allowance and a credit to the receivable accounts. There is no valuation allowance recorded for the years ended December 31, 2020 and 2019 as management deems all balances collectible.

Intangible Asset - Trademark

The Company received approval of the trademark registration in October 2017. The costs incurred for the Company's trademark are being amortized over the expected estimated useful life of 10 years. Amortization of trademark costs was approximately \$660 for both of the years ended December 31, 2020 and 2019. Future amortization of the trademark costs is approximately \$660 for the years 2021 through 2026, and approximately \$490 for 2027. Total accumulated amortization was \$2,141 and \$1,481 for the years ended December 31, 2020 and 2019, respectively. The Company periodically reviews intangible assets for impairment if events or changes in circumstances indicate that the carrying value may not be recoverable. There were no impairment changes recorded in 2020.

Income Taxes

The Company elected to be taxed as a partnership under the provisions of the Internal Revenue Code and applicable state regulations. Therefore, no provision for income taxes is included in the financial statements. The Company's earnings and losses for income tax purposes are included in the tax returns of the individual members.



**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2020 AND 2019**

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NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Limited Liability Company

Since the Company is a limited liability company, no member, director, manager, agent, or employee of the Company shall be personally liable for the debts, obligations, or liabilities of the Company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, director, manager, agent, or employee of the Company, unless the individual has signed a specific personal guarantee. The duration of the Company is perpetual. As a limited liability company, each members' liability is limited to amounts reflected in their respective member equity accounts.

Brand Development Fund

The Company will collect funds from franchisees to manage the brand level advertising, marketing and development program. The fee is based on a percentage of the gross sales less any amount paid towards sales tax, payable monthly. Activity relating to brand development will be reflected in the statement of operations and member's equity as both revenue and expense as applicable.

Advertising and Marketing

Advertising and marketing expenses are charged to operations in the year incurred. Advertising and marketing expenses were \$30,247 and \$9,577 for the years ended December 31, 2020 and 2019, respectively.

NOTE 2 REVENUE FROM CONTRACTS WITH CUSTOMERS

The Company follows FASB ASC Topic 606, Revenue from Contracts with Customers and adopted Subtopic 952-606, Franchisors - Revenue from Contracts with Customers effective with the Application of ASC Topic 606.

Franchise Fees

The Company recognizes franchise fees in two (2) parts. The amount allocated to site selection, architectural drawings, construction advisement, grand opening marketing, corporate training, and on-site training are earned at a point in time when performed. The amount allocated to the franchise license is earned over time as performance obligations are satisfied due to the continuous transfer of control to the franchisee. For the years ended December 31, 2020 and 2019, revenue earned at a point in time was \$86,311 and \$23,300, respectively and revenue earned over time was \$8,620 and \$31,401, respectively.

Area Development Fees

The Company recognizes the revenue from area development agreements over the length of the agreement, normally ten (10) years, as performance obligations are satisfied due to the continuous transfer of control to the franchisee. For each of the years ended December 31, 2020 and 2019, revenue earned over time was \$2,000.

Variable Considerations

The franchise agreements contain variable considerations in the form of royalty and advertising fees. These fees are based on franchisee weekly gross sales and are recorded as revenue and recognized as these services are delivered because the variable payment relates specifically to the performance obligation of using the license.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2020 AND 2019**

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NOTE 2 REVENUE FROM CONTRACTS WITH CUSTOMERS (continued)

The Company also recognizes revenue from vendor rebates on sales of contracted products to Franchisees, and other revenue from various services provided as needed to franchisees. These fees are recognized as incurred and at the time the services take place.

Contract Liabilities

Contract liabilities consist of the remaining initial franchise fees and area development fees, which are amortized over the life of the franchise and area development agreements, as well as any performance obligations that have not yet been performed. Contract liabilities are a result of the collection of the initial franchise fee at the time of the signing of the franchise agreement and will fluctuate each year based on the number of franchise agreements signed. There was \$49,150 of revenue recognized during the year ended December 31, 2020 that was included in the contract liability balance at the beginning of the year.

NOTE 3 RELATED PARTY TRANSACTIONS

Certain expenses are paid on behalf of the Company by an entity related through common ownership. Amounts are due on demand, but the owners of the Company agreed not to demand payment unless the Company has sufficient cash flow to repay the amounts without interrupting operations. The balance due was \$120,314 and \$134,204 for the years ended December 31, 2020 and 2019, respectively.

The Company has a license agreement with a related party with common ownership for use of their business system and Trademark, as defined. The license agreement has a term of 10 years, expiring November 2025. The Company was not required to pay an initial license fee or royalties under this agreement.

NOTE 4 NOTES PAYABLE

The Company has promissory notes with two (2) of its members which are due on demand. Both require monthly interest only payments of 10%. The members have agreed not to demand payment of principal or interest unless the Company has sufficient cash flow to repay the amounts without interrupting operations. The outstanding principal balance on the notes payable was \$171,496 and \$172,496 for the years ended December 31, 2020 and 2019, respectively. Accrued interest was \$81,454 and \$57,493 for the years ended December 31, 2020 and 2019, respectively. These notes have been amended on August 10, 2021 to change the payment terms to state that in no event will any repayment of principal, interest, and accrued interest be required prior to October 31, 2022. See Notes 1 and 6 for further discussion.

The Company entered into an Economic Injury Disaster Loan (“EIDL”) with the U.S. Small Business Administration (“SBA”) on June 10, 2020 for \$22,300. The loan accrues interest at 3.75% per annum and monthly payments of principal and interest are not due to begin until twelve (12) months from the date of the note. In accordance with the promissory note, for loan amounts of \$25,000 or less, the SBA in not taking a security interest in any collateral.

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**NOTES TO FINANCIAL STATEMENTS**  
**DECEMBER 31, 2020 AND 2019**

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NOTE 4 NOTES PAYABLE (continued)

Future maturities of notes payable are as follows:

<u>Years Ending December 31,</u>	
2021	\$ 237
2022	419
2023	435
2024	452
2025	469
Thereafter	<u>20,288</u>
	<u>\$ 22,300</u>

NOTE 5 COMMITMENTS AND CONTINGENCIES

The extent of the impact of the coronavirus (“COVID-19”) outbreak on the financial performance of the Company will depend on future developments, including the duration and spread of the outbreak, related advisories and restrictions, and the impact of COVID-19 on the financial markets and the overall economy, all of which are highly uncertain and cannot be predicted. If the financial markets and/or the overall economy are impacted for an extended period of time, the Company’s results of operations may be materially adversely affected.

NOTE 6 SUBSEQUENT EVENTS

The Company has evaluated events or transactions that have occurred after December 31, 2020 (the financial statement date) through August 13, 2021, the date that the financial statements were available to be issued. Except as noted below, during this period the Company did not have any material recognizable subsequent events that would require adjustment to, or disclosure in, the financial statements.

During August 2021, the Company restructured the payment terms of its promissory notes payable with members originally due on demand, together with accrued interest thereon, in the aggregate amount of \$253,187 as of December 31, 2020, to be due no earlier than October 31, 2022 (Note 4). Additionally, during August 2021, the Company and its affiliate converted amounts due to affiliate of \$120,314 as of December 31, 2020, to permanent members’ equity (Note 1).

**SUPPLEMENTARY INFORMATION (UNAUDITED)**

## INDEPENDENT AUDITORS' REPORT ON SUPPLEMENTARY INFORMATION

To the Members of  
Fourth Avenue Restaurant Group, LLC

We have audited the financial statements of Fourth Avenue Restaurant Group, LLC as of December 31, 2020, and for the year then ended, and our report dated August 13, 2021, which expressed an unmodified opinion on those financial statements appears on pages 1 and 2. Our audit was conducted for the purpose of forming an opinion on the financial statements taken as a whole. The Schedule of Operating Expenses, which is the responsibility of management, is presented for the purposes of additional analysis and is not a required part of the financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the financial statements, and, accordingly, we do not express an opinion or provide any assurance on it.

### Prior Year Financial Statements

The Schedule of Operating Expenses of Fourth Avenue Restaurant Group, LLC for the year ended December 31, 2019, was audited by another auditor who expressed an unmodified opinion on that statement on April 27, 2020.

*EisnerAmper LLP*

EISNERAMPER LLP  
Merchantville, New Jersey  
August 13, 2021



**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**SCHEDULES OF OPERATING EXPENSES**  
**YEARS ENDED DECEMBER 31, 2020 AND 2019**

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	Unaudited 2020	Unaudited 2019
Advertising and marketing	\$ 30,247	\$ 9,577
Bank service charges	3,747	2,637
Dues and subscriptions	-	1,675
Education and training	-	450
Franchise expenses	2,874	193
Insurance	231	-
Office and supplies	3,750	2,839
Professional fees	120,409	88,391
Research and development	971	250
Taxes and licenses	383	400
Technology	7,465	5,578
Travel	8,838	10,224
Utilities	1,086	211
	<hr/>	<hr/>
<b>TOTAL OPERATING EXPENSES</b>	<b>\$ 180,001</b>	<b>\$ 122,425</b>

**Fourth Avenue  
Restaurant Group, LLC**

**Financial Statements**

December 31, 2018 and 2017

# Fourth Avenue Restaurant Group, LLC

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## **Independent Auditor's Report**

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The Members  
Fourth Avenue Restaurant Group, LLC  
St. Petersburg, Florida

We have audited the accompanying financial statements of Fourth Avenue Restaurant Group, LLC (the Company), which comprise the balance sheets as of December 31, 2018 and 2017, and the related statements of operations and members' deficit, and cash flows for the years then ended, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes 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.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Fourth Avenue Restaurant Group, LLC as of December 31, 2018 and 2017, 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.

A handwritten signature in black ink that reads "Lurie, LLP".

Lurie, LLP

Minneapolis, Minnesota  
April 26, 2019

# Fourth Avenue Restaurant Group, LLC

## Balance Sheets

December 31	2018	2017
<b>ASSETS</b>		
<b>Current Assets</b>		
Cash	\$ 1,273	\$ 36
Accounts receivable	904	1,017
<b>Total Current Assets</b>	<b>2,177</b>	<b>1,053</b>
<b>Trademark, net of amortization</b>	<b>5,751</b>	<b>6,408</b>
<b>Total Assets</b>	<b>\$ 7,928</b>	<b>\$ 7,461</b>
<b>LIABILITIES AND MEMBERS' DEFICIT</b>		
<b>Current Liabilities</b>		
Accounts payable and accrued expenses	\$ 46,300	\$ 540
Deferred revenue	30,667	-
<b>Total Current Liabilities</b>	<b>76,967</b>	<b>540</b>
<b>Accrued interest</b>	<b>35,652</b>	<b>20,036</b>
<b>Notes Payable, Related Parties</b>	<b>146,810</b>	<b>118,828</b>
<b>Due to Related Party</b>	<b>139,673</b>	<b>82,425</b>
<b>Deferred Revenue</b>	<b>61,333</b>	<b>-</b>
<b>Total Liabilities</b>	<b>460,435</b>	<b>221,829</b>
<b>Members' Deficit</b>	<b>(452,507)</b>	<b>(214,368)</b>
<b>Total Liabilities and Members' Deficit</b>	<b>\$ 7,928</b>	<b>\$ 7,461</b>

See notes to financial statements.

# Fourth Avenue Restaurant Group, LLC

## Statements of Operations and Members' Deficit

Years Ended December 31	2018	2017
Revenue	\$ 18,392	\$ 33,563
Operating Expenses	240,914	87,861
Loss from Operations	(222,522)	(54,298)
Other Expense		
Interest expense	(15,617)	(13,057)
Total Other Expense	(15,617)	(13,057)
Net Loss	(238,139)	(67,355)
Members' Deficit		
Beginning	(214,368)	(147,013)
Ending	\$ (452,507)	\$ (214,368)

See notes to financial statements.

# Fourth Avenue Restaurant Group, LLC

## Statements of Cash Flows

Years Ended December 31	2018	2017
<b>Operating Activities</b>		
Net Loss	\$ (238,139)	\$ (67,355)
Adjustments to reconcile net loss to net cash used by operating activities:		
Amortization of trademark	657	164
Changes in operating assets and liabilities:		
Accounts receivable	113	(1,017)
Accounts payable and accrued expenses	45,760	(235)
Deferred revenue	92,000	(24,000)
Accrued interest	15,616	13,058
Due to related party	57,248	82,425
<b>Net Cash Provided (Used) by Operating Activities</b>	<b>(26,745)</b>	<b>3,040</b>
<b>Investing Activities</b>		
Due from related party	-	101
Trademark development costs	-	(4,023)
<b>Net Cash Used by Investing Activities</b>	<b>-</b>	<b>(3,922)</b>
<b>Financing Activities</b>		
Checks in excess of deposits	-	(582)
Borrowings on notes payable, related parties	27,982	1,500
<b>Net Cash Provided by Financing Activities</b>	<b>27,982</b>	<b>918</b>
<b>Net Increase in Cash</b>	<b>1,237</b>	<b>36</b>
<b>Cash</b>		
Beginning of year	36	-
End of year	\$ 1,273	\$ 36
<b>Supplemental Disclosure of Cash Flow Information</b>		
Cash paid for interest	\$ -	\$ -

See notes to financial statements.

# Fourth Avenue Restaurant Group, LLC

## Notes to Financial Statements

### 1. Nature of Business and Summary of Significant Accounting Policies

#### Nature of Business

Fourth Avenue Restaurant Group, LLC (the "Company") is a Florida LLC organized on November 19, 2015. The Company, which operates under the name Smokin' Oak Wood-Fired Pizza<sup>®</sup>, is a franchisor who grants franchisees the right to purchase and operate a franchise business.

#### Franchise Operations

The Company franchises restaurants that offer wood-fired pizza and other menu items primarily baked in a wood-fired oven. The Company also offers, to certain qualified persons, rights to develop a number of Smokin' Oak Wood-Fired Pizza franchises within a specific development area.

The Company anticipates receiving initial franchise fees of approximately \$15,000 - \$49,500. In addition, the Company will receive royalty payments of 5% of gross revenues, as defined. As of December 31, 2018, there were six franchise agreements signed with an initial term of 10 years with unlimited options to renew for 10-year periods, subject to certain conditions as defined. In addition, there was one development agreement signed simultaneously with one of the franchise agreements signed in 2018 with rights to develop up to three franchise businesses within a specific development area, as defined. If the franchisees decide to renew the franchise agreement, the franchisee will pay a renewal fee equal to 10% of the then current initial franchise fee.

One franchise opened in June 2017. No new locations were opened in 2018.

#### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that may affect certain reported amounts and disclosures in the financial statements and accompanying notes. Accordingly, actual results could differ from those estimates.

#### Cash and Credit Risk

The Company maintains cash balances at a financial institution which, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts and management believes that the Company is not exposed to any significant credit risk on cash.

#### Accounts Receivable

Accounts receivable represents royalty fees due from franchisees. Management has determined that no allowance for doubtful accounts is necessary.

#### Intangible Asset - Trademark

The Company received approval of the trademark registration in October 2017. The costs of the trademark as of December 31, 2018 and 2017 totaled \$6,572. The costs incurred for the Company's trademark is being amortized over the expected estimated useful life of 10 years, beginning at the date of registration approval. Amortization of trademark costs was approximately \$660 and \$160 for the years ended December 31, 2018 and 2017, respectively. Future amortization of the trademark costs are approximately \$660 for the years 2019 through 2026, and approximately \$490 for 2027. The Company periodically reviews intangible assets for impairment if events or changes in circumstances indicate that the carrying value may not be recoverable. There were no impairment charges recorded in 2018 or 2017.

# Fourth Avenue Restaurant Group, LLC

## Notes to Financial Statements

### 1. Nature of Business and Summary of Significant Accounting Policies (continued)

#### **Due to Related Party**

Due to related party represents amounts owed for expenses paid on behalf of the Company by an entity related through common ownership. Amounts are due on demand, but the owners of the Company agreed not to demand payment prior to January 1, 2020. The owners have also agreed not to demand payment prior to April 26, 2020, unless the Company has sufficient cash flow to repay the amounts without interrupting operations.

#### **Revenue Recognition**

Revenue from initial franchise fees and development area fees from individual franchise sales is recognized upon the opening of the franchised restaurant when the Company has performed all of its material obligations and initial services. Royalty fees equal to 5% of weekly net sales are recognized as earned each period.

#### **Deferred Revenue**

Deferred revenue consists of amounts received for franchise fees and development area fees on signed contracts for restaurants not yet opened. The related revenue is deferred until stores open and locations commence operations. During the period from contract signing until restaurant opening, the Company provides various services, including training, use of manuals, build-out consultation, financial guidance and site review. Deferred revenues are classified as current and noncurrent based on the anticipated restaurant opening date.

The Company received \$92,000 for three initial franchise fees and a development fee in 2018. The stores are expected to open in 2019 and 2020, at which time the revenue will be recognized.

#### **Franchisee Acquisition Costs**

Costs that are directly related to the acquisition of a franchisee and that would not have been incurred for reasons other than the acquisition of that franchisee are charged to expense as incurred.

#### **Advertising**

The Company expenses advertising costs as incurred. Advertising expense was approximately \$63,000 and \$38,000 for the years ended December 31, 2018 and 2017, respectively.

# Fourth Avenue Restaurant Group, LLC

## Notes to Financial Statements

### 1. Nature of Business and Summary of Significant Accounting Policies (continued)

#### Income Taxes

The Company elected to be taxed as a partnership under the provisions of the Internal Revenue Code and applicable state regulations; therefore, no provision for income taxes is included in the financial statements. The Company's earnings and losses for income tax purposes are included in the tax returns of the individual members. Net earnings (losses) for financial statement purposes may differ significantly from taxable income (loss) as a result of differences between the tax basis and financial reporting basis of assets and liabilities as well as differences in the recognition of revenues and expenses for tax and financial reporting purposes.

Accounting principles generally accepted in the United States of America require management to evaluate tax positions taxed by the Company and recognize a tax liability (or asset) if the Company has taken an uncertain position that more likely than not would not be sustained upon examination by the Internal Revenue Service. Management has analyzed the tax positions taken by the Company, and has concluded that as of December 31, 2018, there are no uncertain positions taken or expected to be taken that would require recognition of a liability (or asset) or disclosure in the financial statements. The Company is subject to routine audits by taxing jurisdiction; however, there are currently no audits for any tax periods in progress. Management believes the Company is subject to income tax examinations since inception.

#### Recently Issued Accounting Pronouncement

In May 2014, the Financial Accounting Standards Board issued Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*. This new guidance will replace most existing revenue recognition guidance in U.S. GAAP and will affect all companies that enter into contracts with customers. The new standard provides a five-step process for determining when revenue should be recognized to match the transfer of goods and services. This update is effective for annual reporting periods beginning after December 15, 2018, with early adoption permitted. The Company is currently evaluating the impact this standard will have on its financial statements.

#### Reclassifications

Certain reclassifications were made to the 2017 financial statements to conform to the presentation of the 2018 financial statements. The reclassifications did not have any effect on previously reported members' deficit, net loss, or net cash flows.

### 2. Notes Payable

The Company has promissory notes with two of its members which are due on demand. The principal of each was \$43,510 and \$103,300 at December 31, 2018 and \$43,510 and \$75,318 at December 31, 2017. Both require monthly interest only payments of 10% until demand is made. The Company did not pay interest on the notes during the years ended December 31, 2018 and 2017. The members have agreed not to demand payment of principal or interest prior to January 1, 2020. The members have also agreed not to demand payment prior to April 26, 2020, unless the Company has sufficient cash flow to repay the amounts without interrupting operations.

One member loaned approximately an additional \$18,000 to the Company as of April 26, 2019.

# Fourth Avenue Restaurant Group, LLC

## Notes to Financial Statements

### 3. Related Party Transactions

The Company has a license agreement with a related party with common ownership for use of their business system, as defined. The license agreement has a term of 10 years, expiring November 2025. The Company was not required to pay an initial license fee or royalties under this agreement.

### 4. Consulting Agreement

On November 28, 2016 the Company entered into a consulting agreement with an unrelated party. The initial term was twelve months and was verbally renewed by both parties. The agreement will continue until terminated by either party. The Company has agreed to pay a monthly retainer of \$2,500 to manage up to 100 new franchise leads per month. A fixed fee will be paid for any new leads exceeding 100. Additionally, the Company has agreed to pay a commission equal to the greater of \$15,000 or 50% of the initial franchise fee for each new franchisee. Consulting and commission fees expensed under this agreement were approximately \$114,600 and \$35,200 in 2018 and 2017, respectively.

### 5. Subsequent Events

In January 2019, the Company received the initial franchise fees of \$48,000 related to two agreements signed on December 29, 2018. The location and opening date are expected to be in the third quarter of 2019.

Management has evaluated subsequent events through April 26, 2019, the date the financial statements were available to be issued.



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

# Fourth Avenue Restaurant Group LLC

## Balance Sheet Summary

As of April 30, 2021

	TOTAL
<b>ASSETS</b>	
Current Assets	
Bank Accounts	7,852.42
Other Current Assets	4,683.00
<b>Total Current Assets</b>	<b>\$12,535.42</b>
Fixed Assets	5,090.50
<b>TOTAL ASSETS</b>	<b>\$17,625.92</b>
<b>LIABILITIES AND EQUITY</b>	
Liabilities	
Current Liabilities	
Accounts Payable	36,000.00
Other Current Liabilities	81,334.64
<b>Total Current Liabilities</b>	<b>\$117,334.64</b>
Long-Term Liabilities	469,409.12
<b>Total Liabilities</b>	<b>\$586,743.76</b>
Equity	-569,117.84
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$17,625.92</b>

# Fourth Avenue Restaurant Group LLC

Profit and Loss  
January - April, 2021

	TOTAL
Income	
Franchise Purchase Fee Income	44,600.00
Fulfillment Income	12.00
Product Sales	66,940.63
Rebates Received Income	1,635.00
Royalties Received Income	-7.00
<b>Total Income</b>	<b>\$113,180.63</b>
Cost of Goods Sold	
Cost of Goods Sold	1,740.00
Merchant Account Fees	307.08
Subcontracted Services	1,901.73
<b>Total Cost of Goods Sold</b>	<b>\$3,948.81</b>
<b>GROSS PROFIT</b>	<b>\$109,231.82</b>
Expenses	
Bank Service Charges	667.09
Broker Group Fees	880.00
Business Licenses and Permits	388.75
Insurance Expense	
Health Insurance	692.70
<b>Total Insurance Expense</b>	<b>692.70</b>
IT Expense	1,717.42
Marketing	16,253.85
Meals and Entertainment	920.55
Office Supplies	1,427.43
Postage and Delivery	755.91
Professional Fees	
Accounting	3,925.00
Accreditation/Registration	500.00
Franchise Consulting	53,960.00
Legal	1,383.10
<b>Total Professional Fees</b>	<b>59,768.10</b>
QuickBooks Payments Fees	272.00
Supplies - Franchisee	416.18
Technology Expenses	2,016.58
Telephone Expense	708.19
Travel Expense	12,077.18
<b>Total Expenses</b>	<b>\$98,961.93</b>
<b>NET OPERATING INCOME</b>	<b>\$10,269.89</b>
Other Expenses	
Ask My Accountant	6,677.44
<b>Total Other Expenses</b>	<b>\$6,677.44</b>
<b>NET OTHER INCOME</b>	<b>\$ -6,677.44</b>
<b>NET INCOME</b>	<b>\$3,592.45</b>

**EXHIBIT D**  
**TO THE FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE DISCLOSURE DOCUMENT**

**FRANCHISE AGREEMENT**

**FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE AGREEMENT**

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### EXHIBITS

- Exhibit A - Site Selection Addendum
- Exhibit B - Personal Guaranty and Guaranty of Spouses
- Exhibit C - Collateral Assignment of Lease
- Exhibit D - Conditional Assignment of Franchisee's Telephone Numbers and Listings
- Exhibit E - Confidentiality and Restrictive Covenant Agreement
- Exhibit F - Electronic Funds Withdrawal Authorization
- Exhibit G - Franchisee Questionnaire/Compliance Certification
- Exhibit H - Conversion Addendum to Franchise

**DATA SHEET**

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

Guarantors: \_\_\_\_\_

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

Approved Location: \_\_\_\_\_  
\_\_\_\_\_

Protected Territory: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

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

Initial Franchise Fee: \_\_\_\_\_

**The terms of this Data Sheet are incorporated into the attached Franchise Agreement.**

**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

THIS AGREEMENT (the “Agreement” or “Franchise Agreement”) is entered into and made effective this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Fourth Avenue Restaurant Group, LLC, a Florida limited liability company with a principal business address at 200 2<sup>nd</sup> Ave. South, #464, St. Petersburg, Florida 33701 and the franchisee identified in the attached Data Sheet (“Franchisee”).

**RECITALS**

A. Franchisor and its principals have developed a system for operating businesses offering offers wood-fired pizza and other menu items primarily baked in a wood-fired oven, along with beverage items for dine-in or takeout under the “Smokin’ Oak Wood-Fired Pizza” name and mark (each a “Franchised Businesses” or “Business”).

B. Franchisor is engaged in the business of granting franchisees the right to operate Franchised Businesses.

C. Franchisee desires to enter into an agreement with Franchisor to obtain the right to operate a Franchised Business using the system developed by Franchisor, the characteristics of which include, depending on Franchisee’s location: Franchisor’s proprietary standards and specifications for food preparation and service (the “Proprietary Recipes”); interior and exterior designs, décor and color schemes; standard specifications for furniture, fixtures, equipment, wall and ceiling designs and displays; sales techniques, merchandising, marketing, advertising, and inventory management systems; and procedures for operating, promoting, and managing a Business in the manner set forth in this Agreement and in the Operations Manual, as defined in Section 6.1, and modified from time to time (the “System”).

D. Franchisor and its franchisees use various trade names, trademarks and service marks including, without limitation, the mark “Smokin’ Oak Wood-Fired Pizza,” in connection with the System (the “Proprietary Marks”). The rights to all Proprietary Marks Franchisor may now, or in the future designate as part of the System, will be owned exclusively by Franchisor or its affiliate and be used for the benefit of Franchisor, its affiliate and Franchisor’s franchisees to identify to the public the source of the products and services marketed thereunder.

E. Franchisee has applied to Franchisor for a franchise to operate a Franchised Business and such application has been approved in reliance upon all of the representations made therein.

F. Franchisee hereby acknowledges that adherence to the terms of this Agreement and the standards and specifications of Franchisor are essential to the operation of Franchisee’s Franchised Business and to the operations of the System.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises, commitments and understandings contained herein, Franchisor and Franchisee hereby agree as follows:

**1 GRANT OF FRANCHISE**

1.1 **Grant and Acceptance.** Franchisor hereby grants to Franchisee, upon the express terms and conditions contained in this Agreement, and Franchisee hereby accepts, a franchise for the right to establish and operate one (1) Franchised Business, under the System and Proprietary Marks identified below, and the right to use the System and Proprietary Marks in the operation of the Franchised Business.



Franchisor has the right to supplement, improve or otherwise modify the System from time to time in Franchisor's discretion, and Franchisee agrees to comply with all changes, which may include, without limitation, the offer and sale of new or different products or services as Franchisor may specify.

1.2 **Protected Territory.** Except as otherwise provided in this Agreement, for so long as Franchisee complies with the terms and conditions hereof, Franchisor will not establish and operate, nor license any party other than Franchisee to establish and operate, any Franchised Business under the System and the Proprietary Marks within the protected territory of Franchisee's Franchised Business identified in the Data Sheet, the terms of which are incorporated herein by reference ("Protected Territory"), during the term hereof; provided, however, that Franchisor and its affiliates retain all other rights, including, without limitation, the right to distribute products and services as described in Section 1.5 hereof within the Protected Territory. Franchisor will have the right, among others, during the term of this Agreement to use, and to license others to use, the System and Proprietary Marks for the operation and licensing of other Franchised Businesses at any location outside of the Protected Territory. Franchisee may not solicit customers, or provide catering services outside of the Protected Territory. The foregoing grant to Franchisee does not include: (i) any right to offer any product or service via e-commerce without prior approval by Franchisor; (ii) any right to establish an independent website or to establish a URL incorporating the Proprietary Marks or any variation thereof; or (iii) any right to distribute, market, or implement Franchisor's products and services in any channel of distribution not specifically identified in this Agreement.

1.3 **Approved Location.** Franchisee may operate the Franchised Business only at the approved location identified in the Data Sheet (the "Approved Location"). If Franchisor has not approved a location for Franchisee to operate the Franchised Business as of the date Franchisee signs this Agreement, the parties will enter into the Site Selection Addendum attached as Exhibit A to this Agreement, the terms of which will govern the parties' site-selection obligations. Franchisee may not relocate the Franchised Business without Franchisor's prior written consent.

1.4 **Exclusions and Reservations.** Franchisee expressly understands and agrees that Franchisor and Franchisor's affiliates will have the right, in Franchisor's sole discretion, to: (a) own and operate Franchised Businesses at any location(s) outside Franchisee's Protected Territory under the same or different marks, or to license others the right to own and operate Franchised Businesses at any location(s) outside Franchisee's Protected Territory under the same or different marks; (b) use the Proprietary Marks and System in connection with services and products, promotional and marketing efforts or related items, or in alternative channels of distribution, including the sale of products through grocery stores, restaurants, retail stores, foodservice wholesalers, catering businesses (including, without limitation, catering businesses established by us) and via the Internet at any location; (c) own and operate Franchised Businesses at Non-Traditional Sites, as defined below, within and outside of Franchisee's Protected Territory; (d) own and operate Franchised Businesses or other businesses, or market similar products and services, at any location(s) inside Franchisee's Protected Territory under different marks, or to license others the right to own and operate Franchised Businesses or other businesses, or market similar products and services at any location(s) inside Franchisee's Protected Territory under different marks; (e) acquire, merge with, engage in joint ventures with, or otherwise affiliate with, and thereafter own and operate and franchise others the right to own and operate, any business of any kind, including businesses that offer products that are similar to those provided by the Franchised Businesses, within or outside your Protected Territory, or be acquired by any type of business; and (f) use and license to engage in any other activities not expressly prohibited in this Agreement.

1.5 **Other Channels of Distribution.** Franchisee acknowledges and agrees that certain of Franchisor's, or its affiliates', products and services, whether now existing or developed in the future,

may be distributed in Franchisee's Protected Territory by Franchisor, Franchisor's affiliates, or Franchisor's franchisees, licensees or designees, in such manner and through such channels of distribution as Franchisor, in its sole discretion, will determine. Such alternate channels of distribution will include, but are not limited to, the sale of pizza, sauces, merchandise, clothing, and other food and beverage products through supermarkets and grocery stores, convenience stores, foodservice wholesalers, and via the Internet. Franchisee understands that this Agreement grants Franchisee no rights: (i) to distribute such products or services as described in this Section 1.5; or (ii) to share in any of the proceeds received by any such party therefrom.

1.6. **Non-Traditional Sites.** Franchisor will have the exclusive right, unless otherwise specifically delegated in writing, on behalf of itself, Franchisee, and/or other franchisees utilizing the Proprietary Marks, to negotiate and enter into agreements or approve forms of agreement to operate Franchised Businesses in non-traditional sites, including, but not limited to, special events centers, parks, stadiums, arenas, business and industrial complexes, museums, art centers, military bases, airports, other public transportation facilities, government offices or institutions, malls and other shopping complexes, health care facilities and other institutional food service facilities, hotels and motels, toll road or highway rest stops, colleges, universities, food concession stands, food service facilities, theaters, warehouse clubs, theme parks, amusement centers, truck stops, beaches, boardwalks and casinos, both within and outside of Franchisee's Protected Territory (each, a "Non-Traditional Site"). Any dispute as to whether a particular site is a Non-Traditional Site will be determined by Franchisor in its sole discretion and Franchisor's determination will be final and binding. Franchisor or Franchisor's affiliates', licensees' or designees' operation of a Franchised Businesses at a Non-Traditional Site within Franchisee's Protected Territory will not constitute a violation of this Section 1.6 relating to territorial exclusivity. Franchisee disclaims any compensation or consideration for revenues earned by others from operating Franchised Businesses at Non-Traditional Sites within Franchisee's Protected Territory.

## 2 TERM AND RENEWAL

2.1 **Term.** The initial term of the Franchise is for a period of ten (10) years, which will begin on the date that the Franchisor signs this Agreement.

2.2 **Renewal.** Franchisee has the right to renew this Agreement for two successive, five (5) year periods, provided Franchisee has met the following conditions:

2.2.1 Franchisee has notified Franchisor of Franchisee's intention to renew this Agreement in writing at least ninety (90) days prior to expiration of the current term;

2.2.2 Franchisee has demonstrated, to Franchisor's satisfaction, that Franchisee has the right to operate the Franchised Business at the Approved Location for the duration of the renewal term; or, if Franchisee is unable to operate the Franchised Business at the Approved Location, Franchisee has secured a substitute location acceptable to Franchisor;

2.2.3 Franchisee has completed, to Franchisor's satisfaction, no later than ninety (90) days prior to the expiration of the then-current term, all maintenance, refurbishing, renovating, updating and remodeling of the Franchised Business's premises, and any updates to required hardware and software, required to bring the Franchised Business and all equipment into full compliance with Franchisor's then-current System standards and specifications;

2.2.4 Franchisee is not in breach of any provision of this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's approved/designated

suppliers and vendors, and Franchisee has substantially complied with all such agreements during their respective terms;

2.2.5 Franchisee has satisfied all Franchisee's monetary obligations to Franchisor, Franchisor's affiliates, Franchisor's approved/designated suppliers and vendors;

2.2.6 Franchisee executes Franchisor's then-current form of franchise agreement, the terms of which may materially vary from the terms of this Agreement and may include, without limitation, increased royalty fees, increased marketing and advertising obligations, and a change to the size of the Protected Territory;

2.2.7 Franchisee satisfies Franchisor's then-current training requirements for renewing franchisees at Franchisee's expense, as of the date of such renewal, if any;

2.2.8 Franchisee signs a general release, in the form Franchisor prescribes, with the release not inconsistent with any applicable state statute regulating franchises; and

2.2.9 Franchisee pays Franchisor a renewal fee equal to ten percent (10%) of the then-current Initial Franchise Fee.

### **3 FEES**

3.1 **Initial Franchise Fee.** In consideration of the franchise granted to Franchisee, Franchisee must pay Franchisor an initial franchise fee equal to \$49,500. The initial franchise fee is non-refundable and deemed fully earned upon payment in consideration for administrative and other expenses Franchisor incurs in granting the franchise and for Franchisor's lost or deferred opportunity to franchise to others.

3.2 **Royalty Fee.** Franchisee must pay Franchisor a weekly royalty fee on Wednesday of each week equal to six percent (6%) of Franchisee's Net Sales during the immediately preceding Business Week (as defined below) ("Royalty"). "Net Sales" includes all revenues Franchisee generates from all business conducted at or from Franchisee's Franchised Business during the preceding reporting period, including amounts received from the sale and delivery of food items, services, products, merchandise, and tangible property of any nature whatsoever, whether in cash or for credit, and whether collected or uncollected, minus any discounts or coupons. Net Sales, however, does not include the amount of any applicable sales tax imposed by any federal, state, municipal or other governmental authority if such taxes are stated separately when the customer is charged and Franchisee pays such amounts as and when due to the appropriate taxing authority. Also, excluded from Net Sales are the amounts of any documented refunds, chargebacks, credits and allowances given to customers in good faith pursuant to Franchisor's standard procedures for issuing such refunds. All barter and exchange transactions for which Franchisee furnishes services or products in exchange for goods or services to be provided to Franchisee by a vendor, supplier or customer will be valued at the full retail value of the goods or services provided to Franchisee.

3.4 **Manner of Payment.** The Royalty and Brand Development Fees will be collected on a weekly basis, on Wednesday of each week via electronic funds transfer (the "EFT Program") under which Franchisor automatically deducts the Royalty and Brand Development Fees owed to Franchisor under this Agreement, or any other agreement between Franchisee and Franchisor, from Franchisee's bank account. Franchisee must deposit all revenues from operation of Franchisee's Franchised Business into one bank account within three (3) days of receipt, including cash, checks, and credit card receipts.

Before opening Franchisee's Franchised Business, Franchisee must provide Franchisor with Franchisee's bank name, address and account number, a voided check from the bank account, and sign and give to Franchisor and Franchisee's bank, all documents, including Exhibit F to this Agreement, necessary to effectuate the EFT Program and Franchisor's ability to withdraw funds from such bank account via electronic funds transfer. Franchisee will immediately notify Franchisor of any change in Franchisee's banking relationship, including changes in account numbers. Franchisor will inform Franchisee of the amount to be taken from Franchisee's account at least one (1) day beforehand. Franchisor reserves the right to require Franchisee to pay any fees due under this agreement by such other means as Franchisor may specify from time to time.

3.5 **Insufficient Funds.** If the funds in Franchisee's bank account are insufficient to cover any amounts due under this Agreement on the date such funds are due, in addition to the overdue amount, Franchisor has the right to immediately debit from Franchisee's bank account the greater of: (i) \$50; or (ii) 5% of the value of the amount due. Should any electronic funds transfer not be honored by Franchisee's bank for any reason, Franchisee agrees that Franchisee will be responsible for that payment and any service charge.

3.6 **Failure to Pay Fees in a Timely Manner.** Any late payment or underpayment of the Royalty, Brand Development Fees, or Cooperative contributions (as described in Section 12.6 below), or any other charges or fees Franchisee owes Franchisor or Franchisor's affiliates, will bear interest from the due date until paid at the lesser of eighteen percent (18%) per annum or the highest lawful interest rate which may be charged for commercial transactions in the state in which Franchisee's Franchised Business is located and will be subject to a late fee of \$100 per occurrence, per payment period overdue. Nothing contained in this Section will prevent Franchisor from exercising, in Franchisor's sole judgment, any other rights or remedies available to Franchisor under this Agreement.

3.7 **Taxes on Payments.** In the event any taxing authority, wherever located, imposes any future tax, levy or assessment on any payment Franchisee makes to Franchisor, Franchisee must, in addition to all payments due to Franchisor, pay such tax, levy or assessment.

3.10 **Testing or Supplier Approval Fee.** Franchisee must reimburse Franchisor for Franchisor's reasonable costs in connection with testing a particular product or evaluating an unapproved supplier at Franchisee's request, regardless of whether Franchisor subsequently approves the item or supplier. Nothing in the foregoing will be construed to require Franchisor to approve any particular supplier.

## 4 PROPRIETARY MARKS

### 4.1 Franchisee's Use of the Proprietary Marks and Other Proprietary Material.

4.1.1 Franchisee must use only the Proprietary Marks that Franchisor designates, and must use them only in the manner Franchisor authorizes and permits.

4.1.2 Franchisee must use the Proprietary Marks only for the operation of the Franchised Business at the Approved Location and for advertising the Franchised Business.

4.1.3 Franchisee will use all Proprietary Marks without prefix or suffix and in conjunction with the symbols "TM," "SM," "S," or "R," as applicable. Franchisee may not use the Proprietary Marks in connection with the offer or sale of any services or products that Franchisor has not authorized for use in connection with the System. Franchisee may not use the Proprietary Marks as part

of Franchisee's corporate or other legal name. Franchisee's corporate name and all fictitious names under which Franchisee proposes to do business must be approved by Franchisor in writing before use. Franchisee must use Franchisee's corporate or limited liability company name either alone or followed by the initials "D/B/A" and the business name "Smokin' Oak Wood-Fired Pizza" or another business name approved by Franchisor. Franchisee must promptly register at the office of the county in which Franchisee's Franchised Business is located, or such other public office as provided for by the laws of the state in which Franchisee's Franchised Business is located, as doing business under such assumed business name.

4.1.4 Franchisee must identify itself as the owner of the Franchised Business (in the manner Franchisor prescribes) in conjunction with any use of the Proprietary Marks including, without limitation, on invoices, order forms, receipts, customer forms and questionnaires, business stationery, and advertisements, as well as at such conspicuous locations as Franchisor may designate in writing at the Franchised Business premises.

4.1.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof will constitute an infringement of Franchisor's rights.

4.1.6 Franchisee will not use the Proprietary Marks to incur any obligation or indebtedness on Franchisor's behalf.

4.1.7 Franchisee will execute all documents Franchisor deems necessary to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.

4.1.8 Franchisee must promptly notify Franchisor of any suspected unauthorized use of the Proprietary Marks and Proprietary Software (as defined in Section 7.8.5 below), if any, Franchisor may now or hereafter designate for use in connection with the System, 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, the Proprietary Software, and Operations Manual (collectively the "Proprietary Material"). Franchisee acknowledges that Franchisor has the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Material, 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 Franchisor's rights to the Proprietary Material. Franchisor has the right, though not the obligation, to defend Franchisee against any third-party claim, suit, or demand arising out of Franchisee's use of the Proprietary Material. If Franchisor, in Franchisor's sole discretion, determines that Franchisee has used the Proprietary Material in accordance with this Agreement, Franchisor will bear the cost of such defense, including the cost of any judgment or settlement. If Franchisor, in Franchisor's sole discretion, determines that Franchisee has not used the Proprietary Material in accordance with this Agreement, Franchisee will bear the cost of such defense, including the cost of any judgment or settlement. In the event of any litigation relating to Franchisee's use of the Proprietary Material, Franchisee will execute any and all documents and do such acts as may, in Franchisor's opinion, be necessary to carry out such defense or prosecution including, without limitation, 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 Material in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for Franchisee's out-of-pocket costs in performing such acts.

4.1.9 Franchisee expressly understands and acknowledges that:

4.1.9.1 Franchisor or its affiliates or licensors own all right, title, and interest

in and to the Proprietary Marks and the goodwill associated with and symbolized by them, and Franchisor has the right to use, and license others to use, the Proprietary Marks;

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

4.1.9.3 During the term of this Agreement and after its expiration or termination, Franchisee will not directly or indirectly contest the validity of, or Franchisor's ownership of, or right to use and to license others to use, the Proprietary Marks or any other Proprietary Material;

4.1.9.4 Franchisee's use of the Proprietary Material does not give Franchisee any ownership interest or other interest in or to the Proprietary Material;

4.1.9.5 Any and all goodwill arising from Franchisee's use of the Proprietary Material will inure solely and exclusively to Franchisor's benefit, and upon expiration or termination of this Agreement, no monetary amount will be assigned as attributable to any goodwill associated with Franchisee's use of the System, the Proprietary Marks, or any other Proprietary Material;

4.1.9.6 Except as specified in Section 1 hereof, the license of the Proprietary Marks granted to Franchisee hereunder is nonexclusive and Franchisor retains the right, among others, (i) to use the Proprietary Marks itself in connection with selling products and services; (ii) to grant other licenses for the Proprietary Marks; and (iii) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses thereto without providing any rights therein to Franchisee; and

4.1.9.7 Franchisor has the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder. Franchisee must discontinue using all Proprietary Marks that Franchisor has notified Franchisee, in writing, have been modified or discontinued within ten (10) days of receiving written notice and, at Franchisee's sole cost and expense, must promptly begin using such additional, modified or substituted Proprietary Marks.

## 5 CONFIDENTIAL INFORMATION

5.1 **Nondisclosure.** During the term of this Agreement, Franchisee will receive information which Franchisor considers its trade secret and confidential information ("Confidential Information"), including operating procedures, sources of supply, supplier contracts, advertising materials, copyrighted materials, equipment specifications, any information contained in the Operations Manual, trade secrets, the Proprietary Recipes, copyrighted materials, and other methods, techniques and know-how concerning the operation of the Franchised Business that may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation of the Franchised Business. Franchisee will not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any Confidential Information. Franchisee may divulge Confidential Information only to those of Franchisee's employees as must have access to it in order to operate the Franchised Business. Franchisee acknowledges and agrees that certain information, including (i) current customer and prospective customer names and addresses, (ii) information about credit extensions to customers, (iii) customer service purchasing histories, (iv) rates charged to customers (subsections (i)-(iv) collectively "Customer Lists"), and (v) sources of suppliers and purchasing arrangements with suppliers, also constitute the trade secrets and Confidential Information of Franchisor. Franchisee may divulge such Confidential Information only to such of Franchisee's 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 that Franchisor designates as confidential will be deemed Confidential Information for purposes of this Agreement. Franchisee acknowledges and agrees that Franchisor has expended considerable time, effort, and money to develop the System, that the enumerated Confidential Information is not well known outside of the System, that the Confidential Information is of great value to the Franchisor, and that Franchisor is implementing this non-disclosure policy in an effort to protect its trade secrets and Confidential Information. Franchisee acknowledges that in the event of the actual or threatened breach of this Section 5.1, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm.

5.2 **Employees.** Franchisee must require all of Franchisee's employees to execute covenants promising to maintain the confidentiality of information they receive in connection with their employment by Franchisee at the Franchised Business premises. Such covenants will be in a form satisfactory to Franchisor and substantially similar to the Confidentiality and Restrictive Covenant Agreement attached as Exhibit E to the Franchise Agreement. These covenants must, without limitation, specifically identify Franchisor as a third party beneficiary of such covenants with independent rights to enforce those covenants.

5.3 **New Concepts.** If Franchisee, Franchisee's employees, or principals develop any new concept, process or improvement in the operation or promotion of the Franchised Business, including, but not limited to, any modifications or additions to the Proprietary Recipes or the menu, Franchisee must promptly notify Franchisor and provide Franchisor with all necessary related information, without receiving compensation in return. Any such concept, process or improvement will become Franchisor's sole property, and Franchisor will be the sole owner of all patents, patent applications, trademarks, copyrights and other intellectual property rights related thereto. Franchisee and Franchisee's principals and agents hereby assign to Franchisor any rights they may have or acquire therein, including the right to modify such concept, process or improvement, and otherwise waive and/or release all rights of restraint and moral rights therein and thereto. Franchisee and Franchisee's principals and agents agree to assist Franchisor in obtaining and enforcing the intellectual property rights to any such concept, process or improvement in any and all countries and further agree to execute and provide Franchisor with all necessary documentations for obtaining and enforcing such rights. Franchisee and Franchisee's principals and agents hereby irrevocably designate and appoint Franchisor as their agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of patents or other intellectual property rights related to any such concept, process or improvement. In the event that the foregoing provisions of this Section 5.3 are found to be invalid or otherwise unenforceable, Franchisee and Franchisee's principals and agents hereby grant to Franchisor a worldwide, perpetual, non-exclusive, fully paid license to use and sublicense the use of the concept, process or improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe Franchisee's rights therein.

## 6 FRANCHISOR'S OBLIGATIONS

6.1 **Operations Manual.** Franchisor will loan Franchisee one (1) copy of Franchisor's proprietary and confidential Operations Manual and any other manual Franchisor may now or hereafter designate for use in operating a Franchised Business (collectively, the "Operations Manual"), in hardcopy and/or electronic format. Franchisee will operate the Franchised Business in strict compliance with the Operations Manual, as it may be reasonably changed from time to time. The Operations Manual must remain confidential and Franchisor's exclusive property. Franchisee will not disclose, duplicate or make any unauthorized use of any portion of the Operations Manual. The provisions of the Operations Manual constitute provisions of this Agreement as if fully set forth herein. Franchisee will ensure that Franchisee's copy of the Operations Manual is current and up to date, and keep a copy of the Operations

Manual on the Franchised Business premises. If there is a dispute relating to the contents of the Operations Manual, the master copy, which Franchisor maintains at Franchisor's corporate headquarters, will control. Franchisor reserves the right to disclose updates to the Operations Manual via electronic means, including over Franchisor's website or any intranet or extranet system established in connection with the System.

**6.2 Franchised Business Layout and Equipment Selection.** Franchisor will provide Franchisee with specifications and requirements for the equipment required for the opening of Franchisee's Franchised Business. Franchisor will provide Franchisee with plans and specifications for the layout and design of a prototypical Smokin' Oak Wood-Fired Pizza Franchised Business.

**6.3 Start-up and Ongoing Inventory and Supplies.** Franchisor will provide specifications for and designate sources of suppliers from which Franchisee agrees to purchase inventory, goods and supplies necessary for the start-up and ongoing operations of Franchisee's Franchised Business.

**6.4 Pre-opening Advertising.** Franchisor has the right, but not the obligation, to collect the Grand Opening Marketing Requirement, as described in Section 12.4 below, prior to opening, and implement a grand opening marketing and promotions program on Franchisee's behalf during the period of 75 days prior to opening the Franchised Business..

**6.5 Ongoing Assistance.** Franchisor will provide Franchisee continuing consultation and advice as Franchisor deems necessary and appropriate regarding the management and operation of the Franchised Business. Franchisor will provide such assistance, in Franchisor's discretion, by telephone, facsimile, intranet communication and on-site visits. If Franchisee requires and requests additional on-site assistance from Franchisor, or if Franchisor mandates additional training, subject to the availability of Franchisor's personnel, Franchisor will provide Franchisee with such assistance at Franchisor's then-current rate for providing such assistance, plus expenses, including Franchisor's travel and lodging expenses.

**6.6 Additional Training.** Franchisor may, in Franchisor's sole discretion, hold refresher and ongoing training courses, or training courses upon a significant change to the System, in order to provide additional assistance to Franchisees. Franchisor may require Franchisee and Franchisee's employees to attend such training at its then-current fee for providing such training. All expenses, including Franchisee and Franchisee's employees' transportation, meal, and lodging expenses to attend such training shall be Franchisee's sole responsibility.

**6.7 Annual Conference.** Franchisor may, in Franchisor's discretion, hold an annual conference at a location to be selected by Franchisor (the "Annual Conference"). Franchisor will determine the topics and agenda for such conference to serve the purpose among other things, of updating franchisees on new developments affecting franchisees, exchanging information between franchisees and Franchisor's personnel regarding Franchised Business operations and programs, and recognizing franchisees for their achievements. Franchisor may require Franchisee to attend the Annual Conference, for a duration designated by Franchisor, and to pay Franchisor's then-current registration fee if it chooses to charge a registration fee in its sole discretion. All expenses, including Franchisee's and Franchisee's employees' transportation to and from the Annual Conference, lodging, meals, and salaries during the Annual Conference, are Franchisee's sole responsibility. Franchisor may use Brand Development Fees for purposes related to the Annual Conference, including costs related to productions, programs, and materials.

**6.8 Site Selection.** Franchisor may identify markets for future development and potential



sites for Franchisee's Franchised Business; provided, however, Franchisee will remain responsible for selecting a location, subject to Franchisor's approval, and negotiating a lease, as more fully discussed in Section 7.1 below. Franchisor's assistance with the site selection process in no way constitutes a representation or guarantee of success in the proposed location.

**6.9 Toll Free Telephone Number.** Franchisor has the right, but not the obligation, to establish and maintain a toll free telephone number for the purpose of dealing with prospective customers, customer service, customer follow-up and satisfaction surveys. If Franchisor establishes a toll-free number, Franchisee must comply with Franchisor's procedures for implementing the nationwide service as Franchisor specifies in the Operations Manual or otherwise in writing, and Franchisee may be required to pay a fee related to the establishment, operation and maintenance of the toll-free telephone number.

## **7 FRANCHISEE'S OBLIGATIONS**

**7.1 Site Location and Approval.** Franchisee must submit at least one site for Franchisor approval within ninety (90) days of signing the Franchise Agreement, and secure real estate, by purchase or lease, for the operation of the Franchised Business within one hundred eighty (180) days of signing this Agreement. If Franchisor has not approved a location for Franchisee to operate the Franchised Business as of the date Franchisee signs this Agreement, the parties will enter into the Site Selection Addendum attached as Exhibit A to this Agreement, the terms of which will govern the parties' site selection obligations. Franchisor has the right to review, evaluate and approve Franchisee's proposed lease for the Approved Location ("Lease") prior to execution. Franchisor may condition Franchisor's approval of any proposed Lease on, among other things, Franchisee and Franchisee's landlord's execution of a Collateral Assignment of Lease (attached as Exhibit C to this Agreement) which (i) grants Franchisor the right, but not the obligation, to assume the Lease upon (a) Franchisee's default on the Lease, or (b) termination, transfer or expiration of this Agreement; and (ii) authorizes and requires Franchisee's landlord to disclose to Franchisor, upon Franchisor's request, sales and other information Franchisee has furnished to the landlord. Franchisee must deliver an executed copy of the Lease and the Collateral Assignment of Lease to Franchisor within fifteen (15) days of execution of the Lease. Neither Franchisor's review of the Lease nor Franchisor's acceptance of the site Franchisee has selected constitutes a representation or guarantee that Franchisee will succeed at the selected Approved Location or an expression of Franchisor's opinion regarding the terms of the Lease. Franchisor encourages Franchisee to seek independent counsel from a lawyer or business adviser to assist Franchisee in selecting a location and negotiating a lease for the Franchised Business premises.

**7.1.1 Relocation.** If, for any reason, the Lease term is shorter than the term of this Agreement and the Lease cannot be renewed or extended, or Franchisee cannot continue for any other reason to occupy the Approved Location, Franchisee must notify Franchisor and request the right to relocate Franchisee's Franchised Business. Franchisee must relocate Franchisee's Franchised Business to a mutually acceptable site within Franchisee's Protected Territory to complete the unexpired portion of the term of this Agreement. Franchisee must notify Franchisor of Franchisee's intention to relocate, procure a site acceptable to Franchisor within ninety (90) days prior to closing operations at Franchisee's current Approved Location, and open for business at the new Approved Location within thirty (30) days of closing business at Franchisee's existing Approved Location. Franchisee must pay Franchisor a relocation fee equal to Franchisor's actual costs and expenses incurred in assisting Franchisee with relocation of the Franchised Business, plus a 15% administrative fee, the total amount of which shall not to exceed \$5,000.

**7.1.2 Franchised Business Appearance and Construction.** The Franchised Business will conform to Franchisor's standards and specifications for the appearance, layout, and

design of a Smokin' Oak Wood-Fired Pizza Franchised Business. Franchisor shall provide Franchisee with a prototype layout for Franchisee's architect to use in the construction and buildout of its Franchised Business. Franchisee must ensure that plans meet with applicable ordinances, building codes, permits requirements, and any other applicable local, state, or federal law. All construction and floor plans, and amendments thereto, must be approved by Franchisor prior to implementation. Franchisor reserves the right to approve of all of Franchisee's vendors for buildout and construction of the Franchised Business prior to commencement of their services. Each vendor must be properly licensed and insured to do business in the state where the Franchised Business is located. Franchisor reserves the right to inspect the Franchised Business upon twenty-four (24) hours' notice to Franchisee.

7.1.3 *Opening Approval.* Franchisor shall have the right to inspect the Franchised Business prior to the opening of the Franchised Business to determine whether all construction has been substantially completed, and that such construction conforms to Franchisor's standards and specifications, including, but not limited to, materials, quality of work, signage, décor, paint, and equipment. Franchisee shall obtain Franchisor's written approval prior to first opening the Franchised Business, which approval shall not be unreasonably withheld. Franchisee shall provide at least thirty (30) days prior notice to Franchisor of the date on which Franchisee proposes to first open the Franchised Business for business. Unless Franchisor waives in writing the foregoing requirement, Franchisee shall not open the Franchised Business without the on-site presence of a representative of Franchisor, provided that Franchisor will not unreasonably delay the opening of the Franchised Business. In the event there is a change in the opening date of the Franchised Business, which is not caused by Franchisor, Franchisee shall reimburse Franchisor for Franchisor's actual out-of-pocket costs and expenses incurred by Franchisor due to such delay, including travel costs and expenses for Franchisor's representatives.

7.2 **Training.** Franchisee (or Franchisee's principal, as applicable) and its General Manager, as defined in Section 7.6.5, (if applicable) must attend and successfully complete Franchisor's initial training program as set forth in Section 8.1.

7.3 **Opening Requirements.** Franchisee must open the Franchised Business for business no later than twelve (12) months after this Agreement is signed.

7.4 **Purchasing Requirements.**

7.4.1 *Compliance with Standards.* Franchisee acknowledges and agrees that Franchisee's obligations set forth in this Agreement and the Operations Manual are reasonable and necessary for the operation of the Franchised Business and to maintain uniformity throughout the System. Franchisee must adhere to the standards and specifications set forth in this Agreement and the Operations Manual and any revisions or amendments to same, including, without limitation, standards and specifications for the preparation and presentation of selling pizza and other menu items prepared on the premises, and related food and beverage items for dine-in or takeout. Franchisee must use the food and beverage items, signs, furnishings, supplies, fixtures, equipment and inventory that comply with Franchisor's then-current standards and specifications, which Franchisor establishes from time to time. Franchisor has the right to change Franchisor's standards and specifications in Franchisor's discretion. Franchisee acknowledges that Franchisee may incur an increased cost to comply with such changes.

7.4.2 *Designated and Approved Suppliers.* Recognizing that preservation of the System depends upon product and service uniformity and the maintenance of Franchisor's trade dress, Franchisee agrees to purchase all food products, ingredients, merchandise, mixes, beverages, menus, furniture, equipment, forms, menu boards, paper and plastic products and the packaging and other materials from Franchisor or from approved or designated suppliers as Franchisor will specify, from time

to time, in the Operations Manual and otherwise in writing. Franchisee hereby acknowledges that Franchisor, Franchisor's affiliate and/or a third party may be one of several, or the only, approved supplier of any item. Franchisee further acknowledges that Franchisor and/or Franchisor's affiliates have the right to realize a profit on any items that Franchisor, Franchisor's affiliates or Franchisor's approved suppliers supply to Franchisee. Franchisor reserves the right to designate itself as a supplier or the sole supplier of any of the products listed above or inventory sold at the Franchised Business.

**7.4.3 Supplier Approval.** In the event Franchisee wishes to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, Franchisee must provide Franchisor the name, address and telephone number of the proposed supplier, a description of the item Franchisee wishes to purchase, and the purchase price of the item, if known. At Franchisor's request, Franchisee must provide Franchisor with a sample of the item Franchisee wishes to purchase for testing purposes. Franchisee must reimburse Franchisor for Franchisor's reasonable costs in connection with testing a particular product or evaluating an unapproved supplier at Franchisee's request, which is estimated to be between \$200 and \$1,000, regardless of whether Franchisor subsequently approves the item or supplier. Nothing in the foregoing will be construed to require Franchisor to approve any particular supplier. Franchisor may base Franchisor's approval of any such proposed item or supplier on considerations relating not only directly to the item or supplier itself, but also indirectly to the uniformity, efficiency, and quality of operation Franchisor deems necessary or desirable in Franchisor's System as a whole. Franchisor has the right to receive payments from suppliers on account of their dealings with Franchisee and other franchisees and to use all amounts Franchisor receives without restriction (unless instructed otherwise by the supplier) for any purposes Franchisor deems appropriate. Franchisor shall make a good faith effort to respond to Franchisee's request for a new supplier within ten (10) days of receiving all of the necessary materials. If Franchisor does not respond within the ten (10) day timeframe, the supplier is deemed disapproved. Nothing herein will require Franchisor to approve an unreasonable number of suppliers for a given item, which approval might, in Franchisor's reasonable judgment, result in higher costs or prevent the effective or economical supervision of approved suppliers. Franchisor may revoke Franchisor's approval of particular products or suppliers when Franchisor determines, in Franchisor's sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee must cease purchasing products from such supplier and/or offering and selling such products. Franchisee must use products purchased from approved suppliers solely in connection with the operation of Franchisee's Franchised Business and not for any competitive business purpose.

**7.4.4 System Suppliers.** Franchisor may establish business relationships, from time to time, with suppliers who may produce, among other things, certain food and beverage items, furnishings, supplies, fixtures, equipment and inventory according to Franchisor's proprietary standards and specifications or private label goods that Franchisor has authorized and prescribed for sale by System franchisees ("System Suppliers"). Franchisee recognizes that such products are essential to the operation of the Franchised Business and to the System generally. Franchisee further recognizes that Franchisee's failure to pay System Suppliers may interfere with such suppliers' willingness to supply the System, which may result in other System franchisees' inability to obtain product or ability to obtain product only on less favorable credit terms. Accordingly, Franchisee agrees to pay System Suppliers as and when due.

**7.5 Authorized Products and Services.** Franchisee will offer for sale all products and services that Franchisor prescribes and only those products and services that Franchisor prescribes. Franchisee may not offer any other products for sale, rent, or lease without having received Franchisor's prior written authorization. Franchisee will, at all times, maintain sufficient levels of inventory as specified in the Operations Manual, to adequately satisfy consumer demand. Franchisee must offer and sell all private label products that Franchisor may now or in the future designate for sale by System

franchisees.

## 7.6 Operations.

7.6.1 Franchisee must operate Franchisee's Franchised Business for at least those hours, days, and months that Franchisor specifies in the Operations Manual.

7.6.2 Franchisee must maintain the Franchised Business in a clean, safe and attractive manner, and in accordance with all applicable requirements of law, including all federal, state and local health laws or regulations relating to the preparation and serving of food items, and the Operations Manual. Franchisee and Franchisee's employees must give prompt, courteous and efficient service to the public and otherwise operate the Franchised Business so as to preserve, maintain and enhance the reputation and goodwill of the System.

7.6.2.1 In order to ensure that all food items prepared by Franchisee meet Franchisor's high standards of taste, texture, appearance and freshness, and in order to protect Franchisor's goodwill, Proprietary Marks, Proprietary Recipes and other proprietary material, all food items and products will be prepared only by properly trained personnel strictly in accordance with Franchisor's recipes, preparation techniques and processes, and the Operations Manual, and will be sold to customers only from the Approved Location in conformity with Franchisor's marketing plan and concept. Franchisee acknowledges that such recipes, preparation techniques and processes are integral to the System and failure to strictly adhere to such recipes, preparation techniques and processes (including the handling and storage of both raw ingredients, such as meat, produce, and dairy items, and fully prepared food items) will be detrimental to the System and Proprietary Marks and will constitute a default of this Agreement. Further, Franchisee may provide catering services to customers in its Territory from its Approved Location only. Franchisee shall not provide any services granted under this Agreement through a mobile unit.

7.6.3 Franchisee must employ a sufficient number of qualified, competent personnel, offer prompt, courteous and efficient service to the public, and otherwise operate the Franchised Business in compliance with the Operations Manual to preserve, maintain and enhance the reputation and goodwill of the System. All employees engaged in the operation of Franchisee's Franchised Business during working hours must dress in conformance with Franchisor's standards, must present a neat and clean appearance in conformance with Franchisor's reasonable standards and must render competent, efficient service to the customers of the Franchised Business.

7.6.4 Franchisee agrees to conduct the Franchised Business in accordance with the Operations Manual. Franchisee must immediately train and instruct Franchisee's employees in accordance with the Operations Manual, and will continue such training and instruction as long as each employee is employed. The Operations Manual will set forth the practices, procedures and methods to be used in Franchisee's Franchised Business and Franchisor may require Franchisee to conform Franchisee's practices to national programs, which Franchisor has designed and promulgated as part of Franchisor's System.

7.6.5 Franchisee (or at least one of Franchisee's principals if Franchisee is a corporation, partnership or other entity) must personally supervise the day-to-day operations of the Franchised Business. Franchisee (or at least one of Franchisee's principals if Franchisee is a corporation, partnership or other entity) must devote his or her personal full-time attention and best efforts to the management and operation of the Franchised Business. If Franchisee is a corporation, partnership or other entity, or Franchisor otherwise approves, Franchisee may, however, delegate the day-to-day operation of

Franchisee's Franchised Business to a key manager who has Franchised Business experience ("General Manager"). Franchisor must approve Franchisee's General Manager in writing prior to hiring, and Franchisee's General Manager must successfully complete Franchisor's initial training program before assuming any managerial responsibility. Franchisee's Franchised Business must, at all times, be staffed with at least one (1) individual who has successfully completed Franchisor's initial training program as set forth in Section 8.1. Franchisee will keep Franchisor informed at all times of the identity of any employee acting as General Manager of a Franchised Business. In the event that a General Manager resigns or is otherwise terminated from Franchisee's Franchised Business, Franchisee will hire a replacement approved in writing by Franchisor who meets Franchisor's then-current standards for General Managers within thirty (30) days after termination or resignation of the prior General Manager. Franchisee must train the new General Manager within thirty (30) days of hiring. Franchisor reserves the right, without the obligation, to train the new General Manager directly. Any General Manager(s) must devote full-time and best efforts to the day-to-day operation and management of the Franchised Business and cannot engage in any other business activity without Franchisor's prior written consent.

7.6.6 Franchisee must, at all times, maintain such working capital as may be reasonably necessary to enable Franchisee to properly and fully carry out and perform all of Franchisee's duties, obligations and responsibilities hereunder and to operate the Franchised Business in a businesslike, proper and efficient manner.

7.6.7 Franchisee must at all times maintain sufficient levels of inventory to adequately meet consumer demand.

7.6.8 Franchisee must prepare all menu items in accordance with Franchisor's standards and specifications.

7.7 **Site Evaluation.** Franchisee agrees that in order to maintain the high quality and uniform standards associated with the System and to protect its goodwill and reputation, Franchisee will permit Franchisor, during business hours, to inspect Franchisee's Franchised Business, confer with Franchisee and Franchisee's employees and customers, check inventories and methods, and perform any other inspection that Franchisor deems necessary to protect the standards of quality and uniformity of the System and Franchisee's performance under this Agreement. Franchisee is obligated to make changes to Franchisee's operations based upon any inspections by Franchisor. Our inspections and evaluations may include a mystery shopper program (the "Mystery Shopper Program") from time to time. We hire various suppliers who send mystery shoppers into the Franchise Businesses. We have the right to charge you a fee for any Mystery Shopper Program conducted at your Franchise Business that includes the cost of their meals, at our sole discretion.

## 7.8 **Computer Software and Hardware.**

7.8.1 *Computer System.* 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,

7.8.2 *Required Software.* Franchisor shall have the right, but not the obligation, to develop or designate: (i) computer software programs Franchisee must use in connection with any component of the Computer System (the "Required Software"), which Franchisee shall install at Franchisee's expense; (ii) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install at Franchisee's expense; (iii) the tangible media upon which

Franchisee records data; and (iv) the database file structure of the Computer System. Franchisee shall be responsible for the payment of all fees associated with the Required Software, Computer System and POS System.

7.8.3 *Compliance with Requirements.* At Franchisor's request, Franchisee shall purchase or lease, and thereafter maintain, the Computer System and, if applicable, the Required Software. Franchisee agrees to pay all fees associated with the use of Required Software, which may be payable to Franchisor or Franchisor's approved or designated suppliers. 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, including any security software. Franchisee agrees, at its own expense, to keep its Computer System in good maintenance and repair and install such upgrades, 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 its compliance with this Section 7.8.3 shall be at Franchisee's sole cost and expense.

7.8.4 *Franchisor's Access.* Franchisor may require that Franchisee's Computer System be programmed to automatically transmit data and reports about the operation of the Franchised Business to Franchisor. Franchisor shall also have the right to, at any time without notice, electronically connect with Franchisee's Computer System to monitor or retrieve data stored on the Computer System or for any other purpose Franchisor deems necessary. There are no contractual limitations on Franchisor's right to access the information and data on Franchisee's POS System and Computer System. Franchisee shall deliver to Franchisor all access codes, static internet protocol ("IP") addresses and other information to facilitate Franchisor's access to the data described in this Section 7.8 within thirty (30) days of opening the Franchised Business.

7.8.5 *Proprietary Software.* Franchisor may now or in the future create or designate a proprietary software program, and Franchisor will retain a proprietary interest in all databases, lists, templates, programs and any other software components that have been created and/or customized by Franchisor using the Computer System and/or Required Software (the "Proprietary Software"). Proprietary Software may conduct, among other things, scheduling, accounting, inventory, and related activities. Franchisee must obtain the computer hardware necessary to implement the Proprietary Software into the Franchised Business, and comply with all specifications and standards prescribed by Franchisor regarding the Proprietary Software as provided in the Operations Manual. This Proprietary Software will be Franchisor's proprietary product, and the information collected therefrom will be deemed Franchisor's confidential information. Franchisee agrees to sign Franchisor's then-current form of software license agreement for any Proprietary Software Franchisor may now or in the future create, pay any license fees associated with use of Proprietary Software, and upgrade the Proprietary Software as Franchisor designates.

7.8.6 *Computer Network.* Franchisee is required to participate in any System-wide computer network, intranet system, or extranet system that Franchisor implements and may be required by Franchisor to use such computer network, intranet system, or extranet system to, among other things: (i) submit Franchisee's reports due under this Agreement to Franchisor online; (ii) view and print portions of the Operations Manual, including any updates or modifications thereto; (iii) download approved local advertising materials; (iv) communicate with Franchisor and other System franchisees; and (v) to complete any initial or ongoing training. Franchisee agrees to use the facilities of any such computer network, intranet system or extranet system in strict compliance with the standards, protocols, and restrictions that Franchisor included in the Operations Manual, including those related to the encryption of confidential information and prohibitions against the transmission of libelous, derogatory or defamatory statements.

7.9 **Personal Conduct.** Franchisee agrees to refrain from committing any act or pursuing any course of conduct that tends to bring Franchisor's Proprietary Marks into disrepute.

7.10 **Best Efforts.** Franchisee must use its best efforts to promote and increase the demand for menu items. All of Franchisee's advertising and promotion must be completely factual and conform to the highest standards of ethical advertising. Franchisee agrees to refrain from any business or advertising practice which may be injurious to the Franchised Business or the goodwill associated with the Proprietary Marks and System.

7.11 **Telephone.** Franchisee must obtain a new telephone number and telephone listing at Franchisee's expense, to be listed under the "Smokin' Oak Wood-Fired Pizza" name (or another name approved by Franchisor) and not under Franchisee's corporate, partnership, or individual name, and to be used exclusively in connection with Franchisee's operation of the Franchised Business. Upon the expiration, transfer or termination of this Agreement for any reason, Franchisee must terminate Franchisee's use of such telephone number and listing and assign the same to Franchisor or Franchisor's designee. Franchisee must answer the telephone in the manner Franchisor specifies in the Operations Manual.

7.12 **Payment of Debts.** Franchisee is solely responsible for selecting, retaining and paying Franchisee's employees; the payment of all invoices for the purchase of goods and services used in connection with operating the Franchised Business; and determining whether, and on what terms, to obtain any financing or credit that Franchisee deems advisable or necessary for the conduct of the Franchised Business. Franchisee agrees to pay all current obligations and liabilities to suppliers, lessors, and creditors on a timely basis. Franchisee agrees to indemnify Franchisor in the event that Franchisor is held responsible for debts owed by Franchisee if Franchisor elects to pay any of Franchisee's obligations in order to preserve the relationship between System Suppliers and System franchisees. Franchisee agrees to make prompt payment of all federal, state and local taxes, including individual and corporate taxes, sales and use taxes, franchise taxes, gross receipts taxes, employee withholding taxes, FICA taxes, personal property and real estate taxes arising from Franchisee's operation of the Franchised Business. Franchisee agrees to indemnify Franchisor in the event that Franchisor is held responsible for these taxes.

7.13 **Compliance with Applicable Laws.** Franchisee must comply with all applicable federal, state and local laws, ordinances and regulations regarding the operation of the Franchised Business (including, without limitation, all government regulations relating to food preparation and service, occupational hazards and health, dispensing of food products, consumer protection, trade regulation, workers' compensation, unemployment insurance, withholding and payment of Federal and State income taxes and social security taxes and sales, use and property taxes, and the applicable provisions of the Americans with Disabilities Act ("ADA") regarding the construction, design and operation of the Franchised Business). Franchisee will have sole authority and control over the day-to-day operations of the Franchised Business and Franchisee's employees and/or independent contractors. Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Franchised Business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. At no time will Franchisee or Franchisee's employees be deemed to be employees of Franchisor or Franchisor's affiliates.

7.14 **Health and Safety Standards.** Franchisee shall meet and maintain the highest health and safety standards and ratings applicable to the operation of the Franchised Business. Franchisee shall furnish to Franchisor within two (2) days of its receipt thereof, a copy of all health inspection reports and any violation or citation that indicates Franchisee's failure to maintain federal, state, or local health or

safety standards in the operation of the Franchised Business. Franchisee's failure to cure such violations within twenty-four (24) hours shall constitute grounds for immediate termination, upon notice, pursuant to Section 15.2.8 of this Agreement.

**7.15 Trade Secrets and Confidential Information.** Franchisee must maintain the confidentiality of all Confidential Information as set forth in Section 5 of this Agreement.

**7.16 Image.** Franchisee acknowledges that Franchisor has developed the System to offer and sell products that will distinguish the Franchised Business from other businesses that offer similar products valued at different prices and with less attention paid to product quality and customer service. Franchisee agrees to offer products and services and to operate the Franchised Business in such a manner that emulates and enhances the image Franchisor intends for the System. Franchisee further acknowledges and agrees that each aspect of the System is important not only to Franchisee but also to Franchisor and to other System franchisees in order to maintain the highest operating standards, achieve system-wide uniformity and increase the demand for the products sold and services rendered by System franchisees. Franchisee agrees to comply with the standards, specifications and requirements Franchisor set forth in order to uniformly convey the distinctive image of a Smokin' Oak Wood-Fired Pizza business. Franchisee will, in the operation of the Franchised Business, use only displays, trays, boxes, bags, wrapping paper, labels, forms and other paper and plastic products imprinted with the Proprietary Marks and colors as prescribed from time to time by Franchisor.

**7.17 Pending Actions.** Franchisee must notify Franchisor, in writing, within five (5) days of the commencement of any action, suit or proceeding and the issuance of any order, suit or proceeding of any court, agency or other government instrumentality, including the receipt of any notice or citation, which may adversely affect the operation or financial condition of Franchisee or the Franchised Business.

**7.18 Standard Maintenance and System Conformity.** Franchisee agrees to repair, refinish, repaint, replace, and/or otherwise redo the Franchised Business, the signs, the furnishings, fixtures, décor, equipment and any other tangible part or property of the Franchised Business at Franchisee's sole expense at such times as Franchisor may reasonably direct. At any time after the 5<sup>th</sup> year of the term of this Agreement, Franchisor has the right to direct Franchisee to remodel, re-equip, and otherwise refurbish the Approved Location in the manner necessary to bring it into conformance with other franchisees of the type Franchisor and Franchisor's franchisees are opening at the time of such direction.

## **8 TRAINING**

**8.1 Initial Training Program.** Franchisee must attend, and complete to Franchisor's satisfaction, Franchisor's initial tuition-free training program. Franchisor reserves the right to require one (1) additional employee to attend Franchisor's initial training program along with Franchisee. If Franchisee is a partnership, corporation or limited liability company, at least one (1) of the trainees must be Franchisee's general partner, principal shareholder, or manager as appropriate. If Franchisee has a General Manager, as described in Section 7.6.5, then he or she will attend and complete the required training. The required training lasts approximately ten days and will consist of classroom and practical experience, including training in sanitation and safety, preparing and presenting menu items, offering customer service, maintaining financial controls and general bookkeeping procedures, maintaining an adequate supply of inventory, operational techniques, human resources, local advertising and promotion, instruction on using any required hardware or software, marketing and advertising techniques, sanitation and maintenance procedures, and/or maintenance of quality standards. All training will be held at Franchisor's corporate headquarters, located in the St. Petersburg, Florida, or at an affiliate-owned business or different site designated by Franchisor. All trainees whom Franchisee designates must attend



the training course at the same time. All training related expenses, including Franchisee and Franchisee's employees' transportation to and from the training site, lodging, meals, and salaries during training, are Franchisee's sole responsibility. Franchisee and Franchisee's employee shall attend and complete Franchisor's initial training class to Franchisor's satisfaction at least eight (8) weeks prior to the opening of Franchisee's Franchised Business. Should Franchisee or Franchisee's employees fail to complete the initial training program to Franchisor's satisfaction, the respective person may repeat the course, or in the case of an employee, Franchisee may send a replacement (the "Replacement Personnel") to the next available initial training program. Franchisor may charge for such Replacement Personnel attending an initial training program. Failure by Franchisee, an employee or any Replacement Personnel to complete the initial training program to Franchisor's satisfaction within the time period prescribed in this Agreement will constitute default of this Agreement and Franchisor may terminate the Agreement.

**8.2 Additional On-Location Training.** As part of the initial training program, Franchisor will provide Franchisee with five days of on on-location assistance at Franchisee's location immediately prior to the opening of its Franchised Business ("Additional On-Location Training"). Additional On-Location Training will include review and assessment of kitchen operations, food preparation, staff training/performance, inventory management and final plans for grand opening. Franchisee must reimburse Franchisor for all costs and expenses incurred in providing the Additional On-Location Training, including all travel and lodging expenses incurred. If additional training is required beyond the Additional On-Location Training, Franchisee will be advised of the adjustments needed to successfully complete the initial training program and be approved for grand opening.

**8.3 Training of Additional Personnel.** Franchisee's other employees may be trained by Franchisee, or at Franchisee's request, and subject to the availability of Franchisor's personnel, Franchisor will train Franchisee's additional personnel and require Franchisee to pay Franchisor's then-current fee for additional training. All training related expenses for Franchisee's additional teaching personnel, including transportation to and from the training site, lodging, meals, and salaries during training, are Franchisee's sole responsibility. Franchisor will provide Franchisee with training materials for Franchisee to use in training Franchisee's personnel. Only Franchisor's provided training materials may be used by Franchisee in training Franchisee's personnel. Updated training materials will be provided to Franchisee by Franchisor upon written request. All training materials provided to Franchisee by Franchisor will, at all times, remain Franchisor's property, and Franchisee agrees not to challenge Franchisor's or Franchisor's affiliates' title or rights in or to the training materials. Franchisee may not make any disclosure, duplication or other unauthorized use of any portion of the training materials.

**8.4 Additional or Refresher Training Programs.** To assist Franchisee in the operation of Franchisee's Franchised Business, Franchisor may offer additional training programs and/or refresher courses to Franchisee, Franchisee's General Manager and/or Franchisee's employees. Franchisor may require Franchisee's attendance at these programs and/or courses up to five (5) days per year. Franchisee is responsible for the expenses of Franchisee, Franchisee's General Manager, and Franchisee's employees, including transportation to and from the training site and lodging, meals, and salaries during such training.

## **9 INSURANCE**

Franchisee agrees to purchase/procure and maintain such insurance covering the operation and location of the Franchised Business as Franchisor may designate from time to time. Franchisor's present insurance requirements are set forth in the Operations Manual or otherwise in writing from time to time. Franchisee agrees to provide Franchisor with proof of coverage on demand. Franchisee agrees to obtain these insurance policies from insurance carriers that are rated "A-VIII" or better by Alfred M. Best & Company, Inc. and that are licensed and admitted in the state in which Franchisee operates its Franchised Business.

All insurance policies must: (i) name Franchisor (and Franchisor's members, officers, directors, and employees) as additional insureds; and (ii) contain a waiver by the insurance carrier of all subrogation rights against Franchisor. Furthermore, Franchisee shall be required to provide ten (10) days prior written notice of the termination, expiration, cancellation or modification of any insurance policy. Franchisor's acceptance of an insurance carrier does not constitute Franchisor's representation or guarantee that the insurance carrier will be capable of meeting claims during the term of the insurance policy. Franchisee agrees to carry such insurance as may be required by the Lease of the Approved Location or by any of Franchisee's lenders or equipment lessors. If Franchisee fails to comply with the minimum insurance requirements set forth herein, Franchisor has the right to obtain such insurance and keep same in force and effect and Franchisee shall pay Franchisor, on demand, the premium cost thereof and administrative costs of fifteen percent (15%) in connection with Franchisor's obtaining the insurance. Franchisee must provide Franchisor with copies of any insurance claims or insurance cancellations within twenty-four (24) hours. Franchisee has a twenty-four (24) hour opportunity to cure any lapses in insurance coverage. No insurance policy must be subject to cancellation, termination, nonrenewal or material modification, except upon at least thirty (30) days prior written notice from the insurance carrier to Franchisor. Franchisee must submit a certification of insurance that demonstrates compliance with this Section. Franchisor has the right to increase or otherwise modify the minimum insurance requirements upon thirty (30) days prior written notice to Franchisee, and Franchisee shall comply with any such modification within the time specified in said notice.

## **10 FINANCIAL RECORDS AND REPORTS**

Franchisee must maintain, for at least five (5) fiscal years from their preparation, complete financial records for the operation of the Franchised Business in accordance with generally accepted accounting principles and must provide Franchisor, at Franchisor's request, with: (i) a monthly income statement and profit and loss statement, in a format specified by Franchisor, including a standard chart of accounts, within fifteen (15) days after the end of each month; (ii) annual financial reports and operating statements in the form Franchisor specifies, prepared by a certain public accountant or state licensed public accountant, within thirty (30) days after the close of each of Franchisee's fiscal years; (iii) state and local sales tax returns or reports and federal, state and local income tax returns for each year in which Franchisee's Franchised Business is operated, within thirty (30) days after their timely completion; and (iv) such other reports as Franchisor may from time to time require, in the form and at the time Franchisor prescribes. Franchisee's fiscal year must be on a calendar year basis. Franchisee agrees to provide an unaudited quarterly profit and loss statement covering Franchisee's Franchised Business. These reports are due on the fifteenth (15<sup>th</sup>) day of each quarter. Franchisee must also provide an unaudited profit and loss statement covering the Franchised Business for Franchisee's fiscal year end. To assist Franchisee in recording and keeping accurate and detailed financial records for reports and tax returns, Franchisor, at Franchisor's discretion, may specify the form in which the business records are to be maintained and provide a uniform set of business records for Franchisee to use. Franchisor will have full access to all of Franchisee's data, system, and related information by means of direct access, whether in person, or by telephone/modem installed and maintained at Franchisee's sole expense.

## **11 BOOKS AND RECORDS**

Franchisee must maintain accurate business records, reports, accounts, books and data relating to the operation of Franchisee's Franchised Business. Franchisor and Franchisor's designees have the right to inspect and/or audit Franchisee's business records at any time during normal business hours, to determine whether Franchisee is current with suppliers and are otherwise operating in compliance with the terms of this Agreement and the Operations Manual. If any audit reveals that Franchisee has understated Franchisee's Royalty or marketing payments by more than two percent (2%), or if Franchisee has failed

to submit timely reports and/or remittances for any two (2) reporting periods within any twelve (12)-month period, Franchisee must pay the reasonable cost of such audit and/or inspection, including the cost of outside auditors and attorneys (to the extent Franchisor incurs such costs), together with amounts due for Royalty and other fees as a result of such underreporting and/or failure to submit reports, along with all late fees and interest which may otherwise be due under this Agreement.

## 12      **MARKETING AND ADVERTISING**

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      **Generally.** With regard to advertising generally for the Franchised Business, Franchisee must place or display at the Approved Location (interior and exterior) only such signs, emblems, lettering, logos and displays and advertising materials as Franchisor approves in writing from time to time. Franchisee must submit to Franchisor, at least twenty (20) days prior to publication or use, samples of all sales, promotional, and advertising materials Franchisee desires to use, including, but not limited to, print, radio and television advertising, signage, supplies and packaging that Franchisor has not previously approved. Such submission will not affect Franchisee's right to determine the prices at which Franchisee sells Franchisee's products. Within ten (10) days of Franchisor's receipt of any sample sales promotional material or advertising materials from Franchisee, Franchisor will notify Franchisee in writing of Franchisor's approval or disapproval of the materials. If Franchisor's written approval thereof is not received within ten (10) days, the submitted material will be deemed to have been approved. Franchisee cannot use any advertising or promotional materials that have not previously been approved by Franchisor. All advertising must prominently display the Proprietary Marks and comply with any standards for use of the Proprietary Marks Franchisor establishes as set forth in the Operations Manual or otherwise in writing. Franchisor may require Franchisee to discontinue the use of any advertising or marketing material, within time frames prescribed by Franchisor, at Franchisee's sole cost and expense.

12.2      **Advertising Restriction.** Franchisee is not permitted to solicit customers and/or advertise outside Franchisee's Protected Territory except to the extent that Franchisee has received Franchisor's prior written authorization, which Franchisor may withhold at its sole discretion. Franchisor may condition Franchisor's authorization upon Franchisee's agreement to offer to other System franchisees, specifically those who operate Franchised Businesses in territories encompassed by the circulation base of the proposed advertising, the opportunity to participate in, and share the expense of, such solicitation and/or advertising. Notwithstanding the foregoing, Franchisee may accept customers from outside Franchisee's Protected Territory at Franchisee's Approved Location, provided Franchisee did not solicit such customers by advertising outside of Franchisee's Protected Territory without Franchisor's prior written consent. Franchisee may not advertise the Franchised Business or any products or services offered by the Franchised Business via the Internet or any other means of e-commerce, except as permitted in Section 12.3.

12.3      **Internet Website.** Franchisee must have and maintain adequate hardware and software in order to access the Internet at the bit speed Franchisor requires from time to time. Franchisee is prohibited, however, from establishing any website or other presence on the Internet, except as provided herein.

12.3.1 Franchisor may, but is not obligated to, establish an Internet website that provides information about the System and the products and services offered by Smokin' Oak Wood-Fired Pizza businesses. In the event Franchisor exercises its right to create such a website, Franchisor

shall have sole discretion and control over the website (including timing, design, contents and continuation).

12.3.2 Franchisor may, but is not obligated to, create interior pages on its website(s) that contain information about the Franchised Business and other Smokin' Oak Wood-Fired Pizza Franchised Businesses. If Franchisor does create such pages, Franchisor may require Franchisee to prepare all or a portion of the page for the Franchised Business, at Franchisee's expense, using a template that Franchisor provides. All such information will be subject to Franchisor's approval prior to posting.

12.3.3 Except as approved in advance in writing by Franchisor, Franchisee must not establish or maintain a separate website, splash page, profile or other presence on the Internet, or otherwise advertise on the Internet or any other public computer network in connection with the Franchised Business, including any profile on Facebook, Twitter, LinkedIn, Plaxo, YouTube, Pinterest, Instagram, or any other social media and/or networking site. If such approval is granted by Franchisor, Franchisee must: (i) establish and operate such World Wide Web or Internet site in accordance with System standards and any other policies Franchisor designates in the Operations Manual or otherwise in writing from time to time; and (ii) utilize any templates that Franchisor provides to Franchisee to create and/or modify such site(s).

12.3.4 Franchisor shall have the right to modify the provisions of this Section.

12.3.5 Franchisor may use a portion of the Brand Development Fee to pay or reimburse itself for the costs incurred in connection with the development, maintenance and update of its website.

12.3.6 Franchisee acknowledges that Franchisor and/or Franchisor's affiliates are the lawful, rightful and sole owner of the Internet domain name [www.smokinoakpizza.com](http://www.smokinoakpizza.com) and [www.smokinoakpizza.com](http://www.smokinoakpizza.com) as well as any other Internet domain names registered by Franchisor and/or Franchisor's affiliates, and unconditionally disclaims any ownership interest in such Internet domain names and any Internet domain names similar thereto. Franchisee agrees not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by Franchisor or Franchisor's affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words.

12.4 **Grand Opening Marketing & Promotion.** Franchisee must pay Franchisor's Approved Supplier an amount between to \$8,000 and \$30,000 (depending on the model) which Franchisor will use to conduct a grand opening marketing campaign on Franchisee's behalf during the period 75 days prior to opening of the Franchised Business (the "Grand Opening Marketing Requirement"). Franchisee may expend additional sums on advertising its grand opening at its sole discretion, subject to Sections 12.1 and 12.2 above. Franchisee must also reimburse Franchisor for its cost to send its team members to support Franchisee's grand opening, including costs for travel and lodging.

12.5 **Brand Fund.** Franchisor has established a brand fund (the "Brand Fund") for the common benefit of System Franchisees. Franchisee must participate in and contribute weekly to the Brand Fund in an amount up to two percent (2%) of Franchisee's Net Sales (the "Brand Development Fee") in the manner Franchisor prescribes. Franchisee must pay the Brand Development Fee in the same manner as the Royalty due under this Agreement. Franchisor has the right to require that an advertising/marketing cooperative and/or franchisee advisory council be formed, changed, dissolved or merged.

12.5.1 Franchisor will use Brand Development Fees, in Franchisor's sole discretion, to develop, produce and distribute national, regional and/or local marketing and to create advertising

materials and public relations programs which promote, in Franchisor's sole judgment, the services offered by System franchisees. Franchisor has the sole right to determine contributions and expenditures from the Brand Fund, or any other advertising program, and sole authority to determine, without limitation, the selection of the advertising materials and programs; provided, however, that Franchisor will make a good faith effort to expend Brand Development Fees in the general best interests of the System on a national or regional basis. Franchisor may use the Brand Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertisements and other marketing, including the cost of preparing and producing television, radio, magazine, Internet and newspaper advertising campaigns, the cost of direct mail and outdoor billboard advertising; the cost of public relations activities and advertising agencies; the cost of developing and maintaining an Internet website; and personnel and other departmental costs for advertising that Franchisor internally administers or prepares. Nevertheless, Franchisee acknowledges that not all System franchisees will benefit directly or on a pro rata basis from such expenditures. While Franchisor does not anticipate any part of the Brand Development Fees will be used for advertising that is principally a solicitation for franchisees, Franchisor reserves the right to use the Brand Development Fees for public relations or recognition of the Smokin' Oak Wood-Fired Pizza brand and for the creation and maintenance of a website, a portion of which may be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating the availability of franchises. Sales materials, if developed, may be sold to franchisees at a reasonable cost.

12.5.2 Franchisor may periodically assist franchisees to maintain high quality standards through customer surveys, customer interviews, and other similar initiatives ("Surveys"). The cost of such programs will be borne by the Brand Fund. The cost of these programs may be charged directly to Franchisee if Franchisee's results from a Survey fall below System-established minimum standards for such Surveys.

12.5.3 Franchisor has the right to reimburse itself from the Brand Development Fees for such reasonable costs and overhead, if any, that Franchisor may incur in activities reasonably related to the direction and implementation of the Brand Fund.

12.5.4 Franchisor will provide an annual statement of contributions and expenditures for the Brand Fund upon Franchisee's reasonable written request. The Brand Fund is not required to be independently audited.

**12.6 Regional Advertising and Promotional Cooperative.** Franchisor will have the right, in Franchisor's 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 Franchised Business. If a Cooperative is established applicable to the Franchised Business: (i) Franchisee must participate in the Cooperative; and (ii) Cooperative contributions will be determined by the Cooperative, but shall not exceed two percent (2%) of monthly Net Sales. The following provisions will apply to each Cooperative:

12.6.1 Each Cooperative will be organized and governed in a form and manner, and will commence operation on a date, approved in advance by Franchisor;

12.6.2 Each Cooperative will 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 marketing;

12.6.3 No promotional or advertising plans or materials may be used by a Cooperative

or furnished to its members without Franchisor's prior approval. All such plans and materials must be submitted to Franchisor in accordance with the procedure set forth in Section 12.1 hereof;

12.6.4 Subject to Section 12.6 above, the Cooperative's activities will be agreed upon by a majority vote of the member franchisees in the Cooperative. The Cooperative may, by the majority vote of its members, increase a Cooperative contribution up to two percent (2%), but may not decrease the Cooperative contribution without prior written approval of Franchisor; and

12.6.5 Each member franchisee must submit to the Cooperative, no later than the 10<sup>th</sup> day of each month, for the preceding month, its respective contribution as provided in this Agreement together with such other statements or reports as Franchisor may require or as may be required by the Cooperative with Franchisor's approval.

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

**12.7 Local Advertising Requirement.** Franchisee shall comply with the following requirements in regard to local advertising:

12.7.1 Franchisee must expend two percent (2%) of Franchisee's Net Sales per month on advertising and promoting the Franchised Business in the immediate locality surrounding the Franchised Business in accordance with the advertising/marketing plan that Franchisor approves (the "Local Advertising Requirement").

12.7.2 Franchisor reserves the right to require Franchisee to expend any portion of the Local Advertising Requirement on (a) products or services Franchisor directs or approves, or (b) services that Franchisee must acquire from an Approved Supplier (which currently includes Franchisor).

12.7.3 Franchisor may require that Franchisee expend any portion of the Local Advertising Requirement on services, content and other products/items that must be purchased from one (1) or more Approved Suppliers, and (ii) collect the Local Advertising Requirement and pay such Approved Supplier directly as part of its support services and control rights described hereunder.

12.7.4 At Franchisor's option, Franchisee must ensure that: (i) the Franchised Business has a dedicated phone line for use in connection with the Franchised Business only; and (ii) the Franchised Business is listed in the appropriate Internet-based directories and Chamber(s) of Commerce that Franchisor designates. Franchisee shall obtain at least one (1) telephone number solely dedicated to the Franchised Business, which Franchisee shall assign to Franchisor, at Franchisor's option, upon termination, expiration, or transfer of this Agreement. Franchisee must list and advertise the telephone number(s) for the Franchised Business in the "White pages" telephone director and the classified or "yellow pages" telephone directory distributed in its trade area and under such categories as Franchisor may specify from time to time. Franchisee must place the classified directory advertisement and listings together with other Smokin' Oak Wood-Fired Pizza Businesses operating within the distribution area of the directory. If a joint listing is obtained, all Smokin' Oak Wood-Fired Pizza Businesses listed together shall pay a pro rata share of the cost of all advertisements and listings.

12.7.5 Furthermore, Franchisee shall obtain listings and/or advertise with Franchisor and other franchisees of the System on electronic yellow pages directory and other online directors as

Franchisor may designate, including Google Local, Google Business, Angie's List or similar online directory. In the event Franchisee does not comply with Franchisor's requests regarding such online listings or advertisement, Franchisor reserves the right to place, modify, or remove such listings and advertisements on behalf of Franchisee. For any listings or advertisements that Franchisor posts on behalf of Franchisee due to Franchisee's non-compliance under this Section, Franchisee shall promptly pay, upon demand by Franchisor, its pro rata share of the costs of such listings or advertisements. Upon termination, transfer, or expiration of this Agreement, Franchisee agrees to take any and all steps necessary to assist Franchisor in removing or assigning control of all listing under this Section to Franchisor.

12.7.6 Franchisee may not advertise and promote the Franchised Business outside of the Protected Territory, unless (a) the geographic area wherein Franchisee wishes to advertise is contiguous to the Protected Territory and that area has not been granted in connection with any other Franchised Business, or (b) Franchisor otherwise provides its prior written consent in writing. Nothing in this Section shall prevent or otherwise affect Franchisee's right to continue servicing and corresponding with any Existing Account that Franchisee has assumed in accordance with the terms of this Agreement.

### **13 INDEPENDENT CONTRACTOR; INDEMNIFICATION**

13.1 **Independent Contractor Status.** Franchisee is an independent contractor responsible for full control over the internal management and daily operation of Franchisee's Franchised Business, and neither party to this Agreement is the agent, principal, partner, employee, employer or joint venture partner of the other party. Franchisee may not act or represent itself, directly or by implication, as Franchisor's agent, partner, employee or joint venture partner, and Franchisee may not incur any obligation on Franchisor's behalf or in Franchisor's name. All stationery, business cards and contractual agreements entered into by Franchisee must contain Franchisee's corporate or fictitious name and a conspicuously displayed notice in the place Franchisor designates, stating: (i) Franchisee operates Franchisee's Franchised Business as an independently owned and operated Smokin' Oak Wood-Fired Pizza Franchised Business, and (ii) Franchisee independently owns and operates the Franchised Business as a System franchisee. 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 will in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor will Franchisor be liable by reason of any of Franchisee's acts or omissions in the operation of the Franchised Business or for any claim or judgment arising therefrom against Franchisee or Franchisor. Neither this Agreement nor Franchisor's course of conduct is intended, nor may anything in this Agreement (nor Franchisor's course of conduct) be construed to state or imply that Franchisor is the employer of Franchisee's employees and/or independent contractors.

13.2 **Indemnification.** Franchisee and Franchisee's principals agree to indemnify, defend and hold Franchisor, Franchisor's affiliates and their respective shareholders, directors, officers, employees, agents, successors and assignees ("Indemnitees") harmless against and to reimburse them for all claims, obligations, liabilities and damages ("Claims"), including any and all taxes, directly or indirectly arising out of, in whole or in part: (a) the operation of Franchisee's Franchised Business, including the use, condition, or construction, equipping, decorating, maintenance or operation of the Franchised Business premises, the sale or delivery of any food and beverage items (including pizza, sauces, and related food and beverage items) and Franchisee's advertising; (b) the use of the Proprietary Marks and other Proprietary Material; (c) the transfer of any interest in this Agreement or Franchisee's Franchised Business in any manner not in accordance with this Agreement; (d) the infringement, alleged infringement, or any other violation or alleged violation by Franchisee or any of Franchisee's principals of any patent, mark or copyright or other proprietary right owned or controlled by third parties; or (e) libel, slander or any other form of defamation of Franchisor, the System or any franchisee or developer

operating under the System, by Franchisee or by any of Franchisee's principals. For purposes of this indemnification, "Claims" will mean and include all obligations, actual, consequential, punitive and other damages, and costs reasonably incurred in the defense of any action, including attorneys', attorney assistants' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses, whether or not such claims exceed the amount of insurance coverage available through Franchisee to Franchisor. Franchisor will have the right to defend any such claim against it in such manner as Franchisor deems appropriate or desirable in Franchisor's sole discretion. Such an undertaking by Franchisor will, in no manner or form, diminish Franchisee's and each of Franchisee's principals' obligations to indemnify the Indemnitites and to hold them harmless. This indemnity will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## 14 SALE OR TRANSFER

14.1 **Transfer.** Franchisee's rights under this Agreement are personal, and Franchisee must not sell, transfer, assign or encumber Franchisee's interest in the Franchised Business without Franchisor's prior written consent. Any sale, transfer, assignment or encumbrance made without Franchisor's prior written consent will be voidable at Franchisor's option and will subject this Agreement to termination as specified herein.

### 14.2 Death or Disability.

14.2.1 *Representative's Right to Continue as Franchisee.* In the event of Franchisee's death, disability or incapacitation (or the death, disability or incapacitation of Franchisee's partners or personal guarantors), Franchisee's legal representative, or Franchisee's partner's or guarantor's respective legal representative, as applicable, will have the right to continue the operation of the Franchised Business as franchisee under this Agreement if: (i) within 45 days from the date of death, disability or incapacity (the "45-Day Period"), such person has obtained Franchisor's prior written approval and has executed Franchisor's then-current franchise agreement for the unexpired term of the franchise, or has furnished a personal guaranty of any partnership, corporate or limited liability company to satisfy Franchisee's obligations to Franchisor and Franchisor's affiliates; and (ii) such person successfully completes Franchisor's training program (which Franchisor will provide at Franchisor's then-current tuition rate). Such assignment by operation of law will not be deemed in violation of this Agreement, provided such heirs or legatees accept the conditions imposed by the Franchise Agreement and are acceptable to Franchisor.

14.2.2 *Franchised Business Operation During and After 45-Day Period.* Franchisor is under no obligation to operate the Franchised Business, or incur any obligation on behalf of any incapacitated franchisee, during or after the 45-Day Period. If necessary, Franchisee (or Franchisee's legal representative, as applicable) will appoint a previously approved acting interim manager to operate the Franchised Business during the 45-Day Period. In the event of Franchisee's death, disability, absence or otherwise, Franchisor has the right, but not the obligation, to operate Franchisee's Franchised Business on Franchisee's behalf and at Franchisee's expense for such period of time (and under such terms and conditions) as Franchisor determines, including paying out the assets and/or revenues of the Franchised Business to cover any or all past, current and/or future obligations of the Franchised Business (including any amounts owed to Franchisor and/or any affiliate) in such priorities as Franchisor determines from time-to-time in Franchisor's sole and absolute discretion. Franchisor may pay itself a management fee of \$1,000 per week, plus ten percent (10%) of Net Sales earned during such time period to reimburse Franchisor for Franchisor's management services and other costs, including, without limitation travel and lodging expenses ("Management Fee"). Franchisor may obtain approval of a court or arbitrator for any



such arrangements, the attorneys' fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of Franchisee's Franchised Business. Franchisee (and/or Franchisee's estate) will indemnify Franchisor against any costs and/or liabilities incurred by it in connection with, or related in any way to, the operation (or otherwise) of Franchisee's Franchised Business. This Management Fee is in addition to the amounts due under this Agreement for Royalty and other payments during the time which Franchisor takes over the management of the Franchised Business.

**14.3 Ownership Changes.** A sale, transfer or assignment requiring Franchisor's prior written consent will be deemed to occur: (i) if Franchisee is a corporation, upon any assignment, sale, pledge or transfer of any fractional portion of Franchisee's voting stock or any increase in the number of outstanding shares of Franchisee's voting stock that results in a change of ownership, (ii) if Franchisee is a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if Franchisee is a limited liability company, upon the assignment, sale, pledge or transfer of any interest in the limited liability company. Any new partner, shareholder, member or manager owning more than ten percent (10%) of the outstanding shares of the corporation, will be required to personally guarantee Franchisee's obligations under this Agreement. A transfer pursuant to (i) and (iii) above will not be subject to Franchisor's right of first refusal as set forth in Section 14.3.1.

**14.3.1 Right of First Refusal.** If Franchisee proposes to transfer either this Agreement or all, or substantially all, of the assets used in connection with the Franchised Business or any interest in Franchisee's lease to any third party (other than a corporation or limited liability company as set forth in Section 14.4 hereof), Franchisee must first offer to sell such interest to Franchisor on the same terms and conditions as offered by such third party. Franchisee will obtain from the third party and provide Franchisor a statement in writing, signed by the third party and Franchisee, of the terms of the offer ("Letter of Intent"). If Franchisor elects not to accept the offer within a thirty (30) day period, Franchisee will have a maximum period of sixty (60) days to complete the transfer described in the Letter of Intent subject to the conditions for approval set forth in Section 14.3.2 hereof. Franchisee will effectuate no other sale or transfer as contemplated under the Letter of Intent without first complying with this Section 14.3.1. Any material change in the terms of the offer will be deemed a new proposal subject to Franchisor's right of first refusal. So long as Franchisee has obtained Franchisor's prior written consent, which will not be unreasonably withheld, a transfer to an existing partner or shareholder, or a transfer as a result of the death, disability or incapacitation of a shareholder or partner, in accordance with the provisions set forth below, is not subject to Franchisor's first right of refusal.

**14.3.2 Conditions for Approval.** Franchisor may condition Franchisor's approval of any proposed sale or transfer of the Franchised Business or of Franchisee's interest in this Agreement upon satisfaction of the following occurrences:

**14.3.2.1** All of Franchisee's accrued monetary obligations to Franchisor, Franchisor's affiliates, and Franchisor's designated/approved suppliers and vendors, are satisfied;

**14.3.2.2** Franchisee must cure all existing defaults under this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's designated/approved suppliers and vendors, within the period permitted for cure and have substantially complied with such agreements during their respective terms;

**14.3.2.3** Franchisee and Franchisee's principals (if Franchisee is a partnership, corporation or limited liability company), and the transferee (if it has had any previous relationship with Franchisor or Franchisor's affiliates), must execute a general release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor and Franchisor's affiliates and officers, directors,

shareholders and employees, in their corporate and individual capacities; provided, however, the release will not be inconsistent with any applicable state statute regulating franchising;

14.3.2.4 Franchisee or transferee will provide Franchisor a copy of the executed purchase agreement relating to the proposed transfer with all supporting documents and schedules, including transferee's assumption of an agreement to faithfully perform all of Franchisee's obligations under this Agreement;

14.3.2.5 The transferee must demonstrate to Franchisor's satisfaction that he or she meets Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to conduct the business to be transferred; and has adequate financial resources and capital to meet the performance obligations under this Agreement; however, transferee cannot be in the same business as Franchisor either as licensor, franchisor, independent operator or licensee of any other business or chain that is similar in nature or in competition with Franchisor, except that the transferee may be an existing franchisee of ours;

14.3.2.6 The transferee must execute Franchisor's then-current Franchise Agreement for the unexpired term of this Agreement;

14.3.2.7 Franchisee or transferee must pay Franchisor a transfer fee equal to the greater of (i) \$15,000, or (ii) 50% of the then-current Initial Franchise Fee;

14.3.2.8 The transferee must satisfactorily complete Franchisor's training Program at the transferee's expense within the time frame Franchisor sets forth;

14.3.2.9 Franchisee (and Franchisee's principals if Franchisee is a partnership, corporation or limited liability company), and the members of their respective families must comply with the post-termination provisions of this Agreement;

14.3.2.10 The transferee must obtain, within the time limits set by Franchisor, and maintain thereafter, all permits and licenses required for the operation of the Franchised Business;

14.3.2.11 To the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;

14.3.2.12 The transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises;

14.3.2.13 The purchase price and terms of the proposed transfer are not so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Franchised Business and performance under its franchise agreement;

14.3.2.14 Franchisee must request that Franchisor provide the prospective transferee with Franchisor's current form of franchise disclosure document, and Franchisor will not be liable for any representations not included in the franchise disclosure document;

14.3.2.15 Franchisor's approval of the transfer will not constitute a waiver of any claims Franchisor may have against the transferring party;

14.3.2.16 Franchisor will have the right to disclose to any prospective transferee such revenue reports and other financial information concerning Franchisee and Franchisee's Franchised Business as Franchisee has supplied Franchisor hereunder; and

14.3.2.17 In any event, Franchisor may withhold or condition Franchisor's consent to any transfer as Franchisor deems appropriate based on the circumstances of the transfer or otherwise.

14.4 **Transfer to a Corporation or Limited Liability Company.** If Franchisee is an individual and desires to assign its rights under this Agreement to a corporation or limited liability company, and if all of the following conditions are met, Franchisor will consent to the transfer without assessing the transfer fee set forth in Section 14.3.2.7, and such assignment will not be subject to Franchisor's right of first refusal in Section 14.3.1:

14.4.1 The corporation or limited liability company is newly organized and its activities are confined to operating the Franchised Business;

14.4.2 Franchisee is, and at all times remains, the owner of at least 51% of the outstanding shares of the corporation or a controlling interest in the limited liability company;

14.4.3 The corporation or limited liability company agrees in writing to assume all of Franchisee's obligations hereunder; and

14.4.4 All stockholders of the corporation, or members and managers of the limited liability company, as applicable, personally guarantee prompt payment and performance by the corporation or limited liability company of all its obligations to Franchisor and Franchisor's affiliates, under this Agreement and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates and execute a non-compete agreement as set forth in Section 17.4 hereof.

14.5 **Franchisor's Right to Transfer.** Franchisor has the right to sell, transfer, assign and/or encumber all or any part of Franchisor's assets and Franchisor's interest in, and rights and obligations under, this Agreement in Franchisor's sole discretion.

## 15 BREACH AND TERMINATION

15.1 **Automatic Termination.** This Agreement will automatically terminate without notice or an opportunity to cure upon the occurrence of any of the following:

15.1.1 *Voluntary Bankruptcy.* If Franchisee makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated bankrupt or insolvent, files or acquiesces in the filing of a petition seeking reorganization or arrangement under any federal or state bankruptcy or insolvency law, or consents to or acquiesces in the appointment of a trustee or receiver for Franchisee or the Franchised Business.

15.1.2 *Involuntary Bankruptcy.* If proceedings are commenced to have Franchisee adjudicated bankrupt or to seek Franchisee's reorganization under any state or federal bankruptcy or insolvency law, and such proceedings are not dismissed within sixty (60) days, or a trustee or receiver is appointed for Franchisee or the Franchised Business without Franchisee's consent, and the appointment is not vacated within sixty (60) days.

15.1.3 *Unauthorized Transfer.* Franchisee purports to sell, transfer or otherwise dispose of Franchisee or any interest in the Franchised Business in violation of Section 14 hereof.

15.2 **With Notice and Without Opportunity to Cure.** Franchisor has the right to terminate this Agreement upon notice without providing Franchisee an opportunity to cure for any of the following breaches or defaults:

15.2.1 *Criminal Acts.* If Franchisee or Franchisee's principals are convicted of or plead guilty or no contest to a felony or take part in any criminal misconduct relevant to the operation of Franchisee's Franchised Business.

15.2.2 *Fraud.* If Franchisee or Franchisee's principals commit any fraud or misrepresentation in the operation of Franchisee's Franchised Business.

15.2.3 *Misrepresentation.* If Franchisee or Franchisee's principals make any misrepresentation or omission in connection with Franchisee's franchise application, including but not limited to any financial misrepresentation.

15.2.4 *Failure to Complete Training.* If Franchisee fails to complete initial training as provided in Section 8.1.

15.2.5 *Repeated Breaches.* If Franchisor sends Franchisee two (2) or more written notices to cure pursuant to Sections 15.3 or 15.4 hereof in any twelve (12)-month period.

15.2.6 *Breach of Other Agreements.* If Franchisee or Franchisee's principals materially breach any other agreement with Franchisor or any of Franchisor's affiliates, or threaten any material breach of any such agreement, or any Lease for the Approved Location, and fails to cure such breach within any permitted period for cure.

15.2.7 *Misuse of the Proprietary Marks or Confidential Information.* If Franchisee or Franchisee's principals materially violate any provision hereof pertaining to Proprietary Marks or Confidential Information or misuse the Proprietary Marks or Confidential Information.

15.2.8 *Violation of Health Code.* If Franchisee violates any health, safety or sanitation law, ordinance or regulation or operates the Franchised Business in a manner that presents a health or safety hazard to customers, or the general public.

15.2.9 *Violation of In-term Restrictive Covenant.* If Franchisee violates the in- term restrictive covenant contained in Section 17.1.

15.2.10 *Liens.* If a levy of writ of attachment or execution or any other lien is placed against Franchisee or any of Franchisee's principals or any of their assets which is not released or bonded against within 30 days.

15.2.11 *Insolvency.* If Franchisee or any of Franchisee's principals become insolvent.

15.2.12 *Abandonment.* If Franchisee voluntarily or otherwise abandons the Franchised Business. The term "abandon" includes any conduct which indicates a desire or intent to discontinue the franchisee business in accordance with the terms of this Agreement and will apply in any event Franchisee fails to operate the Franchised Business as a System Franchised Business for a period of two (2) or more

consecutive days without Franchisor's prior written approval.

15.2.13 *Unauthorized Products or Services.* If Franchisee offers any unauthorized and unapproved products or services at or from the Franchised Business.

15.2.14 *Unapproved Purchases.* Franchisee orders or purchases supplies, signs, furnishings, fixtures, equipment or inventory from an unapproved supplier or which Franchisor has not approved.

15.2.15 *Proprietary Software.* Franchisee misuses or makes unauthorized use of any Proprietary Software that Franchisor may develop for use in connection with the System.

15.2.16 *Insurance.* Franchisee fails to maintain insurance or to repay Franchisor for insurance paid for by it, or otherwise fails to adhere to the requirements of Section 9.

15.2.17 *Government Regulations.* Franchisee fails, within fifteen (15) days after notification of non-compliance by federal, state or local government authorities to comply with any law or regulation applicable to the Franchised Business.

15.2.18 *Government Actions.* Any government action is taken against Franchisee that results in any obligation upon Franchisor which in Franchisor's sole judgment is uneconomical, not in the best interests of Franchisor, or would result in Franchisor having an unintended relationship or obligation.

15.2.19 *Anti-Terrorist Activities.* Franchisee fails to comply with the provisions of Section 22.7.

15.2.20 *Personal Use of Franchised Business Property.* If Franchisee takes for Franchisee's own personal use any assets or property of the Franchised Business, including employee taxes, FICA, insurance or benefits.

15.2.21 *Insufficient Funds.* If there are insufficient funds in Franchisee's bank account to cover a check or EFT payment to Franchisor three (3) or more times within any twelve (12) month period.

15.2.22 *Under-reporting of Net Sales.* If any audit reveals that Franchisee has understated Franchisee's Royalty or marketing payments, or Franchisee's Local Marketing expenditures, by more than two percent (2%) or if Franchisee has failed to submit timely reports and/or remittances for any two (2) reporting periods within any 12-month period, as described in Section 11.

15.2.23 *Default Under Lease.* Franchisee defaults in obligations under any Lease agreement for the Approved Location.

**15.3 Upon 15 Days' Notice to Cure.** Franchisor has the right to terminate this Agreement if any of the following defaults remains uncured after expiration of the fifteen (15)-day cure period:

15.3.1 *Nonpayment.* If Franchisee fails to pay as and when due any sums owed to Franchisor, any of Franchisor's affiliates, or any of Franchisor's System Suppliers or vendors.

15.3.2 *Endorsement of Checks.* Franchisee fails to immediately endorse and deliver to Franchisor any payments due to Franchisor from any third party that is erroneously made to Franchisee.

15.3.3 *Failure to Maintain Sufficient Inventory Level.* If Franchisee fails to maintain sufficient levels of inventory to adequately meet consumer demand.

15.3.4 *Failure to Open.* If Franchisee fails to commence operations of Franchisee's Franchised Business within the time prescribed in Section 7.3 of this Agreement.

15.3.5 *Interruption of Service.* If Franchisee fails to maintain the prescribed months, days or hours of operation at the Franchised Business.

15.3.6 *Failure to Personally Supervise Franchised Business Operations or Employ Adequate Personnel.* If Franchisee fails, in Franchisor's sole discretion, to personally supervise day-to-day operation of the Franchised Business or fails to employ a sufficient number of qualified, competent personnel as Franchisor requires from time to time.

15.3.7 *Quality Control.* If Franchisee fails to maintain the strict quality controls reasonably required by this Agreement and/or the Operations Manual.

15.3.8 *Other Conduct Reflecting Adversely on System.* Franchisee conducts itself in a manner that, although not criminal, reflects adversely on the System, the Proprietary Marks, or the products offered through the System.

15.3.9 *Licenses and Permits.* Franchisee fails to procure or maintain any licenses, certifications, or permits necessary for the operation of Franchisee's Franchised Business.

15.4 **Upon 30 Days' Notice to Cure.** Franchisor has the right to terminate this Agreement if Franchisee fails to perform or comply with any one or more of the terms or conditions of this Agreement or any ancillary agreements between Franchisee and Franchisor or Franchisor's affiliates and fails to cure such default after notice and expiration of the thirty (30)-day cure period.

15.5 **Step In Rights.** In addition to Franchisor's right to terminate this Agreement, and not in lieu of such right, or any other rights, Franchisor may have against Franchisee, upon a failure to cure any default within the applicable time period (if any), Franchisor has the right, but not the obligation, to enter upon the Franchised Business premises and exercise complete authority with respect to the operation of the Franchised Business until such time as Franchisor determines, in Franchisor's sole discretion that the default has been cured, and Franchisee is otherwise in compliance with this Agreement. In the event Franchisor exercises the rights described in this Section, Franchisee must pay Franchisor \$1,000 per week plus ten percent (10%) of Net Sales in connection with its operation of Franchisee's Franchised Business including. This fee is in addition to the payment of the Royalty and all other fees due under this Agreement during the time Franchisor exercises its rights under this Agreement. If Franchisor undertakes to operate the Franchised Business pursuant to this Section, Franchisee agrees to indemnify and hold Franchisor (and Franchisor's representative(s) and employees) harmless from and against any fines, claims, suits or proceedings that may arise out of Franchisor's operation of the Franchised Business.

15.6 **Nonwaiver.** Franchisor's delay in exercising or failing to exercise any right or remedy under this Agreement or Franchisor's acceptance of any late or partial payment due hereunder will not constitute a waiver of any of Franchisor's rights or remedies against Franchisee.

## 16 RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

16.1 **Franchisee's Obligations.** Upon termination of this Agreement, regardless of the cause,

and upon expiration and nonrenewal or transfer of this Agreement, Franchisee must, at Franchisee's cost and expense:

16.1.1 Immediately cease all operations under this Agreement;

16.1.2 Immediately pay Franchisor all unpaid fees and pay Franchisor, Franchisor's affiliates, Franchisor's major suppliers and vendors, all other monies owed;

16.1.3 Immediately discontinue the use of the Proprietary Marks;

16.1.4 Immediately return the Operations Manual and all other Proprietary Materials and Confidential Information Franchisor loaned to Franchisee and immediately and permanently cease use of such information and materials;

16.1.5 Immediately cease using all telephone numbers and listings used in connection with the operation of the Franchised Business, and direct the telephone company to transfer all such numbers and listings to Franchisor or Franchisor's designee pursuant to the Conditional Assignment of Franchisee's Telephone Numbers and Listings attached hereto as Exhibit D or, if Franchisor directs, to disconnect the numbers within fifteen (15) days of termination or expiration of this Agreement;

16.1.6 Immediately vacate the Franchised Business, and if Franchisor exercised Franchisor's rights pursuant to the Collateral Assignment of Lease attached as Exhibit C, arrange for transfer of the Lease to Franchisor within fifteen (15) days of termination or expiration of this Agreement;

16.1.7 Immediately surrender all stationery, printed matter, signs, advertising and marketing materials and other items containing the Proprietary Marks as Franchisor directs and all items that are a part of the trade dress of the System, no later than five (5) days after the termination or expiration of this Agreement;

16.1.8 Immediately cease to hold itself out as Franchisor's franchisee;

16.1.9 Take such action as will be necessary to amend or cancel any assumed name, business name or equivalent registration which contains any trade name or other Proprietary Mark Franchisor licensed to Franchisee and furnish Franchisor evidence satisfactory to Franchisor of compliance with this obligation within fifteen (15) days after the termination, expiration or transfer of this Agreement;

16.1.10 Permit Franchisor to make a final inspection of Franchisee's financial records, books, and other accounting records within one (1) month of the effective date of termination, expiration, or transfer;

16.1.11 Comply with the post-termination covenants set forth in Section 17 hereof, all of which will survive the transfer, termination or expiration of this Agreement;

16.1.12 Cease to use in advertising or in any other manner, any methods, procedures or techniques associated with Franchisor or the System;

16.1.13 Immediately cease from engaging in any contacts with customers or former customers of the Franchised Business; and

16.1.13 Execute from time to time any necessary papers, documents, and assurances to effectuate the intent of this Section 16.

**16.2 Option to Purchase Personal Property.** Upon the termination or expiration of this Agreement, Franchisor, or Franchisor's designee will also have the option, but not the obligation, to purchase any personal property used in connection with operation of Franchisee's Franchised Business by providing Franchisee written notice of Franchisor's election within sixty (60) days after such termination or expiration and by paying Franchisee the book value for such personal property within sixty (60) days of such notice. For purposes of this paragraph, "book value" means the amount Franchisee actually paid for the personal property less depreciation (calculated by using the straight-line depreciation method on a ten (10)-year depreciation schedule irrespective of the depreciation method or schedule Franchisee uses for accounting purposes). Notwithstanding the foregoing, to the extent that Franchisor exercises Franchisor's right to purchase any personal property subject to a lease or finance agreement, the purchase price of such personal property will equal the amount of Franchisee's remaining obligations under the lease or finance agreement, as applicable. Franchisor will be entitled to offset the purchase price by the amount of money owed by Franchisee to Franchisor for any payments necessary to acquire clear title to property or for any other debt. If Franchisor exercises Franchisor's option to purchase, pending the closing of such purchase, Franchisor has the right to appoint a manager to maintain operation of the Franchised Business, or Franchisor may require that Franchisee close the Franchised Business during such period without removing any assets. Franchisee is required to maintain in force all insurance policies required under this Agreement until the date of such closing. Franchisor has the unrestricted right to assign this option to purchase the Franchised Business. Franchisor will be entitled to all customary warranties and representations in connection with Franchisor's purchase of Franchisee's property, including, without limitation, representations and warranties as to ownership and condition of and title to the property; liens and encumbrances on the property; validity of contracts and agreements; and liabilities affecting the property, contingent or otherwise.

**16.3 Exclusions.** Franchisor may exclude from the personal property purchased under Section 16.2 cash or its equivalent and any equipment, signs, inventory, materials and supplies that are not reasonably necessary (in function or quality) to the Franchised Business's operation or that Franchisor has not approved as meeting standards for the Franchised Business.

**16.4 Damages, Costs, and Expenses.** In the event of termination for any default by Franchisee, Franchisee will promptly pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default, which obligation will create and remain, until paid in full, a lien in favor of Franchisor against any and all of Franchisee's personal property, furnishings, equipment, signs, fixtures and inventory related to the operation of the Franchised Business.

## 17 COVENANTS

Franchisee acknowledges that as a participant in Franchisor's System, Franchisee will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques which Franchisor has developed. Therefore, in order to protect Franchisor and all Franchisor's franchisees, Franchisee agrees as follows:

**17.1 During the Term of This Agreement.** During the term of this Agreement, neither Franchisee, Franchisee's officers, directors, principals, or General Managers, nor any member of the immediate family of Franchisee or Franchisee's officers, directors, principals, or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person,



partnership or corporation:

17.1.1 Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any other business deriving ten percent (10%) or more of its revenue from the sale of pizza or other similar items or any other goods or services offered or authorized for sale by System franchisees (a “Competing Business”) or any business that licenses the right to operate a Competing Business; provided, however, that this Section does not apply to Franchisee’s operation of a Franchised Business under Franchisor’s System; or

17.1.2 Divert or attempt to divert any business or customer of the Franchised Business 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 or the System.

## 17.2 After the Term of This Agreement.

17.2.1 For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement, regardless of the cause, neither Franchisee, Franchisee’s officers, directors, principals, or General Managers, nor any member of the immediate family of Franchisee or Franchisee’s officers, directors, principals, or General Managers may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with Franchisor granting franchises or licenses for Competing Businesses at the time this Agreement is terminated or otherwise expires and is not renewed.

17.2.2 For a period of two (2) years after the expiration, transfer or termination of this Agreement, regardless of the cause, neither Franchisee, Franchisee’s principals, nor any member of the immediate family of Franchisee or Franchisee’s principals may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

17.2.2.1 Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any Competing Business: (i) within the Protected Territory, including at the Approved Location; or (ii) within a twenty-five (25) mile radius of the perimeter of (a) the Protected Territory being granted hereunder, (b) any other Protected Territory licensed by Franchisor as of the date of expiration or termination of this Agreement, or (c) any other Franchised Business; or

17.2.2.2 Solicit business from customers of Franchisee’s former Franchised Business or contact any of Franchisor’s suppliers or vendors for any competitive business purpose.

17.3 **Intent and Enforcement.** It is the parties’ intent that the provisions of this Section 17 be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein will not render any other part unenforceable. In the event of the actual or threatened breach of this Section 17 by Franchisee, any of Franchisee’s principals, or any member of the immediate family of Franchisee or Franchisee’s principals, Franchisor will be entitled to an injunction restraining such person from any such actual or threatened breach. Franchisee acknowledges that the covenants contained herein are necessary to protect the goodwill of the Franchised Business, other Smokin’ Oak Wood-Fired Pizza franchisees, and the System. Franchisee further acknowledges that covenants contained in this Section 17 are necessary to protect Franchisor’s procedures and know-how transmitted during the term of this Agreement. Franchisee agrees that in the event of the actual or threatened breach of this Section 17, Franchisor’s harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such

harm. Franchisee acknowledges and agrees, on Franchisee's own behalf and on behalf of the persons who are liable under this Section 17, that each has previously worked or been gainfully employed in other careers and that the provisions of this Section 17 in no way prevent any such person from earning a living. Franchisee further acknowledges and agrees that the time limitation of this Section 17 will be tolled during any default under this Section 17.

17.4 **Employees.** Franchisee will ensure that Franchisee's principals, employees and members of their immediate families who have access to Franchisor's Confidential Information, including all of Franchisee's managers and other key employees, execute a Confidentiality and Restrictive Covenant Agreement, in the form attached as Exhibit E to the Franchise Agreement, or as Franchisor, in Franchisor's sole discretion, otherwise prescribes. Franchisee must furnish Franchisor a copy of each executed agreement.

17.5 **No Defense.** Franchisee hereby agrees the existence of any claim Franchisee may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to Franchisor's enforcement of the covenants contained in this Section 17. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) that Franchisor incurs in connection with the enforcement of this Section 17.

## 18 DISPUTE RESOLUTION

18.1 **Choice of Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Florida (without reference to its conflict of laws principals).

18.2 **Internal Dispute Resolution.** Franchisee must first bring any claim or dispute between Franchisee and Franchisor to Franchisor's Managers, after providing notice as set forth in Section 18.6 below. Franchisee must exhaust this internal dispute resolution procedure before Franchisee may bring Franchisee's dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

18.3 **Mediation.** At Franchisor's option, all claims or disputes between Franchisor and Franchisee or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Franchisee or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 18.2 above, must be submitted first to mediation, in St. Petersburg, Florida under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Franchisee must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of 30 days following receipt of such notice within which to notify Franchisee as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Franchisee may not commence any action against Franchisor or its affiliates in respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation, and Franchisor and Franchisee will share mediation costs equally. This agreement to mediate will survive any termination or expiration of this Agreement.

18.3.1 The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 18.3 if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating):

18.3.1.1 Any federally protected intellectual property rights in the Proprietary Marks, the System, or in any Confidential Information;

18.3.1.2 Any claims pertaining to or arising out of any warranty issue; or

18.3.1.3 Any of the restrictive covenants contained in this Agreement.

18.4 **Selection of Venue.** Nothing contained in this Agreement will prevent Franchisor from applying to and obtaining from any court of competent jurisdiction a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interests. The parties expressly agree to the jurisdiction and venue of any court of general jurisdiction in St. Petersburg, Florida and the jurisdiction and venue of the United States District Court presiding over St. Petersburg, Florida. Franchisee acknowledges that the parties have entered into this Agreement in St. Petersburg, Florida and that Franchisee is to receive valuable and continuing services emanating from Franchisor's headquarters in St. Petersburg, Florida, including but not limited to training, assistance, support and the development of the System. In recognition of such services and their origin, Franchisee hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Florida set forth above.

18.5 **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of the provisions of this Agreement, including the mediation provision set forth in this Section 18, each having authority to specifically enforce the right to mediate/arbitrate claims asserted against such person(s) by Franchisee.

18.6 **Prior Notice of Claims.** As a condition precedent to commencing an action for damages or for violation or breach of this Agreement, Franchisee must notify Franchisor within thirty (30) days after the occurrence of the violation or breach, and failure to timely give such notice will preclude any claim for damages.

18.7 **No Right to Offset.** Franchisee is prohibited from withholding all or any part of any payment to Franchisor or any of its affiliates on the grounds of Franchisor's alleged nonperformance or as an offset against any amount Franchisor or any of Franchisor's affiliates allegedly may owe Franchisee under this Agreement or any related agreements.

18.8 **Injunctive Relief.** Nothing in this Agreement will prevent Franchisor from seeking to obtain injunctive relief, without posting a bond, against threatened conduct that will cause Franchisor loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary and permanent injunctions. If injunctive relief is granted, Franchisee's only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, Franchisee expressly waives all claims for damages Franchisee incurred as a result of the wrongful issuance.

18.9 **Limitation of Action.** Franchisee further agrees that no cause of action arising out of or under this Agreement may be maintained by Franchisee against Franchisor unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one (1) year after the Franchisee becomes aware of facts or circumstances reasonably indicating that Franchisee may have a claim against Franchisor hereunder, whichever occurs sooner, and

that any action not brought within this period will be barred as a claim, counterclaim, defense, or set-off.

18.9.1 Franchisee hereby waives the right to obtain any remedy based on alleged fraud, misrepresentation, or deceit by Franchisor, including, without limitation, rescission of this Agreement, in any mediation, judicial, or other adjudicatory proceeding arising hereunder, except upon a ground expressly provided in this Agreement, or pursuant to any right expressly granted by any applicable statute expressly regulating the sale of franchises, or any regulation or rules promulgated thereunder.

18.10 **Waiver of Punitive Damages.** Franchisee hereby waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) against Franchisor arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that Franchisee's recovery is limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

**18.11 THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR FRANCHISEE'S PURCHASE FROM FRANCHISOR OF THE FRANCHISE AND/OR ANY GOODS OR SERVICES. THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN FRANCHISEE, FRANCHISEE'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.**

## **19 REPRESENTATIONS**

19.1 **No Authority.** NO SALESPERSON, REPRESENTATIVE OR OTHER PERSON HAS THE AUTHORITY TO BIND OR OBLIGATE FRANCHISOR EXCEPT FRANCHISOR'S AUTHORIZED OFFICER BY A WRITTEN DOCUMENT. FRANCHISEE ACKNOWLEDGES THAT NO REPRESENTATIONS, PROMISES, INDUCEMENTS, GUARANTEES OR WARRANTIES OF ANY KIND WERE MADE BY FRANCHISOR OR ON FRANCHISOR'S BEHALF THAT HAVE LED FRANCHISEE TO ENTER INTO THIS AGREEMENT. FRANCHISEE UNDERSTANDS THAT WHETHER FRANCHISEE SUCCEEDS AS A FRANCHISEE IS DEPENDENT UPON FRANCHISEE'S EFFORTS, BUSINESS JUDGMENTS, THE PERFORMANCE OF FRANCHISEE'S EMPLOYEES, MARKET CONDITIONS AND VARIABLE FACTORS BEYOND FRANCHISOR'S CONTROL OR INFLUENCE. FRANCHISEE FURTHER UNDERSTANDS THAT SOME FRANCHISEES ARE MORE OR LESS SUCCESSFUL THAN OTHER FRANCHISEES AND THAT FRANCHISOR HAS MADE NO REPRESENTATION THAT FRANCHISEE WILL DO AS WELL AS ANY OTHER FRANCHISEE.

19.2 **Receipt.** THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF THIS AGREEMENT, WITH ALL BLANKS COMPLETED AND WITH ANY AMENDMENTS AND EXHIBITS, AT LEAST SEVEN (7) CALENDAR DAYS PRIOR TO EXECUTION OF THIS

AGREEMENT. IN ADDITION, THE UNDERSIGNED ACKNOWLEDGES RECEIPT OF FRANCHISOR'S FRANCHISE DISCLOSURE DOCUMENT AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE EXECUTION OF THIS AGREEMENT OR FRANCHISEE'S PAYMENT OF ANY MONIES TO FRANCHISOR, REFUNDABLE OR OTHERWISE.

**19.3 Opportunity for Review by Franchisee's Advisors.** FRANCHISEE ACKNOWLEDGES THAT FRANCHISOR HAS RECOMMENDED, AND THAT FRANCHISEE HAS HAD THE OPPORTUNITY TO OBTAIN, REVIEW THIS AGREEMENT AND FRANCHISOR'S FRANCHISE DISCLOSURE DOCUMENT BY FRANCHISEE'S LAWYER, ACCOUNTANT OR OTHER BUSINESS ADVISOR PRIOR TO EXECUTION HEREOF.

**19.4 Execution of Agreement.** EACH OF THE UNDERSIGNED PARTIES WARRANTS THAT IT HAS THE FULL AUTHORITY TO SIGN AND EXECUTE THIS AGREEMENT. IF FRANCHISEE IS A PARTNERSHIP OR CORPORATION, THE PERSON EXECUTING THIS AGREEMENT ON BEHALF OF SUCH PARTNERSHIP OR CORPORATION WARRANTS TO FRANCHISOR, BOTH INDIVIDUALLY AND IN HIS CAPACITY AS PARTNER OR OFFICER, THAT ALL OF THE PARTNERS OF THE PARTNERSHIP OR ALL OF THE SHAREHOLDERS OF THE CORPORATION, AS APPLICABLE, HAVE READ AND APPROVED THIS AGREEMENT, INCLUDING ANY RESTRICTIONS WHICH THIS AGREEMENT PLACES UPON RIGHTS TO TRANSFER THEIR INTEREST IN THE PARTNERSHIP OR CORPORATION.

## **20 GUARANTY**

If Franchisee is a corporation, or subsequent to execution hereof, Franchisee assigns this Agreement to a corporation, all shareholders of Franchisee's outstanding shares and their spouses (or if Franchisee is a partnership, or subsequent to execution hereof, Franchisee assigns this Agreement to a partnership, all partners and their spouses, or if Franchisee is a limited liability company, or subsequent to execution hereof Franchisee assigns this Agreement to a limited liability company, all members and managers and their spouses) hereby personally and unconditionally guarantee without notice, demand, or presentment, the payment of all of Franchisee's monetary obligations under this Agreement, and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates, as if each were an original party to this or any other agreement in his or her individual capacity. All such personal guarantors further agree to be bound by the restrictions of Franchisee's activities upon transfer, termination, or expiration and nonrenewal of this Agreement as if each were an original party to this Agreement in his or her individual capacity. All such personal guarantors and their spouses must execute a continuing personal guarantee in the form attached hereto as Exhibit B.

## **21 NOTICES**

All notices and requests to be given under this Agreement are to be in writing, and delivered by either hand delivery or overnight mail by a recognized carrier offering a delivery receipt, to the following addresses (which may be changed by written notice):

Franchisee Name/Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Franchisor Name/Address: Matt Mongoven  
Fourth Avenue Restaurant Group, LLC  
200 2<sup>nd</sup> Ave. South, #464  
St. Petersburg, Florida 33701

With a copy to: Lane Fisher, Esq.  
Fisher Zucker, LLC  
21 S. 21<sup>st</sup> Street  
Philadelphia, PA 19103

## 22 MISCELLANEOUS

22.1 **Entire Agreement.** This Agreement contains the entire Agreement of the parties. There are no representations either oral or written, except those contained in this Agreement. This written Agreement includes all representations between the parties. This agreement may not be modified except by a written document signed by both parties. Nothing in the Agreement is intended to disclaim the representations Franchisor made in the franchise disclosure document furnished to you.

22.2 **Construction of Language.** The language of this Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as Franchisee, their obligations and liabilities will be joint and several. Headings are for reference purposes and do not control interpretation. Reference to Franchisee's "immediate family" means Franchisee's spouse, parents, children and siblings and Franchisee's spouse's parents, children and siblings. Reference to Franchisee's "principals" means Franchisee's partners, officers, directors, shareholders, members and managers, as applicable. References to "Franchisor" and "Franchisee" include the party's successors, assigns or transferees. The parties have had a reasonable opportunity to review this Agreement. In the event of an ambiguity or if a question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by all of the parties, and no presumptions or burdens of proof will arise in favor of any party by virtue of the authorship of any of the provisions of this Agreement.

22.3 **Severability.** If any provision of this Agreement is deemed invalid or inoperative for any reason, that provision will be deemed modified to the extent necessary to make it valid and operative or, if it cannot be so modified, it will then be severed, and the remainder of that provision will continue in full force and effect as if this Agreement had been signed with the invalid portion so modified or eliminated; provided, however, that if any part of this Agreement relating to payments to Franchisor or any of its affiliates or protection of the Proprietary Marks or the Confidential Information, including the Operations Manual and Franchisor's other trade secrets, is declared invalid or unenforceable, then Franchisor at Franchisor's option may terminate this Agreement immediately upon written notice to Franchisee.

22.4 **State Law Applies.** If any provision of this Agreement, including but not limited to its provisions for transfer, renewal, termination, notice of termination, or cure rights, is inconsistent with any valid law or regulation of the state in which the Franchised Business is located, then the valid law or regulation of that state applicable to the franchise will supersede any provision of this Agreement that is less favorable to Franchisee.

22.5 **Additional Documentation.** Franchisee must from time to time, subsequent to the date first set forth above, at Franchisor's request and without further consideration, execute and deliver such other documentation or agreement and take such other action as Franchisor reasonably may require in

order to effectuate the transactions contemplated herein. In the event that Franchisee fails to comply with the provisions of this Section 22.5, Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact to execute any and all documents on Franchisee's behalf, reasonably necessary to effectuate the transactions contemplated herein.

22.6 **Force Majeure.** Neither Franchisee nor Franchisor or Franchisor's affiliates will be liable for loss or damage or deemed to be in breach of this Agreement or any related agreement if its failure to perform its obligations is not the fault nor within the reasonable control of the person due to perform but results from, without limitation, fire, flood, natural disasters, acts of God, governmental acts or orders, or civil disorders. Any delay resulting from any such cause will extend the time of performance for the period of such delay or for such other reasonable period of time as the parties agree in writing or will excuse performance, in whole or in part, as Franchisor deems reasonable.

22.7 **Anti-Terrorist Activities.** Franchisee certifies that neither Franchisee, nor Franchisee's owners, principals, employees or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (the "Annex"). Franchisee agrees not to hire or have any dealings with a person listed in the Annex. Franchisee certifies that Franchisee has no knowledge or information that, if generally known, would result in Franchisee, Franchisee's owners, principals, employees, or anyone associated with Franchisee being listed in the Annex. Franchisee agrees to comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with the Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee certifies, represents, and warrants that none of Franchisee's property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws and that Franchisee and Franchisee's owners or principals are not otherwise in violation of any of the Anti-Terrorism Laws. Franchisee is solely responsible for ascertaining what actions must be taken by Franchisee to comply with all such Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee's indemnification responsibilities as provided in Section 13.2 of this Agreement pertain to Franchisee's obligations under this Section 22.7. Any misrepresentation by Franchisee under this Section or any violation of the Anti-Terrorism Laws by Franchisee, Franchisee's owners, principals or employees will constitute grounds for immediate termination, upon notice, of this Agreement and any other agreement Franchisee has entered into with Franchisor or one of Franchisor's affiliates in accordance with the terms of Section 15.2.19 of this Agreement. As used herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies lists and any other requirements of any Governmental Authority (including without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

22.8 **Attorneys' Fees.** If Franchisee is in breach or default of any monetary or non-monetary material obligation under this Agreement or any related agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Franchisee must pay all reasonable attorneys' fees, court costs and litigation expenses Franchisor incurs. If Franchisee institutes any legal action to interpret or enforce the terms of this Agreement, and Franchisee's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

## 23 ACKNOWLEDGMENTS

23.1 **Independent Investigation.** Franchisee acknowledges that Franchisee has conducted an independent investigation of the Franchised Business contemplated by this Agreement and recognizes that it involves business risks that make the success of the venture largely dependent upon Franchisee's business abilities and efforts. Franchisee acknowledges that Franchisee has been given the opportunity to clarify any provision of this Agreement that Franchisee may not have initially understood and that Franchisor has advised Franchisee to have this Agreement reviewed by an attorney.

23.2 **No Guarantee of Earnings.** Franchisee understands that Franchisor and any of Franchisor's representatives and/or agents with whom Franchisee has met have not made and are not making any guarantees as to the extent of Franchisee's success in Franchisee's Franchised Business, and have not and are not in any way representing or promising any specific amounts of earnings or profits in association with Franchisee's Franchised Business.

23.3 **Receipt of Franchise Disclosure Document.** Franchisee acknowledges that this Agreement and Franchisor's franchise disclosure document have been in Franchisee's possession for at least fourteen (14) calendar days before Franchisee signed this Agreement or paid any monies to Franchisor or an affiliate and that any material changes to this Agreement were in writing in this Agreement for at least seven (7) calendar days before Franchisee signed this Agreement.

23.4 **No Personal Liability.** Franchisee agrees that fulfillment of any and all of Franchisor's obligations written in this Agreement or based on any oral communications that may be ruled to be binding in a court of law will be Franchisor's sole responsibility and none of Franchisor's agents, representatives, nor any individuals associated with Franchisor's franchise company will be personally liable to Franchisee for any reason. This is an important part of this Agreement. Franchisee agrees that nothing that Franchisee believes Franchisee has been told by Franchisor or Franchisor's representatives will be binding unless it is written in this Agreement. Do not sign this Agreement if there is any question concerning its contents or any representations made.

*[signatures on following page]*



**IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND  
HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED  
EFFECTIVE THE DATE FIRST SET FORTH ABOVE.**

**FRANCHISEE**

\_\_\_\_\_  
(Individual, Partnership or Corporation Name)

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

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

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

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

**PERSONAL GUARANTORS**

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

**FRANCHISOR**

**FOURTH AVENUE RESTAURANT GROUP, LLC**

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

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

**EXHIBIT A**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**SITE SELECTION ADDENDUM**

Fourth Avenue Restaurant Group, LLC (“Franchisor”) and \_\_\_\_\_ (“Franchisee”), have this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, entered into a Franchise Agreement for the operation of a Franchised Business using Franchisor’s Proprietary Marks and System (the “Franchised Business”) and desire to supplement its terms, as set forth below. The parties therefore agree as follows:

1. Within 120 days after Franchisee receives notice of approval of the Franchise Agreement, Franchisee must obtain a site, at Franchisee’s expense, for the business franchised under the Franchise Agreement (the “Franchised Business”), which Franchisor will approve as hereinafter provided. The site must be within the following protected territory:

\_\_\_\_\_ (the “Site Selection Protected Territory”).

2. Franchisee’s failure to obtain a site for the Franchised Business within the time required in Paragraph 1 will constitute a default under the Franchise Agreement and this Site Selection Addendum. Time is of the essence.

3. Prior to Franchisee’s acquisition by lease or purchase of a site for the Franchised Business, Franchisee must submit to Franchisor, in the form Franchisor specifies, 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 that confirms Franchisee’s favorable prospects for obtaining the proposed site. Recognizing that time is of the essence, Franchisee must submit a proposed site, together with the information and materials required by this Paragraph 3, to Franchisor for Franchisor’s approval within ninety (90) days after execution of this Site Selection Addendum. Franchisor will have fifteen (15) 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 Franchised Business. No proposed site will be deemed approved unless Franchisor has expressly approved it in writing.

4. Franchisor will furnish to Franchisee such site selection guidelines, consultation and on-site evaluation as Franchisor deems advisable as part of Franchisor’s evaluation of Franchisee’s request for site approval. Franchisor will not, however, provide on-site evaluation for any proposed site prior to Franchisor’s receipt of the information and materials required by Paragraph 3 hereof. If Franchisor deems on-site evaluation necessary and appropriate, Franchisor will conduct up to one (1) on-site evaluation at Franchisor’s cost. For each additional on-site evaluation (if any), Franchisee will reimburse Franchisor for Franchisor’s reasonable expenses including, without limitation, the costs of travel, lodging, and meals.

5. If Franchisee will be occupying the Franchised Business premises under a lease, Franchisee must, prior to the execution of the lease, submit the lease to Franchisor for Franchisor’s written approval. Franchisor’s approval of the lease will be conditioned upon Franchisee’s execution of a

Collateral Assignment of Lease in the form Franchisor prescribes and the inclusion of the following terms and conditions:

5.1 That the initial term of the lease, or the initial term together with renewal terms, will be for not less than ten (10) years with the option to renew the lease for two (2) additional five (5)-year terms;

5.2 That the lessor consents to Franchisee's use of such Proprietary Marks and initial signage as Franchisor may prescribe for the Franchised Business;

5.3 That the use of the premises be restricted solely to the operation of the Franchised Business;

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

5.5 That the lessor provide to Franchisor copies of any and all notices of default given to Franchisee under the lease;

5.6 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;

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

6. Franchisee must furnish Franchisor with a copy of any executed lease within ten (10) days after execution thereof.

7. After Franchisor has approved a site for the Franchised Business in writing and Franchisee has acquired the site pursuant to Paragraph 4 hereof, the site will constitute the Approved Location referred to in Section 1.3 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 or any kind, express or implied, as to the suitability of the site for the Franchised Business or for any other purpose. Franchisor's approval of the site indicates only that Franchisor believes the site complies with acceptable minimum criteria established by Franchisor solely for Franchisor's purposes as of the time of the evaluation. Both parties to this Agreement acknowledge the application of criteria that 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. Such factors are unpredictable and are beyond Franchisor's control. Franchisor will not be responsible for the failure of a site approved by Franchisor to meet Franchisee's expectations as to revenue or operational criteria. Franchisee further acknowledges and agrees that

Franchisee's acceptance of a franchise for the operation of the Franchised Business at the site is based on Franchisee's 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 terms of this Site Selection Addendum will 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.

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

**FRANCHISEE**

\_\_\_\_\_

(Individual, Partnership or Corporation Name)

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

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

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

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

**FRANCHISOR**

**FOURTH AVENUE RESTAURANT GROUP,  
LLC**

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

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

**EXHIBIT B**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**PERSONAL GUARANTY AND GUARANTY OF SPOUSES**

NOTE: IF FRANCHISEE IS A CORPORATION, EACH OF FRANCHISEE'S SHAREHOLDERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING. IF FRANCHISEE IS A PARTNERSHIP, EACH OF FRANCHISEE'S GENERAL PARTNERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING. IF FRANCHISEE IS A LIMITED LIABILITY COMPANY, EACH OF FRANCHISEE'S MEMBERS AND MANAGERS AND THEIR SPOUSES MUST EXECUTE THE FOLLOWING UNDERTAKING.

**ARTICLE I**  
**PERSONAL GUARANTY**

The undersigned persons (individually and collectively "you") hereby represent to Fourth Avenue Restaurant Group, LLC ("Franchisor") that you are all of the shareholders of, or all of the general partners of, or all of the members and managers of, or the spouse of any such shareholder, general partner, or member or manager of \_\_\_\_\_ ("Franchisee"), as the case may be. In consideration of the grant by Franchisor to the Franchisee as herein provided, each of you hereby agree, in consideration of benefits received and to be received by each of you, jointly and severally, and for yourselves, your heirs, legal representatives and assigns, to be firmly bound by all of the terms, provisions and conditions of the foregoing Franchise Agreement, and any other agreement between Franchisee and Franchisor and/or its affiliates, and do hereby unconditionally guarantee the full and timely performance by Franchisee of each and every obligation of Franchisee under the aforesaid Franchise Agreement or other agreement between Franchisor and Franchisee, including, without limitation, any indebtedness of Franchisee arising under or by virtue of the aforesaid Franchise Agreement and that you (jointly and individually) will not permit or cause any change in the percentage of Franchisee owned, directly or indirectly, by any person, without first obtaining the written consent of Franchisor prior to said proposed transfer, which consent must not be unreasonably withheld, and without first paying or causing to be paid to Franchisor the transfer fee provided for in said Franchise Agreement, if applicable, and without otherwise complying with the transfer provisions of the foregoing Franchise Agreement. You further agree to be bound by the in-term and post-term covenants against competition of the aforesaid Franchise Agreement.

**ARTICLE II**  
**CONFIDENTIALITY**

During the term of this Agreement, you will receive information which Franchisor considers a trade secret and confidential information ("Confidential Information"). You will not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any Confidential Information including, without limitation, operating procedures, customer lists, sources of supply, supplier contracts, advertising materials, copyrighted materials, equipment specifications, any information

contained in the Operations Manual, trade secrets, the Proprietary Recipes, copyrighted materials, and other methods, techniques and know-how concerning the operation of the Franchised Business which may be communicated to you or of which you may be apprised by virtue of your relationship with Franchisee and role as a Guarantor of the Franchise Agreement.

### **ARTICLE III NON-COMPETITION**

- 1) **During the Term of the Franchise Agreement.** During the term of the Franchise Agreement, neither you, nor your principals, officers, directors, nor any members of your family or the family of your officers, directors, or principals may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:
  - a) Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any other business deriving ten percent (10%) or more of its revenue from the sale of pizza or other similar items or any other goods or services offered or authorized for sale by System franchisees (a “Competing Business”) or any business that licenses the right to operate a Competing Business; provided, however, that this Section does not apply to the said parties’ operation of a Franchised Business;
  - b) Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor’s affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or
  - c) Divert or attempt to divert any business or customer of the Franchised Business 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 or the System.
  
- 2) **After the Term of the Franchise Agreement.**
  - a) For a period of two (2) years after the expiration and nonrenewal, transfer or termination of the Franchise Agreement, regardless of the cause, neither you, your principals, officers, directors, nor any members of your immediate family or the immediate family of your officers, directors, or principals may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with Franchisor granting franchises or licenses for Competing Businesses at the time the Franchise Agreement is terminated or otherwise expires and is not renewed.
  - b) For a period of two (2) years after the expiration, transfer or termination of this Agreement, regardless of the cause, neither you, nor your principals, officers, directors, nor any member of your immediate family or the immediate family of your officers, directors, or principals may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:
    - i) Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to or have any interest in any Competing Business or any

other goods or services offered or authorized for sale by System franchisees, at the time the Franchise Agreement is terminated or otherwise expires and is not renewed, (i) within the Protected Territory, including at the Approved Location; or (ii) within a twenty-five (25) mile radius of the perimeter of (a) the Protected Territory being granted hereunder, (b) any other Protected Territory licensed by Franchisor as of the date of expiration or termination of this Agreement, or (c) any other Franchised Business; or

- ii) Solicit business from customers of Franchisee's former Franchised Business or contact any of Franchisor's suppliers or vendors for any competitive business purpose nor solicit any of Franchisor's employees or the employees of Franchisor's affiliates or any other System franchisee to discontinue employment.
- 3) **Intent and Enforcement.** It is the parties' intent that the provisions of this Article III be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein will not render any other part unenforceable. In the event of the actual or threatened breach of this Article III by you, any of your principals, or any members of their immediate family, Franchisor will be entitled to an injunction restraining such person from any such actual or threatened breach. You agree that in the event of the actual or threatened breach of this Article III, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. You acknowledge and agree that each of you has previously worked or been gainfully employed in other careers and that the provisions of this Article III in no way prevent you from earning a living. You further acknowledge and agree that the time limitation of this Article III will be tolled during any default under this Personal Guaranty.

#### **ARTICLE IV DISPUTE RESOLUTION**

- 1) **Acknowledgment.** You acknowledge that this Personal Guaranty is not a franchise agreement and does not confer upon you any rights to use the Franchisor's Proprietary Marks or its system.
- 2) **Governing Law.** This Personal Guaranty will be deemed to have been made in and governed by the laws of the State of Florida (without reference to its conflict of laws principals).
- 3) **Internal Dispute Resolution.** You must first bring any claim or dispute arising out of or relating to the Franchise Agreement or this Personal Guaranty to Franchisor's Managers. You agree to exhaust this internal dispute resolution procedure before bringing any dispute before a third party. This agreement to engage in internal dispute resolution first will survive the termination or expiration of this Agreement.
- 4) **Mediation.** At Franchisor's option, all claims or disputes between you and Franchisor arising out of, or in any way relating to, this Personal Guaranty or the Franchise Agreement or any other agreement by and between you and the Franchisor, or any of the parties' respective rights and obligations arising from such agreements must be submitted first to mediation, in St. Petersburg, Florida, under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, you must submit a

notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of 30 days following receipt of such notice within which to notify you as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. You may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation and the parties will share the cost of mediator. This agreement to mediate at our option will survive the termination or expiration of the Franchise Agreement.

- a) The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section IV if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating):
  - (1) Any federally protected intellectual property rights in the Proprietary Marks, the System, or in any Confidential Information;
  - (2) Any claims arising out of or pertaining to any warranty issued; or
  - (3) Any of the restrictive covenants contained in this agreement.
- 5) **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of the Franchise Agreement and this Personal Guaranty, and the mediation provisions contained herein, each having authority to specifically enforce the right to mediate and arbitrate claims asserted against such person(s) by you.
- 6) **Injunctive Relief.** Nothing contained in this Personal Guaranty will prevent Franchisor from applying to or obtaining from any court having jurisdiction, without bond, a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interest prior to the filing of any mediation proceeding or pending the trial or handing down of a decision or award pursuant to any mediation or judicial proceeding conducted hereunder.
- 7) **Jurisdiction and Venue.** With respect to any proceeding not subject to mediation, the parties expressly agree to submit to the jurisdiction and venue of any court of general jurisdiction in St. Petersburg, Florida, and the jurisdiction and venue of the United States District Court presiding over St. Petersburg, Florida.
- 8) **Jury Trial Waiver.** THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS PERSONAL GUARANTY OR THE FRANCHISE AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR YOUR PURCHASE FROM FRANCHISOR OF THE FRANCHISE, OPTION AND/OR ANY GOODS OR



## SERVICES.

- 9) **Waiver of Punitive Damages.** You waive to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) that you may have against us arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agree that in the event of a dispute, your recovery will be limited to actual damages. If any other term of this Personal Guaranty is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.
- 10) **Limitation on Action.** You agree that no cause of action arising out of or under this Personal Guaranty or the Franchise Agreement may be maintained by you unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one (1) year after you become aware of facts or circumstances reasonably indicating that you may have a claim against the Franchisor, whichever occurs sooner, and that any action not brought within this period will be barred as a claim, counterclaim, defense or set-off.
- 11) **Attorneys' Fees.** If either party institutes any mediation action or judicial proceeding to enforce any monetary or nonmonetary obligation or interpret the terms of this Personal Guaranty and the Franchise Agreement, and Franchisor prevails in such action, you will be liable to Franchisor for all costs, including reasonable attorneys' fees, incurred in connection with such proceeding.
- 12) **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Personal Guaranty and the Franchise Agreement will not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default will not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Personal Guaranty will be cumulative. Franchisor's election to exercise any remedy available by law or contract will not be deemed a waiver or preclude exercise of any other remedy.
- 13) **Severability.** The parties agree that if any provisions of this Personal Guaranty may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision will have the meaning that renders it valid and enforceable. The language of all provisions of this Personal Guaranty will be construed according to fair meaning and not strictly construed against either party. The provisions of this Personal Guaranty are severable, and this Personal Guaranty will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions will be enforced to the extent that they are valid and enforceable. If any material provision of this Personal Guaranty will be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Personal Guaranty.
- 14) **Construction of Language.** Any term defined in the Franchise Agreement which is not defined in this Personal Guaranty will be ascribed the meaning given to it in the Franchise Agreement.

The language of this Personal Guaranty will be construed according to its fair meaning, and not strictly for or against either party. All words in this Personal Guaranty refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

- 15) **Successors.** References to “Franchisor” or “the undersigned,” or “you” include the respective parties’ successors, assigns or transferees.
  
- 16) **No Personal Liability.** You agree that fulfillment of any and all of Franchisor’s obligations written in this Personal Guaranty or in the Franchise Agreement or based on any oral communications that may be ruled to be binding in a court of law will be Franchisor’s sole responsibility and none of Franchisor’s agents, representatives, nor any individuals associated with Franchisor’s franchise company will be personally liable to Franchisee or you for any reason.

**PERSONAL GUARANTORS**

**SPOUSES**

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**EXHIBIT C**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT COLLATERAL**  
**ASSIGNMENT OF LEASE**

**FOR VALUE RECEIVED**, the undersigned (“Assignor”) hereby assigns and transfers to Fourth Avenue Restaurant Group, LLC, a Florida limited liability company, with its principal place of business address at 200 2<sup>nd</sup> Ave. South, #464, St. Petersburg, Florida 33701 (“Assignee”), all of Assignor’s right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Exhibit 1 (the “Lease”) respecting premises commonly known as \_\_\_\_\_  
\_\_\_\_\_. This Assignment is for collateral purposes only and except as specified herein, Assignee has no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless Assignee takes possession of the premises demised by the Lease pursuant to the terms hereof and assumes the obligations of Assignor thereunder.

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

Upon a default by Assignor under the Lease or under the franchise agreement for a Franchised Business between Assignee and Assignor (the “Franchise Agreement”), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, or upon expiration or termination of the Franchise Agreement or this Agreement, Assignee has the right and is hereby empowered to take possession of the premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor will have no further right, title or interest in the Lease. Assignor hereby authorizes the Lessor to disclose to Assignee, upon its request, sales and other information furnished to the Lessor by Assignor.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it must 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 Assignor to so elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and instead of Assignor for the purpose of effecting such extension or renewal.

**ASSIGNOR:**

Dated: \_\_\_\_\_

SIGNED AND SEALED this \_\_\_\_  
day of \_\_\_\_\_, 20\_\_

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

Notary Public

**CONSENT AND AGREEMENT OF LESSOR**

The undersigned Lessor under the aforescribed Lease hereby:

(a) Agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;

(b) Agrees that Assignee has the right, but must not be obligated, to cure any default by Assignor under the Lease within 30 days (or such longer period of time as reasonably necessary to cure the default, so long as Assignee commences the cure within 30 days and thereafter diligently pursues the cure to completion) after delivery by Lessor of notice thereof in accordance with paragraph (a) above;

(c) Consents to the foregoing Collateral Assignment and agrees that if Assignee takes possession of the premises demised by the Lease and confirms to Lessor the assumption of the Lease by Assignee as tenant thereunder, Lessor must recognize Assignee as tenant under the Lease, provided that Assignee cures within the time period set forth above the defaults, if any, of Assignor under the Lease;

(d) Agrees that Assignee may further assign the Lease to a person, firm or corporation who must agree to assume the tenant's obligations under the Lease and who is reasonably acceptable to Lessor and upon such assignment Assignee will have no further liability or obligation under the Lease as assignee, tenant or otherwise.

DATED: \_\_\_\_\_

**LESSOR:**

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

**EXHIBIT D**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**CONDITIONAL ASSIGNMENT**  
**OF FRANCHISEE'S TELEPHONE NUMBERS AND LISTINGS**

1. \_\_\_\_\_ (“Assignor”), in exchange for valuable consideration provided by Fourth Avenue Restaurant Group, LLC (“Assignee”), receipt of which is hereby acknowledged, hereby conditionally assigns to Assignee all telephone numbers, facsimile numbers, domain names, as well as any listings associated therewith, utilized by Assignor in the operation of its Smokin’ Oak Wood-Fired Pizza Franchised Business at Assignor’s above-referenced address (the “Assigned Property”). The Assigned Property includes the following:

Telephone Number(s): \_\_\_\_\_  
Facsimile Number(s): \_\_\_\_\_  
Domain Name(s) (as permitted by Franchisor under the Franchise Agreement): \_\_\_\_\_.

2. The conditional agreement will become effective automatically upon termination or expiration of Assignor’s franchise. Upon the occurrence of that condition, Assignor must do all things required by the telephone company and/or domain name registrar to assure the effectiveness of the assignment of Assigned Property as if the Assignee had been originally issued such Assigned Property and the usage thereof.

3. Assignor agrees to pay the telephone company and/or domain name registrar, on or before the effective date of assignment, all amounts owed for the use of the Assigned Property up to the date this Assignment becomes effective. Assignor further agrees to indemnify Assignee for any sums Assignee must pay the telephone company to effectuate this Assignment, and agrees to fully cooperate with the telephone company and/or domain name registrar, as well as the Assignee, in effectuating this assignment.

**ASSIGNOR:**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
TITLE: \_\_\_\_\_

**ASSIGNEE:**

**FOURTH AVENUE RESTAURANT GROUP, LLC**

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

**EXHIBIT E**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT**

*(for trained employees, shareholders, officers, directors,  
general partners, members and managers and General Manager of Franchisee)*

In consideration of my being a \_\_\_\_\_ of \_\_\_\_\_ (“Franchisee”), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I hereby acknowledge and agree that: Franchisee has acquired the right from Fourth Avenue Restaurant Group, LLC (the “Company”) to establish and operate a Smokin’ Oak Wood-Fired Pizza Franchised Business (the “Franchised Business” or “Franchised Business”) and the right to use in the operation of the Franchised Business the Company’s trade names, trademarks and service marks (the “Proprietary Marks”) and the Company’s unique and distinctive format and system relating to the establishment and operation of Franchised Business (the “System”), as they may be changed, improved and further developed from time to time in the Company’s sole discretion, only at the following authorized and approved location: \_\_\_\_\_ (the “Franchised Business Premises”).

1. The Company possesses certain proprietary and confidential information relating to the operation of the System, which includes certain trade secrets, Proprietary Recipes and food preparation and presentation techniques, copyrighted materials, methods and other techniques and know-how (the “Confidential Information”).

2. Any and all information, knowledge, know-how, and techniques that the Company specifically designates as confidential will be deemed to be Confidential Information for purposes of this Agreement.

3. As an employee of Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, the Fourth Avenue Restaurant Group, LLC operations manual (the “Manual”) and other general assistance during the term of this Agreement.

4. I will not acquire any interest in the Confidential Information, other than the right to utilize it in the operation of the Franchised Business during the term hereof, and the use or duplication of the Confidential Information for any use outside the System would constitute an unfair method of competition.

5. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I will hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company 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, and will continue not to disclose any such information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

6. Except as otherwise approved in writing by the Company, I will not, while in my

position with Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in any other business that operates or licenses any other Franchised Business, except for a Smokin' Oak Wood-Fired Pizza Franchised Business operating under the System and Proprietary Marks.

7. I agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree 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 Agreement.

8. I understand and acknowledge that the Company will have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Agreement, or any portion thereof, without my consent, effective immediately upon receipt by me of written notice thereof; and I agree to comply forthwith with any covenant as so modified.

9. The Company 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 Company and the Franchisee irreparable harm; therefore, I acknowledge and agree that Franchisee and/or the Company may apply for the issuance of an injunction preventing me from violating this Agreement, and I agree to pay Franchisee and the Company all the costs it/they incur(s), including, without limitation, legal fees and expenses, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisee and the Company, any claim I have against Franchisee or the Company is a separate matter and does not entitle me to violate, or justify any violation of this Agreement.

10. This Agreement will be construed under the laws of the State of Florida (without reference to its conflict of laws principals). The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

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

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

**ACKNOWLEDGED BY FRANCHISEE**

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

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

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

**EXHIBIT F**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**ELECTRONIC FUNDS WITHDRAWAL AUTHORIZATION**

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

ABA# : \_\_\_\_\_

Acct. No. : \_\_\_\_\_

Acct. Name : \_\_\_\_\_

Effective as of the date of the signature below, \_\_\_\_\_ (“Franchisee”) hereby authorizes Fourth Avenue Restaurant Group, LLC (“Company”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to make the following payments to Company under the Franchise Agreement for the franchise located at \_\_\_\_\_:

(1) all Royalty and (2) all contributions to the Brand Fund. Such withdrawals will occur on a weekly basis, or on such other schedule as Company will specify in writing. Company is also authorized to deposit funds into the above-referenced account, electronically or otherwise. This authorization will remain in full force and effect until terminated in writing by Company. Franchisee will provide Company, in conjunction with this authorization, a voided check from the above- referenced account.

AGREED:

FRANCHISEE

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

Print name: \_\_\_\_\_

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



**EXHIBIT G**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**FRANCHISEE QUESTIONNAIRE/COMPLIANCE CERTIFICATION**

As you know, Fourth Avenue Restaurant Group, LLC (“we”, “us”), and you are preparing to enter into a Franchise Agreement for the right to open and operate one or more Smokin’ Oak Wood-Fired Pizza franchises (each, a “Franchised Business”). The purpose of this Questionnaire is to: (i) determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate or misleading; (ii) be certain that you have been properly represented in this transaction; and (iii) be certain that you understand the limitations on claims you may make by reason of the purchase and operation of your franchise. **You cannot sign or date this Questionnaire the same day as the Receipt for the Franchise Disclosure Document but you must sign and date it the same day you sign the Franchise Agreement, and pay us the appropriate franchise fee.** Please review each of the following questions carefully and provide honest responses to each question. If you answer “No” to any of the questions below, please explain your answer on the back of this sheet.

Yes/No \_\_\_\_ 1. Have you received and personally reviewed the Franchise Agreement, as well as each exhibit or schedule attached to these agreements that you intend to enter into with us?

Yes/No \_\_\_\_ 2. Have you received and personally reviewed the Franchise Disclosure Document we provided?

Yes/No \_\_\_\_ 3. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes/No \_\_\_\_ 4. Do you understand all the information contained in the Disclosure Document and the Franchise Agreement you intend to enter into with us?

Yes/No \_\_\_\_ 5. Have you reviewed the Disclosure Document and Franchise Agreement with a lawyer, accountant or other professional advisor and discussed the benefits and risks of operating the Franchised Business(es) with these professional advisor(s)?

Yes/No \_\_\_\_ 6. Do you understand the success or failure of your Franchised Business(es) will depend in large part upon your skills, abilities and efforts and those of the persons you employ, as well as many factors beyond your control such as demographics of your premises, competition, interest rates, the economy, inflation, labor and supply costs, lease terms and the marketplace?

Yes/No \_\_\_\_ 7. Do you understand we have only granted you certain, limited territorial rights under the Franchise Agreement and that we have reserved certain rights under the Franchise Agreement?

Yes/No \_\_\_\_ 8. Do you understand we and our affiliates retain the exclusive unrestricted right to engage, directly or through others, in the providing of services under the Smokin’ Oak Wood-Fired Pizza mark or any other mark at any location outside your Territory under the Franchise Agreement, without regard to the proximity of these activities to the premises of your Franchised Business(es)?

Yes/No \_\_\_\_ 9. Do you understand all disputes or claims you may have arising out of or relating to the Franchise Agreement must be mediated, at our option, in Florida?

Yes/No \_\_\_\_ 10. Do you understand the Franchise Agreement provide that you can only collect compensatory damages on any claim under or relating to the Franchise Agreement and are not entitled to any punitive, consequential or other special damages?

Yes/No \_\_\_\_ 11. Do you understand the sole entity or person against whom you may bring a claim under the Franchise Agreement is us?

Yes/No \_\_\_\_ 12. Do you understand that the Franchisee (or one of its principals if Franchisee is an organization), as well as any General Managers (as defined in the Franchise Agreement), must successfully complete the appropriate initial training program(s) before we will allow the Franchised Business to open or consent to a transfer of that Franchised Business?

Yes/No \_\_\_\_ 13. Do you understand that we require you to successfully complete certain initial training program(s) and if you do not successfully complete the applicable training program(s) to our satisfaction, we may terminate your Franchise Agreement?

Yes/No \_\_\_\_ 14. Do you understand that we do not have to sell you a franchise or additional franchises or consent to your purchase of existing franchises?

Yes/No \_\_\_\_ 15. Do you understand that we will send written notices, as required by your Franchise Agreement, to either your Franchised Business or home address until you designate a different address by sending written notice to us?

Yes/No \_\_\_\_ 16. Do you understand that we will not approve your purchase of a Smokin' Oak Wood-Fired Pizza franchise, or we may immediately terminate your Franchise Agreement, if we are prohibited from doing business with you under any anti-terrorism law enacted by the United States Government?

Yes/No \_\_\_\_ 17. Is it true that no broker, employee or other person speaking on our behalf made any statement or promise regarding the costs involved in operating a Franchised Business that is not contained in the Disclosure Document or that is contrary to, or different from, the information contained in the Disclosure Document?

Yes/No \_\_\_\_ 18. Is it true that no broker, employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Franchised Business will generate, that is not contained in the Disclosure Document or that is contrary to, or different from, the information contained in the Disclosure Document?

Yes/No \_\_\_\_ 19. Is it true that no broker, employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement, concerning advertising, marketing, media support, marketing penetration, training, support service or assistance that is contrary to, or different from, the information contained in the Disclosure Document?

Yes/No \_\_\_\_ 20. Is it true that no broker, employee or other person providing services to you on our behalf has solicited or accepted any loan, gratuity, bribe, gift or any other payment in money, property or services from you in connection with a Franchised Business purchase with exception of those payments or loans provided in the Disclosure Document?

Yes/No \_\_\_\_ 21. Is it true that no broker, employee or other person providing services to you on our behalf has made any statement, promise, or agreement concerning any other aspect of our franchise offering, the operation of a Franchised Business, or your rights under the Franchise Agreement that is contrary to, or different from, information contained in the Franchise Disclosure Document or the Franchise Agreement?

The date of your first face-to-face meeting with a franchise marketing representative, franchise broker or any other person affiliated with or representing the interests of us to discuss the possible purchase of a Franchise was \_\_\_\_\_, 20\_\_\_. Franchisee's Initials \_\_\_\_\_

The date on which you received a Franchise Disclosure Document was \_\_\_\_\_, 20\_\_\_. Franchisee's Initials \_\_\_\_\_

The date when you received a fully completed copy (other than signatures) of the Franchise Agreement I later signed was \_\_\_\_\_, 20\_\_\_. Franchisee's Initials \_\_\_\_\_

The earliest date on which you signed the Franchise Agreement or any other binding document (not including the Receipt page of the FDD) was \_\_\_\_\_, 20\_\_\_. Franchisee's Initials \_\_\_\_\_

The earliest date on which you delivered cash, check or other consideration to us or any other person or company was \_\_\_\_\_, 20\_\_\_. Franchisee's Initials \_\_\_\_\_

**YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.**

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)  
Dated: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Name (please print)  
Dated: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)  
Dated: \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Name (please print)  
Dated: \_\_\_\_\_, 20\_\_\_\_\_

**EXHIBIT H**  
**to**  
**FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE AGREEMENT**

**CONVERSION ADDENDUM TO FRANCHISE AGREEMENT**

## CONVERSION ADDENDUM TO FRANCHISE AGREEMENT

THIS CONVERSION ADDENDUM is signed on \_\_\_\_\_, 2019 between Fourth Avenue Restaurant Group, LLC ("we, "us" or "our") and \_\_\_\_\_ ("you" or "your").

### **BACKGROUND**

- A. You currently own and operate a \_\_\_\_\_ (the "Operating Unit") located at \_\_\_\_\_ (the "Premises").
- B. We are the franchisor of Smokin' Oak Wood-Fired Pizza Franchises and you desire to purchase franchise rights from us and convert the Operating Unit into a Smokin' Oak Wood-Fired Pizza Franchise (the "Franchise Business").
- C. The parties are entering into the Franchise Agreement (the "Agreement") at the same time as this Addendum and agree to amend certain terms of the Agreement to reflect the conversion of the Operating Unit into a Franchise Business in accordance with the terms of this Conversion Addendum.

The parties agree as follows:

### **TERMS**

1. Sections 2.1, 2.2 and 4.1 of the Agreement are deleted.
2. Before signing the Agreement and this Addendum, you furnished to us as part of your application for a Franchise Business, information regarding your existing Premises including a copy of the lease, a written description of the location, exterior and interior photographs of the Premises, plans and specifications, and such other information we reasonably require. You also have obtained the written consent of your landlord for the conversion including any required construction, renovation, refurbishing, décor changes, new signage and variance from the use clause of the lease and out Agreement with Landlord.
3. After the parties sign the Agreement and this Addendum, we will furnish you with our requirements for the conversion of the Operating Unit to a Franchise Business including any required construction, renovation and refurbishing to conform to our Trade Dress of a Franchise Business in accordance with Sections 4.2 and 4.3 of the Agreement. As part of the conversion process, you agree to sell, remove or otherwise dispose of all inventory, materials, furniture, fixtures, signs and equipment that do not conform with the Business System, are not approved by us or do not meet our standards and specifications.
4. You will convert all of your books, accounts, ledgers, bookkeeping systems and related records and systems to comply in format and content with our standards and specifications as set forth in the Agreement and the Operation & Policies Manual. You must also modify or replace you existing Computer/POS systems and/or software as required to comply with our specification for Franchise Businesses.
5. You acknowledge that, notwithstanding the fact that you operated a business similar to a Franchise Business, you are subject to all of the terms of the Agreement including the confidentiality and non-competition provisions and our ownership of the Confidential Information.
6. You represent and warrant to us as follows:

- (a) You are the sole owner of the Operating Unit;
- (b) You do not operate any other business, other than the Operating Unit, that is in competition with our business that would be in violation of Subsection 13.1(a)(i) of the Agreement;
- (c) You and the Operating Unit are not subject to any other franchise, license, loan or other agreement that restricts you from entering into the Agreement and this Addendum; and
- (d) The assets comprising the Operating Unit are not subject to any lien, security interest or other encumbrance.

7. Upon any inconsistency between the terms of the Agreement and the terms of this Addendum, the terms of this Addendum supersede and control. In all other respects, the parties ratify and confirm the terms of the Agreement.

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

**WE, US, or OUR:**

FOURTH AVENUE RESTAURANT GROUP, LLC

By: \_\_\_\_\_  
Matt Mongoven, CEO

**YOU or YOUR:**

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

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

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

**EXHIBIT E**  
**TO THE FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE DISCLOSURE DOCUMENT**  
**DEVELOPMENT AGREEMENT**

## DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) entered into this \_\_\_ day of \_\_\_, 202\_\_\_, between: (i) Fourth Avenue Restaurant Group, LLC, a Florida limited liability company with a principal business address at 200 2<sup>nd</sup> Ave. South, #464, St. Petersburg, Florida 33701 (“Franchisor”); and (ii) \_\_\_\_\_ a \_\_\_\_\_, with a principal business address at \_\_\_\_\_ (“Developer”).

### BACKGROUND

A. Franchisor and its principals have developed a system for operating businesses offering wood-fired pizza and other menu items primarily baked in a wood-fired oven, along with beverage items for dine-in or takeout under the “Smokin’ Oak Wood-Fired Pizza” name and mark (each a “Franchised Businesses” or “Business”).

B. Developer desires to enter into an agreement with Franchisor to obtain the right to open and operate multiple Franchised Businesses using the system developed by Franchisor, the characteristics of which include, depending on Franchisee’s location: Franchisor’s proprietary standards and specifications for food preparation and service (the “Proprietary Recipes”); interior and exterior designs, décor and color schemes; standard specifications for furniture, fixtures, equipment, wall and ceiling designs and displays; sales techniques, merchandising, marketing, advertising, and inventory management systems; and procedures for operating, promoting, and managing a Franchised Business in the manner set forth in the Franchise Agreement, this Agreement and in the Operations Manual and modified from time to time (the “System”).

C. Franchisor and its franchisees use various trade names, trademarks and service marks including, without limitation, the mark “Smokin’ Oak Wood-Fired Pizza,” in connection with the System (the “Proprietary Marks”). The rights to all Proprietary Marks Franchisor may now, or in the future designate as part of the System, will be owned exclusively by Franchisor or its affiliate and be used for the benefit of Franchisor, its affiliate and Franchisor’s franchisees to identify to the public the source of the products and services marketed thereunder.

D. Franchisor grants qualified third parties the right to develop a certain number of Franchised Businesses within a defined geographical area (the “Development Area”) in accordance with the terms of this Agreement that must be strictly adhered to, with each Franchised Business within the Development Area being opened and operating utilizing the Proprietary Marks and System pursuant to the terms and conditions set forth in Franchisor’s then-current form of franchise agreement (each, a “Franchise Agreement”).

E. Developer recognizes the benefits from receiving the right to operate a Franchised Business and desires to: (i) become a multi-unit Franchised Business operator subject to the terms of this Agreement; and (ii) receive the benefits provided by Franchisor under this Agreement.

F. Developer has applied for the right to open and operate \_\_\_\_\_ Franchised Businesses within the Development Area as set forth in this Agreement, and Franchisor has approved such application in reliance on Developer’s representations made therein.

G. Developer hereby acknowledges that adherence to the terms of this Agreement, including Franchisor’s operations manual and other System standards and specifications, are essential to the operation of all Franchised Businesses and Franchisor’s System as a whole.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:



## AGREEMENT

1. **Development Area.** Subject to the terms and conditions set forth herein, Franchisor grants Developer the right, and Developer undertakes the obligation, to develop and establish the number of Franchised Businesses within the Development Area described in the data sheet attached hereto as Exhibit “A” (the “Data Sheet”), provided Developer opens and commences operations of such Franchised Businesses in accordance with the development schedule provided in the Data Sheet (“Development Schedule”). During the term of this Agreement and except as provided herein, Franchisor will not open or operate, or license any third party the right to open or operate, any Franchised Business within the Development Area.

2. **Development Fee.** In consideration of the rights granted under this Agreement, Developer agrees to pay to Franchisor a development fee in the amount set forth in the Data Sheet (the “Development Fee”). The Development Fee calculated as follows: (i) \$49,500 for the first Franchised Business that we will grant you the right to open and operate under the Development Agreement (the “Initial Franchised Business”); plus (ii) \$39,500 for the second Franchised Business that we grant you right to open and operate; and (iii) \$29,500 for the third and each subsequent Franchised Business thereafter. Each Franchised Business that we grant you the right to open and operate after the Initial Franchised Business is referred to herein as an “Additional Franchised Business.”

3. **Payment Terms.** The Development Fee is payable in full upon the execution of this Agreement. Notwithstanding the terms of Developer’s individual Franchise Agreements, Developer is not required to pay any additional franchise fee for Franchised Businesses opened pursuant to this Agreement. The Development Fee is deemed fully earned and non-refundable upon payment.

4. **Initial Franchise Agreement.** Contemporaneous with the execution of this Agreement, Developer must enter into Franchisor’s current form of Franchise Agreement for the Initial Franchised Business that Developer is required to open within the Development Area. In the event Developer is a business entity of any kind, then Developer’s principals/owners must each execute the form of personal guaranty attached to the foregoing Franchise Agreement, as well as any additional Franchise Agreements described in Section 5 of this Agreement.

5. **Additional Franchise Agreements.** Developer agrees and acknowledges that it must: (i) enter into Franchisor’s then-current form of Franchise Agreement for each Additional Franchised Business that Developer is required to open under this Agreement, the terms of which may be materially different than the terms of the current form of Franchise Agreement; and (ii) enter into such Franchise Agreements at such times as are required for Developer to timely meet, and strictly adhere to, its development obligations set forth in Section 6 of this Agreement.

6. **Development Obligations.** Developer must ensure that it: (i) opens and commences operations of the number of new Franchised Business during each of the development periods defined in the Development Schedule (each, a “Development Period”) until Developer has opened the number of Franchised Businesses it is required to open pursuant to the Development Schedule; and (ii) has the minimum cumulative number of Franchised Businesses open and operating at the expiration of each Development Period. The parties agree and acknowledge that time is of the essence with respect to the foregoing development obligations, and that Developer’s failure to comply with this Section is grounds for termination of this Agreement (and any future development rights granted hereunder) following notice and a thirty-day cure period, as set forth herein in Section 7.2.

7. **Term and Termination.**

7.1 This Agreement will commence as of the date it is fully-executed and, unless earlier terminated by Franchisor, will expire on the last day of the calendar month that the final Franchised Business is required to be opened and operating under the Development Schedule. Upon expiration or termination of this Agreement for any reason, Developer will not have any rights within the Development Area other than the territorial rights granted in connection with any Franchised Businesses that Developer has opened and commenced operating as of the date this Agreement is terminated or expires (pursuant to the respective Franchise Agreement(s) that Developer entered into for such Franchised Business(es)).

7.2 Franchisor will have the right, at its option, to terminate this Agreement and all rights granted to Developer hereunder, without affording Developer any opportunity to cure such default, effective upon written notice to Developer, upon the occurrence of any of the following events: (i) if Developer ceases to actively engage in development activities in the Development Area or otherwise abandons its development business for three (3) consecutive months, or any shorter period that indicates an intent by Developer to discontinue development of the Franchised Businesses within the Development Area; (ii) if Developer becomes insolvent or is adjudicated bankrupt, or if any action is taken by Developer, or by others against the Developer, under any insolvency, bankruptcy or reorganization act, or if Developer makes an assignment for the benefit of creditors or a receiver is appointed by the Developer; (iii) if Developer fails to meet its development obligations set forth in Section 6 of this Agreement during any Development Period, and fails to cure such default within thirty days of receiving notice thereof; and (iv) if any Franchise Agreement that is entered into in order to fulfill Developer's development obligations under this Agreement is terminated or subject to termination by Franchisor, pursuant to the terms of that Franchise Agreement.

8. **Reservation of Rights.** Except as provided in Section 1 of this Agreement, the parties agree and acknowledge that the rights granted in this Agreement are non-exclusive and that Franchisor and its affiliates reserve all other rights not expressly granted to Developer herein.

9. **Sale or Assignment.** Developer's rights under this Agreement are personal and Developer may not sell, transfer, or assign any right granted herein without Franchisor's prior written consent, which may be withheld in its sole discretion. Notwithstanding, if Developer is an individual or a partnership, Developer has the right to assign its rights under this Agreement to a corporation or limited liability company that is wholly owned by Developer according to the same terms and conditions as provided in Developer's initial Franchise Agreement. Franchisor has the right to assign this Agreement in whole or in part in its sole discretion.

10. **Acknowledgment.** Developer acknowledges that this Agreement is not a Franchise Agreement and does not confer upon Developer any rights to use the Franchisor's Proprietary Marks or System.

11. **Notices.** All notices, requests and reports to be given under this Agreement are to be in writing, and delivered by either hand, overnight mail via recognized courier such as UPS or FedEx, or certified mail, return receipt requested, prepaid, to the addresses set forth above (which may be changed by written notice).

12. **Choice of Law.** This Agreement will be governed by the laws of the State of Florida (without reference to its conflict of laws principals).

13. **Internal Dispute Resolution.** Developer must first bring any claim or dispute between Developer and Franchisor to Franchisor's Managers, after providing Franchisor with notice of and a reasonable opportunity to cure any alleged breach hereunder. Developer must exhaust this internal dispute resolution

procedure before bringing a dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

14. **Mediation.** At Franchisor's option, all claims or disputes between Franchisor and Developer or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Developer or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 13 above, must be submitted first to non-binding mediation, in or near St. Petersburg, Florida, under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Developer must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty days following receipt of such notice within which to notify Developer as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Developer may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. This agreement to mediate will survive any termination or expiration of this Agreement. The parties agree that there will be no class action mediation.

15. **Injunctive Relief.** Nothing contained in this Agreement herein will prevent Franchisor from applying to or obtaining from any court having jurisdiction, without bond, a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interests prior to the filing of any mediation proceeding or pending the trial or handing down of a decision or award pursuant to any mediation proceeding conducted hereunder.

16. **Jurisdiction and Venue.** With respect to any proceeding not subject to mediation, the parties expressly agree to the jurisdiction and venue of any state court of general jurisdiction in St. Petersburg, Florida and the jurisdiction and venue of the United States District Court presiding over St. Petersburg, Florida. Developer acknowledges that this Agreement has been entered into in the State of Florida, and that Developer is to receive valuable and continuing services emanating from Franchisor's headquarters in St Petersburg, Florida. In recognition of such services and their origin, Developer hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Florida set forth above.

17. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of this Agreement and the dispute resolution procedures contained herein, each having authority to specifically enforce the right to mediate claims asserted against such person(s) by Developer.

18. **JURY TRIAL WAIVER.** WITH RESPECT TO ANY PROCEEDING NOT SUBJECT TO MEDIATION, THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR DEVELOPER'S PURCHASE FROM FRANCHISOR OF THE DEVELOPMENT RIGHTS DESCRIBED HEREIN.

19. **Waiver of Punitive Damages.** Developer waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which Developer may have against Franchisor arising out of any cause

whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agree that in the event of a dispute, Developer's recovery will be limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions will continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

20. **Attorneys' Fees.** If Developer is in breach or default of any monetary or non-monetary material obligation under this Agreement or any related agreement between Developer and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Developer must pay all reasonable attorneys' fees, court costs and litigation expenses Franchisor incurs. If Developer institutes any legal action to interpret or enforce the terms of this Agreement, and Developer's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

21. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Agreement will not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default will not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Agreement will be cumulative. Franchisor's election to exercise any remedy available by law or contract will not be deemed a waiver or preclude exercise of any other remedy.

22. **Severability.** The parties agree that if any provisions of this Agreement may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision will have the meaning, which renders it valid and enforceable. The provisions of this Agreement are severable, and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions will be enforced to the extent that they are valid and enforceable. If any material provision of this Agreement will be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Agreement.

23. **Construction of Language.** The language of this Agreement will be construed according to its fair meaning, and not strictly for or against either party. All words in this Agreement refer to whatever number or gender the context requires. If more than one party or person is referred to as Developer, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

24. **Successors.** References to "Franchisor" or "Developer" include the respective parties' successors, assigns or transferees, subject to the limitations of Section 9 of this Agreement.

25. **Additional Documentation.** Developer must from time to time, subsequent to the date first set forth above, at Franchisor's request and without further consideration, execute and deliver such other documentation or agreements and take such other action as Franchisor may reasonably require in order to effectuate the transactions contemplated in this Agreement. In the event that Developer fails to comply with the provisions of this Section, Developer hereby appoints Franchisor as Developer's attorney-in-fact to execute any and all documents on Developer's behalf, as reasonably necessary to effectuate the transactions contemplated herein.

26. **No Right to Offset.** Developer may not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of the alleged nonperformance of Franchisor or any of its affiliates or as

an offset against any amount Franchisor or any of its affiliates may owe or allegedly owe Developer under this Agreement or any related agreements.

27. **State Law Applies.** If any provision of this Agreement, including but not limited to its provisions for transfer, renewal, termination, notice of termination, or cure rights, is inconsistent with any valid law or regulation of the state in which Developer’s initial Franchised Business is located, then the valid law or regulation of such state will supersede any provision of this Agreement that is less favorable to Developer.

28. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning Developer’s development rights within the Development Area; no promises, inducements or representations (other than those in the Franchise Disclosure Document) not contained in this Agreement have been made, nor will any be of any force or effect, or binding on the parties. Modifications of this Agreement must be in writing and signed by both parties. Franchisor reserves the right to change Franchisor’s policies, procedures, standards, specifications or manuals at Franchisor’s discretion. In the event of a conflict between this Agreement and any Franchise Agreement(s), the terms, conditions and intent of this Agreement will control. Nothing in this Agreement, or any related agreement, is intended to disclaim any of the representations Franchisor made to Developer in the Franchise Disclosure Document that Franchisor provided to Developer.

**IN WITNESS WHEREOF, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES HERETO HAVE CAUSED THIS AGREEMENT TO BE EXECUTED EFFECTIVE THE DATE FIRST SET FORTH ABOVE.**

**DEVELOPER**

\_\_\_\_\_  
(Individual, Partnership or Corporation Name)

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

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

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

**FRANCHISOR**

**FOURTH AVENUE RESTAURANT GROUP,  
LLC**

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

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

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

**EXHIBIT A to DEVELOPMENT AGREEMENT**

**DATA SHEET**

1. **Development Area.** The Development Area, as referred to in Section 1 of the Development Agreement, is described below (or an attached map) by geographic boundaries and will consist of the following area or areas:

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2. **Development Fee.** The Development Fee under the Development Agreement is \$\_\_\_\_\_.

3. **Development Schedule.** The Development Schedule referred to in Section 1 of the Development Agreement is as follows:

<b>Expiration of Development Period (each, a “Development Period”)</b>	<b># of New Franchised Businesses Opened Within Development Period</b>	<b>Cumulative # of Franchised Businesses that Must Be Open and Operating</b>
___ Months from Effective Date		
___ Months from Effective Date		
___ Months from Effective Date		
___ Months from Effective Date		
___ Months from Effective Date		
___ Months from Effective Date		

**APPROVED AND AGREED TO BY:**

**FRANCHISOR**  
**FOURTH AVENUE RESTAURANT GROUP,**  
**LLC**

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

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

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

**DEVELOPER**

\_\_\_\_\_  
(Individual, Partnership or Corporation Name)

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

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

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

**EXHIBIT F**  
**TO FOURTH AVENUE RESTAURANT GROUP, LLC**  
**FRANCHISE DISCLOSURE DOCUMENT**

**SAMPLE TERMINATION AND RELEASE AGREEMENT**

## **SAMPLE TERMINATION AND RELEASE AGREEMENT**

This Termination of Franchise Agreement and Release (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Fourth Avenue Restaurant Group, LLC, a Florida limited liability company with a principal business address at 200 2nd Ave. South, #464, St. Petersburg, Florida 33701 (“Franchisor”) and \_\_\_\_\_, a \_\_\_\_\_ with an address at \_\_\_\_\_ (“Transferor”).

### **BACKGROUND**

- A. On \_\_\_\_\_, Transferor entered into a franchise agreement (the “Franchise Agreement”) with Franchisor for the right to operate a Franchised Business at \_\_\_\_\_.
- B. Transferor has satisfied all conditions of transfer as specified in the Franchise Agreement and now desires to sell the business to \_\_\_\_\_, who has been approved by Franchisor as an authorized transferee.
- C. In order to complete Transferor’s sale of the business, Transferor now desires to terminate the Franchise Agreement and all rights and obligations between the parties relating to the Franchise Agreement, and Franchisor desires to accept such termination, pursuant to the terms of this Agreement.

### **AGREEMENT**

In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the parties agree as follows:

1. Subject to the terms and conditions contained in this Agreement, the Franchise Agreement and all rights and obligations between Franchisor and Transferor arising from or related to the Franchise Agreement are terminated, effective as of the date of this Agreement.
2. Notwithstanding anything in this Agreement to the contrary, the parties agree that Transferor will remain bound by all of the post-term covenants and obligations contained in the Franchise Agreement including, without limitation, those relating to Confidential Information and non-competition.
3. Transferor represents and warrants that all of Transferor’s monetary obligations to Franchisor and its subsidiaries and affiliates have been satisfied in full as of the date of this Agreement.
4. Transferor, for itself and all persons and entities claiming by, through or under it, releases, acquits and forever discharges Franchisor and its present and former officers, employees, shareholders, directors, agents, servants, representatives, affiliates, successors and assigns (the “Franchisor Releasees”) from all obligations, claims, debts, demands, covenants, contracts, promises, agreements, liabilities, costs, attorneys’ fees, actions or causes of action whatsoever, whether known or unknown, which it, by itself, on behalf of, or in conjunction with any other person, persons, partnership or corporation, have, had or claim to have against the Franchisor Releasees arising out of or related to the offer, sale and operation of the business, and the parties’ rights or obligations under the Franchise Agreement.
5. Excluding the indemnification obligations set forth in the Franchise Agreement, and Transferor’s obligations as set forth in paragraph 2 of this Agreement, Franchisor, for itself and all persons and entities claiming by, through or under it, releases, acquits and forever discharges Transferor and Transferor’s employees, agents, servants, representatives, affiliates, successors and assigns (the “Transferor Releasees”) from all obligations, claims, debts, demands, covenants, contracts, promises, agreements, liabilities, costs, attorneys’ fees, actions or causes of action whatsoever, whether known or unknown, which it, by itself, on behalf of, or in conjunction with any other



person, persons, partnership or corporation, have, had or claim to have against the Transferor Releasees arising out of or related to the offer, sale and operation of the business, and the parties' rights or obligations under the Franchise Agreement.

6. This Agreement constitutes the entire integrated agreement of the parties with respect to the subject matter contained in this Agreement, and may not be subject to any modification without the written consent of the parties.

7. This Agreement will be construed under the laws of Florida, which laws will control in the event of any conflict of law.

8. This Agreement will be for the benefit of and binding upon the parties and their respective representatives, successors and assigns.

9. Each party acknowledges that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted by each party, after having a reasonable opportunity to retain and confer with counsel. This Agreement is entered into after a full investigation by the parties, and the parties are not relying upon any statements or representations not embodied in this Agreement.

10. In the event that Franchisor retains the services of legal counsel to enforce the terms of this Agreement, it will be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in enforcing the terms of this Agreement.

11. Transferor agrees that Transferor has and had a relationship with Franchisor in St. Petersburg, Florida and that, with the exception of Franchisor's right to seek injunctive relief in any appropriate jurisdiction, any action by or against Franchisor arising out of or relating to this Agreement will be commenced and concluded in St. Petersburg, Florida pursuant to the dispute resolution provisions of the Franchise Agreement.

12. This Agreement may be executed in multiple counterparts by the various parties and the failure to have the signatures of all parties on a single Agreement will not affect the validity or enforceability of any part of this Agreement against any party who executes any counterpart of the Agreement. Executed facsimile copies of this Agreement will be deemed to be effective as original signatures.

**I HAVE READ THE ABOVE AGREEMENT AND UNDERSTAND ITS TERMS. I WOULD NOT SIGN THIS AGREEMENT IF I DID NOT UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS.**

**FOURTH AVENUE RESTAURANT GROUP, LLC**

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

TRANSFEROR

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

**EXHIBIT G  
TO THE FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE DISCLOSURE DOCUMENT**

**STATE SPECIFIC ADDENDA**

*Reserved.*

**EXHIBIT H**

**TO THE FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE DISCLOSURE DOCUMENT**

**LIST OF FRANCHISEES/LIST OF FRANCHISEES WHO HAVE LEFT THE SYSTEM**

**A. LIST OF FRANCHISEES AS OF DECEMBER 31, 2020**

<b>Name of Franchisee</b>	<b>Address of Franchisee</b>	<b>Telephone Number of Franchisee</b>
ZCI Investments, LLC (Bob Marolf)	2478 Highway 6 and 50 Grand Junction, CO 81505	(970) 243 8255
Pizza 3.14, LLC (Andy Gunther)*	11410 Via Varra #300 Broomfield, CO 80020	(303) 498-0719
MT Tanks, LLC (Marty Rouse)	1525 W Ridgeway Ave. Cedar Falls, IA 50613	(319) 260-2185

\*Development Rights

**B. LIST OF FRANCHISEES WHO HAVE SIGNED FRANCHISE AGREEMENTS BUT NOT YET OPENED AS OF DECEMBER 31, 2020**

<b>Name of Franchisee</b>	<b>Address of Franchisee</b>	<b>Telephone Number of Franchisee</b>
ZCI Investments, LLC (Bob Marolf)	2478 Highway 6 and 50 Grand Junction, CO 81505	(970) 243 8255
402 Pizza and Tap, LLC (Dan Yaksich)	7504 N 161 <sup>st</sup> Street Bennington, NE 68007	(402) 215-4630
Honu-Life Enterprises, LLC (Rod Scott)	14391 Spring Hill Road, Suite 173 Spring Hill, FL 34609	(402) 517-5244

**C. LIST OF OPEN FRANCHISEES WHO LEFT THE SYSTEM AS OF DECEMBER 31, 2020**

<b>Name of Franchisee</b>	<b>Address of Franchisee</b>	<b>Telephone Number of Franchisee</b>
Campustown Hospitality LLC Todd Rognes, President Group,	1401 6 <sup>th</sup> Avenue South Clear Lake, Iowa 50429	(641) 355-1000

## EXHIBIT I

### TO THE FOURTH AVENUE RESTAURANT GROUP, LLC FRANCHISE DISCLOSURE DOCUMENT

#### STATE EFFECTIVE DATES

The following states require that the Franchise Disclosure Document be registered or filed with the state, or otherwise be exempt from registration: California, Florida, Hawaii, Illinois, Indiana, Kentucky, Maryland, Michigan, Minnesota, Nebraska, New York, North Dakota, Rhode Island, South Dakota, Texas, Utah, Virginia, Washington and Wisconsin. This disclosure document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates:

CALIFORNIA	Not Registered
FLORIDA	May 18, 2021
HAWAII	Not Registered
ILLINOIS	Not Registered
INDIANA	Not Registered
KENTUCKY	Registered
MARYLAND	Not Registered
MICHIGAN	Not Registered
MINNESOTA	Not Registered
NEBRASKA	Registered
NEW YORK	Not Registered
NORTH DAKOTA	Not Registered
RHODE ISLAND	Not Registered
SOUTH DAKOTA	Not Registered
TEXAS	Registered
UTAH	Not Registered
VIRGINIA	Not Registered
WASHINGTON	Not Registered
WISCONSIN	Not Registered

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT J**

**TO THE FOURTH AVENUE RESTAURANT GROUP, LLC  
FRANCHISE DISCLOSURE DOCUMENT**

**RECEIPTS**

**RECEIPTS  
(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 Fourth Avenue Restaurant Group, LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.**

If Fourth Avenue Restaurant Group, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state administrator identified in Exhibit A of this Franchise Disclosure Document.

A list of franchisor's agents registered to receive service of process is listed as Exhibit A to this Franchise Disclosure Document.

I have received a Franchise Disclosure Document with an issue date of August 16, 2021, which contained the following Exhibits:

A – List of State Administrators and List of Agents for Service of Process	E – Development Agreement
B – Table of Contents of Operations Manual	F – Sample Termination and Release Agreement
C – Financial Statements	G – State Specific Addenda
D – Fourth Avenue Restaurant Group, LLC Franchise Agreement	H – List of Franchisees/List of Franchisees Who Have Left the System
	I – State Effective Dates
	J – Receipts

A list of the names, principal business addresses, and telephone numbers of each franchise seller offering this franchise is as follows: Matt Mongoven, CEO, Fourth Avenue Restaurant Group, LLC, 200 2nd Ave. South, #464, St. Petersburg, FL 33701, (800) 656-0779; Pinnacle Franchise Development, 10302 Brookridge Village Blvd., Suite 201, Louisville, KY 40291, (502) 719-8365.

If an individual:

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

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

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

Telephone Number: \_\_\_\_\_

If a Partnership, Corporation or Limited Liability Corporation:

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

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

Name of Entity: \_\_\_\_\_

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

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

***Return this copy to Franchisor***

**RECEIPTS  
(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 Fourth Avenue Restaurant Group, LLC offers you a franchise it must provide this disclosure document to you within 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreements or payment of any consideration that relates the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or the payment of any consideration, whichever occurs first.**

If Fourth Avenue Restaurant Group, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state administrator identified in Exhibit A of this Franchise Disclosure Document.

A list of franchisor's agents registered to receive service of process is listed as Exhibit A to this Franchise Disclosure Document.

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If an individual:

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

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

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

Telephone Number: \_\_\_\_\_

If a Partnership, Corporation or Limited Liability Corporation:

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

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

Name of Entity: \_\_\_\_\_

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

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

***Keep this copy for your records***