

## FRANCHISE DISCLOSURE DOCUMENT



BF Acquisition Holdings, LLC  
A Delaware limited liability company  
9311 East Via De Ventura  
Scottsdale, Arizona 85258  
480-362-4800  
[www.bajafresh.com](http://www.bajafresh.com)  
[www.bajafreshfranchise.com](http://www.bajafreshfranchise.com)

BF Acquisition Holdings, LLC, a Delaware limited liability company, offers franchises for the operation of quick service restaurants at specified locations selling a limited menu featuring fresh high quality Mexican-style food products, soft drinks, and related items to the public under the trade name Baja Fresh®.

We offer the following franchise programs:

**Traditional Restaurant Program.** Under the Traditional Restaurant Program, you will sign a Franchise Agreement to operate a traditional, Baja Fresh® restaurant. The total investment necessary to begin operations of a traditional Baja Fresh® restaurant ranges from approximately \$310,310 to \$1,033,290. This includes \$22,000 to \$42,500 that must be paid to the franchisor or an affiliate.

**Non-Traditional Restaurant Program.** Under the Non-Traditional Restaurant Program, you will operate a Baja Fresh® “Non-Traditional Restaurant” at a captive market location. The total investment necessary to begin operations of a single Baja Fresh® Non-Traditional Restaurant at a captive market location ranges from approximately \$202,200 to \$695,200. This includes \$13,000 to \$23,500 for each Baja Fresh® Non-Traditional Restaurant that must be paid to the franchisor or an affiliate.

**Purchase Program.** Under this program, you, as buyer (“**Buyer**”), will purchase a restaurant operated directly by franchisor or its affiliate. You will sign an Asset Purchase Agreement (**Exhibit D**) to acquire the assets of the Restaurant (“**Asset Purchase Agreement**”) and will sign a Franchise Agreement to operate the Restaurant when you purchase the assets of the Restaurant.

This Disclosure Document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read the 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 payments to, the Franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact BF Acquisition Holdings, LLC; Attn: John Wuycheck, 9311 E. Via De Ventura, Scottsdale, Arizona 85258 and (480) 362-4800.

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

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

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

**THE ISSUANCE DATE OF THIS DISCLOSURE DOCUMENT IS MARCH 28, 2022.**

## How to Use This Franchise Disclosure Document

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

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

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

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

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

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

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

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

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

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

### **Some States Require Registration**

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



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 Arizona. 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 Arizona than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement even though your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets, perhaps including your house, at risk if your franchise fails.

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

**BF ACQUISITION HOLDINGS, LLC  
FRANCHISE DISCLOSURE DOCUMENT  
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**ITEM 1**  
**THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

**BF Acquisition Holdings, LLC**

BF Acquisition Holdings, LLC, a Delaware limited liability company ("**BFAH**"), was organized on October 25, 2006 and is the Franchisor for Baja Fresh® Mexican Grill Restaurants, which feature fresh, high quality Mexican-style food products. To simplify the language in this disclosure document, "BFAH," "**Franchisor**," "**we**" and "**us**" means BF Acquisition Holdings, LLC. "**You**" or "**Franchisee**" means the business entity, person or persons who sign the Franchise Agreement. BFAH owns and operates Baja Fresh® Mexican Grill Restaurants, which are referred to in this document as "company-owned" or "affiliate owned" restaurants.

**BF Acquisition Holdings, Parents, Predecessors, and Affiliates**

Triune, LLC, a California limited liability company ("**Triune**"), was organized on September 29, 2009, and was the franchisor for Baja Fresh Mexican Grill Restaurants until July 26, 2017. Triune Corporation was a California corporation that was incorporated on May 15, 1991. As noted below, Fresh Enterprises, LLC, a California limited liability company, the successor-in-interest to Fresh Enterprises, Inc. ("**Fresh Enterprises**"), was organized on September 29, 2009, and owned and operated Baja Fresh Mexican Grill Restaurants, "**company-owned**" or "**affiliate owned**" restaurants until July 26, 2017, wherein BFAH acquired the outstanding shares .

On July 26, 2017, BFAH acquired all assets of Triune, LLC, a California limited liability company and Fresh Enterprises LLC, a California limited liability company wherein BFAH became the franchisor of Baja Fresh Mexican Grill. Our affiliates Kahala Holdings, LLC and Kahala Restaurants, LLC, each an Arizona limited liability company, own and operate company-owned of Baja Fresh Mexican Grill outlets. Prior to the transfer, on November 27, 2006, BFAH acquired all of the outstanding shares of Fresh Enterprises, Inc. and all of Triune Corporation's franchise assets from Wendy's International, Inc. ("**Wendy's**"), thereby becoming the parent company of Triune Corporation, the predecessor-in-interest to Triune, LLC. Triune Corporation and Fresh Enterprises, Inc. were part of a company reorganization that took place in October 2009 which resulted in the formation of their successors-in-interest, Triune, LLC and Fresh Enterprises, LLC, and the dissolution of Triune Corporation and Fresh Enterprises, Inc.

Effective as of September 9, 2016, MTY Franchising USA, Inc., originally known as The Extreme Pita Franchising USA, Inc., and having an address of 9311 E Via De Ventura, Scottsdale, AZ 85258 entered into an agreement to purchase all outstanding membership interests of BFAH, including the rights to franchise the Baja Fresh and La Salsa Mexican Grill brands. The transaction closed on October 5, 2016. The principal office of BFAH and its parent company is located at 9311 East Via De Ventura, Scottsdale, Arizona 85258.

The parent corporation of MTY Franchising USA, Inc. ("**MTY USA**") is MTY Franchising Inc. ("**MTY Canada**"), a Canadian corporation and a wholly owned subsidiary of MTY Food Group, Inc. (formerly known as Matoyee Enterprises Inc.) ("**MTY**"), a Canadian corporation incorporated in 1979 and having a principal business address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada, formerly known as MTY Tiki Ming Enterprises Inc., and having an address at 8150 Route Transcanadienne, Suite 200, Ville Saint-

Laurent, Quebec, H4S 1M5, Canada. MTY is a public corporation listed on the Toronto Stock Exchange.

Before May 1997, Baja Fresh Westlake Village, Inc. ("**Westlake Village**") incorporated in California on February 4, 1992, owned and operated Baja Fresh restaurants. Fresh Enterprises, Inc. was incorporated in California on April 30, 1997, and on May 6, 1997, it acquired Westlake Village and Triune Corporation through a 100% stock exchange. The principal business address for Triune and Fresh Enterprises was 320 Commerce, Suite 100, Irvine, California 92602. Mr. James Magglos, was a former shareholder and the founder of both Triune Corporation and Westlake Village, and opened the first Baja Fresh Mexican Grill restaurant in August of 1990, in Newbury Park, California. Mr. Magglos later expanded opening restaurants through Triune Corporation and Westlake Village. Fresh Enterprises, Inc. was later recapitalized in November 1998, by which a controlling interest in Fresh Enterprises, Inc. was issued to a group of investors.

On June 21, 2002, Wendy's acquired all of the outstanding shares of Fresh Enterprises, Inc. Wendy's is an Ohio corporation with its principal office at 4288 West Dublin-Granville Road, Dublin, Ohio 43017. Wendy's grants franchises for, and together with its affiliates owns, and operates "**Wendy's**" quick-service hamburger restaurants. Wendy's has not offered franchises in any other line of business.

BFAH, Triune, and Fresh Enterprises have never offered franchises for sale in any other line of business; however, on July 16, 2007, LAS Acquisition, LLC, a Delaware limited liability company organized on May 1, 2007 and a wholly-owned subsidiary of Fresh Enterprises, Inc., acquired all of the outstanding shares of La Salsa, Inc., the owner, operator and franchisor of La Salsa Fresh Mexican Grill Restaurants, from Santa Barbara Restaurant Group, Inc. La Salsa Franchise, LLC, a Delaware limited liability company organized on May 10, 2007 and a wholly-owned subsidiary of LAS Acquisition, LLC, assumed all of the rights and obligations of La Salsa, Inc. under its development, franchise and license agreements and began offering franchises for La Salsa Fresh Mexican Grill Restaurants for sale in February 2008. La Salsa, Inc. and its predecessor have offered franchises for La Salsa Fresh Mexican Grill Restaurants for sale since January 1988. La Salsa Franchise, LLC does not and has not offered franchises for sale in any other line of business. The principal business address of LAS Acquisition, LLC and La Salsa Franchise, LLC is 9311 East Via De Ventura, Scottsdale, Arizona 85258.

Kahala Management, L.L.C. ("Kahala Management"), an affiliate of franchisor, is an Arizona limited liability company that provides administrative, legal, accounting, sales, POS phone support, real estate and marketing support services to franchisor. In December of 2019 KGC, LLC, a Colorado limited liability company ("KGC") originally created to administer gift card programs, merged into Kahala Management. Kahala Restaurant is an affiliate of franchisor that also owns and operates company-owned outlets detailed above. Kahala Advertising, LLC, an Arizona limited liability company ("Kahala Advertising"), is an affiliate of franchisor that helps administer the national advertising fund for certain brands. Neptune Equipment Services, LLC, an Arizona limited liability company ("Neptune Equipment"), is an affiliate of franchisor that is an approved retailer of equipment that sells, distributes, and coordinates logistics of equipment, menu boards, interior and exterior signage, and smallwares to franchisees and licensees.

## **The Baja Fresh Franchise**

The Baja Fresh franchise (the “**Franchise**”) is an owner-developed and operated quick service restaurant business that sells fresh, high quality Mexican-style food products, uses the trade name **Baja Fresh**<sup>®</sup>, which is a registered trademark, and uses a System of food production and restaurant operating techniques that are licensed to you and identify the franchised restaurant with the Baja Fresh reputation for quality and service. The Baja Fresh “**System**” also includes our operating methods and business practices; our relationships with our franchisees; the interior and exterior designs we have developed for Baja Fresh Restaurants, and other items of trade dress; our specifications for equipment, fixtures and uniforms; our defined product offerings, recipes, preparation methods and specified pricing and promotions; our ownership restrictions, standard operating and administrative procedures and management and technical training programs; and our marketing and public relations programs. You will sell all, and only, the high quality, Mexican-style food products, soft drinks and other items that are part of the Baja Fresh standard menu and that appeal to the appetites of children and adults. Baja Fresh Restaurants provide fast service, having on-premises eating facilities as well as offering take out service.

We offer three (3) separate Franchise programs in this disclosure document, though we may not necessarily allow you the opportunity to purchase under all of these programs:

**Traditional Restaurant Program.** Under this program, you will sign a Franchise Agreement (**Exhibit E-1:** Franchise Agreement (New); **Exhibit E-2:** Franchise Agreement (Renewal); **Exhibit E-3:** Franchise Agreement (Transfer) (all the preceding three franchise agreements collectively known as “**Exhibit E:** Franchise Agreement”)) to operate a new single traditional 1,800 – 3,000 square foot Baja Fresh Restaurant (individually “**Traditional Restaurant**” and collectively “**Traditional Restaurants**”) at a location which you choose and which we authorize (“**Franchised Location**”).

**Purchase Program.** Under this program, you, as buyer (“**Buyer**”), will purchase a company-owned restaurant from BFAH or its affiliate. You will sign an Asset Purchase Agreement (**Exhibit D**) to acquire the assets of the Restaurant (“**Asset Purchase Agreement**”) and will sign a Franchise Agreement to operate the Restaurant when you purchase the assets of the Restaurant.

**Non-Traditional Restaurant Program.** Under this program, you will sign a “**Non-Traditional Restaurant Franchise Agreement**” (**Exhibit E:** Franchise Agreement; **Exhibit H:** Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)) to operate an 800 – 1,200 square foot Baja Fresh Restaurant (“**Non-Traditional Restaurant**”) at a captive market location (“**Non-Traditional Restaurant Franchised Location**”) which you choose and which we authorize. Captive market locations include hotels and motels, casinos, stadiums, arenas, airports, train stations, bus stations, Indian reservations, colleges and universities, recreational theme park, schools, hospitals, military and other governmental facilities, office or in-plant food service facilities, gas stations, convenience stores, truck stops, grocery stores, supermarkets or any similar captive market location. The Non-Traditional Restaurant Franchise Agreement will identify the larger building (“**Facility**”) in which the Non-Traditional Restaurant will be located as well as the Non-Traditional Restaurant Franchised Location. All references in this disclosure document to a “**Non-Traditional Restaurant**” or a “**Non-Traditional Restaurant Franchised Location**” refer only to your operation of that portion of the Facility which is occupied by the Baja Fresh Restaurant.

Under each of our Franchise programs, Franchisees (Buyer under a Purchase Program) may be individuals or entities which meet our then current requirements for non-individual franchisees. These requirements include the signing of personal guarantees (**Exhibit F**) by some or all of the individuals holding an equity interest in the Franchisee (or Buyer). In addition, you, and each affiliate who has a currently effective Franchise Agreement with us, must sign a General Release (**Exhibit Q**), as a condition to entering into a new Franchise Agreement.

If you are signing your Franchise Agreement for the renewal of an existing Franchise (**Renewal Franchise**), some of the terms of the new Franchise Agreement may be modified or different from the terms of the existing Franchise Agreement (see Items 5, 6, 11, and 17).

Unless the context of this disclosure document indicates or infers otherwise, any reference to **Franchise** in this disclosure document will include a Franchise for a Traditional Restaurant and a Non-Traditional Restaurant, any reference to **Franchise Agreement** in this disclosure document will include a Franchise Agreement for a Traditional Restaurant and a Non-Traditional Restaurant Franchise Agreement for a Non-Traditional Restaurant, any reference to **Restaurant** in this disclosure document will include a Traditional Restaurant and a Non-Traditional Restaurant, and any reference to a **Franchised Location** in this disclosure document will include a Traditional Restaurant Franchised Location and a Non-Traditional Restaurant Franchised Location.

### **Other Agreements**

Effective as of November 14, 2017, MTY USA entered into agreement to purchase all outstanding membership interests of CB Franchise Systems, LLC (**The Counter**), a California limited liability company and Built Franchise Systems, LLC (**Built**), a California limited liability company, both having an address at 8571 Higuera Street, Culver City, California 90232, including the rights to franchise The Counter® and Built Custom Burgers® brands. The transaction closed December 1, 2017. On January 2, 2019 MTY USA, acquired the right to franchise from CB Franchise Systems, LLC wherein MTY USA became the franchisor for The Counter. MTY USA and or its affiliate companies offer the unit, and area development The Counter and Built franchises under separate disclosure documents.

Effective as of February 16, 2018, MTY USA entered into an agreement to acquire the assets of the Grabbagreen® brand from Eat Clean Holdings, LLC, an Arizona limited liability company having an address at 10789 North 90th Street, Suite 202, Scottsdale, Arizona 85260 and certain of its affiliated entities, including the rights to franchise the Grabbagreen brand. The transaction closed on March 15, 2018. The current franchisor, MTY USA, currently offers Grabbagreen unit franchises, and, prior to 2017, the previous franchisor, Grabbagreen Franchising, LLC, had offered area representative Grabbagreen franchises. As of November 30, 2021, there are 13 Grabbagreen restaurants (13 franchised and 0 company-owned) open and operating in the United States.

Effective as of September 1, 2018, MTY USA entered into an agreement to acquire the assets of, and in particular the rights to franchise, the sweetFrog® brand from SFF, LLC, a Virginia limited liability company having an address at 10800 Midlothian Turnpike, Suite 300, Richmond, VA 23235, and certain of its affiliates. SFF, LLC, offered sweetFrog unit franchises and had licensed sweetFrog Shops. As of September 1, 2018, there were 332 sweetFrog Shops (254 franchised and 78 company-owned 2 of which were joint ventures) open and operating in the United States. The transaction closed on September 25, 2018, MTY became the franchisor



and as of the issuance date is not operating any corporate Shops. SFF or its affiliates retained the 78 company-owned stores referenced above.

We have the following U.S.-based affiliates through common ownership by MTY, that also offer franchises in the United States and internationally: (1) our parent company MTY USA, (2) Kahala Franchising, LLC (“Kahala Franchising”), an Arizona limited liability company with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 and successor-in-interest to Kahala Franchise Corp., with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258; (3) La Salsa Franchise, LLC, a Delaware limited liability company with a principal business address at 9311 E. Via De Ventura, Scottsdale, Arizona 85258, and (4) Papa Murphy’s International LLC, a Delaware limited liability company with a principal business address at 8000 NE Parkway Dr., Suite 350, Vancouver, Washington 98662.

### **Other Franchises Offered by Franchisor or its Affiliate**

BFAH IS ONLY OFFERING A BAJA FRESH UNIT FRANCHISE UNDER THIS DISCLOSURE DOCUMENT. EACH OF THE FRANCHISES DETAILED BELOW ARE OFFERED BY ONE OF ITS AFFILIATES UNDER SEPARATE DISCLOSURE DOCUMENTS FOR EACH BRAND.

The following summarizes these other quick service restaurant brands as of November 30, 2021, including the type of restaurant business, number of franchised units in operation as of November 30, 2021, and the date BFAH and/or its current or former affiliates offered franchises in those brands:

<b>Brand Name</b>	<b>Type of Restaurant Business</b>	<b>Number of Units as of November 30, 2021</b>	<b>Dates unit franchises began being offered by us or our affiliate</b>
Extreme Pita	Restaurants serving wrap-style hot and cold pita and wrap sandwiches	1 franchised unit	From March 2001 to July 2014 The Extreme Pita Franchising USA, Inc., since July 2014 MTY USA
Grabbagreen	Restaurants serving healthy food, juice, smoothies and related products	13 franchised units	From April 2015 Grabbagreen Franchising, LLC and since February 2018 under MTY USA
Ginger Sushi Boutique + Poke Shop	Restaurant serving a variety of sushi menu items and drinks	0 franchised units	From September 2015 under MTY USA

<b>Brand Name</b>	<b>Type of Restaurant Business</b>	<b>Number of Units as of November 30, 2021</b>	<b>Dates unit franchises began being offered by us or our affiliate</b>
Mucho Burrito	Restaurants offering burritos, quesadillas, tacos, nachos, and other assorted food and drinks	0 franchised units	From January 2010 under Mucho Burrito Franchising USA, Inc. From March 2019 under MTY USA
Thai Express	Restaurant serving "Thai-style" foods and drinks	8 franchised units (plus 1 company-owned)	From February 2015 under MTY USA
La Diperie	Restaurant serving retail sale of an ice cream product and various dips and toppings	0 franchised unit	From April 2019 under MTY USA
Ben & Florentine	Restaurant serving a superior breakfast & lunch experience	0 franchised units	From December 2018 under MTY USA in the United States and From October 2009 in Canada under Imvescor Restaurant Group Inc.
Baja Fresh	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	92 franchised units (90 in the United States and 2 internationally) (plus 7 company-owned units)	From 2009 under Triune, LLC until July 2017 and since BF Acquisition Holdings, LLC
La Salsa	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	8 franchised units	From 1988 to 2006 under La Salsa Franchise, Inc. 2007 under La Salsa Franchise, LLC.

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2021	Dates unit franchises began being offered by us or our affiliate
The Counter	Full service restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	30 franchised units (24 in the United States and 6 internationally) (plus 1 company-owned unit)	From June 2005 under CB Franchise Systems, LLC. Then from March 2019 under MTY USA
Built Custom Burgers	Fast casual restaurant featuring build-your-own burgers, signature burgers, side dishes, sandwiches, and salads	6 franchised units (3 in the United States and 3 internationally)	From 2014 under Built Franchise Systems, LLC. Then from March 2019 under MTY USA
sweetFrog	Restaurant offering frozen yogurt using a self-serve delivery format	248 franchised units (238 in the United States which include 21 licensed franchisees) plus 10 internationally)	From 2009 under sweetFrog Enterprises, LLC then from April 2012 under SFF. Then from September 2018 under MTY USA
Manchu WOK	Quick service restaurant serving fast and fresh Chinese cuisine	21 franchised units (	From October 2000 to March 2005: Manchu WOK (USA), Inc.; from March 2005 to October 2014: Manchu WOK Franchising USA, Inc.; since March 2015: MTY USA
Papa Murphy's	Retail food outlet serving primarily take and bake pizza	1,249 franchised units (1,212 in the United States and 37 internationally plus 27 company-owned units)	From May 2019 Papa Murphy's International LLC
America's Taco Shop	Restaurants serving freshly prepared Mexican food including	1 company-owned unit* And, 2 licensed units.	November 2011 under Kahala Franchising

<b>Brand Name</b>	<b>Type of Restaurant Business</b>	<b>Number of Units as of November 30, 2021</b>	<b>Dates unit franchises began being offered by us or our affiliate</b>
	tacos, burritos, and quesadillas		
Blimpie	Restaurants serving submarine sandwiches and salads	140 franchised units (137 in the United States and 3 internationally) (plus 5 company-owned units in the United States)	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising

<b>Brand Name</b>	<b>Type of Restaurant Business</b>	<b>Number of Units as of November 30, 2021</b>	<b>Dates unit franchises began being offered by us or our affiliate</b>
Cereality cereal bar & cafe	Restaurants serving hot and cold cereals and cereal blends with toppings, oatmeal, and parfaits	0 franchised units	From July 2007 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Chicken Strips & Dips	Ghost kitchen concept serving primarily chicken tenders.	1 company-owned unit/a	March 2022, Kahala Franchising.

Cold Stone Creamery	Restaurants serving super-premium freshly made ice cream, frozen yogurt, cakes, pies, smoothies, shakes, and other frozen dessert products	1248 franchised units (889 in the United States and 359 internationally) (plus 5 company-owned units).  96 Cold Stone Creamery franchises also sell Rocky Mountain Chocolate Factory® products and 1 Cold Stone Creamery franchise also sells Tim Hortons® products)  Additionally, 25 licensed units.	From May 2007 until April 2008 by Cold Stone Creamery, Inc., from April 2008 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Frullati Cafe & Bakery	Restaurants serving sandwiches, salads, smoothies and baked goods	10 franchised units	From 1999 until 2004 by Frullati Franchise Systems, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Great Steak	Restaurants serving Philadelphia cheesesteak sandwiches, chicken sandwiches and French fries	41 franchised units (31 in the United States and 10 internationally) Additionally, 1 licensed unit	From 2004 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Johnnie's New York Pizzeria	Restaurants serving New York style pizza, calzones, salads, and related Italian cuisine menu items	2 franchised units	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising

Kahala Coffee Traders	Restaurants serving coffee and espresso, tea, baked goods, parfaits, sandwiches and merchandise	5 franchised units And 1 licensed units.	November 2011 under Kahala Franchising
Maui Wowi	Store fronts or portable units serving fruit smoothies, Hawaiian coffee and espresso	125 franchised units (117 in the United States and 8 internationally)	Since November 2015 under Kahala Franchising
NrGize Lifestyle Cafe	Cafes serving smoothies, fruit drinks and nutritional supplements	65 franchised units	From 2006 until March 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Pinkberry	Restaurants serving frozen yogurt, yogurt drinks, smoothies and frozen desserts	72 franchised units And 17 licensed units	From July 2008 until April 2016 under Pinkberry Ventures, Inc. and since June 2016 under Kahala Franchising

Planet Smoothie	Restaurants serving smoothies, smoothie bowls, smoothie bowls, juices and nutritional supplements	150 franchised units (149 in the United States and 1 internationally)  Additionally, as of fiscal year end there were 2 Tasti D-Lites outlets.	From March 2012 to April 2016 under Tasti D-Lite LLC and since June 2016 under Kahala Franchising
Ranch One	Restaurants specializing in grilled and crispy breaded chicken sandwiches	2 franchised units	From 2001 until 2004 by Ranch *1 Group, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Rollerz Rolled Sandwiches	Restaurants serving gourmet rolled sandwiches, salads, soups and baked goods	1 franchised unit	From 2000 until 2004 by Rollerz Franchise Systems, L.L.C., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Samurai Sam's Teriyaki Grill	Restaurants serving Japanese rice bowls and noodle bowls	12 franchised units (plus 1 company-owned unit)	From 2003 until 2004 by SP Franchising, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
Surf City Squeeze	Juice bars serving smoothies, fruit drinks and nutritional supplements	73 franchised units (plus 1 company-owned unit)	From 1994 until 2004 by Malibu Smoothie Franchise Corp. and Surf City Squeeze Franchise Corp., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising

TacoTime	Restaurants serving freshly-prepared Mexican food including burritos, taco, quesadillas and nachos	237 franchised units (108 franchised in the United States and 129 internationally)  Additionally, there are 79 licensed units.	From 2003 until 2004 by Taco Time International, Inc., from 2004 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising
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*\*The company owned unit referenced above for America's Taco Shop was open as of our last fiscal year end but has since closed.*

We or our affiliates had previously also franchised the right to purchase a defined geographic area to become an area representee in; however, as of the issuance date of this Disclosure Document, we and our affiliates are not offering area representative agreements under a separate Area Representative Franchise Disclosure Document for any brands other than La Diperie, Planet Smoothie, and Thai Express, but may do so for additional brands in the future under a separate disclosure document.

**Competition and Special Industry Regulation**

You will compete with other restaurants, fast food outlets, supermarkets and other food retailers located in or otherwise servicing or marketing to, your venue or market area. Some of your competitors may include Baja Fresh restaurants operated by other franchisees, licensees or our affiliates. The foodservice industry is highly competitive, and is sensitive to other factors both within and beyond the control of restaurant operators. The extent to which you may succeed at any particular location cannot be predicted. Successful operation of the Franchised Business will depend in part upon the best efforts, capabilities, management, and efficient operation by the Franchisee, as well as general economic trends and other local marketing conditions. Baja Fresh restaurants also compete with other food facilities operated or franchised by us or our affiliates. For example, you will compete with Mucho Burrito, TacoTime, America's Taco Shop, and La Salsa restaurants owned and operated by our affiliated companies and their franchisees. We and/or our affiliated companies have in the past offered, but are currently not offering, area representative franchises for any of its brands other than Planet Smoothie, La Diperie, and Thai Express, but may do so again for additional brands in the future.

You must comply with all federal, state, and local laws, rules and regulations affecting your Franchised Business. A variety of laws, rules, and regulations govern commerce in general, and the food service industry in particular. Examples include public health laws, tax laws, labor, employment and wage and hour laws, insurance laws, privacy laws, business licensing requirements, the public posting of notices regarding nutritional information and/or menu labeling, and the Americans with Disabilities Act (which may affect your building construction, site design, entrance ramps, parking, doors, bathrooms, etc.). It is your sole responsibility to comply with all federal, state, and local laws, rules and regulations affecting your Franchised Business. We strongly encourage you to make further inquiries about these laws, rules and regulations with your own legal counsel to be sure that you understand and comply with all applicable requirements.

**ITEM 2  
BUSINESS EXPERIENCE**



References to titles and positions for the persons listed in this Item 2 may be assigned to MTY, MTY Canada, MTY USA, Kahala Brands, or any one or more affiliated companies.

Chairman of the Board and Chief Executive Officer: Eric Lefebvre

Mr. Lefebvre was promoted and became the Chief Executive Officer of MTY effective November 2018. Prior to that, Mr. Lefebvre was the Chief Financial Officer of MTY since June 2012, and was Vice President of Finance of MTY from November 2009 until June 2012.

Director, Chief Financial Officer: Renee St-Onge

Ms. St-Onge was promoted to Chief Financial Officer of MTY effective November 2018. Prior to that, Ms. St-Onge was with MTY as Controller since 2012.

Director, Chief Operating Officer: Jeff Smit

Mr. Smit has been the Chief Operating Officer of Kahala Brands since June 2009 and has been a Director of MTY USA since November 2018. Prior to that, Mr. Smit was the Blimpie Brand President from November 2007 until December 2010 and the Sr. Vice President of Operations for Cold Stone Creamery from February 2005 to December 2007.

Executive Vice President of Finance: Nik Rupp

Mr. Rupp has been the Executive Vice President of Finance of MTY USA since early 2020. He joined Papa Murphy's International LLC in April 2018 as Chief Financial Officer and was appointed to their Board of Managers in May 2019. In June 2019, his title changed to Executive Vice President of Finance. Mr. Rupp was with Specialized Bicycle Components, Inc., in Morgan Hill, California, as Global Controller from January 2015 to March 2016, and Chief Financial Officer from March 2016 to February 2018.

Senior Vice President of Restaurant Operations: Anthony Crosby

Mr. Crosby joined Kahala Brands in October 2009 as the Vice President of Restaurant Operations. He assumed his current role in August 2011.

Vice President of Restaurant Operations: Blake Borwick

Mr. Borwick was a Cold Stone Creamery franchisee in Cedar Falls and Waterloo, Iowa from April 2005 to March 2014. From March of 2014 to January 2017, he was the Regional Director of Operations of Cold Stone Creamery and Blimpie. He was promoted to Vice President of Operations for the Blimpie brand in January 2017 and then became Vice President of Operations for the Cold Stone Creamery brand in March 2018. In May of 2021 he was promoted to Vice President of Restaurant Operations for Kahala Brands.

Vice President of Restaurant Operations: Logan Reves

Mr. Reves joined Kahala Brands in May 2021 in his current role. Prior to joining Kahala Brands, Mr. Reves was an Independent Restaurant Consultant from March 2020 through April 2021. Prior to that Mr. Reves was with Tilted Kilt Franchise Operating, LLC in Tempe, Arizona as Vice President of Operations from January 2014 to July 2016, Chief Operating Officer from July 2016 through December 2018, and as Senior Vice President of Franchise Operations of the Dick's

Wings & Grill brand from January 2019 through March 2020.

General Counsel: Jenny Moody

Ms. Moody has been with the Kahala Brands' Legal department since June 2010. In August 2012 she was named Corporate Counsel, in September 2013 International Counsel, in September 2016 Deputy General Counsel, and in November 2019 General Counsel.

Deputy General Counsel: Kim Lane

Ms. Lane joined the Kahala Brands' Legal department in March 2012 as Corporate Counsel, then became the Vice President of Real Estate/Assistant General Counsel in February 2013, and became Deputy General Counsel in September 2016.

Vice President of Training and Customer Service: Kerri Kudla

Ms. Kudla joined the Cold Stone Creamery training team in June 2002. She became Director of Operations & Training Development in January 2009 and was promoted to Senior Director of Operations & Training Development in October 2012. In June 2014, Ms. Kudla assumed her current role.

Senior Vice President of Marketing: Steven Evans

Mr. Evans joined Kahala Brands in October 2007 as a National Marketing Manager for the Blimpie brand. In October 2009, he also became the Director of Marketing for the NrGize Lifestyle Cafe and Surf City Squeeze brands, and in January 2010, also the Director of Marketing for the TacoTime brand. In March 2011, Mr. Evans was promoted to Senior Director of Marketing, and in August 2011, he became the Vice President of Marketing. In January 2017, Mr. Evans was promoted to his current role.

**Franchise Sales**

Senior Vice President of Development: John Wuycheck

Mr. Wuycheck has served as Kahala Brands' Senior Vice President of Development since September 2014.

Vice President of Franchise Development: Jay Goldstein

Mr. Goldstein has worked with the Cold Stone Creamery brand since October 2005. In January 2008, he became the Senior Director of Development for Kahala Franchising, and from January 2008 until November 2008, he served as Senior Director of Operations. Mr. Goldstein was promoted to Vice President of Franchise Development in May 2009.

Director of Franchise Development: Doug Merenda

Mr. Merenda joined Kahala Brands' sales team in October 2015 as a Director of Franchise Development and was a franchise broker for Kahala Brands from April 2015 through October 2015.

Vice President of Business Development – USA: Ramin (Ray) Zandi

Mr. Zandi is the Vice President of Business Development – USA, a position he has held since February 2009.

Franchise Development Manager: Traci Zandi

Ms. Zandi has assisted Kahala Brands' Development team in awarding franchise units since October 2016. She also served as Office Manager and Executive Assistant for Extreme Pita from April 2011 until October 2016.

### ITEM 3 LITIGATION

#### **LITIGATION INVOLVING PREDECESSORS AND AFFILIATES**

##### **Concluded Arbitration and Litigation Involving The Extreme Pita Franchising USA, Inc.**

*Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra v. The Extreme Pita Franchising USA, Inc., EP Development, Inc., and Feisal Ramjee*; Superior Court of the State of Washington for King County; Case No. 15-2-15120-7.

On June 22, 2015, Purav Enterprises, LLC, Balwant Bahia, and Paramjit Samra (collectively "Plaintiffs"), filed a complaint against The Extreme Pita Franchising USA, Inc., EP Development, Inc., and Feisal Ramjee (collectively "Defendants"). Plaintiffs alleged: (i) violations under the Franchise Investment Protection Act in the State of Washington ("FIPA"); (ii) misrepresentation by the Area Developer of the financial performance of the franchise, omissions of mandatory and material information and inherently misleading information that were material factors in the Plaintiff's purchase of the franchise; and (iii) the Area Developer was not a registered broker in the State of Washington. Plaintiffs sought: (i) rescission of the franchise agreement, the corresponding personal guarantee and related agreements; (ii) treble damages under FIPA; and (iii) costs and attorney's fees. The parties entered into a settlement agreement on March 11, 2016, in which Defendants paid Plaintiffs the sum of \$20,000. The matter was dismissed on March 16, 2016.

##### **Pending Arbitration and Litigation Involving MTY Franchising Inc., formerly known as MTY Tiki Ming Enterprises Inc.**

*9276-2665 Quebec Inc., Lynda Larrivée v. MTY Tiki Ming Enterprises Inc., Iad (Eddy) Hassan, Habitations Matrik Inc.*; Superior Court of Quebec 500-17-104982-189.

On August 6, 2018, 9276-2665 Quebec Inc. ("Plaintiff Quebec Inc."), Lynda Larrivée (collectively "Plaintiffs") filed a Statement of Claim against MTY Tiki Ming Enterprises Inc. ("Defendant MTY"), Iad (Eddy) Hassan, and Habitations Matrik Inc. (collectively "Defendants"). Plaintiffs

allege: (i) false representations regarding system sales and projected sales for the outlet and business values; (ii) Defendants withheld material information and that as a result the Plaintiffs suffered damages; and (iii) representatives of the Franchisor are responsible for defects in the construction of the outlet. Plaintiffs sought: (i) to order the Defendants MTY and Hassan, jointly and severally to pay the Plaintiffs the sum of \$ 251,935.00 in damages for the years of operation ending in 2017, including the year 2017, resulting from false representations and fraudulent maneuvers by the Defendants on the situation financing of the Thai Express banner, plus interest at the legal rate and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of February 27, 2018; (ii) to order the Defendants jointly and severally to pay the Plaintiffs the sum of \$ 54,978.22 for the payment of the work carried out following the negligence and non-respect by the Defendants of the plans and specifications, of the construction and the arrangement of the restaurant, plus the interests at the legal rate plus the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of February 27, 2018; (iii) to condemn the Defendants jointly and severally to pay the Plaintiffs for the troubles, annoyances and inconveniences that their wrongful behavior caused the Plaintiffs, the sum of \$ 36,944.03 plus interest at the legal rate, and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of February 27, 2018; (iv) cancel the franchise agreement signed in 2015 following the change in shareholding with the Plaintiff Quebec Inc.; (v) cancel the general discharge signed by the Plaintiffs in 2015 following the change in shareholding with the Plaintiff Quebec Inc.; (vi) to declare the franchise contract signed on May 1, 2013 between the Plaintiffs and the Defendant MTY as the one and only contract governing the contractual relationship between the parties; (vii) all with legal costs, including expert fees. On March 3, 2019, Defendants filed their Answer denying all allegations cited in Plaintiff's complaint. On May 16, 2019, Plaintiff's counsel ceased its representation. On July 6, 2020, Plaintiffs amended their claim and alleged: (i) false representations regarding system sales and projected sales for the outlet and business values; (ii) Defendants withheld material information and that as a result Plaintiffs suffered damages; and (iii) representatives of the franchisor are responsible for defects in the construction of the outlet. Plaintiffs are seeking: (i) to order Defendants, jointly and severally, to pay Plaintiffs the sum of \$251,935.00 in damages for the years of operation ending in 2017, including the year 2017, resulting from alleged false representations and fraudulent maneuvers by Defendants on the situation financing of the Thai Express banner, plus interest at the legal rate and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of February 27, 2018; (ii) to order Defendants, jointly and severally, to pay Plaintiffs the sum of \$54,978.22 for the payment of the work carried out following the negligence and non-respect by Defendants of the plans and specifications of the construction and the arrangement of the restaurant, plus interest at the legal rate and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of February 27, 2018; (iii) to condemn Defendants, jointly and severally, to pay Plaintiffs, for the troubles, annoyances and inconveniences that their alleged wrongful behavior caused Plaintiffs, the sum of \$36,944.03, plus interest at the legal rate and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec Inc. as of February 27, 2018; (iv) to order Defendants, jointly and severally, to pay Plaintiffs the sum of \$56,000.00 for the payment of the work to be carried out following the alleged negligence and non-compliance by Defendants with the plans and specifications, the construction, and the renovation of the restaurant, plus interest at the legal rate and the additional indemnity provided for in Article 1619 of the Civil Code of Quebec as of December 14, 2019; (v) to cancel the franchise contract signed in 2015 with the change in shareholding with Plaintiff Quebec Inc.; (vi) to cancel the general discharge signed by Plaintiffs in 2015 following the change in shareholding

with Plaintiff Quebec Inc. ; (vii) to declare the franchise contract signed on May 1, 2013 between Plaintiffs and Defendant MTY as the one and only contract governing the contractual relationship between the parties; (viii) to award Plaintiffs all legal costs, including expert fees. Defendants vehemently deny the allegations made and will continue to vigorously defend the matter. Trial is set for October 2022.

**Concluded Arbitration and Litigation Involving MTY Franchising Inc., formerly known as MTY Tiki Ming Enterprises Inc.**

2423950 Ontario Inc. and Sylvie Louchez v. MTY Tiki Ming Enterprises Inc., Stanley Ma and Claude St-Pierre; Ontario Superior Court of Justice; Court File No.: CV-17-584365.

On October 13, 2017, 2423950 Ontario Inc. and Sylvie Louchez (“Applicants”) filed a Notice of Application against MTY Tiki Ming Enterprises Inc., Stanley Ma, and Claude St-Pierre (collectively “Respondents”). Applicants alleged (i) Breach of the Wishart Act. Applicants sought: (i) a declaration that MTY Tiki Ming Enterprises Inc. is a franchisor as defined in the Wishart Act; (ii) a declaration that Stanley Ma and Claude St-Pierre are each “franchisor’s associates” as defined in the Wishart Act; (iii) a declaration that Respondents were obligated to provide Applicants with a disclosure document and failed to do so; therefore, giving rise to a right to rescind the agreement; (iv) a declaration that any agreement (including the franchise agreement and sublease) relating to the franchise between the parties was rescinded by Notice of Rescission dated April 14, 2016; (v) an order requiring Respondents to indemnify Applicants for any payments due to Respondents; (vi) damages jointly and severally in the amount of \$269,863.00; (vii) in addition or in the alternative damages in the amount of \$269,863.00 from the Respondents, jointly and severally, pursuant to Sections 7 and 8 of the Wishart Act for alleged failure to comply with Section 5 of the Wishart Act; (viii) a declaration that Respondents are jointly and severally liable to Applicants pursuant to Sections 7 and 8 of the Wishart Act; (ix) pre-judgment interest and post-judgment interest in accordance with the provisions of the Courts of Justice Act, RSO 1990 c. C-43; (x) costs of the application on a full indemnity basis, including HST and any other applicable taxes; and (xi) any other relief the Court deems fit. On December 6, 2018, the parties executed a full and final mutual release in which Applicants assigned the assets of the franchised business to Respondents and Respondents agreed to pay Applicants \$120,000 to settle the matter in full.

9299-7626 Quebec Inc., Martin Belley and Carole Tremblay v. Les Entreprises MTY Tiki Ming Inc.; Superior Court of Chicoutimi; Quebec; Case No.: 150-17-003520-175.

On August 4, 2017, 9299-7626 Quebec Inc., Martin Belley and Carole Tremblay (collectively “Plaintiffs”) filed a Statement of Claim against MTY Tiki Ming Enterprises Inc. (“Defendant”). Plaintiffs alleged: (i) misrepresentation; and (ii) failure to act in good faith and fair dealing. Mediation occurred in January 2018, but was not successful. On January 28, 2019, Defendant filed its Answer and vehemently denied the allegations. On December 16, 2019, the trial began;

however, the parties chose to settle on December 17, 2019. Defendant agreed in the settlement to grant one year of royalty relief of 1.5% to Plaintiffs; \$2,000 to assist in food delivery; \$2,000 reimbursement for digital media advertising and assistance in negotiating a possible rent reduction with the landlord.

### **Concluded State Administrative Actions, Arbitration, and Litigation Involving SFF, LLC**

*In the Matter of SweetFrog Enterprises, LLC f.k.a. Imagination Enterprises, Inc., d/b/a Sweet Frog, Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2012-0055.*

As a result of an inquiry into the franchise related activities of SweetFrog Enterprises, LLC, (“SFE”) the Maryland Securities Commissioner (“Commissioner”) concluded that grounds existed to allege that SFE violated the registration and disclosure provisions of the Maryland Franchise Law in relation to the offer and sale of certain license agreements. SFE acknowledged that those license agreements constituted franchises as defined under the Maryland Franchise Law. SFE represented that it entered into license agreements with eight Maryland licensees during the time it was not registered to offer and sell franchises in Maryland. On August 29, 2012, the Commissioner and SFE agreed to enter into a consent order whereby SFE, without admitting or denying any violations of the law, agreed to: (i) immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; (ii) file and diligently pursue an application for an initial franchise registration in Maryland relating to the license agreements it offered and sold to Maryland licensees; and (iii) to offer to rescind the license agreements of all Maryland licensees to whom it sold unregistered franchises. Franchisor is not aware of any licensees that accepted the rescission and has made a good faith effort to obtain that information.

*Sun Yop Cho v. Imagination Enterprises, Inc., American Arbitration Association, Case No. 16 114 Y 00250 13.*

On May 15, 2013, Sun Yop Cho (“Claimant”), a sweetFrog licensee, filed an arbitration action against Imagination Enterprises, Inc., predecessor to SweetFrog Enterprises, LLC (“Respondent”). Claimant asserted that: (i) Respondent breached the license agreement by violating the territorial exclusivity provision in the license agreement; (ii) Respondent violated the Virginia Retail Franchising Act; and (iii) Respondent breached an alleged oral promise to partner with Claimant in developing a sweetFrog shop in Leesburg, Virginia. Claimant sought: (i) damages in the amount of \$900,000; (ii) attorneys’ fees; (iii) reformation of the license agreement; and (iv) injunctive relief. Respondent vehemently disputed Claimant’s claims. On December 13, 2013, Claimant and Respondent entered into an agreement pursuant to which: (i) the parties settled their disputes and jointly dismissed the arbitration proceeding with prejudice; and (ii) Respondent repurchased Claimant’s License Agreement and acquired the assets of his sweetFrog shop for a total price of \$504,162.63.

Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc. v. SweetFrog Enterprises, LLC; SFF, LLC and Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02356-JS-WDW.

On April 11, 2014, Sweet Frog Stony Brook, Inc. and Sweet Frog Babylon, Inc., (collectively “Plaintiffs”), two sweetFrog franchisees, filed a lawsuit against SweetFrog Enterprises, LLC, SFF, LLC (collectively “Franchisor”), and Ki Young Cha a/k/a Derek Cha (collectively with Franchisor, “Defendants”). Plaintiffs alleged that Defendants: (i) violated the New York Franchise Sales Act; (ii) violated the New York General Business Law § 680, *et seq.* (“NYFSA”) by making unauthorized and fraudulent pre-sale financial performance representations; and (iii) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiffs demanded: (i) damages in excess of \$685,000; (ii) rescission of their franchise agreements; and (iii) recovery of their attorneys’ fees. Defendants disputed Plaintiffs’ claims, but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on July 29, 2014, the parties entered into an agreement pursuant to which: (i) Plaintiffs would attempt to sell their franchised shops and transfer their franchise agreements to any third party(ies) approved by Franchisor before November 1, 2014; and (ii) if Plaintiffs were unable to identify a suitable buyer for their franchised shops by November 1, 2014, the parties agreed to mutual termination of the franchise agreements and that Franchisor would purchase the equipment from each franchised shop at a price of \$50,000. The case was dismissed with prejudice on August 6, 2014.

Tri Star Consulting Group, Inc. and Sweet Frog Hauppauge, Inc. v. SweetFrog Enterprises, LLC, SFF, LLC, Ki Young Cha a/k/a Derek Cha; United States District Court, Eastern District of New York; Case No. 2:14-cv-02228-ADS-AKT.

On April 9, 2014, Tri Star Consulting Group, Inc., a licensee and area developer of SweetFrog Enterprises, LLC (“Plaintiff Tri Star”), and Sweet Frog Hauppauge, Inc., a licensee of SweetFrog Enterprises, LLC (“Plaintiff Hauppauge”); (collectively “Plaintiffs”); filed a lawsuit against SweetFrog Enterprises, LLC, (“Defendant SweetFrog”), SFF, LLC (“Defendant SFF”), and Ki Young Cha a/k/a Derek Cha (collectively “Defendants”). Plaintiff Tri Star alleged Defendant SweetFrog breached its license/area development agreement with Plaintiff Tri Star by: (i) terminating the license/area development agreement for nonpayment of royalty fees; (ii) licensing to Defendant SFF the right to sell franchises in New York City, Plaintiff Tri Star’s development territory; and (iii) failing to pay fees allegedly owed to Plaintiff Tri Star related to the operation of franchised sweetFrog locations within Plaintiff Tri Star’s development territory. Plaintiff Tri Star sought: (i) damages in excess of \$75,000; (ii) a declaration that it was not in default of the license/area development agreement; (iii) a declaration that Defendant SweetFrog was obligated to pay fees to Plaintiff Tri Star based on revenues of all franchised sweetFrog locations in New York City; (iv) an order enjoining Defendant SFF from selling franchises in New York City; and (v) recovery of its attorneys’ fees. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Tri Star and Defendants entered into an agreement

pursuant to which (1) the parties agreed to mutual termination of Plaintiff Tri Star's license/area development agreement; (2) Defendant SweetFrog agreed to pay Plaintiff Tri Star \$19,830.58; (3) Defendant SFF agreed to pay Plaintiff Tri Star an ongoing commission equal to 2% of the net sales of all franchised sweetFrog locations in New York City through November 2031; and (4) Plaintiff Tri Star agreed not to operate any competitive business in New York City for so long as Defendant SFF was obligated to make commission payments to Plaintiff Tri Star.

Plaintiff Hauppauge asserted that Defendants: (i) violated the New York Franchise Sales Act, (ii) violated the New York General Business Law § 680, *et seq.* ("NYFSA"); (iii) committed fraudulent and negligent representations by making unauthorized and fraudulent pre-sale financial performance representations; and (iv) failed to register the franchise offering with the New York Attorney General prior to entering into franchise agreements with Plaintiffs. Plaintiff Hauppauge sought: (i) damages in excess of \$330,000; (ii) rescission of its license agreement, and (iii) recovery of its attorneys' fees. Defendants disputed Plaintiffs' claims but agreed to mediate the dispute. Prior to the deadline to respond to the complaint, on September 9, 2014, Plaintiff Hauppauge, on the one hand, and Defendants on the other hand, entered into an agreement pursuant to which: (i) the parties agreed to mutual termination of Plaintiff Hauppauge's license agreement; and (ii) Defendant SweetFrog agreed to pay Plaintiff Hauppauge \$75,000. The case was dismissed with prejudice on September 20, 2014.

*Urquieta Sweet Frog, LLC and Ana Urquieta v. SweetFrog Enterprises, LLC d/b/a SFF, LLC, American Arbitration Association; Case No. 01 14 0001 8086.*

On December 23, 2014, Urquieta Sweet Frog, LLC and Ana Urquieta, a former sweetFrog franchisee and its owner (collectively "Plaintiffs"), filed a Demand for Arbitration against SweetFrog Enterprises, LLC ("Defendant"). Plaintiffs alleged: (i) Defendant engaged in fraud; (ii) unfair practices; and (iii) deceptive actions. On February 2, 2015, Defendant timely filed an Answer and Counterclaim and denied all allegations, and further asserted a counterclaim against Plaintiffs for unpaid royalties. This matter was settled in December of 2015. Under the settlement, Defendant agreed to pay Plaintiffs \$300,000 and the parties executed mutual releases.

*SFF, LLC v. Carmel Village Yogurt Company LLC; City of Richmond, Virginia Circuit Court; Case No. CL16-3927.*

On August 29, 2016, SFF, LLC ("Plaintiff") filed a lawsuit against three sweetFrog franchisee entities, Carmel Village Yogurt Company LLC ("Defendant Carmel YC"), Huntersville Yogurt Company, LLC ("Defendant Huntersville YC"), and Mooresville Yogurt Co, LLC ("Defendant Mooresville YC"), and their main member, Steve Anto ("Defendant Anto"); (all named Defendants collectively referred to as, "Anto Defendants"). Plaintiff alleged: (i) Defendant Carmel YC breached its franchise agreement through its unauthorized closure of its franchised



shop; and (ii) as a result of the breach, Plaintiff had the contractual right to terminate Defendant Carmel YC's franchise agreement and cross terminate the franchise agreements of Defendant Huntersville YC and Defendant Mooresville YC. Plaintiff sought: (i) declaratory judgment that the three franchise agreements had terminated; (ii) specific performance of the Anto Defendants' post-termination obligations; (iii) damages for past due fees; (iv) lost future royalties in excess of \$116,000; and (v) recovery of its attorneys' fees. In response to Plaintiff's complaint, Anto Defendants denied Plaintiff's claims and asserted counterclaims against Plaintiff and alleged: (i) Defendant Carmel YC's franchise agreement was unenforceable and, alternatively, that Plaintiff was in breach of Defendant Carmel YC's franchise agreement due to Plaintiff's allowance of another franchisee to open a shop within three miles of Defendant Carmel YC's shop. Anto Defendants sought: (i) a declaratory judgment that they were not in default of their franchise agreements; (ii) damages of not less than \$425,000; and (iii) recovery of their attorneys' fees. Plaintiff denied Anto Defendants' claims and filed a demurrer and pleas in bar seeking to have those claims dismissed. Prior to the court hearing and ruling on Plaintiff's motion, the parties entered into an agreement pursuant to which: (i) the parties acknowledged the valid termination of Defendant Carmel YC's franchise agreement; (ii) Defendant Carmel YC transferred the assets of its business to Plaintiff and Plaintiff paid Defendant Carmel YC \$25,000; (iii) Plaintiff reinstated Defendant Huntersville YC's and Defendant Mooresville YC's terminated franchise agreements; and (iv) Plaintiff granted Defendant Anto the right to develop a new sweetFrog shop at a mutually acceptable location on or before November 8, 2018. The case was dismissed with prejudice on December 15, 2016.

### **Concluded Arbitration and Litigation Involving Kahala Franchising, L.L.C.**

*KOHO, Inc. v. Kahala Franchising, L.L.C.*; Superior Court of the State of California for the County of Los Angeles; Case No.: BC572565.

On or about February 17, 2015, Koho, Inc. ("Koho") filed a Complaint against Kahala Franchising, L.L.C. ("Kahala") alleging: (i) breach of contract; (ii) unjust enrichment; and (iii) declaratory relief. Koho sought: (i) no less than \$540,000 in special and general damages; (ii) litigation costs; (iii) prejudgment interest; (iv) reasonable attorney's fees; and (v) declaratory relief. On or about May 5, 2015, Kahala filed a Cross-Complaint against Koho; Heeyong Kyle Chung; and Hannah Kim; alleging: (i) breach of contract; (ii) unjust enrichment; (iii) disgorgement and restitution; (iv) fraud-deceit and concealment; (v) negligent misrepresentation; (vi) conversion; (vii) negligence; and (viii) declaratory relief. Kahala sought: (i) breach of contract damages in amount according to proof; (ii) disgorgement and restitution on Unjust Enrichment cause of action; (iii) judicial determination that Kahala is permitted and entitled to set off amounts owed to it by Koho with funds in its possession which would otherwise have been due Koho; (iv) costs; (v) attorneys' fees; (vi) punitive damages; and (vii) prejudgment interest; (viii) any other relief the Court deems just and proper. On or about June 15, 2015, Koho filed a Notice of Hearing on Demurrer and Demurrer to Kahala's Cross-Complaint; Memorandum of Points and Authorities; Declaration of Daniel D. Hoffman and

Exhibits in Support Thereof. Koho filed its Notice of Motion and Motion to Strike Certain Portions of Kahala's Cross Complaint; Memorandum of Points and Authorities on June 17, 2015. On October 16, 2015, the Court overruled Koho's Demurrer to Kahala's Cross Complaint in its entirety and denied their motion to strike Kahala's punitive damages claims; the Court sustained the Demurrer as to Hannah Kim. Mediation was held on May 3, 2016, which failed to yield a settlement between the two parties. On May 5, 2016, Kahala dismissed the claims against Koho and Kyle Chung because they satisfied the debts owed to Kahala, and, therefore, the claims were moot. Hannah Kim was subsequently awarded attorney's fees on June 15, 2016, in the amount of \$10,233. A bench trial commenced on June 15, 2016, and ended on June 16, 2016. Upon the conclusion of Koho's case, Kahala presented its case-in-chief and moved for judgment pursuant to Code of Civil Procedure section 631.8. The Court granted Kahala's Judgment as Koho failed to establish the requisite elements of "breach" and "damages" on the three causes of action asserted in the Complaint. On July 18, 2016, the Court awarded Kahala attorneys' fees in the amount of \$205,000. On September 22, 2016, Koho filed a Notice of Filing of Notice of Appeal and requested that Kahala participate in a mediation to resolve the outstanding award to Kahala. Koho failed to post an appeal bond. On February 13, 2017, Kahala commenced its self-help pursuant to Section 8(i) and (j) of the ARA and began withholding 100% of the Area Representative fees to which Koho would have otherwise been entitled. On June 19, 2017, the parties entered into a settlement agreement whereby Kahala repurchased Koho's Area Developer territory for the sum of \$75,000 and forgave the remaining damages owed in the amount of \$130,000.

**Lawsuits Filed by Franchisor Kahala Franchising, L.L.C. Against Franchisees During Fiscal Year December 1, 2020 through November 30, 2021**

**Suits for Federal Trademark Infringement; Common Law Trademark Infringement; Federal Unfair Competition; California Statutory Trademark Infringement; and California Unfair Competition**

*Kahala Franchising, LLC v. Real Faith, LLC; D'Mari Jackson and Does 1-50*; United States District Court Central District of California; Case No.: 2:21-cv-08115-ODW-SK.

**Suits for Breach of Contract (Franchise Agreement) and Account Stated**

*Kahala Franchising, LLC v. Atul Patel*; Superior Court of New Jersey Monmouth County Law Division; Case No.: MON-L-002881-21.

**Pending Arbitration and Litigation Involving Cold Stone Creamery, Inc.**

*Cecil Rolle v. Cold Stone Creamery, Inc., Kahala Corp., Cold Stone Franchisee National Advisory Board, L.L.C., Robert Zarco, Esq. and Zarco, Einhorn, Salkowski, & Brito, P.A.*; Eighth Judicial Circuit Court, Alachua County, Florida, Case No. 2011-CA-5004 subsequently amended and removed to *Cecil Rolle v. Cold Stone Creamery, Inc.; The Kahala Corp.; The NIACCF, Inc.; Robert Zarco, Esq.; and Zarco, Einhorn, Salkowski, & Brito, P.A.; Daniel Beem; Rodolfo Puig;*

Frank Caperino and Edward Reesman; County Court of the Eleventh Judicial Circuit in and for Miami-Dade County, FL; Case No.: 2012-19002CA02.

On or about September 30, 2011, Cecil Rolle, a former general manager of a Cold Stone Creamery franchisee ("Plaintiff"), filed a Complaint and Demand for Jury Trial against Cold Stone Creamery, Inc., Kahala Corp. (collectively "Defendants Cold Stone"), Cold Stone Franchisee National Advisory Board, L.L.C., Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A. The Complaint alleged defamation per se and defamation per quod. Plaintiff sought an award in an unspecified amount for all damages, including interest, costs and any other relief the Court deemed proper. On November 21, 2011, Defendants Cold Stone filed a Motion to Dismiss Plaintiff's Complaint and/or for More Definite Statement. The National Advisory Board, L.L.C. also filed a Motion to Dismiss Plaintiff's Complaint on November 21, 2011. On January 3, 2012, Defendant Robert Zarco, Esq. filed his Motion to Dismiss Plaintiff's Complaint with Prejudice. On January 4, 2012, Defendants The NIACCF, Inc. ("NIACCF"), and Zarco, Einhorn, Salkowski, & Brito, P.A. filed their Motion to Dismiss Plaintiff's Complaint With Prejudice and/or for a More Definite Statement. Plaintiff filed an Amended Complaint on or about January 17, 2012. Plaintiff amended the original claims and added conspiracy to defame. The Amended Complaint no longer named the National Advisory Board L.L.C. as a Defendant but included Daniel Beem ("Defendant Beem"), NIACCF, , Rodolfo Puig, Frank Caperino, and Edward Reesman, as additional Defendants (hereinafter "Defendants Puig, Caperino and Reesman"). On February 1, 2012, Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A. filed a Motion to Dismiss along with a Motion to Transfer Venue. On February 2, 2012, Defendants Cold Stone filed a Motion to Dismiss and Motion for Sanctions. On February 16, 2012, Defendants Puig, Caperino and Reesman filed their Motion to Dismiss. On February 16, 2012, Plaintiff filed his Response to Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A.'s Motion to Dismiss and Motion to Transfer Venue requesting the Court to keep the venue in Alachua County, Florida. On March 13, 2012, Plaintiff filed a Request to Enter Default against Defendant Beem for failure to respond to the Complaint. On April 9, 2012, Defendant Beem filed a Motion to Quash Service of Process and Motion to Set Aside Clerk's Default for lack of personal jurisdiction pursuant to Fla. R. Civ. P. 1.140. He also moved to set aside the clerk's default entered against him on March 14, 2012, on the grounds that: (i) he was entitled to notice prior to entry of the default; and (ii) his alleged failure to timely answer was due to excusable neglect, he has meritorious defenses, and he acted with diligence in moving to set aside the default. On April 12, 2012, the Alachua County Eighth Circuit District Court denied Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A.'s Motion to Dismiss, but granted the Motion to Transfer Venue to the Miami-Dade Eleventh Circuit District Court. On May 4, 2012, Plaintiff filed an Appeal in the First District Court of Appeal; State of Florida; Case No.: 12-2112. Plaintiff requested the Court reverse the trial Court's Order to Transfer Venue. On June 29, 2012, Defendants Cold Stone and Defendant Beem filed their Answer Brief requesting that the Court affirm the trial Court's Order granting the defense motions to transfer venue. On July 18, 2012, Plaintiff filed his Reply again requesting that the trial Court's Order to Transfer Venue be reversed. On November 28, 2012, the First District Court of Appeal issued its Opinion and affirmed the trial Court's Order to transfer the venue from Alachua County to Miami-Dade County. On January 22, 2013, Plaintiff filed his reply to Defendant Beem's Motion to Quash Service of Process and Motion to Set Aside the Clerk's Default and requested that the Court

deny both motions. On January 23, 2013, the Court issued its Order that Defendant Beem's Motion to Set Aside the Clerk's Default was granted and the Clerk's Default of March 13, 2012 be set aside; (ii) Defendant Beem's Motion to Quash Service for lack of personal jurisdiction was denied; and (iii) Defendant Beem's arguments with regard to personal jurisdiction were preserved and would be heard with his Motion to Dismiss. On January 15, 2013, Plaintiff filed a Motion for Default against Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A. for failure to plead or otherwise defend within the specified time frame. On January 28, 2012, Defendants NIACCF, Robert Zarco Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A. filed a Corrected Motion to Vacate the Portion of the Order Dated April 12, 2012, Denying Defendants' Motion to Dismiss. On June 18, 2013, the Court Order was issued, and it granted without prejudice Defendant Beem's Amended Motion to Dismiss based on a lack of personal jurisdiction. On June 24, 2013, the Court granted Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A.'s Corrected Motion to Vacate the Portion of the Order Dated April 12, 2012 Denying Defendants' Motion to Dismiss. The Court further ordered on June 24, 2013 an Order granting (i) Defendants NIACCF,, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A.'s Motion to Dismiss the First Amended Complaint; (ii) Defendants NIACCF, Inc. Robert Zarco Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A.'s Supplemental Motion to Dismiss; (iii) Defendants Cold Stone Creamery Amended Motion to Dismiss First Amended Complaint; and (iv) Defendant Beem's Motion to Dismiss Amended Complaint. On July 15, 2013, Plaintiff filed a Notice of Appeal with the Florida Third District Court of Appeal, Case No. 3D13-1821, to appeal the June 24, 2013 Order granting Defendant Cold Stone's Motion to Dismiss. On July 19, 2013, Defendants Cold Stone filed their Notice of Appearance. On July 24, 2013, the Court granted Defendants Puig, Caperino and Reesman's Motion to Dismiss First Amended Complaint. On July 24, 2013, Plaintiff filed an Amended Notice of Appeal to the aforementioned June 24, 2013 Order and the July 24, 2013 Order. On August 27, 2013, Defendants Cold Stone filed their Motion to Dismiss Appeal and Alternative Motion to Strike Notice of Appeal. On March 31, 2014, oral argument of the Appeal took place in which Defendants Cold Stone presented their authorities and arguments in favor of affirming the lower court's decision. On June 24, 2016, Plaintiff filed its Notice of Substitution of Counsel for Plaintiff. On July 8, 2016, Defendants NIACCF, Robert Zarco, Esq., and Zarco, Einhorn, Salkowski, & Brito, P.A., filed a Motion to Strike Plaintiff's Notice of Supplemental Authority. On July 11, 2016, Plaintiff filed his Response in Opposition to Defendants' Motion to Strike Defendants' Notice of Supplemental Authority. Defendants Cold Stone filed their Notice of Supplemental Authority on July 21, 2016. On March 1, 2017, the Third District Court of Appeals issued its decision reversing the trial court's decision to dismiss Plaintiff's defamation lawsuit based on technical procedural grounds. On May 18, 2017, Defendants Cold Stone filed their Answer and Affirmative Defenses. On April 25, 2019, the parties participated in mediation but failed to come to a resolution. On August 13, 2019, Defendants Robert Zarco, Esq. and Zarco, Einhorn, Salkowski, & Brito, P.A. filed a Motion for Summary Judgment (collectively "Zarco MSJ"). On August 13, 2019, Defendants Cold Stone filed Motions for Partial Summary Judgment on Defamation Per Quod and Defamation Per Se as well as a Motion for Final Summary Judgment. On August 22, 2019, Defendants Cold Stone filed a Notice of Joinder to the Zarco MSJ. On August 30, 2019, Defendants Robert Zarco, Esq. and Zarco, Einhorn, Salkowski, & Brito, P.A. filed their Notice of Joinder as to Defendants Cold Stones' Motions for Partial Summary Judgment on Defamation Per Quod and Defamation Per Se and its Motion for Final Summary Judgment as to Defamation, Defamation Per Se and Conspiracy to Defame. On November 10, 2019, Plaintiff filed his Response to the Zarco MSJ. The hearing on the Zarco

MSJ was held on November 18, 2019. The Court ruled on the Zarco MSJ on November 27, 2019, granting the Zarco MSJ as to the Defamation Per Quod count but denying it as to the Defamation Per Se and Conspiracy counts. On December 14, 2019, Plaintiff filed his Response to Defendants Cold Stone's Motion for Partial Summary Judgment as to Plaintiff's Defamation and Defamation Per Se Count. A hearing was held on December 16, 2019, in which Defendants Cold Stone presented their argument for summary judgment. On October 16, 2020, the Court denied Defendants Cold Stone's Motion for Summary Judgment on Lack of Agency Relationship, leaving the Motions for Summary Judgment on Defamation Per Se and Qualified Privilege pending. The Judge further recused himself from the case leading to the appointment of a new Judge later that same month. In January 2021, the case was again transferred to a new judge due to judge rotation. In April 2021, Defendants Cold Stone filed an Amended Supplemental Motion for Final Summary Judgment, incorporating the previously filed Motions for Summary Judgment. In July 2021, the judge denied Defendants Cold Stone's Motion for Summary Judgment as to Absolute Privilege and Qualified Privilege. In August 2021, Defendants Cold Stone filed, and the judge subsequently granted, their Motion for Reconsideration of the October 2020 Order Denying its Final Summary Judgment Based on Lack of Agency. In December 2021, Defendants Cold Stone filed a Renewed Motion For Final Summary Judgment On Plaintiff's Defamation Per Se Claim Based on Agency and its Motion For Final Summary Judgment On Plaintiff's Conspiracy To Defame Claim. The hearing for the Motion for Summary Judgments and the Court ordered Mediation are set for March 2022. Trial is set for June 2022. Defendants Cold Stone will continue to vigorously defend the claims against them.

### **Concluded Arbitration and Litigation Involving Cold Stone Creamery, Inc.**

*Kenneth J. Kirwin v. Cold Stone Creamery/Kahala Corp; Commonwealth of Massachusetts Plymouth Superior Court, Civil Action No. 13-01126A subsequently removed to the United States District Court of Massachusetts; Case No.: 1:14-cv-11691.*

On or about October 21, 2013, Kenneth J. Kirwin ("Plaintiff") filed a Complaint In Equity and Demand For Jury Trial against Kahala Corp, inadvertently named as Cold Stone Creamery/Kahala Corp ("Defendant"). The Complaint alleged: (i) promissory estoppel; breach of contract; breach of implied covenant of good faith and fair dealing; (ii) misrepresentation; fraud and deceit violation of M.G.L. Chap. 93A, §11; (iii) unjust enrichment; (iv) misrepresentation and deceit in violation of M.G.L. Chap. 93A, §11; and (v) intentional infliction of emotional distress. Plaintiff sought: (i) judgment against Defendant in an amount the Court deemed appropriate; (ii) interest; (iii) costs of the action; (iv) compensatory damages; (v) punitive damages; (vi) attorneys' fees; and (vii) court costs. On April 7, 2014, Defendant filed its Notice of Removal seeking removal to the United States District Court for the District of Massachusetts. On April 16, 2014, Defendant filed its Motion to Dismiss or Transfer; which Plaintiff opposed in its filing of the April 16, 2014 Opposition to Kahala Corporation's Motion to Dismiss. On May 5, 2014, Defendant filed its Reply to Plaintiff's Opposition to Motion to Dismiss. On May 16, 2014, Defendants filed a Petition to Compel Arbitration against Plaintiff in the United States District Court for the District of Arizona; Case No.: 2:14-cv-01059-NVW. Defendants sought a court order to compel Plaintiff to arbitrate before the American Arbitration

Association in Phoenix, Arizona per the language of the franchise agreements. On June 2, 2014, Plaintiff executed a Declaration With Consent to Relief Requested agreeing to arbitrate before the American Arbitration Association in Phoenix, Arizona. On June 3, 2014, Defendants filed a Notice of Voluntary Dismissal against Plaintiff as he had agreed to arbitrate all claims. Mediation occurred on July 15, 2014, and the parties arrived at a settlement in which Defendants would pay Plaintiff \$37,500 to settle all disputes. The Settlement Order of Dismissal was filed on July 17, 2014, in the United States District Court District of Massachusetts.

*Gregory Fowler, and Doubri Enterprises, L.L.C. v. Cold Stone Creamery, Inc.; State of Rhode Island Kent Superior Court; Case No.: KC-13-0986; subsequently removed to United States District Court for the District of Rhode Island; Case No.: CA 1:13-cv-00662-S-PAS; subsequently removed to United States District Court for the District of Arizona; Case No.: 2:13-02414 PHX PGR.*

On or about September 13, 2013, Gregory Fowler and Doubri Enterprises, LLC (collectively "Plaintiffs") filed a Complaint against Cold Stone Creamery, Inc. ("Defendant"). Plaintiffs alleged: (i) breach of sublease; (ii) breach of franchise agreement; (iii) breach of good faith and fair dealing; (iv) tortious interference with contractual relationships; (v) fraud; (vi) defamation of business character; and (vii) negligent infliction of emotional distress. Plaintiffs sought: (i) punitive damages; (ii) attorneys' fees; (iii) interest; and (iv) costs. On September 17, 2013, Defendant filed a Notice of Removal, removing the lawsuit to the United States District Court for the District of Rhode Island. On October 9, 2013, Defendant filed a Motion to Dismiss the Complaint, or alternatively, to transfer the lawsuit to the United States District Court for the District of Arizona. The Motion to transfer was granted on November 25, 2013, and the matter was transferred to the Arizona court. On December 9, 2013, Defendant filed its Answer to the Complaint. On March 5, 2014, the Court entered a scheduling order establishing dates for completion of discovery and pre-trial motions and setting the matter down for trial on October 28, 2014. The parties participated in mediation and ultimately entered into a settlement agreement whereby Defendant paid Plaintiffs \$250,000.

*Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. v. Cold Stone Creamery, Inc.; American Arbitration Association; Case No.: 76 114 Y 00252 09 LGB.*

On or about August 17, 2009, Cindy Kilman, Joseph "Buck" Kilman, and BCEK, L.L.C. (collectively "Claimants"), former Cold Stone Creamery franchisees, filed a Demand for Arbitration with the American Arbitration Association against Cold Stone Creamery, Inc. ("Respondent"). Claimants alleged: (i) intentional fraud/fraudulent inducement; (ii) negligent misrepresentations and omissions; (iii) wrongful termination of four franchise agreements and subleases; (iv) breach of implied covenant of good faith and fair dealing; (v) breach of contract; (vi) violations of Federal Anti-Trust law including "illegal tying" claims and "exclusive arrangements" under the Sherman Act and Clayton Act; (vii) violations of the Arizona Uniform State Antitrust Act, A.R.S. §§ 44-1401, *et seq.*; (viii) violations of the Texas Free Enterprise and

Antitrust Act of 1983, Tex. Bus. & Com. Code Ann. §§15.01 – 15.26 (TFEAA); (ix) violations of Arizona’s Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.*; (x) and violations of Texas’ Deceptive Trade Practices-Consumer Protection Act, Texas Bus. & Comm. Code Ann. §§17.41, *et seq.* Claimants sought: (i) damages in excess of \$1,100,000, which included their investment; (ii) future profits; (iii) future earnings; (iv) interest; (v) costs and expenses of the arbitration proceeding; (vi) attorneys’ fees; (vii) rescission of their four franchise agreements and subleases; and (viii) declaratory relief that “None of the Kilmans (BCEK, L.L.C., Cindy Kilman or Joseph “Buck” Kilman), shall be responsible to Cold Stone Creamery, Inc. for contribution, or otherwise, relating to any rent or additional rent which Cold Stone Creamery, Inc. (or any of its affiliates) may owe or may have been adjudged to owe to any landlord in connection with any of the premises from which the Kilmans (or any one of them) operated their Cold Stone Franchises.” Claimants filed an Amended Demand for Arbitration on or about February 9, 2010, stating with more specificity the allegations of each alleged misrepresentation. Respondent filed a Response to the Amended Demand for Arbitration and Counterclaim in which it alleged breach of contract and sought a dismissal of all claims raised by Claimants with prejudice and damages in the amount of \$85,000 plus reasonable attorneys’ fees and costs. The arbitration occurred in March 2011, with the American Arbitration Association. The arbitrator awarded Claimants \$349,542.07 on or about May 6, 2011. On or about May 20, 2011, Respondent filed a Notice of Appeal with the American Arbitration Association. On or about June 15, 2011, the American Arbitration Association asked to set up a conference call to initiate the appeal. When, as of June 17, 2011, counsel for the Claimants had not indicated any availability for or an agreement to participate in the conference call, Respondent appealed the decision to the Arizona District Court by filing a Complaint, Case No. 2:11-cv-01192, alleging breach of contract. Respondent sought an order compelling the Claimants to submit to AAA jurisdiction for an appeal of the award, reasonable attorneys’ fees and costs, and any other relief the court deemed proper. On August 5, 2011, Respondent filed a Motion to Vacate and Modify Arbitration Award in which it sought an order amending the arbitration award in favor of Respondent in the amount of \$85,000 plus pre- and post-judgment interest, or alternatively, an order vacating the arbitration award, and reasonable attorneys’ fees and costs incurred and such other relief as the court deemed just and proper. On or about September 6, 2011, Claimants filed a Motion for Temporary Restraining Order and Preliminary Injunction seeking the court to disallow Respondent from any further activity in the appeal of the arbitration award and to disallow Respondent from enforcing the appeal of arbitration provision in the franchise agreement. Claimants filed an Answer and Counterclaims seeking an Order confirming the final arbitration award, a declaration that the appeal provision in the franchise agreement is unconscionable, and injunctive relief. On September 16, 2011, Respondent filed a Motion to Stay its earlier filed Petition to Vacate and Modify the Arbitration Award until the Court ruled on the underlying merits of the Complaint. On September 20, 2011, Claimants filed an Amended Answer to the Complaint asserting counter-claims against Respondent. Respondent filed a response to Claimants’ Motion seeking a temporary restraining order. On October 3, 2011, Claimants filed a response to Respondent’s Motion to Stay. On October 26, 2011, the United States District Court of Arizona Order granted Claimants’ Motion for Temporary Restraining Order and Preliminary Injunction as well as its cross-motion seeking to confirm the arbitration award. The Order further denied Respondent’s Motion to Stay as well as its Motion seeking to Vacate and/or Modify the arbitration. Following the October 2011 Order, Claimants filed a Motion for Attorneys’ Fees and Non-Taxable Expenses in the amount of \$160,000. In May 2012, the Court ordered Respondent to pay Claimants \$70,000 in fees. Respondent appealed the

United States District Court of Arizona's Order to the United States Court of Appeals for the Ninth Circuit in February 2012 and Claimants cross-appealed the May 2012 Order. While the appeal was pending, the parties continued to explore settlement discussions. In December 2012, the parties wished to settle all the issues and claims arising out of and/or relating to the (i) AAA Proceeding; (ii) the District Court Action; (iii) the AAA Appeal Proceeding; and (iv) the Court of Appeals Actions. Respondent agreed to pay Claimants \$371,160 in full satisfaction of the claims and attorneys' fees along with \$3,381 in AAA fees. In exchange, Claimants agreed to release and forever discharge Respondent from any and all claims related to or arising from the dispute. On January 17, 2013, the United States District Court executed an Order that dismissed all claims and counter claims with prejudice with each party bearing its own costs and attorneys' fees.

### **Concluded Arbitration and Litigation Involving Kahala Franchise Corp.**

*Texas Nrgize #1, Inc. v. Kahala Franchise Corp. and Kahala Holdings, L.L.C.*; 67<sup>th</sup> Judicial District Court, Tarrant County, Texas; Civil Action No.: 067-272652-14 subsequently removed to United States District Court for the Northern District of Texas; Case No.: 4:14-cv-544-Y.

On or about June 18, 2014, Texas Nrgize #1, Inc., an Nrgize franchisee ("Plaintiff"), filed a Petition and Request for Disclosure against Kahala Franchise Corp and Kahala Holdings, L.L.C. (collectively "Defendants") alleging (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm. Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) Breach of Contract and Warranties. Plaintiff sought: (i) economic damages in excess of \$200,000, plus treble damages and pre- and post-judgment interest at the maximum rates allowed by law; (ii) attorneys' fees and costs; and (iii) such other relief to which the Plaintiff may be justly entitled. On July 16, 2014, Defendants filed a Notice of Removal to the United States District Court for the Northern District of Texas. On July 24, 2014, the judge executed the Order Granting the Unopposed Motion to Substitute Parties and Changing Case Style. Kahala Franchising, L.L.C. ("Defendant") was substituted in as a defendant instead of Kahala Franchise Corp. On July 28, 2014, Defendant filed a Motion to Transfer Pursuant to 28 U.S.C. §1404(A) and Brief in Support. This motion sought an order to transfer the litigation to the United States District Court for the District of Arizona pursuant to the parties' forum selection clause contained in the franchise agreement. On August 1, 2014, Defendant filed its Answer, Counterclaim and Third Party Claim. The Counterclaim was against Plaintiff and the Third Party Claim was filed against Duane W. Martin, Argentina Saldivar, and Margena Wood ("Third Party Defendants"). Defendant alleged: (i) Breach of Franchise Agreement against Plaintiff, and (ii) Breach of Guaranty against Third Party Defendants. Defendant sought: (i) judgment against Plaintiff and the Third Party Defendants in an amount to be proven at trial; (ii) attorneys' fees; (iii) costs pursuant to A.R.S. §§12-341 and 12-341.01 and the parties' contractual agreements; and (iv) any other relief the Court deemed fit. Plaintiff filed its Response to Defendant's Motion to Transfer Pursuant to 28 U.S. C. §1404 (A) and Brief in Support on August 18, 2014, then filed its Answer to Defendant's Counterclaim on August 22, 2014. On August 28, 2014, Defendant filed its Reply in Support of Motion to Transfer Pursuant to 28 U.S. C. § 1404(A) and Brief in Support. On September 24, 2014, the United States District Court for the Northern District of Texas Court requested that each party submit a supplemental



brief to benefit the Court in resolving the Defendant's Motion to Transfer. Mediation was held on September 29, 2014, but the parties failed to come to an agreement. On October 17, 2014, Third Party Defendants filed their Answer and Counterclaim. Third Party Defendants alleged: (i) violations of the Texas Business Opportunities Act, Tex. Bus. & Comm. Code §§ 51.001 and the Texas Deceptive Trade Practices Consumer Protection Act, Tex. Bus. & Comm. Code §17.46, and (ii) breach of contract and warranties. Third Party Defendants sought: (i) economic damages in excess of \$200,000, plus treble damages under the Code and pre- and-post judgment interest at the maximum rates allowed by law; (ii) attorney's fees; (iii) costs; and (iv) any other general or special relief that the Court deemed fit. On October 24, 2014, Defendant filed its Supplemental Briefing In Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 10, 2014, Defendant filed its Answer to the Third Party Counterclaims. On November 13, 2014, Defendant filed its Notice of Dismissal Without Prejudice as to Third Party Defendant Argentina Saldivar only. On November 14, 2014, Plaintiff filed its Response to Defendant's Supplemental Briefing In Support of Their Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On November 26, 2014, Defendant filed its Reply to Plaintiff's Response to Defendant's Supplemental Briefing in Support of Its Motion to Transfer Pursuant to 28 U.S.C. §1404(A). On February 24, 2015, the Court granted Defendant's Motion to Transfer the case to the United States District Court of the District of Arizona; Phoenix Division; Case No.: CV15-0337 PHX DGC. In April 2015, Plaintiff moved to compel arbitration which was ultimately denied by the Court. The parties participated in a mediation in August 2015 which was unsuccessful. In December 2015, the parties executed a settlement agreement in which Defendant paid Plaintiff the sum of \$35,000. The parties filed a Stipulation to Dismiss With Prejudice on December 18, 2015.

**Concluded Arbitration and Litigation Involving Cold Stone Creamery Leasing Company, Inc.**

*Afsana Alekozai v. Cold Stone Creamery Leasing Company, Inc.*; United States District Court for the Northern District of California, San Francisco Division, Case No. CV-10 1254.

In March 2010, Afsana Alekozai ("Plaintiff Alekozai"), a former Cold Stone Creamery franchisee, filed a Complaint against Cold Stone Creamery Leasing Company, Inc. ("Defendant Cold Stone" or "Respondent Cold Stone ") alleging violation of the California Franchise Relations Act (Cal Bus & P C §§2000-20043) for: (i) terminating Plaintiff Alekozai's Franchise Agreement without providing Plaintiff Alekozai with an opportunity to cure; (ii) violation of the California Franchise Investment Law (California Corporations Code §§31000-31516); (iii) deceit (as defined in California Civil Code §§1709-1710); (iv) violation of the California Unfair Competition Law (Bus & P C §§17200-17210); (v) fraud; (vi) breach of an express contract provision; (vii) breach of fiduciary duty; and (viii) breach of the implied covenant of good faith and fair dealing. Plaintiff Alekozai sought monetary and punitive damages in an unspecified amount and restitution. Defendant Cold Stone filed a Motion to Dismiss and to Stay Proceedings Pending Arbitration. On June 25, 2010, the United States District Court entered an Order Granting Defendant Cold Stone's Motion to Dismiss as to certain causes of action and Motion to Stay Pending Arbitration as to other causes of action. The order dismissed with prejudice Plaintiff Alekozai's causes of action regarding violation of the California Franchise Relations Act and

California Franchise Investment Law. The remaining claims against Defendant Cold Stone were stayed pending arbitration of the dispute in Arizona. On or around August 13, 2010, Cold Stone Creamery Leasing Company, Inc. and Cold Stone Creamery, Inc. (collectively "Petitioner Cold Stone") filed a Petition to Compel Arbitration in the United States District Court for the District of Arizona, Case No. CV 10-1762-PHX-JAT, against Alekozai. On December 21, 2010, the Court entered an Order Granting Petitioner Cold Stone's Motion for Default Judgment, and further Order Granting the Petition to Compel Arbitration. On March 12, 2012, Alekozai filed a separate Demand for Arbitration, Case No. 76-114-J00048-12 02 NOLG-R, with the American Arbitration Association against Cold Stone alleging that Alekozai's Franchise Agreement was wrongfully terminated in 2009. In the demand, Alekozai failed to properly identify any existing Cold Stone entity against which relief was to be sought. It was not determinable from the demand whether the Arbitration was filed pursuant to the Order Granting the Petition to Compel Arbitration issued by the United States District Court for the District of Arizona, Case No. CV 10-1762-PHX-JAT. In the Arbitration, Alekozai sought: (i) damages in the amount of \$830,000; (ii) attorneys' fees; (iii) interest; (iv) arbitration costs; (v) punitive/exemplary damages; and (vi) lost wages. Although it was indeterminable from the demand which Cold Stone entity Alekozai sought relief from, Respondent Cold Stone filed its Answer and Counterclaim on April 9, 2012, in which it sought recovery of \$12,000 in landlord fees paid by Respondent Cold Stone. In August 2012, the parties settled Case No. CV 10-1762 PHX-JAT and American Arbitration Association Case No. 76-114-J00048-12 02 NOLG-R in mediation. Respondent Cold Stone agreed to pay Alekozai \$75,000 in settlement of all claims. The amount was paid in full in August 2012.

#### **Concluded State Administrative Actions Involving Predecessor Blimpie Associates, Ltd.**

In May 1992, Blimpie Associates, Ltd. ("Blimpie") and Joseph Dornbush (formerly the President of Blimpie) (collectively "Respondents") responded to a claim by the New York Department of Law that it had sold franchises during a period of time when Blimpie's prospectus had not been updated by amendment. Without the admission of any wrongdoing, Respondents consented to the entry of an order in which Respondents agreed: (i) to entry of a judgment enjoining them from further violations of the New York Franchise Sales Act; and (ii) to pay the sum of \$18,000 to the State of New York as an additional allowance. Respondents paid the \$18,000 in May 1992 and executed the consent judgment on August 25, 1992.

#### **Concluded State Administrative Actions Involving Maui Wowi Franchising, Inc.**

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2005-0651.

On November 11, 2005, Maui Wowi Franchising, Inc. (“MWF”), the predecessor franchisor of the Maui Wowi brand, entered into a Consent Order with the Securities Commissioner of Maryland (“Commissioner”) resulting from MWF inadvertently entering into four franchise agreements with Maryland residents (“Maryland Franchisees”) after its registration in Maryland expired on June 9, 2004. The Consent Order required MWF to (i) cease and desist from the offer and sale of unregistered franchises in Maryland; (ii) to diligently pursue the completion of its then pending application; (iii) to register its Offering Circular in Maryland; (iv) to develop and implement new franchise law compliance procedures to ensure future compliance with the registration and disclosure provisions of Maryland Franchise Law; and (v) to enroll an officer and a franchise compliance person in a franchise law compliance training program. Upon notification by the Commissioner, MWF sent to the Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Maryland Franchisees that they could rescind their franchise agreements.

In the Matter of Maui Wowi Franchising, Inc., Before the Securities Commissioner of Maryland, Case No. 2007-0194.

On September 12, 2007, Maui Wowi Franchising, Inc. (“MWF”), the predecessor franchisor of the Maui Wowi brand, entered into a Consent Order with the Maryland Commissioner resulting from MWF inadvertently entering into two franchise agreements with two Maryland residents (“Second Maryland Franchisees”) without delivering to them the appropriate Offering Circular. MWF was registered in the State of Maryland at the time of the offer and sale with an Offering Circular containing certain specific information required only by Maryland law. At the same time, MWF used a second form of Offering Circular in other states that did not contain all of the information required by Maryland law. Prior to the execution of the franchise agreements with the Second Maryland Franchisees, MWF inadvertently delivered to them the Offering Circular that did not contain the Maryland-specific information. MWF subsequently reported these mistakes to the Commissioner. The Consent Order required MWF to: (i) cease and desist from the offer and sale of franchises in Maryland in violation of the Maryland Franchise Law; (ii) to diligently pursue the completion of its then pending application to register its Offering Circular in Maryland; (iii) to implement additional compliance measures to ensure future compliance with the Maryland Franchise Law; (iv) to employ an approved franchise law compliance training program or trainer to monitor MWF’s franchise activities in Maryland for two years; and (v) to reimburse the Maryland Attorney General for its investigation and resolution costs in the total amount of \$2,500. Additionally, MWF was required to provide to the Second Maryland Franchisees the registered Offering Circular, a copy of the Consent Order, and a letter notifying the Second Maryland Franchisees that they have a right to rescind their franchise agreements. The Commissioner and MWF subsequently entered into an Amended Consent Order in which MWF elected to withdraw from the State of Maryland instead of employing a compliance monitor, with the agreement to employ a monitor if MWF was to re-register in the State of Maryland.

Lawsuits Filed by Franchisor BF Acquisition, L.L.C. Against Franchisees During Fiscal Year December 1, 2020 through November 30, 2021

**Lawsuit filed for Breach of Contract (Franchise Agreement); Breach of Contract (Sublease) and Breach of Contract (Renovation Agreement)**

*BF Acquisition Holdings, LLC v. ARZ Partners, Inc., Syed Zafar Raza; and Does 1 through 25;*  
Superior Court of California, County of Los Angeles; Case No.: 21STCV12606.

**Concluded State Administrative Actions, Arbitration, and Litigation Involving BF Acquisition Holdings, LLC and/or its predecessors**

*State of Maryland Determination;* Case Number 2012-0073.

In February 2012, the State of Maryland alleged that during the period January 1, 2009 to November 26, 2009, Triune, LLC ("Triune"): (i) did not retain signed acknowledgements of receipt reflecting the dates that its Franchise Disclosure Document was delivered to certain Maryland residents and non-residents; (ii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document; (iii) sold franchises to certain Maryland residents and non-residents without providing them with a copy of a 2009 Franchise Disclosure Document that contained its 2008 financial statements with a going concern note from its auditors resulting from the unfavorable financial condition of its parent company; and (iv) sold franchises to certain Maryland residents and non-residents without including, or abiding with, a deferral condition in their franchise agreements that was imposed upon it by the State of Maryland, all as required by the Maryland Franchise Registration and Disclosure Law (the "Maryland Law") and in violation of the Maryland Law. Without admitting or denying the allegations, in September 2012, Triune voluntarily entered into a Consent Order with the Office of the Attorney General of Maryland and agreed to: (i) not violate the Maryland Law in the future; (ii) pay the Office of the Attorney General the sum of \$50,000 as a civil penalty; (iii) retain copies of all acknowledgments of receipt confirming dates that prospective Maryland franchisees received any Maryland Franchise Disclosure Documents; (iv) comply with the disclosure and antifraud provisions of the Maryland Franchise Law and the record keeping and escrow requirements of the Code of Maryland Regulations; and (v) send a copy of the Consent Order to certain Maryland franchisees.

*State of Virginia Determination;* Case Number SEC-2012-00027.

In February 2012, the Division of Securities and Retail Franchising of the State Corporation Commission (the "Commission") alleged that during 2009 Triune, LLC ("Triune"): (i) offered or sold franchises in Virginia in 2009 that were not registered under the Virginia Retail Franchising Act (the "Virginia Act"); (ii) offered or sold franchises in Virginia without disclosing that it was not registered to do so; (iii) failed to provide material information regarding the parent company's unfavorable financial condition and the potential impact that it could have on Triune as stated in a going concern note in its 2008 financial statements from its auditors; and (iv) failed to provide a prospective franchisee with a copy of its Franchise Disclosure Document as required by rule or order of the Commission at least 14 calendar days before the prospective franchisee signed

a binding agreement or made any payment to it in connection with the sale or offer to sell a franchise in Virginia. Without admitting or denying the allegations, on November 26, 2012, Triune voluntarily entered into a Settlement Order with the Commission and agreed: (i) to not violate the Virginia Act in the future; (ii) to pay Virginia the sum of \$25,000 as a penalty and the sum of \$5,000 to defray the Commission's costs of investigation; (iii) to offer certain Virginia franchisees a refund of their initial franchise fees; and (iv) to send a copy of the Settlement Order to certain Virginia franchisees.

*Fresh Enterprises v. Ledang Investment Group, LLC, Vincent Tienn Le, Ho Tien Le and Hue Thi Dang* Superior Court of the State of California, County of Santa Clara, Case No. 1-13-CV-257219.

On July 2, 2013, Fresh Enterprises, as successor-in-interest to Baja Fresh Westlake Village, Inc. ("Plaintiff"), filed a complaint against Ledang Investment Group, LLC; Vincent Tien Le, Ho Tien Le and Hue Thi Dang (collectively "Defendants Ledang" or "Cross Claimants Ledang") for: (i) implied indemnity; (ii) equitable indemnity; (iii) express indemnity; (iv) breach of contract; (v) declaratory relief seeking unspecified damages; (vi) indemnification; (viii) a judgment of unlawful detainer; and (ix) declaration that Defendants Ledang were obligated to reimburse Plaintiff for various expenses. On January 6, 2014, Cross Claimants Ledang filed a Cross-Complaint against Plaintiff, Baja Fresh Westlake Village, LLC, Triune Corporation and National Franchise Sales, Inc. (collectively "Counter Defendants") for: (i) breach of contract; (ii) breach of covenant of good faith and fair dealing; (iii) negligent misrepresentation; and (iv) intentional misrepresentation. On February 19, 2014, Counter Defendants filed a Motion to Compel Arbitration, which was granted. The disputes between the parties were then arbitrated before the American Arbitration Association (Case Number 72-20-1400-0126). On February 2, 2015, the Arbitrator issued an award in favor of Cross Claimants Ledang in the amount of \$660,620.84. The parties entered into a Settlement and Release Agreement on July 20, 2015, under which Counter Defendants paid the Cross Claimants Ledang the sum of \$585,000 and the matter was dismissed with prejudice.

Other than these actions, no litigation is required to be disclosed in this Item

#### **ITEM 4 BANKRUPTCY**

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

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

The initial franchise fee ("**Initial Franchise Fee**") for your Baja Fresh Traditional Restaurant is \$30,000. The Initial Franchise Fee is reduced for your second and each

subsequent traditional restaurant to \$15,000. The Initial Franchise Fee for your Baja Fresh Non-Traditional Restaurant location is \$20,000. The Initial Franchise Fee is reduced for your second and each subsequent non-traditional restaurant to \$10,000.

If you are currently an active or active reserve member of the U.S. Armed Forces, have been honorably discharged from the U.S. Armed Forces (“Eligible Military”), or if the franchisee is a federally recognized 501(c)(3) organization (“501(c)(3)”), you will receive a 20% discount on the Initial Franchise Fee.

The initial fees to be paid to us and/or our affiliate(s) before the franchisee’s business opens are indicated on the chart below and in the notes to the chart. The initial fees to be paid to us and/or our affiliate(s) before the franchisee’s business opens (not including any Lease Guaranty Fee) are the total of the Initial Franchise Fee, grand opening fee, and lease review fee (if any), and ranges from \$13,000 to \$23,500 for a Non-Traditional Franchised Location, and from \$22,000 to \$42,500 for a Traditional Franchised Location. These amounts do not include the Document Administration Fee, which is generally only required if there is an amendment to your Franchise Agreement.

There are no refunds of the Initial Franchise Fee under any circumstances. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs. We may vary the terms of our franchises in connection with testing new marketing, branding and/or operational programs. These tests are generally conducted with experienced, existing franchisees and may include incentives and other rights which are not available to all franchisees. If you sign the Franchise Agreement in connection with a transfer or renewal, you will not pay the Initial Franchise Fee.

We may offer you the option to purchase a license to sell additional signature products in your Baja Fresh Restaurant and to use the signature products trademark(s) as signature products are developed. We estimate that the fees associated with acquiring license(s) to sell additional products will be between \$2,500 and \$5,000 although these license fees may be modified from time to time.

Category	Amount	Method of Payment	Due Date	To Whom Pmt. Is Made	Refundability
Initial Franchise Fee – Traditional Location	\$30,000 (reduced to \$24,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	BFAH	See Note (1)
Initial Franchise Fee – Non-Traditional Location	\$20,000 (reduced to \$16,000 for Eligible Military and 501(c)(3))	Lump Sum	Signing of the Franchise Agreement	BFAH	See Note (1)
Grand Opening Marketing	\$10,000 for a traditional store and \$5,000 for a non-traditional store	Lump Sum	Signing of the Franchise Agreement	BFAH	See Note (1)
Lease Guarantee Fee (optional)	10% of the total amount guaranteed, up to a maximum payment of \$10,000 (if applicable) (Note 2)	Lump Sum	Signing of the lease guarantee agreement (if applicable)	BFAH or its affiliate who guarantees the lease	See Note (1)
Lease Review Fee (optional)	\$0 to \$2,500 (Note 3)	Lump Sum	When you request review by Kahala Management's real estate department	BFAH	See Note (1)

The above fees will be used for franchise support, training, and working capital.

Notes:

(1) There are no refunds under any circumstances. BFAH does not offer any financing of the Initial Franchise Fee. We may periodically reduce the Initial Franchise Fee in connection with limited time promotions, new concepts and/or operational programs.

(2) If, after a request by you, BFAH or any of its affiliates agree, in their sole and absolute discretion, to guarantee your lease with the applicable third party landlord for the Baja Fresh Restaurant you are developing, you will pay BFAH or its affiliate a lease guarantee fee in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease upon the execution of the lease and associated guarantee with the third party landlord, up to a maximum payment of \$10,000. This fee is not refundable (See **Exhibit M: Lease Guaranty Acknowledgement**).

(3) If, prior to executing the lease, you request BFAH's real estate department review your lease and provide suggested changes to you, a \$2,500 lease review fee shall be paid by you to BFAH ("**Lease Review Fee**") upon your request to BFAH's real estate department. The Lease Review Fee is non-refundable. This is an optional service, with the determination of whether to utilize BFAH's real estate department to be made in your sole discretion.

(4) You are required, to pay a Grand Opening Marketing fee of \$10,000 for a Traditional store or \$5,000 for a Non Traditional store payable to US on the earlier of (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of your Franchised Business to the public.

**ITEM 6  
OTHER FEES**

Column 1	Column 2	Column 3	Column 4
Type of Fee	Amount	Due Date	Remarks
Royalty Fee and Surcharge (Notes 1 and 9)	Royalty Fee is 5% of total weekly Gross Sales. Surcharge is a maximum of \$10 per week in addition to the Royalty Fee. (Note 2)	Withdrawn electronically from your Depository Account each Friday (Note 3)	"Gross Sales" include all revenue from the Franchised Business excluding sales tax and authorized refunds, credits and allowances.
Advertising Fees (Note 1)	Up to 4% of weekly Gross Sales	Same as Royalty Fee (Note 3)	Currently, Advertising Fee is 3% of weekly Gross Sales, which goes to the Advertising Fund (Note 4).
Additional Persons Training Fee (Note 1)	\$1,750 per person (\$1,000 per person for the In-Store portion of the Training Program, and \$750 per person for the New Owner Training portion of the Training Program)	2 weeks prior to beginning of training	The training of two individuals is included in the Initial Franchise Fee. The Additional Persons Training Fee is for any additional persons who attend the Training Program.



<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Additional Training Fee (Note 1)	\$300 per person per day	Prior to attendance	Payable if we require or you request additional training after attending the Training Program.
Annual Meeting Registration Fee (Notes 1 and 5)	Up to \$1,000 plus incidental costs to attend	60-90 days prior to the Meeting	We will debit your Depository Account for this fee, which is non-refundable. This fee is charged to all franchisees whether or not they attend the Meeting.
Depository Account	\$3,000 (must be replenished on a regular basis)	Signing of Franchise Agreement	(Note 3)
Data Fees (Notes 1 and 6)	Up to \$75 per month (Subject to reasonable annual and/or service enhancement increases)	Same as Royalty	Fee for collecting or polling data from your POS System.
POS Help Desk Phone Support Maintenance Contract Fee	\$55 per month	Last Thursday of each month	We will debit your Depository Account for this fee.
Renewal Franchise Fee (Note 1)	50% of the then-current Initial Franchise Fee not including any discounts or reductions	Signing of new Franchise Agreement at renewal	Applicable if you are renewing your Franchise Agreement.
Transfer Franchise Fee – traditional locations (Note 1)	\$15,000	Prior to completion of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer. A full transfer is, including, but not limited to, a transfer of 50% or more ownership or control.
Transfer Franchise Fee – non-traditional locations (Note 1)	\$5,000	Prior to completion of transfer	Payable if you are purchasing your Franchised Business as a result of a full transfer from another franchisee.
Relocation Fee (Note 1)	\$500	At signing of relocation amendment to Franchise Agreement	Payable if we approve the relocation of your store.
Transfer Training Fee (Note 1)	\$10,000 for two individuals (\$500 for each additional individual)	Prior to consummation of transfer	Payable if you purchase your Franchised Business as a result of a full transfer from another franchisee.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Type of Fee</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Document Administration Fee	\$500 (Note 7)	As incurred	Applicable if an amendment must be prepared, including for an affiliate transfer.
Default Interest (Notes 1 and 8)	\$50 plus interest at 1-1/2% per month or maximum legal rate, if less (" <b>Default Rate</b> ")	Payable upon assessment	Payable on all overdue amounts.
Late Report Fee (Note 1)	\$100 per report	Payable upon assessment	Payable if any required financial statement or report is delinquent.
Collection Costs (Note 1)	All collection costs including, but not limited to, reasonable attorneys' fees	Payable upon assessment	Payable only if we are required to retain an attorney or collection agency to collect delinquent payments from you. We will also collect as damages any attorneys' fees and costs incurred by us in defending claims that arise due to your actions as a Baja Fresh franchisee.
Non-Sufficient Funds Fee (Note 1)	\$50 for each electronic funds transfer returned for non-sufficient funds; \$25 for each check or draft returned for non-sufficient funds	Payable upon assessment	Payable only if your electronic funds transfer from your Depository Account or any check you remit to us is returned for non-sufficient funds.
Audit (Note 1)	Cost of Audit plus interest at Default Rate on underpayments or the maximum rate permissible by law (Note 9)	Payable upon assessment	Payable only if audit is caused by your failure to furnish reports or if audit reveals an understatement of fees or assessment of 5% or more.
New Supplier Approval Fee (Note 1)	A charge not to exceed the reasonable cost of the inspection and the actual cost of the test not to exceed \$5,000.	Payable upon assessment	Payable by either you or the proposed supplier if you request our approval of a new or alternative supplier.
Non-Participation Fee (Note 1)	\$100 per day	Payable upon assessment	For failure to participate in local, regional, seasonal, promotional and other programs, initiative and campaigns

Column 1 Type of Fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks
Early Termination Fee (Note 1)	The average monthly Royalty and Advertising Fees paid for any consecutive 12-month period within the preceding 48-month period multiplied by the number of months remaining in the term of the Franchise Agreement, and the product is divided by 2.	30 days prior to the early closing of the Restaurant	You must provide us with 90 days prior written notice of the termination of your Franchise Agreement.
Management Fee	6% of the Franchised Business' Gross Sales (in addition to the Royalty Fee and Advertising Fee) plus our direct out-of-pocket costs and expenses.	Payable with Royalty and Advertising Fee	If we assume the management of your Franchised Business for any period of time.

Notes:

(1) These fees are collected by us, are payable to BFAH, and are non-refundable. These fees are uniformly imposed by BFAH; however, BFAH, in its sole discretion, may reduce or waive a one-time fee (*i.e.*, transfer franchise fee, renewal franchise fee, etc.) or may waive or reduce an ongoing fee (*i.e.*, Royalty Fee or Advertising Fees) for a defined period of time.

(2) For Traditional and Non-Traditional Baja Fresh Restaurants, the Royalty Fee will be 5% of the total weekly Gross Sales. In our sole discretion, we may charge, in addition to the Royalty Fee, a Surcharge of up to \$10 per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor. Currently, New York is the only state that has imposed the additional reporting requirements.

(3) At the time you sign the Franchise Agreement, you will set up a depository account of a minimum of \$3,000 with your local banking institution. You are required to maintain a minimum balance of \$3,000 in this account at all times. This will mean that you must replenish the depository account to \$3,000 after BFAH makes any withdrawals. (A Pre-Authorized Electronic Funds Transfer Form by and payable to Franchisor is attached as **Exhibit P**).

(4) BFAH directs that Advertising Fees be paid to us, a national advertising fund ("National Fund") designated by us, and/or, in our sole discretion, to a designated approved regional advertising fund ("Regional Fund," and together with the National Fund, the "Advertising Fund" or "Fund"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. We encourage the formation of franchisee cooperative advertising associations (each a "**Cooperative**"). Currently, there are no Baja Fresh Cooperatives, and therefore; no fees imposed by Cooperatives. BFAH reserves the right to require Cooperative contributions in the future. If a Cooperative is formed for your region, you must financially

contribute to the Cooperative, as required by us. Failure to do so will be deemed a breach of the Franchise Agreement and you may also, in Franchisor’s sole discretion, lose your right to vote on decisions the Cooperative makes. The membership of the Cooperative is defined by us according to your market area. For each of our company-owned or affiliate-owned restaurants, it’s our policy that such restaurants make contributions to the Fund at a rate equal to the lowest rate a franchisee is then-required to contribute. Corporate or affiliate-owned outlets have the same voting power as franchisee-owned outlets.

(5) If we hold an annual meeting (“**Meeting**”), the Meeting will be held at various locations throughout the United States and/or online as we may designate in our sole discretion, and may offer valuable continuing education programs. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for the Annual Meeting Registration Fee up to \$1,000 at any time 60 to 90 days prior to the first day of the Meeting. This fee is not refundable and will be debited from all franchisees’ accounts (even if you do not attend the Meeting). If you do not attend the Meeting, we will make available to you one full set of the substantive materials that were presented at the Meeting.

(6) We may collect a weekly data polling fee for the collection of data from your restaurant sales for the POS System for your restaurant. Currently, the fee is up to \$75 per month, and is subject to reasonable annual and/or service enhancement increases.

(7) The Document Administration Fee in the amount of \$500 will be charged to you if an amendment to your franchise documents must be prepared.

(8) Interest begins from the date of the underpayment.

(9) Royalties may be increased to up to eighteen percent (18%) of Gross Sales with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalties paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as “Breaching Royalties.” Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

**ITEM 7  
ESTIMATED INITIAL INVESTMENT  
TRADITIONAL RESTAURANT\***

**YOUR ESTIMATED INITIAL INVESTMENT**

TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
<b>Build-Out Costs<sup>2 &amp; 3</sup></b>					

TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
Architect; Engineer; Drawings <sup>1</sup>	\$15,000	\$25,000	As Arranged	As Incurred	Architect; Engineer
Permits	\$5,000	\$32,000	Cash	As Incurred	City, County, State
<b>Leasehold/ Construction<sup>2 &amp; 4</sup></b>					
Base building, Interior Improvements; Lighting; Tile; Millwork; Seat Fee Assessment <sup>5</sup>	\$80,000	\$483,000	As Arranged	As Incurred	Contractor; City, County, State
<b>Furniture, Fixtures, Equipment &amp; Signage<sup>6</sup></b>					
Signage	\$10,000	\$17,000	As Arranged	As Incurred	Approved Supplier
POS System	\$11,000	\$20,000	As Arranged	As Incurred	Approved Supplier
Computer System	\$800	\$1,200	As arranged	As incurred	Approved Supplier
Kitchen Equipment; Smallwares; Furniture	\$90,000	\$275,000	As Arranged	As Incurred	Approved Supplier
Inventory; Uniforms	\$4,000	\$8,000	As Arranged	Before Opening	Approved Supplier
Advertising	\$2,500	\$10,000	As Arranged	Before Opening	Approved Supplier
<b>Other Costs</b>					
Pre-opening training expenses <sup>8</sup>	\$11,610	\$21,090	As Arranged	Before Opening	Various Vendors
Lease & Security Deposits	\$10,000	\$15,000	Cash (non-refundable)	At signing of Franchise Agreement	Lessor

TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
				nt	
Insurance - Liability & Workers compensation (initial deposit)	\$2,000	\$4,000	Cash	Monthly Premium	Insurance Carriers
Legal Fees	\$1,000	\$3,000	Cash	As Incurred	Legal & State
Initial Franchise Fee <sup>10</sup>	\$12,000	\$30,000	Cash	At signing of Franchise Agreement	Us
Depository Account <sup>7</sup>	\$3,000	\$3,000	Cash (must be replenished on a regular basis)	Signing of Franchise Agreement	Your bank (we have the right to withdraw from this account)
Lease Review Fee	\$0	\$2,500	Cash	At signing of Franchise Agreement	Us
Grand Opening Marketing <sup>9</sup>	\$10,000	\$10,000	Cash <sup>9</sup>	Before Opening <sup>9</sup>	Us
<b>ADDITIONAL FUNDS</b> (3 months) <sup>11</sup>	\$42,400	\$73,500	Cash	As Incurred	Approved Suppliers & Employees
<b>Grand Total<sup>14</sup></b>	<b>\$310,310</b>	<b>\$1,033,290</b>			

\*ASSUMPTION: IN-LINE, END-CAP OR FREE-STANDING LEASED PROPERTY, 2,200 TO 2,500 SQ. FT. IN HIGH DENSITY MARKETS AND 2,500 TO 3,000 SQ. FT. IN SUBURBAN MARKETS.

**NON-TRADITIONAL RESTAURANT<sup>12</sup>  
YOUR ESTIMATED INITIAL INVESTMENT**

TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
<b>Build-Out Costs<sup>2 &amp; 3</sup></b>					
Architect; Engineer; Drawings <sup>1</sup>	\$8,000	\$20,000	As Arranged	As Incurred	Architect; Engineer
Permits	\$1,500	\$10,000	Cash	As Incurred	City, County, State
<b>Leasehold/Construction<sup>4 &amp; 13</sup></b>					
Base building, Interior Improvements; Lighting; Tile; Millwork; Seat Fee Assessment <sup>5 &amp; 13</sup>	\$20,000	\$230,000	As Arranged	As Incurred	Contractor; City, County, State
<b>Furniture, Fixtures &amp; Equipment and Signage<sup>6</sup></b>					
Signage	\$5,000	\$22,000	As Arranged	As Incurred	Approved Supplier
POS System	\$11,000	\$20,000	As Arranged	As Incurred	Approved Supplier
Computer System	\$800	\$1,200	As arranged	As incurred	Approved Supplier
Kitchen Equipment; Smallwares	\$75,000	\$215,000	As Arranged	As Incurred	Approved Supplier
Furniture	\$5,000	\$25,000	As Arranged	As Incurred	Approved Supplier
Inventory; Uniforms	\$3,000	\$6,000	As Arrange	Before Opening	Approved Supplier

TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
			d		
Advertising	\$2,500	\$6,000	As Arranged	Before Opening	Approved Supplier
<b>Other Costs</b>					
Pre-opening training expenses <sup>8</sup>	\$9,000	\$15,000	As Arranged	Before Opening	Various Vendors
Lease & Security Deposits	\$0	\$15,000	Cash (non-refundable)	At signing of Franchise Agreement	Lessor
Insurance - Liability & Workers compensation (initial deposit)	\$2,000	\$3,000	Cash	Monthly Premium	Insurance Carriers
Legal Fees	\$1,000	\$3,000	Cash	As Incurred	Legal & State
Initial Franchise Fee <sup>10</sup>	\$8,000	\$20,000	Cash	At signing of Franchise Agreement	Us
Depository Account <sup>7</sup>	\$3,000	\$3,000	Cash (must be replenished on a regular basis)	Signing of Franchise Agreement	Your bank (we have the right to withdraw from this account)
Lease Review Fee	\$0	\$2,500	Cash	At signing of Franchise Agreement	Us
Grand Opening Marketing	\$5,000	\$5,000	Cash <sup>9</sup>	Before Opening <sup>9</sup>	Us
<b>ADDITIONAL FUNDS (3 months)<sup>11</sup></b>	<b>\$42,400</b>	<b>\$73,500</b>	Cash	As Incurred	Approved Suppliers & Employees



TYPE OF EXPENDITURE	AMOUNT		METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
	LOW	HIGH			
<b>Grand Total<sup>14</sup></b>	<b>\$202,200</b>	<b>\$695,200</b>			

The charts above describe the estimated initial investment for a Traditional Baja Fresh Restaurant and a Non-Traditional Restaurant. Please see footnote 7 below regarding the Initial Training Program. Except as described in Item 10 below, we currently do not offer financing for any purpose, but reserve the right to do so in the future.

**NOTES:**

- 1 Applies to non-union labor.
- 2 Does not include demolition, site work or purchase of real estate. If you are signing your Franchise Agreement with the renewal of an existing Franchise, this table is not applicable to you because your Baja Fresh Restaurant is currently open and operating, but under Sections 2.3 and 2.4 of the Franchise Agreement we may require you to remodel, renovate, modernize or refurbish your Baja Fresh Restaurant to our then-current standards.
- 3 You must obtain a site for your Baja Fresh Restaurant within 12 months after the effective date of the Franchise Agreement, start operating your Baja Fresh Restaurant within 12 months after the effective date of the Franchise Agreement, and complete the Initial Training Program prior to the opening of your Baja Fresh Restaurant. You may not open your Baja Fresh Restaurant for business until you have received our written authorization, which is subject to our satisfactory inspection of the Restaurant at the Franchised Location. You must lease or purchase a location accepted by us and construct, remodel, alter and improve it to our specifications. These estimates assume that your location will be a leased, unimproved, unfinished retail store-type unit. If you purchase real estate, your initial investment will be greater, the exact amount depending upon the size and location of the premises. A typical Baja Fresh Traditional Restaurant will be located in a suburban area on a major thoroughfare or adjacent to or part of a suburban shopping center. The typical location will be 2,200 to 2,500 square feet in high density markets and 2,500 to 3,000 square feet in suburban markets, not including patio area. Monthly lease payments usually range from \$8,000 to \$18,000. The typical Non-Traditional Restaurant site will be 600 to 1,200 square feet. Monthly lease payments usually range from \$2,500 to \$8,000. You must perform or have performed any construction, remodeling, or additions necessary to cause the premises to conform to applicable Federal, State, County, City, local laws, ordinances, codes, rules and regulations governing food service businesses and to meet our requirements for the layout design, construction, fixturation, equipment and installation, and trade dress appearance of a Baja Fresh Restaurant. Construction and remodeling costs vary widely, depending upon the location, design, configuration and condition of the premises, the condition and configuration of existing services and facilities such as air conditioning, electrical and plumbing, and the terms of your lease. You must grant us a security interest in and to all leasehold improvements, fixtures, furnishings and equipment, inventory, supplies and vehicles located at or used in connection with the Restaurant, in accordance with a Security Agreement in a form

substantially similar to the Security Agreement attached to the Asset Purchase Agreement (**Exhibit D**) as Exhibit B.

- 4 The Construction Costs presented include all estimated costs incurred in construction and remodeling a location to conform to our current standards, including a general contractor's fee (generally equal to 10% to 15% of total construction costs); contractor's insurance; materials and supplies; tools; labor and subcontractor fees; and other costs to construct leasehold improvements conforming to our standards.
- 5 Selected counties charge a one-time fee referred to as a "**seat fee**" calculated on the basis of \$300-\$600 per seat in the restaurant for new restaurant space which is space that has not been designated as "**food service**" or restaurant before your business.
- 6 You must prepare and sell all of the menu items as we designate as part of our standard menu and provide all standard services we designate periodically. If any special or additional equipment or fixtures are needed to provide those services or menu items, you must acquire that equipment or fixture, the cost of which may be significant.
- 7 At the time you sign the Franchise Agreement, you will set up a depository account of a minimum of \$3,000 with your local banking institution. You are required to maintain a balance of a minimum of \$3,000 in this account at all times. This will mean that you must replenish the depository account to \$3,000 after Franchisor makes any withdrawals.
- 8 You must make arrangements for and pay the expenses of all persons attending the Initial Training Program including transportation, lodging, meals and wages. The amount expended will depend, in part, on the distance you must travel and the type of accommodation you choose. The estimate provided contemplates costs for 2 supervisory or managerial personnel who attend the Initial Training Program for 6 to 8 weeks. If you operate 3 or more Baja Fresh Restaurants, you may apply to offer the Initial Training Program for the employees of each Restaurant at your training facility (which may be a Baja Fresh Restaurant). We may certify you to offer the Initial Training Program if you meet our standards, your training facility has been certified by us and your designated training manager has been certified by us. You must reimburse us for the travel, living and other expenses incurred in evaluating your facility and your training manager.
- 9 You are required to pay a Grand Opening Marketing fee of \$10,000 for a Traditional store or \$5,000 for a Non Traditional store payable to franchisor on the earlier of (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing fee to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing fee should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing fee is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing fee after six (6) months from the opening of your Franchised Business to the public.

- 10 The Initial Franchise Fee is \$30,000 for each Traditional Restaurant and restaurant. The Initial Franchise Fee is \$20,000 for each Non-Traditional Restaurant. The Initial Franchise Fee is described in Item 5 of this disclosure document. The Initial Franchise Fee includes the training fee for two (2) individuals. However, you will be responsible for costs of travel, living, compensation and other expenses.
- 11 You must, at all times, maintain adequate reserves and working capital sufficient for you to fulfill all your obligations under the Franchise Agreement and to cover the risks and contingencies of the franchised business for at least 3 months. The estimates provided above do not include pre-opening training expenses, pre-opening food waste, managerial salaries or any payment to you. These estimates also do not take into account (i) the finance charges, interest and related costs you may incur if any portion for the initial investment is financed, or (ii) the costs of a security system, which we estimate will cost between \$500 to \$750 per month to lease, or music system, which we estimate to cost between \$450 and \$500 per month to lease. These amounts are the minimum recommended levels to cover operating expenses, including employee's salaries for 3 months. However, we cannot guarantee that those amounts will be sufficient. Additional working capital may be required if sales are low or fixed costs are high. The disclosure laws require us to include this estimate of all costs and expenses to operate your Franchise during the **"initial phase"** of your business, which is defined as a 3 months or longer period if **"reasonable for the industry."** We are not aware of any established longer **"reasonable period"** for the restaurant industry, so our disclosure covers a 3 month period. We make no guarantee, and do not intend to imply, that 3 months is a "break even" point for you to recover your initial investment in your Restaurant. We make no representation regarding how long it will take you to recover your initial investment or to become profitable. We relied on our experience and that of our predecessor and affiliates when preparing these figures. If you wish to provide Catering Services from your Restaurant, we estimate the cost for additional supplies (such as chafing dishes, warmers and other supplies) will be approximately \$2,000 to \$4,000.
- 12 Our experience with sites for Non-Traditional Restaurants is that, generally, there are no specific costs associated with acquiring real property since the Non-Traditional Restaurant Franchisee typically already has a contract with the owner of the Facility to provide foodservice at the Facility. Therefore, a Non-Traditional Restaurant Franchisee should not incur additional real property costs for the site of a Non-Traditional Restaurant.
- 13 Our experience with building and site improvement costs at Non-Traditional Restaurants has varied dramatically. Accordingly, it is difficult to estimate the costs except in a very broad range. These costs are heavily dependent on the condition of the Facility and the venues of the location (i.e., food court, in-line space, concession location, etc.). In some instances, it also may be dependent on the amount of improvements required by the owner of the Facility.
- 14 All amounts are non-refundable unless otherwise noted. You should review these estimates carefully with a business advisor before making any decision to purchase the franchise.

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

Except as stated in this Item 8, you have no obligation to purchase or lease goods, services, supplies, fixtures, equipment, inventory or computer hardware relating to the establishment or operation of your Baja Fresh restaurant from us or from any of our designees.

The Franchise Agreement requires that all food products, ingredients, equipment, computer hardware and software, furniture, fixtures, décor, signs, computer equipment, supplies and other products, services and materials which you will use in the operation of your restaurant meet our standards and be purchased only from approved distributors and suppliers. You may use any operational service providers, such as exterminators, refrigeration services companies, refuse removal companies, and similar service providers that you desire. If we organize a rollout for a new approved product or a new supplier of an approved product, you will be required to purchase such approved product(s) from our approved distributors of the approved supplier within 60 days of notification from us. BFAH is not a supplier of any products or services. Neptune Equipment, an affiliate of franchisor, is currently one of the approved suppliers of certain equipment, interior and exterior signage menu boards, POS System and smallwares. Kahala Management, an affiliate of ours, is currently the only approved service provider of phone support maintenance for the software and hardware of the POS system (“**POS Help Desk Phone Support Maintenance**”). You are required to purchase the POS Help Desk Phone Support Maintenance from Kahala Management. Kahala Management is also an approved service provider of real estate services. For a fee, Kahala Management will review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease. Kahala Management may, in its sole discretion, also assist you in locating a potential site for a franchisee upon request from a franchisee. You may, but are not required, to use Kahala Management for real estate services. There are other approved suppliers who are not affiliated with us for each of the items you will purchase to operate your Baja Fresh restaurant. We currently have other non-affiliated approved suppliers of all equipment, smallwares, furniture, POS Systems, beverage equipment, sound systems and certain ingredients and other logoed items utilized in your Baja Fresh restaurant. None of our officers own an interest in any of the approved suppliers not affiliated with us. To become approved, a supplier must demonstrate, to our reasonable satisfaction, it can meet all of our standards and has adequate capacity to supply franchisee's quantity and delivery needs. We will provide you with a list of approved distributors of the approved suppliers for your market area during the pre-opening and/or construction phase for your Franchised Business. You can expect that the items you will purchase in accordance with our specifications will represent over 90% of the total purchases you will make to begin operations and over 80% of your annual operating expense for raw materials, products and supplies.

All requests for approving new or alternative suppliers must be submitted in writing by you and/or the supplier to the purchasing department at Kahala Brands. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. Our criteria for approving suppliers is available to franchisees upon written request to the purchasing department at Kahala Brands. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test not to exceed \$5,000 must be paid to us either by you or by the proposed supplier. If approved, in our sole reasonable discretion, we will notify you and/or the supplier in writing within 60 days of our receipt of an approval request. You must not offer for sale or sell any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier. We may, at our option, re-inspect the

facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum standards and specifications. If you receive a written notice of revocation from us, you must stop selling disapproved products and stop purchasing from the disapproved supplier.

We will provide you with one set of our confidential "ops package" which may consist of the operations manual, "ops toolkit," information and resources posted on our Franchisee Portal, and related printed and electronic documents (collectively, the "**Confidential Manual**"). We provide all specifications and standards to you in the Confidential Manual, which we may modify from time to time by providing you with "rollout guides" for limited time offers, amendments, modifications or supplemental inserts through notices or bulletins, or by amending the Confidential Manual. A list of approved distributors for our approved vendors is maintained by our purchasing department and will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved vendors. We may acquire certain used equipment and signage and offer it for sale to prospective or existing franchisees at a price that we believe to be equal to or less than the fair market value of that equipment and signage. If we make that offer to you, you have the option of purchasing that equipment and signage from us or purchasing new equipment and signage from the approved third parties.

You must, at your own cost and expense, use a third party design architect approved by us, to prepare the initial design drawings for your Franchised Business. Except for the design architect approved by us, no other architect may be used by you for the design of your restaurant. You must also, at your own cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings.

You must purchase an interior and exterior sign package and menu panels in accordance with our specifications indicated in the Confidential Manual and related documents provided to all franchisees. In addition, you must have your Baja Fresh restaurant be consistent in color, design and style with the standards and specifications adopted and approved by us, and as we may modify those standards periodically. You must maintain the appearance and atmosphere of your Baja Fresh restaurant, and the equipment and premises used in connection with your Baja Fresh restaurant, in accordance with the standards we may adopt from time to time. Any variations in color, design, style, appearance or atmosphere must be approved in writing by us. Our current standards and specifications are included in our Confidential Manual.

You are required to acquire, from an approved supplier, and exclusively use an approved cash register/point of sale computer system and software during the operation of your Baja Fresh restaurant. The components and specifications of this system are specifically identified in the Confidential Manual, including approved vendors for such system. You shall also be required to own a personal computer or similar device that allows you to send and receive e-mails with us, and a fax machine to allow communication with us.

You are required to accept all approved debit and credit cards, along with BFAH or its affiliates Stored Value Gift Cards, Loyalty Cards, Frequency Cards, and any other similar BFAH or affiliate sponsored electronic card and/or payment program from consumers at your Baja Fresh restaurant. Prior to the opening of your restaurant, you

will be required to acquire an approved debit, credit and Gift/Loyalty card processing system(s) to use during the operation of your Baja Fresh restaurant. The components and specifications of this system are specifically identified in the Confidential Manual. You are also required to create an online merchant account with the payment processor identified in the Confidential Manual for payment processing associated with online orders. Additionally, you must utilize our approved third party Gift/Loyalty payment card processor, as identified in the Confidential Manual, for processing all such Gift/Loyalty card transactions. Also, with respect to online ordering only, you must utilize our approved third party payment card processor, as identified in the Confidential Manual, for processing all such debit and credit card transactions.

In our sole discretion, if we determine that a customer complaint associated with any Baja Fresh restaurant warrants the need to provide a discount or credit to assist in customer retention, the customer service team may provide the customer with a brand specific retention discount or credit, which may be in the form of a branded coupon, discount, bounce back card or gift card. You are required to accept all forms of Baja Fresh customer retention discount or credits.

You must complete a food safety manager training program at your cost. We will accept your local county or state required program or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to attending our Training Program.

We may, from time to time, provide referral incentives to franchisees, employees and others for qualified referrals of prospective franchisees. We may, from time to time, pay membership fees to public, quasi-public and private service providers who refer potential franchisees from identified groups (e.g. veterans or military personnel planning to leave the service).

We may vary the terms of our franchises in connection with testing new marketing, branding, research and development of new menu offerings, and/or operational programs. These tests are generally conducted with experienced, existing franchisees and may include incentives and other rights which are not available to all franchisees. We reserve the right to sell some of the products associated with the Baja Fresh brand to different retail outlets such as grocery chains or membership-based retailers.

You may not maintain a World Wide Web site, social media site, an App (application), or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Franchised Business without our prior written approval.

Although not bound to do so, BFAH may conduct, from time to time, additional research and development with regard to its specifications and standards. The criteria for evaluating any changes in these specifications will be whether such changes in the specifications will improve quality, be more efficient and have greater customer appeal, thus enhancing the Baja Fresh brand name and image.

You must obtain all insurance we require and obtain it from an insurer having an A.M. Best's financial strength rating of "A-VIII" or better. Your insurance must: (i) insure the particular Franchisee listed on your Franchise Agreement; (ii) name us and our

parents, subsidiaries, affiliates, directors, officers, and employees as additional insured; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates for casualty losses; (iv) provide that we will receive by an endorsement 30 days' prior written notice of cancellation; and (v) provide that failure by franchisee to comply with any term, condition or provision of the contract, or other conduct by franchisee, will NOT void or otherwise affect the coverage afforded us. Before you may open your *Baja Fresh* restaurant, at the time you sign your lease, annually at least 10 days prior to renewal of your insurance coverage, and at any other time upon our request, you must provide a copy of your certificate of insurance to us which meets our requirements.

Our minimum insurance coverage requirements (subject to change, including to increase) are below. You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, business interruption, umbrella insurance and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums but may also save you money in the long run. We make no representation that the minimum coverage that we specify will be sufficient for your business. You will pay your insurance premiums directly to your insurance broker or to the insurance company issuing the policy.

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You must always keep the required insurance coverage in force, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances. In the event you fail to obtain or maintain the required insurance coverage, we reserve the right, but are not obligated to, obtain the required insurance on your behalf and charge the insurance premium to you.

We have negotiated special pricing arrangements or discounts with some of our suppliers. The arrangements may include special contract pricing, volume discounts, and specific discounts from regular wholesale prices. These discounts are typically passed on to our franchisees. We do not provide any other material special benefits to franchisees based on their purchase of particular approved supplies or their use of particular approved suppliers.

We or our affiliates may also receive rebates and/or allowances, usually ranging between 1% and 5%, from certain suppliers on purchases made by you and other franchisees. The rebates and/or allowances are generally based upon a percentage of franchisee purchases, will be included in our general revenue, and may be used by us for salaries of personnel that assist franchisees increase their sales, maintaining the customer service hotline, handling of inquiries and complaints from our franchisees' customers, tracking consumer service hotline trends, product research and development, franchisee crew training, supply chain information management systems, and a variety of ongoing programs, including education, marketing, advertising, and franchisee meetings, seminars, conventions, conferences, and events. These rebates are usually based on an amount per unit, per case, per gallon, or per pound of product (*i.e.*, properly specified and approved meat, dairy products, paper products, smallwares, beverages and apparel) purchased. We may use rebate and allowance funds received from our suppliers to benefit the Baja Fresh System in our sole and absolute discretion.

For the year ending November 30, 2021 MTY USA and its subsidiaries derived revenues from the sales of products, services, and product allowances to their franchisees in the amount of \$30,329,806, which was approximately 14% of MTY USA and its subsidiaries' total recognized revenue in the amount of \$216,655,000.

A subsidiary of MTY USA that earned revenue from purchases of equipment, furniture, menu boards, interior and exterior signage, wall décor and smallwares made by us, our franchisees, and licensees is Neptune Equipment. Neptune Equipment provides the following services: purchases your equipment from various approved manufacturers; provides logistics services by arranging for bundled delivery to you; and assists with warranty support of the equipment purchased. Neptune Equipment charges a markup on the equipment and a handling fee for its services. During our last fiscal year, Neptune Equipment earned a total of \$862,172 of the \$30,329,806 from required franchisee purchases.

Another affiliate of BFAH that earned revenue from required POS help desk phone support maintenance services is Kahala Management. During our last fiscal year, Kahala Management earned a total of \$556,694 of the \$30,329,806 from POS help desk phone support maintenance fees.

An affiliate of BFAH also administers the gift card program. The processing fees received by BFAH's affiliate do not currently cover the costs of the gift card program.

You must also participate in third-party delivery service through Postmates, which is our third-party delivery service provider, if you are in a covered area and able to participate. In addition to Postmates, you may also choose to use another third-party delivery service of your choice. You must utilize our online food ordering service



(including any third-party delivery order integration) and may not use any other store-specific online ordering service. Olo is our current online ordering vendor.

Our Leasing Affiliates do not derive revenue as a result of their leasing activities.

We have not arranged any purchasing or distribution cooperatives among our franchisees.

Effective as of February 22, 2007, BFAH's predecessor, Fresh Enterprises entered into an agreement with Coca-Cola North America FoodService under which Coca Cola products would be exclusively sold in all Baja Fresh Restaurants. Under this arrangement with Coca Cola, BFAH will receive refunds in the future from Coca Cola based on volume discounts received from sales of Coca Cola products by franchisees and BFAH for company-owned Baja Fresh Restaurants.

On a consolidated basis, we and our affiliates receive rebates from certain approved suppliers. During our last fiscal year, MTY USA and its subsidiaries earned a total of \$20,632,205 in rebates during our fiscal year ending November 30, 2021 which represents approximately 9.5% of our total revenue during our fiscal year ending November 30, 2021, which was \$216,655,000. We or our affiliates may in the future continue to receive rebates and/or allowances, usually ranging from between 1% to 5%, from certain suppliers on purchases made by you and other Baja Fresh franchisees.

Except as stated above, none of our revenue was received from purchases of products and services by franchisees during the fiscal year ending November 30, 2021.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

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

Obligation	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
a. Site selection and acquisition/lease	2.1 and 2.2	Preamble	7, 8 and 11
b. Pre-opening purchases/leases	2.2, 3.3, 4.6 and 9.3	Not Applicable	5, 7, 8, 10 and 11
c. Site development and other pre-opening requirements	2.3 and 2.4	1.2	7, 8 and 11
d. Initial and ongoing training	4.1, 4.2 and 4.3	Not Applicable	11

Obligation	Article or Section in Franchise Agreement	Section in Sublease	Disclosure Document Item
e. Opening	3.1 (Note 1)	Not Applicable	11
f. Fees	5	3, 4, 5 and 18	5, 6, 7 and 10
g. Compliance with standards and policies/ confidential manual	1.4, 3.2, 4.5 and 9	Not Applicable	8, 11 and 14
h. Trademarks and proprietary information	6 and 7	Not Applicable	13 and 14
i. Restrictions on products/ services offered	2.6, 3.2 and 9.2	6	8 and 16
j. Warranty and customer service requirements	No obligation imposed	Not Applicable	Not applicable
k. Territorial development and sales quotas	No obligation imposed	Not Applicable	Not applicable
l. Ongoing product/service purchases	3.2, 9.2 and 9.3	Not Applicable	8
m. Maintenance, appearance, and remodeling requirements	1.4, 2.3, 12.3 and 13	8	7 and 11
n. Insurance	9.5	12	7
o. Advertising	5.3 and 10	Not Applicable	6, 7 and 11
p. Indemnification	8.2, 8.3, 14.7 and 16.17	2.3, 7, 11 and 16	13 and 14
q. Owner's participation/management/ staffing	4.1, 4.2, 4.3, 9.1 and 9.6	Not Applicable	11 and 15
r. Records and reports	5.2, 5.6 and 11.1	3	6 and 11
s. Inspections and audits	4.3, 4.4, 5.18, 9.7 and 11.2	3.3 and 13	6 and 11
t. Transfer	12	9	6, 16 and 17
u. Renewal	13	2.2	6, 16 and 17
v. Post-termination obligations	14.5	Not Applicable	17
w. Non-competition covenants	14.6	Not Applicable	15 and 17
x. Dispute resolution	16.3	Not Applicable	17
y. Other			
Personal Acceptance; Personal and Spousal Guarantees; Non-Disclosure and Non-Competition	9.8; Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8; and Guaranty of Franchise Agreement; and Non-Disclosure and Non-Competition Agreement	Guaranty of Sublease	10, 15

Note 1: Not applicable for renewal Franchise Agreements.

## ITEM 10 FINANCING

We do not offer any direct or indirect financing or financing arrangement, nor will we guaranty your obligations under any note or other obligation, except potentially for the lease for your site or if you purchase a restaurant corporate-owned “as-is” by one of our affiliates, and only in our sole and absolute discretion.

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement (**Exhibit F-1**: Guaranty of Franchise Agreement) and a Non-Disclosure and Non-Competition Agreement (**Exhibit F-2**: Non-Disclosure and Non-Competition Agreement) at the same time that you sign the Franchise Agreement unless your spouse is also signing the agreement as an individual. If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement, and their respective spouses must execute and deliver to us a Non-Disclosure and Non-Competition Agreement, at the same time that you sign this Agreement. In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or the holder of any class of your stock or ownership interests or a spouse of such holder, at any time after the execution of such agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us as appropriate.

If, in order to obtain the lease agreement for the site of your Baja Fresh Restaurant, the landlord requires you to obtain a third party lease guaranty, and we or one of our affiliates agrees to serve as such guarantor (with such determination to be made in our sole and absolute discretion), you will pay to us a lease guaranty fee in the amount of 10% of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum payment of \$10,000. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married) must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and each of their respective spouses, if married) must personally guarantee the debt. Once paid, the lease guaranty fee is non-refundable under all circumstances. We do not offer financing for the lease guaranty fee as it is payable in full upon the execution of the guaranty. Neither we, nor any of our affiliates, are required to serve as a guarantor of your lease for the site of your restaurant. The decision of whether to serve as a guarantor of your lease shall be made at our sole and absolute discretion.

If you purchase a corporate restaurant “as-is” that is owned and operated by one of our affiliates, we may finance up to 100% of the purchase price, at our sole discretion. When you purchase a corporate-owned restaurant from one of our affiliates, you will enter into an “Asset Purchase Agreement” (See **Exhibit D**). If you finance any portion of the purchase price of the corporate-owned restaurant through Kahala Holdings, LLC (“Kahala Holdings”) or Kahala Restaurants, you will also enter into a “Promissory Note and Security Agreement” and a “Guaranty,” which are exhibits to the Asset Purchase Agreement. The purchase price may include the initial franchise fee, any transferrable furniture, fixtures, and equipment, the leasehold and/or any transferable leasehold improvements that are located in the restaurant at the time of purchase, along with any inventory in the restaurant at the time of purchase. The lender providing the financing is one of our affiliates, Kahala Holdings or Kahala Restaurants,

whichever entity owns the restaurant. The annual rate of interest charged will be between 0% and 12% and will depend on the creditworthiness of the franchisee, the amount being financed, and the dollar amount being paid up-front by the franchisee. There are no finance charges associated with the Promissory Note and Security Agreement. The amount being financed will be required to be re-paid in equal monthly installments and the period of repayment will be between 12 months and 60 months, depending on the amount being financed. The security interest required by us is a first position lien on all equipment. If the franchisee is an individual, the individual franchisee (and his/her spouse, if married), must personally guarantee the debt. If the franchisee is a corporation, limited liability company, partnership, or other entity, each of the principals of the entity (and their respective spouses, if married) must personally guarantee the debt. The Promissory Note and Security Agreement may be pre-paid in full or in part at any time and from time to time without penalty. The franchisee's potential liabilities upon default include: (i) an accelerated obligation to pay the entire amount due, including but not limited to all accrued and unpaid interest, if the default is not cured within seven calendar days; and the interest rate will be increased to an annual rate of 18%; (ii) obligation to pay costs and attorneys' fees incurred in collecting the debt; (iii) termination of the franchise; and (iv) liabilities from cross defaults resulting from non-payment or from the loss of business property on franchisee's other restaurants named in the Promissory Note and Security Agreement and granting either Kahala Holdings or Kahala Restaurants the right to take back the restaurant(s). The Promissory Note and Security Agreement requires franchisees to waive the following legal rights: demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of the promissory note; any release or discharge by reason of any release or substitution of, or other change in, any security given for the indebtedness or the obligation of any person or entity who may become directly or indirectly liable for the note or any extension or other modification of the note; and rights to contest or appeal our exercise of the take back rights and not receiving compensation for the restaurant after the take back rights have been exercised. The Promissory Note and Security Agreement also bars the franchisee's right to contest the take back rights.

We require a first lien position in all equipment as a security interest to be given by the franchisee. We do not intend to sell, assign or discount to a third party any financing arrangement. We do not arrange financing from other sources; therefore, we do not receive direct or indirect payments from placing financing.

The lease for a corporate restaurant is entered into by one of our affiliates. When you purchase the corporate restaurant, you will in our sole discretion enter into a direct lease with the landlord or a Sublease with our affiliate using our standard form of Sublease where you pay all monies owing under the Master Lease directly to the property owner, or our standard form of Sublease in which you pay all monies owing under the Master Lease to our affiliate and the affiliate will pay the property owner, which are exhibits to the Asset Purchase Agreement. The Sublease will contain substantially the same terms as the Master Lease. The term of the Sublease will be for the entire term of the Master Lease, less one day. If you are an individual, you (and your spouse, if married) must sign the Guaranty of Sublease. If you are a corporation, limited liability company, partnership or other business entity, each of your shareholders, members, partners or other owners (and their respective spouses, if married) must sign the Guaranty of Sublease.

We will, within 60 days after we receive the proposed Master Lease (and additional materials required by us), review the Master Lease to make sure it meets our minimum site requirements.

Upon submission of a proposed Master Lease, you must provide us with any additional documentation and information that we may require regarding the proposed site, the proposed lease, your financial condition and your Principals' financial condition. If we determine that you do not have the financial capacity to perform your obligations with respect to the site or the Master Lease, we may deny approval of the site and/or Master Lease. That disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a Baja Fresh Restaurant at that site.

We or our affiliates may, in our sole discretion, lease the site approved by us for your Baja Fresh Restaurant and sublease the site to you. In addition, if and when you sign the Sublease, you must pay to us an amount equal to two months base rent under the Master Lease, plus a security deposit in an amount equal to the security deposit required under the Master Lease. (We reserve the right, however, to require a greater security deposit, based upon your creditworthiness.)

Please note, if you intend to lease the site of your Restaurant, the lease must include certain required provisions (See **Exhibit L**: Required Lease Terms; **Exhibit E**: Franchise Agreement – Section 2.2).

## ITEM 11

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

**Except as disclosed below, BFAH is not required to provide you with any assistance.**

Currently, there are no Baja Fresh Area Representatives. However, if the area in which your Baja Fresh Restaurant is located is ever subject to an area representative agreement, the Area Representative in that area may be responsible for providing to you some or all of the services required to be provided by us, other than new owner training. However, Area Representatives are not authorized to make promises or agreements on our behalf or to agree to modifications to your Franchise Agreement or other agreements relating to your Franchised Business.

#### **Pre-Opening Assistance**

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

#### **Site Selection**

You will either: (i) lease or purchase the premises for your Baja Fresh Restaurant directly from a third party; or (ii) one of our Leasing Affiliates will lease or license the premises where you will locate your restaurant, and will provide you with a Sublease or sublicense of the premises, as applicable. You must select, and we must approve, an acceptable location that you open within one year after the effective date of the Franchise Agreement. The lease or purchase agreement will be subject to our prior approval, and you must provide us with a copy of the lease or purchase agreement at least 30 days prior to execution. We will notify you if we do not approve the site within 30 days of receiving your site selection information. We will not unreasonably withhold our approval of the location. The location must be within a geographic area identified in Section 1.1 of the Franchise Agreement. The factors that we will consider in approving your proposed location include, among other things: occupancy costs, proximity to major retail activity and other Baja Fresh Restaurants, sign visibility, traffic volume and speeds,

parking availability, neighborhood economic profile, population density, accessibility, competition and other tenants in the shopping center, mall, or applicable retail structure. If you cannot secure a location acceptable to us and open it within one year after the effective date of the Franchise Agreement, we may terminate your Franchise Agreement after giving you written notice (See **Exhibit E-1**: Franchise Agreement (New) —Section 2.1). The decision to establish and operate your Baja Fresh Restaurant at the location will be made solely by you, without any reliance upon any information provided (if any), recommendation made (if any) or approval given (if any) by us, any Area Representative or any of our or their respective shareholders, directors, officers, employees, representatives, agents or affiliates. You must purchase or lease your business location from independent third parties. If you intend to lease your business location, the lease must include certain required provisions (See **Exhibit L**: Required Lease Terms; **Exhibit E**: Franchise Agreement—Section 2.2).

If we determine that you do not have the financial capacity to perform your obligations with respect to the location or the Master Lease, we may deny approval of the location and/or Master Lease. Our disapproval will be deemed to be reasonable. In that event, we or our affiliates or franchisees may operate a Baja Fresh Restaurant at that site.

### **Construction and Furnishings**

You must, at your sole cost and expense, use a third-party design architect (“Design Architect”) approved by us to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Baja Fresh Restaurant. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications (“Plans”) for your Baja Fresh Restaurant. We will provide you with a copy of the Plans upon our approval of the Plans. (See **Exhibit E**: Franchise Agreement—Section 2.3). You are solely responsible for conforming the premises to all codes and ordinances, including the Americans with Disabilities Act (the “**ADA**”), and obtaining all required permits. You are solely responsible for constructing or remodeling and decorating the location to our system standards and subject to our approval. We do not provide assistance with conforming the premises to codes and ordinances, including the ADA, obtaining permits, or constructing, remodeling or decorating your Baja Fresh Restaurant. You must provide us with one (1) copy of the Plans for your Baja Fresh Restaurant within 30 days after selection of the site. We will then have 30 days to approve or disapprove of the plans. We must approve any and all changes or revisions to the Plans required for your site before you begin construction. Our approval of the Plans is solely for complying with our system standards, and not for determining compliance with codes, ordinances, the ADA, or any lease-specific requirements.

We will identify the furnishings, fixtures, and equipment (including cash registers, point of sale systems, and computer hardware and software), signs, products, materials, and supplies necessary or authorized for the restaurant to begin operation (See **Exhibit E**: Franchise Agreement—Sections 2.4, 3.2, 3.3, 4.5, 4.6, and 9.3).

We will provide you with all standards of operation that you must use or satisfy before you open the restaurant (See **Exhibit E**: Franchise Agreement—Sections 4.5 and 9.1).

We will provide you with the names and contact information of any distributors and/or suppliers you are required or authorized to use to supply you with products or services complying with our standards and specifications. The names and contact information of the approved distributors and suppliers and the written specifications for the approved equipment,

signs, fixtures, opening inventory and supplies will be provided to you during the pre-opening and/or construction phase for your Franchised Business. Updates will be provided to you as changes are made (i.e., additions and deletions) to the list of approved distributors for our approved suppliers. We do not deliver or install any of these approved items (See **Exhibit E**: Franchise Agreement—Section 9.3).

### **Confidential Operations Manual**

We will provide you, as part of the Confidential Manual, an electronic or print version of the Operations Manual with operating procedures to assist you in complying with our standard methods of record keeping, controls and production methods, and with policies procedures and resources to support brand consistency and compliance. The Operations Manual is 278 pages. The Operations Manual is confidential and remains our property. We may modify the Operations Manual as and when we desire, but no modification will materially alter your status and rights under the Franchise Agreement (See **Exhibit E**: Franchise Agreement—Section 4.5). The Table of Contents of the Operations Manual is attached to this Disclosure Document as Exhibit T.

### **Time to Open**

The typical length of time between the earlier of the signing of the Franchise Agreement or the first payment of consideration for the franchise and the opening of the Franchised Business is 4 to 12 months for both a traditional and non-traditional Baja Fresh restaurant. The factors that may affect this time are: lease or purchase negotiations; zoning procedures; financing applications; local ordinances and approvals; obtaining licenses and permits; construction delays; weather conditions; shortages; delayed installation of equipment, fixtures and signs; development or construction not in accordance with our requirements; labor disputes; Acts of God; and other reasons.

### **Training**

1. We will make a Training Program available to you and your designated representative after you sign the Franchise Agreement. The following Table indicates the general subject matter, the number of hours of classroom training, and the number of hours of on-the-job training for each subject to be covered during the Training Program, and the location of the training. Our instructors have been adequately trained in the ownership and operation of a Baja Fresh franchise, including having, at a minimum, completed the entire Baja Fresh Training Program, and having experience in training each of the subjects listed in the table below, with some trainers having five years' experience or more in training some of the subjects. Other personnel involved with on-the-job training of franchisees are Franchise Directors of Operation, all who have more than one year experience with on-the-job training. During the classroom portion of the Training Program, New Owner Training will be taught using the following instructional materials: manuals, videos, and tests. You and anyone taking In-store training (including employees of franchisees) must: sign the In-Store Training Release and Waiver of Liability Agreement (see Exhibit J). In-store training will be taught in a Baja Fresh restaurant using the following instructional materials: manuals, job aids and tests. Certain portions of the entire Training Program may be adjusted as necessary as determined by us and based upon your skill sets. Further, substitute instructors may present certain portions of the Training Program.

### **INITIAL TRAINING PROGRAM**

SUBJECTS	HOURS OF CLASSROOM TRAINING	HOURS OF THE TRAINING ON JOB	LOCATION
New Owner Training	40		Online, KTEC (Kahala Training & Education Center) in Scottsdale, AZ, or at such other location designated by us
In-Store Training		240	Training restaurant in Arizona or such other location designated by us

2. The training of two individuals is included in the Initial Franchise Fee. You or another partner, shareholder or member of your business organization must have successfully completed our Training Program to our satisfaction. Your manager, at your sole discretion, may be one of the two individuals you bring to training, or you may bring your manager in addition to the two individuals and pay the Additional Persons Training Fee. You and your restaurant managers must be able to read and write English adequately, in our good faith opinion, to satisfactorily complete our Training Program and to communicate with employees, customers and suppliers. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its managers(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards. Please note, at our sole discretion, the Training Program for a non-traditional Baja Fresh may differ slightly from the Training Program outlined above (See Exhibit H: Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand.))

3. The classroom portion of the Training Program will be held online, at KTEC, which is located at our corporate offices in Scottsdale, Arizona, or at such other location(s) as we designate in our sole discretion and the in-store portion of the Training Program will be held at one of our affiliated restaurants in the metropolitan Phoenix, Arizona area, or at such other location(s) as we may designate in our sole discretion. You will need to arrange for transportation (such as flights and car rental), food, and lodging for you and your designated attendee. The costs you incur will depend on factors such as the distance you must travel, the type of accommodations you choose and the time of year you attend training. The estimated cost for travel and living expenses for two persons while training, not including salaries, if any, ranges from \$3,000 to \$7,500 (See **Exhibit E**: Franchise Agreement—Sections 4.1 and 9.6).

4. You must complete the Training Program no more than three months and no less than one day prior to the opening of your Baja Fresh Restaurant. The New Owner Training will be conducted once a month. The In-Store Training portions of the Training Program are scheduled as needed and determined by the Franchisor. BFAH does not currently require you to attend additional training courses or refresher courses. However, if you would like additional training after completing the Training Program, we will provide additional training to you at a cost of \$300 per person per day. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its managers(s) to attend additional in-store training in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.



5. In addition to the Training Program, you must ensure that all of your employees are trained in Baja Fresh restaurant procedures. You are solely responsible for hiring and training your employees. You must also ensure that the manager(s) and all employees whose duties include customer service are able to speak and read English and any other language that may be required to adequately meet the public needs in your restaurant. We believe training is important to the success of the Baja Fresh System, and from time to time, we may offer informal training sessions to franchisees. We believe it is in your best interest to attend any such training sessions.

6. We will provide one of our representatives to come to your restaurant during opening week for up to five days at our expense to work with you and your manager on your grand opening, and on operating and marketing your restaurant. We may, in the future, hold refresher or additional training programs, conferences and seminars. Your attendance at these programs is mandatory. To help us defray the cost of sponsoring these programs, there may be a nominal registration fee, and you will also be required to pay the cost of transportation, food, lodging and other personal expenses of your attendance and those of your personnel at any such program. These programs will be held at locations within the United States that we will specify in our sole discretion (See Exhibit E: Franchise Agreement—Section 4.3).

### **Post-Opening Assistance**

During the operation of the Franchised Business:

If you are opening a new restaurant, we will assist you in coordinating a grand opening promotional advertising program or such other advertising program as we may specify (See Exhibit E: Franchise Agreement—Sections 5.24 and 10.2).

We will maintain a continuing advisory relationship with you, including consulting with you in marketing, merchandising and general business operations which may help you in improving and developing your restaurant (See Exhibit E: Franchise Agreement – Sections 4.3, 9.1).

We will provide you with information on our operating and other standards for your restaurant. We may modify these as, and when, we desire (See Exhibit E: Franchise Agreement – Sections 4.5, 9.1).

We will continue our efforts to maintain high and uniform standards of quality, cleanliness, appearance and service at all restaurants in the System, including making periodic inspections and quality service checks of your restaurant (See Exhibit E: Franchise Agreement – Section 4.3, 9.1, and 9.7).

We may make you aware of software available for purchase from an approved third party vendor to assist you in administrative, bookkeeping, accounting, and inventory control procedures (See Exhibit E: Franchise Agreement – Section 4.6).

We must review substitute locations for your restaurant and you must obtain our prior approval if you desire to relocate your restaurant. (See Exhibit E: Franchise Agreement – Section 2.5).

We may offer you the option for a one-time renewal of your Franchise Agreement prior to its expiration for a maximum term of five years, if you meet our requirements. Upon renewal, you must execute our form of Franchise Agreement being used at the time of your renewal and pay us the applicable Renewal Franchise Fee (See **Exhibit E-1**: Franchise Agreement (New) – Article 13; **Exhibit E-3**: Franchise Agreement (Transfer) – Article 13).

### **Optional Assistance**

Upon your request, we will reasonably assist you or provide recommendations regarding establishing pricing for the products you sell in your restaurant; however, the ultimate decision on the prices you charge is yours. We will not establish the prices for you.

Upon your request, we will reasonably assist you in resolving operating problems you may encounter.

### **Advertising**

We (or, at our election, a third party that may be an affiliate of ours) will establish and administer the Fund (that will include your Advertising Fees and those of other franchise owners in the System, in accordance with the Franchise Agreement. The Advertising Fee, which is a percentage of your weekly Gross Sales (See **Exhibit E**: Franchise Agreement – Section 5.3), shall be due and payable with the Royalty Fee (See **Exhibit E**: Franchise Agreement – Section 5.2). Except in limited circumstances as described below, all Baja Fresh franchisees must contribute to the Fund at the same rate, which is currently three percent (3%) of your weekly Gross Sales to the National Fund. In limited cases in our sole discretion (for example, certain international restaurants or non-traditional restaurants such as airport or university locations that require different advertising support), some stores may not be obligated to contribute to the Fund. If an affiliate of ours administers the Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third parties for comparable services. For each of our company-owned or affiliate-owned restaurants, it's our policy that such restaurants make contributions to the Fund at a rate equal to the lowest rate a franchisee is then-required to contribute. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Fund, and the monies comprising the Fund may be placed in our general account(s) if we desire. We may also reserve portions of the Fund for use in a subsequent year. The Fund is not audited, and the financial statements for the Fund and accounting of the Fund are not available to franchisees.

The Fund will be used for marketing, advertising, production and media expenses to promote the Baja Fresh name, System, products and services. The Fund may be used to pay any and all costs of maintaining, administering, directing and preparing advertising, including the cost of preparing and conducting television, radio, magazine, digital, and newspaper advertising campaigns and other public relations activities, employing advertising agencies to assist in such campaigns or other activities, and providing promotional brochures and other marketing materials to franchise owners. We are entitled to receive the following from the Fund: reimbursement of our expenses, overhead, and employee salaries for services, materials, supplies, facilities, equipment or capital provided to the Fund, and rent for office space provided to the Fund. Advertising funds not spent in the fiscal year in which they accrue are rolled over to the next fiscal year. We have no fiduciary responsibility to you on our management of the Fund, and no obligation to you to spend the Fund in your market area and/or in your Cooperative area, if applicable.

We, or our designee, will direct all advertising programs to be undertaken through the use of the Fund. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. Advertisements generally will be in print, digital, and broadcast media, initially with local coverage. We are not required to use any specific amounts from the Fund in your market. However, we in our sole discretion may use some amounts contributed by you to any approved Regional Fund, if any, in the same geographic area in which your restaurant is located. We may use an outside advertising agency to create and place advertising or we may use our in-house marketing department. The Fund will be used to create new marketing material and promote the products and services offered by Baja Fresh restaurants.

Advertising Fund expenditures during our most recent fiscal year ending November 30, 2021 fell into the following categories:

Production	3.3%
Media Placement	72.7%
Administrative	18.8%
Other	5.2%
TOTAL	100%

The “other” expenses included public relations, research, concept development and communications. None of the Fund was used for the solicitation of franchises.

Unless your Baja Fresh restaurant is located in an enclosed shopping mall or other enclosed structure identified in Section 1.1 of the Franchise Agreement, you will be required to insert a regular (white pages) listing and a classified (yellow pages) telephone directory advertisement in the main telephone directories serving the geographical area in which the Franchised Business is located, or you must participate in a multiple insertion in the event there is more than one franchise owner in such area. In either case, the telephone directory advertisement must be approved by us in advance (See **Exhibit E**: Franchise Agreement—Section 10.2).

In addition to contributions to the Fund and the telephone directory advertisements, if applicable, described above, we strongly recommend that you spend not less than 2% of your monthly Gross Sales on local advertising.

All advertising by you in any medium must be conducted in a professional manner, must conform to the standards and requirements in our Confidential Manual, and must display our Proprietary Marks only in those forms approved by us. We may make available to you, from time to time, approved advertising, promotional plans and materials for purchase (See **Exhibit E**: Franchise Agreement—Sections 3.2 and 10.2).

You may not maintain a web site, software application, an App (application), social media account (including, but not limited to, an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network in connection with the Franchised Business without our prior written approval (See **Exhibit E**: Franchise Agreement – Section 3.4).

We will not prevent the formation of franchisee cooperatives. Currently, there are no regional or national marketing cooperatives for Baja Fresh franchisees. We encourage our franchisees to form and operate Cooperatives. If a Cooperative is formed for your region, you must financially contribute to the Cooperative, as required by us. Failure to do so will be deemed a breach of the Franchise Agreement and you may also, in Franchisor's sole discretion, lose your right to vote as to Cooperative matters. The membership of the Cooperative would be defined by us according to your market area. We reserve the right at any time, in our sole discretion, to form, change, dissolve, or merge Cooperatives.

Currently, there is no advertising council composed of Baja Fresh franchisees that advises us on advertising policies.

### **Computer System**

1. We require you to exclusively use an approved electronic point-of-sale system to record all your sales during the operation of your restaurant, the components of which are identified in the Confidential Manual ("**POS System**"). Prior to the opening of your restaurant, you will be required to acquire and to exclusively use an approved cash register/computer system during the operation of the Franchised Business. We require that the manufacturer or its authorized representative on an ongoing basis service the POS System, at your cost. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the term of your Franchise Agreement as we may require from time to time. There are no contractual limitations on the frequency or cost for the franchisee to upgrade or update the POS System during the term of the Franchise Agreement. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. Your POS System cost per restaurant will depend, among other things, on your restaurant's size and configuration, the system options you choose and/or we determine (such as drive-thru needs (if any), and printer needs), and the types of telephone and internet access services available. You may be required to obtain a high-speed/always-on internet connection service for your POS System. This requirement shall be defined by the then-current Confidential Manual, which may change from time to time. If high-speed/always-on internet connection service is not available in your area, dial-up Internet access may be used until high-speed/always-on internet connection service becomes available in your area. You may be required, from time to time, to upgrade the POS System's hardware and/or software, at your sole cost and expense, in order to maintain the POS System in conformity with our then current requirements. You must complete training for the POS System as we require. If you are buying an existing restaurant with an older cash register system, it is a requirement for the transfer that you purchase and install the then current POS System in the restaurant. (See **Exhibit E**: Franchise Agreement – Section 4.6).

a. We require you to use a POS System that meets our specifications in order to: (i) assist you in the operation of your Baja Fresh Restaurant; (ii) allow us to monitor your gross sales; (iii) enable us to develop chain-wide statistics that may improve purchasing; (iv) assist us in the development of new authorized products or the removal of existing unsuccessful authorized products; (v) enable us to refine existing authorized products; (vi) generally improve system-wide understanding of our marketing efforts; and (vii) obtain new types of information. The POS System must be configured so that we have independent and remote access to the information and data stored in it. This access allows us to exchange/collect data and other information on such basis as we shall from time to time communicate to you. There are no

contractual limitations on our right to access the information in your POS System. All approved cash registers are capable of recording accumulated sales and cannot be turned back or reset, and must be able to retain data in the event of power loss. You must purchase the approved electronic POS System from an approved vendor, as we have required our approved supplier to make special modifications to their equipment and systems to comply with our requirements (See **Exhibit E**: Franchise Agreement – Section 4.6). You must also purchase approved software for your restaurant. The cost of purchasing the POS System, including the software, ranges from \$4,760 to \$20,000. You must also purchase from us POS Help Desk Phone Support Maintenance on both the software and hardware for your POS System, the cost of which will not exceed \$55 per month. It is recommended that you also purchase hardware support for all modules for the first year you operate your Baja Fresh Restaurant. The cost is approximately \$150 to \$1,300 per year depending on the equipment installed. This cost is subject to change by the supplier.

b. The approved POS System has in its specifications integrated “card swipe” systems that process debit card, credit card, or other non-cash payment systems including our stored value gift cards, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and/or payment programs (collectively, the “**Gift/Loyalty Card**”) sponsored by us or our affiliates. You must obtain gift card processing services, and for online ordering only, credit and debit card processing, from our approved vendors. The charges associated with credit card and gift card transactions are compiled per transaction and therefore will vary from restaurant to restaurant. We estimate that the costs associated with credit card transactions will be between 1% and 4% of your gross sales. Gift card transactions will cost you 11% of the gift card redemption, subject to increase based on program costs. The Payment Card Industry (“**PCI**”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“**PCI DSS**”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, completing an annual questionnaire and quarterly network PCI scans and installing a network firewall appliance for logging, tracking, reporting, and security assessment. The PCI compliance is mandated by the Payment Card Industry. The cost for the quarterly network security scans, network firewall appliance and annual questionnaire ranges from \$150 to \$1,300 per year. The cost is subject to change by supplier. You are also required to validate with BFAH that your store is PCI compliant to show validation you must send BFAH your Passing Certificate showing your store is PCI compliant and also verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity.

c. You must purchase a computer and connect to the Internet so that you can report your gross sales online, so that you can receive online orders, so that we can communicate by email, so that you can use Internet and Extranet services, and so that you can receive other electronic information we send. You also must, at your cost, maintain membership in a designated third party network, and maintain an active email account. We may revise our computer specifications. If we do so, we may require you to upgrade or update your computer, including but not limited to your operating system. There is no contractual limitation on the frequency and cost of this obligation. There may be comparable equivalents on the market for the computer we require, but we have not yet tested or approved any comparable computer; however, we may do so in the future. You are responsible for backing up and otherwise protecting your data on your computer. You are also responsible for recording and restoring all software license keys. We may require you to upgrade the hardware and software as reasonably necessary to provide reports and information required by us. All Baja Fresh franchisees of traditional restaurants are required to participate in the online ordering program. The fee structure for fees

paid to the supplier of the website service is two tiered. The first tier of fees paid by franchisees to the website service provider is 10% of the online transaction. Once monthly sales for the prior three months exceed \$1,500, franchisees are moved permanently into the second tier and pay a flat fee of \$60 per month for unlimited online transactions. Franchisees also have the option of moving directly to the flat monthly fee of \$60 if they pay a \$250 start-up fee to the website service provider.

2. We require that you permit us to poll your sales information on a daily basis, and that you execute a Pre-Authorized Electronic Funds Transfer Form by and payable to BFAH (which is attached to this Disclosure Document as **Exhibit P**), permitting us to weekly debit your account for payment of weekly royalty and advertising fees and debit your account as necessary for product purchases from us or our affiliates. (See **Exhibit E**: Franchise Agreement – Sections 5.2 and 5.3). We may require you to enter weekly inventory information, and if so, would require that you permit us have remote access to that information (See **Exhibit E**: Franchise Agreement – Section 4.6). We may require you to permit us access to your POS System, restaurant management software, and financial records (or similar tools thereto) to poll your information daily, or more frequently, by electronic or other remote means (See **Exhibit E**: Franchise Agreement – Section 5.2).

3. The POS System and personal computers contain sales and labor data that can be generated and stored in the systems and that allows for the generation of financial and payroll reports.

## **ITEM 12 TERRITORY**

The franchise is granted only for the location specified in the Franchise Agreement or a location to be approved by us. The specific site of your Baja Fresh Restaurant is subject to our approval. We will not unreasonably withhold our approval of the location.

You will not receive an exclusive territory. You may face competition from other franchisees, from restaurants that we own, or from other channels of distribution or competitive brands that we control. You will not receive an option, right of first refusal or other rights under the Franchise Agreement to acquire additional franchises. We (and/or our affiliates) may establish other franchised or company-owned Baja Fresh Restaurants that may compete with your location, including across the street from your location or in the same venue as your location. We (and/or our affiliates) may co-brand Baja Fresh with one or more of our other quick service restaurants or allow approved Baja Fresh stores to sell additional approved menu items under a trademark license agreement we may have with other third-party restaurant concepts. We presently intend to develop Baja Fresh Restaurants throughout the United States and internationally. Except as expressly limited in the Franchise Agreement, we (for ourselves, our affiliates and our designees) retain all rights with respect to Baja Fresh Restaurants, the service Marks, all confidential and proprietary information, all copyrighted materials and the sale of Baja Fresh products anywhere in the world, including, without limitation, the right to implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs. One or more future Baja Fresh restaurants may have an adverse effect on the revenues and profitability of existing *Baja Fresh* restaurants, including your Baja Fresh Restaurant.

In addition, we (and/or our affiliates) may market and/or test, directly or indirectly, Baja Fresh products or services through channels of distribution other than Baja Fresh restaurants operated by us, our affiliates and franchisees, including through the Internet, catalog sales, telemarketing, grocery stores, movie theaters, limited access highway food facilities, mobile units, off-site sales accounts, electronic mail, converting other chains and other distribution opportunities, or vending machines and similar automated dispensing systems (“**Other Channels**”) which generally are not available for us to franchise to you, and typically involve trademark licensing and/or the sale of our branded products. We may also distribute, sell and/or license other persons or entities to distribute and/or sell products through all Other Channels. Where tests prove to be successful, we may expand our sale of products in similar businesses on a regional, national or international level. We reserve the right to establish Other Channels to make sales that may compete with your location using our principal trademarks. These Other Channels could compete with you in the sale of your products. BFAH is under no obligation to compensate its franchisees on sales BFAH makes using Other Channels. BFAH is under no obligation to compensate franchisees for soliciting or accepting orders in the franchisee’s territory as the franchisee is granted no exclusive territory. Franchisees may not use Other Channels, including the Internet, catalog sales or telemarketing to make sales except that the Franchisee may provide catering services anywhere as long as such services comply with the current version of our Confidential Manual. All sales made from catering services must be included in the franchisee’s Gross Sales. We reserve the right, directly or through third parties, to manufacture or sell, or both, anywhere, other products which are the same as or similar to those sold in Baja Fresh restaurants, but which bear trademarks that are not confusingly similar to any of the trademarks you are authorized to use under the Franchise Agreement.

We reserve the right, either directly or through affiliated entities, to operate or license others to operate businesses other than Baja Fresh restaurants anywhere, including, but not limited to, locations of our other quick service restaurant concepts, and you agree that we or our affiliates may do so anywhere. We reserve the right, directly or through third parties, to manufacture or sell, or both, anywhere, other products which are the same as or similar to those sold in Baja Fresh restaurants, but which bear trademarks that are not confusingly similar to any of the trademarks you are authorized to use under the Franchise Agreement.

We may merge with, acquire and/or be acquired by any other business, including, without limitation, a business that competes with your Baja Fresh Restaurant, or acquire and convert any retail stores, including, without limitation, retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned.

The Mucho Burrito, TacoTime, La Salsa and America’s Taco Shop restaurant concepts franchised or operated by affiliates of BFAH offer goods and services that are the same or similar to those that you will offer under the Baja Fresh brand. Those goods and services are offered under the Mucho Burrito, TacoTime, La Salsa and America’s Taco Shop trademarks. Mucho Burrito, TacoTime, La Salsa and America’s Taco Shop franchisees are not granted an exclusive territory and any conflicts that may arise between a Mucho Burrito, Taco Time, La Salsa or an America’s Taco Shop franchisee and a Baja Fresh franchisee regarding territory or franchisor support that cannot be resolved through negotiation between the parties will be resolved through mediation and arbitration.

You must obtain our prior approval to relocate your Baja Fresh Restaurant. The approval or rejection by us of any proposed relocation shall be in our sole discretion. In order to


relocate your restaurant, you must be in compliance with your Franchise Agreement, the relocation must be for a legitimate business reason, and we must approve the new location. In connection with any relocation, your Baja Fresh Restaurant may not be closed for business for more than 30 days.

Your Franchise Agreement is for a specific location only, so you may not open additional Baja Fresh restaurants under the same Franchise Agreement. You must obtain our prior approval to purchase and open additional Baja Fresh restaurants. The approval or rejection by us shall be in our sole discretion. In order to purchase an additional Baja Fresh Restaurant(s), you must be in compliance with your existing Franchise Agreement(s), you must qualify to operate additional restaurants, you must enter into our then-current form of Franchise Agreement and pay the initial franchise fee, and we must approve the location.

### ITEM 13 TRADEMARKS

As a Franchisee, you are licensed to use and display the trade name Baja Fresh®, the marks using it, and the mark Baja Fresh® for the duration of the Franchise Agreement only for the operation of the Restaurant and the sale from it of products described on Baja Fresh’s standard menu. You may not license or sublicense any trademarks, service marks, trade names, logotypes or commercial symbols owned by us or our affiliates.

We or our affiliates are the owner of all rights, titles and interests in the trade names, trademarks (the “**Marks**”) and service marks and have received registration of the following marks in the U.S. Patent and Trademark Office (“**USPTO**”):

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
	2750373	August 12, 2003
BAJA FRESH EXPRESS	3573389	February 10, 2009
BAJA FRESH	2301436	December 21, 1999

Some of our trademarks are only registered on the Supplemental Register. Therefore, those trademarks do not have as many legal benefits and rights as a federally registered trademark. If our right to use any of those trademarks is challenged, you may have to change to an alternative trademark, which may increase your expenses.



We also claim common law rights to the trade and service marks we license to you. We or our affiliates have filed all required affidavits.

There are no agreements currently in effect or contemplated which would significantly limit our right to use or license the use of its marks in any manner. There are no currently effective material determinations of the Patent and Trademark Office, Trademark Trial and Appeal Board, the trademark administrator of any state or any court, or any opposition or cancellation proceeding, or any pending litigation involving the trade name Baja Fresh® or the licensed marks. There are no agreements currently in effect that significantly limit our rights to use or license the use of the principal trademarks that are material to the franchise, nor are there any prior superior rights or infringing uses actually known to us that could materially affect your use of the licensed trade name, trademarks, or service marks. We have not, however, conducted an exhaustive search of users of names which may be the same or similar to our marks. Although we are not aware of anyone other than our Affiliates or franchisees who are using “**Baja Fresh Mexican Grill**,” as a trademark or service mark, we are aware that some businesses are using “**Baja**” and/or “**Fresh**” as part of a trademark or service mark associated with quick casual restaurants serving fresh Mexican food and we may not be able to prevent their continued use of these words, particularly in cases where their use predates our federal trademark and service mark registrations. There may be similar uses to our marks of which we are unaware, which could arise from prior users.

You must use the trade name Baja Fresh® without any suffix or prefix attached to it to identify the Franchise business. You are prohibited from using our trade name, trademarks, or service marks as part of any corporate name or using the Baja Fresh® trade name with any prefix, suffix, or other modifying words, terms, designs, or symbols. You are obligated to file a fictitious business name statement and do all other things necessary to prevent the use of the Baja Fresh® trade name, trademarks, or service marks by you from diminishing or destroying the legal protection to which they are entitled.

You must notify us of any infringement of, challenge to, or unauthorized use of the licensed name or marks which comes to your attention, including any claim, suit or demand against you. We may take actions we deem appropriate to protect our name or Marks but we are not obligated by the Franchise Agreement to do so.

We are not obligated by the Franchise Agreement to participate in your defense in any administrative or judicial proceeding involving our trade name, trademarks, or service marks or to indemnify you for costs and expenses you incur if you are a party in any action or proceeding involving our trade name or marks. We have the sole right, but no obligation, to control any litigation involving our trade name or marks and to compromise or settle any claim, in our discretion, at our sole cost and expense, using attorneys of our own choosing, and you must cooperate fully in defending any claim, and you may participate at your own expense in the defense or settlement. You may not make any demand against any alleged infringer, prosecute any claim or settle or compromise any claim by a third party without our written consent. You agree in the Franchise Agreement not to contest, directly or indirectly, our ownership, right, title, or interest in its names or marks, or contest the sole right of to register, use, or license others to use those names and marks.

Periodically, in the Manuals or in directives or supplemental bulletins, we may add to, delete, or modify any or all of the marks. You must modify or discontinue the use of a mark, at your expense, if we modify or discontinue it. You must implement any change within 60 days

after notice to you. We will not compensate you for any modification or discontinuation of the Marks.

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

We own proprietary information and rights in numerous items, such as menu formats, advertising designs, processes, techniques, formulae for recipes, the method of production and storage of products and information contained in the Confidential Manual and related documents. In connection with the operation of the franchise, we may disclose to you certain information in which we claim proprietary rights. For example, our Confidential Manual incorporates certain information that we believe is protected under the law of trade secrets, including sales and marketing techniques and restaurant operations. In addition, although we have not registered the copyright with the United States Copyright Office, the Confidential Manual is protected against unauthorized copying under United States Copyright laws for 100 years from the date of creation or 75 years from the date of publication, whichever is shorter. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose it to any person, or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us the “**Confidentiality Agreement**” included in the Confidential Manual, and you may only use this information as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

No agreements limit our right to use or license the use of our statutory copyright of the O Confidential Manual.

If you reproduce any items or materials suitable for copyright protection, you must make sure that each item bears a copyright notice in the form specified by us. You must use the proprietary information only in the manner required by us and in no other manner. This information is strictly confidential and you may not disclose to any person or use any of that information for any purpose, except disclosure to a person who has signed and delivered to us a confidentiality agreement, and use as necessary in connection with the operation of your Franchised Business. In addition, you must fully and strictly comply with all security measures required by us for maintaining the confidentiality of all information designated by us as trade secrets.

You will not have the exclusive right to use the innovations or any of our patents or patent applications, copyrights or proprietary information, nor will you acquire, by use or otherwise, any right, title or interest in or to the innovations, the copyrights or the proprietary information, other than as expressly contained in, and limited by, the Franchise Agreement. Your right to use the innovations, the claimed subject matter of any patents or patent applications, the copyrights and the proprietary information is limited and temporary. Upon expiration or termination of the Franchise Agreement, you may not, directly or indirectly, use the innovations, the claimed subject matter of any patents or patent applications, the copyrights or the proprietary information in any manner or for any purpose.

You must immediately notify us of any conduct that could constitute infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information. We will decide, in our sole discretion, whether to institute any action in

connection with infringement of or challenge to the innovations, the patents or patent applications, the copyrights and our proprietary information, and will control all proceedings and litigation. The Franchise Agreement does not require us to take affirmative action when notified of infringement, but indicates we have the sole discretion to take such action as we may deem appropriate. We are not required to protect your right to use the innovations, the patents or patent applications, the copyrights and proprietary information. As indicated in the Franchise Agreement, we will indemnify you for all damages for which you are held liable in any lawsuit arising out of your proper use of the innovations, the patents or patent applications, the copyrights and our proprietary information in compliance with the Franchise Agreement.

We may, in our sole discretion, modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place. If we decide to do so, you must do so also, at your expense. The Franchise Agreement does not provide you any additional rights if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information. However, if we require you to modify or discontinue use of the innovations, the patents or patent applications, the copyrights and our proprietary information and/or use other information and/or rights in its place at any time other than upon renewal of the Franchise Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the innovations, the patents or patent applications, the copyrights and the proprietary information infringed upon a third party's rights, we will bear the actual direct and reasonable cost of those modifications or discontinuances. The rights granted in this paragraph are your sole and exclusive remedy for any infringement by any part of the System.

We do not own any rights in any patents that are material to the franchise of your Baja Fresh Restaurant. We have no pending patent applications that are material to the franchise. We do not know of any current material determinations of the United States Patent and Trademark Office, United States Copyright Office, or of any court, nor do we know of any effective determinations or any material proceedings pending in the United States Patent and Trademark Office or of any court regarding the patent application. We do not know of any patent or copyright infringement that could materially affect the franchisee.

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

While the Franchise Agreement does not specifically require you or your principals to personally participate in the direct operation of the franchise, it is our intention to select as Baja Fresh franchisees only those who plan to actively participate in the direct operation and daily affairs of the Baja Fresh Restaurant. The franchise must be personally managed with on-premises supervision and directly operated by you or another partner, shareholder or member of your business organization, or a manager who must have successfully completed the Training Program.

If you are an individual and married, your spouse must: sign the Guaranty of Franchise Agreement in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement (**Exhibit F-1**) and a Non-Disclosure and Non-Competition Agreement (**Exhibit F-2**); if applicable; sign the Guaranty

of Sublease in which your spouse agrees to perform, and guarantees, all of the sublessee's obligations to us and our affiliates contained in the Sublease (**Exhibit O**); and, if you purchase a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which your spouse agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement, and all of the sublessee's obligations to us and our affiliates contained in the Sublease (**Exhibit D**: Guaranty of Promissory Note and Security Agreement and **Exhibit O**: Guaranty of Sublease). Each person, corporation, partnership, limited liability company or other entity that owns, directly or indirectly, an equity interest in the franchised entity ("**Principal**"), and each executive officer must sign the Personal Acceptance attached to the Franchise Agreement ("**Personal Acceptance**") in which the Principal agrees to be bound by the restrictive covenants, the confidentiality provisions and certain other provisions contained in the Franchise Agreement. Each Principal (and his/her spouse, if married) must also: sign the Guaranty of Franchise Agreement in which the Principal (and his/her spouse, if married) agree to perform, and guarantee, all of the franchisee's obligations to us and our affiliates contained in the Franchise Agreement; his/her spouse, if married, sign the Non-disclosure and Non-Competition Agreement; if applicable, sign the Guaranty of Sublease in which the Principal (and his/her spouse, if married) agree to perform, and guarantee, all of the sublessee's obligations to us and our affiliates contained in the Sublease; and if purchasing a corporate restaurant, sign the Guaranty of Promissory Note and Security Agreement and Guaranty of Sublease in which each Principal (and his or her spouse, if married) agrees to perform, and guarantees, all of the franchisee's obligations to us and our affiliates contained in the Promissory Note and Security Agreement and all of the sublessee's obligations to us and our affiliates contained in the Sublease. In the event that any person who has not signed an appropriate guaranty becomes your spouse or the holder of any class or your stock or ownership interests or a spouse of such holder, at any time after the execution of the respective agreement as referenced above, you must cause such person(s) to immediately execute and deliver the required guaranty to us. We are not seeking to license you to operate a Baja Fresh Restaurant if your principals are merely seeking a passive investment.

We strongly recommend that you devote a substantial amount of time to your Baja Fresh Restaurant, whether or not you hire a manager. Franchisees that do not devote their full time efforts to the establishment and operation of their restaurants may have lower gross sales, higher operating costs and lesser name recognition in their areas than those franchisees that do devote their full efforts to the business. Examples of the types of functions that you might perform include training and supervision of employees, inventory checks, review of sales and food costs, local store marketing, bookkeeping, responding to and managing customer feedback, and all reasonable efforts to ensure smooth and efficient operations.

Additionally, you must employ on a full time basis at least one on-premises supervisor ("**Manager**") for the restaurant. The Manager of the restaurant must at all times be a person who meets our criteria as a qualified restaurant operator. The Manager is not required to have an equity interest in the Franchised Business. The Manager must devote his or her entire time during normal business hours to the management, operation and development of the Franchised Business and must maintain the confidentiality of the trade secrets and proprietary information, comply with the use of the proprietary marks, conform with the covenants not to compete, and conform with the operating standards in the Franchise Agreement and Confidential Manual. The Manager is required to sign a Confidentiality Agreement included in the Confidential Manual.

In the interest of safe and efficient job performance, business operation and public health and safety, you must have a Manager on each shift who is able to read and understand our written materials and communicate with your employees and customers in the English language. This requirement will not restrict the Manager or your employees from speaking in any other language with you, other employees or customers, and shall not apply to any employee while on personal time or breaks.

All personnel employed by you in connection with the operation of your Baja Fresh Restaurant must maintain standards of sanitation, cleanliness and demeanor as may be established by us. All personnel must wear a uniform or other clothing approved by us. In addition, you must ensure that all employees whose duties include customer service have sufficient literacy and fluency in the English language (or such other language that is the primary language in your market) to adequately serve the public at your Baja Fresh Restaurant.

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

We require that your business is solely that of a Baja Fresh Restaurant, and you may not conduct any other business or activity at the site of the restaurant without our prior written approval. For traditional Baja Fresh franchises, you must offer the full menu prescribed by us, subject to change from time to time in our sole discretion. Non-traditional Baja Fresh franchises may offer a more limited menu than the traditional Baja Fresh franchises, as detailed in the Confidential Manual. We have the right to require you to sell additional authorized products and services from time to time that we believe will be successful. You will be obligated to offer and sell those new products and to participate in all local, regional, seasonal and promotional programs, initiatives and campaigns adopted by us in which we require you to participate. We reserve the right to designate which of our franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may periodically develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on our right to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns. You may not add any item to your menu unless it is first researched and tested through our research and development center and approved by us in writing. In addition, you may not offer or sell any products or services specified by us in any configuration, form or manner (including items for resale) other than those specifically approved by us. You are prohibited from offering or selling any products or services not authorized or approved by us. You may only use products, materials, ingredients, supplies, paper goods, uniforms, fixtures, furnishings, signs, equipment, POS System, debit and credit card and Gift/Loyalty Card processing service, and methods of product preparation and delivery that meet our requirements as specified in the Confidential Manual.

If we believe in good faith that any product offered by you may be unhealthy, unsafe or unsanitary, and we request that you discard that product, you must do so immediately. In addition, we may require you to close your Baja Fresh Restaurant until we are satisfied that any unhealthy, unsafe or unsanitary condition has been completely corrected.

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

**THE FRANCHISE RELATIONSHIP**

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

<b>Provision</b>	<b>Section in Franchise Agreement</b>	<b>Summary</b>
a. Length of the Term of the Franchise	Section 1.3	If you are purchasing a new or existing non-operating Baja Fresh Restaurant, the term is (i) 10 years from the date the restaurant opens to the public if you own the property, or enter into a lease directly with the landlord or other third party, or (ii) the term of the sublease if you enter into a sublease with a BFAH affiliate excluding any extensions or renewal options. If you are purchasing an existing

Provision	Section in Franchise Agreement	Summary
		and operating Baja Fresh Restaurant, the term is (i) 10 years from the effective date of the franchise agreement if you own the property, or enter into a lease directly with the landlord or other third party, or (ii) the term of the sublease if you enter into a sublease with a BFAH affiliate excluding any extensions or renewal options. If you are purchasing a Baja Fresh Restaurant that will be co-branded into another franchisor affiliated restaurant, the term of your franchise agreement for this brand will equal the remaining term of the existing franchise agreement for the store which this brand will be co-branded into, so both franchise agreements will expire concurrently. If you are entering into a renewal agreement for your Baja Fresh Restaurant, the term is five years from the effective date of your renewal Franchise Agreement.
b-1. Renewal or extension of the Term	Section 13 (New & Transfer)	If you are not in default and satisfy certain conditions, you may renew for a single renewal term of 5 years, with no further right to renew at the end of the renewal term.
c-1. Requirements for you to renew or extend	Section 13 (New & Transfer)	“Renewal” means to sign a renewal Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in renewing franchises) and all other agreements then customarily used by us in the granting of franchises. The renewal Franchise Agreement may have materially different terms and conditions than the original franchise agreement, including higher royalty and advertising fees. If offered, you must: give at least 120 days’ notice prior to the expiration date of the term; not be in default; be in compliance with the terms of the Franchise Agreement and Confidential Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed renewal date; have a premises; sign a new Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay a renewal franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u> .
b-2. Successor Term	Section 13 (Renewal)	If at the end of your renewal term, you are not in default and satisfy certain conditions, you may apply

Provision	Section in Franchise Agreement	Summary
		for a successor term.
c-2 Requirements for you to obtain a successor term	Section 13 (Renewal)	Applying for and entering into a “successor” term means to sign a new Franchise Agreement (which will be in the form of the Franchise Agreement then customarily used by us in entering into new franchises) and all other agreements then customarily used by us in the granting of franchises. The successor term Franchise Agreement may have materially different terms and conditions than the original Franchise Agreement, including higher royalty and advertising fees. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must: give at least 120 days’ notice prior to the expiration date of the renewal term; not be in default; be in compliance with the terms of the Franchise Agreement and Confidential Manual; not have received more than 3 notices of default or breach of the Franchise Agreement during its term, nor more than 2 such notices during the 5 years immediately before the proposed successor term effective date; have a premises; sign a Franchise Agreement which may have materially different terms and conditions than the original Franchise Agreement; pay an initial franchise fee; remodel or refurbish if necessary; and be current on all financial obligations to us. You must also sign the General Release in form attached to the Disclosure Document as <u>Exhibit Q</u> . We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.
d. Termination by you	Not Applicable	-----
e. Termination by us without cause	Not Applicable	-----
f. Termination by us with cause	Sections 3.1 (New & Transfer) and 14.1	We can terminate only if you are in default under the Franchise Agreement or any other Franchise Agreements or other agreements between you and us.
g. "Cause" defined— defaults that can be	Section 14.2	You have an immediate cure period of less than 24 hours to cure defaults of your violation of our social



Provision	Section in Franchise Agreement	Summary
cured		<p>media policy regarding posting content containing inappropriate public displays of affection, confidential information, violations of health or safety standards, foul or obscene language, or images that have not been consented to. You have 24 hours to cure defaults of your violation of (i) any law, regulation, or order; (ii) our standards relating to health, sanitation, or safety; (iii) our policy regarding posting defamatory or offensive comments on social media sites; or (iv) you cease to operate your store for a period of 48 hours without our consent. You have 48 hours to cure defaults of your violation of our social media policy where you have a social media site in connection with your franchised business without approval or hold out your social media site to be an official site of Baja Fresh, or if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You have 7 days to cure defaults of failure to (i) pay us or any Advertising Fund (inclusive of a Cooperative) monies owing; or (ii) maintain insurance. You have 14 days to cure other defaults, except those which have no cure period. If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than the cure period listed in the Franchise Agreement, the statutory cure period will apply.</p>
h. "Cause" defined— defaults that cannot be cured	Sections 12.1, 14.1 and 14.2	<p>Non-curable defaults: failure to open your restaurant within the time period listed in your Franchise Agreement; non-compliance with applicable laws and regulations, failure to adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct, involvement in any business practice which may be injurious to the System or goodwill associated with the Proprietary Marks; defaulting on your lease or sublease and failure to cure such default, lease or sublease is terminated due to your default, or location is lost for failure to comply with lease or sublease; you, or any owner, co-owner or principal of the franchise, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein; closing or relocating your restaurant, without our express advance written consent;</p>

Provision	Section in Franchise Agreement	Summary
		transferring or attempting to transfer your Franchise Agreement or Franchised Business to a third party without our express advance written consent; bankruptcy, insolvency and similar events; conviction of felony; making any false representations or warranties; repeated defaults even if previously cured; abandonment; trademark misuse; unauthorized use of any of the components of the System; materially impair the goodwill or reputation of the System, breach of confidentiality or non-competition covenants; fraud with respect to obligations under the Franchise Agreement; you or any of your owners, officers, directors, managers, members, or partners violate any anti-bribery, corruption, or similar law or appear on a "blocked" persons list, or receive funding from any embargoed country; falsify financial data; failure to promptly provide upon request financial data and records specified in the Franchise Agreement; and intentionally underreporting weekly Gross Sales.
. Your obligations on termination/non-renewal	Sections 14.5, 14.6, 14.7, and 14.9	Obligations include cessation of your operation of the franchised business in all matters, complete de-identification, payment of amounts due us (also see "r" below) including early termination damages if any, transfer of telephone numbers, maintenance of records, and compliance with any confidentiality requirements and covenants not to compete.
j. Assignment of contract by us	Section 12.5	No restriction on our right to assign.
k. "Transfer" by you—definition	Section 12.1	Any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you.
l. Our approval of transfer by franchise owner	Section 12.1	We have the right to approve all transfers, but we will not unreasonably withhold approval.
m. Conditions for our approval of transfer	Sections 5.15 and 12.3	New franchise owner qualifies, no existing defaults, transfer franchise fee and transfer training fee paid, all obligations under the Franchise Agreement are fully paid and satisfied, new franchisee completes training for two individuals (additional fee for additional individuals trained), remodels or refurbishes if necessary, and keeps existing telephone number, release signed by you, new agreements signed.
n. Our right of first refusal to acquire your business	Section 12.2	We can match any offer for your business.

Provision	Section in Franchise Agreement	Summary
o. Our option to purchase your business	Section 12.2	We can match any offer for your business.
p. Your death or disability	Section 12.4	If representative of franchisee wants the Franchised Business to continue operating, it must be transferred within 90 days to an approved buyer. Upon non-compliance, all of franchisee's rights under the Franchise Agreement will be automatically terminated.
q. Non-competition covenants during the term of the franchise	Section 14.6	No involvement in any competing business.
r. Non-competition covenants after the Franchise Agreement is terminated or expires	Section 14.6	No competing business for 2 years, within 10 miles of another Baja Fresh restaurant.
s. Modification of the Agreement	Sections 4.5 and 16.13	Confidential Manuals subject to change at any time; otherwise no modifications unless in writing and signed by both parties.
t. Integration/merger clause	Section 16.14	Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside the Disclosure Document and Franchise Agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	Section 16.3	Any dispute that cannot be resolved by, or is not subject to, mediation shall be settled by arbitration administered by the American Arbitration Association in Maricopa County, Arizona. This does not apply to a dispute where we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to BFAH's goodwill, the proprietary information, the trademarks or other property or for fraudulent conduct by franchisee, or if a delay in the mediation process may adversely affect the public. Either party may appeal the arbitrator's final award, if it is over \$100,000, to the appropriate U.S. District Court.
v. Choice of forum	Section 16.4	Litigation must be in Maricopa County, Arizona.
w. Choice of law	Section 16.4	Except to the extent governed by the United States trademark laws or the franchise laws of any state, Arizona law applies.

## Sublease

This table lists certain important provisions of the Sublease. You should read these provisions in the agreements attached to this disclosure document.

Provision	Section in Sublease	Summary
a. Term of the Sublease	2.1	Ends one day before expiration of Master Lease, including any renewals of Master Lease.
b. Renewal or extension of the term	2.2 and 2.3	If the Master Lease contains a renewal option, you must notify us to exercise it.
c. Requirements for you to renew or extend	2.2 and 2.3	You must be in good standing and you must notify us of your intent to renew at least 60 (but not more than 90) days before we are required to notify the Master Landlord of intent to renew.
d. Termination by you	Not Applicable	You have no right to terminate the Sublease.
e. Termination by us without cause	Not Applicable	There is no right to terminate the Sublease without cause.
f. Termination by us with cause	15	Our Leasing Affiliate may terminate the Sublease for cause. Our Leasing Affiliate can terminate only if you default under the Master Lease, Sublease or the Franchise Agreement.
g. "Cause" defined – curable defaults	15.1	Our Leasing Affiliate can terminate if you default in the: (i) payment of any sums you owe; (ii) performance of any of the terms, covenants, or conditions of the Master Lease or Sublease; or (iii) default under the Franchise Agreement or any other agreement between you or your affiliates and us or our affiliates.
h. "Cause" defined – defaults that cannot be cured	15.1	Bankruptcy of, or general assignment for the benefit of creditors by, franchisee; defaults under the Master Lease that are not curable
i. Your obligations on termination/nonrenewal	15	Our Leasing Affiliate may enter and take possession of the premises and all of the furniture, fixtures, equipment, signage, inventory and other items covered by our lien under Section 4.2 of the Sublease; you are not relieved of further obligations under the Sublease.
j. Assignment of agreement by us	22	Our Leasing Affiliate has the right to assign under the Master Lease.
k. "Transfer" by you – defined	9 and 22	Approval of Leasing Affiliate is required.
l. Our approval of transfer by you	9	Approval of Leasing Affiliate, at its sole discretion, and approval of landlord may be required.
m. Conditions for our approval of transfer	9	Our Leasing Affiliate must consent.
n. Our right of first refusal to acquire your business	Not Applicable	None. Our Leasing Affiliate already holds the Master Lease.

<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
o. Our option to purchase your business	Not Applicable	None. Our Leasing Affiliate already holds the Master Lease.
p. Your death or disability	Not Applicable	None
q. Non-competition covenants during the term of the franchise	Not Applicable	None
r. Non-competition covenants after the franchise is terminated or expires	Not Applicable	None
s. Modification of the agreement	Not Applicable	None
t. Integration/merger clause	24	The Sublease, including any exhibits, contains the entire agreement of the parties.
u. Dispute resolution by arbitration or mediation	Not Applicable	None
v. Choice of forum	Not Applicable	None
w. Choice of law	20	Arizona law applies

**ITEM 18  
PUBLIC FIGURES**

No compensation or other benefit is given or promised to a public figure for the use of a public figure in the name or symbol of the franchised business or the endorsement or recommendation of the franchised business by a public figure in advertisements. You do not have the right to use the name of any public figure in promotional efforts or advertising without prior written approval from us.

No public figures are involved in the actual management or control of BFAH.

**ITEM 19  
FINANCIAL PERFORMANCE REPRESENTATIONS**

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

The average gross sales amounts contained in the table below pertain to the historic performance of all Baja Fresh franchised stores located in the United States that were existing

outlets that did not open for the first time during the past fiscal year. The time period measured was December 1, 2020, through November 30, 2021.

	Average Gross Sales	Median Gross Sales	Number of Stores Measured	Number of stores that met or exceeded the Average Gross Sales	Percentage of stores that met or exceeded the Average Gross Sales	Number of stores that met or exceeded the Median Gross Sales	Percentage of stores that met or exceeded the Median Gross Sales
All franchised outlets	\$730,542	\$727,252	82	41	50%	41	50%
All Traditional franchised outlets	\$817,743	\$813,678	64	31	48%	32	50%
Top 20% Traditional franchised outlets	\$1,217,754	\$1,215,716	13	6	46%	7	54%
Bottom 20% Traditional franchised outlets	\$400,082	\$395,559	13	6	46%	7	54%

Notes:

1. As of November 30, 2021, there were 90 franchised stores open in the United States. Of these 90 outlets, 82 of these outlets were franchised, existing locations that did not open for the first time during the past fiscal year, were located in the United States, and were not temporarily closed as of fiscal year end.
2. The information is based upon gross sales, which means the total revenue derived from the sales of goods and services less sales tax, discounts, allowances and returns, of franchised, stores
3. **Some outlets have sold this amount. Your individual results may differ. There is no assurance that you'll sell as much.**
4. The above table and information were prepared from (i) weekly sales reports provided to us by franchisees. We have not audited the information provided by the franchisees.
5. We will provide to you the spreadsheets as written substantiation for the representations made in this Item 19 upon reasonable request.

Other than the preceding financial performance representation, we do not make any

financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting John Wuycheck, Kahala Franchising, L.L.C., 9311 E. Via De Ventura, Scottsdale, Arizona 85258, (480) 362-4800, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

**TABLE NO. 1  
SYSTEM-WIDE RESTAURANT SUMMARY  
FOR FISCAL YEARS 2019 to 2021**

Column 1	Column 2	Column 3	Column 4	Column 5
<b>OUTLET TYPE</b>	<b>YEAR</b>	<b>OUTLETS AT THE START OF THE YEAR</b>	<b>OUTLETS AT THE END OF THE YEAR</b>	<b>NET CHANGE*</b>
Franchised*				
	2019	121	110	-11
	2020	110	96	-14
	2021	96	90	-6
Company - Owned				
	2019	5	8	3
	2020	8	4	-4
	2021	4	7	3
Total Outlets				
	2019	126	118	-9
	2020	118	100	-18
	2021	100	97	-3

**TABLE NO. 2  
TRANSFER OF RESTAURANTS FROM FRANCHISEES TO NEW OWNERS (OTHER THAN  
FRANCHISOR OR AN AFFILIATE)  
FOR FISCAL YEARS 2019 to 2021**

Column 1	Column 2	Column 3
STATE	YEAR	NUMBER OF TRANSFERS
California	2019	2
	2020	2
	2021	1
New Jersey	2019	0
	2020	1
	2021	0
Oregon	2019	0
	2020	1
	2021	1
Pennsylvania	2019	1
	2020	0
	2021	0
Washington	2019	1
	2020	0
	2021	0
Total	2019	4
	2020	4
	2021	2

**TABLE NO. 3  
STATUS OF FRANCHISED RESTAURANTS  
FOR FISCAL YEARS 2019 to 2021**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
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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
Alabama	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Arizona	2019	2	0	0	0	0	0	2
	2020	2	0	0	0	0	0	2
	2021	2	0	0	0	0	0	2
California	2019	67	1	0	1	3	4	62
	2020	62	0	0	2	1	7	52
	2021	52	1	0	0	2	6	45
Delaware	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
District of Columbia	2019	0	0	0	0	0	0	0
	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
Florida	2019	0	1	0	0	0	1	0
	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
Georgia	2019	2	0	0	0	0	0	2
	2020	2	1	0	0	0	0	3
	2021	3	0	0	0	0	0	3
Idaho	2019	2	0	0	0	0	0	2
	2020	2	0	0	0	0	1	1
	2021	1	0	0	0	0	0	1

Illinois	2019	1	0	0	1	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Indiana	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Maryland	2019	9	0	0	2	0	0	7
	2020	7	0	0	1	0	1	5
	2021	5	0	0	0	0	0	5
Missouri	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
Nevada	2019	4	0	0	0	0	0	4
	2020	4	0	0	0	0	0	4
	2021	4	1	0	0	0	0	5
New Jersey	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
New York	2019	1	0	0	0	0	1	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Oregon	2019	17	0	0	0	0	1	16
	2020	16	0	0	0	0	2	14
	2021	14	3	0	0	0	3	14
Oklahoma	2019	2	0	0	0	0	0	2
	2020	2	0	0	1	0	0	1
	2021	1	0	0	0	0	0	1
Pennsylvania	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1

	2021	1	0	0	0	1	0	0
South Carolina	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
Tennessee	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
Texas	2019	0	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0
	2021	0	1	0	0	0	0	1
Virginia	2019	5	0	0	0	0	1	4
	2020	4	0	0	0	0	1	3
	2021	3	0	0	0	0	0	3
Washington	2019	3	1	0	0	0	0	4
	2020	4	0	0	0	0	0	4
	2021	4	0	0	0	0	0	4
Wisconsin	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	0	1
	2021	1	0	0	0	0	0	1
Total Outlets	2019	121	4	0	4	3	8	110
	2020	110	3	0	4	1	12	96
	2021	96	6	0	0	3	9	90

**TABLE NO. 4  
STATUS OF COMPANY AND AFFILIATE OWNED RESTAURANTS  
FOR FISCAL YEARS 2019 to 2021**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8

STATE	YEAR	OUTLETS AT START OF YEAR	OUTLETS OPENED	OUTLETS REACQUIRED FROM FRANCHISEE	OUTLETS CLOSED	OUTLETS SOLD TO FRANCHISEE	OUTLETS AT END OF THE YEAR
Arizona							
	2019	1	0	0	0	0	1
	2020	1	1	0	1	0	1
	2021	1	0	0	0	0	1
California							
	2019	2	0	4	0	1	5
	2020	5	0	1	3	0	3
	2021	3	0	2	0	0	5
District of Columbia							
	2019	1	0	0	0	0	1
	2020	1	0	0	0	1	0
	2021	0	0	0	0	0	0
Idaho							
	2019	1	0	0	0	0	1
	2020	1	0	0	0	1	0
	2021	0	0	0	0	0	0
Pennsylvania	2019	0	0	0	0	0	0
	2020	0	0	0	0	0	0
	2021	0	0	1	0	0	1
Total Outlets							
	2019	5	0	4	0	1	8
	2020	8	1	1	4	2	4
	2021	4	0	3	0	0	7

**TABLE NO. 5  
PROJECTED OPENINGS AS OF**

November 30, 2021

Column 1	Column 2	Column 3	Column 4
<b>STATE</b>	<b>FRANCHISE AGREEMENTS SIGNED BUT OUTLET NOT OPENED</b>	<b>PROJECTED NEW FRANCHISED OUTLET IN THE NEXT FISCAL YEAR</b>	<b>PROJECTED NEW COMPANY-OWNED OUTLETS IN THE NEXT FISCAL YEAR</b>
Arizona	4	1	0
California	2	1	0
Georgia	1	1	0
Texas	1	1	0
Total	8	4	0

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. In some instances current and former franchisees sign provisions restricting their ability to speak openly about their experience with us. You may wish to speak with current and former franchisees, but be aware that not all of those franchisees will be able to communicate with you.

**Exhibit U** is a list of Baja Fresh franchisee-owned Restaurant as of November 30, 2021. Also included in **Exhibit U** are the names, addresses and last known telephone numbers of every Franchisee who had a Franchise Agreement terminated, canceled, not renewed, or which otherwise voluntarily or involuntarily ceased doing business between December 1, 2020 and November 30, 2021 or who has not communicated with us within 10 weeks of the application date of our application for registration or renewal. If you buy this Franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

There are no independent franchisee organizations that have asked to be included in this Disclosure Document.

## ITEM 21 FINANCIAL STATEMENTS

Attached to this Disclosure Document as **Exhibit V** are the audited consolidated financial statements of Franchisor's parent company, MTY Franchising USA, Inc. ("Guarantor") for the fiscal years ended November 30, 2021 and November 30, 2020, along with the independent auditor's reports for the years ended November 30, 2021 and November 30, 2020.

Guarantor absolutely and unconditionally guarantees to assume the duties and obligations of Franchisor under its franchise registration in each state where the franchise is registered, and under the Franchise Agreement, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns. (See Exhibit W: Performance Guaranty).

## ITEM 22 CONTRACTS

Attached to this Disclosure Document are the following franchise-related contracts:

Exhibit D	Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note and Security Agreement and Guaranty (if applicable)
Exhibit E-1	Franchise Agreement (New) and Franchisee Questionnaire
Exhibit E-2	Franchise Agreement (Renewal) and Franchisee Questionnaire
Exhibit E-3	Franchise Agreement (Transfer) and Franchisee Questionnaire
Exhibit F-1	Guaranty of Franchise Agreement
Exhibit F-2	Non-Disclosure and Non-Competition Agreement
Exhibit G	Collateral Assignment and Irrevocable Special Power of Attorney
Exhibit H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)
Exhibit J	In-Store Training Release and Waiver of Liability Agreement
Exhibit K	Addendum to the Franchise Agreement for SBA Loans
Exhibit L	Required Lease Terms (Lease Addendum to Lease Agreement)
Exhibit M	Lease Guaranty Acknowledgement
Exhibit N	Lease Review and/or Negotiation Agreement and Release and State Addenda
Exhibit O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
Exhibit O-2	Sublease and Guaranty of Sublease (Franchisor or its affiliate collects rent from Franchisee and pays to Landlord)
Exhibit P	Pre-Authorized Electronic Funds Transfer Form
Exhibit P-1	Gift / Loyalty Card Participation Agreement
Exhibit Q	General Release for Renewal of Franchise Agreement
Exhibit R-1	Consent to Transfer and Release Agreement (without Sublease)
Exhibit R-2	Consent to Transfer and Release Agreement (with Sublease)
Exhibit S	State Specific Addenda to Franchise Documents
Exhibit W	Performance Guaranty
Exhibit X	Addendum for Sale of Company-Affiliated Owned Stores
Exhibit Y	Receipts

## ITEM 23 RECEIPTS

Two copies of an acknowledgment of your receipt of this disclosure document appear as Exhibit

Y.

**EXHIBIT A**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**State Addenda to Franchise Disclosure Document**

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF CALIFORNIA**

- A. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.**
- B. Neither the franchisor, franchise broker nor any person in Item 2 of the Disclosure Document are subject to any currently effective order of any National Securities Association or National Securities Exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78A et seq., suspending or expelling such person from membership in such association or exchange.**
- C. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C.A. Sec. 101 et seq.).**
- D. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the agreements. This provision may not be enforceable under California law.**
- E. The Franchise Agreement requires application of the laws of the State of Arizona. This provision may not be enforceable under California Law.**
- F. Section 31125 of the California Corporations Code requires us to give you a disclosure document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.**
- G. YOU MUST SIGN A GENERAL RELEASE IF YOU RENEW OR TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE §31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§31000 THROUGH 31516).**
- H. BUSINESS AND PROFESSIONS CODE §20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§20000 THROUGH 20043).**
- I. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.**
- J. If the Franchisee resides in the State of California or the franchised business is located within the State of California, the venue for any dispute may be within the State of California. Business and Professions Code Section 20040.5 voids restricting a venue to a forum outside California with respect to any claim arising under or relating to a Franchise Agreement involving a franchise business operating in California.**
- K. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [www.dbo.ca.gov](http://www.dbo.ca.gov).**



**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF HAWAII**

**These franchises will be/have been filed under the Franchise Investment Law of the State of Hawaii. Filing does not constitute approval, recommendation or endorsement by the Director of Commerce and Consumer Affairs or a finding by the Director of Commerce and Consumer Affairs that the information provided herein is true, complete and not misleading.**

**The Franchise Investment Law makes it unlawful to offer or sell any franchise in this state without first providing to the prospective franchisee, or subfranchisor, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the payment of any consideration by the franchisee, or subfranchisor, whichever occurs first, a copy of the Disclosure Document, together with a copy of all proposed agreements relating to the sale of the franchise.**

**This Disclosure Document contains a summary only of certain material provisions of the Franchise Agreement. The contract or agreement should be referred to for a statement of all rights, conditions, restrictions and obligations of both the franchisor and the franchisee.**

**A Federal Trade Commission rule makes it unlawful to offer or sell any franchise without first providing this Disclosure Document to the prospective franchisee at the earlier of (1) fourteen calendar days before the signing of any franchise or related agreement; or (2) fourteen calendar days before any payment. The prospective franchisee must also receive a Franchise Agreement containing all material terms at least seven calendar days prior to the signing of the Franchise Agreement.**

**If this Disclosure Document is not delivered on time, or if it contains a false, incomplete, inaccurate or misleading statement, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington D.C. 20580 and to Hawaii Department of Commerce and Consumer Affairs which administers and enforces the Hawaii Franchise Disclosure Act.**

Registered agent in the state authorized to receive service of process:

Department of Commerce and Consumer Affairs  
Business Registration Division  
Commissioner of Securities  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, Hawaii 96813

1. The following paragraph is added to Item 17:

Section 482E-6(3) of the Hawaii Revised Statutes provides that upon termination or refusal to renew the Franchise Agreement, BF Acquisition Holdings, LLC is obligated to compensate you for the fair market value, at the time of the termination or expiration of the Franchise Agreement, of your inventory, supplies, equipment and furnishings purchased from BF Acquisition Holdings, LLC or a supplier designated by BF Acquisition Holdings, LLC; provided that personalized materials which have no value to us need not be compensated for. If BF Acquisition Holdings, LLC refuses to renew a Franchise Agreement for the purpose of converting your business to one owned and operated by

BF Acquisition Holdings, LLC, in addition to the remedies provided above, shall compensate you for the loss of goodwill. BF Acquisition Holdings, LLC may deduct from such compensation reasonable costs incurred in removing, transporting and disposing of your inventory, supplies, equipment and furnishings pursuant to this requirement, and may offset from such compensation any monies due BF Acquisition Holdings, LLC

2. The following list reflects the status of the franchise registration of the Franchisor in the states which require registration:

- A. The states in which this proposed registration is effective: None.
- B. The states in which this proposed registration is or will be shortly on file: California, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin.
- C. The states, if any, which have refused, by order or otherwise, to register these franchises: None.
- D. The states, if any, which have revoked or suspended the right to offer these franchises: None.
- E. The states, if any, in which the proposed registration of these franchises has been withdrawn by the Franchisor: None.

3. Section 482E-3(a) of the Hawaii Franchise Investment Law requires the franchisor to give you a copy of the Franchise Disclosure Document at least 7 calendar days prior to signing the franchise agreement. The Receipt is amended to reflect the 7 calendar-day waiting period.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF ILLINOIS**

1. Items 17.f and 17.i are supplemented with the following language:

The conditions under which your Franchise Agreement may be terminated and your rights upon non-renewal may be affected by Illinois Law, 815 ILCS 705/19 and 705/20.

2. Items 17.f, 17.g, 17.t, 17.v, and 17.w are supplemented with the following language:

This summary applies to both the Franchise Agreement and the Area Representative Agreement.

3. The Summary in Item 17.v is deleted and replaced by the following Summary:

Litigation in Illinois.

4. The Summary in Item 17.w is deleted and replaced by the following Summary:

Illinois law applies.

5. Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void.”

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF INDIANA**

1. Item 17.c may be modified by Indiana Code § 23-2-2.7.

2. The Summary in Item 17.r. is deleted and replaced with the following Summary:

For one year after the termination of your Franchise Agreement, you may not establish a similar type of business within your exclusive territory.

3. Item 17.t is supplemented with the following language:

However, you do not waive any rights under the Indiana Statutes with regard to prior representations made by BF Acquisition Holdings, LLC in the Disclosure Document.

4. Items 17.v and 17.w are supplemented with the following language:

Except that under Indiana law, you may have the right to bring an action in Indiana, and have Indiana law apply.

5. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement including any limitation on the forum chosen. Any provision in the Franchise Agreement, specifying a forum contrary to Indiana law, shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN.§§ 1-51 (1994).

6. The Indiana Deceptive Franchise Practices Act, IC 23-2-2.7-1 (10) prohibits the limitation of litigation brought for breach of a Franchise Agreement. Any provision in the Franchise Agreement requiring the application of another state's law shall not apply to any claims brought under the Indiana Deceptive Franchise Practices Act and/or the Indiana Franchise Act, Ind. Code ANN.§§ 1-51 (1994).

7. Indiana Code § 23-2-2.5-9 (2) requires a franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) 10 days prior to signing the franchise agreement; or (ii) 10 days prior to franchisor's receipt of any consideration. The Receipt is amended to reflect the 10 day waiting period.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF MARYLAND**

1. Item 5 of the Franchise Disclosure Document and all agreements in this offering are amended to disclose the following:

Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement.

2. The following amends Item 11 and replaces the last sentence of paragraph 8.a. under the section titled "During the operation of the Franchised Business:"

A Franchisee may, at any time after 120 days following the end of the calendar year, obtain an accounting of expenditures for the Advertising Fund and any Cooperative Regional Funds for the entire preceding calendar year by submitting a written request to BF Acquisition Holdings, LLC's Chief Financial Officer at the principal business address listed in Item 1 of the Franchise Disclosure Document.

3. The Summary in Item 17.v is deleted, and the following Summary is inserted in its place:

A Franchisee may file a civil lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

4. Item 17 is amended to disclose the following:

Any general release required as a condition of renewal, sale, and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

5. The following paragraph is added to the end of Item 17:

The Franchise Agreement provides for termination upon Franchisee's bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law (11 U.S.C. Section 101 et seq.).

Item 17 is amended to disclose the following:

This franchise agreement provides that disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

**ADDENDUM TO BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT  
FOR THE STATE OF MICHIGAN**

Section 445.1508(1) of the Michigan Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document earlier of: (i) 10 business days prior to signing the Agreement; or (ii) 10 business days prior to franchisor's receipt of any consideration.

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

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

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

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

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

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

Any questions regarding this notice shall be directed to:

STATE OF MICHIGAN  
DEPARTMENT OF THE ATTORNEY GENERAL  
ATTENTION: FRANCHISE SECTION  
P.O. BOX 30213  
LANSING, MICHIGAN 48909  
(517) 373-7117

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF MINNESOTA**

1. The following legends are added to the Risk Factors on the Cover Page:

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

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

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

2. Pursuant to Minnesota Rules 604.113, in Item 6, the table entry in the second column pertaining to "Amount" for "Non-Sufficient Funds Fee" is hereby deleted and replaced with the following:

\$30 for each electronic funds transfer returned for non-sufficient funds; \$25 for each check or draft returned for non-sufficient funds

3. The following paragraph is added to Item 13:

The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes, Section 80C.12, Subd. 1(g).

4. The following statement is added at the end of Item 17.c and 17.m:

Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release.

5. The following statement is added at the end of 17.v and 17.w.:



Minnesota Statutes, Section 80C.21 and Minnesota Rules 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce (1) any of the franchisee's rights as provided for in Minnesota Statutes, Chapter 80C or (2) franchisee's rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J.

Also, a court will determine if a bond is required.

6. The following statement is added at the end of Item 17:

With respect to franchises governed by Minnesota law, the franchisor will comply with Minnesota Statutes, Section 80C.14, Subd. 3-5, which require (except in certain specified cases) (1) that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

7. The Summary in Item 17.v is deleted, and the following Summary is inserted in its place:

The Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC**  
**DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF NEW YORK**

1. The following information is added to the cover page of the Franchise Disclosure Document:

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT B OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 120 BROADWAY, 23<sup>RD</sup> FLOOR, NEW YORK, NEW YORK 10271.**

2. The following is added at the end of Item 3:

Except as provided above, with regard to the franchisor, its predecessor, a person identified in Item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. No such party has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust, or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable civil or misdemeanor allegations.

B. No such party has pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

C. No such party has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the 10 year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud, or securities law; fraud; embezzlement; fraudulent conversion or misappropriation of property; or unfair or deceptive practices or comparable allegations.

D. No such party is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State, or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

3. The following is added to the end of Item 5:

The initial franchise fee constitutes part of our general operating funds and will be used as such in our discretion.

4. The following is added to the end of the "Summary" sections of Item 17(c), titled "Requirements for franchisee to renew or extend," and Item 17(m), entitled "Conditions for franchisor approval of transfer":

However, to the extent required by applicable law, all rights you enjoy and any causes of action arising in your favor from the provisions of Article 33 of the General Business Law of the State of New York and the regulations issued thereunder shall remain in force; it being the intent of this proviso that the non-waiver provisions of General Business Law Sections 687.4 and 687.5 be satisfied.

5. The following language replaces the “Summary” section of Item 17(d), titled “Termination by franchisee”:

You may terminate the agreement on any grounds available by law.

6. The following is added to the end of the “Summary” sections of Item 17(v), titled “Choice of forum”, and Item 17(w), titled “Choice of law”:

The foregoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business Law of the State of New York.

7. The franchisor may, if it chooses, negotiate with you about items covered in the prospectus. However, the franchisor cannot use the negotiating process to prevail upon a prospective franchisee to accept terms which are less favorable than those set forth in this prospectus.

8. The Franchise Agreement and the other documents to be signed by the franchisee provide that we do not grant you any exclusive or protected territory for your restaurant.

9. The Franchise Agreement and the other documents to be signed by you further allow the franchisor to locate franchised or corporate-owned locations of food concepts similar to *Baja Fresh* in the immediate vicinity of your restaurant. There may also be locations of food concepts similar to *Baja Fresh* that are owned by affiliates of the franchisor already open and operating in the immediate vicinity of your restaurant.

10. Section 683.8 of the General Business Law of the State of New York requires franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) the first personal meeting; (ii) 10 business days before the execution of the Franchise Agreement; or (iii) 10 business days before the payment of any consideration that relates to the franchise relationship.

#### FACTORS TO BE CONSIDERED:

Any disputes, differences or controversies that arise pursuant to the Franchise Agreement or breach thereof which cannot be settled by mediation shall be settled by arbitration. All such proceedings shall be held in Maricopa County, Arizona. This information should be taken into consideration in determining whether or not to purchase this franchise.

The franchisor represents that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF NORTH DAKOTA**

**ALTHOUGH THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF NORTH DAKOTA, REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE STATE OF NORTH DAKOTA THAT THE INFORMATION PROVIDED IN THIS DISCLOSURE DOCUMENT IS TRUE, COMPLETE, ACCURATE, OR NOT MISLEADING.**

**NORTH DAKOTA LAW MODIFICATIONS**

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota Law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17 (1993). To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete during the term and upon termination or expiration of the Franchise Agreement are enforceable only under certain conditions according to North Dakota Law. If the Franchise Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.
- c. If the Franchise Agreement requires litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.
- d. If the Franchise Agreement requires that it be governed by a state's law, other than the State of North Dakota, to the extent that such law conflicts with the North Dakota Franchise Investment Law, the North Dakota Franchise Investment Law will control.
- e. If the Franchise Agreement requires mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.
- f. If the Franchise Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.
- g. Section 51-19-08 of the North Dakota Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) seven days prior to signing the franchise agreement; or (ii) seven days prior to franchisor's receipt of any consideration.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (SECTION 51-19-09, N.D.C.C.):**

- A. Restrictive Covenants: Franchise Disclosure Documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to the statute.
- A. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to the arbitration of disputes at a location that is remote from the site of the franchisee's business.
- B. Restrictions on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- C. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- D. Applicable Laws: Franchise agreements which specify that they are to be governed by the laws of a state other than North Dakota.
- E. Waiver of Trial by Jury: Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
- F. Waiver of Exemplary & Punitive Damages: Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
- G. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
- H. Limitation of Claims: Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- J. Enforcement of Agreement: Franchise Agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

3. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF RHODE ISLAND**

**RHODE ISLAND LAW MODIFICATIONS**

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-1 – 19-28.1-34. To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchise Agreement restricts jurisdiction or venue to a forum other than the State of Rhode Island, the requirement is void under Rhode Island Franchise Investment Act Sec. 19-28.1-14.
- b. If the Franchise Agreement requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with Rhode Island Franchise Investment Act it is void under Sec. 19-28.1-14.
- c. If the Franchisee is required in the Franchise Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule or order under the Act, such release shall exclude claims arising under the Rhode Island Franchise Investment Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

**ADDENDUM TO BF ACQUISITION HOLDINGS, LLC DISCLOSURE DOCUMENT  
FOR THE STATE OF SOUTH DAKOTA**

1. The Director of the South Dakota Division of Securities requires that certain provisions contained in franchise documents be amended to be consistent with South Dakota law, including the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-1 through 37-5B-53 (2008). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the South Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete upon termination or expiration of the Agreement are generally unenforceable in the state of South Dakota, except in certain limited instances as provided by law. If this Agreement contains a covenant not to compete which is inconsistent with South Dakota Law, the covenant may be unenforceable.
- c. Regardless of the terms of the Agreement concerning termination, if Franchisee fails to meet performance and quality standards or fails to make any royalty payments under the Agreement, Franchisee will be afforded thirty (30) days' written notice with an opportunity to cure the default before termination.
- d. If the Agreement requires payment of liquidated damages that are inconsistent with South Dakota law, the liquidated damage clause may be void under SDCL 53-9-5.
- e. If the Agreement requires litigation to be conducted in a forum other than the State of South Dakota, the requirement is void with respect to any cause of action otherwise enforceable under South Dakota Law.
- f. If the Agreement requires that it be governed by a state's law, other than the State of South Dakota, matters regarding franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota; but as to contractual and all other matters, the Agreement and all provisions of this Amendment will be and remain subject to the application, construction, enforcement, interpretation under the governing law set forth in the Agreement.
- g. If the Agreement requires that disputed between Franchisor and Franchisee be mediated/arbitrated at a location that is outside the State of South Dakota, the mediation/arbitration will be conducted at a location mutually agreed upon by the parties. If the parties cannot agree on location for the mediation/arbitration, the location shall be determined by the mediator/arbitrator selected.

h. Any condition, stipulation or provision in the Agreement requiring Franchisee to waive compliance of a provision under the South Dakota Franchise Investment Law is void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.



**ADDENDUM TO BF ACQUISITION HOLDINGS, LLC DISCLOSURE DOCUMENT  
FOR THE STATE OF VIRGINIA**

1. The following amends Item 17 and is stated at the end of Item 17:

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC**  
**DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WASHINGTON**

The State of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise Agreement. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise Agreement.

1. If any provisions governing termination or non-renewal disclosed herein are inconsistent with Washington law, then Washington law shall apply. The applicable law reads as follows:

Section 19.100.180. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(2) For the purpose of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a Franchise Agreement without fairly compensating the franchisee for the fair market value, at the time of expiration of the Franchise Agreement, or the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchised business: PROVIDED, that compensation need not be made to a franchisee for good will if: (i) the franchisee has been given one year's notice of nonrenewal; and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, that after three willful and material breaches of the same term of the Franchise Agreement occurring within a twelve month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the Franchise Agreement upon any subsequent month period without providing notice or opportunity cure: PROVIDED FURTHER, that a franchisor may terminate a Franchise Agreement without prior notice or opportunity to cure a default if the franchisee: (i) is adjudicated bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchised business; (iii) voluntarily abandons the franchised business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchised business. Upon termination for good cause the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of: (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchised business; and (iii) if the franchisee is to retain control of the premises of the franchised business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor."

2. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

3. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

4. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

5. Ranch\*1, Inc. and its subsidiaries, all affiliates of BF Acquisition Holdings, LLC, filed for Bankruptcy Protection Code Chapter 11 of the United States Bankruptcy Code on July 3, 2001. Full disclosure of the particulars of this filing is in Item 4 of this Disclosure Document.

**ADDENDUM TO THE BF ACQUISITION HOLDINGS, LLC  
DISCLOSURE DOCUMENT REQUIRED BY THE STATE OF WISCONSIN**

**THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE WISCONSIN FRANCHISE INVESTMENT LAW. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.**

**WISCONSIN LAW MODIFICATIONS**

1. The Securities Commissioner of the State of Wisconsin requires that certain provisions contained in franchise documents be amended to be consistent with Wisconsin Fair Dealership Law, Wisconsin Statutes, Chapter 135 ("Fair Dealership Law") and the Wisconsin franchise Investment Law, Chapter 553. To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of non-renewal and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Franchise Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- b. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of termination and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Franchise Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- c. If the Franchise Agreement requires that it be governed by a state's law, other than the State of Wisconsin, to the extent that any provision of the Franchise Agreement conflicts with the Wisconsin Fair Dealership Law such provision shall be superseded by the law's requirements.
- d. Any condition, stipulation or provision in the Agreement requiring Franchisee to waive compliance with any provision under the Wisconsin Franchise Investment law may be void.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Amendment. This Amendment shall have no force or effect if such jurisdictional requirements are not met.

**EXHIBIT B**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Directory of State Agencies and Administrators**

## DIRECTORY OF STATE AGENCIES AND ADMINISTRATORS

<p><b><u>CALIFORNIA</u></b> Department of Business Oversight 320 West 4<sup>th</sup> Street, Suite 750 Los Angeles, CA 90013 (213) 576-7500</p> <p><b><u>HAWAII</u></b> Department of Commerce and Consumer Affairs Business Registration Division  Commissioner of Securities King Kalakaua Building 335 Merchant Street, Room 205 Honolulu, Hawaii 96813 (808) 586-2744</p> <p><b><u>ILLINOIS</u></b> Illinois Attorney General's Office Franchise Bureau 500 South Second Street Springfield, IL 62701 (217) 782-1090</p> <p><b><u>INDIANA</u></b> Indiana Secretary of State Securities Division 302 W. Washington St, Room E111 Indianapolis, IN 46204 (317) 232-6681</p> <p><b><u>MARYLAND</u></b> Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202 (410) 576-6360</p> <p><b><u>MICHIGAN</u></b> Michigan Department of Attorney General Corporate Oversight Division G. Mennen Williams Building 525 W. Ottawa Street Lansing, MI 48909 (517) 373-7117</p>	<p><b><u>MINNESOTA</u></b> Minnesota Department of Commerce, 85 7th Place East, Suite 280, Saint Paul, MN 55101, (651) 539-1600</p> <p><b><u>NEW YORK</u></b> Office of the Attorney General  New York State Department of Law Investor Protection Bureau 28 Liberty Street New York, NY 10005 (212) 416-6684</p> <p><b><u>NORTH DAKOTA</u></b> Securities Commissioner  600 E. Boulevard Ave State Capitol, 5<sup>th</sup> Floor Bismarck, ND 58505 (701) 328-4712</p> <p><b><u>RHODE ISLAND</u></b> Department of Business Regulation, Securities Division, Franchise Section  1511 Pontiac Avenue, Building 69-2 Cranston, Rhode Island 02920 (401) 462-9500</p> <p><b><u>SOUTH DAKOTA</u></b> Division of Insurance Securities Regulation 124 S. Euclid Ave., 2<sup>nd</sup> Floor Pierre, SD 57501-3185 (605) 773-3563</p>	<p><b><u>VIRGINIA</u></b> State Corporation Commission Division of Securities and Retail Franchising P.O. Box 1197 Richmond, VA 23218 (804) 371-9051</p> <p><b><u>WASHINGTON</u></b> Department of Financial Institutions Securities Division 150 Israel Rd SW Tumwater, WA 98501 (360) 902-8760</p> <p><b><u>WISCONSIN</u></b> State of Wisconsin Department of Financial Institutions Division of Securities  4822 Madison Yards Way, North Tower Madison, WI 53705 (608) 266-2139</p>
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**EXHIBIT C**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchisor's Agent for Service of Process**

## FRANCHISOR'S AGENT FOR SERVICE OF PROCESS

### ARIZONA

CT CORPORATION SYSTEM  
3800 North Central Avenue, Suite 460  
Phoenix, AZ 85012

### CALIFORNIA

COMMISSIONER OF BUSINESS OVERSIGHT  
320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, CA 90013

### HAWAII

COMMISSIONER OF SECURITIES  
King Kalakua Building  
335 Merchant Street, Room 205  
Honolulu, Hawaii 96813

### ILLINOIS

ILLINOIS ATTORNEY GENERAL  
500 South Second Street  
Springfield, Illinois 62701

### INDIANA

SECRETARY OF STATE  
302 W. Washington St, Room E111  
Indianapolis, IN 46204

### MARYLAND

MARYLAND SECURITIES COMMISSIONER  
200 St. Paul Place  
Baltimore, Maryland 21202-2020

### MINNESOTA

Minnesota Department of Commerce, 85 7th  
Place East, Suite 280, Saint Paul, MN 55101-  
2198

### NEW YORK

SECRETARY OF STATE  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231

### NORTH DAKOTA

SECURITIES COMMISSIONER  
600 E. Boulevard Ave  
State Capital, 5<sup>th</sup> Floor  
Bismarck, North Dakota 58505

### RHODE ISLAND

Director Of The Rhode Island Department Of  
Business Regulation, Securities Division,  
Franchise Section

1511 Pontiac Avenue, Building 69-2  
Cranston, Rhode Island 02920

### SOUTH DAKOTA

Division of Insurance  
Securities Regulation  
124 S. Euclid Ave., Suite 104  
Pierre, SD 57501-3185

### VIRGINIA

CLERK OF THE STATE CORPORATION  
COMMISSION  
Tyler Building  
1300 East Main Street  
Richmond, Virginia 23219

### WASHINGTON

DIRECTOR OF FINANCIAL INSTITUTIONS  
150 Israel Rd SW  
Tumwater, WA 98501

### WISCONSIN

ADMINISTRATOR, DEPARTMENT OF  
FINANCIAL INSTITUTIONS, DIVISION OF  
SECURITIES  
4822 Madison Yards Way, North Tower  
Madison, WI 53705



If a state is not listed, BF Acquisition Holdings, LLC has not appointed an agent for service of process in that state in connection with the requirements of franchise laws. There may be states in addition to those listed above in which BF Acquisition Holdings, LLC has appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

**EXHIBIT D**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Asset Purchase Agreement  
(For Sale of a Corporate Store to a Franchisee)  
with  
Promissory Note and Security Agreement and Guaranty (if applicable)**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT ("Agreement"), dated \_\_\_\_\_ ("Execution Date") and which will be effective as of the Closing Date as defined in Section 5(a) below is by and between [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] [LIQUOR LICENSE ENITITY if applicable] ("Seller" or as may be applicable the "seller Parties"), and \_\_\_\_\_, a [state] [Corporation/Limited Liability Company, etc.] ("Purchaser"). Seller [or as applicable the Seller Parties] and Purchaser may also be referred to in this Agreement each individually as a "Party" and collectively as the "Parties."

### Recitals

A. Seller owns certain assets of, maintains certain licenses of, and operates Baja Fresh restaurant no. \_\_\_\_ ("Franchised Business") located at [store address, city and state] ("Premises"). [LIQUOR LICENSE ENITITY if applicable] owns certain assets of and maintains certain licenses of the Franchised Business [and executed a master lease] with respect to the Premises.

B. [LEASING ENTITY,] a(n) \_\_\_\_\_ affiliated with Seller ("Sublessor"), has executed a lease with respect to the Premises. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Lease Agreement is currently on a month-to-month basis, and Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord. Upon execution of said newly negotiated lease, the Lease Agreement shall be terminated and become null and void.]

C. Seller desires to sell and transfer to Purchaser, and Purchaser desires to purchase and acquire from Seller, substantially all of the assets owned by Seller and to be used in connection with the operation of the Franchised Business.

D. In conjunction with the execution of this Agreement, Purchaser executed a franchise agreement[, as amended,] to be effective as of the Closing Date (collectively, the "Franchise Agreement") with BF Acquisition Holdings, LLC, a Delaware limited liability company, affiliated with Seller ("Franchisor").

E. In conjunction with the execution of this Agreement, Purchaser executed a sublease to be effective as of the Closing Date ("Sublease Agreement") with Sublessor and shall comply with all terms and conditions in the Sublease, including but not limited to, paying any additional security deposits, if required. [MONTH TO MONTH LANGUAGE IF APPLICABLE: Notwithstanding the foregoing, the Sublease Agreement is currently on a month-to-month basis and may be terminated by Sublessor with thirty (30) days prior written notice to Purchaser. As stated above, Purchaser is currently in direct negotiations with the landlord for the Premises to enter into a new lease directly with the landlord and upon execution of said newly negotiated lease, the Sublease Agreement shall be terminated and become null and void.]

### Agreement

NOW, THEREFORE, in consideration of the foregoing promises and the mutual covenants and

agreements contained herein, the Parties hereby agree as follows:

**1. Sale of Assets.**

(a) **The Transferred Assets.** On the Closing Date (as defined in Section 5(a), below), Seller shall sell, transfer, convey, assign and deliver to Purchaser, and Purchaser shall purchase and acquire from Seller, all of the furniture, fixtures and equipment and other items owned by Seller and to be used in connection with the Franchised Business (excluding cash, company record books and tax records) (collectively, "Transferred Assets")[, and to Seller's knowledge, free and clear of all liens, claims, charges, encumbrances and security interests of any nature or type whatsoever][**OR**][subject to the terms of the Franchise Agreement]. A list of the Transferred Assets is attached hereto as **Schedule 1 to Exhibit A.** Seller makes no representation or warranty, express or implied, regarding the merchantability of the Transferred Assets or the condition or quality thereof AND HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE and the Parties hereby agree that the Transferred Assets are being purchased in as "**AS IS**" condition. Each reference in this Agreement to the "Transferred Assets" of the Franchised Business shall mean and refer to the following:

- (i) All of the fixtures, equipment, signs and other tangible assets of the Franchised Business ("Equipment") as more fully described on **Schedule 1** attached to this Agreement and incorporated into this Agreement by reference.
- (ii) [IF LIQUOR LICENSE: The State of [\_\_\_\_\_] [State Agency Name] ("\_\_\_\_") liquor license no. [\_\_\_\_\_] issued on [\_\_\_\_\_] and maintained by [entity] and used by [entity] in the operation of the Franchised Business ("License"), to the extent that such license is fully transferable or partially transferable in connection with Purchaser securing its own continuing operations permit (or something similar) with the [State Agency Name].

(b) **Excluded Assets.** The following assets shall be excluded from this transaction ("Excluded Assets"):

- (i) All cash in any safe located at the Franchised Business or any cash in banks and/or other financial institution accounts associated with the Franchised Business.
- (ii) The business records which relate to the operations of the Franchised Business for all periods prior to the date immediately preceding the Closing Date ("Business Records").
- (iii) All refunds of federal, state or local income or franchise taxes or worker's compensation insurance premiums due to either Seller Party, as may be applicable, as of the date immediately preceding the Closing Date.
- (iv) All intellectual property rights of either Seller Party and/or Franchisor, as applicable.

(c) **Inventory.** The Purchase Price (as defined in Section 2) does not include: (i) consumable inventory including food products, perishables and paper products; or (ii) cash on hand.

## 2. Purchase Price.

(a) In consideration of the sale of the Transferred Assets, Purchaser shall pay:

[ Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds.]

[OR]

[ Simultaneously with the execution and delivery of this Agreement, the Purchase Price (as defined in Section 2(b) below) payable as set forth in the attached Promissory Note ("Deferred Payment").]

[OR

[(i) Simultaneously with the execution and delivery of this Agreement, a non-refundable deposit in the amount of XX Thousand Dollars (**\$XX,000**) ("Deposit"), by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds; and

(ii) On the Closing Date, an amount equal to the difference between the Purchase Price (as defined in Section 2(b) below) minus the Deposit (such difference is referred to as "Purchase Price Balance"), by electronic funds transfer, wire transfer, or cashiers' or certified check of immediately available funds. OR On the Closing Date, XX Thousand Dollars (**\$XX,000**) ("Deferred Payment"), payable as set forth in the attached Promissory Note.]

(b) The "Purchase Price" is XX Thousand Dollars (**\$XX,000**), which shall be allocated as follows: [(i) XX Thousand Dollars (**\$XX,000**) to the leasehold improvements at the Premises;] [(ii) XX Thousand Dollars (**\$XX,000**) to the Transferred Assets, including all furniture, fixtures and equipment, as more fully described in **Schedule 1** to the Bill of Sale, attached hereto as **Exhibit A**, and incorporated herein by reference.]

## 3. Representations and Warranties.

(a) To induce Purchaser to enter into this Agreement and to perform Purchaser's obligations hereunder, and with full knowledge that Purchaser will rely thereon, Seller represents and warrants as follows:

(i) Seller has title to and rightful possession to the Transferred Assets, and each of the Transferred Assets is and shall, upon the delivery thereof to Purchaser, be free and clear of recorded and publicly available liens, claims, charges, encumbrances and security interests.

(ii) Seller is a limited liability company duly organized, validly existing and in good standing under the law of the State of [State].

(iii) Seller has full right, power and authority to execute and deliver this

Agreement, and to consummate the transactions contemplated hereby.

- (iv) This Agreement has been duly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.
  - (v) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of notice or the passage of time, or both): (a) any license, instrument, contract or agreement to which Seller is a party or by which Seller is bound, or (b) the articles of incorporation or the bylaws of Seller. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will result in the creation of any lien, claim, charge, encumbrance or security interest of any nature or type whatsoever with respect to the Transferred Assets. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.
  - (vi) On the Closing Date, the Transferred Assets are being purchased in “**AS IS**” condition and will comprise all of the assets and property necessary to conduct the Franchised Business in accordance with Franchisor’s confidential operations manual (“Confidential Manual”).
  - (vii) The development and/or conduct of the Franchised Business, and the ownership and use of the Transferred Assets in accordance with Franchisor’s Confidential Manual, complies, or will (as of the Closing Date) comply, with all applicable federal, foreign, state and local laws, regulations and ordinances; provided, however, that Purchaser may be required to obtain certain licenses and permits in connection with the operation of the Franchised Business.
- (b) To induce Seller to enter into this Agreement and to perform Seller’s obligations hereunder, and with full knowledge that Seller will rely thereon, Purchaser represents and warrants as follows:
- (i) Purchaser is a [type of entity] duly organized, validly existing and in good standing under the law of the State of [state].
  - (ii) Purchaser has full right, power and authority to execute and deliver this Agreement, and to consummate the transactions contemplated hereby.
  - (iii) This Agreement has been duly executed and delivered by Purchaser and constitutes the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms.
  - (iv) Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will conflict with, violate or result in a breach of or default under (with or without the giving of notice or the passage of time, or both): (a) any license, instrument, contract

or agreement to which Purchaser is a party or by which Purchaser is bound, or (b) the certificate of incorporation or the bylaws (or other comparable charter documents) of Purchaser. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will require any consent or approval of, or any filing with, any governmental entity or other person.

- (v) Purchaser acknowledges that:
  - (a) There are several potential locations for the location of Purchaser's Baja Fresh restaurant;
  - (b) The decision to establish and operate Purchaser's Baja Fresh restaurant at the Premises was made solely by Purchaser, without any reliance upon any information provided (if any), recommendation made (if any) or approval given by Seller, any area representative, Sublessor, or any of their respective shareholders, directors, officers, employees, representatives, agents or affiliates;
  - (c) Seller's selection and approval of the Premises as a site for a Baja Fresh restaurant provides no assurance or guaranty as to Purchaser's results of operations in connection with its Baja Fresh restaurant at the Premises;
  - (d) Purchaser has reviewed the lease (including all amendments and addendums) with respect to the Premises and approves of the terms thereof, including rental payment amounts;
  - (e) Purchaser accepts full responsibility for the consequences of Purchaser's decision to open and operate a Baja Fresh restaurant at the Premises.

#### **4. Interim Period [ONLY IF APPLICABLE].**

- (a) Between the Execution Date and the Closing Date, as applicable, Seller has operated the Franchised Business, in accordance with Seller's standard operating procedures for operating Baja Fresh restaurants and the Franchised Business is open to the public for business.
- (b) Purchaser shall attend Franchisor's training program, if so required by Franchisor in the Franchise Agreement.

#### **5. Closing.**

- (a) Subject to the conditions set forth in Sections 5(b) and 5(c) hereof, the transactions contemplated by this Agreement shall be consummated on the date that Seller turns over the Franchised Business to Purchaser which is estimated to be on or around \_\_\_\_\_ ("Closing Date") at an office designated by Seller or at another mutually agreeable location.
- (b) The obligations of Seller to consummate the transactions contemplated by this

Agreement are subject to the satisfaction at or prior to the Closing Date of the following conditions, any of which may be waived by Seller, in its sole discretion. Purchaser shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before the Closing Date.

[(i) Purchaser shall have delivered to Seller the [Purchase Price] or [Purchase Price Balance], as set forth in Section 2 of this Agreement;]

[OR]

[(i) Purchaser shall have executed and delivered to Seller the Promissory Note and Security Agreement attached hereto as **Exhibit B** (“Promissory Note”) in the amount of the Deferred Payment and any upfront, non-refundable payments due pursuant to Section 2 in the form of cash or by cashiers’ or certified check; ]

(ii) Purchaser shall have executed and delivered to Franchisor the Franchise Agreement and to Sublessor the Sublease with respect to the Premises, in the forms then being executed by new franchisees of Franchisor and sublessees of Sublessor;

(iii) Purchaser shall have delivered to Sublessor the Sublease Security Deposit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_.\_\_\_\_) as defined in the Sublease [and a Lease Security Deposit in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_.\_\_\_\_)] as defined in the Sublease in connection with the Premises as contemplated by the Sublease and pursuant to Section 5(d) below, as applicable;

(iv) Purchaser shall have delivered to Franchisor the Initial Franchise Fee in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_.\_\_\_\_) as defined in the Franchise Agreement; and

(v) The representations and warranties of Purchaser contained in this Agreement shall be true and correct on and as of the Closing Date, and each and all of the terms, covenants, conditions and agreements to be performed or complied with by Purchaser on or before the Closing Date shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Purchaser shall constitute Purchaser’s certification of the conditions stated herein.

Assuming that Seller satisfied all of the conditions precedent contained in Section 5(c), if any of the requirements of this Section 5(b) have not been satisfied by the Closing Date, Purchaser shall be in breach of its obligations hereunder.

(c) The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing Date of the



following conditions, any of which may be waived by Purchaser, in its sole discretion. Seller shall use its best efforts to cause each and every one of the following conditions to be satisfied at or before the Closing Date.

- (i) As of the Closing Date, there shall have been no material adverse change in the Franchised Business, the Transferred Assets or the Premises, or the condition thereof, since the date of this Agreement, other than changes contemplated by Section 5;
- (ii) Seller shall have delivered to Purchaser the Bill of Sale executed by Seller; and
- (iii) The representations and warranties of Seller contained in this Agreement shall be true and correct on and as of the Closing Date, with the same effect as though such representations and warranties had been made on and as of the Closing Date; and each and all of the terms, covenants, conditions and agreements to be performed or complied with by Seller on or before the Closing Date shall have been performed or complied with. This provision shall be self-executing, and the consummation of the transactions contemplated by this Agreement by Seller shall constitute Seller's certification of the conditions stated herein.

Assuming that Purchaser has satisfied all of the conditions precedent contained in Section 5(b) if any of the requirements of this Section 5(c) (other than the requirement contained in clause (i) if such material adverse change shall be beyond the control of Seller) has not been satisfied by the Closing Date, Seller shall be in breach of its obligations hereunder.

- (d) The rent payable pursuant to the lease for the Premises shall be paid by Sublessor for the month in which the Closing Date occurs and Purchaser shall pay to Sublessor (on a per diem basis, based upon a thirty (30)-day month) an amount equal to the rent prepaid by Sublessor with respect to the period on and after the Closing Date, via an EFT, ACH, or other type of debit authorized by Seller or Sublessor, as may be applicable will bill Purchaser for such pro-rated rent amount.
- (e) Seller shall be responsible for all compensation to employees of the Franchised Business for the period through the date immediately preceding the Closing Date. Purchaser shall be responsible for all compensation to employees of the Franchised Business for the period on and after the Closing Date. Notwithstanding anything contained in this Agreement to the contrary, Purchaser shall not be obligated to employ any of Seller's employees after the Closing Date.
- (f) Seller shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to CAM reconciliation charges, and property taxes, on a pro-rated basis for the period through the date immediately preceding the Closing Date. Purchaser shall be responsible for all costs, fees and expenses relating to the Franchised Business, including but not limited to, CAM reconciliation charges, property taxes, etc., on a pro-rated basis for the period on and after the Closing Date.
- (g) As of and after the Closing Date, Purchaser shall assume, acquire, take over,

become responsible for, and promise to pay all contracts, leases, agreements and other liabilities (collectively the "Assumed Liabilities") in connection with the Franchised Business except for those contracts, leases, agreements and other liabilities which are specifically excluded as set forth below:

\_\_ [List all contracts, leases, agreements and other liabilities which Purchaser is NOT assuming] OR [List "None"] \_\_

- (h) Purchaser shall indemnify, defend and hold Seller free and harmless from and against any and all "Losses" (as defined below), which Seller shall incur or suffer which arise or result from the operation or conduct of the business of the Franchised Business by Purchaser as of and after the Closing Date, including, but not limited to, any Losses arising from any default of Purchaser arising under the Franchise Agreement or Sublease, and from any default of Purchaser with respect to the Assumed Liabilities. "Losses" shall mean any and all obligations, liabilities, costs (including reasonable attorneys' fees), expenses, damages and losses actually incurred by Seller, net of any insurance proceeds and material tax adjustments, benefits, savings or reductions to which Seller is entitled by virtue of such obligations, liabilities, costs, expenses, damages and losses; provided however, that "Losses" exclude all consequential damages of any kind (including, but not limited to, loss of revenue or income, cost of capital or loss of business reputation or opportunity). As of and prior to the Closing Date, Seller shall have good and marketable title to the Transferred Assets, free and clear of any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, except as otherwise provided herein. Seller agrees to indemnify Purchaser of any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, which accrued up through the date immediately preceding the Closing Date, whether or not known by either Seller or Purchaser. Seller further agrees to indemnify Purchaser of any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, which accrued up to the date immediately preceding the Closing Date, even if such liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind are discovered at any future date. Any and all liens, claims, judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind which accrue on or after the Closing Date are the sole obligation and responsibility of the Purchaser.

**6. Notices.** All notices, consents, approvals or other instruments required or permitted to be given by either Party pursuant to this Agreement shall be in writing and given by (a) hand delivery, (b) facsimile, (c) express overnight delivery service or (d) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand-delivered, (ii) transmission, if delivered by facsimile, (iii) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (iv) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by

certified or registered mail, return receipt requested. Notices shall be provided to the Parties at the addresses and facsimile numbers specified below:

If to Seller: [Selling Entity]  
Attention: Legal Department  
9311 East Via De Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4819

If to Liquor License Entity (if applicable) [Liquor License Entity]  
Attention: Legal Department  
9311 East Via De Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4819

If to Purchaser: [Purchaser]  
[address]  
Telephone Number:  
Facsimile Number: OR Email:

Any Party may change its address or facsimile number by giving notice in writing, stating its new address or facsimile number, to the other Party to this Agreement as provided in the foregoing manner.

**7. [USE ONLY IF BROKER INVOLVED WITH SALE, OTHERWISE RESERVE][Brokers' Fees.** Seller has retained Broker Entity ("Broker") as broker in connection with the sale of the Transferred Assets contemplated hereby. The Seller shall be solely responsible for the payment of any fees due Broker in connection with the sale of the Transferred Assets contemplated hereby.]

**8. Survival.** Each of the representations, warranties and covenants contained herein shall survive the Closing Date, irrespective of any investigation or inquiry made by, or any knowledge of, any Party.

**9. Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective assigns, legal representatives, executors, heirs and successors.

**10. Amendment, Modification or Waiver.**

- (a) No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the Parties and specifying with particularity the nature and extent of the amendment, modification or waiver. Waiver of any matter shall not be deemed a waiver of the same or any other matter on any future occasion.

- (b) Failure on the part of any Party to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long the failure continues, shall not constitute a waiver by that Party of its rights under this Agreement.

**11. Entire Agreement.** This Agreement, including the exhibits hereto, contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. Each of the exhibits is incorporated in this Agreement by this reference and constitutes a part of this Agreement.

**12. Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.

**13. Dispute Resolution.**

- (a) Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the Parties hereto or the relationship between the Parties, or the entry, making, interpretation, or performance of either Party under this Agreement ("Dispute"), which cannot be resolved by mediation under Section 13(d) below or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.
- (b) Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our principal place of business is located at the time the arbitration is commenced. Purchaser agrees to conducting the arbitration where Seller is located is appropriate. The Parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorney's fees of the prevailing Party, against the Party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the Parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The Parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a Party, by consolidation, joinder, or in any other manner, any other person or entity, unless both Parties consent in writing. Both Parties shall have the absolute right to refuse such consent. Further, the Parties expressly waive any right to bring and/or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including, but not limited to, any claim brought on their behalf by an association of which it, he or she is a member. At the request of any Party, the arbitration shall be conducted in a manner that maintains the

confidentiality of the proceedings.

- (c) The arbitrator(s) will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each Party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.
- (d) Prior to the commencement of an arbitration proceeding, the Parties must first submit any Dispute to non-binding mediation. At the request of any Party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the Parties shall mutually agree to a different location. The Parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each Party, including, without limitation, counsel fees and expenses. The mediation process will be deemed "Completed" when the Parties agree that it has been completed, the mediator declares that any impasse exists or sixty (60) days have elapsed since the date of the initiating Party's notice to the other Party that it is initiating the mediation process, whichever occurs first.
- (e) Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 13(a), 13(b), 13(c) and 13(d) do not apply to a Dispute where: (i) Seller brings an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to Seller's goodwill, the confidential information, the proprietary marks or for fraudulent conduct by Purchaser; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, Seller may bring an action in any federal or state court having jurisdiction, whether for monetary damages and/or for temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to Seller. Purchaser hereby consents to and waives any objection or defense and agrees not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.
- (f) Disputes concerning the validity or scope of arbitration, including whether a dispute is subject to arbitration, are beyond the authority of the arbitrator(s) and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 1 et seq., as amended from time to time.
- (g) Either Party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either Party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three arbitrators chosen under AAA

procedures, which will employ the same standards of review stated immediately above.

**14. Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the Parties under this Agreement. Seller and Purchaser agree, subject to the mandatory mediation and arbitration provisions of Section 13 of this Agreement, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing, any action initiated by Seller may, at Seller's election, be brought in any jurisdiction where Purchaser is domiciled or that has jurisdiction over Purchaser. The Parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

Notwithstanding anything contained in this Agreement to the contrary, the Parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and Seller and Purchaser hereby waive any right to bring any such action after such two-year period except for the collection of any unpaid amounts due to Seller or its affiliate.

**15. Attorneys' Fees.** In the event of any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, the prevailing Party may recover reasonable attorneys' fees incurred in connection with any court or arbitration proceeding.

**16. Remedies Cumulative.** The remedies of the Parties under this Agreement are cumulative and shall not exclude any other remedies to which any Party may be lawfully entitled.

**17. Captions.** Captions used throughout this Agreement are for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof.

**18. Additional Actions.** Each Party agrees to do all acts and things and to make, execute and deliver such written instruments as may from time to time be reasonably required to carry out the terms and provisions of this Agreement.

**19. Construction.** The Parties acknowledge that each Party was represented (or had the opportunity to be represented) by legal counsel in connection with this Agreement, the exhibits hereto and the transactions contemplated by this Agreement and that each of them and its counsel have reviewed this Agreement, or have had an opportunity to do so, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or any exhibits hereto or thereto.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, the Parties hereto, by and through its respective representatives with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**SELLER:**

[SELLING ENTITY,]  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name,] [Title]

[Liquor License Entity (if applicable)]:

[ENTITY,]  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name,] [Title]

**PURCHASER:**

[PURCHASER],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]



**EXHIBIT A**  
**TO ASSET PURCHASE AGREEMENT**  
**(BILL OF SALE)**

**BILL OF SALE**

This BILL OF SALE, dated \_\_\_\_\_, executed by [SELLING ENTITY], a(n) \_\_\_\_\_ [IF LIQUOR LICENSE ENTITY] ("Grantor") in favor of [PURCHASER], a(n) \_\_\_\_\_ ("Grantee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby convey, grant, bargain, sell, transfer, set over, assign, alien, remise, release, deliver and confirm unto Grantee, its successors and assigns forever, free and clear of all liens, security interests, claims, charges or encumbrances of any kind, the assets listed on **Schedule 1** attached hereto (collectively, " Transferred Assets"), TO HAVE AND TO HOLD all of the Assets unto Grantee, its successors and assigns to their own use and behoof forever.

The following are excluded assets and are excluded from **Schedule 1**:

- a. Cash deposits, including, but not limited to, any utility and security deposits, banks accounts, certificates of deposit, securities or evidences of indebtedness received prior to and including the date of this Bill of Sale;
- b. Credit card or house accounts receivable from sales generated from the Franchised Business and constituting a part thereof, prior to and including the date of this Bill of Sale, any other accounts receivable, or choses of action accruing on or before the Closing Date, as defined in the Asset Purchase Agreement; and
- c. Consumable inventory including, but not limited to, food products, perishables, paper products, cash on hand and other goods.

**EXECUTED** as of the date first set forth above.

[IF LIQUOR LICENSE ENTITY]

**GRANTOR:**

[SELLING ENTITY],  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

## Schedule 1 to Bill of Sale

### List of Assets

1. All telephone numbers used in connection with the Franchised Business, including, without limitation, the following:
2. The leasehold under the master lease along with all improvements which may be associated with the Franchised Business.
3. All goodwill associated with the Franchised Business.
4. [IF LIQUOR LICENSE: The License maintained by [Entity] as may be transferrable under [applicable State] law.
5. All of Grantor's furniture, fixtures and equipment, appliances and personal property located at the Franchised Business, including, without limitation, the following:

**Quantity**

**Description**

**Serial Number**

**EXHIBIT B**  
**TO ASSET PURCHASE AGREEMENT**

(PROMISSORY NOTE AND SECURITY AGREEMENT)

[Attached]

[Not Applicable] [OR] [Applicable only if Purchaser enters into a Promissory Note and Security Agreement]

**PROMISSORY NOTE AND SECURITY AGREEMENT**

Note Amount:  
**[\$AMOUNT]**

Scottsdale, Arizona  
**[DATE]**

1. Promise to Pay. For value received, [NAME], a(n) [\_\_\_\_\_ corporation / limited liability company / individual] (“Maker”), promises to pay to the order of [Holder Entity], a [state] [Corporation/Limited Liability Company, etc.] (“Holder”), at 9311 East Via De Ventura, Scottsdale, Arizona 85258, or at such other address as Holder may designate at any time by written notice to Maker, in lawful money of the United States of America, the principal sum of XX Thousand Dollars (**\$XX,000.00**) together with all then-accrued and unpaid interest and other amounts that are Maker’s obligations under this Promissory and Security Agreement (“Note”), if any. Maker and Holder may also be referred to in this Agreement as a “Party” and collectively as “Parties.” The Note balance represents the principal amount owing by Maker to Holder for the purchase price of the Store (as defined below) due under the Asset Purchase Agreement in the aggregate amount of XX Thousand Dollars (**\$XX,000.00**) [plus the UCC-1 filing fee (as described in Section 7) in the amount of One Hundred Dollars (\$100)([collectively,]“Debt”) for the Baja Fresh store number \_\_\_ at the following location \_\_\_\_\_ (“Store”).

2. Computation of Interest. Except as otherwise set forth in this Note, this Note shall [not bear interest OR bear interest at the rate of \_\_\_% per annum] based on a \_\_\_ [month/year] amortization schedule.

3. Required Payments; Method of Payment. Principal and interest, if any, shall be repaid to Holder in a total of \_\_\_\_\_ (XX) [weekly/monthly] installments, consisting of the first \_\_\_\_\_ (XX) installments in the amount of \_\_\_\_\_ **AND xx/100 DOLLARS (\$\_\_\_\_\_.\_\_)**, and the final installment in the amount of \_\_\_\_\_ **AND xx/100 DOLLARS (\$\_\_\_\_\_.\_\_)** which installments shall be due on the [day of the week, or date of the month] (X<sup>xx</sup>) of each consecutive [week / month], with the first installment due on [DATE] and the final installment due on [DATE], all as set forth on the Amortization Schedule attached hereto as **EXHIBIT “1”** and incorporated herein by reference. Maker authorizes Holder (or one of its affiliates) to deduct payments owed by Maker (or one of its affiliates) to Holder under this Note out of Maker’s bank accounts via electronic funds transfer in the same way Holder (or one of its affiliates) is authorized to collect payment under the Franchise Agreement entered into by and between Holder and Maker dated \_\_\_\_\_, 20\_\_\_ or other franchise documents that Maker (or a related entity) entered into with Holder (or one of its affiliates) for the Store (individually and collectively, “Franchise Agreement”). All payments due under this Note shall be deducted by Holder’s close of business from Maker’s Depository Account (as defined in the Franchise Agreement) on the day they are due (or the preceding banking business day if such date is a holiday or falls on a weekend). Holder shall not be responsible for any interest charges for any overage collected due to Maker’s failure to timely authorize payment. Additionally, Holder shall not be responsible for any bank service charges incurred by Maker which result in the withdrawal of funds from Maker’s Depository Account. Maker shall pay Holder FIFTY AND 00/100 DOLLARS (\$50.00) for each withdrawal attempted from Maker’s Depository Account pursuant to this Section 3 that is returned for non-sufficient funds. Maker shall also reimburse Holder for all other costs incurred by Holder in collecting or attempting to collect funds due Holder from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms of the Franchise Agreement). Holder does not have to make or give “presentment, demand, protest or notice” to get paid. Maker hereby waives any right to “presentment, demand, protest and notice” as set forth in Section 10 below.

4. Application of Payments. All payments and other credits due under this Note shall be applied: [if part of Note balance a non-refundable fee (i) first to the amount of principal allocated to the Initial Franchisee Fee/Renewal Fee/Transfer Fee,] [(i) first][(ii) second,] to fees, costs and expenses payable by Maker under this Note, [(ii) second,][(iii) third,] to accrued and unpaid interest, if any, and [(iii) third][(iv) fourth,] to principal.

5. Collection Costs. If suit, arbitration, or other legal proceeding or any non-judicial foreclosure proceeding is instituted or any other action is taken by Holder to collect all or any part of the indebtedness evidenced hereby or to proceed against the Collateral (as defined below) for any portion of such indebtedness or against any guarantor of the payment of any portion of the indebtedness, Maker promises to pay Holder's attorneys' fees and other costs (to be determined by the court and not by a jury) incurred thereby. Such fees and costs shall be included in any judgment or arbitration award obtained by Holder, and shall bear interest at the default rate set forth in Section 12.

6. Optional Prepayments. Maker shall have the option to prepay this Note, in full or in part, at any time and from time to time, without penalty. Maker shall identify each optional prepayment of principal as such by written notice to Holder at the time of payment, and no such prepayment shall decrease or defer the monthly installment payments required by Section 3 above.

7. Security Interest. The indebtedness evidenced by this Note shall be secured by, and Maker hereby grants to Holder, a security interest in the equipment, inventory, leasehold improvements, and all proceeds thereof, and all increases, additions, accessories, accessions, substitutions, and replacements thereto located at the Store including, without limitation, insurance proceeds ("Collateral"). A description of the Collateral is attached hereto as **EXHIBIT "2"** and incorporated herein by reference. Concurrent with the execution of this Note or at any time after the execution of this Note so long as a balance remains outstanding under this Note, Maker shall execute and deliver to Holder, or alternatively Maker gives Holder permission to file, at Maker's expense, a UCC-1 financing statement, evidencing the security interest granted by this Section 7.

8. Guaranty of Promissory Note and Security Agreement. [If Maker is an individual and married, Maker represents and warrants that Maker's obligations under this Note are guaranteed by Maker's spouse and/or any other individuals requested by Holder as consideration for its agreements herein (together, "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement attached hereto as **EXHIBIT "3"** and incorporated herein by reference.] If Maker is a corporation, limited liability company, or other business entity, Maker represents and warrants that Maker's obligations under this Note are guaranteed by each of the persons who are shareholders, members, or other owners, direct or indirect, of Maker (and their respective spouses, if married); and/or any other individuals requested by Holder as consideration for its agreements herein (together, also "Guarantors"), pursuant to the Guaranty of Promissory Note and Security Agreement attached hereto as **EXHIBIT "3"** and incorporated herein by reference. In the event any person who has not previously signed a Guaranty of Promissory Note and Security Agreement becomes Maker's spouse; person who is a shareholder, member, or other owner, direct or indirect, of Maker (or their respective spouses, if married); and/or any other individual requested by Holder as consideration for its agreements herein, at any time after the execution of this Agreement, Maker must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement to Holder.

9. Maker's Representations and Warranties. Maker represents and warrants the

following:

A. Collateral.

(i) Maker will make sure that the Collateral is maintained and in good operating condition, necessary to the conduct of Maker's business. All maintenance must also comply with any legal or regulatory requirements.

(ii) Maker will make sure that Maker has not suffered any material adverse change in Maker's financial condition or operations.

(iii) Maker will protect and preserve the Collateral and Holder's security interest therein, and assist Holder in all ways in enforcing Holder's security interests in the Collateral.

(iv) Maker will not incur any debts beyond Maker's ability to pay such debts as they mature.

(v) Maker will pay, before they become delinquent, all taxes and claims, assessments, charges, and the like, as well as all amounts due under all agreements with third parties.

(vi) Maker will take all actions necessary or appropriate to protect the Collateral that consists of technology and proprietary information. This includes, without limitation, filing all applicable documentation with the United States and foreign patent and trademark offices.

(vii) Holder will give Maker prior notice if Holder, or Holder's agents, want to inspect the Collateral. Holder may inspect the Collateral during regular business hours. Holder will take reasonable steps not to interfere with Maker's business operations during any such inspection. If Holder finds during an inspection that Maker is not complying with this Note or if Maker is otherwise in default under this Note, Maker (and not Holder) will pay Holder's reasonable travel, meals and lodging costs, Holder's salary costs, and Holder's costs and fees and those of Holder's agents for re-inspection. Maker will promptly cure any problems with the Collateral that are discovered during Holder's inspections.

(viii) Maker will use the Collateral only for business purposes. Maker will obey all legal and regulatory requirements in Maker's use of the Collateral and the conduct of Maker's business.

(ix) Maker will make all additions, modifications and improvements to the Collateral to the extent necessary. Otherwise, Maker will not alter the Collateral without Holder's written permission.

(x) Maker will not remove the Collateral from the Store location.

(xi) Maker has and will continue to have good and merchantable title to all of the Collateral, free and clear of all security interests, liens and other encumbrances, with the exception of Holder's lien described in Section 7 above.

(xii) Maker will not convey, assign, sell, mortgage, transfer, encumber, pledge, hypothecate, grant a security interest in, grant options with respect to, lease or otherwise dispose of all or any part of any interest whatsoever in or to any or all of the Collateral, or any interest therein.

B. Insurance.

(i) Until Maker has made all payments to Holder under this Note in full, Maker will keep the Collateral insured. The amount of insurance, the coverage, and the insurance company must be acceptable to Holder.

(ii) If Maker does not provide Holder with written evidence of insurance that is acceptable to Holder, Holder may buy the insurance, at Maker's expense. Maker will promptly pay Holder the cost of this insurance. Holder has no obligation to purchase any insurance. Any insurance that Holder purchases will be Holder's insurance, and not Maker's, and Holder may insure the Collateral beyond the date of satisfaction of the Debt.

(iii) Insurance proceeds may be used to repair or replace damaged or lost Collateral or to pay Holder the present value of the payments described herein.

(iv) Maker appoints Holder as Maker's "attorney-in-fact" to make claims under the insurance policies, to receive payments under the insurance policies, and to endorse Maker's name on all documents, checks or drafts relating to insurance claims for Collateral. Upon request by Maker, Holder will provide Maker with copies of any and all documents signed as Maker's attorney-in-fact. Holder agrees to pay Maker any insurance proceeds received by Holder in excess of the any and all amounts due Holder under this Note.

10. Waivers and Acknowledgments. Maker, and any sureties, endorsers and guarantors of all or any portion of the indebtedness evidenced by this Note waive: (a) demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (b) any release or discharge by reason of (i) any release or substitution of, or other change in, any security given for the indebtedness evidenced by this Note or the obligation of any other person or entity who or which is now or may become directly or indirectly liable for all or any portion of the indebtedness evidenced by this Note, or (ii) any extension or other modification of the time or terms of payment of all or any portion of the indebtedness evidenced by this Note. Maker, and any sureties, endorsers and guarantors agree that their liability for the indebtedness evidenced hereby shall be joint and several.

11. Default, Take-Back Rights and Additional Remedies.

A. Default. Maker will be in default if any of the following occurs:

(i) Maker does not pay Holder, within seven (7) days after written notice is received by Maker from Holder, any payment that Maker owes Holder under this Note, the Franchise Agreement (including, but not limited to, royalty and advertising fees) or any other agreement, loan, debt, lease or other financial arrangement that Maker has with Holder or one of its affiliates (each a "Payment Default").

(ii) Any of the financial information that Maker gives Holder is not materially true and complete, or Maker fails to tell Holder anything that would make the financial information not materially misleading.



(iii) Maker does something it is not permitted to do, or Maker fails to do anything that is required of them, under this Note, the Franchise Agreement or any other lease, loan, debt or other financial arrangement that Maker has with Holder and such breach continues uncured for a period of seven (7) days after Holder has given written notice of such default to Maker, provided that such cure period shall not apply to any covenant relating to insurance covering the Collateral described in Section 7.

(iv) An event of default occurs under the Franchise Agreement, or under any other lease, loan, debt or obligation of Maker (or any guarantor) that exceeds Fifty Thousand Dollars (\$50,000) in the aggregate that results in the acceleration or mandatory prepayment thereof.

(v) Maker files bankruptcy, or involuntary bankruptcy is filed against Maker or any guarantor and such involuntary bankruptcy is not dismissed within sixty (60) days.

(vi) Maker is subject to any other insolvency proceeding other than bankruptcy (for example, a receivership action or an assignment for the benefit of creditors) and such proceeding that is involuntary is not dismissed within sixty (60) days.

(vii) Without Holder's permission, Maker sells all or a substantial part of Maker's assets, merges or consolidates (other than with an affiliate where Maker is the surviving entity), or a majority of Maker's voting stock or interests (or any guarantor's voting stock or interests) is transferred.

(viii) There is a material adverse change in Maker's financial condition, business or operations.

B. "Take Back Rights." In the event of a Payment Default, Maker hereby grants Holder the following "Take Back Rights" (as defined below in this Section 11.B.) with respect to the Store. Maker shall have seven (7) days after receipt of written notice from Holder to cure any such Payment Default. If Maker does not timely cure the Payment Default, Maker hereby grants Holder the irrevocable right to immediately enter the Store and take possession and full ownership of the Store going forward, and further agrees to execute any and all reasonably necessary documents to transfer ownership of the Store, including all assets located therein, to Holder or its designee and to assign the lease for the premises of the Store to Holder or its designee ("Take Back Rights"). In the event of an uncured Payment Default, Maker further acknowledges and agrees to the following: (i) the Take Back Rights represent Holder's liquidated damages for Maker's Payment Default; (ii) that such damages are reasonable under the circumstances; (iii) that Maker shall have no right to contest, and hereby waives any such rights to contest or appeal, Holder's Take Back Rights, including Holder's entry into the Store and subsequent possession, control; and ownership of the Store thereafter; and (iv) that Maker shall receive no compensation or other monetary consideration from Holder for the Store. For purposes of the Take Back Rights under this Section 11, all notices shall be sent by certified mail, return receipt requested, or via overnight delivery service, to the other Party at the addresses listed in Section 16.

C. Acceleration in the Event of Default. In the event of any default, including a Payment Default, under this Note which is not cured within seven (7) calendar days after receipt of written notice from Holder, the principal sum hereof, together with all accrued and unpaid interest, shall, at the option of the Holder (and without limiting any remedies available to Holder),



9311 East Via De Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4819

If to Maker:

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

Telephone Number:  
Facsimile Number:

17. Governing Law. This Note shall be construed according to the substantive laws and judicial decisions of the State of Arizona, without regard to any conflict of laws principles. Any action brought to enforce this Note may be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa. Maker and any sureties, endorsers and guarantors irrevocably consent to jurisdiction and venue in such court for such purposes.

18. RELEASE. IN EXCHANGE FOR HOLDER'S AGREEMENT TO ARRANGE FOR MAKER'S PAYMENT OF THE DEBT, MAKER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES' RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH MAKER "MAKER PARTIES"), HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE HOLDER AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH HOLDER "HOLDER PARTIES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL, STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE MAKER PARTIES HAVE AGAINST ANY OF THE HOLDER PARTIES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE FRANCHISE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION, LEASING OR SUBLEASING OF THE STORE; AND (III) THE OFFERING AND SALE OF THE FRANCHISE FOR THE STORE; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE DATE OF THIS NOTE WRITTEN ABOVE.

IT IS UNDERSTOOD BY MAKER THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY MAKER TO BE TRUE AT THE TIME OF

EXECUTION OF THIS NOTE, THEN MAKER EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION, IN WHOLE OR IN PART, BASED UPON SUCH DIFFERENCES.

19. Counterparts; Signatures. This Note may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Note and all of which, when taken together, shall be deemed to constitute one and the same Note. The signatures required for execution may be transmitted to the other Party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other Party, may be admitted in evidence and shall fully bind the Party and person making such signature.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, Maker, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective Party without further consent or approval of any kind, has duly executed and delivered this Note as of the date first written above.

**MAKER:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT "1" TO PROMISSORY NOTE**  
**AMORTIZATION SCHEDULE**

(Attached)

## **EXHIBIT "2" TO PROMISSORY NOTE**

### **COLLATERAL**

All assets owned by [NAME], a(n) [State] [corporation / limited liability company] ("Borrower"), whether now owned or hereafter acquired by Borrower and located at the following location: [Store Address], including, without limitation, the following properties of Borrower:

- (a) All accounts, contract rights, rights to payment, accounts receivable, chattel paper, leases, instruments, notes, securities, documents of title, deposit accounts, certificates of deposit and general intangibles;
- (b) All inventory, including, without limitation, raw materials, work-in-process or materials used or consumed in the business of Borrower, whether in the possession of Borrower, warehouseman, bailee or any other person or entity;
- (c) All machinery, furniture, fixtures and other equipment;
- (d) All negotiable and nonnegotiable documents of title;
- (e) All proceeds of any of the above-described property;
- (f) All books and records pertaining to any of the above-described property, including, without limitation, any computer readable memory and any computer hardware or software necessary to process such memory;
- (g) All rights under contracts of insurance covering any of the above-described property;
- (h) All attachments, accessions, tools, parts, supplies, increases and additions to and all replacements of and substitutions for any of the above-described property; and
- (i) All products of any of the above-described property.

**EXHIBIT "3" TO PROMISSORY NOTE**

**[GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT] or [NOT  
APPLICABLE]**



## GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT

This GUARANTY OF PROMISSORY NOTE AND SECURITY AGREEMENT ("Guaranty") is dated as of [Date] ("Effective Date"), and is executed by each of the undersigned ([individually and collectively, ]"Guarantor") in favor of [SELLING ENTITY], a [state] [Corporation/Limited Liability Company, etc.] ("Seller"). To the extent this Guaranty contains terms and conditions that differ from those contained in the Note (as defined in Recital A below), this Guaranty shall control. All capitalized terms not otherwise defined in this Guaranty will have the same meanings ascribed to such terms in the Note.

### Recitals

A. As an inducement for Seller to provide debt to [Franchisee], a [State] [corporation/limited liability company], ("Franchisee"), and to perform Seller's obligations under the Promissory Note and Security Agreement dated [Start Date] ("Note") in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), Guarantor has agreed to jointly and severally guarantee the obligations of Franchisee under the Note.

B. Franchisee and BF Acquisition Holdings, LLC signed a Franchise Agreement, as amended, with respect to Baja Fresh Store No. \_\_\_\_\_ ("Franchise") dated [Franchise Agreement Date] ("Franchise Agreement").

C. Guarantor is an individual who owns, directly or indirectly, a five percent (5%) or greater equity interest in the Franchise, has agreed to guarantee the Franchisee's obligations pursuant to the Franchise Agreement and Note, or is Franchisee's spouse.

NOW THEREFORE, in consideration of the foregoing, the execution and delivery of the Note by Seller, and the performance of Seller's obligations under the Note, Guarantor agrees, for the benefit of Seller and its affiliates as follows:

### Agreement

1. Guarantor unconditionally guarantees and promises to pay to Seller and/or its affiliates and to perform, for the benefit of Seller and/or its affiliates, on demand, any and all obligations and liabilities of Franchisee in connection with, with respect to, or arising out of, the Note and all Schedules entered into in connection therewith ("Obligations").

2. This is a guaranty of payment and not of collection. This Guaranty will remain in full force and effect until all amounts payable by Guarantor have been validly, finally and irrevocably paid-in-full and all Obligations will have been validly, finally and irrevocably satisfied or performed-in-full.

3. Guarantor's Obligations under this Guaranty are joint and several and are independent of the obligations of Franchisee. A separate action or actions may be brought and prosecuted against Guarantor regardless of whether an action is brought against the Franchisee or whether the Franchisee (or, if more than one Guarantor, the other Guarantors) is joined in any such action. Guarantor waives the benefit of any statute of limitations affecting Guarantor's liability under this Guaranty or the enforcement of this Guaranty. Guarantor waives its rights under A.R.S. Section 12-1641, *et seq.* and Rule 17(f) of the Arizona Rules of Civil Procedure for the Superior Courts of Arizona, which set forth certain rights and obligations among guarantors, debtors and creditors, if applicable, including the right to require Seller to bring an action against the Franchisee prior to enforcing its rights under this Guaranty. Guarantor waives any right to require Seller to proceed against or exhaust any security interest held in the property of Franchisee or to pursue any other remedies that Seller may have. Guarantor waives all

requirements as to presentment, demand for performance, notice of non-performance, protest, notice of protest, notice of dishonor, and notice of acceptance of this Guaranty and of the existence, creation or incurring of new or additional Obligations or indebtedness.

4. Guarantor authorizes Seller, without notice or demand and without affecting Guarantor's liability under this Guaranty to renew, compromise, modify, extend, accelerate or otherwise change the terms of any present or future Obligations and/or agreements between Franchisee and Seller or Seller's affiliates. Any change in the Obligations and/or agreements will have no effect on Guarantor's liability under this Guaranty. Guarantor will remain liable for the Obligations as set forth in this Guaranty if Franchisee fails to satisfy any of its obligations.

5. If any one or more of the provisions in this Guaranty will be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision of this Guaranty, and this Guaranty will be construed as if such provision had never been contained herein. Notwithstanding the foregoing, if the provision held invalid, illegal or unenforceable is a material part of this Guaranty, as determined by Seller, the Parties shall promptly negotiate a substitute provision consistent with then-current law and the Parties' original intent to replace the provision held to be invalid, illegal or unenforceable.

6. If Seller is required to take any legal action to enforce its rights under this Guaranty, Seller may recover from Guarantor Seller's costs and expenses in connection therewith, including, without limitation, reasonable attorneys' fees, whether or not suit is filed, and all costs of collection, suit, and preparation for suit (whether at the trial or appellate level).

7. Nothing in this Guaranty will constitute a waiver or limitation of any other rights or remedies of Seller or its affiliates against Franchisee or Guarantor. No failure or delay on the part of Seller or its affiliates in exercising its rights under this Guaranty will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any right will be effective unless given in writing, specifying with particularity the nature of the waiver. No waiver of any right will be deemed a waiver of any other right. The rights provided for in this Guaranty are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law.

8. Guarantor agrees that it will not exercise any rights of subrogation that Guarantor may acquire due to any payment or performance of the Obligations of the Franchisee pursuant to this Guaranty unless and until all amounts payable to Seller or its affiliates, and all Obligations for the benefit of Seller or its affiliates, due under the Note will have been validly, finally and irrevocably paid and performed in full.

9. This Guaranty will be binding upon Guarantor and its respective successors, heirs and assigns, and will inure to the benefit of Seller, its affiliates and their respective successors and assigns.

10. If more than one person signs this Guaranty, each Guarantor's obligations will be joint and several. Guarantor acknowledges and agrees that Seller will materially rely upon Guarantor's promises and obligations under this Guaranty.

11. [The undersigned \_\_\_\_\_][include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the Effective Date.

**This Guaranty will be governed by, and construed and enforced in accordance with, the law of the State of Arizona, notwithstanding any conflict of law provisions to the contrary.**

**Guarantor agrees that any litigation in connection with this Guaranty will be commenced and maintained only in the courts located in Maricopa County, Arizona, and Guarantor consents to the jurisdiction of such courts.**

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT E-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (New) and Franchisee Questionnaire**

***BAJA FRESH***

**FRANCHISE AGREEMENT  
(New)**

**between**

**BF ACQUISITION HOLDINGS, LLC**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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**Exhibits**

**Exhibit 1 Franchisee Questionnaire**

**BAJA FRESH**  
**FRANCHISE AGREEMENT**  
(“Agreement”)

**PARTIES:**

BF ACQUISITION HOLDINGS, LLC,  
a Delaware limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

(“Franchisor”)

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] “Franchisee”)

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_

(“Effective Date”)

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A “traditional” restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Baja Fresh* restaurant normally offers a full menu. A “non-traditional” restaurant is a *Baja Fresh* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Baja Fresh* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *Baja Fresh* restaurant normally offers a limited version of the full *Baja Fresh* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in Mexican-style food items, salsa items, tortillas, and other related beverage and food items. These restaurants do business under the trade name "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>". These Baja Fresh recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Baja Fresh*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:



**ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS**

**1.1 Franchise Grant.**

We hereby grant to you a *Baja Fresh* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ (“Location”)

**1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.**

You must operate the Franchised Business only from the Location, including any catering services of *Baja Fresh* menu items you provide. You acknowledge that the *Baja Fresh* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Baja Fresh* restaurant or any other business using the Proprietary Marks, the *Baja Fresh* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Baja Fresh* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Baja Fresh* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Baja Fresh* products anywhere in the world with no compensation or liability to you, including the right to:

- a. Establish and operate (or license to any other person or entity the right to establish and operate) *Baja Fresh* restaurants owned or licensed by us at any location;
- b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);

[store #]  
[doc #]

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

This Agreement will commence on the Effective Date and continue as set forth in either *Section 1.3a.* or *1.3b.* below ("Term").

a. If you are purchasing a new or existing non-operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the date you open this Franchised Business to the public if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*; or

b. If you are purchasing an existing and operating Franchised Business, the Term will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12*.

### **1.4 System Standards.**

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;
- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Baja Fresh* System for all restaurants operating under the *Baja Fresh* System to present a uniform and professional image to *Baja Fresh* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a

mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1 Location Selection Procedures.**

You must select a Location that satisfies our minimum site requirements (such confirmation will be provided to you by us in writing), for your Franchised Business within one (1) year from the Effective Date. If you cannot secure an acceptable Location for your Franchised Business within one (1) year from the Effective Date, then we may terminate this Agreement by giving you notice to that effect. You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location or a third party to assist you in selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

### **2.2 Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

### **2.3 Construction.**

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act ("ADA") or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use a third-party design architect ("Design Architect") approved by us to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications ("Plans") for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in

accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Baja Fresh* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Baja Fresh* System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Baja Fresh* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the ADA, and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

## **2.5 Relocation.**

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Baja Fresh* restaurant in compliance with this

Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Commencing Operations.**

You agree to start operating your *Baja Fresh* restaurant at the confirmed Location within one (1) year from the Effective Date. You acknowledge that before starting operations you must, at your own expense, do the following (in addition to any other requirements set forth in this Agreement):

- a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;
- b. Successfully complete the Training Program described in *Section 4.1*;
- c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the *Baja Fresh* Franchised Business; and
- d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to opening the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. Upon receipt of our acknowledgment that such requirements have been satisfied, you will have five (5) days to begin operations of your *Baja Fresh* restaurant. If you do not begin operations of your restaurant at the confirmed Location before the expiration of the one (1) year period from the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

## **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally,



during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the ADA; and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, "Site") in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else's) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *Baja Fresh* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Baja Fresh* brand; and (b) the Location of your Franchised

Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

We will provide up to two (2) natural persons (individually and collectively, "Trainees") with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the "In-Store Training," which is approximately two hundred forty (240) hours, and "New Owner Training," which is approximately forty (40) hours (collectively, "Training Program"). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee (as defined below), as provided for in this *Section 4.1* and *Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

### **4.2 Employee Training.**

You acknowledge that the employees of your *Baja Fresh* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

### **4.3 Additional Programs; Continuing Assistance.**

We will provide one (1) of our representatives to come to your restaurant during opening week for up to five (5) days, at our expense, to work with you or your manager on your grand opening, and on operating and marketing your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual

conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Confidential Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### **4.4 Area Representatives.**

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Baja Fresh* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from *Baja Fresh* franchisees; and (viii) coordination with other *Baja Fresh* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or

written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### **4.5 Confidential Manual.**

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to [training@kahalamgmt.com](mailto:training@kahalamgmt.com). Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. Prior to the opening of your restaurant, you will be required to acquire, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on is not available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Baja Fresh* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet

provider for such computer equipment. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your restaurant, you will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, for the Gift/Loyalty Card processing services. Also, for online ordering only, you must utilize our approved third-party payment card processor for processing all such debit and credit transactions. You are also required to create an online merchant account with the payment processor identified in the Operations Manual for payment processing associated with online orders. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business’ POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Initial Franchise Fee.**

The initial franchise fee is Thirty Thousand Dollars (\$30,000) (“Initial Franchise Fee”). The Initial Franchise Fee will be due and payable by you to us by cashier’s check, wire transfer or other form of immediately available funds acceptable to us, upon your execution of this Agreement. You and we agree that our grant of the franchise and your payment of the Initial Franchise Fee provided for in this *Section 5.1* does not give you any rights with respect to other franchises, if any, as we in our sole discretion may elect to make available in the future.

## 5.2 Royalty Fee and Surcharge.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Friday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Monday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of three percent (3%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. Your own local marketing and advertising should be developed to maximize your particular customer base.

### **5.4 Cooperative Advertising.**

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an "Association"). Each Association will help coordinate advertising, marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement and you may also, in Franchisor's sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

### **5.5 Not Applicable.**

## 5.6 Depository Account; Payment Procedures.

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository"). You will initially deposit no less than Three Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Monday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Friday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2* and *5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Friday (or preceding banking business day, if Friday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.



## **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

## **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

## **5.9 Additional Persons Training Fee.**

The training of two (2) individuals is included in the Initial Franchise Fee. If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of One Thousand Dollars (\$1,000) for each such person to attend the In-Store Training and an additional Seven Hundred and Fifty Dollars (\$750) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

## **5.10 Additional Training Fee.**

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

### **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g.*).

### **5.12 Renewal Franchise Fee.**

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13.i.*).

### **5.13 Transfer Franchise Fee.**

a. Not applicable.

b. A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay to us a transfer franchise fee of Fifteen Thousand Dollars (\$15,000) ("Transfer Franchise Fee").

### **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5.*).

### **5.15 Transfer Training Fee.**

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of Ten Thousand Dollars (\$10,000) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for

calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date payment is made) at the Default Rate, which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty Fee; or, if on a percentage Royalty Fee, the Royalty Fee will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

#### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

#### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

#### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

#### **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid by the supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

#### **5.22 Reserved.**

#### **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

#### **5.24 Grand Opening Marketing.**

Ten Thousand Dollars (\$10,000) ("Grand Opening Marketing") is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised

Business will be located. We or our designated affiliate will create a marketing plan for (i) a grand opening event at your Franchised Business, and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan. We or our designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in our sole discretion, reimburse you for some local store marketing expenses that you pay if you received our prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of your Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, we may, in our discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of your Franchised Business to the public.

**5.25 through 5.35 Not Applicable.**

**ARTICLE 6. PROPRIETARY MARKS**

**6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

**6.2 Covenants of Franchise Owners.**

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or

continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

### **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the

Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *Baja Fresh* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

## **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

## **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of Mexican-style fast food, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

### **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures,

information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Baja Fresh* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.



e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.

## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or equity, or otherwise, under local, state or federal law including, without limitation the ADA, or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Baja Fresh* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks

or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

#### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-in-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

### **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

#### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Baja Fresh* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

#### **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

### **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Baja Fresh* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold

in the Franchised Business (“Rollout”). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

**9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

**9.5 Maintenance of Insurance.**

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best’s financial strength rating of at minimum “A-VIII,” and grant us authority to obtain copies of your certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout your term. Currently, the general liability insurance required by this Agreement must: (i) name BF Acquisition Holdings, L.L.C. as the certificate holder; (ii) name BF Acquisition Holdings, L.L.C., Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates’ respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive a copy, via an endorsement, thirty (30) days’ prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
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TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, umbrella insurance, and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums, but may also save you money in the long run.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our

option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

# **ARTICLE 10. ADVERTISING AND PROMOTION**

## **10.1 Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we in our sole discretion, may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

## **10.2 Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and your grand opening promotional advertising program required under *Section 5.24*, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;
- e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:
  1. daily cash reports;
  2. cash receipts journal and general ledger;
  3. cash disbursements journal and weekly payroll register;
  4. monthly bank statements, daily deposit slips and canceled checks;
  5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
  6. suppliers invoices (paid and unpaid);
  7. dated cash register tapes (detailed and summary);
  8. semi-annual balance sheets and monthly profit and loss statements;
  9. daily production, throwaway and finishing records and weekly inventories;



10. records of promotion and coupon redemptions;
11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## **11.2 Audit by Franchisor.**

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## **ARTICLE 12. TRANSFER**

*Sections 12.1* through *12.4* apply to all transfers, except transfers by us, which are described in *Section 12.5*.

### **12.1 Prior Consent of Franchisor.**

a. As used in this Agreement, “Transfer” means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. “Full Transfer,” which is any act or circumstance, except those set forth in *Section 12.1.a.2.*, by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, “Entity”) to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.

2. “Affiliate Transfer,” which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1*.

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

## **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of

the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining

financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

### **ARTICLE 13. RENEWAL**

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;

b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;

c. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;

d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

e. You must sign a general release provided by us;

f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;



(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. **Cross-default:** A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners

(individually and collectively, “Franchisee Entity”); and (ii) us or any of our affiliates or predecessors (individually and collectively, “Franchisor Entity”). A Franchisee Entity’s default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

## **14.2 Opportunity to Cure.**

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *Baja Fresh* brand; other brands franchised by us or one of our affiliates;

your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv), or 14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

#### 14.4 Remedies.

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

#### 14.5 Effect of Termination or Expiration.

Upon termination or expiration of this Agreement, we can advise all suppliers of *Baja Fresh* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in *Section 14.9* below), and

all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements

and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Baja Fresh* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Baja Fresh* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, "Competing Business" means a business which is primarily engaged in the sale of Mexican-style food items, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the

Location or location of any *Baja Fresh* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*Baja Fresh* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*," then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5 and 14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### **14.8 Remedies.**

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### **14.9 Early Termination Damages.**

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee,

and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®,



UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

### **16.2 Severability and Substitution of Provisions.**

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall

be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

### **16.3 Dispute Resolution.**

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement (“Dispute”), which cannot be resolved by mediation under *Section 16.3d*. or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA’s Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and

expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed “Completed” when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party’s notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court’s review of the arbitrator’s findings of fact will be under the clearly erroneous standard, and the Court’s review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator’s final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

(i) the annual net profit (as defined below) multiplied by

(ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement.

### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

#### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

#### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term "affiliate" means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term "Dollars" means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms "includes" and "including" in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term "person" means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term "will" and "shall" shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, and in each case being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided however that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that it expressly enacts its rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance and to fulfill its obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

## **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

## **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

## **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

## **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

# **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

## **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.



d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

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

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## **17.2 Additional Information Respecting Franchisee.**

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

### 17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *Baja Fresh* franchise, that is different from, contrary to, or not contained in the *Baja Fresh* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Baja Fresh* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Baja Fresh* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only a Design Architect approved by us for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

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

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Baja Fresh* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Baja Fresh* Disclosure Document or *Baja Fresh* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Baja Fresh* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

\_\_\_\_\_

Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Baja Fresh* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*Baja Fresh*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_/\_\_\_\_

**ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:** \_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:** BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
(signature) individual  
Date: \_\_\_\_\_

**EXHIBIT 1**  
**FRANCHISEE QUESTIONNAIRE**



**FRANCHISEE QUESTIONNAIRE**

The undersigned is in the process of negotiating and consummating the purchase of a BF Acquisition Holdings, LLC (“BFAH”) Franchise Agreement (“Agreement”) for Baja Fresh.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the BFAH Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the BFAH Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that BFAH will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of BFAH make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Baja Fresh restaurants or about the Baja Fresh restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document (“FDD”), and as stated in ITEM 19 of the Baja Fresh FDD?

Check one:             Yes                             No

If yes, please state in detail the oral, written, or visual claim or representation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Other than what was previously disclosed to you in the Baja Fresh FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for Franchisor or any of Franchisor’s parent or affiliated companies; or (2) rely on the financial condition of Franchisor or any of Franchisor’s parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:             Yes                             No

If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a "side deal" or other promise or agreement not included in the Agreement?

Check one:             Yes                       No

If yes, please comment, in detail:

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5. Did you receive a copy of the Baja Fresh FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to BFAH or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Baja Fresh FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Baja Fresh FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one:             Yes                       No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Baja Fresh FDD and Franchise Agreement?

Check one:             Yes                       No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected

territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:             Yes                             No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Baja Fresh System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:             Yes                             No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT E-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (Renewal) and Franchisee Questionnaire**

***BAJA FRESH***

**FRANCHISE AGREEMENT  
(Renewal)**

**between**

**BF ACQUISITION HOLDINGS, LLC**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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### Exhibits

Exhibit 1 Franchisee Questionnaire

**BAJA FRESH**  
**FRANCHISE AGREEMENT**  
(“Agreement”)

**PARTIES:**

BF ACQUISITION HOLDINGS, LLC,  
a Delaware limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

(“Franchisor”)

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] “Franchisee”)

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_

(“Effective Date”)

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A “traditional” restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Baja Fresh* restaurant normally offers a full menu. A “non-traditional” restaurant is a *Baja Fresh* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Baja Fresh* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *Baja Fresh* restaurant normally offers a limited version of the full *Baja Fresh* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in Mexican-style food items, salsa items, tortillas, and other related beverage and food items. These restaurants do business under the trade name "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>". These Baja Fresh recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Baja Fresh*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:



**ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS**

**1.1 Franchise Grant.**

We hereby grant to you a *Baja Fresh* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ (“Location”)

**1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.**

You must operate the Franchised Business only from the Location, including any catering services of *Baja Fresh* menu items you provide. You acknowledge that the *Baja Fresh* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Baja Fresh* restaurant or any other business using the Proprietary Marks, the *Baja Fresh* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Baja Fresh* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Baja Fresh* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Baja Fresh* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *Baja Fresh* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);

c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

a. The term for this Agreement is for a single renewal term that will commence on the Effective Date and will expire on the five (5) year anniversary of the Effective Date, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, or transferred in accordance with *Article 12* ("Term").

### **1.4 System Standards.**

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;
- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;

g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;

h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;

i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;

j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and

k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Baja Fresh* System for all restaurants operating under the *Baja Fresh* System to present a uniform and professional image to *Baja Fresh* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1 Location Selection Procedures.**

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in making your selection, our recommendation of any location or a third party to assist you in selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

## **2.2 Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

## **2.3 Construction.**

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved

by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act (“ADA”) or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use a third-party design architect (“Design Architect”) approved by us to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications (“Plans”) for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Baja Fresh* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time.

In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the granting of a successor term to operate the Franchised Business, as set forth in *Articles 12 and 13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Baja Fresh* System specifications, standards, format, image and appearance.

f. You must submit to us a certificate of occupancy for your Franchised Business at any time upon our request.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Baja Fresh* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

## **2.5 Relocation.**

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have

occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Baja Fresh* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Not Applicable.**

## **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use

them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, "Site") in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else's) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *Baja Fresh* brand. On any Site you use in connection with the Franchised Business, you must



affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Baja Fresh* brand; and (b) the Location of your Franchised Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

The training program is made up of the “In-Store Training,” which is approximately two hundred forty (240) hours, and “New Owner Training,” which is approximately forty (40) hours (collectively, “Training Program”). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional In-Store Training (as defined below), as provided for in this *Section 4.1*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor’s Systems Standards. Notwithstanding the foregoing, because Franchisee has prior experience in the food service industry, and in particular with the operation of a *Baja Fresh* restaurant, Franchisor hereby waives the requirement for Franchisee to attend and successfully complete the Training Program at the time Franchisee executes this Agreement. Franchisor and Franchisee hereby agree that Franchisor has no obligation to provide the Training Program to Franchisee, or any persons who have an ownership interest in the Franchised Business, prior to, or in connection with Franchisee’s continuing operations of the Franchised Business. Franchisee understands and agrees that the foregoing waiver is not a permanent waiver by Franchisor and Franchisor does not waive and hereby reserves the right to require Franchisee to later attend and successfully complete any training as may be prescribed by Franchisor at any time during the Term. Furthermore, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee, as provided for in this *Section 4.1 and Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor’s Systems Standards.

### **4.2 Employee Training.**

You acknowledge that the employees of your *Baja Fresh* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees’ compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction

with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

#### **4.3 Additional Programs; Continuing Assistance.**

We may, in the future, request that you participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by you at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

We shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Confidential Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### **4.4 Area Representatives.**

We may retain the services of an independent third-party area representative ("Area Representative") to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Baja Fresh* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience ("QSCE") evaluations; (vii) assistance with collection of the various sums due to us from *Baja Fresh* franchisees; and (viii) coordination with other *Baja Fresh* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### **4.5 Confidential Manual.**

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to [training@kahalamgmt.com](mailto:training@kahalamgmt.com). Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. You are required to acquire, as necessary, to maintain, and to exclusively use an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on is not available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be

required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Baja Fresh* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet provider for such computer equipment. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. You are required to acquire, as necessary, and to maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, for the Gift/Loyalty Card processing services. Also, for online ordering only, you must utilize our approved third-party payment card processor for processing all such debit and credit transactions. You are also required to create an online merchant account with the payment processor identified in the Operations Manual for payment processing associated with online orders. The Payment Card Industry (“PCI”) requires all companies that process, store, or transmit credit card information to protect the cardholders’ information by complying with the PCI Data Security Standard (“PCI DSS”). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business’ POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Not Applicable.**

## 5.2 Royalty Fee and Surcharge.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Friday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Monday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of three percent (3%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. Your own local marketing and advertising should be developed to maximize your particular customer base.

### **5.4 Cooperative Advertising.**

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an "Association"). Each Association will help coordinate advertising, marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement and you may also, in Franchisor's sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

### **5.5 Not Applicable.**

## 5.6 Depository Account; Payment Procedures.

As of the Effective Date, you are required to maintain for the duration of the Term a depository account ("Depository Account") at a bank or other federally insured financial institution ("Depository"). You are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Monday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Friday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Friday (or preceding banking business day, if Friday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

## **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

## **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

## **5.9 Not Applicable.**

## **5.10 Additional Training Fee.**

If you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

## **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g.*).

## **5.12 Not Applicable.**

## **5.13 Transfer Franchise Fee.**

- a. Not applicable.



b. A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay to us a transfer franchise fee of Fifteen Thousand Dollars (\$15,000) ("Transfer Franchise Fee").

#### **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

#### **5.15 Transfer Training Fee.**

A Potential Transferee receiving this Agreement, as may be amended, in connection with a Full Transfer, must pay to us, in addition to the Transfer Franchise Fee, a transfer training fee of Ten Thousand Dollars (\$10,000) ("Transfer Training Fee"). The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

#### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

#### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date payment is made) at the Default Rate, which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty Fee; or, if on a percentage Royalty Fee, the Royalty Fee will be increased up to

eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

#### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

#### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

#### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The

POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

#### **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid by the supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

#### **5.22 Reserved.**

#### **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

#### **5.24 Not Applicable.**

#### **5.25 through 5.35 Not Applicable.**

### **ARTICLE 6. PROPRIETARY MARKS**

#### **6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and

d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

## **6.2 Covenants of Franchise Owners.**

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

## **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

#### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *Baja Fresh* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

#### **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

### **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

#### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale

of Mexican-style fast food, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

## **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Baja Fresh* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential

Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this Section 7.2 will remain in full force and effect during the Term and after termination or expiration of this Agreement.

## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts,

duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction (individually and collectively, "Claims") suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Baja Fresh* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon us granting you a successor term to operate the Franchised Business pursuant to *Article 13*, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the Proprietary Marks or Confidential Information infringed upon a third-party's rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-in-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

## **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality,



cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Baja Fresh* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility, and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

## **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. You are required to acquire, as necessary, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

## **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications,

photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Baja Fresh* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

#### **9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

**9.5 Maintenance of Insurance.**

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-VIII," and grant us authority to obtain copies of your certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout your term. Currently, the general liability insurance required by this Agreement must: (i) name BF Acquisition Holdings, L.L.C. as the certificate holder; (ii) name BF Acquisition Holdings, L.L.C., Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive a copy, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, umbrella insurance, and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums, but may also save you money in the long run.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

# **ARTICLE 10. ADVERTISING AND PROMOTION**

## **10.1 Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we in our sole discretion, may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

## **10.2 Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;

e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:

1. daily cash reports;
2. cash receipts journal and general ledger;
3. cash disbursements journal and weekly payroll register;
4. monthly bank statements, daily deposit slips and canceled checks;
5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
6. suppliers invoices (paid and unpaid);
7. dated cash register tapes (detailed and summary);
8. semi-annual balance sheets and monthly profit and loss statements;
9. daily production, throwaway and finishing records and weekly inventories;
10. records of promotion and coupon redemptions;
11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## 11.2 Audit by Franchisor.

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## ARTICLE 12. TRANSFER

*Sections 12.1* through *12.4* apply to all transfers, except transfers by us, which are described in *Section 12.5*.

### 12.1 Prior Consent of Franchisor.

a. As used in this Agreement, "Transfer" means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. "Full Transfer," which is any act or circumstance, except those set forth in *Section 12.1.a.2.*, by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, "Entity") to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.



2. "Affiliate Transfer," which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1.*

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

### **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the transfer franchise fee set forth in the Transfer Documents, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will

terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation.

With regard to any of the above sales, assignments and dispositions, you expressly and specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

## **ARTICLE 13. SUCCESSOR TERM**

We have no obligation under any circumstances to extend your rights to operate the Franchised Business beyond the Term. Notwithstanding the foregoing, in the event the Term expires in accordance with *Section 1.3*, you may apply to us to extend your rights to operate the Franchised Business for a successor term. In the event you desire to apply to us to extend your rights to operate the Franchised Business for a successor term, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of intent to apply for a successor term referred to above in a timely manner, in order to qualify for a license to operate the Franchised Business for a successor term, you must also, at a minimum, meet each of the following requirements:

- a. You must successfully complete the then-current application process required of new franchisees;
- b. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;
- c. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;
- d. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed successor term;

e. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);

f. You must sign a general release provided by us;

g. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Successor Franchise Documents") then used by us in the granting of franchises and then being required of new franchise owners in connection with the System. The Successor Franchise Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Successor Franchise Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Successor Franchise Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

h. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

i. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

j. You shall have paid to us the then-current initial franchise fee.

We reserve the right to reject your application for a successor term, at our sole discretion, for any reason, without limitation, failure to meet our then-current standards or requirements for new franchisees. If we decide to reject your application for a successor term to operate the Franchise Business, we will give you a notice to that effect within sixty (60) days after you deliver to us your notice of intent to apply for a successor term.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition

with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. Cross-default: A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. Termination: If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. Cross-termination: If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.



## 14.2 Opportunity to Cure.

a. Fourteen-Day Cure Period - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:

b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *Baja Fresh* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv),* or *14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m.* or *17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that

statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

### **14.4 Remedies.**

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These

remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

#### **14.5 Effect of Termination or Expiration.**

Upon termination or expiration of this Agreement, we can advise all suppliers of *Baja Fresh* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in Section 14.9 below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our

affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Baja Fresh* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Baja Fresh* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, "Competing Business" means a business which is primarily engaged in the sale of Mexican-style food items, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *Baja Fresh* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*Baja Fresh* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "*Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8,*" then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5* and *14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth

in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### **14.8 Remedies.**

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### **14.9 Early Termination Damages.**

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early

Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination ("Early Termination Notice"). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify

yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

## **16.2 Severability and Substitution of Provisions.**

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew or grant a successor term to, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

## **16.3 Dispute Resolution.**

a. Except as otherwise provided herein, *any* dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement ("Dispute"), which cannot be resolved by mediation under *Section 16.3d*. or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the



prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. **THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.**

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

- (i) the annual net profit (as defined below) multiplied by
- (ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

#### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

#### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

#### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

#### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

#### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

#### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our

right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement.

#### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

#### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

#### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

#### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

#### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term “affiliate” means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term “Dollars” means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms “includes” and “including” in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term “person” means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term “will” and “shall” shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, in each case, being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided however that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that it expressly enacts its rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance and to fulfill its obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

#### **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

#### **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

#### **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

#### **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

## **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

### **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided

in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

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

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is



subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## 17.2 Additional Information Respecting Franchisee.

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

## 17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *Baja Fresh* franchise, that is different from, contrary to, or not contained in the *Baja Fresh* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Baja Fresh* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Baja Fresh* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only a Design Architect approved by us for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

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

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

[store #]  
[doc #]

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Baja Fresh* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Baja Fresh* Disclosure Document or *Baja Fresh* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Baja Fresh* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

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Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Baja Fresh* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*Baja Fresh*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do

not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

**ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:** \_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:** BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

**EXHIBIT 1**  
**FRANCHISEE QUESTIONNAIRE**

**FRANCHISEE QUESTIONNAIRE**

The undersigned is in the process of negotiating and consummating the purchase of a BF Acquisition Holdings, LLC (“BFAH”) Franchise Agreement (“Agreement”) for Baja Fresh.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the BFAH Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the BFAH Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that BFAH will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of BFAH make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Baja Fresh restaurants or about the Baja Fresh restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document (“FDD”), and as stated in ITEM 19 of the Baja Fresh FDD?

Check one:             Yes                             No

If yes, please state in detail the oral, written, or visual claim or representation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Other than what was previously disclosed to you in the Baja Fresh FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for Franchisor or any of Franchisor’s parent or affiliated companies; or (2) rely on the financial condition of Franchisor or any of Franchisor’s parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:             Yes                             No



If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a "side deal" or other promise or agreement not included in the Agreement?

Check one:             Yes                       No

If yes, please comment, in detail:

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5. Did you receive a copy of the Baja Fresh FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to BFAH or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Baja Fresh FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Baja Fresh FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one:             Yes                       No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Baja Fresh FDD and Franchise Agreement?

Check one:             Yes                       No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected

territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:             Yes                             No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Baja Fresh System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:             Yes                             No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT E-3**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Franchise Agreement (Transfer) and Franchisee Questionnaire**

***BAJA FRESH***

**FRANCHISE AGREEMENT  
(Transfer)**

**between**

**BF ACQUISITION HOLDINGS, LLC**

**and**

\_\_\_\_\_, a(n) \_\_\_\_\_

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**Exhibits**

**Exhibit 1      Franchisee Questionnaire**

**BAJA FRESH**  
**FRANCHISE AGREEMENT**  
(“Agreement”)

**PARTIES:**

BF ACQUISITION HOLDINGS, LLC,  
a Delaware limited liability company  
Attn: Legal Department  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258

(“Franchisor”)

\_\_\_\_\_  
a(n) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone No.: \_\_\_\_\_

([individually and collectively,] “Franchisee”)

**RESTAURANT NO.:** \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_

(“Effective Date”)

**TRADITIONAL RESTAURANT (YES or NO):** \_\_\_\_\_

**RESTAURANT DESCRIPTION IF NON-TRADITIONAL:** \_\_\_\_\_

A “traditional” restaurant is a restaurant that is easily accessible by the general public, such as a free-standing building, inline retail shop, shopping mall and street front location. A traditional *Baja Fresh* restaurant normally offers a full menu. A “non-traditional” restaurant is a *Baja Fresh* restaurant that is located in a non-traditional marketplace, as determined by us (in our sole discretion), such as an airport, amusement park, sports or entertainment venue, train station, travel plaza, toll roads, cafeteria, retail store, convenience store, military base, hospital, office building, movie theater, hotel, casino, kiosk, cart, or high school or college campus. A non-traditional restaurant may also be a *Baja Fresh* restaurant that is co-branded into another brand restaurant, at Franchisor’s sole discretion. A non-traditional *Baja Fresh* restaurant normally offers a limited version of the full *Baja Fresh* menu.

To simplify the language in this Agreement, the terms “we,” “us,” “our” and the like may be used to refer to the Franchisor, and the terms “you,” “your” and the like may be used to refer to the Franchisee. The term “you” as used herein is applicable to one (1) or more persons, a corporation, partnership, trust, other entity, association or form of organization as the case may be, and the singular usage includes the plural, masculine, neuter, feminine, and possessive usages. Franchisor and Franchisee may individually be referred to as a “party” and collectively referred to as the “parties.”

## **RECITALS:**

This Agreement is entered into with reference to the following facts and circumstances:

A. We have, over a period of time and at considerable expense, developed and established a uniform and unique method of operation, customer service, advertising, publicity, processes, recipes, techniques and technical knowledge in connection with the restaurant business, specializing in Mexican-style food items, salsa items, tortillas, and other related beverage and food items. These restaurants do business under the trade name "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>". These Baja Fresh recipes, techniques, processes and methods constitute our "Trade Secrets." All of our knowledge, experience, Trade Secrets, processes, methods, specifications, techniques, Proprietary Marks (as defined in Recital B.), System Standards (as defined in *Section 1.4*) and information are referred to in this Agreement as the "System." The System may be changed, supplemented, improved and further developed by us from time to time.

B. We have owned and issued franchises to others for the operation of franchised restaurants in the United States and in other countries. We have registered and applied for proprietary marks with the United States Patent and Trademark Office and with offices in other countries serving similar functions. These proprietary interests, trademarks, service marks, logos, insignias, trade names and trade dress are referred to in this Agreement as the "Proprietary Marks."

C. We are engaged in the business of licensing the right to use the Proprietary Marks in connection with the operation and promotion of the System.

D. You understand and recognize that: (1) our Trade Secrets, Proprietary Marks, developments and other properties as recited above are of considerable value; and (2) it is of importance to us and all of our franchisees to maintain the development of the System in a uniform and distinctive manner, allowing you and our other franchisees to enjoy a public image and reputation greater than most single franchisees could establish.

E. You desire to make use of the "*Baja Fresh*<sup>®</sup>" or "*Baja Fresh Mexican Grill*<sup>®</sup>" trademark and to enjoy the benefits of that mark, the other Proprietary Marks, and the System; and to establish a "*Baja Fresh*" franchise to be operated in accordance with System Standards set forth from time to time by us. System Standards are set forth in, without limitation, the confidential "ops package," which consists of the "operations manual" ("Operations Manual"), "ops toolkit" and related printed and electronic documents, both now existing and hereinafter developed (individually and collectively, "Confidential Manual"). We are willing to grant you the right to do so under the terms, conditions and provisions set forth in this Agreement, which includes any and all appendices, addenda, amendments, attachments and exhibits.

F. You recognize the necessity and desirability of protecting our reputation, goodwill, Trade Secrets, and other confidential business information; and that disclosure of Trade Secrets and confidential business information, including specifics of the System to any third-party, will cause irreparable damage and harm to us.

## **AGREEMENT:**

The parties agree as follows:

**ARTICLE 1. GRANT OF FRANCHISE; TERM; SYSTEM STANDARDS**

**1.1 Franchise Grant.**

We hereby grant to you a *Baja Fresh* franchise that includes the right to use the System (“Franchised Business”) as provided in this Agreement, at the following location:

Arena, Mall, Facility, or Center Name: \_\_\_\_\_  
(if applicable)

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

City/State/Zip Code: \_\_\_\_\_ (“Location”)

**1.2 Location of the Franchised Business; No Exclusive Territory or Other Rights.**

You must operate the Franchised Business only from the Location, including any catering services of *Baja Fresh* menu items you provide. You acknowledge that the *Baja Fresh* franchise granted under this Agreement is non-exclusive, that we are not granting you any territorial protection or any other exclusive rights, and that we, directly or through one (1) or more affiliates, reserve the right in our sole discretion, and without compensating you or seeking your prior approval: (i) to establish, and grant to other franchisees or licensees the right to establish, a *Baja Fresh* restaurant or any other business using the Proprietary Marks, the *Baja Fresh* System or any variation thereof, in any location other than the approved Location (including locations in the immediate vicinity of your Location), on any terms and conditions that we deem appropriate; (ii) to establish, and grant to other franchisees or licensees the right to establish, any restaurant concept other than *Baja Fresh* in any location on any terms and conditions that we deem appropriate (including locations in the immediate vicinity of the Location); (iii) to sell products identified by the Proprietary Marks or other trademarks, service marks or commercial symbols in any location through any distribution channels, including grocery stores, convenience stores, supermarkets, club stores, vending machines, delivery services and restaurants other than *Baja Fresh* restaurants; and (iv) to take any other action that we are not expressly prohibited from taking under this Agreement.

We hereby grant to you during the term of this Agreement, a non-exclusive right and license to operate a single restaurant at the Location only, according to the System Standards and subject to the terms, conditions and restrictions contained in this Agreement. This Agreement is limited to the operation of one traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.

Except as expressly limited in this Agreement, we (for ourselves and our affiliates and designees) retain all rights with respect to all Proprietary Marks and the sale of *Baja Fresh* products anywhere in the world with no compensation or liability to you, including the right to:

a. Establish and operate (or license to any other person or entity the right to establish and operate) *Baja Fresh* restaurants owned or licensed by us at any location;

b. Develop, market, own, operate and participate in any other business under the Proprietary Marks or any other trademarks (including trademarks identified in the Franchise Disclosure Document (“Disclosure Document”) and other trademarks we or our affiliates own or have the right to license);



c. Develop, lease and license the use of, at any location, trademarks other than the Proprietary Marks, in connection with the operation of a system that offers products or services that are the same as, or similar to, those offered by us under this Agreement on any terms or conditions that we deem advisable, in our sole discretion;

d. Merge with, acquire or be acquired by any other business, including a business that competes with your Franchised Business, or acquire and convert any retail stores, including retail stores operated by competitors, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporate-owned;

e. Distribute, sell and license other persons or entities to distribute and sell products through all other channels of distribution, including catalog sales, telemarketing, grocery stores, warehouses, big box shops, specialty shops, limited access highway food facilities, vending machines and similar automated dispensing systems, mobile units, off-site sales accounts, electronic mail, Internet sales, and movie theaters (individually and collectively, "Other Channels"); and

f. Implement multi-area marketing programs that may allow us or others to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such multi-area marketing programs.

### **1.3 Term of Agreement.**

a. This Agreement will commence on the Effective Date and will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Franchised Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this Franchised Business is located; or (2) if you have entered into a sublease with one of our affiliates, the expiration of the term of the sublease for the Location excluding any extensions or renewal options, unless terminated earlier in accordance with *Article 14* or any other provisions of this Agreement, renewed in accordance with *Article 13*, or transferred in accordance with *Article 12* ("Term").

### **1.4 System Standards.**

You shall operate the restaurant in accordance with our standards, including the following:

- a. restaurant design, maintenance, health and safety and remodeling;
- b. types, models, brands and suppliers of required fixtures, furnishings, equipment, signs, materials and supplies;
- c. recipes and ingredients, menu items and menu design;
- d. cooperation with and participation in sales, marketing, advertising and promotional programs (including discount coupons, discount gift cards, special menu promotions, and entering into product and service agreements directly with third-party vendors and service providers as required by us) and materials and media used in those programs, including discontinued use and removal of promotional materials as directed by us;

- e. use and display of the Proprietary Marks;
- f. restaurant operations, including matters related to the management of the restaurant; training of your employees consistent with the System Standards; and commercial impression of the Franchised Business to the public;
- g. cooperation with and participation consistent with our responses and resolutions in response to customer feedback;
- h. cooperation with and participation in: (i) market research and testing; and (ii) product and service development programs;
- i. acceptance of our stored value gift cards, including gift cards sold at a discount, loyalty cards, frequency cards, gift certificates, vouchers, and any other similar electronic card and payment programs (individually and collectively, "Gift/Loyalty Card"), credit and debit cards, other payment systems, check verification services and use of point of sale computer systems; You agree to enter into a separate participation agreement with the approved vendor for data processing services;
- j. bookkeeping, accounting, data processing and record keeping systems; computer hardware and software; connections to the Internet or to proprietary networks; forms, methods, formats, content and frequency of reports to us of Gross Sales (as defined in *Article 5*), financial performance and condition; and providing tax returns and other operating and financial information to us; and
- k. conduct and maintain the Franchised Business and Location so as not to distract from or interfere with the integrity of the System (individually and collectively, "System Standards"). We may, in whole or in part, change, improve, update and further develop the System Standards, from time to time during the term. You shall comply with the updated System Standards as directed by us.

The operation and maintenance of your restaurant according to the System Standards are essential to the well-being and vitality of the System and to preserve the goodwill of the Proprietary Marks for us and for all other franchisees operating under the System. It is critical to the *Baja Fresh* System for all restaurants operating under the *Baja Fresh* System to present a uniform and professional image to *Baja Fresh* customers regardless of which location the customer visits. Any information regarding the operation of the restaurant will be considered a mandatory System Standard, unless it is clear from the express language of our communication that the information is merely optional or is intended by us as a suggestion, rather than a requirement.

You agree that System Standards constitute binding provisions of this Agreement as if they were an integral part of this Agreement.

## **ARTICLE 2. SELECTION OF LOCATION; CONSTRUCTION AND RELOCATION**

### **2.1 Location Selection Procedures.**

You are ultimately responsible for the selection of the Location. We will not have any liability to you with respect to your selection of the Location, any assistance we provide you in

making your selection, our recommendation of any location or a third party to assist you in selecting a location, or our allowing you to move forward on any location. You agree that your selection of the Location will be based on your own independent investigation of the suitability of the Location.

## **2.2 Lease and Purchase Approval.**

If you intend to lease the Location for your Franchised Business, the lease will be subject to our prior limited review and acknowledgment so that we can confirm that certain lease terms are incorporated into the lease. You must provide us, at least thirty (30) days prior to executing the lease, a copy of the lease and details relating to square footage, rent per square foot, the term of the lease, and either confirmation that such other terms as we reasonably require are incorporated into the lease or that you and the landlord agree to incorporate the lease addendum to lease agreement as an exhibit to the lease. You or your attorney shall be responsible for negotiating the terms of the lease, which shall be subject to our final limited review and acknowledgment. If you do not submit all of the required documents to us, we will not allow you to move forward with your lease. We have no liability to you regarding the terms or negotiations of the lease.

If, prior to executing the lease, you or your attorney request a full review of your lease, including any and all exhibits attached thereto, and we or our designated affiliate review your entire lease and exhibits and provide to you or your attorney its review of the entire lease and suggested changes to the lease ("Lease Review"), you must pay a Lease Review Fee (as defined in *Section 5.7*) to compensate for time and effort in reviewing the lease. The Lease Review is optional and only completed by us or our designated affiliate at your or your attorney's request. The Lease Review Fee is due only in the event that you or your attorney request us or our affiliate to complete a Lease Review. Each lease must contain the required lease terms set forth in the Lease Addendum to Lease Agreement, and must specifically state that we are a third-party beneficiary of the lease. If we cure any default by you under the lease, any amounts that we pay to cure the default will be payable by you to us on demand, together with interest thereon, at the lesser rate of one and one-half percent (1½%) or the maximum rate that does not violate applicable state usury laws ("Default Rate") per month from the date we make such payment.

You acknowledge and agree that on the earlier of thirty (30) days after: (i) you receive a fully executed copy of your lease for the Location of your Franchised Business; or (ii) you open your Franchised Business to the public, you must provide a fully-executed copy of your lease for the Location to us. Failure to timely provide us with a fully-executed copy of the lease will result in a default under this Agreement.

If you intend to purchase the Location for your Franchised Business, the terms of such purchase shall be subject to our prior approval, and you must provide us, at least thirty (30) days prior to executing the purchase agreement, a copy of the purchase agreement and details relating to square footage, price per square foot and such other terms as we reasonably require.

You acknowledge and understand that our confirmation that you may move forward with any specific location, lease or purchase agreement does not in any way guarantee or ensure the success or profitability of the Franchised Business, or the conformity of the Location, lease or purchase agreement to applicable laws, and such confirmations are only for our own benefit.

## 2.3 Construction.

a. You must, at your sole cost and expense, construct, furnish, make improvements to and equip, if necessary, the Franchised Business at the Location selected by you and meeting our minimum site requirements, in accordance with plans and specifications approved by us or our third-party approved architect, if applicable. Our approval of plans is solely for complying with our System Standards and not for determining compliance with codes, ordinances and other legal requirements, including the Americans with Disabilities Act (“ADA”) or any requirements under the lease for your Location. You are solely responsible for ensuring that your Location conforms to all codes and ordinances, including the ADA, and all lease-specific requirements. You must, at your sole cost and expense, use a third-party design architect (“Design Architect”) approved by us to prepare the initial design drawings for any construction, alterations or improvements, as applicable, for your Franchised Business. The Design Architect must provide us with one (1) set of the design drawings, including landscaping and parking spaces if applicable, which are the detailed plans and specifications (“Plans”) for your Franchised Business. We will provide you with a copy of the Plans upon our approval of the Plans. You must also, at your sole cost and expense, retain a licensed architect of record to prepare the permitted construction set of drawings for any construction, alterations or improvements. The permitted construction set of drawings must be submitted to us for our files prior to the start of construction, alterations or improvements. In addition, you must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as we may require, even if local laws in the jurisdiction where your restaurant is located do not require same.

b. Any material modifications to the approved Plans must be submitted to us for approval and you will not undertake any construction, alterations or improvements until such modifications have been approved by us. Approval of such modifications does not constitute any representation by us of compliance with applicable zoning laws, building codes or other laws.

c. You will be solely responsible for the cost and expense of obtaining all necessary governmental construction permits and licenses, and you must, at your sole cost and expense, comply with all laws, zoning ordinances, rules and regulations of any governmental agencies that may govern any construction, alterations or improvements of the Franchised Business in accordance with the approved Plans. We will have the right, but are not required, to meet with the Design Architect and to inspect any construction, alterations or improvements during its course to ensure that the provisions of this *Section 2.3* are being observed; and you agree to allow our authorized representatives, at any and all times while construction, alterations or improvements are in progress, to meet with the licensed architect and general contractor and enter onto the Location for this purpose. If we determine in good faith that the provisions of this *Section 2.3* are not being observed, you will, at your sole cost and expense, immediately take all necessary corrective action.

d. You must, at your sole cost and expense, use a general contractor that is licensed, and if applicable, registered in the state and local jurisdiction where your restaurant is located for any and all construction, alterations and improvements. The general contractor must have prior experience in the construction, alterations and improvement of quick-service restaurants.

e. You acknowledge that the design and appearance of the *Baja Fresh* restaurant is part of the System, and that uniformity is essential to the System. Therefore, you agree that after the restaurant has been constructed, altered or improved, you will not make any material changes to the building plan or design or its appearance without our prior written consent, and you will, at your sole cost and expense, maintain the interior and exterior décor of the restaurant in a first class condition and in such manner as we may reasonably prescribe from time to time. In addition to any remodeling required by us upon the transfer of the Franchised Business and upon the renewal of this Agreement, as set forth in *Articles 12* and *13*, respectively, you will, upon thirty (30) days' prior notice from us, and at your sole cost and expense, remodel and make all alterations and improvements in and to your Franchised Business as reasonably determined by us to reflect the then-current *Baja Fresh* System specifications, standards, format, image and appearance.

f. A certificate of occupancy for your Franchised Business must be submitted to us approximately six (6) days prior to the day you open your Franchised Business to the public and as otherwise requested by us throughout the Term.

## **2.4 Signage.**

You will acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, signs for advertising and identifying the Franchised Business as a *Baja Fresh* restaurant. All signs must be in accordance with the System Standards, specifications and any local governing body (i.e., city or county governments), as well as any other applicable laws, including the Americans with Disabilities Act ("ADA"), and exterior signage must be the maximum size allowed by the landlord and local governing body. You acknowledge that quality control is essential to protect and promote our Proprietary Marks, standards, and uniform image, and you shall acquire all signs only from approved suppliers. In addition, you shall prominently display on all communications, forms, advertising, business stationery and business cards, and in a sign easily visible to consumers at the Franchised Business, the following words: "INDEPENDENTLY OWNED AND OPERATED."

## **2.5 Relocation.**

a. If you desire to relocate the Franchised Business, you may request our consent upon the following conditions:

(i) Not less than sixty (60) days prior to the desired date of relocation (unless prior notice is impractical because of a required relocation, due to a third-party or our request, in which event notice shall be made as soon as possible), you must make a written request for consent to relocate, describing the reasons for the relocation and providing details respecting any proposed new location.

(ii) Within twenty-one (21) days after receiving your written request, we shall advise you in writing if the proposed new location meets our minimum real estate site requirements as provided in *Section 2.1* and if you have our authorization to proceed with the relocation. In the event of our denial to proceed with the relocation, you may request an alternative proposed new location pursuant to the provisions of this *Section 2.5*.

(iii) The Term will not be extended in connection with the requested relocation.

b. At the time you request to relocate the Franchised Business, you must also meet each of the following requirements:

(i) You must not be in default under this Agreement or any other agreement or note then in effect between us or you and any affiliate of ours, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement;

(ii) You must neither have received more than three (3) notices of default or breach during the Term; nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed relocation;

(iii) The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and System Standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and System Standards then applicable to new franchise owners; and

(iv) You shall have paid to us a Relocation Fee (as defined in *Section 5.14*).

c. If we approve the relocation of your Franchised Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Franchised Business, and (ii) you must open your Franchised Business at the new location within thirty (30) days after you close your Franchised Business at the current Location. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 2.5, during the period of time between the closure of your Franchised Business at the current Location, and the opening of the Franchised Business at the approved relocation address, you will not owe the Royalty Fee (as defined in *Section 5.2*).

## **2.6 Restricted Use of Restaurant Location.**

You may not wholly or partially sublet the Location without our prior written consent. The Location may be used only for the operation of a *Baja Fresh* restaurant in compliance with this Agreement and the System Standards. You shall not conduct other businesses or activities at the Location without our prior written consent.

## **2.7 Not Applicable.**

# **ARTICLE 3. OPERATIONS**

## **3.1 Commencing Operations.**

You agree to start operating your *Baja Fresh* restaurant at the Location as of the Effective Date. You acknowledge that before starting operations you must, at your own expense, do the following (in addition to any other requirements set forth in this Agreement):

a. Complete a food safety training program at your sole cost and expense. We will accept the certificate for the required program through your local county or state health

department or any other nationally recognized food safety program. You must provide us with a copy of your certificate prior to commencing training;

- b. Successfully complete the Training Program described in *Section 4.1*;
- c. Purchase, lease or otherwise acquire from the list of approved sources provided by us all the signage, supplies, equipment, fixtures, inventory and other items necessary to operate the *Baja Fresh* Franchised Business; and
- d. Obtain liability insurance in accordance with the requirements described in *Section 9.5* and provide to us evidence that such insurance has been obtained.

Prior to starting operations of the Franchised Business, you must notify us that you have satisfied all requirements to begin operations, and provide us with such documents as we may reasonably request that show your compliance with all such requirements. If you do not begin operations of your restaurant at the Location as of the Effective Date, then we may terminate this Agreement by giving you notice to that effect.

### **3.2 Supplies and Promotional Materials; Rollouts.**

You agree to sell only those menu items, products and services authorized under the terms of this Agreement and as specified in the Confidential Manual, and you shall use only supplies and ingredients in making those menu items that are in compliance with the standards as set forth in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You shall purchase all such services, supplies and ingredients only from approved vendors and utilize approved distributor(s) as specified in the documents provided by, or approved by, us as they presently exist or may exist in the future. You must purchase promotional materials containing the Proprietary Marks, including stationery, business cards, promotional and advertising materials and similar items, from suppliers approved by us, except that we must first approve all such promotional and advertising materials before you use them, and all such printed materials containing any of the Proprietary Marks shall be accompanied by the words "INDEPENDENTLY OWNED AND OPERATED." Additionally, during the Term, you agree to participate in any Rollout of new products and suppliers, as defined in *Section 9.3*.

### **3.3 Fixtures, Furnishings, and Equipment.**

Unless otherwise approved by us in writing, you will: (1) acquire, repair and replace, as necessary, and maintain in a first class condition throughout the Term, fixtures, furnishings, and equipment to be used in the operation of your Franchised Business that is in accordance with the System Standards, specifications set forth by us in the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future, and with applicable laws including, without limitation, including the Americans with Disabilities Act ("ADA"); and (2) procure the fixtures, furnishings, and equipment from suppliers or vendors previously approved in writing by us.

### **3.4 Online Presence.**

You may not maintain a website, software application, an App (application), social media account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®,

Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), or otherwise maintain a presence or advertise on the Internet or any other public computer network (individually and collectively, “Site”) in connection with the Franchised Business without our prior written approval, which we may withhold in our sole discretion. If we grant you written approval, you agree to submit to us for approval before use, true and correct printouts, of all Site pages you propose to use in connection with the Franchised Business. You understand and agree that our right of approval of all such Site pages is necessitated by the fact that such Site pages will include and be inextricably linked with our Proprietary Marks. If we approve your use of a Site, you may only use Site pages that we have approved. Your Site must conform to all online presence requirements, policies and procedures per our System Standards. You agree to provide all information regarding your online presence that we require. If we grant approval for a Site, you may not use any of the Proprietary Marks on the Site except as we expressly permit. You may not post any of our proprietary, confidential or copyrighted material or information on the Site without our prior written permission. If you wish to modify your approved Site, all proposed modifications must also receive our prior written approval. You explicitly understand that you may not post on any Site (whether yours or someone else’s) any material in which a third-party has any direct or indirect ownership interest (including video clips, photographs, sound bites, copyrighted text, trademarks or service marks, or any other text or image which any third-party may claim intellectual property or other rights in). If we grant approval, you agree to list on the Site any website and social media account maintained by us, and any other information we require in the manner we dictate. You agree to obtain our prior written approval for any Internet domain name, home page address and Uniform Resource Locator. The requirement for our prior approval set forth in this *Section 3.4* will apply to all activities on the Internet or other communications network to be conducted by you, except that you may maintain one (1) or more e-mail addresses and may conduct individual e-mail communications without our prior written approval. You agree to obtain our prior approval as provided above if you propose to send advertising to multiple addressees via e-mail or text messages. You may not use a Site to represent that: (1) the Site is an official account, application, page or group of, or video produced by us; or (2) you are the owner of the *Baja Fresh* brand. On any Site you use in connection with the Franchised Business, you must affirmatively state: (a) that you are a franchisee and the opinion and content being expressed are your own and not that of the *Baja Fresh* brand; and (b) the Location of your Franchised Business.

### **3.5 Not Applicable.**

## **ARTICLE 4. TRAINING, ASSISTANCE AND START-UP MATERIALS**

### **4.1 Training Program.**

We will provide up to two (2) natural persons (individually and collectively, “Trainees”) with a training program designed to inform the participants as to the fundamentals of operating the Franchised Business prior to your opening of the Franchised Business. At minimum, one (1) of the two (2) natural persons must have an ownership interest in the Franchised Business. The remaining position may be filled by a natural person with an ownership interest in or management responsibility for the Franchised Business. The training program is made up of the “In-Store Training,” which is approximately two hundred forty (240) hours, and “New Owner Training,” which is approximately forty (40) hours (collectively, “Training Program”). You will be solely responsible for all transportation costs, food, lodging and other personal expenses incurred by you and your employees in connection with the Training Program. The New Owner



Training will be conducted either online or in person at our sole discretion. If the New Owner Training is conducted in person, it will be at the Franchisor training and education center in Scottsdale, Arizona or at such other location as we may designate at our sole discretion and the In-Store Training will be conducted at a training store in Arizona or such other location as we may designate at our sole discretion. You acknowledge that adequate knowledge regarding the operation of the Franchised Business is essential to the growth of your franchise and to the promotion of the System. Notwithstanding the foregoing, Franchisor has the right to require Franchisee and/or its manager(s) to attend additional training and pay the Additional Training Fee (as defined below), as provided for in this *Section 4.1* and *Section 5.10*, in the event Franchisee is not operating the Franchised Business pursuant to Franchisor's Systems Standards.

#### **4.2 Employee Training.**

You acknowledge that the employees of your *Baja Fresh* Franchised Business are an integral and important part of the Franchised Business, as they will have substantial contact with customers. You alone are responsible, and acknowledge that we have no direct or indirect control and no right or authority, for the hiring, firing, training, supervising, setting the terms and conditions of employment (including employee tasks and work schedules), compensation of your employees, or maintaining employment records, for the safety of your employees and for your employees' compliance with the System Standards. The System Standards are in place to protect our interests in the System and not for exercising any control over you, your employees or your Franchised Business. You must ensure that your employees who have direct interaction with the public are able to speak and read English and any other language that may be required to adequately meet the public needs in your Franchised Business.

#### **4.3 Additional Programs; Continuing Assistance.**

We will provide one (1) of our representatives to come to your restaurant during opening week for up to five (5) days, at our expense, to work with you or your manager on operating your restaurant. We may, in the future, request that Trainees participate in refresher or additional training programs. We may also hold an annual conference to introduce new products, discuss sales and marketing techniques, personnel training, advertising programs, merchandising procedures and other subjects. You may be charged a nominal registration fee for these programs and you will be solely responsible for the cost of transportation, food, lodging and other expenses incurred by Trainees at any such program. Attendance at these additional training programs and conferences is mandatory. They will be held in the metropolitan Phoenix, Arizona area, or at other locations in the United States chosen by us, at our sole discretion.

In addition to the initial training available under *Section 4.1*, we shall provide such periodic evaluations or inspections as we deem appropriate, utilizing our field representatives who may visit the Franchised Business from time to time. The frequency and duration of such visits to a Franchised Business by our representatives shall be in our sole discretion. Any such evaluation or inspection is not intended to exercise any control over your employees or the daily operation of your Franchised Business. In addition, we will be available on an ongoing basis at our offices for consultation and guidance with respect to the operation and management of the Franchised Business. In addition to the Confidential Manual, we may, but are not required to, from time to time provide you with additional materials relating to the Franchised Business.

#### 4.4 Area Representatives.

We may retain the services of an independent third-party area representative (“Area Representative”) to represent us in the area in which the restaurant is located and perform some or all of the services we provide under this Agreement. The services the Area Representative may perform could include: (i) assistance in location selection and evaluating and confirming that the Location meets our minimum site requirements; (ii) advice and guidance regarding lease negotiations; (iii) assistance in opening new *Baja Fresh* locations; (iv) assistance with training on the approved POS System (as defined in *Section 4.6a.*); (v) assistance with marketing advice; (vi) periodic Quality Service Cleanliness and Experience (“QSCE”) evaluations; (vii) assistance with collection of the various sums due to us from *Baja Fresh* franchisees; and (viii) coordination with other *Baja Fresh* franchisees in your area and general supervision and monitoring of your Franchised Business on our behalf. You agree in advance to our delegation to an Area Representative of some or all of our obligations, and assignment to an Area Representative of some or all of our rights under this Agreement. You agree that we may require you to submit to an Area Representative any reports you are required to submit to us. Upon our request, you will provide the Area Representative with access, inspection and audit rights to the same extent we have those rights under this Agreement. You are not a third-party beneficiary of any agreement between us and any Area Representative. If we have designated an Area Representative for your restaurant as of the Effective Date, the name and contact information of the Area Representative is shown in *Section 17.3h*. We reserve the right in our sole discretion to remove any Area Representative in your area at any time and to appoint any other Area Representative for your area. We have no obligation to appoint an Area Representative in the area in which your restaurant is located, and we have no obligation to appoint a new Area Representative after we have removed an Area Representative.

You acknowledge that Area Representatives and their owners and employees may not contractually bind us without our express written authorization. You further acknowledge no Area Representative has the authority to: (i) enter into agreements or execute any agreements on our behalf; or (ii) bind us in any way without our prior written consent. Unless expressly authorized and agreed to by us in writing, we disavow any agreements, whether verbal or written, entered into by an Area Representative that in any way attempts to bind us. In any litigation or arbitration proceeding, you agree to waive any claim or defense that an Area Representative is our express or implied agent and such an assertion by you constitutes a material default under this Agreement.

#### 4.5 Confidential Manual.

To protect the reputation and goodwill of the System and to maintain the uniform standards of operation under the Proprietary Marks, you must conduct your business in accordance with our Confidential Manual. The Confidential Manual is confidential and remains our property.

The Operations Manual is available to Franchisee via the Franchisee portal at: <https://portal.kahalamgmt.com>. In the event Franchisee desires to receive a hard copy of the Operations Manual, then Franchisee shall submit such request in writing to [training@kahalamgmt.com](mailto:training@kahalamgmt.com). Upon such request, a hard copy of the Operations Manual will be mailed to Franchisee via regular mail within approximately forty-five (45) days thereafter.

So that you may benefit from new knowledge gained by us as to improved techniques in the operation of the Franchised Business, we may from time to time revise, amend, restate or supplement the content of the Confidential Manual or other documents provided by, or approved by, us as they presently exist or may exist in the future. You will at all times ensure that your copy of the Confidential Manual is kept current and up to date. In the event of a dispute regarding any of the content of the Confidential Manual, the master copies maintained by us at our corporate office will control.

#### **4.6 Computer Systems; Debit and Credit Card Processing.**

a. You will be required to acquire, to maintain, and to exclusively use, an approved cash register/computer system ("POS System") during the operation of the Franchised Business. You and your employees must complete training for the POS System as we require, and you will be required to use the POS System to produce sales reports, keep inventory control and post sales tax, refunds, credits and allowances and submit that information to us immediately upon our request. You are required to obtain high-speed/always-on internet connection service for your POS System. If high-speed/always-on is available in your area, dial-up Internet access may be used until high-speed/always-on service becomes available in your area. The POS System must be configured so that we will have remote access to the information and data stored in the POS System, which may include inventory information. This access will allow us to exchange/collect data and other information on such bases as we will communicate to you from time to time. You will be required to maintain the POS System in good working order at all times, and to upgrade or update the POS System during the Term as we may require from time to time. It will be your responsibility to enter into contracts for the maintenance, upgrades and updates to the POS System with an approved supplier of such services identified by us on the list of approved vendors and distributors or other notification to you from us advising of suppliers for your market area. You shall also be required to own a personal computer or similar device with access to the Internet that allows you to report your Gross Sales (as defined in *Section 5.2*) online, send and receive e-mails with us, and receive online orders. If implemented by us, all *Baja Fresh* franchisees of traditional restaurants will be required to participate in an online ordering program. We may provide specifications that you must follow for the hardware, software, and Internet provider for such computer equipment. We may require you to upgrade the hardware and software including, but not limited to, your operating system, as reasonably necessary to provide reports and information required by us.

b. You are required to accept debit and credit cards and Gift/Loyalty Cards from consumers at the Franchised Business. You will be required to acquire and maintain an approved debit, credit and Gift/Loyalty Card processing system to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party Gift/Loyalty payment card processor for processing all such Gift/Loyalty Card transactions, including entering into a Gift Card Participation Agreement with one of our affiliates, or its successors or assigns, for the Gift/Loyalty Card processing services. Also, for online ordering only, you must utilize our approved third-party payment card processor for processing all such debit and credit transactions. You are also required to create an online merchant account with the payment processor identified in the Operations Manual for payment processing associated with online orders. The Payment Card Industry ("PCI") requires all companies that process, store, or transmit credit card information to protect the cardholders' information by complying with the PCI Data Security Standard ("PCI DSS"). Therefore, as a franchisee who accepts credit cards, you are required to be PCI compliant by following and adhering to PCI DSS, which includes ensuring that your POS System, back office computer (if supplied), and any other device that is

plugged into the network is **only** used for business purposes. You are also required to complete an annual questionnaire and quarterly network PCI scans and install a network firewall appliance for logging, tracking, reporting, and security assessment. You are also required to validate with Franchisor that your store is PCI compliant. To show such validation you must send us your Passing Certificate showing your store is PCI compliant. You are also required to verify that you have a PCI compliant firewall appliance installed at your location if you process credit cards via high speed internet connectivity. We require your Franchised Business' POS System, including terminals, computers, and software to be in compliance with the PCI DSS at all times. The PCI DSS is often updated, and you are required to obtain and comply with all updated standards. You must also be PCI compliant in order to obtain cyber liability/data breach insurance coverage.

## **ARTICLE 5. FEES AND DEPOSITS**

You agree to pay each of the following amounts to us via a lump sum, with each and every amount being non-refundable because of our investment in time and money, in addition to any other benefits conferred upon you, including processing your application, reviewing your documents, and providing you with relevant information, unless otherwise expressly specified below, in accordance with the provisions set forth in this *Article 5*. Notwithstanding your designation to the contrary, we have the sole discretion to apply any of your payments, in part or in whole, to any of your indebtedness to us.

### **5.1 Not Applicable.**

### **5.2 Royalty Fee and Surcharge.**

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you must pay to us a weekly royalty fee equal to five percent (5%) of total Gross Sales (as defined below) ("Royalty Fee"). If we or the landlord of the Location require you to remodel your Franchised Business in such a way that your Franchised Business (including catering) stops offering items to the public, or if there is a disaster at your Franchised Business, such as a fire, flood or damage caused by an act of God, that requires you to temporarily close your Franchised Business, you are not required to pay the Royalty Fee during the period of time of such temporary closure; provided you provide us or our authorized representative with notice of such temporary closure as soon as reasonably possible, but in no event more than twenty-four (24) hours after such closure begins. Notwithstanding the above, all amounts owed to us under this Agreement prior to the temporary closure shall still be fully due and payable. The temporary closure of your Franchised Business shall not exceed ninety (90) days, but may be extended on a case-by-case basis at our sole discretion and with our prior written approval.

In our sole discretion, we may charge, in addition to the Royalty Fee, a surcharge of up to Ten Dollars (\$10) per week if your Franchised Business is located in a state that imposes additional reporting requirements on a franchisor ("Surcharge"). The Royalty Fee and applicable Surcharge shall be due and payable no later than Friday of each week, which day may be modified by us without prior notice to or approval from you, for the week ending on the preceding Monday in which applicable Gross Sales (as defined below) were earned from the Franchised Business. The weekly Royalty Fee and applicable Surcharge shall be paid by electronic funds transfer, as detailed below.

For the period of time commencing on the later of the Effective Date or the date the Franchised Business opens to the public, and for the duration of the Term, you are required to report Gross Sales to our designated accounting office, which as of the Effective Date, is via the Internet at <http://franchisee.kahalamgmt.com>, as set forth in *Section 5.6*. Nothing herein shall prevent Franchisor from electronically polling Franchisee's POS system, restaurant management software, and financial records (or similar tools thereto) daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Franchisor authority to do so. You shall be required to establish a Depository Account (as defined in *Section 5.6*) at the time you execute this Agreement as set forth in *Section 5.6*. Payment of the Royalty Fee, Advertising Fee (as defined in *Section 5.3*), and all other fees due under this Agreement to us shall be made via electronic transfer of funds from the Depository Account. To accomplish this electronic transfer of funds from the Depository Account, you must complete, sign and deliver to us, and maintain for the duration of the Term, a current Electronic Funds Transfer Authorization in a form that we provide.

As used in this Agreement, "Gross Sales" means all sales, money or things of value, received or receivable, directly or indirectly, by Franchisee on account of the Franchised Business, less applicable sales taxes and any properly documented refunds, credits and allowances given by you to customers in accordance with the System Standards, but without deducting any of your income taxes, costs and other expenses. All sales made from catering services must be included in the Gross Sales.

### **5.3 Advertising Fee.**

a. You must pay to us, or directly into a national advertising fund or also any regional advertising funds, as designated by us at our sole discretion, (individually and collectively, "Advertising Fund") a weekly advertising fee of three percent (3%) of the Gross Sales for the preceding week ("Advertising Fee"). Upon thirty (30) days' notice by us to you, we may unilaterally increase the Advertising Fee from its current level not to exceed four percent (4%) of your weekly Gross Sales. The Advertising Fee shall be due and payable with the Royalty Fee under *Section 5.2*. The Advertising Fee is our property and may be deposited by us into our general operating account.

b. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* name, System, products and services. We are entitled to deduct, free of charge the following from the Advertising Fund: (i) reimbursement of expenses, overhead, and employee salaries for services provided; and (ii) rent for office space provided to the Advertising Fund. We have no fiduciary obligation to you in connection with the operation of any Advertising Fund. No interest on an unexpended Advertising Fee shall be imputed or otherwise charged for the benefit of, or payable to, you. You understand and agree that the only obligations we have regarding the collection and spending of the Advertising Fee or the administration of the Advertising Fund are the express contractual obligations in this *Section 5.3*. We are not acting as a trustee, fiduciary, agent or in any other special capacity. We do not give any representation or warranty regarding the quality or effectiveness of the advertising and marketing activities funded by the Advertising Fee or of the Advertising Fund, and we will have no liability to you with respect to how these funds are spent.

c. Your own local marketing and advertising should be developed to maximize your particular customer base.

#### **5.4 Cooperative Advertising.**

a. We encourage the formation and operation of franchisee cooperative advertising associations (each an “Association”). Each Association will help coordinate advertising, marketing efforts and programs, and attempt to maximize the efficient use of local advertising media. If an Association is formed for your region, you must contribute financially to the Association as required by us. Failure to do so will be deemed a breach of this Agreement and you may also, in Franchisor’s sole discretion, lose your right to vote as to decisions regarding advertising and marketing efforts and programs.

b. Upon our request, you will assist in establishing an Association or in deciding how to allocate all or part of any Fund contribution we elect to distribute to the Association. We will decide in our sole discretion whether to make contributions from the Fund to an Association and how much to contribute. We reserve the right to establish general standards concerning the operation of an Association, advertising agencies retained by an Association, and advertising programs conducted by an Association. Notwithstanding anything to the contrary, no Association decision will be made or advertising collections spent without our prior written approval.

#### **5.5 Not Applicable.**

#### **5.6 Depository Account; Payment Procedures.**

You are required to establish, at the time you execute this Agreement, and maintain for the duration of the Term a depository account (“Depository Account”) at a bank or other federally insured financial institution (“Depository”). You will initially deposit no less than Three Thousand Dollars (\$3,000) into the Depository Account and are required to maintain a balance of at least Three Thousand Dollars (\$3,000) in the Depository Account at all times during the Term by replenishing the Depository Account to at minimum Three Thousand Dollars (\$3,000) after any withdrawals. We shall not be responsible for any bank service charges incurred by you which result from the withdrawal of funds from your Depository Account.

On Tuesday of each week, you must submit a report to us regarding the weekly period which ended on the preceding Monday, including details on Gross Sales and other statistical data as provided in this Agreement, Confidential Manual, or as otherwise specified from time to time by us. We will withdraw funds electronically on Friday of each week from the Depository Account. The withdrawals are based upon the figures you report and constitute the Royalty Fee and Advertising Fee as described in *Sections 5.2 and 5.3*. If you do not submit a report on any Tuesday, we may estimate the Royalty Fee and Advertising Fee based upon prior reports and withdraw the estimated amounts up to the entire Three Thousand Dollars (\$3,000). We will return or credit back to you, in our sole discretion, any overage within thirty (30) days after our receipt of your report(s). We shall not be responsible to you for any interest charges for any overage collected due to your failure to timely report your sales. You shall instruct the Depository to disburse each week to our designated bank, via electronic funds transfer by the close of business on Friday (or preceding banking business day, if Friday is a bank holiday), the weekly Royalty Fee and Advertising Fee and other fees due for that week, which week shall end on the preceding Sunday. The days of the week specified above may be modified by us without prior notice to or approval from you.

We will also withdraw the monthly POS Help Desk Phone Support Maintenance Fee (as defined in *Section 5.20*) from the Depository Account on the last Thursday of each month. Under no circumstances shall such access to the Depository Account be deemed control or joint control of the Depository Account by us.

Subject to reasonable advance notice for non-recurring payment amounts, we have the right to debit your Depository Account, or any other depository account you have with us, according to the terms of your Electronic Funds Transfer Authorization for any of the payments described in this Agreement. If you do not pay all amounts due by the due date, we may suspend our and our affiliates' services and support until your payment default is cured. Repeated failure to pay all amounts when due, whether or not the defaults are subsequently cured, may be cause for termination under *Article 14*.

You shall pay us Fifty Dollars (\$50) for each electronic funds transfer attempted from your Depository Account pursuant to this *Section 5.6* that is returned for non-sufficient funds. You shall also reimburse us for all other costs and expenses incurred by us in collecting or attempting to collect funds due to us from the Depository Account (for example, without limitation, charges for non-sufficient funds, uncollected funds or other discrepancies in deposits or maintenance of the Depository Account balance in accordance with the terms hereof). The Depository Account shall be established and maintained solely for the purposes set forth in this *Section 5.6* and any other fees authorized under this Agreement and any other agreements between you and us or any of our affiliates.

#### **5.7 Lease Review Fee.**

If you request us or one of our designated affiliates to complete a Lease Review, you are required to pay us or our designated affiliate a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) ("Lease Review Fee") for reviewing and providing comments to your proposed lease.

#### **5.8 Lease Guarantee Fee.**

If, in order to obtain the lease agreement for the Location of your Franchised Business, the landlord requires you to obtain a lease guarantee, and we or one of our affiliates agree to serve as such guarantor, you will pay us or our affiliate a fee in the amount of ten percent (10%) of the total amount of the rental obligations being guaranteed under the lease during its term up to a maximum fee of Ten Thousand Dollars (\$10,000) ("Lease Guarantee Fee"). The Lease Guarantee Fee will be due and payable upon our or our affiliate's execution of the applicable lease guarantee agreement with the landlord. Neither we nor any of our affiliates are required to serve as a guarantor of your lease for the Location of your Franchised Business; rather, the decision of whether to serve as a guarantor shall be made in our sole discretion. In the event that you request us or our affiliate to either agree to be the tenant under the lease or execute a separate guarantee to the lease, and you pay the required Lease Guarantee Fee, you agree and acknowledge that payment of the Lease Guarantee Fee shall not, in any manner, be deemed as an insurance policy which limits your liability in connection with the Franchised Business, including any and all financial liability under the sublease or lease related to the Location. You further agree and acknowledge that our or our affiliate's agreement to act as tenant or guarantor under the lease, and your payment of the Lease Guarantee Fee to us or our affiliate, does not result in the assumption or transfer of your liability, in connection with the Franchised Business, by or to us or our affiliate.

## **5.9 Additional Persons Training Fee.**

The training of two (2) individuals is included in the Transfer Training Fee (as defined in *Section 5.15*). If you desire to have more than two (2) people attend the Training Program, you must pay an additional training fee of One Thousand Dollars (\$1,000) for each such person to attend the In-Store Training and an additional Seven Hundred and Fifty Dollars (\$750) for each such person to attend the New Owner Training (individually and collectively, "Additional Persons Training Fee") (see *Section 4.1*).

## **5.10 Additional Training Fee.**

If, after attending the Training Program, you desire to receive additional training, we will provide additional training time to you for a fee of Three Hundred Dollars (\$300) per person per day. Such additional training will be at a time reasonably agreed to by you and us, and will be conducted at Franchisor's headquarters, online, or such other location as we may designate in our sole discretion. You will be solely responsible for all transportation costs and expenses, food, lodging and other personal costs and expenses incurred by you and your employees in connection with this additional training.

## **5.11 Document Administration Fee.**

A document administration fee of Five Hundred Dollars (\$500) ("Document Administration Fee") is payable to us when we must prepare an amendment to your franchise documents (see *Section 12.3g*).

## **5.12 Renewal Franchise Fee.**

A renewal franchise fee of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("Renewal Franchise Fee") is payable to us when you renew this Agreement (see *Section 13.i*).

## **5.13 Transfer Franchise Fee.**

a. A transfer franchise fee and other applicable initial fees, as set forth in the Consent to Transfer and Release Agreement executed contemporaneously herewith and to which Franchisee is also a party, are payable to us when you sign this Agreement.

b. If, following the Effective Date, Franchisee desires to complete a Full Transfer (as defined in *Section 12.1.a.1.*) of this Agreement, we will require the Potential Transferee (as defined in *Section 12.1.c.*) to pay us Fifteen Thousand Dollars (\$15,000) ("Transfer Franchise Fee") as one of the conditions for Franchisee to receive Franchisor's consent for such Transfer (as required in *Section 12.1.b.*).

## **5.14 Relocation Fee.**

A relocation fee of Five Hundred Dollars (\$500) ("Relocation Fee") is payable to us when you sign the amendment to your Franchise Agreement for your relocation (see *Section 2.5*).

## **5.15 Transfer Training Fee.**

a. In connection with a Full Transfer and in addition to the Transfer Franchise Fee,



a training fee of Ten Thousand Dollars (\$10,000) ("Transfer Training Fee") is payable to us when you sign this Agreement. The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

b. A Potential Transferee receiving this Agreement, as may be amended, as Potential Transferee's Transfer Documents in connection with a Full Transfer must pay to us, in addition to the Transfer Franchise Fee, the Transfer Training Fee. The Transfer Training Fee is used to provide training for two (2) individuals, and a fee of Five Hundred Dollars (\$500) will be charged for each additional individual trained over two (2).

#### **5.16 Annual Meeting Registration Fee.**

If we hold an annual meeting ("Meeting"), the Meeting may be held at various locations throughout the United States and/or online as we may designate in our sole discretion. Because the planning and funding of the Meeting must be done well in advance and requires a substantial financial commitment, we have the right to debit your Depository Account for up to One Thousand Dollars (\$1,000) for the Meeting registration fee at any time sixty (60) to ninety (90) days prior to the first day of the Meeting. This fee may be debited from your account (even if you do not attend the Meeting). You will also be solely responsible for all costs incidental to attending the Meeting. If you do not attend the Meeting, we will make available to you one (1) full set of the substantive materials that were presented at the Meeting.

#### **5.17 Late Report, Default and Non-Sufficient Funds Fees, Breaching Royalties and Collection Costs and Expenses.**

If you fail to submit to us any financial statements, forms, reports or records required to be provided under this Agreement by its due date, including your weekly Gross Sales report for calculating your Royalty Fee and Advertising Fee, you must pay to us a non-refundable late report charge of One Hundred Dollars (\$100) per report.

If any fees or assessments due under this Agreement, including the Royalty Fee and Advertising Fee, are not paid when due, interest shall accrue on the late payment (from the date payment is due until the date payment is made) at the Default Rate, which amount, plus a Fifty Dollar (\$50) late fee, shall be added to each late payment. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of a processed check, you shall be charged a non-sufficient funds fee of Twenty-Five Dollars (\$25) per occurrence. Pursuant to *Section 5.6*, for each electronic funds transfer that is attempted from the Depository Account but returned for non-sufficient funds, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50) per occurrence.

Franchisor has the absolute right to charge Franchisee the greater of: three (3) times the fixed Royalty Fee; or, if on a percentage Royalty Fee, the Royalty Fee will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which Franchisee is in breach or default of its/his/her obligations under this Agreement. The Royalty Fees paid or owing to Franchisor with respect to the period during which Franchisee is in breach or default are referred to as "Breaching Royalties." Breaching Royalties will be charged for a minimum fourteen (14) day period, regardless of the length of the actual breach or default.

If, as a result of your failure to remit payments required under any provision of this Agreement, we retain an attorney or a collection agency to collect such payments, you must pay all collection costs and expenses, including reasonable attorneys' fees and expenses, whether or not legal proceedings are initiated. Our rights under this *Section 5.17* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

#### **5.18 Audit Fees.**

For the purpose of this *Section 5.18*, we have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the business records, cash control devices, bookkeeping and accounting records, sales and income tax records and returns and other records of the Franchised Business and your entity's books and records.

You hereby grant us access to any computers utilized by you for such purposes and we will have the ability, at all times, via modem, to obtain daily and weekly sales reports and other financial records that the POS System provides. You will fully cooperate with our representatives, the Area Representative, if applicable, and independent accountants hired by us to conduct any such inspection or audit. In addition, in the event such inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required herein, or to furnish such reports, records or information on a timely basis, or if an understatement of Gross Sales, resulting in an underpayment of the Royalty Fee or Advertising Fee for the period of any audit (which shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee and Advertising Fee and other amounts due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date of payment and you must reimburse us for such audit or inspection, including the charges of any independent accountants, and the travel expenses, room, board and compensation of such accountants and our employees.

The remedies in this *Section 5.18* will be in addition to all other remedies and rights available to us under this Agreement or otherwise available.

#### **5.19 Data Fee.**

We may require you to pay us or a third-party we designate a data fee of up to Seventy-Five Dollars (\$75) per month for polling or collecting data from your POS System.

#### **5.20 POS Help Desk Phone Support Maintenance Service Fee.**

You must purchase from us a help desk phone support maintenance service that covers phone support for both the software and hardware of your POS System that is supported by the help desk, the cost of which is currently Fifty-Five Dollars (\$55) monthly, and subject to increase upon thirty (30) days' notice ("POS Help Desk Phone Support Maintenance Service Fee"). The POS Help Desk Phone Support Maintenance Service Fee shall be paid by electronic funds transfer, as detailed in *Section 5.6*, and debited from your account on the last Thursday of each month.

## **5.21 New Supplier Approval Fee.**

All requests for approving new or alternative suppliers must be submitted in writing by you or the supplier to our Purchasing Department. Each request will be reviewed in accordance with our then-current procedures and the supplier must meet our then-current requirements, which may include that our representatives be allowed to inspect the facilities of the proposed supplier, and that samples from the proposed supplier be delivered, at no charge, either to us or to our designee for testing. A charge not to exceed the amounts incurred in connection with the inspection and the test, with such cumulative amount not to exceed Five Thousand Dollars (\$5,000), must be paid to by the supplier. If approved, in our sole discretion, we will notify you or the supplier in writing within sixty (60) days after our receipt of an approval request. You must not offer or sell in any manner any of the proposed alternative supplier's products until you receive our written approval of the proposed alternative supplier.

## **5.22 Reserved.**

## **5.23 Non-participation Fee.**

You must offer and sell at the Location of the Franchised Business all products designated by us, consistent with our System Standards. In addition, you must immediately incorporate into the Franchised Business all new products and services designated by us and must fully participate in all local, regional, seasonal, promotional and other programs, initiatives and campaigns adopted by us in which we require you to participate. If you fail or refuse to fully participate in any such program, initiative or campaign, you may, in our sole discretion, be required to pay a non-participation fee of One Hundred Dollars (\$100) per day that you are not in compliance ("Non-participation Fee").

## **5.24 Not Applicable.**

## **5.25 through 5.35 Not Applicable.**

# **ARTICLE 6. PROPRIETARY MARKS**

## **6.1 Ownership and Right to Use.**

We warrant to you that:

- a. We are the owner of all right, title and interest in and to the Proprietary Marks;
- b. We have granted to you the personal, non-exclusive, limited, revocable right and license to use the Proprietary Marks in connection with the operation of your Franchised Business;
- c. We have taken and will take all steps reasonably necessary to preserve and protect our rights in the Proprietary Marks; and
- d. We will only permit you to use the Proprietary Marks in accordance with the System Standards.

## **6.2 Covenants of Franchise Owners.**

a. You acknowledge our ownership of the Proprietary Marks, and you agree that during the Term and after its expiration or termination, you will not directly or indirectly contest, or aid in contesting, the validity of the Proprietary Marks or our ownership of the Proprietary Marks, nor will you take any action which might impair or prejudice our ownership of the Proprietary Marks. You shall not, directly or indirectly, apply to register, register or otherwise seek to own or control any of the Proprietary Marks, or any confusingly similar mark thereto, whether in whole or in part, in any place or jurisdiction either within or outside of the United States; nor will you assist any others to do so.

b. You agree that the license granted pursuant to this Agreement authorizes you to use the Proprietary Marks solely in connection with the Franchised Business only at the Location, and for no other purpose. You have no right to license or sublicense any aspect of the System Standards or any of the Proprietary Marks.

c. You agree to use the Proprietary Marks only in the manner and to the extent specifically licensed by this Agreement. You further agree that any unauthorized use or continued use of the Proprietary Marks after the termination or expiration of this Agreement will constitute irreparable harm and is subject to injunctive relief.

d. The license granted by this Agreement includes only the Proprietary Marks, now existing or which may exist in the future. This license does not include the right to use any other trademarks, service marks, trade name or trade dress owned by us or our licensor anywhere in the world. You agree that any and all goodwill associated with and identified by your use of the Proprietary Marks will inure directly and exclusively to our benefit, and that, on the expiration or termination of this Agreement, no monetary amount will be due or payable to you as a result of any goodwill associated with your ownership or operation of the Franchised Business.

## **6.3 Limitations on Franchisee's Use of Proprietary Marks.**

To develop and maintain high and uniform standards of quality and service and thereby protect our reputation and goodwill and that of the System, you agree:

a. To operate and advertise the Franchised Business only under the Proprietary Marks authorized by us;

b. To adopt and use the Proprietary Marks licensed by this Agreement solely in the manner prescribed by us;

c. That your corporate, partnership or other entity name including trade name, will not include any of the Proprietary Marks, in whole or in part, or any terms confusingly similar thereto, unless first authorized by us in writing;

d. To submit all advertising, promotional materials and all printed matter, including stationery, business cards, and any materials to be used on the Internet to us for our written approval before you use any of these items; and

e. That we may from time to time change or modify the System Standards, including modifying existing Proprietary Marks or adopting new marks. You agree, at your own

expense, to adopt, use and display any such new or modified Proprietary Marks within ninety (90) days after notification from us. However, if we require you to modify or discontinue use of our proprietary information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees' use of the proprietary information infringed upon a third-party's rights, we or our affiliate will bear the actual, direct, and reasonable costs of those modifications or discontinuances. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy for any infringement by any part of the System.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), termination or expiration of this Agreement, you must immediately cease to use, in any manner whatsoever, any of the Proprietary Marks or any other marks which, in whole or in part, may be confusingly similar to any of the Proprietary Marks.

#### **6.4 Non-Exclusive License of Proprietary Marks.**

You understand and agree that your license to use the Proprietary Marks is non-exclusive; that we, in our sole discretion, can grant to other franchisees the right to use the Proprietary Marks and obtain the benefits of the System Standards, in addition to the licenses and rights granted to you under this Agreement; and that we or our affiliates may develop and license other proprietary marks in conjunction with concepts other than the *Baja Fresh* concept, on any terms and conditions we deem advisable. You will have no right or interest in any such other licenses, proprietary marks or systems.

#### **6.5 Notification of Infringement and Claims.**

You agree that you will notify us immediately of any apparent infringement of, or challenge to your use of any of the Proprietary Marks, or any claim by any person of any rights in any of the Proprietary Marks. You agree that you will not communicate with any person, other than us and our legal counsel, in connection with any such infringement, challenge or claim. We will have the sole discretion to take such action as we may deem appropriate to protect the Proprietary Marks and the exclusive right to control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge, claim or otherwise relating to any Proprietary Marks. You agree to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of our counsel, be necessary or advisable to protect and maintain our interests in connection with any such litigation or proceeding, or to otherwise protect and maintain our interests in the Proprietary Marks.

### **ARTICLE 7. TRADE SECRETS AND PROPRIETARY INFORMATION**

#### **7.1 Innovations.**

During the Term, you and your principals, officers, managers and employees may conceive, invent, create, design or develop various ideas, techniques, methods, processes and procedures, recipes, formulae, products, packaging or other concepts and features relating to restaurant operations, business practices or the manufacturing, production, marketing and sale of Mexican-style fast food, and other food and beverage items, and related goods now in existence or later developed, adopted, or improved in connection with the Franchised Business (individually and collectively, "Innovations"). You, without further consideration, hereby assign

any and all of your rights, title and interest in the Innovations, including any intellectual property rights, to us, and also agree to cooperate with us and our counsel in the protection of the Innovations, including the perfecting of title thereto in us. In addition, you will require all of your principals, officers, managers and employees to sign an agreement in the form set forth in our System Standards and incorporated herein by reference ("Confidentiality Agreement"), and shall be liable to us for obligating your principals, officers, managers and employees to assign all of their rights, title and interest to the Innovations to us and requiring your principals, officers, managers and employees to cooperate in obtaining, protecting, maintaining and enforcing our right, title and interest in the Innovations.

## **7.2 Confidentiality Agreement.**

a. In connection with the operation of the Franchised Business, you will from time to time receive, have access to, or learn certain information and materials that are proprietary to us or our affiliate. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" agree that you will keep confidential, and will not use for your own purposes, nor supply or divulge to any other person, any of our Trade Secrets, including our methods of operation, processes, techniques, formulae and procedures, information a reasonable person would believe to be confidential and any other proprietary information regardless of whether such is expressly marked as confidential ("Confidential Information"). You acknowledge that much of the information imparted to you by us is confidential, constitutes Trade Secrets, are unique to us, and remains our sole exclusive property. Our Confidential Information includes the following:

1. The Confidential Manual and any amendments thereto;
2. Ingredients, recipes, and methods of preparation of food products;
3. Methods of operation of *Baja Fresh* restaurants;
4. Information about products, services, or procedures before they become public knowledge;
5. Information which relates in any manner to our business or the System Standards, whether oral or reduced to writing, and which is not generally known to, or readily ascertainable by, other persons who might derive economic benefit from its disclosure or use; and
6. Any other information which may be imparted to you from time to time and designated by us as confidential.

b. You and any person signing this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*" acknowledge and agree that the Confidential Information and any business goodwill of the Franchised Business is our sole and exclusive property, and that you will preserve the confidentiality thereof. Upon termination or expiration of this Agreement, all items, records or documentation recording or incorporating any Confidential Information, including any copies thereof, will be immediately turned over by you to us or our authorized representative.

c. You agree to take all steps necessary, at your own expense, to protect the Confidential Information, including our Trade Secrets, and to adopt and implement all reasonable procedures prescribed by us from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. We require that all of your executive officers, agents, directors, shareholders, trustees, beneficiaries, partners and managers who may or are likely to obtain knowledge concerning the Proprietary Information (and who do not sign this Agreement under the heading "Personal Acceptance of *Sections 7.1, 7.2, 14.6 and 14.8*") sign the Confidentiality Agreement binding such person to preserve the confidentiality of the Confidential Information as part of the terms and conditions of such person's employment or association with you. You must obtain a Confidentiality Agreement signed by any such person prior to or at the same time that you begin employment of, or association with, that person. This will be a continuing obligation on your part throughout the Term. You must keep each original signed Confidentiality Agreement and provide us with a copy of each Confidentiality Agreement when requested by us or our authorized representative.

d. Notwithstanding the above, Confidential Information shall not include information which you can reasonably prove: (i) entered the public domain through no breach by you or your affiliate of any duty of confidentiality, or (ii) you received our prior express written consent to disclose in the manner in which you disclosed it.

e. If anyone under a Confidentiality Agreement is legally compelled or required by a regulatory body to disclose any Confidential Information, he/she/it will notify us as soon as possible and will use his/her/its best efforts to obtain, and give us an opportunity to obtain, appropriate assurances of confidential treatment.

f. The requirements under this *Section 7.2* will remain in full force and effect during the Term and after termination or expiration of this Agreement.

## **ARTICLE 8. RELATIONSHIP OF THE PARTIES AND INDEMNIFICATION**

### **8.1 Relationship of the Parties.**

You and we agree that this Agreement does not create any fiduciary or employment relationship between you, or any of your employees, and us, that you are an independent contractor, and that nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, subsidiary, joint venture, partner, employee or servant of the other for any purpose. You shall not enter into any agreement on behalf of or otherwise bind us for any purpose.

### **8.2 Indemnification of Franchisor.**

You agree to indemnify, defend and hold us and our affiliates (including our parent and subsidiary companies, current, past and future predecessors, successors and assigns), and each of our shareholders, owners, directors, officers, members, managers, partners, joint venturers, attorneys, employees, contractors, agents, representatives, guarantors, insurers, spouses, heirs, executors, trustees and estates (collectively with us, "Indemnified Parties") harmless for, from and against any and all claims, liabilities, causes of action, suits, debts, duties, accounts, covenants, contracts, agreements, promises, taxes, demands, obligations, costs and expenses, including reasonable attorneys' fees, damages, judgments, and proceedings, of every kind and nature whatsoever, whether actual or threatened, in law or

equity, or otherwise, under local, state or federal law including, without limitation the Americans with Disabilities Act (“ADA”), or the law of any other applicable jurisdiction (individually and collectively, “Claims”) suffered or incurred by any of the Indemnified Parties arising out of or relating to your construction, ownership, marketing, Promotions (as defined in *Article 10*), operation, including your failure to comply with PCI DSS or any law, statute, regulation, order, rule, or ordinance, or management of the Franchised Business, except for Claims held to have resulted solely from our gross negligence or willful misconduct. Notwithstanding the foregoing, we will have the right, at our option, to defend any Claim, but you must reimburse us upon demand for the costs and expenses of such defense. You shall immediately give us notice of any demand, investigation, written inquiry, action, suit, proceeding, or claim in any way related to us or the *Baja Fresh* brand.

### **8.3 Indemnification of Franchisee.**

We agree to indemnify, defend and hold you and your affiliates, and their shareholders, directors, officers, members, managers, partners, employees, agents, successors and assignees harmless for, from and against any and all Claims, arising out of any Claim of infringement or unfair competition in connection with your authorized use of the Proprietary Marks or Confidential Information, provided that such use is in accordance with the provisions of this Agreement. However, if we require you to modify or discontinue use of our Proprietary Marks or Confidential Information or use other information or rights in its place at any time other than upon renewal of this Agreement, and that requirement is a direct result of proceedings or litigation that determined that our and our franchisees’ use of the Proprietary Marks or Confidential Information infringed upon a third-party’s rights, we will bear the cost of those modifications or discontinuances as set forth in this Agreement.

### **8.4 Special Power of Attorney.**

You agree to cooperate with and assist us as we may request from time to time to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks, including executing documents and appearing as a witness. You hereby appoint us as your attorney-in-fact and hereby grant us an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as you might or could do if personally present, hereby ratifying all that we, as your attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce our intellectual property and Proprietary Marks if we are, for any reason, unable to obtain your cooperation or assistance. The Special Power of Attorney granted by this *Section 8.4*, shall survive your dissolution, death, incompetence or disability and the termination or expiration of this Agreement.

## **ARTICLE 9. OPERATING STANDARDS AND DUTIES OF FRANCHISE OWNER**

### **9.1 Compliance with System Standards and Confidential Manual.**

You understand and acknowledge that every detail of the operation of the Franchised Business is important in order to develop and maintain high and uniform standards of quality, cleanliness, appearance, service, facilities and techniques; to increase the demand for the System; and to protect our reputation and goodwill and that of other *Baja Fresh* franchisees. You also acknowledge that the operation of the Franchised Business is your sole responsibility,



and that neither we nor our affiliates have any responsibility to obtain customers for you. The System Standards will constitute provisions of this Agreement as if fully set forth herein.

## **9.2 Authorized Products and Services.**

a. You agree that you will not, without our prior written approval, offer at the Location any menu items, beverages, products or services that are not authorized by us for the Franchised Business, as set forth in the System Standards.

b. You have complete discretion in establishing the minimum price you charge for your products. Although we may suggest pricing strategy, you will have the final pricing decision.

c. Notwithstanding the terms of *Section 9.2b.*, we may conduct periodic promotional campaigns during which a specified product or products are promoted at a specified price. During the promotional period, you may not charge your customers more than the specified promotional price, although you may charge less than the promotional price.

d. We may conduct new marketing, research and development, branding and operational program tests, which will generally be conducted with experienced, existing franchisees and may include incentives and other rights that are not available to all franchisees.

e. You hereby consent to third-party vendors, suppliers and distributors sharing with us any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to us sharing your contact information with them when we reasonably believe they may offer you a desired benefit.

f. You are required to accept debit and credit cards (including Visa®, MASTERCARD® and AMERICAN EXPRESS®) and Gift/Loyalty Cards from consumers at the Franchised Business. Prior to the opening of your Franchised Business, you are required to acquire, and maintain during the Term, an approved debit, credit and Gift/Loyalty Card processing system ("Card Processing System") to use during the operation of the Franchised Business. Additionally, you must utilize our approved third-party payment card processor, as identified in the System Standards, for processing all Card Processing System transactions.

## **9.3 Specifications and Standards for Supplies; Approved Suppliers; Rollouts.**

a. You must purchase or otherwise acquire certain proprietary or required equipment and supplies utilized in the Franchised Business only from our designated approved distributors or suppliers. If, during the Term, we change designated approved distributors or suppliers for any of the proprietary or required equipment and supplies utilized in the Franchised Business, you shall change to the new designated approved distributor or supplier within sixty (60) days after written notification of such change from us.

b. If you desire to purchase or otherwise acquire any equipment, supplies or inventory items required by the System Standards but not previously approved by us, or from sources not previously approved by us, you must submit to us sufficient specifications, photographs, drawings and other information sufficient to allow us to determine whether such equipment, supplies or inventory items meet our System Standards. We may require that our representatives be allowed to inspect the facilities of the proposed supplier and revoke its

approval upon the supplier's failure to meet any of our then-current minimum System Standards. We may also require that samples from the proposed supplier be delivered, at no charge to us, either to us or to our designee for testing. A charge not to exceed the reasonable cost and expense of the inspection and the actual cost and expense of the test must be paid to us either by you or by the proposed supplier. We will notify you within sixty (60) days after your request of our approval or disapproval of the proposed product or supplier, with such determination to be made at our sole discretion. You acknowledge and agree that our approval of any item or supplier of equipment, supplies or inventory not previously approved by us will not, in and of itself, make the supplier of that item an approved supplier for other *Baja Fresh* franchise owners in the System. We may, in our sole discretion, at any time and from time to time, re-inspect the facilities and products of any approved supplier and revoke its approval upon the supplier's failure to meet any of our then-current System Standards. If you receive a notice of revocation from us, you must immediately stop selling disapproved products and purchasing from the disapproved supplier.

c. We will provide to you a list of all recommended and required items of equipment, fixtures, supplies, smallwares and interior decor. This list will be included in the System Standards.

d. At any time and from time to time, we may in our sole option engage in new product rollouts to add to or change the menu items offered for sale in the Franchised Business and the ingredients or supplier of ingredients utilized in the preparation of the menu items sold in the Franchised Business ("Rollout"). If we engage in a Rollout, you shall participate in the changes that are the subject of such Rollout, including offering the new menu items, changing the menu items, changing to the new supplier of the ingredients utilized in the preparation of the menu items, and changing to the new ingredients utilized in the preparation of the menu items. If we engage in a Rollout, we will notify you of the details of the Rollout and provide you sixty (60) days from said notification to take the applicable actions required by the Rollout.

#### **9.4 Compliance with Legal Requirements and Good Business Practices.**

You must, at your sole expense, operate the Franchised Business in full compliance with all applicable Federal, state and local statutes, laws, ordinances and regulations, including health and safety regulations, food and drug laws, disability laws, labor and employment laws and data privacy laws, as may be amended, supplemented or enacted from time to time. You must pay all costs and expenses incurred by, and in the conduct of, the Franchised Business, including all rent, salaries, taxes (excluding our income taxes), disbursements, license or permit fees, insurance premiums, traveling expenses and any other business expenses. If you receive any demand, action, suit or proceeding, or the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality relating to your Franchised Business, you must immediately notify us, and in no event, later than three (3) days after your receipt. Any such notice must be accompanied by a copy of the demand, complaint, order, writ, injunction, award, decree or other similar document. You must, in all dealings with your employees, customers, suppliers, the public and us adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to refrain from any business practice that may be injurious to the System or the goodwill associated with the Proprietary Marks.

**9.5 Maintenance of Insurance.**

At all times during the Term, you must maintain in full force and effect at least the minimum types and amounts of insurance coverage that we require, under one (1) or more policies of insurance (each of which shall be primary coverage and shall not be contributory or secondary to any other coverage maintained by us), insured under the particular name of the Franchisee and for the particular address of the Franchised Business.

Such insurance policies must be issued by insurers acceptable to us having an A.M. Best's financial strength rating of at minimum "A-VIII," and grant us authority to obtain copies of your certificate of insurance directly from the carrier or your agent/broker. The particular requirements of our minimum insurance coverage will be made available to you throughout your term. Currently, the general liability insurance required by this Agreement must: (i) name BF Acquisition Holdings, L.L.C. as the certificate holder; (ii) name BF Acquisition Holdings, L.L.C., Kahala Franchising, L.L.C. and MTY Franchising USA, Inc. and their parents, subsidiaries, affiliates, officers, directors, and employees as additional insureds; (iii) contain a waiver by the insurance carrier of all subrogation rights against us and our affiliates and our affiliates' respective officers, directors and employees for casualty losses; (iv) indicate the address of the Franchised Business being insured; and (v) provide that we will receive a copy, via an endorsement, thirty (30) days' prior notice of cancellation of any such policy. Additional minimum insurance coverage requirements (subject to increase or otherwise change in our sole discretion) are as follows:

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
General Liability	\$1,000,000 Bodily Injury/Property Damage Per Occurrence / \$2,000,000 Aggregate
Building Improvements and Betterments	100% of Full Replacement Cost – No Coinsurance (minimum of \$100,000)
Business Personal Property	100% of Full Replacement Cost – No Coinsurance – Special Form or equivalent (minimum of \$100,000)
Spoilage	\$5,000
Flood, Earthquake and Volcanic Eruption	Subject to Territory Limitations – required if in a designated Flood Zone
Workers' Compensation and Employer's Liability Insurance	As required by law
Employment Practices Liability Insurance with Franchisor Defense coverage	\$1,000,000
Hired and Non-Owned Automobile Liability	\$1,000,000 Combined Single Limit per accident

You need to evaluate if your particular business will require greater coverage or other types of insurance. For example, we strongly recommend that you consult with an insurance broker to discuss whether your particular lease/situation requires and/or should obtain additional common types of insurance (including without limitation, umbrella insurance, and cyber liability/data breach insurance coverage). Such insurance may significantly increase your premiums, but may also save you money in the long run.

You are responsible for maintaining insurance coverage and limits as required by us, at minimum, pursuant to this *Section 9.5*, provided, if your landlord requires additional coverage, higher limits, or any other requirements not required by us, then you are responsible for maintaining such additional items as well. You must always keep the required insurance coverage in force at all times during the operation of the Franchised Business, and you must comply with any changes we make periodically to our insurance requirements. Upon 30 days' notice to you, we may require you to increase and/or otherwise change the minimum coverage of the insurance referred to above, including to reflect identification of special risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

Subject to *Section 3.1*, before you may open your restaurant, annually thereafter at least ten (10) days prior to renewal of your insurance coverage, and at any other time on our request, you must provide us with certificates of insurance or copies of insurance policies showing that you are in compliance with our insurance requirements, as well as proof that you have paid the premiums you owe for the insurance we require. You will pay your insurance premiums to your insurance broker or to the insurance company issuing the policy. We or our affiliate may, at our option and in addition to our other rights and remedies under this Agreement, obtain such insurance coverage on your behalf, and you must promptly execute any applications or other forms or instruments required to obtain any such insurance and pay to us, on demand, any costs, expenses and premiums (in whole or part) incurred by us. Your obligation to obtain and maintain the insurance described above will not be limited in any way by reason of any insurance maintained by us, nor will your performance of such obligations relieve you of any obligations under *Section 8.2*.

## **9.6 Management of the Franchised Business.**

You are directly responsible for all aspects of operating the Franchised Business, and you agree that you will, at all times, operate the Franchised Business and use your best efforts to enhance your Franchised Business and the System. The Franchised Business must be personally managed and directly operated by either you or another partner, shareholder or member of your business organization, or a manager.

## **9.7 Inspections by Franchisor.**

For the purpose of this *Section 9.7*, you must make available to us or our authorized representatives such financial and other information concerning the Franchised Business, and you must permit us or our authorized representatives to have full and free access to such information at your Franchised Business Location during regular business hours without prior notice. We and our authorized representatives will have the right to communicate freely with your employees, and make extracts from, and copies of, all such information. Our authorized representative may make announced or unannounced inspections of your Franchised Business to ensure compliance with all of the requirements of this Agreement.

## **9.8 Personal Guaranty; Non-Disclosure and Non-Competition Agreement.**

If you are an individual and married, your spouse must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign the Agreement unless your spouse is also signing the Agreement as an individual.

If you are a corporation, limited liability company, or other business entity, each of your shareholders, members, or other owners, whether direct or indirect (and their respective spouses, if married) must execute and deliver to us a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement at the same time that you sign this Agreement.

In the event any person who has not previously signed a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement becomes your spouse or shareholder, member, or other owner, direct or indirect or a spouse of such shareholders, members, or other owner, at any time after the execution of this Agreement, you must cause such person(s) to immediately execute and deliver a Guaranty of Franchise Agreement and a Non-Disclosure and Non-Competition Agreement to us.

Failure to provide a Guaranty of Franchise Agreement or a Non-Disclosure and Non-Competition Agreement to us may, in our sole discretion, be grounds for termination of this Agreement as set forth in *Section 14.2a*.

## **9.9 Not Applicable.**

# **ARTICLE 10. ADVERTISING AND PROMOTION**

## **10.1 Advertising by Franchisor.**

We (or at our election a third-party which may be an affiliate of ours) will administer the Advertising Fund that will include your Advertising Fee and those of other franchise owners in the System. If an affiliate of ours administers the Advertising Fund or places advertising in connection with the System, such affiliate may be paid a fee that will not exceed the fee that would be payable to unrelated third-parties for comparable services. Unless required by applicable law, we will have no obligation to create a trust account, escrow account or other special account for the Advertising Fund, and the monies comprising the Advertising Fund may be placed in our general account. We may also reserve the Advertising Fee for use in a subsequent year.

We will direct all advertising and promotional programs. We will have sole discretion over all creative concepts, materials and media used in such programs and the placement and allocation of such programs. The Advertising Fund will be used for marketing, advertising, production and media expenses to promote the *Baja Fresh* trade name, System, products and services. We are entitled to deduct, free of charge, the following from the Advertising Fund: reimbursement of expenses, overhead, and employee salaries for services provided; and rent for office space provided to the Advertising Fund. We are not required to use any specific amounts from the Advertising Fund in your market. However, we in our sole discretion, may use some amounts contributed by you to any Advertising Fund, if any (see *Section 5.3*), in the same geographic area in which your Franchised Business is located.

## **10.2 Advertising by Franchisee.**

In addition to your Advertising Fee, if applicable, and unless your Franchised Business is located in an enclosed shopping mall or other enclosed structure identified in *Section 1.1*, you agree to pay for a regular (white pages) and classified (yellow pages) telephone directory advertisement in the main directory distributed in the area where your Franchised Business is located, in such directory categories as we specify, utilizing forms of listing and classified directory advertisements approved by us. We also recommend that, in addition to your Advertising Fee, you spend at least two percent (2%) of your monthly Gross Sales on local advertising.

Your own local marketing and advertising plan should be developed to maximize your particular customer base. You should not rely upon a marketing program or plan by us as the sole means of obtaining customers. All marketing and advertising materials must be reviewed by the marketing department for look and feel. The marketing department's review is not for determining compliance with federal, state and local laws.

All advertising by you in any medium must be conducted in a professional manner and must conform to the System Standards. We may make available to you, from time to time, advertising, promotional plans and materials for purchase.

Under no circumstances may you use, without limitation, the name, image, or voice of a celebrity, public figure, character or other person in connection with the Proprietary Marks or the Franchised Business without our prior written consent. We retain the sole and exclusive right to use, without limitation, the name, services or image of any celebrity, public figure, character or other person in advertising, endorsing or recommending the System.

## **ARTICLE 11. ACCOUNTING PROCEDURES AND REPORTS**

### **11.1 Maintenance of Records.**

You shall keep full, complete, and accurate books and accounts in accordance with generally accepted accounting principles, and in the form and manner indicated below or as from time to time further required by us. You agree to submit reports and data to us electronically if we advise you to do so. You agree:

- a. to submit to us electronically the weekly Gross Sales as set forth in *Section 5.6*;
- b. to submit to us, on or before the thirtieth (30th) day of each month, commencing with the opening of the Franchised Business, in a format and method approved by us (including through a third-party vendor that franchisee may be required to pay for), a profit and loss statement of the Franchised Business for the preceding calendar month prepared in accordance with generally accepted accounting principles;
- c. to submit to us, within ninety (90) days after the end of each calendar year, commencing with the opening of the Franchised Business, in a format approved by us, a profit and loss statement and balance sheet (including a statement of retained earnings or partnership account) for the preceding calendar year;
- d. to submit to us, at the times required, such other periodic forms, reports and information as may from time to time be required by us;

e. to preserve, in the English language and for the time periods set forth below, all accounting records and supporting documents related to the Franchised Business (individually and collectively, "Records"), including:

1. daily cash reports;
2. cash receipts journal and general ledger;
3. cash disbursements journal and weekly payroll register;
4. monthly bank statements, daily deposit slips and canceled checks;
5. all tax returns, including your personal returns and those of your officers, shareholders, partners and members;
6. suppliers invoices (paid and unpaid);
7. dated cash register tapes (detailed and summary);
8. semi-annual balance sheets and monthly profit and loss statements;
9. daily production, throwaway and finishing records and weekly inventories;
10. records of promotion and coupon redemptions;
11. records of all outside sales; and
12. such other records as we may from time to time request.

f. to record all sales on cash registers approved by us, as specified in the Confidential Manual;

g. to file all of your federal and state tax returns on a timely basis and to provide copies of them to us. We may, where applicable, require that tax returns from all of your shareholders, members or partners be provided to us, if you are other than an individual;

h. During the Term, you shall preserve the Records for at least the current fiscal year and for the three (3) immediately preceding fiscal years. For three (3) years after the date of any transfer of an interest in this Agreement, the transferor of such interest will preserve the Records for its last three (3) fiscal years of operation under this Agreement. For three (3) years after the expiration of the Term (or after any earlier termination), you shall preserve the Records for the last three (3) fiscal years of operation of the Franchised Business; and

i. In connection with our efforts to attract additional franchise owners to the System, we will have the right to use (without identifying you, except as required or allowed by law) any financial statements, sales reports, profit and loss statements or balance sheets provided by you and, in connection therewith, you authorize us to disclose any information contained on such financial reports as may be required by any federal or state registration or disclosure law.

## 11.2 Audit by Franchisor.

We will have the right, at any time during business hours, and with or without prior notice to you, to inspect and audit, or cause to be inspected and audited, the Records and cash control devices of the Franchised Business, and your corporate, partnership or limited liability company books and records (if you are a corporation, partnership, limited liability company, or other entity). You agree that we may access any computers utilized by you for such purposes.

You will fully cooperate with our authorized representatives and independent accountants hired by us to conduct any such inspection or audit. In the event any such inspection or audit discloses an understatement of your Gross Sales for any period in question, you will pay to us, immediately after receipt of the inspection or audit report, any additional Royalty Fee or Advertising Fee due as a result of any such understatement, plus interest at the Default Rate from the date originally due until the date such understatement is paid in full.

In addition, in the event such inspection or audit is made necessary by your failure to timely furnish Records, or if an understatement of the Royalty Fee or Advertising Fee for the period of any audit (which period shall not be for less than one (1) month) is determined by any such audit or inspection to be five percent (5%) or greater, you must reimburse us all amounts incurred in connection with such audit or inspection including our employee costs and expenses, any independent accountants' and attorneys' fees, transportation, room, and meal expenses.

The remedies in this *Section 11.2* will be in addition to all our other remedies and rights under this Agreement or under applicable law.

## ARTICLE 12. TRANSFER

*Sections 12.1* through *12.4* apply to all transfers, except transfers by us, which are described in *Section 12.5*.

### 12.1 Prior Consent of Franchisor.

a. As used in this Agreement, "Transfer" means any voluntary, involuntary (including by operation of law), direct or indirect assignment, sale, gift or other transfer by you, including:

1. "Full Transfer," which is any act or circumstance, except those set forth in *Section 12.1.a.2.*, by which fifty percent (50%) or more of the ownership or control is shifted from any individual or corporation, partnership or other business entity (individually and collectively, "Entity") to another, including:

(i) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement;

(ii) Transfer of an interest in you, if you are an Entity;

(iii) Merger, consolidation or issuance of additional ownership interests or redemption of ownership interests in you, if you are an Entity; or

(iv) Transfer of an interest in any other Entity holding an interest in this Agreement or you, if you are an Entity.



2. "Affiliate Transfer," which includes:

(i) Transfer in a separation or divorce, regardless of how much of the ownership or control is shifted from any individual or Entity to another;

(ii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from your name as an individual(s) to your Entity name in which you are the sole owner(s) of the Entity;

(iii) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement, from your Entity name in which you are the sole owner(s) to your name as an individual(s);

(iv) Transfer of this Agreement or the Franchised Business, or any right or interest granted by this Agreement from one Entity name to another Entity name in which the owners of the entities are the same;

(v) Removing an owner from the Franchisee (unless the person has a fifty percent (50%) or more ownership interest);

(vi) Adding an owner to the Franchisee (unless the person has a fifty percent (50%) or more ownership interest); or

(vii) Transfer by which less than fifty percent (50%) of the ownership or control is shifted from any individual or entity to another for any act or circumstance listed in *Section 12.1.a.1.*

b. We are entering into this Agreement based upon our knowledge of and faith in your ability. Therefore, the Franchised Business and all the rights granted by this Agreement are personal to you and you may not Transfer without our prior written consent. Any attempted Transfer without our prior written consent will be null and void, and will give us the right to terminate this Agreement and your rights under it, in addition to any remedies which we may have for the breach of this covenant by reason of an attempted Transfer.

c. We shall not unreasonably withhold or delay our consent to a Transfer, so long as it is shown to our satisfaction that the potential transferee ("Potential Transferee") can perform a franchisee's obligations under the then-current form of franchise agreement and all other agreements, legal instruments and documents required of new franchisees.

## **12.2 Advance Notice of Proposed Terms and Right of First Refusal.**

a. If you, or any of your shareholders, members or partners, have received and desire to accept a signed bona fide written offer from a third-party to Transfer, you shall notify us and provide us with a complete copy of the offer (letter of intent) which must include the name, address and telephone number for every Potential Transferee. You must also include information as to the identity of all who will own an interest in this Agreement or in the Franchised Business after the completion of the Transfer, their respective interests, and the proposed terms and conditions of sale and payment.

b. We shall have the right and option, exercisable within thirty (30) days after the date we receive a copy of the offer, to purchase the interest proposed to be transferred, at the price and upon the same terms and conditions specified in the notice.

c. If we do not exercise our option, and the terms of the unaccepted offer are altered, you must, in each such instance, notify us of the changed offer; and we will again have thirty (30) days to exercise our right to purchase on the altered terms. If we do not exercise our option, then the Transfer may take place on the terms and price set forth in the notice; provided: (i) we give our written consent; (ii) the Transfer takes place no later than six (6) months from receipt of our written refusal to exercise our option to purchase; and (iii) all the conditions set forth in *Section 12.3* are satisfied.

### **12.3 Requirement for Consent to Transfer.**

If a Transfer is proposed and we do not exercise our right of first refusal pursuant to *Section 12.2*, then we will consent to the Transfer, provided that:

a. All your obligations under this Agreement are fully paid and satisfied, including the Royalty Fee and Advertising Fee; you are not in default under any provisions of this Agreement or any other agreement, legal instrument or document with us or any of our affiliates; and you enter into written agreements with us, including (except where prohibited by law) a general release by you of all claims against us;

b. Potential Transferee provides to us a completed application and financial documents, is financially acceptable, is not associated with any of our competitors, is of good moral character and reputation, and meets our criteria, which includes: work experience and aptitude; ability to devote time and best efforts to the Franchised Business; equity interest in the Franchised Business; ability to speak and read English sufficient in our opinion to communicate with employees, customers and suppliers and to satisfactorily complete our training; no conflicting interests; and other criteria and conditions that we apply to new franchisees;

c. Potential Transferee provides us with copies of all governing documents of Potential Transferee (e.g., certificate of incorporation or organization, by-laws, stock certificates, operating agreement, membership certificates (if any)) which must be reasonably satisfactory to us in our sole discretion;

d. You provide to us a copy of the purchase and sale agreement, if a Full Transfer, or other documentation evidencing the Transfer, if an Affiliate Transfer, and following our analysis of the terms and conditions of the proposed Transfer, we, in our sole discretion, conclude that such terms and conditions will not interfere with the financial feasibility of the future operation of the Franchised Business;

e. Potential Transferee enters into all agreements, legal instruments and other documents, whether our then-current agreements, legal instruments and documents or a transfer of this Agreement and related legal instruments and documents, as determined by us (individually and collectively, "Transfer Documents"). The terms of the Transfer Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

f. Not Applicable;

g. Potential Transferee pays to us the Transfer Franchise Fee, if a Full Transfer; or Potential Transferee pays us the Document Administration Fee, if an Affiliate Transfer; Franchisee shall be liable to the Franchisor for the transfer franchise fee or Document Administration Fee in the event the Potential Transferee fails to pay such fee that is owing in full;

h. Potential Transferee pays to us the transfer training fee set forth in the Transfer Documents, if a Full Transfer; Franchisee shall be liable to Franchisor for the training fee if Potential Transferee fails to pay the training fee owing in full; If Potential Transferee or any of its employees or representatives cancel or reschedule participation in any training course or program which Potential Transferee schedules with Franchisor, Potential Transferee or Franchisee must reimburse Franchisor for all of its employee's travel expenses, wages and other expenses incurred as a result of such cancellation or rescheduling;

i. Potential Transferee successfully completes the training program required by the Transfer Documents, if a Full Transfer;

j. Potential Transferee agrees to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us, if a Full Transfer;

k. You and Potential Transferee agree not to assert any security interest, lien, right or claim now or in the future, in the Franchised Business. Any security interest, lien, claim or right asserted with respect to any personal property at the Location must not include any after-acquired property and must be subject, junior and subordinate to any security interest, lien, right or claim now or in the future, asserted by us, our successors or assigns; and

l. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to Potential Transferee so that Potential Transferee may keep the existing telephone number when the store is transferred to Potential Transferee.

#### **12.4 Death or Incapacity of Individual Franchisee; Change in Entity.**

a. Death or incapacity of Franchisee when Franchisee is an individual:

(i) In the event of your death or incapacity, your legal representative may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your representative desires to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your legal representative must apply in writing for the right to transfer the Franchised Business to the person or persons (whether spouse, heir, devisee, purchaser, or any other person), as the legal representative may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If your legal representative does not comply with the provisions of the preceding paragraph, or does not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our

sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

b. Death or incapacity of any shareholder, partner, or member in Franchisee when Franchisee is a business entity:

(i) In the event of the death or incapacity of any of your shareholders, partners, or members, the surviving shareholders, partners, or members may, for a period of ninety (90) days from the date of death or incapacitation, continue to operate the Franchised Business, provided that the operation is conducted in accordance with this Agreement and any other agreements with us.

(ii) If your shareholders, partners or members desire to continue the operation of the Franchised Business beyond the ninety (90) day period, then, prior to the expiration of this period, your shareholders, partners, or members must apply jointly with all surviving shareholders, partners or members in writing, for the right to transfer the Franchised Business (or the interest of the deceased or incapacitated shareholder, partner, or member in the Franchised Business), to the person or business entity as the surviving shareholders, partners, or members may specify. The application for transfer will be treated in the same manner as any other proposed Transfer under this Agreement.

(iii) If all surviving shareholders, partners or members do not comply with the provisions of the preceding paragraph, or do not propose a Potential Transferee acceptable to us under the standards set forth in this Agreement, all rights licensed to you under this Agreement will terminate immediately and automatically revert to us. We shall have the right and option, in our sole discretion, exercisable upon such termination, to purchase all removable furniture, fixtures, signs, equipment and other chattels, but not leasehold improvements, at a price to be agreed upon by the parties or, if no agreement as to price is reached by the parties, at such price as may be determined by a qualified appraiser, approved by both parties, such approval not to be unreasonably withheld. We shall give notice of our intent to exercise the option no later than twenty-one (21) days prior to termination.

## **12.5 Assignment by Franchisor.**

You agree and affirm that we may, without your prior consent, sell our business, our assets, or our System, in whole or in part, to a third-party; may issue a public offering of our securities; may engage in private placement of some or all of our securities; may merge with or acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. You further agree and affirm that we have the right, now and in the future, without your prior consent, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of such franchise network, chain or business, which you acknowledge may be proximate to your Franchised Business, and to operate, franchise or license such franchise networks, chains or businesses operating under the Proprietary Marks or any other marks following our purchase, merger, acquisition or affiliation. With regard to any of the above sales, assignments and dispositions, you expressly and

specifically waive any claims, demands or damages against us arising from or related to the loss of your rights to use the System as authorized under this Agreement.

This Agreement will inure to the benefit of our successors and assigns. In conjunction with one (1) or more of the transactions contemplated above, or as otherwise determined by us, we have the right to assign our rights and obligations under this Agreement to any person or entity, without your prior consent. Upon such assignment, we will be relieved of all obligations or liabilities then existing or thereafter able to be asserted under this Agreement.

## **12.6 Restrictions on Security Interests and Subfranchising.**

Except as otherwise set forth in this *Section 12.6*, you shall not have any rights to pledge, encumber, hypothecate or otherwise give any third-party a security interest in this Agreement in any manner whatsoever, nor subfranchise or otherwise transfer, or attempt to subfranchise or transfer the Franchised Business, in whole or in part, so long as it is operated as the Franchised Business, without our express prior written permission, which permission may be withheld for any reason whatsoever in our sole discretion. Notwithstanding anything contained herein to the contrary, you shall have the right to pledge your accounts receivable, net of royalties and rent, without our prior written consent for the sole purpose of obtaining financing for the operation of the Franchised Business, provided you are in full compliance with this Agreement and any other agreement, arrangement or understanding with us.

## **ARTICLE 13. RENEWAL**

Subject to the terms and conditions described below, you will have the right to renew your license to operate the Franchised Business for an additional term of five (5) years. In the event you desire to renew your license, you must give us notice to that effect at least one hundred twenty (120) days prior to the expiration date of the Term. In addition to giving the notice of renewal referred to above in a timely manner, in order to have the right to renew the license to operate the Franchised Business for an additional term, you must also meet each of the following requirements:

- a. You must not then be in default under this Agreement or any other agreement, legal instrument or document with us or any of our affiliates, and no event shall have occurred that, with the giving of notice, the passage of time, or both, would constitute a default under this Agreement, including all financial obligations to us;
- b. You must be in complete compliance with the terms of this Agreement, including all financial obligations to us, and the then-current Confidential Manual;
- c. You must not have received more than three (3) notices of default or breach of this Agreement during its term, nor more than two (2) notices of default or breach during the five (5) years immediately preceding the effective date of the proposed renewal;
- d. You must have the existing right to maintain possession of the Location or you must have secured and developed a suitable substitute location that meets our then-current minimum site requirements (such confirmation will be provided to you by us in writing);
- e. You must sign a general release provided by us;

f. You and we must execute all agreements, legal instruments and other documents (individually and collectively, "Renewal Documents") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Documents will supersede this Agreement, but will not terminate your liability to perform any obligations which you have not yet performed under this Agreement, or which survive the termination of this Agreement; nor will the Renewal Documents terminate or supersede any Guaranty of Franchise Agreement, Confidentiality Agreement, or Non-Disclosure and Non-Competition Agreement executed pursuant to this Agreement. The terms of the Renewal Documents may vary materially from the current agreements used by us, including the payment of a higher Royalty Fee and Advertising Fee;

g. The equipment, fixtures and signage used in connection with the operation of the Franchised Business must either meet our then-existing System specifications and standards, or you must agree, within a timeframe required by us, to replace or refurbish such items, and otherwise modify the methods of operation of the Franchised Business at your cost and expense, in order to comply with our System specifications and standards then applicable to new franchise owners;

h. You agree to complete all remodeling and improvements as required by us, and must upgrade the POS System to the then-current required POS System, within the time period specified by us; and

i. You shall have paid to us the Renewal Franchise Fee as required under *Section 5.12*.

If you do not meet any of the requirements for renewal, we will give you a notice to that effect which will specify the requirements not met. The notice will be given to you within sixty (60) days after you deliver to us your notice of intent to renew.

## **ARTICLE 14. DEFAULT AND TERMINATION**

### **14.1 Default; Termination.**

a. You will be in default under this Agreement:

(i) If: (a) you become insolvent or make an assignment for the benefit of creditors; (b) you file a petition in bankruptcy, or if such a petition is filed against and consented to by you, and such petition is not dismissed within thirty (30) days from the filing date of such petition; (c) you are adjudicated bankrupt; (d) a bill in equity or other proceeding for the appointment of your receiver or other custodian for your business or assets is filed and is consented to by you or is not dismissed within thirty (30) days from the filing date of such bill or other proceeding; (e) a receiver or other custodian is appointed; (f) proceedings for composition with creditors under any state or federal law is instituted by or against you; (g) the real or personal property of the Franchised Business is sold at levy thereupon by any sheriff, marshal or constable, or sold by a secured party under any state's Commercial Code;

(ii) If you fail to pay, perform, observe or comply with any of your duties and obligations under this Agreement or the Confidential Manual, including failure to provide a fully-executed copy of the lease to us when due and failure to pay when due, any sum due to us under this Agreement (including the Royalty Fee and Advertising Fee) or to any Advertising

Fund (inclusive of any Association); or if you breach any of your obligations under any lease, sublease, mortgage, equipment agreement, promissory note, vendor account, conditional sales contract or other contract arising from, or in connection with, the Franchised Business, to which you are a party or by which you are bound, whether or not we are a party thereto;

(iii) If your lease or sublease for the Location of the Franchised Business is either: (a) in default and you fail to cure such default as provided in the lease or sublease; (b) is terminated for reason of default by you; or (c) the Location is lost as a result of your failure to comply with the lease or sublease;

(iv) If you fail, within thirty (30) days of the entry of a final judgment against you in an amount exceeding Two Thousand Dollars (\$2,000), to discharge, vacate or reverse the judgment or to stay its execution pending appeal, or to discharge any judgment which is not vacated or reversed within thirty (30) days after expiration of the stay of execution;

(v) If we determine that a serious health or safety problem exists at the Franchised Business, in which case, we may require you to immediately correct the problem or cease operating until the problem is corrected;

(vi) If you, or any owner, co-owner or principal of the Franchised Business, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely to adversely affect the System, the goodwill associated therewith, or our interest therein;

(vii) Except for any reason provided in *Section 5.2*, if you abandon the Franchised Business, which abandonment shall conclusively be deemed established if the Franchised Business is closed for more than three (3) consecutive days;

(viii) Except for any reason provided in *Section 5.2*, if you close or relocate the Franchised Business, without our express advance written consent;

(ix) If you fail to maintain an independent contractor relationship with us;

(x) If you either negligently or knowingly inaccurately report, or fail to report, any information in your franchise application;

(xi) If you or any owner, co-owner or principal of the Franchised Business commits an act, or permits an act to be committed, that violates any federal, state or local law that adversely impacts the Franchised Business;

(xii) If you fail to participate in any Rollout detailed in *Section 9.3*;

(xiii) If you violate any of the provisions of *Sections 2.3, 3.2, 9.2, 9.3 or 9.4* including the requirement that you: (a) sell or offer for sale only those products and services authorized by us; (b) purchase such authorized products and services only from suppliers or service providers who are approved in writing by us; and (c) utilize or switch to any of our designated approved suppliers, including a supplier who has entered into a national or regional master supplier agreement with us;

(xiv) If you transfer or attempt to transfer any rights or obligations under this Agreement or any other property or assets to any third-party in violation of the provisions of *Article 12*;

(xv) If you or any of your owners, officers, directors, managers, members, or partners (as applicable): (a) become subject to U.S. Executive Order 13224 or are involved in any activity that violates the U.S. Foreign Corrupt Practices Act or any other anti-corruption, bribery or any other laws, orders or governmental notices affecting your ability to conduct business in or with the United States, as may be amended and whether in effect as of the Effective Date or at any time during the Term, (b) are identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specialty Designated National and Blocked Persons list, or (c) receive any funding from any country that is subject to an embargo by the United States, any foreign government or government official, political party; or

(xvi) If you intentionally made any false representations and warranties under *Section 17.1*.

b. **Cross-default:** A default by you under this Agreement will be deemed a default of all agreements between: (i) you and your principals in his or her individual capacity or any other entity in which your principals are owners, members, managers, shareholders or partners (individually and collectively, "Franchisee Entity"); and (ii) us or any of our affiliates or predecessors (individually and collectively, "Franchisor Entity"). A Franchisee Entity's default of any other agreement, legal instrument or other document between the Franchisee Entity and a Franchisor Entity will be deemed a default under this Agreement. A default by any guarantor of your obligations under this Agreement or any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be deemed a default of this Agreement.

c. **Termination:** If you fail to cure any default to our satisfaction, within the applicable period following notice from us, if applicable, or otherwise breach this Agreement, we may, in addition to all other remedies at law or in equity or as otherwise set forth in this Agreement, immediately terminate this Agreement. This termination will be effective immediately upon the giving of notice pursuant to *Article 15*.

d. **Cross-termination:** If this Agreement is terminated as a result of your default of this Agreement or any other agreement related to the Franchised Business, we may, at our option, elect to terminate any or all other agreements, legal instruments or documents between a Franchisee Entity and a Franchisor Entity. If any agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity is terminated as a result of a default by the Franchisee Entity, we may, at our sole discretion, elect to terminate this Agreement. It is agreed that an incurable or uncured default under this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity will be grounds for termination of this Agreement or any other agreement, legal instrument or document between a Franchisee Entity and a Franchisor Entity, without additional notice or opportunity to cure.

## **14.2 Opportunity to Cure.**

a. **Fourteen-Day Cure Period** - Except as otherwise provided in this *Section 14.2*, you will have the right to cure your default under this Agreement within fourteen (14) days after notice of default is given by us pursuant to *Article 15*. Notwithstanding the foregoing, the following lesser periods will apply under the circumstances described:



b. Seven-Day Cure Period - A seven (7) day cure period will apply if you fail, refuse, or neglect to pay when due, any monies owing to us (including the Royalty Fee and Advertising Fee), or otherwise to any Advertising Fund (inclusive of any Association), or if you fail to maintain the insurance coverage set forth in this Agreement;

c. 48-Hour Cure Period – A forty-eight (48) hour cure period will apply (1) if you are in default of *Section 3.4* or (2) if you fail to participate in any limited time product offering, value offering, contest, promotion or charity event. You must initiate your participation in such offering, contest, promotion or event within forty-eight (48) hours and fully participate in such offering, contest, promotion or event as soon as reasonably possible, in our sole discretion, thereafter;

d. 24-Hour Cure Period - A twenty-four (24) hour cure period will apply to your violation of any law, regulation, order or our standards relating to health, sanitation or safety; or, except as provided in *Section 5.2*, if you cease to operate the Franchised Business for a period of forty-eight (48) hours without our prior written consent. In addition, a twenty-four (24) hour cure period will apply if you post on any Site or direct others to any site or page, post, blog or other social media site where there are posted any defamatory or offensive comments about: other franchisees; the *Baja Fresh* brand; other brands franchised by us or one of our affiliates; your or other franchisees' customers; any of our, your or franchisees' vendors; us or any of our affiliates; or any of our, your or franchisees' competitors;

e. Immediate Cure Period (less than 24 hours) – An immediate cure period (less than twenty-four (24) hours) will apply if you post any content to a Site in which the content includes any inappropriate public displays of affection, our or others' confidential information or materials, violations of health or safety standards, foul or obscene language, or any images of or information about any persons from whom you did not obtain prior written consent;

f. No Cure Period - No cure period will be available: (1) if you are in default of *Sections 3.1, 7.2, 9.4, 14.1a.(i), 14.1a.(iii), 14.1a.(vi), 14.1a.(vii), 14.1a.(viii), 14.1a.(xiv), 14.1a.(xv),* or *14.6*; (2) if you intentionally underreport weekly Gross Sales, falsify financial data, fail to promptly provide upon our request financial data and records specified in this Agreement, or otherwise commit an act of fraud with respect to your rights or obligations under this Agreement; (3) if you repeatedly fail to comply with the provisions of this Agreement, whether or not subsequently cured; (4) if you, having twice previously cured a default of this Agreement, commit the default again; (5) if you made any false representations and warranties under *Sections 17.1f., 17.1g., 17.1m. or 17.1n.*; or (6) if you engage in trademark misuse or otherwise materially misuse or make an unauthorized use of any of the components of the System or commit any other act which does, or can reasonably be expected to, materially impair the goodwill or reputation associated with any aspect of the System;

g. Statutory Cure Period - If a statute in the state or municipality in which the Franchised Business is located requires application of that state or municipal law, and that statute requires a cure period for the applicable default which is longer than any cure period specified in this *Article 14*, the statutory cure period will apply.

### **14.3 Our Right to Take Over Management.**

We have the right (but not the obligation), under the circumstances described below, to enter the Franchised Business and assume the Franchised Business' management for any

period of time we feel is appropriate. If we assume the Franchised Business' management, you must pay us, in addition to the Royalty Fee and Advertising Fee, six percent (6%) of the Gross Sales, plus our direct out-of-pocket cost and expenses, for the period of time we assume the Franchised Business' management. If we assume the Franchised Business' management, you acknowledge that our duty is limited to using our reasonable efforts, and we will not be liable to you or your owners for any debts, losses or obligations the Franchised Business incurs, or to any of your creditors for any supplies or services the Franchised Business purchases. We may assume the Franchised Business' management if you abandon the Franchised Business or if you fail to comply with any provision of this Agreement and did not cure the failure within the time period we specify in our notice to you. You agree to complete and sign a letter of agency, letter of authorization, or equivalent and provide it to us upon our request if we assume the Franchised Business' management so that we may keep the existing telephone, facsimile, alarm, and credit card machine numbers (as applicable) in operation under our phone service provider. You also agree to keep the phone, water, gas, electric service (as applicable) turned on and active for one (1) week after we assume the Franchised Business's management to allow us to switch the services over to us or our affiliate. Our exercise of our management rights under this *Section 14.3* will not affect our right to terminate this Agreement.

#### **14.4 Remedies.**

a. Interest, Costs and Damages - If you fail to remit when due any payments required under this Agreement, you agree to pay, in addition to the unpaid amounts, all of our collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, with interest on the unpaid amounts at the Default Rate or the highest permissible rate. If you fail to cure a default, following notice, within the applicable time period set forth in *Section 14.2*, or if this Agreement is terminated as a result of your default, you shall pay to us all damages of any kind and nature whatsoever and all collection costs and expenses, expert fees, reasonable attorneys' fees, and costs and expenses, including all fees, costs and expenses of court, including all appeals, together with interest at the Default Rate or the highest permissible rate. If you fail to report Gross Sales in accordance with *Sections 5.2* and *5.6*, we may estimate your Royalty Fee and Advertising Fee based on prior reports, and may sue for and obtain judgment for such estimates unless you prove, prior to the entry of any default order or judgment, that your Royalty Fee and Advertising Fee are different than the estimates.

b. Waiver of Punitive Damages - Both we and you waive, to the full extent permitted by law, any right they otherwise may have had to claim, pursue, demand or receive any exemplary or punitive damages arising out of or related in any way to this Agreement and its addenda, amendments, appendices, exhibits and attachments.

c. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we may enforce our rights by injunction, specific performance, or any other remedy available under this Agreement, at law or in equity, including termination. These remedies are cumulative and not exclusive and we may use all remedies available. In addition, we may elect to terminate this Agreement and all your rights under it as set forth in *Section 14.5*.

d. If you breach any of the terms of this Agreement, including if you are in default of this Agreement, we have the right to have a receiver appointed to take possession, manage and control the assets of the Franchised Business, collect the profits, and pay the net income for the

operation of the Franchised Business as ordered by a court of competent jurisdiction. The right to appoint a receiver will be available regardless of whether waste or danger of loss or destruction of the assets exists.

#### **14.5 Effect of Termination or Expiration.**

Upon termination or expiration of this Agreement, we can advise all suppliers of *Baja Fresh* proprietary food items and other supplies bearing any of the Proprietary Marks or service marks to cease delivering the items and products to you.

Upon your abandonment of the Franchised Business (whether voluntary or involuntary), any termination of this Agreement (whether pursuant to *Sections 14.1, 14.2, 14.4*, or otherwise), or upon expiration of the Term, you must immediately cease to hold yourself out to the public as a franchise owner of the System, and you must comply with the following:

a. Immediately pay to us or any affiliate of ours all sums owing from you to us or such affiliate, including the Royalty Fee and Advertising Fee, for any period prior to the date of termination, the applicable Early Termination Damages (as defined in Section 14.9 below), and all amounts owed for services, supplies or other items purchased by you from us or any affiliate of ours, or that were financed by us or any affiliate of ours, or which we or any affiliate of ours loaned to you, together with any interest or late fees accrued thereon, together with all other sums due us under this Agreement, and all damages of any kind or nature whatsoever that may be allowed by law;

b. Immediately cease to use, in any manner whatsoever, including in all advertising, the Proprietary Marks, any Trade Secrets, any Confidential Information, any benefits of the System or any part thereof, any methods associated with the System, any forms, recipes, Confidential Manual, slogans, signs, sign posts, marks, symbols, or devices used in connection with the operation of the Franchised Business; and you must deliver or destroy all of the above-mentioned materials, including any materials containing or referencing any of the foregoing, to us as directed by us. If we do not recover any such items, such items shall be valued at their then-current replacement cost, for purposes of determining the damages owing by you to us for failure to return such items, if we pursue a damage claim as a result thereof;

c. Immediately discontinue all advertising as a franchisee of the System, and thereafter refrain from any advertising that would indicate that you are or ever were a franchisee or licensee of ours, or otherwise were affiliated with us or the System;

d. Immediately take such steps as may be necessary or appropriate to:

(i) delete your listing in all telephone directories, if applicable, and terminate any other listings that indicate that you are or were a franchisee or licensee of ours, or otherwise were affiliated with us or the System; and

(ii) transfer to our designee or us all telephone numbers used by you in connection with the Franchised Business. You acknowledge that between you and us, we have the sole right and interest in all telephone numbers and directory listings associated with any Proprietary Marks, and you authorize us and appoint us and any officer or agent of ours, as your attorney-in-fact, to direct the telephone company and all listings agencies to accept such

direction, or this Agreement, as conclusive evidence of our exclusive rights in such telephone numbers and directory listings and our authority to direct their transfer;

e. Immediately take such action as may be required to cancel all fictitious or assumed names, amend any entity name, or dissolve any entity that contains any Proprietary Mark, in whole or in part, regardless of whether the entity name was authorized by us, and amend or cancel any and all equivalent registrations relating to your use of any Proprietary Mark. You acknowledge that between you and us, we have the sole right and interest in all such fictitious or assumed names, entity name, and equivalent registrations, and you authorize us and appoint us and any officer or agent of ours as your attorney-in-fact, to effect the termination or cancellation of such fictitious or assumed names or equivalent registrations should you fail or refuse to do so, and the appropriate federal, state, and local agencies may accept your direction or this Agreement as conclusive evidence of our exclusive rights in such fictitious or assumed names or equivalent registrations, and our authority to direct their termination or cancellation;

f. Comply with the confidentiality requirements and the covenant against competition in this Agreement for the specified period. You acknowledge that you, or (if an entity) your authorized representative, has carefully reviewed the confidentiality requirements and the covenant against competition in this Agreement; and that you have agreed to be bound by all the requirements and covenants; and

g. Maintain at a place made known to us all books, records and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, to allow us to make a final inspection of your books and records for the purpose of verifying that all amounts owing have been paid.

If you fail to do any of the foregoing, we may pursue any remedy available at law or in equity against: (i) you; (ii) any or all guarantors of your obligations under this Agreement; and (iii) you and any or all guarantors of your obligations under this Agreement.

We have the right, but not the obligation, to purchase from you any assets or property (but not leasehold improvements) used in the operation of the Franchised Business for an amount equal to the Value (as defined below), as of the termination date. If we are required, by law, regulation or court order, to purchase the equipment and other tangible assets used in connection with the Franchised Business, the purchase price will be equal to the Value. For purposes of this Agreement, the term "Value" means, subject to applicable law, an amount equal to your cost for such assets, less depreciation and amortization using a two hundred percent (200%) declining balance method over a five (5) year period. If all, or any portion of, your assets that are being purchased by us or our authorized representative are subject to lien(s), we or our authorized representative may pay, on your behalf, the lienholder(s) that portion of the purchase price for your assets (which may be the entire purchase price) that is necessary to obtain the release of those assets from the lien(s), in lieu of paying you those funds. Further, we may offset any amounts payable to you pursuant to this *Section 14.5*, or otherwise pursuant to this Agreement, against any unpaid amounts payable to us or our affiliates pursuant to this Agreement or any agreement executed in connection with this Agreement.

#### **14.6 Covenant Not to Compete; Conflicting Interests.**

a. During the Term and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not engage in any Competing Business (as defined in *Section 14.6c.*) with any *Baja Fresh* restaurant, nor shall you have any Conflicting Interest (as defined in *Section 14.6d.*) in a Competing Business. The provisions of this Agreement bind you in any capacity, including as a franchisee, sole proprietor, partner, limited partner, member, employer, franchisor, shareholder, officer, director or employee.

b. During the Term, and for a period of two (2) years after your abandonment of the Franchised Business, expiration of this Agreement, or termination of this Agreement (whether voluntary or involuntary), you shall not divert or attempt to divert any business, customers, or potential customers of the *Baja Fresh* System to any Competing Business, by direct or indirect inducement or otherwise. In addition, you shall not at any time do or perform any act, directly or indirectly, which harms the goodwill or reputation of us or the System.

c. For purposes of this *Section 14.6*, "Competing Business" means a business which is primarily engaged in the sale of Mexican-style food items, and all variations thereof, within a geographical area consisting of: (1) during the Term, anywhere else; and (2) after abandonment, expiration or termination of this Agreement, within a ten (10) mile radius from the Location or location of any *Baja Fresh* restaurant of ours, our third-party licensees or our third-party franchisees. The term "*Baja Fresh* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

d. For purposes of this *Section 14.6*, "Conflicting Interest" means an interest by which you, or your executive officers, directors and shareholders (if you are a corporation), or your partners (if you are a partnership), or your members (if you are a limited liability company), or your designated manager, directly or indirectly, have a controlling interest in, lend money to, consult with or otherwise assist any Competing Business. If any of the persons named above do not sign this Agreement under the heading "*Personal Acceptance of Sections 7.1, 7.2, 14.6 and 14.8,*" then you agree to obtain the execution by such person of a written agreement setting forth the foregoing in a form acceptable to us.

#### **14.7 Continuing Obligations.**

All your obligations that expressly survive the expiration or termination of this Agreement, including *Sections 14.5* and *14.6*, or by the implicit nature thereof require performance after the expiration or termination of this Agreement, will continue in full force and effect (subsequent to, and notwithstanding, your abandonment of the Franchised Business (whether voluntary or involuntary) the expiration of the Term, or termination of this Agreement), until they are satisfied in full or by their nature expire. The indemnities and obligations set forth in *Article 8* will continue in full force and effect subsequent to, and notwithstanding, the expiration or termination of this Agreement.

#### 14.8 Remedies.

You acknowledge and agree that the restrictions contained in this Agreement, including in this *Article 14*, are fair and reasonable and necessary for the protection of our legitimate business interests and you intend and agree that such restrictions be enforceable and enforced to their fullest extent. You further understand and agree that, notwithstanding any other provision of this Agreement, your breach of your obligations under this *Article 14*, will cause us irreparable harm for which recovery of monetary damages alone would not be an adequate remedy. Both parties shall be entitled to obtain timely injunctive relief, including a temporary restraining order, preliminary and permanent injunctions, to protect their rights under this Agreement, in addition to and not exclusive of any and all other remedies available to each party.

#### 14.9 Early Termination Damages.

If you discontinue operating your Franchised Business before this Agreement expires, with or without obtaining our prior written consent, or in the event of a termination of this Agreement arising from or related to your default and breach of its provisions, you will become obligated to pay Franchisor early termination damages ("Early Termination Damages"). The Early Termination Damages shall be considered damages and not a penalty, are not in lieu of other damages, and your payment of these damages shall not constitute a release of any other obligation owed to us. Franchisor, Franchisee, each individual signing on behalf of Franchisee, and each guarantor guaranteeing Franchisee's obligations hereunder, hereby acknowledge and agree that Franchisor's losses due to Franchisee's unilateral closure of the Franchised Business or termination of this Agreement would be highly difficult or impossible to calculate with reasonable certainty and, therefore, have agreed at the outset of this Agreement that the Early Termination Damages, and the formula for calculating these damages, constitutes a reasonable, good faith forecast of Franchisor's estimated losses and damages due to the premature closure of the Franchised Business or termination of this Agreement.

The amount of the Early Termination Damages is calculated as follows:

- a. Compute the average monthly Royalty Fee and Advertising Fee due for any consecutive twelve (12) month period within the forty-eight (48) months immediately preceding the date we receive notification of the closure, or if you failed to timely notify us of the closure then the date the Franchise Business closed, or, if the Franchised Business has been open for less than twelve (12) months, the average monthly Royalty Fee and Advertising Fee due since the opening of the Franchised Business ("Monthly Average");
- b. Multiply the Monthly Average by the number of months remaining in the Term;  
and
- c. Divide the resulting total computed in b. above by two (2).

For example purposes only: If the average monthly Royalty Fee and Advertising Fee were collectively \$1,000 and there were five years (60 months) remaining in the Term, the Early Termination Damages would be \$30,000, calculated as follows:  $\$1,000 \times 60 \text{ months} = \$60,000 \div 2 = \$30,000$ .

If you unilaterally terminate this Agreement prior to the end of the Term, you must give us ninety (90) days prior notice of the early termination (“Early Termination Notice”). Within ten (10) days after our receipt of your Early Termination Notice, we will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of your Franchised Business. In the event of a termination arising from or related to your default under this Agreement, or that you do not: (i) provide us with the Early Termination Notice at least ninety (90) days prior to the early termination of your Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing us with the Early Termination Notice; and (iii) pay the Early Termination Damages in full at least thirty (30) days prior to closing of the Franchised Business, the Early Termination Damages due may, in our sole discretion, be increased as follows: it will be calculated by multiplying the Monthly Average by the number of months remaining in the Term, and will not be divided by two (2).

If you have not paid your Royalty Fee and Advertising Fee for any period(s) within the forty-eight (48) months prior to notifying us of your early termination, or if you have not reported your Gross Sales for any period(s) within the forty-eight (48) months prior to notifying us of your intended early termination, we will estimate the Royalty Fee and Advertising Fee based upon prior reports to calculate the Monthly Average.

## **ARTICLE 15. NOTICES**

Unless otherwise provided in this *Article 15*, all notices specified by this Agreement or required by law must be in writing and given by personal delivery, sent by carrier (i.e., FedEx®, UPS®, etc.), U.S. certified mail, return receipt requested. All notices to us must be given at the address set forth on page 1 of this Agreement or to such other address as we may designate in writing from time to time in accordance with this *Article 15*. All notices to you may be given at the address set forth on page 1 of this Agreement, at the address of the Franchised Business, at any of your franchised restaurants, at your residence (if an individual), or at the residence of your principal shareholder(s), partner(s), or member(s) (if a business entity). Notices will be conclusively deemed to be given, delivered, and effective when sent pre-paid and actually left in the custody of an adult agent, employee or resident at a place of business or residence if given by personal delivery; or if given by carrier, twenty-four (24) hours after deposited with carrier, or if by U.S. certified mail, three (3) days after deposited with the U.S. Postal Service. You have an obligation to promptly notify us pursuant to this *Article 15* whenever your mailing address, phone number or email address change. Notwithstanding the foregoing, we may give you written notice via email to an email address you provide us regarding all notices specified by this Agreement or required by law, with such email notification to be deemed received by you twenty-four (24) hours after we send it, unless you otherwise earlier acknowledge receipt.

## **ARTICLE 16. CONSTRUCTION AND ENFORCEMENT; MISCELLANEOUS**

### **16.1 Independent Contractors.**

The relationship between you and us is that of independent contractors. You are in no way to be deemed our partner, joint venturer, agent, employee, or servant. You have no authority to bind us to any contractual obligation or incur any liability for or on our behalf. You shall identify yourself as an independent owner of the Franchised Business in all dealings with customers, lessors, contractors, suppliers, public officials, employees, and others.

## 16.2 Severability and Substitution of Provisions.

Except as provided to the contrary in this Agreement, each article, section, term and provision of this Agreement, and any portion thereof, will be considered severable, and if, for any reason, any such portion of this Agreement is held to be invalid, contrary to, or in conflict with any applicable present or future law or regulation, or as a result of a final, non-appealable ruling issued by any court, agency or tribunal with competent jurisdiction in a proceeding to which we are a party, that regulation or ruling will not impair the operation of, or have any other effect upon, such other portions of this Agreement as may otherwise remain valid, and such other portions will continue to be given full force and effect and bind the parties to this Agreement. If the severed provision is material to this Agreement, we shall promptly provide a substitute provision to replace the invalid severed provision consistent with then-current law and the original intent of the parties.

If any applicable and binding law or rule of any jurisdiction requires a greater prior notice of the termination of, or refusal to renew, this Agreement than is required under this Agreement, or the taking of some other action not required under this Agreement, or if under any applicable law, regulation, or court ruling of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by us is invalid or unenforceable, the prior notice or other action required by such law, regulation, or court ruling will be substituted for the comparable provisions of this Agreement, and we will have the right, in our sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to the extent required to be valid and enforceable. Such modifications to this Agreement shall be effective only in such jurisdiction, unless we elect to give them greater applicability, and otherwise shall be enforced as originally made and entered into in all other jurisdictions.

## 16.3 Dispute Resolution.

a. Except as otherwise provided herein, any dispute, claim or controversy arising out of or relating to this Agreement, the breach hereof, the rights and obligations of the parties hereto or the relationship between the parties, or the entry, making, interpretation, or performance of either party under this Agreement (“Dispute”), which cannot be resolved by mediation under *Section 16.3d*. or is not subject to mediation under the terms of this Agreement, shall be settled by arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules as modified below.

b. Any arbitration shall take place before a sole arbitrator in Maricopa County, Arizona or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced. You agree that conducting the arbitration where we are located is appropriate due to the multiple locations throughout the United States where our franchisees are located. The parties agree that the arbitrator shall be an attorney licensed to practice law in the United States and must have a minimum of five (5) years of experience in franchise law. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator shall, in the award, allocate all of the costs and expenses of the arbitration, including the fees of the arbitrator and the reasonable attorneys’ fees of the prevailing party, against the party who did not prevail. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any other dispute, arbitration proceeding or litigation, except to the extent such issue may have been specifically determined in another proceeding between the parties. This agreement to arbitrate



shall survive any termination or expiration of this Agreement, however effected. The parties agree that any arbitration shall be solely between them (including any affiliates) and shall not include as a party, by consolidation, joinder, or in any other manner, any other person or entity, unless both parties consent in writing. Both parties shall have the absolute right to refuse such consent. Further, the parties expressly waive any right to bring or participate in any class or other consolidated, joined or multi-party arbitration claim or proceeding, whether or not permissible under the AAA Commercial Arbitration Rules, including any claim brought on their behalf by an association of which it, he or she is a member. At the request of any party, the arbitration shall be conducted in a manner that maintains the confidentiality of the proceedings.

c. The arbitrator will issue a reasoned award, with findings of fact and conclusions of law. Actions to enforce an express obligation to pay monies may be brought under the Expedited Procedures of the AAA's Commercial Arbitration Rules. The Federal Arbitration Act shall govern, excluding all state arbitration laws. Arizona law will govern all other issues. With respect to discovery, the arbitrator shall require each party to make a good cause showing before any discovery exceeding that specifically authorized by the AAA Commercial Arbitration Rules will be granted.

d. Prior to the commencement of an arbitration proceeding, the parties must first submit any Dispute to non-binding mediation. At the request of any party, the mediation will be confidential. The mediation shall be conducted in Maricopa County, Arizona or in the county in which our headquarters are located at the time of mediation, unless the parties shall mutually agree to a different location. The parties to the mediation will share equally in its costs and expenses, except those costs and expenses incurred separately by each party, including counsel fees and expenses. The mediation process will be deemed "Completed" when the parties agree that it has been completed, the mediator declares that any impasse exists, or sixty (60) days have elapsed since the date of the initiating party's notice to the other party that it is initiating the mediation process, whichever occurs first.

e. Notwithstanding anything contained in this Agreement to the contrary, the provisions of Sections 16.3a., 16.3b., 16.3c. and 16.3d. do not apply to a Dispute where: (i) we bring an action for an express obligation to pay monies, declaratory relief, preliminary or permanent equitable relief, any action at law for damage to our goodwill, the Confidential Information, the Proprietary Marks or for fraudulent conduct by you; or (ii) the delay resulting from the mediation process may endanger or adversely affect the public (for example, unhealthy, unsafe or unsanitary conditions would continue to exist). For such disputes, we may bring an action in any federal or state court having jurisdiction, whether for monetary damages, temporary preliminary and permanent injunctive relief or specific performance in addition to, and not exclusive of, any other remedies available to us. You hereby consent to and waive any objection or defense and agree not to contest venue, forum non conveniens or jurisdiction of such court or arbitration.

f. Disputes concerning the validity or scope of arbitration, including whether the Dispute is subject to arbitration, are beyond the authority of the arbitrator and will be determined by a court of competent jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. §1 et seq., as amended from time to time.

g. Either party may appeal the final award of the arbitrator, if it is over One Hundred Thousand Dollars (\$100,000), to the appropriate U.S. District Court. The Court's review of the arbitrator's findings of fact will be under the clearly erroneous standard, and the Court's review

of all legal rulings will be *de novo*. If it should be determined that this provision for federal court review is not enforceable, then either party may appeal the arbitrator's final award, if it is over One Hundred Thousand Dollars (\$100,000), to a panel of three (3) arbitrators chosen under AAA Optional Appellate Arbitration Rules , which will employ the same standards of review stated immediately above.

#### **16.4 Applicable Law and Forum; Waiver of Jury; Statute of Limitations.**

a. Except to the extent that the United States Trademark Act of 1946, as amended (15 U.S.C., § 1051 et seq.) or the franchising laws of any state that may be applicable, the laws of the State of Arizona govern all rights and obligations of the parties under this Agreement without regard to conflict of law. The parties agree, subject to the mandatory mediation and arbitration provisions of *Section 16.3*, that any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any Dispute arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy. Notwithstanding the foregoing any action initiated by us may, at our election, be brought in any jurisdiction where you are domiciled or that has jurisdiction over you. The parties hereto irrevocably submit to the jurisdiction of, and venue in, any such court, and hereby waive any objection or defense thereto. **THE PARTIES AGREE THAT ALL DISPUTES SUBMITTED TO THE COURT PURSUANT TO THIS SECTION SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.**

b. Notwithstanding anything contained in this Agreement to the contrary, the parties agree that any claims under, arising out of, or related to, this Agreement must be brought within two (2) years of the date on which the underlying cause of action accrued, and the parties hereby waive any right to bring any such action after such two (2)-year period, except for the collection of any unpaid Royalty Fee, Advertising Fee, and any other amount due to us or our affiliate.

c. **YOU HEREBY WAIVE THE RIGHT TO SEEK OR COLLECT PUNITIVE, MULTIPLE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION. YOU HEREBY FURTHER WAIVE THE RIGHT, IF ANY, OF ANY ASSOCIATION OR MEMBERSHIP GROUP TO ASSERT CLAIMS ON YOUR BEHALF IN ANY ACTION.**

d. **YOU HEREBY WAIVE THE RIGHT TO ANY DAMAGES IN CONNECTION WITH OR RESULTING FROM THE WRONGFUL ISSUANCE OF AN INJUNCTION.**

e. The parties agree that the maximum damages that you may recover in connection with a wrongful termination of your franchise and this Agreement will be an amount equal to the product of:

- (i) the annual net profit (as defined below) multiplied by
- (ii) the lesser of:

(a) The number of full years existing between the date on which the franchise and this agreement were wrongfully terminated and the date on which the Term would have otherwise expired; or

(b) Three.

For purposes of this Agreement, the term "net profit" means an amount equal to the net profits of your Franchised Business, as reflected on your tax return filed with the Internal Revenue Service prior to such termination; provided, however, that if such tax return reflects the operations of your Franchised Business for a period less than one (1) year, such net profits will be annualized based upon the net profits reflected in such tax return.

#### **16.5 No Guarantee of Franchisee's Success.**

You have been informed of and acknowledge the highly competitive nature of the business involved, and agree that the successful operation of your Franchised Business will depend in part, upon your best efforts, capabilities, management, and efficient operation; as well as the general economic trend and other market conditions.

#### **16.6 Existence of Various Forms of Franchise Agreements.**

You acknowledge that our present and future franchisees operate under a number of forms of franchise agreements and consequently, our obligations and rights with respect to our various franchisees may differ materially in certain instances. The existence of different forms or versions of the franchise agreement does not entitle you to benefit from any such difference; nor does it operate to alter or amend the agreement of the parties set forth in this Agreement.

#### **16.7 Franchise Owner May Not Withhold Payments.**

You agree that you will not, on grounds of alleged or actual nonperformance or breach by us of any of our obligations under this Agreement, withhold payment of any Royalty Fee, Advertising Fee, amounts due to us or any of our affiliates for goods or services purchased by you, or any other amounts due to us or any of our affiliates.

#### **16.8 Remedies Are Cumulative.**

The rights and remedies of the parties to this Agreement are cumulative and not exclusive, and no exercise or enforcement by either party of any right or remedy under this Agreement shall preclude the exercise or enforcement by such party of any other right or remedy under this Agreement or otherwise available at law or in equity to such party.

#### **16.9 Interpretation.**

All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties. However, nothing in this *Section 16.9* may be construed as our consent to the Transfer of this Agreement or any rights by you.

#### **16.10 Waiver.**

Our failure to insist upon the strict performance of any term, covenant or condition contained in this Agreement will not constitute or be construed as a waiver or relinquishment of our right to enforce thereafter any such term, covenant or condition and such term, covenant or condition will continue in full force and effect. For example, Franchisor's acceptance of any payments made by Franchisee after a breach of this Agreement shall not be, nor be construed

as, a waiver by Franchisor of any breach by Franchisee of any term, covenant or condition of this Agreement.

#### **16.11 Litigation Expense.**

If an action at law or suit in equity is brought to establish, obtain or enforce any right by either of the parties to this Agreement, the prevailing party in the suit or action, in the trial and appellate courts, will be entitled to recover from the non-prevailing party reasonable attorneys' fees, costs and expenses and disbursements incurred in such suit or action.

#### **16.12 No Third-Party Beneficiaries.**

This Agreement is not intended to benefit any other person or entity except the named parties hereto and no other person or entity shall be entitled to any rights hereunder by virtue of so-called "third-party beneficiary rights" or otherwise.

#### **16.13 Binding Effect; Modification.**

This Agreement is binding upon the parties to this Agreement and their respective executors, administrators, personal representatives, heirs, permitted assigns and successors in interest. No amendment, change, or modification of this Agreement shall be binding on any party unless executed in writing by you and us.

#### **16.14 Entire Agreement; Nature and Scope; Construction.**

This Agreement, all exhibits, attachments, addendums, and amendments, constitute the entire understanding and agreement between the parties, and there are no other oral or written understandings or agreements between us and you relating to the subject matter of this Agreement. If required to be signed, any state specific addendums are incorporated herein by reference. Any representation not specifically contained in this Agreement made prior to entering into this Agreement does not survive subsequent to the execution of this Agreement. We and you have entered into this Agreement for the sole purpose of authorizing you to use the System licensed by this Agreement in the operation of the Franchised Business during the Term in which those specific items designated by us for sale and use in such locations are offered for sale and use in individual, face-to-face transactions with patrons visiting the Franchised Business (and equivalent telephone or mail transactions accepted as a convenience to that customer group). All consideration being furnished by us to you during the course of performance of this Agreement has been determined based on the limited rights and other limitations expressed herein. No other rights have been bargained for or paid for. This provision is intended to define the nature and extent of the parties' mutual contractual intent, there being no mutual intent to enter into contract relations, whether by agreement or by implication, other than as set forth in this Agreement. The parties further acknowledge that these limitations are intended to achieve the highest possible degree of certainty in the definition of the contract being formed, in recognition of the fact that uncertainty creates economic risks for both parties which, if not addressed as provided in this Agreement, would affect the economic terms of this bargain.

Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document. Nothing in this Agreement is intended,

nor shall be deemed, to confer any rights or remedies upon any person or legal entity not a party hereto.

#### **16.15 Terminology.**

In addition to the terms defined elsewhere in this Agreement, the following terms defined below are incorporated in this Agreement by reference and shall be deemed to include all persons who succeed to the interest of the original, where applicable:

The term “affiliate” means any person who, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with any person;

The term “Dollars” means United States Dollars and all amounts due under this Agreement shall be paid in United States currency;

The use of the terms “includes” and “including” in any provision of this Agreement followed by specific examples used shall not be construed to limit application of the provision to only the specific examples used;

The term “person” means any natural person, corporation, partnership, trust, other entity, association or form of organization;

The term “will” and “shall” shall be synonymous, and shall be mandatory and not discretionary, unless otherwise specifically provided herein; and

Any references to articles or sections refer to articles and sections in this Agreement unless specified otherwise.

#### **16.16 Counterparts.**

This Agreement may be executed in one (1) or more original counterparts, and all of which, when taken together, shall be deemed to be one (1) original Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature. A fully-executed copy of this Agreement shall be of the same force and effect as the original.

#### **16.17 Offerings.**

If you are a corporation, partnership or other entity, and if you intend to offer securities, partnership interests or other ownership interests in you through any public or private offering, you shall not use any Proprietary Marks in such public or private offering, except to reflect your franchise relationship with us; nor shall you misrepresent your relationship with us by any statement or omission of an essential statement. You shall indemnify and hold us harmless from any liability in connection with such offering. Nothing in the foregoing shall modify the provisions of *Article 12*, and no such offering shall be made without first complying with any applicable provisions of *Article 12*.

#### **16.18 Time.**

Time is of the essence of each and every provision of this Agreement.

#### **16.19 Force Majeure.**

Neither of the parties will be liable for loss or damage or be deemed to be in breach of this Agreement if the failure to perform the party's obligations results from: (a) transportation shortages, inadequate supply of equipment, merchandise, supplies, labor, material or energy, or the voluntary foregoing of the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any government or any department or agency thereof, or (b) acts of God, and in each case being unforeseeable forces which Franchisee could not by the exercise of due diligence have avoided; provided however that Franchisee must: (i) immediately upon the start of the above-mentioned act, provide written notice to Franchisor that it expressly enacts its rights granted under this Section, and (ii) use all commercially reasonable efforts to mitigate the effect of the event of Force Majeure upon its performance and to fulfill its obligations under this Agreement. Any delay resulting from any of these causes will extend performance accordingly or excuse performance, in whole or in part, as may be reasonable, except that no such cause will excuse payments of amounts owed at the time of such occurrence or payment of the Royalty Fee and all other amounts due to us and our affiliates thereafter, or permit Franchisee to permanently close the Franchised Business.

#### **16.20 Plurals and Captions.**

Words in the singular number include the plural when the context requires (and vice-versa). The table of contents and the captions are inserted only for convenience and are not a part of this Agreement or a limitation of the scope of the particular article or section to which each refers.

#### **16.21 Joint and Several Liability.**

If you consist of two (2) or more individuals, whether in the form of separate individuals or a business entity controlled by the individuals, then each individual will be jointly and severally liable under the provisions of this Agreement.

#### **16.22 Trademark Notice.**

All trademarks referenced in this Agreement are those of their respective owners.

#### **16.23 No Accord or Satisfaction.**

If you pay, or we otherwise receive, a lesser amount than the full amount provided for under this Agreement for any payment due hereunder, such payment or receipt may, in our sole discretion, be applied against the earliest amount due us. In addition, if interest or late fees are owed, we may, in our sole discretion, apply any amounts paid to the late fees and interest before such amounts are applied to the principal amount owed. We may accept any check or other payment in any amount without prejudice to our right to recover the entire balance of the amount due or to pursue any other right or remedy. No endorsement or statement by you on any check or payment or in any letter accompanying any check or payment or elsewhere shall constitute or be construed as an accord or satisfaction.

## **ARTICLE 17. ACKNOWLEDGMENTS AND REPRESENTATIONS OF FRANCHISEE**

### **17.1 Certain Representations and Warranties of Franchisee.**

You represent and warrant that the following statements are true and complete as of the Effective Date:

a. You do not seek to obtain the Franchised Business for speculative or investment purposes and have no present intention to sell or transfer or attempt to sell or transfer the Franchised Business except as previously approved by Franchisor and subject and conditioned to Article 12 of this Agreement.

b. You understand and acknowledge the value to the System of uniform and ethical standards of quality, appearance and service described in and required by the Confidential Manual and the necessity of operating the Franchised Business under the System Standards. You represent that you have the capabilities, professionally, financially and otherwise, to comply with our System Standards.

c. If you are a corporation, limited liability company, partnership, or other form of entity, you are duly incorporated, organized, or formed and are qualified to do business in the state and any other applicable jurisdiction within which the Franchised Business is located, and you are and shall remain duly organized and in good standing during the Term.

d. You represent and warrant that: (i) if you are an individual, you are; or (ii) if you are an entity, that each of your owners, shareholders, partners, and members are, a United States citizen or a lawful resident alien of the United States.

e. All financial and other information that you have provided to us or otherwise made available to us in connection with your application for this franchise is true, complete, accurate, and not intentionally misleading.

f. The execution of this Agreement by you will not constitute or violate any other agreement or commitment to which you are a party.

g. Any individual executing this Agreement on your behalf is duly authorized to do so and the Agreement shall constitute your valid and binding obligation and, if applicable, all of your partners, members, or shareholders, if you are a partnership, limited liability company, or corporation.

h. You have, or if you are a partnership, corporation or other entity, your partners or principals have, carefully read this Agreement and all other related documents to be executed by you concurrently or in conjunction with the execution hereof; that you have obtained, or had the opportunity to obtain, the advice of counsel in connection with the execution and delivery of this Agreement; that you understand the nature of this Agreement and that you intend to comply with and be bound by this Agreement.

i. You have read and understand the information and disclosures made in the Disclosure Document provided to you as acknowledged in *Section 17.3e*. You understand and acknowledge that: (i) estimates for initial start-up expenses are estimates only and there can be additional start-up expenses; and (ii) your sales may differ substantially from any sales provided

in Item 19 of the Disclosure Document, and there is no assurance that your sales will meet or exceed any sales listed in Item 19 of the Disclosure Document. You have had the opportunity to and have consulted or elected not to consult with your attorney, accountant and business advisors before entering into this Agreement.

j. You understand and agree that, while not applicable in every case, our past experience indicates that owner-operated restaurants generally perform better than absentee owners with hired managers. The food business is a personal business and is dependent upon your business skill and judgment. This includes your choice of employees. Your skill in hiring the right people to work in your Franchised Business is very important in determining whether people decide to purchase menu items from your Franchised Business or from another restaurant in the same vicinity.

k. You understand and agree that ownership of a franchise and the Franchised Business carries certain risks. These risks include the loss of your initial investment, other continued financial losses such as rent payments due under lease obligations and other contractual obligations, the loss of your time and energy in starting up and running your Franchised Business, and loss of earnings and investment income from your investment in the Franchised Business. You understand and agree that the Franchised Business may make money and may lose money and are entering this business venture with this express understanding. You are not relying upon anything which is not contained within this Agreement or the Disclosure Document in determining and deciding to become a franchisee.

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

m. You represent that neither you nor any of your affiliates, officers, directors, managers, members, or partners (as applicable) or funding sources are subject to U.S. Executive Order 13224, identified on the U.S. Department of the Treasury's Office of Foreign Assets Control Specially Designated National and Blocked Persons list, or any terrorist list or other blocked persons list. In addition, you represent that you have not received funding from, nor are you owned, controlled, or acting on behalf of the government of any country that is



subject to an embargo by the United States, any foreign government official, political party or international organization, and that no foreign government or government official, political party or international organization has any financial interest in the Franchised Business or any monies earned by the Franchised Business.

n. You represent, warrant and agree that you, your officers, directors, managers, members, or partners (as applicable) will each at all times conduct themselves in an ethical manner and avoid any activity that might result in a violation of the U.S. Foreign Corrupt Practices Act, Anti-Terrorism Laws, or any other applicable anti-corruption or bribery laws.

## 17.2 Additional Information Respecting Franchisee.

a. You have delivered to us or will deliver concurrent herewith, complete and accurate copies of all of your organizational documents, including all partnership agreements, certificates of partnership, articles of organization, operating agreements, articles or certificates of incorporation, by-laws and shareholder agreements, including all amendments, side letters and other items modifying such documents.

b. You have completed and signed the Franchisee Questionnaire attached hereto as Exhibit 1 and incorporated herein by reference.

## 17.3 Acknowledgements of Franchisee.

a. You acknowledge that you have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that this business venture involves substantial business risks and will largely depend upon your ability. Other than the financial performance representation contained in Item 19 of the Disclosure Document, if any, we expressly disclaim making, and you acknowledge that you have not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the Franchised Business contemplated by this Agreement.

Franchisee Initials \_\_\_\_\_/\_\_\_\_\_

b. You hereby certify that none of our employees, no other person speaking on our behalf, and no Area Representative, if applicable, have: (i) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement that stated or suggested any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise other than any financial performance representation contained in Item 19 of the Disclosure Document; or (ii) made any oral, written, visual, or other representation, agreement, commitment, claim, or statement from which any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise might be ascertained, related to a *Baja Fresh* franchise, that is different from, contrary to, or not contained in the *Baja Fresh* Disclosure Document; or (iii) made any representation, agreement, commitment, claim or statement to you that is different from, contrary to, or not contained in, the *Baja Fresh* Disclosure Document. You acknowledge and agree that we do not make or endorse, nor do we allow any of our employees or other persons speaking on our behalf to make or endorse, any additional oral, written, visual, or other representation, agreement, commitment, claim, or statement that states or suggests any level or range of actual or potential sales, costs, income, expenses, profits, cash flow, or otherwise with respect to a *Baja Fresh* franchise other than any financial performance representation contained in Item 19 of the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

c. You acknowledge that you have received, read and understand this Agreement and the related exhibits, attachments and agreements and that we have afforded you sufficient time and opportunity to consult with advisors selected by you about the potential benefits and risks of entering into this Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

d. You understand that this Agreement, including any amendments and exhibits, contains the entire agreement between the parties concerning the Franchised Business, and that any prior oral or written statements that are not set out in this Agreement, including any amendments, exhibits and attachments will not be binding. You acknowledge and agree that we do not permit any representations, agreements, commitments, claims, or statements or approve any changes in this Agreement or any of the amendments, exhibits and attachments to this Agreement, except by means of a written amendment or addendum signed by all parties to this Agreement. You acknowledge that nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the Disclosure Document.

Franchisee Initials \_\_\_\_/\_\_\_\_

e. You acknowledge receipt of our Disclosure Document fourteen (14) days prior to the execution of this Agreement or your payment of any monies to us or our agent (or sooner if required by applicable state law).

Franchisee Initials \_\_\_\_/\_\_\_\_

f. You acknowledge that, other than what was previously disclosed to you in our Disclosure Document to which you acknowledge receipt thereof, you have not: (1) received any financial statements for us or any of our parent or affiliated companies; or (2) relied on the financial condition of us or of any of our parent or affiliated companies when making the decision to purchase the Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

g. You acknowledge, as detailed in *Section 2.3*, that you must, at your own cost and expense, use only a Design Architect approved by us for the design of your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

h. You acknowledge that the following is your Area Representative (if applicable):

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

Franchisee Initials \_\_\_\_/\_\_\_\_

i. If an Area Representative is identified in *Section 17.3h.*, you make the following representations with respect to the Area Representative:

[store #]  
[doc #]

(i) You have met or spoken to only \_\_\_\_\_, the Area Representative;

(ii) Other than any financial performance representation contained in Item 19 of the Disclosure Document, at no time did the Area Representative make any promises or statements, or projections or forecasts, or estimates or warranties or representations or other statement or agreement concerning profits or expenses or costs or actual or projected sales of any kind directly or by implication about *Baja Fresh* restaurants or about the Franchised Business that we desire to develop under this Agreement or about obtaining the confirmed Location or about any other matter other than what is contained in the *Baja Fresh* Disclosure Document or *Baja Fresh* restaurant brochure.

(iii) You acknowledge that you have not received any written materials from us or the Area Representative except for the *Baja Fresh* brochure and Disclosure Document; and

If there are any exceptions to *Sections 17.3i.(i) – (iii)*, identify the item number and list the exception here:

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Franchisee Initials \_\_\_\_/\_\_\_\_

j. You acknowledge there have been no other inducements made with any person or entity, including the Identified Area Representative, encouraging you to purchase the Franchised Business, such as a “side deal” or other promise or agreement not included in the Agreement.

Franchisee Initials \_\_\_\_/\_\_\_\_

k. You acknowledge and understand that *Article 6* covers the use of the *Baja Fresh* trademark and prohibition on registration of our Proprietary Marks. You acknowledge the ownership of the Proprietary Marks by us, and you agree that during the Term and after its expiration or termination, you will not, directly or indirectly, apply to register, register or otherwise seek to use or control or in any way use “*Baja Fresh*”, or any other of our proprietary marks, or any confusingly similar form or variation, in any place or jurisdiction either within or outside the United States; nor will you assist any others to do so. You further agree that your corporate, partnership or other entity name will not include any of the Proprietary Marks or phrases similar thereto as a part thereof. Furthermore, you acknowledge and understand that you are prohibited from filing applications for the registration of our trade names used in connection with your Franchised Business.

Franchisee Initials \_\_\_\_/\_\_\_\_

l. You acknowledge and understand that in the event you have registered a trade name or entity name containing our trademarks, you will be required to immediately discontinue all further use of the trademark, all Proprietary Marks and any other marks or names confusingly similar thereto in your entity name. Furthermore, you will take such action as may be required to amend your entity name and affirmatively cancel or terminate and dissolve all fictitious or assumed names or other registrations that contain our Proprietary Marks. In the event you do

not comply and execute any and all instruments and documents necessary to protect and maintain our interests in the Proprietary Marks, we will then have power of attorney to execute any documents necessary to protect and maintain our interests in the Proprietary Marks.

Franchisee Initials \_\_\_\_/\_\_\_\_

**ARTICLE 18. SUBMISSION OF AGREEMENT**

The submission of this Agreement to you does not constitute an offer and this Agreement shall become effective only upon the execution thereof by the parties. THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT SHALL HAVE BEEN ACCEPTED AND SIGNED BY FRANCHISOR.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Agreement as of the Effective Date.

**FRANCHISEE:** \_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:** BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**PERSONAL ACCEPTANCE OF SECTIONS 7.1, 7.2, 14.6, AND 14.8**

Each of the undersigned individually and personally accepts and agrees to be bound by the provisions of Sections 7.1, 7.2, 14.6, and 14.8 of the foregoing Franchise Agreement.

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, an  
individual  
(signature) Date: \_\_\_\_\_

**EXHIBIT 1**  
**FRANCHISEE QUESTIONNAIRE**

**FRANCHISEE QUESTIONNAIRE**

The undersigned is in the process of negotiating and consummating the purchase of a BF Acquisition Holdings, LLC (“BFAH”) Franchise Agreement (“Agreement”) for Baja Fresh.

We have been informed that since the laws of franchising limit the type of information that may be provided to prospective franchisees, the BFAH Legal Department has established a compliance audit program to ensure that all pre-sale negotiations have been lawfully completed.

We understand that if improper sales practices have occurred, the BFAH Legal Department, with appropriate notice prior to Agreement execution, will be able to either rectify and cure the violation, or in the alternative, reject the franchise sale.

In order to comply with your compliance audit program we hereby make the following acknowledgments and representations concerning events during the course of the negotiations and offer of sale of the Agreement knowing that BFAH will rely thereon in agreeing to accept the franchise sale.

1. In the course of the negotiations and the offer and sale of the Agreement we have met or spoken only to: \_\_\_\_\_

List any additional people: \_\_\_\_\_  
\_\_\_\_\_

2. Did any of the individuals identified in paragraph number one (1) or any other person or entity acting on behalf of or at the direction of BFAH make any promises, statements, projections, forecasts, estimates, warranties or representations or other statement or agreement (a) concerning the actual or potential financial performance of the franchised or franchisor owned-outlets, profits or expenses or actual or projected sales of any kind directly or by implication concerning Baja Fresh restaurants or about the Baja Fresh restaurant that is to be developed or about obtaining the approved location or about any other matter relating to the prospect for financial performance to the prospective franchisee, or (b) about any other matter other than what is contained in the Franchise Disclosure Document (“FDD”), and as stated in ITEM 19 of the Baja Fresh FDD?

Check one:             Yes                             No

If yes, please state in detail the oral, written, or visual claim or representation:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Other than what was previously disclosed to you in the Baja Fresh FDD to which you acknowledge receipt thereof, did you: (1) receive any financial statements for Franchisor or any of Franchisor’s parent or affiliated companies; or (2) rely on the financial condition of Franchisor or any of Franchisor’s parent or affiliated companies when making the decision to purchase the Franchised Business?

Check one:             Yes                             No



If yes, please comment, in detail:

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4. Have there been any other inducements made with any person or entity encouraging you to purchase the Agreement such as a "side deal" or other promise or agreement not included in the Agreement?

Check one:             Yes                       No

If yes, please comment, in detail:

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5. Did you receive a copy of the Baja Fresh FDD at least fourteen (14) calendar days prior to signing any binding agreement with, or making a payment to BFAH or any of its affiliates in connection with the proposed franchise sale? If you reside in New York, or if the location of your prospective franchise is located within one of those states, did you receive a copy of the Baja Fresh FDD at the earlier of (i) the first personal meeting; or (ii) ten (10) business days prior to signing any binding agreement or payment of any consideration? If you reside in Michigan or Washington, or if the location of your prospective business is located within one of those states, did you receive the Baja Fresh FDD at least ten (10) business days before the execution of any binding franchise or other agreement or the payment of any consideration?

Check one:             Yes                       No

If no, please comment:

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6. Have you received, studied, and reviewed carefully the Baja Fresh FDD and Franchise Agreement?

Check one:             Yes                       No

If no, please comment:

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7. Do you understand that the license granted in the Franchise Agreement is for the right to operate a franchise at the authorized location only and includes no exclusive area or protected

territory, and that we and our affiliates have the right to issue franchises or operate competing businesses for or at locations, as we may determine, near your authorized location? In addition, do you understand that these locations may include freestanding buildings, strip centers, shopping malls, and other similar locations, as well as non-traditional locations such as office buildings, petroleum stations, food courts, transportation terminals, sports facilities, airports, hotels, hospitals, and college and university student unions, dormitories, and food service areas?

Check one:             Yes                             No

If no, please comment:

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8. Do you understand that the success or failure of your franchise will depend in large part upon your adherence to the Baja Fresh System Standards, your skills and experience, your business acumen, your location, the local market for products under our trademarks, interest rates, the economy, inflation, the number of employees you hire and their compensation, competition, and other economic and business factors? Further, do you understand that the economic and business factors that exist at the time you open your franchise may change?

Check one:             Yes                             No

If no, please comment:

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*All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.*

[NAME OF FRANCHISEE]

By: \_\_\_\_\_  
      [Name]  
      [Title]

\_\_\_\_\_ Date

**EXHIBIT F-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Guaranty of Franchise Agreement**

## GUARANTY OF FRANCHISE AGREEMENT

This GUARANTY OF FRANCHISE AGREEMENT ("Guaranty") is entered into as of \_\_\_\_\_ by each of the undersigned ([individually and collectively, ]"Guarantor") in favor of BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor"). To the extent this Guaranty contains terms and conditions that differ from those contained in the Franchise Agreement (as defined in Recital A below), this Guaranty shall control. All capitalized terms not otherwise defined in this Guaranty will have the same meanings ascribed to such terms in the Franchise Agreement.

### Recitals

A. Franchisor and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Franchisee") entered into a Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_[, as amended,] (collectively "Franchise Agreement") for a *Baja Fresh* restaurant located at \_\_\_\_\_ ("Location").

B. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant or transfer of the Franchise Agreement.

C. Without this Guaranty, Franchisor cannot be assured that there are sufficient assets to operate the franchise or to protect Franchisor in the event of a default by Franchisee.

D. Franchisor is willing to enter into the Franchise Agreement only if Guarantor personally guarantees faithful performance of all the terms of the Franchise Agreement.

E. Guarantor acknowledges Guarantor received and read the Franchise Agreement and agrees to be bound to the obligations in this Guaranty with regard to the Franchise Agreement.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Franchisor, its parent, subsidiaries, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Franchise Agreement.

2. This Guaranty is effective until all terms of the Franchise Agreement have been fully and completely performed by Franchisee and shall continue through the entire Term of the Franchise Agreement as may be renewed or extended. No release of Franchisee or discharge of Franchisee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Franchisor hereunder.

3. Franchisor is not required to proceed first against the Franchisee, but may proceed first against the Guarantor alone or concurrent with proceeding against Franchisee. The obligations of Guarantor hereunder are absolute and unconditional.

4. Franchisee and Franchisor may from time to time alter or modify the Franchise Agreement between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Franchise Agreement and the documents and Confidential Manual referred to in the Franchise Agreement, without requiring notice to Guarantor or Guarantor's consent.

5. Guarantor agrees specifically to be bound by the confidentiality requirements and the covenant against competition in the Franchise Agreement.

6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Franchisee of any of its obligations or liabilities under the Franchise Agreement.

7. A default by Guarantor under this Guaranty will be deemed a default under all Franchise Agreements guaranteed by the Guarantor.

8. Guarantor agrees to pay all attorneys' fees, costs and expenses (including any and all Royalty Fees and Advertising Fees and associated interest on such amounts, that are determined to be owing to Franchisor due to underreporting by Franchisee) incurred by Franchisor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all losses, costs, attorneys' fees, and expenses that Franchisor incurs as a result of a default by Franchisee, including those fees and expenses incurred in a bankruptcy proceeding involving Franchisee.

9. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Franchise Agreement or any other agreement between Guarantor (or a legal entity thereof) and Franchisor or its affiliates, and with no prior notice, Guarantor consents to Franchisor's (or any of its affiliate's or third-party contractor's) acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Franchise Agreement, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Franchisor or its affiliates. Guarantor as an individual or individuals hereby knowingly consent to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

10. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns, heirs, estate, trustee(s) and personal representative(s) of Guarantor. This Guaranty shall inure to the benefit of Franchisor, its affiliates, successors and assigns.

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. [The undersigned \_\_\_\_\_ [include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the Effective Date.]

15. Guarantor acknowledges that (i) it is a condition to the granting of the Franchise Agreement to Franchisee that Guarantor shall execute and deliver this Guaranty to Franchisor, (ii) that Franchisor has entered into the Franchise Agreement in reliance upon the agreement of Guarantor to do so, and (iii) that, as owner of the Franchisee, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in Guarantor any interests, rights or privileges in any franchise or Franchise Agreement.

16. This Guaranty may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Guaranty and all of which, when taken together, shall be deemed to constitute one and the same Guaranty.

17. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT F-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Non-Disclosure and Non-Competition Agreement**

## NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

This NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_ ("Effective Date"), by and between BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company, having an office located at 9311 East Via De Ventura, Scottsdale, Arizona 85258 ("Franchisor") and the undersigned, an individual, having an address of \_\_\_\_\_. Franchisor and the undersigned may also be referred to in this Agreement individually as "Party" and collectively as "Parties."

### Recitals

A. Franchisor is in the business of licensing franchise systems in the quick service restaurant market and is the owner and/or licensee of certain proprietary, confidential and/or trade secret information related to its business.

B. The undersigned is the spouse of the franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of [Franchisee], the "Franchisee" under and signatory to, that certain "Franchise Agreement" dated \_\_\_\_\_ entered into with Franchisor granting Franchisee the right to operate one *Baja Fresh* restaurant ("Franchised Business") on the terms and conditions stated therein.

C. The undersigned acknowledges that, in order to induce Franchisor to enter into the Franchise Agreement, Franchisee must cause those persons as listed in Recital B to execute this Agreement for the benefit of Franchisor.

NOW, THEREFORE, in consideration of the foregoing and of the representations, terms, covenants, conditions and agreements set forth in this Agreement and intending to be legally bound, the Parties hereby agree as follows:

### Agreement

1. **Definition of Confidential Information.** "Confidential Information" includes, without limitation, knowledge and information which Franchisee knows, or should reasonably know, which Franchisor regards as confidential concerning: (i) formulation, ingredients, raw materials, recipes, and food preparation processes for proprietary products, non-proprietary products, collateral logo merchandise or other items or services that Franchisor permits Franchisee to sell at or from the Franchised Business; (ii) Franchisor's supply relationships, inventory requirements and control procedures; (iii) pricing, sales, profit performance or other results of operations of any and all *Baja Fresh* restaurants, including the Franchised Business; (iv) demographic data for determining sites and territories; (v) the results of customer surveys and promotional programs; and (vi) in general, business methods, trade secrets, specifications, customer data, cost data, procedures, information systems and knowledge about the operation of *Baja Fresh* restaurants or the *Baja Fresh* System, whether it is now known or exists or is acquired or created in the future, and whether or not the information is included in the Confidential Manual or Franchisor expressly designates the information as confidential. Confidential Information does not include information which the undersigned can demonstrate came to his or her attention independent of entering into this Agreement and information that Franchisor agrees is, or has become, generally known in the public domain, except where



public knowledge is the result of the undersigned's wrongful disclosure (whether or not deliberate or inadvertent).

## 2. **Non-Disclosure of Confidential Information.**

a. The undersigned agrees not to possess, obtain, or seek to obtain, either directly or indirectly, any Confidential Information from any person or other source, unless authorized in writing by Franchisor. In the event that the undersigned does possess, or comes to possess, any Confidential Information, the undersigned shall immediately notify Franchisor of that fact and return the Confidential Information, and all copies and portions thereof, to Franchisor.

b. The undersigned agrees not to disclose, duplicate, sell, reveal, divulge, publish, furnish or communicate, either directly or indirectly, any Confidential Information to any other person, firm or entity, unless authorized in writing by Franchisor.

c. The undersigned agrees not to use any Confidential Information for his or her own personal gain or to further the purposes of others, whether or not the Confidential Information has been conceived, originated, discovered or developed, in whole or in part, by the undersigned or represents the undersigned's work product. To the extent the undersigned has assisted in the preparation of any information that Franchisor considers Confidential Information or has prepared or created such information by himself or herself, the undersigned hereby assigns any rights that he or she may have in such information as creator to Franchisor, including all ideas made or conceived by the undersigned.

d. The undersigned acknowledges that the use, publication or duplication of the Confidential Information for any purpose not authorized by this Agreement constitutes an unfair method of competition by the undersigned.

e. The provisions of this Section 2 shall apply forever, surviving the expiration or termination of all contracts between Franchisor and Franchisee.

f. The provisions concerning non-disclosure of Confidential Information shall not apply if disclosure of Confidential Information is legally compelled in a judicial or administrative proceeding, provided the undersigned shall have used his or her best efforts, and shall have afforded Franchisor the opportunity, to obtain an appropriate protective order or other assurance satisfactory to Franchisor of confidential treatment for the information required to be disclosed. If the undersigned is required to disclose Confidential Information, whether in whole or in part, to any third party pursuant to a subpoena or a court or agency order, the undersigned agrees to only disclose the minimum amount of Confidential Information required to be disclosed.

## 3. **Agreements Regarding Competition.**

a. For as long as Franchisee is a party to any franchise agreement with Franchisor, the undersigned agrees that he or she shall not, directly or indirectly, own (neither beneficially nor of record), engage in or render services to, whether as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, any Competing Business (as defined in *Section 3.f* below); provided, however, the restrictions stated in this paragraph shall not apply to the undersigned after two (2) years from the date that the undersigned ceases to be a spouse of the Franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of Franchisee or otherwise associated in any capacity with Franchisee.

b. For a period of two (2) years after expiration or termination of the last franchise agreement between Franchisee and Franchisor, it shall be a breach of this Agreement for the undersigned to directly or indirectly, own, engage in or render services to, whether as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, any Competitive Business; provided, however, the restrictions stated in this paragraph shall not apply to the undersigned after two (2) years from the date that the undersigned ceases to be a spouse of the Franchisee or spouse of an employee, officer, director, member, manager, partner or owner of an interest in the equity or voting interests of Franchisee or otherwise associated in any capacity with Franchisee.

c. The undersigned may engage in any activities not expressly prohibited by this Agreement. However, in connection with permitted activities, the undersigned shall not (i) use the Confidential Information or any of *Baja Fresh* intellectual property including without limitation, any and all rights currently existing or that may come into being which Franchisor or Franchisor's affiliates now own or later acquire in *Baja Fresh* trademarks, proprietary products and/or Confidential Information arising under any patent, trade secret, copyright, trade dress, design protection, database protection, trademark, or similar laws of the United States or any other country in which Franchisor or its affiliates operate (collectively "*Baja Fresh Intellectual Property*"); (ii) engage in any conduct or activity which suggests or implies that Franchisor endorses, or authorizes, the undersigned's activities; or (iii) induce any person to engage in conduct prohibited by this Agreement.

d. The undersigned acknowledges that the covenants regarding competition are independent of the other covenants and provisions of this Agreement. If any provision regarding competition is void or unenforceable under any applicable law, but would be enforceable as written or as modified under the laws of the state in which the Franchised Business is located (the "Local Laws"), the parties agree that the Local Laws shall govern any dispute concerning or involving the construction, interpretation, validity or enforcement of the provisions regarding competition. Franchisee expressly authorizes Franchisor to conform the scope of any void or unenforceable covenant in order to conform it to the Local Laws.

e. For purposes of this *Section 3*, "*Baja Fresh System*" means, collectively, all of the distinctive business methods, proprietary products, Confidential Information and *Baja Fresh* Intellectual Property which Franchisor now or in the future authorizes or requires Franchisee to use as a condition of the Franchise Agreement, as Franchisor may modify in its sole discretion at any time.

f. For purposes of this *Section 3*, "Competing Business" means a business which is primarily engaged in the sale of Mexican-styler food items, and all variations thereof within a geographical area consisting of: (1) for as long as Franchisee is a party to any Franchise Agreement with Franchisor, anywhere including the location of the Franchised Business; and (2) after expiration or termination of the last franchise agreement between Franchisee and Franchisor, within a ten (10) mile radius from the location of the Franchised Business or location of any *Baja Fresh* restaurant of Franchisor, Franchisor's third-party licensees or Franchisor's third-party franchisees. The term "*Baja Fresh* restaurant" includes not only the restaurants now in existence, but also those established at a later date. The term of this covenant will be extended by any time consumed in litigation to enforce it in both trial and appellate courts. If a court of competent jurisdiction determines that the restrictions in this paragraph are excessive in time, geographic scope, or otherwise, the court may reduce the restriction to the level that provides the maximum restriction allowed by law.

g. For purposes of this *Section 3*, "Confidential Manual" refers collectively to all of the confidential operations manuals, recipe manuals, operations guides and other instructions loaned or delivered to the Franchisee during the term of the Franchise Agreement, which may be memorialized in written or electronic format, now existing and hereinafter developed, and which may be modified periodically to reflect changes in the *Baja Fresh* System.

4. **Interference.**

The undersigned agrees not to, directly or indirectly, for himself or herself or on behalf of any other person: divert, or attempt to divert, any business or customer of any *Baja Fresh* restaurant to any competitor by direct or indirect inducement or perform any act which directly or indirectly could, or may, injure or prejudice the goodwill and reputation of *Baja Fresh* Intellectual Property or *Baja Fresh* System.

5. **Irreparable Harm to Franchisor.**

The undersigned understands and agrees that if the undersigned breaches or threatens to breach any of his or her obligations under this Agreement, Franchisor will be irreparably harmed and an award of monetary damages alone would be inadequate. Therefore, the undersigned agrees that Franchisor shall be entitled to seek equitable relief, including, without limitation, temporary, preliminary and permanent injunctive relief and specific performance for any actual or threatened breach by the undersigned, his or her affiliates or their respective officers, directors, shareholders, employees or agents. The remedies provided under this *Section 5* shall be in addition to and not exclusive of any other right or remedy available to Franchisor under this Agreement or otherwise, including, without limitation, an award of attorneys' fees, expert witness fees and costs incurred by Franchisor or its affiliates in connection with any dispute arising from or related to this Agreement.

6. **Validity; Conformity With Applicable Law.**

Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be valid under applicable law, but if any provision of this Agreement shall be invalid or prohibited thereunder, the provision shall be ineffective only to the extent of the prohibition or invalidity without invalidating the remainder of this Agreement.

7. **Miscellaneous.**

a. *Waiver.* Any waiver granted to the undersigned by Franchisor excusing or reducing any obligation or restriction imposed under this Agreement shall be evidenced by a writing executed by Franchisor in order to be effective and shall only be effective to the extent specifically allowed in such writing. No waiver granted by Franchisor shall constitute a continuing waiver. Any waiver granted by Franchisor shall be without prejudice to any other rights Franchisor may have. The rights and remedies granted to Franchisor are cumulative. No delay on the part of Franchisor in exercising any right or remedy shall preclude Franchisor from fully exercising such right or remedy or any other right or remedy.

b. *Entire Agreement; Amendment.* This Agreement sets forth the entire agreement made by the undersigned pertaining to the subject matter hereof, fully superseding any and all prior agreements or understandings that may exist between the undersigned and the Franchisor pertaining to such subject matter. No amendment, change, modification or variance to or from the

terms and conditions set forth in this Agreement shall be binding on the undersigned unless it is set forth in writing and duly executed by the undersigned and Franchisor.

c. This Agreement shall be binding on the undersigned's heirs, executors, successors and assigns as though originally executed by such persons.

d. *Notices.* All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx® or UPS®, or by U.S. Mail, sent certified or registered mail, return receipt requested, to the address set forth in the first paragraph of this Agreement, with a courtesy copy sent via email or facsimile (to the address set forth on the signature page below) for the respective Party to be noticed, which address may be amended from time to time pursuant to the terms of this *Section 7.d*. Notices provided under this *Section 7.d* shall be deemed received upon personal delivery or delivery by courier and within five (5) days after deposit in the U.S. Mail.

e. *Governing Law and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona without reference to conflict of laws principles. Except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction) suit under this Agreement shall only be brought in the state or federal courts located in Maricopa County, Arizona. This choice of jurisdiction and venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than as specified in this *Section 7.e*. Each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to the jurisdiction and venue with respect to any proceeding brought in accordance with this *Section 7.e*.

f. *No Assignment.* The undersigned shall not assign or transfer any rights or obligations under this Agreement without Franchisor's prior written consent, which may be withheld in Franchisor's sole discretion. Any assignment made in violation of this *Section 7.f* shall be void.

g. *Counterparts; Facsimile Signatures.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original document as against the Party whose signature appears thereon, and all of which shall together constitute one and the same Agreement. The signatures required for execution may be transmitted to the other Party via facsimile or email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other Party, may be admitted in evidence and shall fully bind the Party and person making such signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives with full rights, power and authority to enter into and bind the respective Party and to perform all obligations under this Agreement.

[NAME]

By: \_\_\_\_\_  
[Name], an individual

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

Address: [Street Address]  
[City, State Zip]

Phone: (xxx) xxx-xxxx

Email: xxxxxxxx@xxxx.xxx

**EXHIBIT G**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Collateral Assignment and Irrevocable Special Power of Attorney**

**COLLATERAL ASSIGNMENT AND  
IRREVOCABLE SPECIAL POWER OF ATTORNEY**

This COLLATERAL ASSIGNMENT AND IRREVOCABLE SPECIAL POWER OF ATTORNEY ("Assignment") is entered into on \_\_\_\_\_ ("Effective Date") in accordance with the terms of that certain Franchise Agreement dated \_\_\_\_\_ [, as amended] ("Franchise Agreement") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor"), executed concurrently with this Assignment and under which Franchisor granted Franchisee the right to own and operate a *Baja Fresh* restaurant located at \_\_\_\_\_ ("Restaurant").

FOR VALUE RECEIVED, Franchisee hereby assigns to Franchisor, its affiliates, subsidiaries, successors and assigns, all of Franchisee's right, title and interest in and to: (i) the "Telephone Numbers and Listings" which include those certain telephone numbers and regular, yellow-pages, special, classified or other telephone directory listings used at any time in connection with the operation of the Restaurant; (ii) any website page or social media addresses and accounts, including, but not limited to, a Facebook® page or Twitter® account that contains any term or any mark confusingly similar to a trademark or other intellectual property owned or licensed by Franchisor; and (iii) any corporation, limited liability company, partnership, or other entity name or trade name filed or formed by Franchisee that contains any trademark or other intellectual property owned or licensed by Franchisor (each an "Entity Name"). This Assignment is for collateral purposes only, and except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment unless Franchisor shall notify the (i) telephone company and/or the listing agencies with which Franchisee has placed telephone directory listings (all such entities are collectively referred to herein as the "Telephone Company"); (ii) webmaster/webhost for the website or social media account; and (iii) Secretary of State, Corporation Commission or other state government agency that handles the filing of entity formation documents, to effectuate the assignment pursuant to the terms hereof.

Franchisee hereby appoints Franchisor as his/her/its attorney-of-fact and grants Franchisor an irrevocable Special Power of Attorney, coupled with an interest, with full power and authority for the purpose of executing documents or taking such action as necessary or appropriate as Franchisee might or could do if personally present, hereby ratifying all that Franchisor, as Franchisee's attorney-in-fact, shall lawfully do or cause to be done by virtue of this Special Power of Attorney to obtain, protect, maintain or enforce Franchisor's intellectual property rights if Franchisor is, for any reason, unable to obtain Franchisee's cooperation or assistance. The Special Power of Attorney granted by this Assignment, shall survive the dissolution, death, incompetence or disability of Franchisee and the termination or expiration of the Franchise Agreement or this Assignment.

Upon (i) termination of the Franchise Agreement for any reason, or (ii) expiration of the Franchise Agreement without renewal or extension, Franchisor shall have the right and is hereby empowered to effectuate the assignment of the Telephone Numbers and Listings, website and/or social media account, and Entity Name. In such event Franchisee shall have no further right, title or interest in the Telephone Numbers and Listings or the website and/or social media account, and shall remain liable to the Telephone Company for all past due fees and charges owing to the Telephone Company on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, Franchisor shall have the sole right to and interest in the Telephone Numbers and Listings,

website and/or social media accounts and Entity Name upon termination or expiration of the Franchise Agreement. Franchisee appoints Franchisor as Franchisee's true and lawful attorney-in-fact to direct the Telephone Company, webmaster/webhost, and state government agency to assign same to Franchisor and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event Franchisee shall immediately instruct the (i) Telephone Company to assign the Telephone Numbers and Listings to Franchisor; the webmaster/webhost to assign the website and/or social media account to Franchisor; and (iii) state government agency to allow Franchisor to file the necessary documents to change the Entity Name. If Franchisee fails to promptly direct the (i) Telephone Company to assign the Telephone Numbers and Listings to Franchisor; (ii) webmaster/webhost to assign the website or social media account(s) to Franchisor; and/or (iii) file the necessary documents with the appropriate state government agency to remove Franchisor's trademarks or other intellectual property from the Franchisee's Entity Name, Franchisor shall direct the appropriate parties to effectuate the assignment contemplated hereunder to Franchisor.

The parties agree that the Telephone Company, webmaster/webhost, and appropriate state government agency may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Telephone Numbers and Listings, website and/or social media accounts, and Franchisor's authority to file the necessary documents to remove Franchisor's trademark or other intellectual property from the Entity Name and that such assignment shall be made automatically and effective immediately upon Telephone Company's, webmaster's/webhost's or state government agency's receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Telephone Company, webmaster/webhost, or state government agency requires that the parties execute an assignment form or other documentation at the time of termination or expiration of the Franchise Agreement Franchisor's execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee's consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, has duly executed and delivered this Assignment as of the Effective Date.

**ASSIGNOR (Franchisee):**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

State of \_\_\_\_\_  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, personally appeared \_\_\_\_\_ known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her/their authorized



capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
(Signature of Notary Public)

(Seal)

Acknowledged by:

**ASSIGNEE (Franchisor):**

BF ACQUISITION HOLDINGS, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT H**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Amendment to Franchise Agreement**

(for non-traditional locations excluding those co-branded with another affiliated brand)

## [FIRST] AMENDMENT TO FRANCHISE AGREEMENT

[for non-traditional locations excluding those co-branded with another affiliated brand]

This [FIRST] AMENDMENT TO FRANCHISE AGREEMENT (“[First] Amendment”) dated \_\_\_\_\_, 20\_\_\_\_ (“[First] Amendment Effective Date”), to the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (collectively the “Agreement”) for the non-traditional *Baja Fresh* location at \_\_\_\_\_ (“Location”) by and between BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company (“Franchisor”) and \_\_\_\_\_ (“Franchisee”), is entered into by such parties to amend the Agreement as set forth in this [First] Amendment. To the extent this [First] Amendment contains terms and conditions that differ from those contained in the Agreement, this [First] Amendment shall control. The parties agree that a concept or principle covered in this [First] Amendment shall apply and be incorporated into all other provisions of the Agreement in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this [First] Amendment will have the same meanings ascribed to such terms in the Agreement.

1. The last sentence of the second unnumbered paragraph in Section **1.2**, “**Location of the Franchised Business; No Exclusive Territory or Other Rights**,” is hereby deleted and replaced with the following: “This Agreement is limited to the operation of one non-traditional restaurant, unless otherwise amended, and does not grant you the right to buy, own or operate additional restaurants.”

2. Section **4.1**, “**Training Program**,” is hereby amended to add the following after the last sentence in Section 4.1: “Notwithstanding the foregoing, for non-traditional locations, the total number of days of In-Store training will be fifteen (15) to thirty (30) days.”

3. The first sentence in Section **5.1**, “**Initial Franchise Fee**,” is hereby deleted and replaced with the following: “The initial franchise fee is \_\_\_\_\_ (\$\_\_\_\_\_) (“Initial Franchise Fee”).”

4. Paragraph b. of Section **5.13**, “**Transfer Franchise Fee**,” is hereby deleted and replaced with the following:

b. A Potential Transferee (as defined in *Section 12.1c.*) receiving this Agreement, as may be amended, in connection with a Full Transfer (as defined in *Section 12.1a.1.*), must pay to us a transfer franchise fee of Five Thousand Dollars (\$5,000) (“Transfer Franchise Fee”).

5. The first sentence in Section **5.24**, “**Grand Opening Marketing**,” is hereby deleted and replaced with the following:

Five Thousand Dollars (\$5,000) (“Grand Opening Marketing”) is payable to us on the earlier of: (i) prior to you executing a lease for the premises where the Franchised Business will be located; or (ii) prior to construction commencing at the premises where the Franchised Business will be located.

6. Except as set forth in this [First] Amendment, the terms and provisions of the Agreement shall remain in full force and effect.

***[SIGNATURE PAGE FOLLOWS]***

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this [First] Amendment as of the [First] Amendment Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT I**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**INTENTIONALLY OMITTED**

**EXHIBIT J**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**In-Store Training Release and Waiver Agreement**

## In-Store Training Release and Waiver of Liability

**READ THIS INSTRUMENT FULLY AND CAREFULLY PRIOR TO SIGNING. THIS IS A LEGALLY VALID AND BINDING OBLIGATION TO RELEASE A PARTY FROM ALL KNOWN AND UNKNOWN OBLIGATIONS. THIS DOCUMENT MUST BE SIGNED BEFORE TRAINING CAN BEGIN.**

This In-Store Training Release and Waiver of Liability ("Release") executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date") by \_\_\_\_\_ ("Trainee") is in favor of \_\_\_\_\_,  a corporation,  a Limited Liability company, or  as individual(s), and their respective directors, officers, members, partners, managers, employees, agents, insurers, successors, assigns, representatives, executors and heirs (individually and collectively the "Franchisee") and BF Acquisition Holdings, LLC, a Delaware limited liability company, and its affiliates and each of their respective parents, subsidiaries, directors, officers, members, managers, employees, agents, successors, assigns and insurers (individually and collectively the "Franchisor"). Franchisor and Franchisee shall collectively be referred to herein as the "Hosts."

The Trainee desires to participate in a training program provided by the Hosts, which program involves engaging in activities related to being a restaurant worker ("Activities"), for the purpose of learning to operate a similar business. The Trainee understands that the Activities may take place at various restaurant facilities owned, operated or managed by Franchisor and/or Franchisee, and may include various restaurant activities, including, but not limited to, cooking, cleaning, lifting and climbing, all of which may take place in a facility where there is increased risk of bodily harm or personal injury, including but not limited to, slips, falls, burns, lacerations, exposure to hazardous materials, as well as many other risks. Trainee understands and agrees that no compensation shall be earned by or paid to Trainee in connection with Trainee's participation in the training program. In consideration of the training being provided to Trainee, in the Hosts' location, Trainee agrees that such training constitutes good and valuable consideration and hereby freely, voluntarily, and without duress executes this Release under the following terms:

Release and Waiver. Trainee does hereby release and forever discharge and hold harmless and promise to indemnify and not sue Hosts, both jointly and severally, from any and all liability, claims, actions, damages, judgments, obligations, expenses, including, without limitation, attorneys' fees, expert witness fees and costs, and demands of whatever kind or nature, either in law or in equity, which arise or may hereafter arise, in whole or in part, from Trainee's Activities with Hosts. Trainee understands that this Release discharges Hosts from any liability or claim that the Trainee may have against Hosts with respect to any bodily injury, personal injury, illness, death, or property damage that may result from Trainee's Activities with Hosts, whether caused by the negligence of Trainee or Hosts. Trainee also understands and hereby agrees that it is NOT an employee of Hosts and that Hosts do not assume any responsibility for or obligation to provide financial assistance or other assistance, including, but not limited to, medical, life, health, or disability, or workers' compensation insurance in the event of injury or illness.

Medical Treatment. Trainee does hereby release and forever discharge Hosts from any claim whatsoever which arises or may hereafter arise on account of any first aid, treatment, or service rendered in connection with the Trainee's Activities with Hosts.

Insurance. Trainee understands that, except as otherwise agreed to by Hosts in writing, Hosts do not carry or maintain health, medical, life, workers' compensation, or disability insurance coverage for any Trainee. Each Trainee is expected and encouraged to obtain his or her own medical, health, life, disability and workers' compensation insurance for his or her protection while conducting any Activities with Hosts.

Photographic Release. In consideration of the training provided to Trainee and without further compensation or royalties, Trainee hereby authorizes Hosts to capture and use in any form, format or media, whether now known or later developed for marketing, advertising and other business purposes, Trainee's name, image, likeness, voice and other personal information and hereby grants and conveys unto Hosts all right, title and interest in any and all photographic images and video or audio recordings captured or made by Hosts during the Trainee's Activities with Hosts, including but not limited to, any claims, damages, royalties, proceeds, or other benefits derived from such photographs or recordings.

Prohibition on Hiring. Trainee understands and agrees that during its Activities with Hosts, it will be afforded an opportunity to meet and work with experienced employees of Hosts, who could be of value to Trainee should they be employed by Trainee. Trainee hereby agrees that for a period of two (2) years following the Effective Date of this Release, Trainee shall NOT, directly or indirectly, recruit, solicit, offer, hire, or otherwise entice any employee or agent of Hosts to become a Trainee employee or to otherwise sever his or her employment with Hosts.

Other. Trainee expressly agrees that this Release is intended to be as broad and inclusive as permitted by the laws of the State of Arizona, and that this Release shall be governed by and interpreted in accordance with the laws of the State of Arizona. Trainee agrees for himself/herself and his or her heirs, executors and representatives, that the representations in this Release are contractually binding, and are not mere recitals, and that should Trainee or his/her heirs, executors or representatives assert a claim contrary to what Trainee has agreed to in this Release, the claiming party shall be liable for the expenses (including, without limitation attorneys' fees and costs) incurred by Hosts in defending the claims. This Release may not be modified orally, and a waiver or modification of any provision shall not be construed as a waiver or modification of any other provision herein or as consent to any subsequent waiver or modification. Trainee consents to the release by any third party to Hosts and their insurance carriers of Trainee's name and medical information that may relate solely to any injury or death he or she may suffer arising from the Activities. Trainee agrees that in the event that any clause or provision of this Release shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not otherwise affect the remaining provisions of this Release which shall continue to be enforceable and Hosts and Trainee agree to promptly negotiate the terms of a substitute clause or provision to replace the severed or unenforceable clause or provision, consistent with the parties' original intent and then-current law.

IN WITNESS WHEREOF, I certify that I am 18 years of age or older. I have carefully read, understand and have freely executed this Release as of the Effective Date.

**Trainee Signature** \_\_\_\_\_

**Printed Name** \_\_\_\_\_

**Address** \_\_\_\_\_

*street*

*city*

*state*

*zip*

**Home Phone** \_\_\_\_\_ **Work Phone** \_\_\_\_\_

**Witness Signature (must be 18 years of age or older)** \_\_\_\_\_

**Printed Name** \_\_\_\_\_



**EXHIBIT K**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Addendum to the Franchise Agreement for SBA Loans**

## INSTRUCTIONS FOR USE OF SBA FORM 2462 ADDENDUM TO FRANCHISE AGREEMENT

SBA has issued a revised version of the Addendum to Franchise Agreement (SBA Form 2462) which became effective January 1, 2018. SBA’s Standard Operating Procedure (SOP) 50 10 5(J) explains updates made to the franchise review process for the 7(a) and 504 loan programs. By executing this Addendum, the franchisor agrees that any terms in its franchise agreement or any other document the franchisor requires the franchisee to sign that are related to control by the franchisor or its franchisees (resulting in a determination by SBA of affiliation between the Franchisor and its franchisees, as defined in 13 CFR part 121 and SBA’s Standard Operating Procedure 50 10) will not be enforced against the franchisee during the life of the SBA-guaranteed loan.

SBA Form 2462 has **three** locations with drop down menu options at the beginning of the form (see example below). Once a drop down option is chosen (i.e. #1 “Franchise” #2 “Franchisor” and #3 “Franchisee”), the user must hit the “tab” key to automatically populate the appropriate term in all fields.

### Example of Drop-Down Options

The image shows a screenshot of the SBA Form 2462. At the top left is the Small Business Administration logo. The main title is "ADDENDUM TO Franchise AGREEMENT". A dropdown menu is open under "Franchise", showing options: Franchise, License, Distributor, Membership, and Other. A red box labeled "1" points to the dropdown arrow. Below the title, the text reads: "THIS ADDENDUM ("Addendum") is made between \_\_\_\_\_, 20\_\_\_\_, by and located at \_\_\_\_\_, and \_\_\_\_\_, ("Franchisor" dropdown), located at \_\_\_\_\_, ("Franchisee" dropdown). Red boxes labeled "2" and "3" point to the "Franchisor" and "Franchisee" dropdown menus respectively.

Once the drop down options have populated in all three locations, the remaining fillable fields must be completed manually (see example below). These fields will either be blank or contain the language “(Enter type of)” or “(type of agreement).” In each of these fields, enter the type of agreement, e.g., franchise, license, dealer, membership, etc. When completing SBA Form 2462, the text may not be altered except to insert the information required to complete the form.

### Example of Fillable Fields to be Completed Manually

#### FORCED SALE OF ASSETS

- If Franchisor \_\_\_\_\_ has the option to purchase the business personal assets upon default or termination of the Franchise \_\_\_\_\_ Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the Franchisee \_\_\_\_\_ owns the real estate where the franchisee \_\_\_\_\_ location is operating, Franchisee \_\_\_\_\_ will not be required to sell the real estate upon default or termination, but Franchisee \_\_\_\_\_ may be required to lease the real estate for the remainder of the (enter type of) \_\_\_\_\_ term (excluding additional renewals) for fair market value.

**Note to Parties:** This Addendum only addresses “affiliation” between the Franchisor \_\_\_\_\_ and Franchisee \_\_\_\_\_. Additionally, the applicant Franchisee \_\_\_\_\_ and the (type of agreement) \_\_\_\_\_ system must meet all SBA eligibility requirements.





ADDENDUM TO \_\_\_\_\_<sup>1</sup> AGREEMENT

THIS ADDENDUM (“Addendum”) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“\_\_\_\_\_”), located at \_\_\_\_\_, and \_\_\_\_\_ (“\_\_\_\_\_”), located at \_\_\_\_\_.

\_\_\_\_\_ and \_\_\_\_\_ entered into a \_\_\_\_\_ Agreement on \_\_\_\_\_, 20\_\_\_\_, (such Agreement, together with any amendments, the “\_\_\_\_\_ Agreement”). \_\_\_\_\_ is applying for financing(s) from a lender in which funding is provided with the assistance of the U. S. Small Business Administration (“SBA”). SBA requires the execution of this Addendum as a condition for obtaining SBA-assisted financing.

In consideration of the mutual promises below and for good and valuable consideration, the receipt and sufficiency of which the parties acknowledge the parties agree that notwithstanding any other terms in the \_\_\_\_\_ Agreement or any other document \_\_\_\_\_ requires \_\_\_\_\_ to sign:

**CHANGE OF OWNERSHIP**

- If \_\_\_\_\_ is proposing to transfer a partial interest in \_\_\_\_\_ and \_\_\_\_\_ has an option to purchase or a right of first refusal with respect to that partial interest, \_\_\_\_\_ may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of \_\_\_\_\_. If the \_\_\_\_\_’s consent is required for any transfer (full or partial), \_\_\_\_\_ will not unreasonably withhold such consent. In the event of an approved transfer of the \_\_\_\_\_ interest or any portion thereof, the transferor will not be liable for the actions of the transferee \_\_\_\_\_.

**FORCED SALE OF ASSETS**

- If \_\_\_\_\_ has the option to purchase the business personal assets upon default or termination of the \_\_\_\_\_ Agreement and the parties are unable to agree on the value of the assets, the value will be determined by an appraiser chosen by both parties. If the \_\_\_\_\_ owns the real estate where the \_\_\_\_\_ location is operating, \_\_\_\_\_ will not be required to sell the real estate upon default or termination, but \_\_\_\_\_ may be required to lease the real estate for the remainder of the \_\_\_\_\_ term (excluding additional renewals) for fair market value.

<sup>1</sup> While relationships established under license, jobber, dealer and similar agreements are not generally described as “franchise” relationships, if such relationships meet the Federal Trade Commission’s (FTC’s) definition of a franchise (see 16 CFR § 436), they are treated by SBA as franchise relationships for franchise affiliation determinations per 13 CFR § 121.301(f)(5).

**COVENANTS**

- If the \_\_\_\_\_ owns the real estate where the \_\_\_\_\_ location is operating, \_\_\_\_\_ has not and will not during the term of the \_\_\_\_\_ Agreement record against the real estate any restrictions on the use of the property, including any restrictive covenants, branding covenants or environmental use restrictions. If any such restrictions are currently recorded against the \_\_\_\_\_'s real estate, they must be removed in order for the \_\_\_\_\_ to obtain SBA-assisted financing.

**EMPLOYMENT**

- \_\_\_\_\_ will not directly control (hire, fire or schedule) \_\_\_\_\_'s employees. For temporary personnel franchises, the temporary employees will be employed by the \_\_\_\_\_ not the \_\_\_\_\_.

As to the referenced \_\_\_\_\_ Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the \_\_\_\_\_.

Except as amended by this Addendum, the \_\_\_\_\_ Agreement remains in full force and effect according to its terms.

\_\_\_\_\_ and \_\_\_\_\_ acknowledge that submission of false information to SBA, or the withholding of material information from SBA, can result in criminal prosecution under 18 U.S.C. 1001 and other provisions, including liability for treble damages under the False Claims Act, 31 U.S.C. §§ 3729 - 3733.

**Authorized Representative of \_\_\_\_\_:**

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

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

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

**Authorized Representative of \_\_\_\_\_:**

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

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

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

**Note to Parties:** This Addendum only addresses "affiliation" between the \_\_\_\_\_ and \_\_\_\_\_. Additionally, the applicant \_\_\_\_\_ and the \_\_\_\_\_ system must meet all SBA eligibility requirements.

**EXHIBIT L**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Required Lease Terms  
(Lease Addendum to Lease Agreement)**

## **REQUIRED LEASE TERMS**

**The Terms and Conditions in the attached Lease Addendum to Lease Agreement (“Lease Addendum”) must be included in the Franchisee’s Lease for the location of the Franchised Business via execution of the attached Lease Addendum or through modifications to the actual Lease**

**LEASE ADDENDUM TO LEASE AGREEMENT**

(“Lease Addendum”)

Dated: \_\_\_\_\_, 20\_\_

between

\_\_\_\_\_ and \_\_\_\_\_  
(Landlord Name) (Tenant Name)

\_\_\_\_\_  
(Address of “Premises”)

**1. Use of Premises.**

During the term of the Lease, the Premises may be used only for the operation of a quick service restaurant under the *Baja Fresh* system, trademarks, trade names, and logos, which specialize in the sale of Mexican-style cuisine and any other items sold under the *Baja Fresh* system. Landlord consents to Tenant’s use of such trademarks, trade names, logos, tag lines, signs, décor items, color schemes, and related components of the *Baja Fresh* franchise system as BF Acquisition Holdings, LLC, franchisor of the *Baja Fresh* brand (“Franchisor”), or any of its affiliates, may prescribe for *Baja Fresh* franchisees and which may be altered or changed by Franchisor from time to time.

**2. Assignment and Notices.**

a. Notwithstanding anything to the contrary in the Lease, Tenant shall have the right to assign the Lease and all amendments thereto, as applicable, including this Lease Addendum (collectively, “Lease”), and all rights hereunder to Franchisor or any of its affiliates, or to a third-party *Baja Fresh* franchisee approved by Franchisor upon the expiration or termination of the current franchise agreement by and between Franchisor and Tenant (“Franchise Agreement”), without obtaining Landlord’s consent and without the imposition of any assignment fee or similar charge. Landlord shall not accelerate the rent owed hereunder in connection with such assignment(s), so long as Franchisor, its affiliate(s) or its third-party franchisee(s) assumes in writing the obligations of Tenant under the Lease. Nothing in this Section 2.a shall serve to extend the term of the Lease or provide Franchisor any occupancy rights, options to renew or other rights not expressly set forth to Tenant in the Lease.

b. Landlord agrees to furnish Franchisor with copies of any and all letters and notices to Tenant pertaining to the Lease and the Premises at the same time that such letters and notices are sent to Tenant. Landlord further agrees that, if it intends to terminate the Lease, the Landlord will give Franchisor the same advance written notice of such intent as provided to Tenant, specifying in such notice all defaults that are the cause of the proposed termination. Franchisor shall have the right to cure, at its sole option, any such default within the time periods granted to Tenant under the Lease. If neither Tenant nor Franchisor cures all such defaults within said time periods (or such longer cure periods as may be specifically permitted by the Lease), then the Landlord may terminate the Lease, re-enter the Premises and/or exercise all other rights as set forth in the Lease.

c. Prior to the expiration or termination of the Lease, Franchisor shall have the right to enter the Premises to make any reasonable modifications or reasonable alterations

necessary to protect Franchisor's interest in the *Baja Fresh* brand and its trademarks, trade names, logos, tag lines, signs, décor items, color schemes, and related components of the *Baja Fresh* franchise system, or to cure any default under the Lease, and Landlord and Tenant agree that Franchisor shall not be liable for trespass or any other crimes or tort.

**3. Notices.**

All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, email or facsimile (provided that the sender confirm the facsimile by sending an original confirmation copy by certified transmission), to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other parties.

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

If directed to Franchisor, the notices shall be addressed to:

BF Acquisition Holdings, LLC  
9311 E. Via De Ventura  
Scottsdale, AZ 85258  
Attn: Real Estate Department  
Facsimile: (480) 362-4792  
Email: [leases@kahalamgmt.com](mailto:leases@kahalamgmt.com)

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by email or facsimile shall be deemed given on the business day of transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service or registered or certified mail shall be deemed given three (3) business days after the time of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other parties.



4. **Amendments.**

Landlord and Tenant will not amend, renew, extend or otherwise modify the Lease in any manner which would materially affect any of the provisions in this Lease Addendum without Franchisor's prior written consent.

5. **Right of First Refusal.**

Landlord and Tenant agree that should Landlord and Tenant desire to terminate the Lease prior to the scheduled expiration date, Landlord will notify Franchisor of the proposed termination not less than thirty (30) days in advance of the proposed termination date. Franchisor shall have a right of first refusal to assume the Lease whereby Tenant will assign the Lease to Franchisor and Franchisor will assume all rights and obligations of Tenant under the Lease.

6. **Miscellaneous.**

The terms and conditions of this Lease Addendum will supersede any conflicting terms of the Lease. Any capitalized term not specifically defined in this Lease Addendum shall have the meaning ascribed to such term in the Lease.

IN WITNESS WHEREOF, the parties hereto, by and through their respective representatives authorized to enter into and bind each respective party without further consent or authorization, have duly executed and delivered this Lease Addendum in duplicate as of the date set forth above.

**LANDLORD:**

\_\_\_\_\_, a(n) \_\_\_\_\_  
\_\_\_\_\_

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

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

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

**TENANT:**

\_\_\_\_\_, a(n) \_\_\_\_\_

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

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

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

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

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

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

**EXHIBIT M**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Lease Guaranty Acknowledgment**

## Lease Guaranty Acknowledgment

You have informed BF Acquisition Holdings, LLC (the "Company") that the landlord of the location which you have selected for the operation of your Franchised Business requires, as a condition for you to obtain a lease agreement, that you obtain a lease guaranty from the Company or any affiliate of the Company of your obligations under the lease. You have requested that the Company or any affiliate of the Company execute and deliver a lease guaranty in favor of the premises landlord for the location you have selected or are considering for your Franchised Business. You acknowledge that neither the Company nor any of its affiliates is required to serve as guarantor of your lease for the site of your Franchised Business and that a decision whether to serve as guarantor is within the sole and absolute discretion of the Company.

We are willing to undertake to assist you in obtaining a lease by agreeing to execute and deliver a lease guaranty, in form and substance satisfactory to the Company and its counsel. In consideration for the execution and delivery of a lease guaranty, you hereby acknowledge that you have agreed to pay a lease guaranty fee to the Company in an amount equal to the lesser of (i) ten percent (10%) of the total amount of the rental obligations to be guaranteed under the lease during its term, and any renewal term (inclusive of any charges for real estate taxes, common area maintenance, insurance), or (ii) Ten Thousand (\$10,000) Dollars (the "Lease Guaranty Fee"). The Lease Guaranty Fee will be due and payable to the Company upon the Company's (or any affiliate of the Company) execution of the applicable lease guaranty agreement with the landlord.

Any capitalized terms not specifically defined in this Lease Guaranty Acknowledgment shall have the meaning ascribed to such terms in your *Baja Fresh* Franchise Agreement dated \_\_\_\_\_.

The undersigned understands and acknowledges that: (i) notwithstanding the agreement of the Company to execute and deliver a lease guaranty, the execution and delivery of such guaranty and any participation of the Company and/or its agents or employees, including, without limitation, its Area Representatives, and/or brand presidents in the negotiation of an LOI or a lease, and analyzing and/or approving site(s) for the Location of the Franchised Business, you are solely responsible for conducting a review of the proposed site, the LOI and lease terms, and for final Location selection and approval based upon your review, your business plan and model; (ii) you have not relied upon the assistance of the Company in procuring, or in the approval of, an LOI or lease for the Franchised Business, or in its decision to select any proposed site; (iii) each potential site for the Franchised Business is unique and provides different risks and benefits, which may impact the performance of the Franchised Business; and, (iv) as part of analyzing the proposed site, it is your responsibility to meet with the local officials to determine, among other things whether any street, highway, interchange, city, or other changes are planned in the area or access to the proposed site that could negatively affect the performance of the Franchised Business.

Acknowledged and accepted:

Corporation or Entity: \_\_\_\_\_

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

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

Brand Concept: \_\_\_\_\_

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

**EXHIBIT N**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Lease Review and/or Negotiation Agreement and Release  
and State Addenda**

## LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE

You have requested that the real estate department of Kahala Management, L.L.C. ("Company") assist you in the review of the Lease for your Franchised Business ("Location"), which may include participation in the negotiation of the business terms of a lease with the landlord and/or broker/agent of the landlord for the Location ("Lease Assistance"). You have agreed to pay the Company a fee of Two Thousand Five Hundred Dollars (\$2,500) for Lease Assistance. The Company is willing to undertake to assist you in the review and related negotiations.

Any capitalized terms not specifically defined in this LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE shall have the meaning ascribed to such terms in your *Baja Fresh* Franchise Agreement dated \_\_\_\_\_, 20\_\_ for store number \_\_\_\_\_.

Although, Company must review your selection of a Location and the Lease to confirm it meets our minimum site requirements, the provisions, final approval and execution of the Lease remain your sole responsibility. You may require or elect to seek additional information or guidance of others, including, without limitation, independent business and legal advisors of your own choosing, other than what is provided by Company. This would be your sole responsibility. The services provided by the Company's real estate department will include only those certain services as detailed in your Franchise Agreement.

The undersigned understands and acknowledges that: (i) notwithstanding any provision by Company and/or its subsidiaries, parent, or affiliated companies, agents or employees, including, without limitation, its Area Representatives, Brand Presidents or Vice President of Operations, in the Lease Assistance for the location of the Franchised Business, you are solely responsible for conducting a review of the proposed site, the Letter Of Intent ("LOI") and Lease terms, and for final site selection based upon your review, your individual business plan and model; (ii) you have not relied solely upon the Lease Assistance of Company in reviewing, negotiating, or approving if an LOI or Lease for the Franchised Business, or in your decision to select any proposed site; (iii) each site for the Franchised Business is unique and provides different risks and benefits, which may impact the performance of the Franchised Business; and (iv) as part of your analysis of the proposed site for the operation of the Franchised Business, it is your sole responsibility to conduct such due diligence reviews of the geographic area and the shopping center in which the Franchised Business is to be located as you, in your sole discretion, deem necessary and advisable, including, without limitation, meeting with the local officials to determine, among other things, whether any street, highway, interchange, city, or other changes are planned in the area or access to the proposed site that could negatively affect the performance of the Franchised Business.

In consideration of the agreement of Company to provide Lease Assistance to you, the undersigned hereby fully releases, discharges, and acquits BF Acquisition Holdings, LLC, Company, and its respective predecessors, successors and assigns, parents, subsidiaries and affiliated corporations, their respective officers, directors, agents, employees and representatives, past and present, of any and all of such corporations (collectively "Franchisor Parties"), and/or their Area Representatives, Brand Presidents and/or Vice President of Operations, from and against any and all claims, demands and causes of action (whether now existing or hereafter arising, known or unknown) that he/she/it, or any of his/her/its parent, affiliate, or subsidiary companies, agents, representatives, members, officers, directors, or employees, may now or in the future have against Franchisor Parties, and/or their Area

Representatives, Brand Presidents and/or Vice President of Operations (or any of them), including, without limitation, claims, demands and causes of action that resulted, result or may result from, arise out of or relate to, in whole or in part, directly or indirectly, the Lease Assistance.

Acknowledged and accepted:

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

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

Corporation or Entity: \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF CALIFORNIA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF CALIFORNIA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516).

2. Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]



**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF HAWAII)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF HAWAII) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims, such release shall exclude claims arising under the Hawaii Franchise Investment Law. Any condition, stipulation or provision binding the Franchisee to waive compliance with any provision of Section 482E-6 of the Hawaii Franchise Investment Law shall be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Hawaii Franchise Investment Law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, have duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF ILLINOIS)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF ILLINOIS) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the General Release:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Illinois Franchise Disclosure Act of 1987, 815 ILCS 705/20, or a rule of order under the Act, such release shall exclude claims arising under the Illinois Franchise Disclosure Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Section 41 of the Illinois Franchise Disclosure Act states that "any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void."

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF INDIANA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF INDIANA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. If the Franchisee is required to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Indiana Franchises Act, Ind. Code Ann. §§ 23-2-2.5 and the Indiana Deceptive Franchise Practices Act, Ind. Code Ann. § 23-2-2.7-1, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Indiana Deceptive Practices Act and the Indiana Franchises Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF MARYLAND)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MARYLAND) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The general release required as a condition of renewal shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF MICHIGAN)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MICHIGAN) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The following provision is void and unenforceable under the Michigan Franchise Investment Law § 445.1527 if contained in any documents relating to a franchise: A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives franchisee of rights and protections provided in the Act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

2. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF MINNESOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF MINNESOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Minnesota Rules 2860.4400.D prohibits a franchisor from requiring a franchisee to assent to a release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes 1973 Supplement, sections 80C.01 to 80C.22; provided, that this part shall not bar the voluntary settlement of disputes.

2. Any condition, stipulation or provision, including any choice of law provision, purporting to bind any person who, at the time of acquiring a franchise is a resident of this state, or, in the case of a partnership or corporation, organized or incorporated under the laws of this state, or purporting to bind a person acquiring any franchise to be operated in this state to waive compliance or which has the effect of waiving compliance with any provision of sections 80C.01 to 80C.22 or any rule or order thereunder is void under the Minnesota Franchise Act, Minn. Stat. § 80C.21.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF NORTH DAKOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF NORTH DAKOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19-16, any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule order hereunder is void.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (SECTION 51-19-09, N.D.C.C.):**

a. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

4. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF NEW YORK)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF NEW YORK) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under New York General Business Law, Article 33, Section 687, it is unlawful to require a franchisee to assent to a release, assignment, novation, waiver or estoppel which would relieve a person from any duty or liability imposed by this Article.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of New York General Business Law, with respect to each such provision are met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]



**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF RHODE ISLAND)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF RHODE ISLAND) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-15, a condition, stipulation or provision requiring a franchisee to waive compliance with or relieving a person of a duty of liability imposed by or a right provided by this act or a rule or order under this act is void. An acknowledgement provision, disclaimer or integration clause or a provision having a similar effect in a franchise agreement does not negate or act to remove from judicial review any statement, misrepresentations or action that would violate this act or a rule or order under this act. This section shall not affect the settlement of disputes, claims or civil lawsuits arising or brought under this act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF SOUTH DAKOTA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF SOUTH DAKOTA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-26, No person may, directly or indirectly, in connection with the offer or sale of a franchise: (8) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. However, this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contractual terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF VIRGINIA)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF VIRGINIA) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Virginia Retail Franchising Act, VA. Code Ann. §13.1-571(c), Any condition, stipulation or provision binding any person to waive compliance with any provision of this chapter or of any rule or order thereunder shall be void; provided, however, that nothing contained herein shall bar the right of a franchisor and franchisee to agree to binding arbitration of disputes consistent with the provisions of this chapter.

2. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF WASHINGTON)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF WASHINGTON) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_ ("Lease Review and Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise.

2. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, has duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_.

**FRANCHISEE**

\_\_\_\_\_, a(n) \_\_\_\_\_

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

[Name, Title]

**ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE**  
(FOR THE STATE OF WISCONSIN)

This ADDENDUM TO LEASE REVIEW AND/OR NEGOTIATION AGREEMENT AND RELEASE (FOR THE STATE OF WISCONSIN) ("Addendum") hereby amends the Lease Review and/or Negotiation Agreement and Release dated \_\_\_\_\_, 20\_\_\_\_ ("Lease Review Agreement") from the undersigned to Franchisor Parties. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Lease Review Agreement. The Lease Review Agreement is hereby amended by the addition of the following language, which shall be considered an integral part of the Lease Review Agreement:

1. A general release is incorporated in the Lease Review Agreement. Under the Wisconsin Franchise Investment Law, Wis. Stat. Ann. § 553.76, Any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this chapter or any rule or order under this chapter is void. This section does not affect the settlement of disputes, claims or civil lawsuits arising or brought under this chapter.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Except as set forth in this Addendum, the terms and provisions of the Lease Review Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned, by and through its respective representative with full rights, power and authority to enter into and bind the undersigned without further consent or approval of any kind, have duly executed and delivered this Addendum on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT O-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Sublease and Guaranty of Sublease**  
(Franchisee pays rent directly to Landlord)

## SUBLEASE

This SUBLEASE ("Sublease") is effective as of the date set forth in Exhibit A attached hereto and incorporated herein by reference, executed by [LEASING ENTITY], a[n] \_\_\_\_\_ ("Sublessor"), and the sublessee identified in Exhibit A to this Sublease ("Sublessee").

WHEREAS, Sublessor, as tenant, previously entered into, or intends to enter into, that certain lease ("Lease") in the form of Exhibit B attached hereto and incorporated herein by reference, as may be amended from time to time, pursuant to which Sublessor leases certain premises ("Premises") as described in the Lease from the landlord under such Lease ("Landlord");

WHEREAS, Sublessor and Sublessee are parties to a sublease dated \_\_\_\_\_, as amended (collectively the "Prior Sublease"). Sublessee agrees and acknowledges that it remains liable under the Prior Sublease up through the date immediately preceding the Effective Date of this Sublease. Sublessor and Sublessee further acknowledge and agree that the Prior Sublease is deemed terminated as of and after the Effective Date of this Sublease.

WHEREAS, Sublessee has entered into that certain Franchise Agreement for Baja Fresh Store No. \_\_\_\_\_ ("Franchise Agreement") with BF Acquisition Holdings, LLC ("Franchisor");

WHEREAS, pursuant to the Franchise Agreement, the parties and Franchisor intend that Sublessee will establish and operate a Baja Fresh restaurant at the location identified in the Franchise Agreement;

WHEREAS, Sublessee may only use and occupy the Premises as a Baja Fresh restaurant selling Baja Fresh-authorized products pursuant to the terms of the Franchise Agreement, and for no other purpose. Sublessee may not sell any other items at the Premises unless first authorized in writing by the Sublessor;

WHEREAS, Sublessee has selected the Premises for the location of the Baja Fresh restaurant to be established and operated by Sublessee;

WHEREAS, in accordance with the Franchise Agreement, Sublessor desires to sublease to Sublessee, and Sublessee desires to sublease from Sublessor, the Premises and Sublessor's rights in the Premises pursuant to the Lease, upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises, and the terms, conditions and covenants set forth in this Sublease, the parties hereby agree as follows:

1. Agreement to Sublease. Sublessor hereby demises and sublets to Sublessee the Premises, and Sublessor grants Sublessee all of its respective rights, privileges and appurtenances related to the Premises, and Sublessee takes from Sublessor, the Premises, for the Term (as defined in Section 2.1).

1.1. Assumption. As of the Effective Date (as defined in Exhibit A and attached hereto), Sublessee assumes, and agrees to abide by, all terms and conditions of the Lease with respect to the Premises, and will faithfully perform all obligations required thereunder to be performed by Sublessor during the Term and any obligations to be performed by Sublessor under the Lease prior to, as of and after the Commencement Date of the Lease (as defined in Exhibit A attached hereto) to the extent the same have not been fully performed by Sublessor as of the Effective Date hereof (including without limitation, any initial construction obligations).

1.2. Compliance with Lease. Notwithstanding anything to the contrary contained herein, the terms of this Sublease and Sublessee's use, occupancy, maintenance, repair and restoration of the Premises are subject and subordinate to the terms, covenants, conditions, agreements and requirements of the Lease. Sublessee will not commit or permit to be committed on the Premises any act or omission which will violate any term or condition of the Lease. To enforce the rights of Sublessor hereunder, Sublessor may exercise any and

all remedies available to Landlord under the Lease, in addition to any other remedies provided hereunder or available at law or in equity.

## 2. Term; Renewal Options.

2.1. Term. This Sublease will be effective as of the Effective Date and will continue for the full term of the Lease ("Term"), as the same may be amended, earlier terminated, or renewed or extended from time to time pursuant to Section 2.2 below, minus one day.

2.2. Renewal Options. If the Lease, as may be amended by Sublessor from time to time, contains renewal options, Sublessee may exercise such options in accordance with this Section 2.2, provided that as of the time of the giving of the Renewal Notice, no event of default exists or would exist hereunder or under the Lease but for the passage of time or the giving of notice, or both. ***To exercise a renewal option, Sublessee must notify Sublessor in writing in accordance with Section 17 herein of Sublessee's intent to exercise such option ("Renewal Notice") not more than 90 days, or less than 60 days, before the date that Sublessor is required to notify Landlord pursuant to the Lease of its intention to exercise such option. Time is of the essence.*** Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

2.3. Failure to Timely Deliver Renewal Notice. If Sublessee does not deliver the Renewal Notice within the time period set forth above, Sublessee's right to exercise the renewal option pursuant to this Section 2 will automatically become null and void and of no further force or effect. Sublessee's exercise of a renewal option, as evidenced by the Renewal Notice, will be irrevocable in all events. Upon receipt of an effective Renewal Notice, Sublessor will undertake to renew the Lease for the applicable renewal term and Sublessee will indemnify, defend and hold Sublessor and the Indemnified Parties (as defined in Section 11) harmless with respect to the exercise of the renewal term. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

## 3. Rent, Taxes, and Insurance.

3.1. Payment of Rent. The first month's Rent (as such term is hereinafter defined) and the Sublease Security Deposit (as defined in Section 4.1 and set forth on Exhibit A) will be due and payable on the date hereof. Sublessee promises to timely pay to Landlord, without demand, deduction or set-off, regular installments of: (a) all base, minimum or fixed rent payable under the Lease ("Base Rent"), (b) any percentage rent or other rent based upon sales in, at, or from the Premises ("Percentage Rent") and (c) any other payments payable under the Lease for operating expenses, common area expenses, utilities, marketing funds, merchants associations, sprinkler fees and any other costs and expenses, including any annual reconciliation(s) of the same, as applicable (collectively, "Operating Expenses"), together with all sales, rental and privilege taxes due thereon, as required under the Lease. The foregoing costs are collectively referred to as "Rent."

3.2. Payment of Taxes and Insurance. Sublessee promises to timely pay any and all taxes and insurance covering or incurred during the Term of this Sublease and due as required under the Lease or in connection with the Premises, when billed or invoiced from the respective taxing authority or insurance company, whether addressed to Sublessor or its affiliate or Sublessee, without demand, deduction or set-off, including any annual reconciliation(s), as applicable.

3.3. Sales Reports. Not later than the tenth (10<sup>th</sup>) day after the end of each calendar month in the Term and the fifteenth (15<sup>th</sup>) day after the end of each calendar year in the Term (including the last year in the Term), or such sooner periods as may be set forth in the Lease, Sublessee will submit to Sublessor (and Landlord, if the Lease requires the delivery of sales reports) an itemized and accurate written statement signed by Sublessee or its duly authorized officer, setting forth in reasonable detail the full amount of Lease Gross Sales (as defined below) made during the preceding calendar month or year, as applicable, and certifying to Sublessor and Landlord that the same is true and correct. If the total amount of Percentage Rent paid by Sublessee for any week, month or calendar year during the Term (including the last calendar year of the Term) shall be less than the actual amount due from Sublessee for such period, Sublessee will pay to Landlord the difference between the amount paid by Sublessee and the actual amount due upon demand, but in no event later than what is required under the Lease. Upon three (3) days' notice to Sublessee, Sublessor or its



representatives will have the right to conduct an audit of Sublessee's books and records relating to Lease Gross Sales at the Premises at any time during the Term. If such audit reveals that Sublessee understated Lease Gross Sales, then Sublessee will pay to Sublessor the costs and expenses of the audit, together with Interest (as defined in Section 3.5 below) from the date Percentage Rent should have been paid hereunder and any interest, late fees or other penalties incurred by Sublessor under the Lease as a result of such underpayment. Sublessee will maintain all books and records relating to sales at the Premises for a minimum of three (3) years. The obligations under this Section 3.3 will survive the expiration or sooner termination of this Sublease.

3.4. Lease Gross Sales. As used herein, the term "Lease Gross Sales" will mean the total gross sales in, on, from or originating within the Premises on which percentage rent, if any, is payable under the terms of the Lease or, if not defined therein, will mean Gross Sales (as defined in the Franchise Agreement).

3.5. Late Charge. Sublessee acknowledges that any late payment by Sublessee to Landlord of any rent or other payment due to Landlord hereunder may result in the assessment of late charges as allowed under the Lease, if any, and that Sublessee shall be solely liable for the payment of such late charges. Sublessee acknowledges that late payment by Sublessee to Sublessor of any payment which may be due to Sublessor hereunder will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Sublessee is delinquent in any installment of such which may be due and payable to Sublessor hereunder for more than three (3) days, Sublessee will pay to Sublessor on demand a late charge equal to five percent (5%) of such delinquent sum, *plus* any late charges and interest incurred by Sublessor under the Lease as a result of such late payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Sublessor will incur by reason of such late payment by Sublessee. The provision for such late charge will be in addition to all of Sublessor's other rights and remedies hereunder or at law and will not be construed as a penalty. In addition to the foregoing late charge, if Sublessee is delinquent in any installment of any payment which may be due to Sublessor hereunder for more than ten (10) days, then such delinquent sum will bear interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less ("Interest"), from the due date until paid in full.

#### 4. Sublease Security Deposit.

4.1. Cash Deposit. Contemporaneously with Sublessee's execution hereof, Sublessee will deposit with Sublessor a sublease security deposit, which shall not be less than one month's base rent, in the amount set forth on Exhibit A ("Sublease Security Deposit"). The Sublease Security Deposit will be held by Sublessor as security for the performance of Sublessee's obligations under this Sublease, Sublessee's Franchise Agreement with Franchisor, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates. The Sublease Security Deposit is not an advance rental deposit or a measure of Sublessor's damages in case of Sublessee's default. Upon each occurrence of an Event of Default hereunder (as defined in Section 15 below), or monies owed to Sublessor, Sublessor or Franchisor or their affiliates may use all or part of the Sublease Security Deposit to pay delinquent payments due under this Sublease and the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates, and the cost of any damage, injury, expense or liability caused by such default, without prejudice to any other remedy provided herein or provided by law. Sublessee will pay Sublessor on demand the amount that will restore the Sublease Security Deposit to its original amount. Sublessor's obligation respecting the Sublease Security Deposit is that of a debtor, not a trustee; no interest will accrue thereon unless otherwise required by law. The Sublease Security Deposit will be the property of Sublessee, but will be refunded to Sublessee when Sublessee's obligations under this Sublease, the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates have been completely fulfilled. Sublessee agrees and acknowledges that the Sublease Security Deposit is separate and distinct from the security deposit held by the Landlord in the amount set forth on Exhibit A ("Lease Security Deposit"). Sublessee further agrees and acknowledges that it will be required to deposit with Sublessor the Sublease Security Deposit and may be required to reimburse Sublessor for the Lease Security Deposit.

4.2. Security Agreement. Sublessee hereby grants Sublessor a security interest, and this Sublease constitutes a security agreement within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises is located, in and to all of Sublessee's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) (collectively, "Collateral") as security for all of Sublessee's obligations hereunder, including, without limitation, the obligation

to pay Rent and other monetary amounts hereunder. Such property thus encumbered includes specifically all trade fixtures and any other fixtures removable by Sublessor, as tenant, pursuant to the Lease, inventory, equipment, signage, small wares, furniture, contract rights, accounts receivable and the proceeds thereof. Sublessee hereby irrevocably authorizes Sublessor to file such financing statements and other Uniform Commercial Code filings as Sublessor deems appropriate in order to perfect such security interest. Sublessee further agrees to execute such other financing statements as reasonably requested by Sublessor to further secure Sublessor's interest under this Section 4.2 as often as Sublessor in its discretion shall require.

5. Utilities. Sublessee will arrange for and pay for, prior to delinquency, the cost of any and all electricity, water, gas, sewer, telephone and other utilities consumed in the Premises commencing on the date Sublessee is permitted to access the Premises and continuing during the Term hereof (collectively, "Utilities"), unless Landlord expressly pays for the same pursuant to the Lease or the cost thereof is paid by Sublessee as Operating Expenses. Such payments will be made directly to the utility provider unless the Lease provides otherwise. Notwithstanding the foregoing, Sublessor may elect to arrange for and/or pay the cost of such Utilities directly to the utility provider. If Sublessor so elects, then Sublessee will pay to Sublessor any and all amounts due for such Utilities upon demand. Any failure to pay the cost of Utilities to any utility provider, as applicable, when due will be deemed a failure to pay Rent hereunder and will entitle Sublessor to exercise its remedies hereunder.

6. Use. Sublessee will use the Premises solely for the operation of a Baja Fresh restaurant in accordance with the terms and conditions of the Lease, this Sublease and all applicable federal, state and local laws, and for no other purpose whatsoever.

7. Sublessor's Obligations. Subject to the terms of this Sublease, Sublessor is conveying to Sublessee only those rights to the Premises that it has acquired by virtue of the Lease respectively. Sublessee acknowledges that the Lease sets forth certain Landlord obligations, which, as between Sublessor and Sublessee, Sublessor is not obligated to perform. Sublessee waives and releases Sublessor from any and all claims Sublessee may now or hereafter have against Sublessor with respect to any and all such obligations and/or the contents of the Lease or any provision thereof, all of which have been read and approved by Sublessee. If Landlord fails to perform its obligations under the Lease, Sublessee will promptly send Sublessor written notice specifically describing the default in detail. Upon receipt of such notice, Sublessor will promptly notify Landlord of the alleged default. Sublessor will not be obligated to bring or defend any claim or action against Landlord and, if it declines to do so, Sublessee, at Sublessee's sole expense, will have the right to do so, in which event Sublessee will indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 below) against the same.

8. Maintenance, Repair, and Alterations. Without limiting the generality of Section 1.1 herein, Sublessee will maintain the Premises in good condition and repair and will perform all of "Tenant's" (as defined in Exhibit A) maintenance, repair and replacement obligations under the Lease. Sublessee acknowledges that Sublessor will have no repair or maintenance obligations with respect to the Premises or the shopping center/development ("Project") in which the Premises is located. Sublessee will not perform any construction or make any alterations, additions or changes to the Premises without Sublessor's prior written consent and, if required by the Lease, Landlord's written approval. Upon the expiration of the Term or the sooner termination of this Sublease, Sublessee will surrender the Premises in good condition and repair, in as good a condition or better than required at the time of Sublessor's surrender under the Lease.

9. Assignment and Subletting. Without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole and absolute discretion, (a) Sublessee will not assign, transfer, convey, pledge or mortgage this Sublease or any interest therein, whether by operation of law or otherwise, (b) no interest in Sublessee may be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including without limitation, a merger or consolidation of Sublessee with another entity or the dissolution of Sublessee, and (c) Sublessee will not sublet all or any part of the Premises. No assignment of this Sublease or subletting of the Premises consented to will relieve Sublessee of its obligations under this Sublease. Any assignment, transfer, conveyance, pledge, mortgage or subletting in violation of this Section 9 will be voidable at the sole option of Sublessor. Sublessee acknowledges that any assignment or subletting to which Sublessor may consent will be conditioned upon Landlord's consent thereto, if Landlord's consent is required under the Lease. Any assignment of this Lease or sublease of the Premises by Sublessee will be subject to the provisions of Section 6 above.

10. Risk of Loss. Except to the extent caused by the intentional misconduct of Sublessor and to the fullest extent permitted by law, (a) Sublessee assumes all risk of loss of or damage to Sublessee's property located within the Premises or the Project, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism, earthquake, act of God or act of any other tenant or third party; and (b) Sublessee waives any claim, demand and action against Sublessor for injury, death or property damage occurring in or around the Premises or Project during the Term.

11. Indemnification. To the fullest extent permitted by law, Sublessee hereby indemnifies, defends (with counsel acceptable to Sublessor), releases and holds harmless Sublessor, and each of its officers, directors, affiliates, contractors, agents, attorneys and employees (collectively, "Indemnified Parties"), against all claims, demands, damages, losses, causes of action and actions of any kind or nature whatsoever, and all related costs and expenses (including reasonable attorneys' fees) (a) for injury, death, disability, or illness of any person or damage to property, occurring in or around the Premises or Project or arising out of Sublessee's use of the Premises or Project, (b) in connection with or arising from the terms conditions, requirements and provisions of the Lease (or Sublessor's negotiation or documentation thereof) and this Sublease and (c) in connection with or arising from any mechanics' or materialmen's lien or claim filed against the Premises for work performed or materials furnished by or on behalf of Sublessee, except to the extent caused by the intentional misconduct of Sublessor. It is expressly agreed that Sublessee's obligations under this Section 11 will survive the expiration or earlier termination of this Sublease for any reason.

12. Insurance. Sublessee will provide such commercial general liability, property and other insurance coverages as Sublessor may reasonably request with respect to the operation of Sublessee's business in the Premises, but in no event less than the insurance coverage required to be carried by Tenant pursuant to the Lease (including loss of rent insurance, etc.). The insurance will be with companies reasonably acceptable to Sublessor, written on an occurrence basis, provide primary coverage, and name Sublessor (and Sublessor's area representative, if any) and Landlord as additional insureds or loss payees as their interests may appear, as applicable and as otherwise required of the Tenant under the Lease. The liability policy will contain a contractual liability endorsement. Sublessee will deliver certificates evidencing the insurance required by this Section 12, which provide that the insurance may not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to Sublessor and Landlord.

13. Right to Inspect. Sublessor and its agents, employees or representatives will have the right to inspect the Premises during business hours to determine Sublessee's compliance with the terms of this Sublease and the Lease.

14. Acceptance of Premises; Sublessee's Representations. Upon the date that Landlord delivers possession of the Premises to Sublessor and Sublessor delivers possession of the Premises to Sublessee (which may occur simultaneously), Sublessee agrees to accept the Premises in an "AS IS" condition, without representation or warranty. Sublessee represents and confirms to Sublessor that Sublessee has selected the Premises for the location of the Baja Fresh restaurant to be established and operated by Sublessee and that: (a) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the Premises, the Lease or the entry into this Sublease; (b) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Premises or the shopping center/development in which the Premises is situated; (c) Sublessee has independently investigated the potential for the success of its operations in the Premises and has not relied upon any representations, inducements or promises by Sublessor's representatives, agents, attorney or employees, or any area representative; (d) Sublessee has concluded that the Premises has a reasonable opportunity for success as a Baja Fresh restaurant; (e) Sublessee has inspected the Premises and finds the same in acceptable condition; (f) Sublessor has made no representation or warranty as to the suitability of the Premises for the conduct of Sublessor's business; (g) Sublessee waives any implied warranty that the Premises are suitable for Sublessee's intended purposes; (h) Sublessee accepts full responsibility for the consequences of Sublessee's decision to operate a Baja Fresh restaurant at the Premises in accordance with the terms of this Sublease, the Lease and the Franchise Agreement; and (i) Sublessee has thoroughly reviewed the Lease and this Sublease and has been advised by its legal counsel regarding the Lease and this Sublease, or Sublessee has made a reasoned and fully informed decision not to be so represented by counsel and understands and acknowledges the significance and consequences of such decision, and Sublessee is fully knowledgeable about and is fully satisfied with the terms and provisions, and

assumes all of its obligations as tenant under, the Lease and this Sublease. Sublessee acknowledges that the foregoing representations by Sublessee are a material inducement to Sublessor's execution of this Sublease.

15. Default.

15.1. An "Event of Default" will occur if at any time during the Term: (a) Sublessee defaults in the payment of Rent or other payment due hereunder and the same is not cured within three (3) days after written notice thereof; provided, however, Sublessor will be obligated to give only two (2) such notices in any calendar year, with subsequent payment default to be an Event of Default if such failure to pay continues for a period of three (3) days or more from the date such payment is due (without any notice); (b) Sublessee defaults in any other obligation under this Sublease, including, but not limited to causing or permitting the occurrence of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under the Lease, and the same is not cured within ten (10) days after written notice thereof or such shorter cure period as may be set forth in the Lease; (c) Sublessee defaults in any obligation under the Franchise Agreement or any other agreement between Sublessor (or its affiliates) and Sublessee (or its affiliates), and the same is not cured within ten (10) days after written notice thereof; (d) any proceeding is begun by or against Sublessee to subject the assets of Sublessee to any bankruptcy or insolvency law or for an appointment of a receiver of Sublessee or for any of Sublessee's asset;, or (e) Sublessee makes a general assignment of Sublessee's assets for the benefit of its creditors.

15.2. Upon an Event of Default, Sublessor may at any time thereafter at its election: (a) terminate this Sublease; (b) terminate Sublessee's right of possession in the Premises; (c) cure any such default and receive from Sublessee, as additional rent, all costs incurred in doing so, plus interest at the lesser of fifteen percent (15%) per annum or the highest rate permitted by law; (d) exercise any remedy available to Landlord under the Lease; and/or (e) pursue any other remedies available at law or in equity. All Sublessor remedies provided herein will be cumulative and non-exclusive. Upon the termination of this Sublease or termination of Sublessee's right of possession, it will be lawful for Sublessor, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Sublessee and all persons and property therefrom. If Sublessor re-enters the Premises following an Event of Default, Sublessor will have the right to keep in place and use, or remove and store, all of the furniture, fixtures, equipment, signage, inventory and other items covered by Sublessor's lien pursuant to Section 4.2 hereof. No action taken by Sublessor pursuant to this Section 15 will relieve Sublessee of its obligations under this Sublease or will be deemed an act terminating this Sublease or declaring the Term hereof ended unless notice is served upon Sublessee by Sublessor expressly setting forth therein that Sublessor elects to terminate this Sublease or declare the Term ended.

15.3. If, following an Event of Default, Sublessor terminates this Sublease, Sublessor may recover from Sublessee the sum of: (a) all Rent and all other amounts accrued hereunder to the date of such termination; (b) the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Sublessor, and costs of removing and storing Sublessee's or any other occupant's property, and repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants and the Landlord; (c) all reasonable expenses incurred by Sublessor in pursuing its remedies, including reasonable attorneys' fees and court costs; and (d) an amount in cash equal to the then present value of the Rent and other amounts payable by Sublessee under this Sublease as would otherwise have been required to be paid by Sublessee to Sublessor during the period following the termination of this Sublease measured from the date of such termination to the expiration date stated in this Sublease. Such present value will be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

15.4. If, following an Event of Default, Sublessor terminates Sublessee's right of possession (but not this Sublease), Sublessor may, but will be under no obligation to, relet the Premises for the account of Sublessee for such rent and upon such terms as shall be satisfactory to Sublessor without thereby releasing Sublessee from any liability hereunder and without demand or notice of any kind to Sublessee. If the Premises are not relet, then Sublessee will pay to Sublessor as damages a sum equal to the amount of the rental reserved in this Sublease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Sublessor to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting after first deducting therefrom, for retention by

Sublessor, the unpaid Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom] to satisfy the rent provided for in this Sublease to be paid, then Sublessee will immediately satisfy and pay any such deficiency. Any such payments due Sublessor will be made upon demand therefor from time to time and Sublessee agrees that Sublessor may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect in writing to terminate this Sublease for such previous breach.

16. Brokerage. Sublessee represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Without limiting the foregoing, Sublessee will pay to any broker, agent or other person all commissions and other compensation that may be due as a result of Sublessee's dealings with such broker, agent or other person in connection with this leasing transaction and will indemnify, defend and hold Sublessor harmless from and against any claims by any such broker, agent or other person claiming a commission or other form of compensation by virtue of actually or allegedly having dealt with Sublessee with regard to this leasing transaction.

17. Notices. All communications or notices required or permitted to be given or served under this Sublease must be in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier); (b) deposited in the United States mail, postage prepaid, for mailing by certified or registered mail, return receipt requested; or (c) faxed with confirmed transmission, followed by a hard copy in the mail on the next business day, and addressed as follows:

If to Sublessor: [LEASING ENTITY]  
Attention: Real Estate Department  
9311 E. Via de Ventura  
Scottsdale, Arizona 85258  
Facsimile: (480) 362-4792

with a copy to: [FRANCHISING ENTITY]  
Attention: Legal Department  
9311 E. Via de Ventura  
Scottsdale Arizona 85258  
Facsimile: (480) 362-4819

If to Sublessee: At the Premises or as designated in the  
notice provision(s) of the Franchise  
Agreement

All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Sublease, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address or fax number, to the other party to this Sublease as provided in the foregoing manner.

18. Personal Property Taxes. Sublessee will comply with all legal requirements for filing a personal property tax return for, and paying all taxes assessed against, all personal property, equipment and fixtures located within the Premises during the Term hereof, such payment to be made by Sublessee directly to the taxing authority on or before the due date thereof.

19. Quiet Enjoyment. So long as Sublessee pays all amounts due hereunder and performs all other covenants and agreements herein set forth, and so long as no Event of Default exists, Sublessee will peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance from Sublessor subject to the terms and provisions of this Sublease. As this is a Sublease, Sublessee agrees to take the Premises subject to the terms of the Lease and all matters of record.

20. Governing Law. This Sublease and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict of laws provisions to the contrary.

21. Attorneys' Fees. If either party should prevail in any litigation or other legal proceeding instituted by or against the other related to this Sublease, the prevailing party, as determined by the court or the like, will receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation or other legal proceeding, including costs on appeal, as determined by the court or the like. Sublessee will also pay to Sublessor, as additional rent, Sublessor's reasonable attorneys' fees incurred as a result of any breach or default by Sublessee under this Sublease.

22. Successors and Assigns. Subject to Section 9 hereof, which restricts Sublessee's rights to assign this Sublease and its rights hereunder, this Sublease will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Sublessee to assign this Sublease, or any of its rights hereunder, or to delegate its obligations hereunder, without compliance with the terms of Section 9 will be void. Notwithstanding anything contained in this Sublease to the contrary, Sublessor may assign this Sublease, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Sublessee or any other person.

23. Joint and Several Liability. If Sublessee consists of more than one person or entity, the obligations hereunder will be joint and several.

24. Entire Agreement. This Sublease, including the exhibits hereto and the other agreements contained as exhibits to Franchisor's operations manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes, replaces and extinguishes all prior agreements and understandings between the parties with respect to that subject matter. Each of the exhibits and other agreements (whether between the current parties or a former sublessee) is incorporated in this Sublease by this reference and constitute a part of this Sublease. This Sublease supersedes all Subleases and Agreements of Intent to Sublet between the parties (or their respective affiliates) with respect to the Premises.

25. Counterparts. This Sublease may be executed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

26. Time is of the Essence. Time is of the essence as to the performance of the parties' obligations under this Sublease.

27. Waiver of Right to Jury Trial, Class Action and Certain Damages. IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN SUBLESSOR AND SUBLESSEE ARISING OUT OF THIS SUBLEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO, SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE RIGHT TO A JURY TRIAL OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, (B) THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND (C) THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

28. Personal Guaranty. If Sublessee is an individual and married, the obligations and liabilities of Sublessee under this Sublease shall be personally guaranteed by the Sublessee's spouse, in the form of guaranty attached hereto as Exhibit D and incorporated herein by reference. If the Sublessee is a corporation, limited liability company, or other business entity, the obligations and liabilities of Sublessee shall be personally guaranteed by each of the Sublessee's shareholders, members, or other owners, direct or indirect (and their respective spouses, if married) in the form of a guaranty attached hereto as Exhibit D and incorporated herein by reference. In the event any person who has not previously signed said guaranty becomes Sublessee's spouse or Sublessee's shareholder, member, or other owner, direct or indirect, or a spouse of such owner, at any time after the execution of this Sublease, Sublessee must cause such person(s) to immediately execute and deliver said guaranty of the Sublease to Sublessor.

29. Plurals, Possessives and Captions. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

***[SIGNATURE PAGE FOLLOWS]***





Store No. \_\_\_\_\_

**SUBLESSOR'S SIGNATURE PAGE**

SUBLESSOR: [LEASING ENTITY], an Arizona \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF ARIZONA            )  
  ) SS:  
COUNTY OF MARICOPA        )

The foregoing Sublease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of [LEASING ENTITY], an Arizona \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_  
Notary Public (Seal)

My Commission Expires

\_\_\_\_\_

Store No. \_\_\_\_\_

**Exhibit A  
to  
Sublease**

Effective Date of Sublease:	_____
Name of Sublessee:	_____, a(n) _____
Lease:	By and between [LEASING ENTITY] ("Tenant") and [LANDLORD] (" <u>Landlord</u> ")
Premises:	[Address City, State Zip]
Commencement Date of Lease:	_____, 20__
Expiration Date of Lease:	_____, 20__
How many option(s) to extend the Lease are remaining and Option Terms:	___ ( ) ___ ( )-year option(s) remaining [or N/A]
Lease Security Deposit currently held by Landlord:	\$X,XXX.XX - Amount set forth in Lease [verified by] [but not verified] by Landlord [or N/A]
Sublease Security Deposit:	\$X,XXX.XX [or N/A]
Exercise Renewal Option(s) Notice Date to Landlord:	[ <i>IF RENEWAL OPTIONS REMAIN</i> ] No earlier than _____, 20__, no later than _____, 20__ ] <u>OR</u> [ <i>IF NO RENEWAL OPTIONS REMAIN</i> ] As of the Effective Date, no renewal options remain under the Lease. If Sublessee is interested in exploring extending the subtenancy after the Lease expiration date, Sublessee is required to notify Sublessor of its desire to extend the tenancy no earlier than _____, 20__, no later than _____, 20__.

**Exhibit B  
to  
Sublease**

**LEASE AGREEMENT**

**Exhibit C  
to  
Sublease**

**Lease Verification Checklist**

By initialing below, Sublessee hereby acknowledges reviewing the attached Lease for the Premises, including all amendments and addendums (**Exhibit B**), and accepts to be bound by all the terms contained therein:

Sublessee acknowledges and agrees to be bound by all of the terms of the Lease, including, but not limited to, the following:

INITIALS:

Current monthly rental payment amounts (Sublessee acknowledges are subject to periodic increases as detailed in the Lease), including CAM, NNN, taxes and related fees

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

Lease term, including any renewal options

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

**Exhibit D  
to  
Sublease**

**GUARANTY OF SUBLEASE**

## GUARANTY OF SUBLEASE

In order to induce BF Acquisition Holdings, LLC ("Franchisor") to enter into that certain Franchise Agreement dated \_\_\_\_\_ ("Franchise Agreement") with \_\_\_\_\_ ("Franchisee"), and to induce [LEASING ENTITY], an affiliate company of Franchisor ("Sublessor") to enter into that certain sublease ("Sublease") dated \_\_\_\_\_, 20\_\_ with Franchisee, as "Sublessee", covering the Baja Fresh store located at: \_\_\_\_\_, the undersigned ([individually and collectively, ]"Guarantor"), hereby personally guarantees the payment and performance of and agrees to pay and perform as a primary obligor all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Franchisee as Sublessee under the terms of the Sublease, as if Guarantor had executed the Sublease as Sublessee thereunder.

### Recitals

- A. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant of the Sublease.
- B. Without this Guaranty of Sublease ("Guaranty"), Sublessor cannot be assured that there are sufficient assets to operate the Baja Fresh store or to protect Sublessor in the event of a default by Sublessee.
- C. Sublessor is willing to enter into the Sublease only if Guarantor personally guarantees faithful performance of all the terms of the Sublease.
- D. Guarantor acknowledges Guarantor received and read the Sublease, and all exhibits thereto, and agrees to be bound to the obligations in this Guaranty with regard to the Sublease.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Sublessor, its parent, subsidiaries, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Sublease.
2. This Guaranty is effective until all terms of the Sublease have been fully and completely performed by Sublessee and shall continue through the entire term of the Sublease as may be renewed or extended. No release of Sublessee or discharge of Sublessee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Sublessor hereunder.
3. Sublessor is not required to proceed first against the Sublessee, but may proceed first against the Guarantor alone or concurrent with proceeding against Sublessee. The obligations of Guarantor hereunder are absolute and unconditional.
4. Sublessee and Sublessor may from time to time alter or modify the Sublease between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Sublease and related documents, without requiring notice to Guarantor or Guarantor's consent.
5. Guarantor agrees specifically to be bound by any confidentiality requirements in the Sublease.
6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Sublessee of any of its obligations or liabilities under the Sublease.
7. Guarantor agrees to pay all attorneys' fees, costs and expenses incurred by Sublessor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all losses, costs, attorney's

fees, and expenses that Sublessor incurs as a result of a default by Sublessee, including those fees and expenses incurred in a bankruptcy proceeding involving Sublessee.

8. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Sublease or any other agreement between Guarantor (or a legal entity thereof) and Sublessor or its affiliates, and with no prior notice, Guarantor consents to Sublessor's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Sublease, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Sublessor or its affiliates. Guarantor hereby knowingly consents to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

9. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns and personal representatives of Guarantor. This Guaranty shall inure to the benefit of Sublessor, its affiliates, successors and assigns.

10. [The undersigned \_\_\_\_\_ [include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the first date set forth above.]

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. Guarantor acknowledges (i) that it is a condition to the granting of the Sublease to Sublessee that Guarantor shall execute and deliver this Guaranty to Sublessor, (ii) that Sublessor has entered into the Sublease in reliance upon the agreement of Guarantor to do so, and (iii) that, as owners of the Sublessee, if applicable, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in Guarantor any interests, rights or privileges in any franchise or the Franchise Agreement.

**GUARANTOR:**

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual

**EXHIBIT O-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Sublease and Guaranty of Sublease**

(Franchisor collects rent from Franchisee and pays to Landlord)



## SUBLEASE

This SUBLEASE (“Sublease”) is effective as of the date set forth in Exhibit A attached hereto and incorporated herein by reference, executed by [LEASING ENTITY], a[n] \_\_\_\_\_ (“Sublessor”), and the sublessee identified in Exhibit A to this Sublease (“Sublessee”).

WHEREAS, Sublessor, as tenant, previously entered into, or intends to enter into, that certain lease (“Lease”) in the form of Exhibit B attached hereto and incorporated herein by reference, as may be amended from time to time, pursuant to which Sublessor leases certain premises (“Premises”) as described in the Lease from the landlord under such Lease (“Landlord”);

WHEREAS, Sublessor and Sublessee are parties to a sublease dated \_\_\_\_\_, as amended (collectively the “Prior Sublease”). Sublessee agrees and acknowledges that it remains liable under the Prior Sublease up through the date immediately preceding the Effective Date of this Sublease. Sublessor and Sublessee further acknowledge and agree that the Prior Sublease is deemed terminated as of and after the Effective Date of this Sublease.

WHEREAS, Sublessee has entered into that certain Franchise Agreement for Baja Fresh Store No. \_\_\_\_\_ (“Franchise Agreement”) with BF Acquisition Holdings, LLC (“Franchisor”);

WHEREAS, pursuant to the Franchise Agreement, the parties and Franchisor intend that Sublessee will establish and operate a Baja Fresh restaurant at the location identified in the Franchise Agreement;

WHEREAS, Sublessee may only use and occupy the Premises as a Baja Fresh restaurant selling Baja Fresh-authorized products pursuant to the terms of the Franchise Agreement, and for no other purpose. Sublessee may not sell any other items at the Premises unless first authorized in writing by the Sublessor;

WHEREAS, Sublessee has selected the Premises for the location of the Baja Fresh restaurant to be established and operated by Sublessee;

WHEREAS, in accordance with the Franchise Agreement, Sublessor desires to sublease to Sublessee, and Sublessee desires to sublease from Sublessor, the Premises and Sublessor’s rights in the Premises pursuant to the Lease, upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the foregoing premises, and the terms, conditions and covenants set forth in this Sublease, the parties hereby agree as follows:

1. Agreement to Sublease. Sublessor hereby demises and sublets to Sublessee the Premises, and Sublessor grants Sublessee all of its respective rights, privileges and appurtenances related to the Premises, and Sublessee takes from Sublessor, the Premises, for the Term (as defined in Section 2.1).

1.1. Assumption. As of the Effective Date (as defined in Exhibit A and attached hereto), Sublessee assumes, and agrees to abide by, all terms and conditions of the Lease with respect to the Premises, and will faithfully perform all obligations required thereunder to be performed by Sublessor during the Term and any obligations to be performed by Sublessor under the Lease prior to, as of and after the Commencement Date of the Lease (as defined in Exhibit A attached hereto) to the extent the same have not been fully performed by Sublessor as of the Effective Date hereof (including without limitation, any initial construction obligations).

1.2. Compliance with Lease. Notwithstanding anything to the contrary contained herein, the terms of this Sublease and Sublessee’s use, occupancy, maintenance, repair and restoration of the Premises are subject and subordinate to the terms, covenants, conditions, agreements and requirements of the Lease. Sublessee will not commit or permit to be committed on the Premises any act or omission which will violate any term or condition of the Lease. To enforce the rights of Sublessor hereunder,

Sublessor may exercise any and all remedies available to Landlord under the Lease, in addition to any other remedies provided hereunder or available at law or in equity.

## 2. Term; Renewal Options.

2.1. Term. This Sublease will be effective as of the Effective Date and will continue for the full term of the Lease ("Term"), as the same may be amended, earlier terminated, or renewed or extended from time to time pursuant to Section 2.2 below, minus one day.

2.2. Renewal Options. If the Lease, as may be amended by Sublessor from time to time, contains renewal options, Sublessee may exercise such options in accordance with this Section 2.2, provided that as of the time of the giving of the Renewal Notice, no event of default exists or would exist hereunder or under the Lease but for the passage of time or the giving of notice, or both. ***To exercise a renewal option, Sublessee must notify Sublessor in writing in accordance with Section 17 herein of Sublessee's intent to exercise such option ("Renewal Notice") not more than 90 days, or less than 60 days, before the date that Sublessor is required to notify Landlord pursuant to the Lease of its intention to exercise such option. Time is of the essence.*** Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

2.3. Failure to Timely Deliver Renewal Notice. If Sublessee does not deliver the Renewal Notice within the time period set forth above, Sublessee's right to exercise the renewal option pursuant to this Section 2 will automatically become null and void and of no further force or effect. Sublessee's exercise of a renewal option, as evidenced by the Renewal Notice, will be irrevocable in all events. Upon receipt of an effective Renewal Notice, Sublessor will undertake to renew the Lease for the applicable renewal term and Sublessee will indemnify, defend and hold Sublessor and the Indemnified Parties (as defined in Section 11) harmless with respect to the exercise of the renewal term. Notwithstanding the foregoing, Sublessee acknowledges and agrees that the decision to exercise any renewal option in connection with the Lease is solely at the discretion of Sublessor.

## 3. Rent, Taxes and Insurance.

3.1. Payment of Rent. The first month's Base Rent (as defined in this Section 3.1), the Sublease Security Deposit (as defined in Section 4.1 and set forth on Exhibit A) and the first monthly installment of estimated Operating Expenses (as defined in this Section 3.1) will be due and payable on the date hereof. Sublessee promises to pay to Sublessor in advance, without demand, deduction or set-off, regular installments of: (a) all base, minimum or fixed rent payable under the Lease ("Base Rent"), (b) any percentage rent or other rent based upon sales in, at, or from the Premises ("Percentage Rent") and (c) any other payments payable under the Lease for operating expenses, common area expenses, utilities, marketing funds, merchants associations, sprinkler fees and any other costs and expenses, including any annual reconciliation(s) of the same, as applicable (collectively, "Operating Expenses"), together with all sales, rental and privilege taxes due thereon. The foregoing costs are collectively referred to as "Rent."

3.1.1. From and after the Commencement Date and through the Term hereof, Sublessee will pay to Sublessor on the earlier of: (i) the 25<sup>th</sup> day of the month, or (ii) the fourth (4<sup>th</sup>) Friday of the month; or (ii) on a day reasonably set by Sublessor to ensure timely payment of Rent under the Lease (as applicable, "Due Date"), an amount equal to 1/12<sup>th</sup> of the annual Base Rent and 1/12<sup>th</sup> of the estimated Operating Expenses and all applicable taxes thereon, as applicable, for the following month (i.e., Sublessee's first Base Rent and estimated Operating Expense payments payable under this Section 3.1.1 will be applied to the second month of the Term, so that Base Rent and Operating Expenses will always be paid one month in advance) . To the extent Sublessee has paid Base Rent and estimated Operating Expenses in advance, Sublessee will not be obligated to pay the same on the Due Date the last month of the Term. If any of Sublessee's Base Rent and Operating Expenses payments are returned for non-sufficient funds, Sublessor has the option, at its sole discretion, to collect the Base Rent and Operating Expenses payments on a weekly basis one month in advance without prior notice to Sublessee. If Sublessor exercises this option, Sublessee will pay to Sublessor on each Friday for the remainder of the Term an amount equal to 1/52<sup>nd</sup> of the annual Base Rent and 1/52<sup>nd</sup> of the estimated Operating Expenses and all applicable taxes thereon, at least four (4) weeks in advance of the first of the month for which it is paid by Sublessor to Landlord.

3.1.2. In addition to Base Rent and estimated Operating Expenses paid in accordance with Section 3.1.1 above, commencing on the date of this Sublease, Sublessee will pay Percentage Rent

and any other amounts due hereunder or under the Lease in the amounts and the same number of installments due from Sublessor, as tenant, to Landlord under the Lease, which payment will be made by Sublessee to Sublessor at least ten (10) days before the same is due to Landlord under the Lease; provided, however, at Sublessor's election, Percentage Rent will be paid by Sublessee in arrears on a weekly basis, in which event Sublessee will also submit along with each payment of Percentage Rent, a sales report of Lease Gross Sales (as defined below) for the previous week in the form described in Section 3.3 below.

3.1.3. If requested by Sublessor, concurrently with Sublessee's execution hereof or at any time thereafter, Sublessee will sign a pre-authorization enabling Sublessor to draw against Sublessee's bank account for the full amount of the Rent and any other amounts due hereunder as and when the same become due. All Rent and other payments required to be made by Sublessee to Sublessor hereunder may be drawn against Sublessee's bank account by Sublessor, or at Sublessor's election, will be payable at such address as Sublessor may specify from time to time by written notice delivered in accordance herewith. Further, Sublessor may direct Sublessee to make full or partial payments of Base Rent, Percentage Rent, and/or Operating Expenses directly to Landlord, and Sublessee will immediately comply with such direction.

3.2. Payment of Taxes and Insurance. Sublessee promises to timely pay any and all taxes and insurance covering or incurred during the Term of this Sublease and due as required under the Lease or in connection with the Premises, when billed or invoiced from the respective taxing authority or insurance company, whether addressed to Sublessor or its affiliate or Sublessee, without demand, deduction or set-off, including any annual reconciliation(s), as applicable. Sublessee agrees and acknowledges that taxes and insurance may be collected by Sublessor either pursuant to Section 3.1.1 above or in such a manner reasonably determined by Sublessor to ensure timely payment of any and all taxes and insurance due under the Lease or in connection with the Premises to the requisite taxing authorities or insurance companies.

3.3. Sales Reports. Not later than the tenth (10<sup>th</sup>) day after the end of each calendar month in the Term and the fifteenth (15<sup>th</sup>) day after the end of each calendar year in the Term (including the last year in the Term), or such sooner periods as may be set forth in the Lease, Sublessee will submit to Sublessor (and Landlord, if the Lease requires the delivery of sales reports) an itemized and accurate written statement signed by Sublessee or its duly authorized officer, setting forth in reasonable detail the full amount of Lease Gross Sales made during the preceding calendar month or year, as applicable, and certifying to Sublessor and Landlord that the same is true and correct. If the total amount of Percentage Rent paid by Sublessee for any week, month or calendar year during the Term (including the last calendar year of the Term) shall be less than the actual amount due from Sublessee for such period, Sublessee will pay to Sublessor the difference between the amount paid by Sublessee and the actual amount due upon demand, but in no event later than fifteen (15) days after the end of such calendar year; and if the total amount of Percentage Rent paid by Sublessee for any such week, month or year shall exceed such actual amount due from Sublessee for such period, then such excess will be credited against the next installment(s) of Rent due from Sublessee to Sublessor under this Sublease, or promptly refunded to Sublessee if this Sublease has expired or otherwise terminated and Sublessee is not then in default hereunder. Upon three (3) days' notice to Sublessee, Sublessor or its representatives will have the right to conduct an audit of Sublessee's books and records relating to Lease Gross Sales at the Premises at any time during the Term. If such audit reveals that Sublessee understated Lease Gross Sales, then Sublessee will pay to Sublessor the costs and expenses of the audit, together with Interest (as defined in Section 3.5 below) from the date Percentage Rent should have been paid hereunder and any interest, late fees or other penalties incurred by Sublessor under the Lease as a result of such underpayment. Sublessee will maintain all books and records relating to sales at the Premises for a minimum of three (3) years. The obligations under this Section 3.3 will survive the expiration or sooner termination of this Sublease.

3.4. Lease Gross Sales. As used herein, the term "Lease Gross Sales" will mean the total gross sales in, on, from or originating within the Premises on which percentage rent, if any, is payable under the terms of the Lease or, if not defined therein, will mean Gross Sales (as defined in the Franchise Agreement).

3.5. Late Charge. Sublessee acknowledges that late payment by Sublessee to Sublessor of any rent or other payment due to Sublessor hereunder will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of such costs being extremely difficult and impractical to determine. Therefore, if Sublessee is delinquent in any installment of Base Rent, Percentage Rent, Operating Expenses or other sums due and payable hereunder for more than three (3) days, Sublessee will pay to Sublessor on demand a late charge equal to five percent (5%) of such delinquent sum, *plus*

any late charges and interest incurred by Sublessor under the Lease as a result of such late payment. The parties agree that such late charge represents a fair and reasonable estimate of the costs that Sublessor will incur by reason of such late payment by Sublessee. The provision for such late charge will be in addition to all of Sublessor's other rights and remedies hereunder or at law and will not be construed as a penalty. In addition to the foregoing late charge, if Sublessee is delinquent in any installment of Rent or other payments due hereunder for more than ten (10) days, then such delinquent sum will bear interest at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less ("Interest"), from the due date until paid in full.

#### 4. Sublease Security Deposit.

4.1. Cash Deposit. Contemporaneously with Sublessee's execution hereof, Sublessee will deposit with Sublessor a sublease security deposit, which shall not be less than one month's base rent, in the amount set forth on Exhibit A ("Sublease Security Deposit"). The Sublease Security Deposit will be held by Sublessor as security for the performance of Sublessee's obligations under this Sublease, Sublessee's Franchise Agreement with Franchisor, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates. The Sublease Security Deposit is not an advance rental deposit or a measure of Sublessor's damages in case of Sublessee's default. Upon each occurrence of an Event of Default hereunder (as defined in Section 15 below), or monies owed to Sublessor, Sublessor or Franchisor or their affiliates may use all or part of the Sublease Security Deposit to pay delinquent payments due under this Sublease, the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates,, and the cost of any damage, injury, expense or liability caused by such default, without prejudice to any other remedy provided herein or provided by law. Sublessee will pay Sublessor on demand, or Sublessor may draw on Sublessee's bank account, the amount that will restore the Sublease Security Deposit to its original amount. Sublessor's obligation respecting the Sublease Security Deposit is that of a debtor, not a trustee; no interest will accrue thereon unless otherwise required by law. The Sublease Security Deposit will be the property of Sublessee, but will be refunded to Sublessee when Sublessee's obligations under this Sublease, the Franchise Agreement, and any other agreement between Sublessee or its affiliates and Sublessor, Franchisor, or their affiliates have been completely fulfilled. Sublessee agrees and acknowledges that the Sublease Security Deposit is separate and distinct from the security deposit held by the Landlord in the amount set forth on Exhibit A ("Lease Security Deposit"). Sublessee further agrees and acknowledges that it will be required to deposit with Sublessor the Sublease Security Deposit and may be required to reimburse Sublessor for the Lease Security Deposit.

4.2. Security Agreement. Sublessee hereby grants Sublessor a security interest, and this Sublease constitutes a security agreement within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises is located, in and to all of Sublessee's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) (collectively, "Collateral") as security for all of Sublessee's obligations hereunder, including, without limitation, the obligation to pay Rent and other monetary amounts hereunder. Such property thus encumbered includes specifically all trade fixtures and any other fixtures removable by Sublessor, as tenant, pursuant to the Lease, inventory, equipment, signage, small wares, furniture, contract rights, accounts receivable and the proceeds thereof. Sublessee hereby irrevocably authorizes Sublessor to file such financing statements and other Uniform Commercial Code filings as Sublessor deems appropriate in order to perfect such security interest. Sublessee further agrees to execute such other financing statements as reasonably requested by Sublessor to further secure Sublessor's interest under this Section 4.2 as often as Sublessor in its discretion shall require.

5. Utilities. Sublessee will arrange for and pay for, prior to delinquency, the cost of any and all electricity, water, gas, sewer, telephone and other utilities consumed in the Premises commencing on the date Sublessee is permitted to access the Premises and continuing during the Term hereof (collectively, "Utilities"), unless Landlord expressly pays for the same pursuant to the Lease or the cost thereof is paid by Sublessee as Operating Expenses. Such payments will be made directly to the utility provider unless the Lease provides otherwise. Notwithstanding the foregoing, Sublessor may elect to arrange for and/or pay the cost of such Utilities directly to the utility provider. If Sublessor so elects, then Sublessee will pay to Sublessor any and all amounts due for such Utilities upon demand. Sublessor may draw against Sublessee's bank account from time to time for the full amount of the cost of such Utilities or Sublessee's reasonable estimate of the costs thereof. Any failure to pay the cost of Utilities to Sublessor or any utility provider, as applicable, when due will be deemed a failure to pay Rent hereunder and will entitle Sublessor to exercise its remedies hereunder.

6. Use. Sublessee will use the Premises solely for the operation of a Baja Fresh restaurant in accordance with the terms and conditions of the Lease, this Sublease and all applicable federal, state and local laws, and for no other purpose whatsoever.
7. Sublessor's Obligations. Subject to the terms of this Sublease, Sublessor is conveying to Sublessee only those rights to the Premises that it has acquired by virtue of the Lease respectively. Sublessee acknowledges that the Lease sets forth certain Landlord obligations, which, as between Sublessor and Sublessee, Sublessor is not obligated to perform. Sublessee waives and releases Sublessor from any and all claims Sublessee may now or hereafter have against Sublessor with respect to any and all such obligations and/or the contents of the Lease or any provision thereof, all of which have been read and approved by Sublessee. If Landlord fails to perform its obligations under the Lease, Sublessee will promptly send Sublessor written notice specifically describing the default in detail. Upon receipt of such notice, Sublessor will promptly notify Landlord of the alleged default. Sublessor will not be obligated to bring or defend any claim or action against Landlord and, if it declines to do so, Sublessee, at Sublessee's sole expense, will have the right to do so, in which event Sublessee will indemnify, defend and hold harmless the Indemnified Parties (as defined in Section 11 below) against the same.
8. Maintenance, Repair, and Alterations. Without limiting the generality of Section 1.1 herein, Sublessee will maintain the Premises in good condition and repair and will perform all of "Tenant's" (as defined in Exhibit A) maintenance, repair and replacement obligations under the Lease. Sublessee acknowledges that Sublessor will have no repair or maintenance obligations with respect to the Premises or the shopping center/development ("Project") in which the Premises is located. Sublessee will not perform any construction or make any alterations, additions or changes to the Premises without Sublessor's prior written consent and, if required by the Lease, Landlord's written approval. Upon the expiration of the Term or the sooner termination of this Sublease, Sublessee will surrender the Premises in good condition and repair, in as good a condition or better than required at the time of Sublessor's surrender under the Lease.
9. Assignment and Subletting. Without the prior written consent of Sublessor, which consent may be withheld in Sublessor's sole and absolute discretion, (a) Sublessee will not assign, transfer, convey, pledge or mortgage this Sublease or any interest therein, whether by operation of law or otherwise, (b) no interest in Sublessee may be assigned, transferred, conveyed, pledged or mortgaged, whether by operation of law or otherwise, including without limitation, a merger or consolidation of Sublessee with another entity or the dissolution of Sublessee, and (c) Sublessee will not sublet all or any part of the Premises. No assignment of this Sublease or subletting of the Premises consented to will relieve Sublessee of its obligations under this Sublease. Any assignment, transfer, conveyance, pledge, mortgage or subletting in violation of this Section 9 will be voidable at the sole option of Sublessor. Sublessee acknowledges that any assignment or subletting to which Sublessor may consent will be conditioned upon Landlord's consent thereto, if Landlord's consent is required under the Lease. Any assignment of this Lease or sublease of the Premises by Sublessee will be subject to the provisions of Section 6 above.
10. Risk of Loss. Except to the extent caused by the intentional misconduct of Sublessor and to the fullest extent permitted by law, (a) Sublessee assumes all risk of loss of or damage to Sublessee's property located within the Premises or the Project, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, vandalism, earthquake, act of God or act of any other tenant or third party; and (b) Sublessee waives any claim, demand and action against Sublessor for injury, death or property damage occurring in or around the Premises or Project during the Term.
11. Indemnification. To the fullest extent permitted by law, Sublessee hereby indemnifies, defends (with counsel acceptable to Sublessor), releases and holds harmless Sublessor, and each of its officers, directors, affiliates, contractors, agents, attorneys and employees (collectively, "Indemnified Parties"), against all claims, demands, damages, losses, causes of action and actions of any kind or nature whatsoever, and all related costs and expenses (including reasonable attorneys' fees) (a) for injury, death, disability, or illness of any person or damage to property, occurring in or around the Premises or Project or arising out of Sublessee's use of the Premises or Project, (b) in connection with or arising from the terms conditions, requirements and provisions of the Lease (or Sublessor's negotiation or documentation thereof) and this Sublease and (c) in connection with or arising from any mechanics' or materialmen's lien or claim filed against the Premises for work performed or materials furnished by or on behalf of Sublessee, except to the extent caused by the intentional misconduct of Sublessor. It is expressly agreed that Sublessee's obligations under this Section 11 will survive the expiration or earlier termination of this Sublease for any reason.

12. Insurance. Sublessee will provide such commercial general liability, property and other insurance coverages as Sublessor may reasonably request with respect to the operation of Sublessee's business in the Premises, but in no event less than the insurance coverage required to be carried by "Tenant" pursuant to the Lease (including loss of rent insurance, etc.). The insurance will be with companies reasonably acceptable to Sublessor, written on an occurrence basis, provide primary coverage, and name Sublessor (and Sublessor's area representative, if any) and Landlord as additional insureds or loss payees as their interests may appear, as applicable and as otherwise required of the "Tenant" under the Lease. The liability policy will contain a contractual liability endorsement. Sublessee will deliver certificates evidencing the insurance required by this Section 12, which provide that the insurance may not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to Sublessor and Landlord.

13. Right to Inspect. Sublessor and its agents, employees or representatives will have the right to inspect the Premises during business hours to determine Sublessee's compliance with the terms of this Sublease and the Lease.

14. Acceptance of Premises; Sublessee's Representations. Upon the date that Landlord delivers possession of the Premises to Sublessor and Sublessor delivers possession of the Premises to Sublessee (which may occur simultaneously), Sublessee agrees to accept the Premises in an "AS IS" condition, without representation or warranty. Sublessee represents and confirms to Sublessor that Sublessee has selected the Premises for the location of the Baja Fresh restaurant to be established and operated by Sublessee and that: (a) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the Premises, the Lease or the entry into this Sublease; (b) no representative, agent, attorney or employee of Sublessor made any representations, inducements or promises about the characteristics or conditions regarding or pertaining to the Premises or the shopping center/development in which the Premises is situated; (c) Sublessee has independently investigated the potential for the success of its operations in the Premises and has not relied upon any representations, inducements or promises by Sublessor's representatives, agents, attorney or employees, or any area representative; (d) Sublessee has concluded that the Premises has a reasonable opportunity for success as a Baja Fresh restaurant; (e) Sublessee has inspected the Premises and finds the same in acceptable condition; (f) Sublessor has made no representation or warranty as to the suitability of the Premises for the conduct of Sublessor's business; (g) Sublessee waives any implied warranty that the Premises are suitable for Sublessee's intended purposes; (h) Sublessee accepts full responsibility for the consequences of Sublessee's decision to operate a Baja Fresh restaurant at the Premises in accordance with the terms of this Sublease, the Lease and the Franchise Agreement; and (i) Sublessee has thoroughly reviewed the Lease and this Sublease and has been advised by its legal counsel regarding the Lease and this Sublease, or Sublessee has made a reasoned and fully informed decision not to be so represented by counsel and understands and acknowledges the significance and consequences of such decision, and Sublessee is fully knowledgeable about and is fully satisfied with the terms and provisions, and assumes all of its obligations as tenant under, the Lease and this Sublease. Sublessee acknowledges that the foregoing representations by Sublessee are a material inducement to Sublessor's execution of this Sublease.

15. Default.

15.1. An "Event of Default" will occur if at any time during the Term: (a) Sublessee defaults in the payment of Base Rent, Percentage Rent, Operating Expenses or any other Rent or other payment due hereunder and the same is not cured within three (3) days after written notice thereof; provided, however, Sublessor will be obligated to give only two (2) such notices in any calendar year, with subsequent payment default to be an Event of Default if such failure to pay continues for a period of three (3) days or more from the date such payment is due (without any notice); (b) Sublessee defaults in any other obligation under this Sublease, including, but not limited to causing or permitting the occurrence of any event which, but for the passage of time or the giving of notice, or both, would constitute a default under the Lease, and the same is not cured within ten (10) days after written notice thereof or such shorter cure period as may be set forth in the Lease; (c) Sublessee defaults in any obligation under the Franchise Agreement or any other agreement between Sublessor (or its affiliates) and Sublessee (or its affiliates), and the same is not cured within ten (10) days after written notice thereof; (d) any proceeding is begun by or against Sublessee to subject the assets of Sublessee to any bankruptcy or insolvency law or for an appointment of a receiver of Sublessee or for any of Sublessee's assets; or (e) Sublessee makes a general assignment of Sublessee's assets for the benefit of its creditors.

15.2. Upon an Event of Default, Sublessor may at any time thereafter at its election: (a) terminate this Sublease; (b) terminate Sublessee's right of possession in the Premises; (c) cure any such default and receive from Sublessee, as additional rent, all costs incurred in doing so, plus interest at the lesser of fifteen percent (15%) per annum or the highest rate permitted by law; (d) exercise any remedy available to Landlord under the Lease; and/or (e) pursue any other remedies available at law or in equity. All Sublessor remedies provided herein will be cumulative and non-exclusive. Upon the termination of this Sublease or termination of Sublessee's right of possession, it will be lawful for Sublessor, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Sublessee and all persons and property therefrom. If Sublessor re-enters the Premises following an Event of Default, Sublessor will have the right to keep in place and use, or remove and store, all of the furniture, fixtures, equipment, signage, inventory and other items covered by Sublessor's lien pursuant to Section 4.2 hereof. No action taken by Sublessor pursuant to this Section 15 will relieve Sublessee of its obligations under this Sublease or will be deemed an act terminating this Sublease or declaring the Term hereof ended unless notice is served upon Sublessee by Sublessor expressly setting forth therein that Sublessor elects to terminate this Sublease or declare the Term ended.

15.3. If, following an Event of Default, Sublessor terminates this Sublease, Sublessor may recover from Sublessee the sum of: (a) all Rent and all other amounts accrued hereunder to the date of such termination; (b) the cost of reletting the whole or any part of the Premises, including without limitation brokerage fees and/or leasing commissions incurred by Sublessor, and costs of removing and storing Sublessee's or any other occupant's property, and repairing, altering, remodeling, or otherwise putting the Premises into condition acceptable to a new tenant or tenants and the Landlord; (c) all reasonable expenses incurred by Sublessor in pursuing its remedies, including reasonable attorneys' fees and court costs; and (d) an amount in cash equal to the then present value of the Rent and other amounts payable by Sublessee under this Sublease as would otherwise have been required to be paid by Sublessee to Sublessor during the period following the termination of this Sublease measured from the date of such termination to the expiration date stated in this Sublease. Such present value will be calculated at a discount rate equal to the 90-day U.S. Treasury bill rate at the date of such termination.

15.4. If, following an Event of Default, Sublessor terminates Sublessee's right of possession (but not this Sublease), Sublessor may, but will be under no obligation to, relet the Premises for the account of Sublessee for such rent and upon such terms as shall be satisfactory to Sublessor without thereby releasing Sublessee from any liability hereunder and without demand or notice of any kind to Sublessee. If the Premises are not relet, then Sublessee will pay to Sublessor as damages a sum equal to the amount of the rental reserved in this Sublease for such period or periods, plus the cost of recovering possession of the Premises (including attorneys' fees and costs of suit), the unpaid Rent and other amounts accrued hereunder at the time of repossession, and the costs incurred in any attempt by Sublessor to relet the Premises. If the Premises are relet and a sufficient sum shall not be realized from such reletting after first deducting therefrom, for retention by Sublessor, the unpaid Rent and other amounts accrued hereunder at the time of reletting, the cost of recovering possession (including attorneys' fees and costs of suit), all of the costs and expense of repairs, changes, alterations, and additions, the expense of such reletting (including without limitation brokerage fees and leasing commissions) and the cost of collection of the rent accruing therefrom) to satisfy the rent provided for in this Sublease to be paid, then Sublessee will immediately satisfy and pay any such deficiency. Any such payments due Sublessor will be made upon demand therefor from time to time and Sublessee agrees that Sublessor may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Sublessor may at any time thereafter elect in writing to terminate this Sublease for such previous breach.

16. Brokerage. Sublessee represents and warrants that, it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction. Without limiting the foregoing, Sublessee will pay to any broker, agent or other person all commissions and other compensation due as a result of Sublessee's dealings with such broker, agent or other person in connection with this leasing transaction and will indemnify, defend and hold Sublessor harmless from and against any claims by such broker, agent or other person claiming a commission or other form of compensation by virtue of actually or allegedly having dealt with Sublessee with regard to this leasing transaction.

17. Notices. All communications or notices required or permitted to be given or served under this Sublease must be in writing and will be deemed to have been duly given or made if (a) delivered in person or by courier (including by Federal Express or other courier); (b) deposited in the United States

mail, postage prepaid, for mailing by certified or registered mail, return receipt requested; or (c) faxed with confirmed transmission, followed by a hard copy in the mail on the next business day, and addressed as follows:

If to Sublessor: [LEASING ENTITY]  
Attention: Real Estate Department  
9311 E. Via de Ventura  
Scottsdale, Arizona 85258  
Facsimile: (480) 362-4792

with a copy to: [FRANCHISING ENTITY]  
Attention: Legal Department  
9311 E. Via de Ventura  
Scottsdale Arizona 85258  
Facsimile: (480) 362-4819

If to Sublessee: At the Premises or as designated  
in the notice provision(s) of the  
Franchise Agreement  
Facsimile: See Exhibit A

All communications and notices will be effective upon delivery in person or by courier to the address set forth in this Sublease, upon being deposited in the United States mail in the manner set forth above or upon being faxed in the manner set forth above. Any party may change his, her or its address or fax number by giving notice in writing, stating his, her or its new address or fax number, to the other party to this Sublease as provided in the foregoing manner.

18. Personal Property Taxes. Sublessee will comply with all legal requirements for filing a personal property tax return for, and paying all taxes assessed against, all personal property, equipment and fixtures located within the Premises during the Term hereof, such payment to be made by Sublessee directly to the taxing authority on or before the due date thereof.

19. Quiet Enjoyment. So long as Sublessee pays all amounts due hereunder and performs all other covenants and agreements herein set forth, and so long as no Event of Default exists, Sublessee will peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance from Sublessor subject to the terms and provisions of this Sublease. As this is a Sublease, Sublessee agrees to take the Premises subject to the terms of the Lease and all matters of record.

20. Governing Law. This Sublease and all questions relating to its validity, interpretation, performance and enforcement will be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, notwithstanding any Arizona or other conflict of laws provisions to the contrary.

21. Attorneys' Fees. If either party should prevail in any litigation or other legal proceeding instituted by or against the other related to this Sublease, the prevailing party, as determined by the court or the like, will receive from the non-prevailing party all costs and reasonable attorneys' fees (payable at standard hourly rates) incurred in such litigation or other legal proceeding, including costs on appeal, as determined by the court or the like. Sublessee will also pay to Sublessor, as additional rent, Sublessor's reasonable attorneys' fees incurred as a result of any breach or default by Sublessee under this Sublease.

22. Successors and Assigns. Subject to Section 9 of this Sublease, which restricts Sublessee's rights to assign this Sublease and its rights hereunder, this Sublease will be binding upon and inure to the benefit of the parties and their respective assigns, legal representatives, executors, heirs and successors. Any attempt by Sublessee to assign this Sublease, or any of his rights hereunder, or to delegate its obligations hereunder, without compliance with the terms of Section 9 will be void. Notwithstanding anything contained in this Sublease to the contrary, Sublessor may assign this Sublease, or any of its rights hereunder, or delegate any of its obligations hereunder without the consent of Sublessee or any other person.

23. Joint and Several Liability. If Sublessee consists of more than one person or entity, the obligations hereunder will be joint and several.



24. Entire Agreement. This Sublease, including the exhibits hereto and the other agreements contained as exhibits to Franchisor's operations manual, contains the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes, replaces and extinguishes all prior agreements and understandings between the parties with respect to that subject matter. Each of the exhibits and other agreements (whether between the current parties or a former sublessee) is incorporated in this Sublease by this reference and constitute a part of this Sublease. This Sublease supersedes all Subleases and Agreements of Intent to Sublet between the parties (or their respective affiliates) with respect to the Premises.

25. Counterparts. This Sublease may be executed in two or more counterparts, each of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

26. Time is of the Essence. Time is of the essence as to the performance of the parties' obligations under this Sublease.

27. Waiver of Right to Jury Trial, Class Action and Certain Damages. IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN SUBLESSOR AND SUBLESSEE ARISING OUT OF THIS SUBLEASE OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO, SUBLESSEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, (A) THE RIGHT TO A JURY TRIAL OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, (B) THE RIGHT TO INITIATE OR PARTICIPATE IN A CLASS ACTION IN ANY FORUM, INCLUDING ARBITRATION, AND (C) THE RIGHT TO SEEK OR COLLECT PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES IN ANY FORUM, INCLUDING ARBITRATION.

28. Personal Guaranty. If Sublessee is an individual and married, the obligations and liabilities of Sublessee under this Sublease shall be personally guaranteed by the Sublessee's spouse, in the form of guaranty attached hereto as Exhibit D and incorporated herein by reference. If the Sublessee is a corporation, limited liability company, or other business entity, the obligations and liabilities of Sublessee shall be personally guaranteed by each of the Sublessee's shareholders, members, or other owners, direct or indirect (and their respective spouses, if married) in the form of a guaranty attached hereto as Exhibit D and incorporated herein by reference. In the event any person who has not previously signed said guaranty becomes Sublessee's spouse or Sublessee's shareholder, member, or other owner, direct or indirect, or a spouse of such owner, at any time after the execution of this Sublease, Sublessee must cause such person(s) to immediately execute and deliver said guaranty of the Sublease to Sublessor.

29. Plurals, Possessives and Captions. Words in the singular number include the plural when the context requires (and vice-versa), and defined terms include the possessive when the context requires (and vice-versa).

***[SIGNATURE PAGE FOLLOWS]***



**SUBLESSOR'S SIGNATURE PAGE**

SUBLESSOR: [LEASING ENTITY], an Arizona \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF ARIZONA            )  
  ) SS:  
COUNTY OF MARICOPA        )

The foregoing Sublease was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the \_\_\_\_\_ of [LEASING ENTITY], an Arizona \_\_\_\_\_, on behalf of said entity.

\_\_\_\_\_ (Seal)

Notary Public

My Commission Expires

\_\_\_\_\_

**Exhibit A  
to  
Sublease**

Effective Date of Sublease:	_____
Name of Sublessee:	_____, a(n) _____
Lease:	By and between [LEASING ENTITY] ("Tenant") and [LANDLORD] (" <u>Landlord</u> ")
Premises:	[Address City, State Zip]
Commencement Date Of Lease:	_____, 20__
Expiration Date of Lease:	_____, 20__
How many option(s) to extend the Lease are remaining and Option Terms:	___ ( ) ___ ( )-year option(s) remaining [or N/A]
Lease Security Deposit currently held by Landlord:	X,XXX.XX - Amount set forth in Lease [verified by] [but not verified] by Landlord [or N/A]
Sublease Security Deposit:	\$X,XXX.XX [or N/A]
Exercise Renewal Option(s) Notice Date to Landlord:	[ <i>IF RENEWAL OPTIONS REMAIN</i> ] No earlier than _____, 20__, no later than _____, 20__ ] <u>OR</u> [ <i>IF NO RENEWAL OPTIONS REMAIN</i> ] As of the Effective Date, no renewal options remain under the Lease. If Sublessee is interested in exploring extending the subtenancy after the Lease expiration date, Sublessee is required to notify Sublessor of its desire to extend the tenancy no earlier than _____, 20__, no later than _____, 20__ .

**Exhibit B  
to  
Sublease**

**LEASE AGREEMENT**

**Exhibit C  
to  
Sublease**

**Lease Verification Checklist**

By initialing below, Sublessee hereby acknowledges reviewing the attached Lease for the Premises, including all amendments and addendums (Exhibit B), and accepts to be bound by all the terms contained therein:

Sublessee acknowledges and agrees to be bound by all of the terms of the Lease, including, but not limited to, the following:

INITIALS:

Current monthly rental payment amounts (Sublessee acknowledges are subject to periodic increases as detailed in the Lease), including CAM, NNN, taxes and related fees

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

Lease term, including any renewal options

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

**Exhibit D  
to  
Sublease**

**GUARANTY OF SUBLEASE**

## GUARANTY OF SUBLEASE

In order to induce BF Acquisition Holdings, LLC ("Franchisor") to enter into that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_ ("Franchise Agreement") with \_\_\_\_\_ ("Franchisee"), and to induce [LEASING ENTITY], an affiliate company of Franchisor ("Sublessor") to enter into that certain sublease ("Sublease") dated \_\_\_\_\_, 20\_\_ with Franchisee, as "Sublessee", covering the Baja Fresh store located at: \_\_\_\_\_, the undersigned ([individually and collectively, ]"Guarantor"), hereby personally guarantees the payment and performance of and agrees to pay and perform as a primary obligor all liabilities, obligations and duties (including, but not limited to, payment of rent) imposed upon Franchisee as Sublessee under the terms of the Sublease, as if Guarantor had executed the Sublease as Sublessee thereunder.

### Recitals

A. Guarantor is a shareholder, partner, member, or other person or entity interested in effecting the grant of the Sublease.

B. Without this Guaranty of Sublease ("Guaranty"), Sublessor cannot be assured that there are sufficient assets to operate the Baja Fresh store or to protect Sublessor in the event of a default by Sublessee.

C. Sublessor is willing to enter into the Sublease only if Guarantor personally guarantees faithful performance of all the terms of the Sublease.

D. Guarantor acknowledges Guarantor received and read the Sublease, and all exhibits thereto, and agrees to be bound to the obligations in this Guaranty with regard to the Sublease.

### Agreement

1. In consideration of the above recitals, Guarantor personally guarantees, for the benefit of Sublessor, its parent, subsidiaries, affiliates and successors and assigns, the prompt and complete performance of all the covenants and conditions contained in the foregoing Sublease.

2. This Guaranty is effective until all terms of the Sublease have been fully and completely performed by Sublessee and shall continue through the entire term of the Sublease as may be renewed or extended. No release of Sublessee or discharge of Sublessee under bankruptcy law, or any other law, shall impair or effect the obligations of Guarantor to Sublessor hereunder.

3. Sublessor is not required to proceed first against the Sublessee, but may proceed first against Guarantor alone or concurrent with proceeding against Sublessee. The obligations of Guarantor hereunder are absolute and unconditional.

4. Sublessee and Sublessor may from time to time alter or modify the Sublease between themselves, possibly changing or increasing the extent of Guarantor's obligation under this Guaranty. Guarantor consents to any and all modifications or amendments of the Sublease related documents, without requiring notice to Guarantor or Guarantor's consent.

5. Guarantor agrees specifically to be bound by any confidentiality requirements in the Sublease.

6. Guarantor waives notice of acceptance of this Guaranty and notice of non-performance or non-payment by Sublessee of any of its obligations or liabilities under the Sublease.

7. Guarantor agrees to pay all attorneys' fees, costs and expenses incurred by Sublessor in enforcing this Guaranty, whether or not suit or action is filed, and if suit or action is filed, then through trial and all appeals, and also in any proceedings or matter in Bankruptcy Court; Guarantor assumes all liability for all



losses, costs, attorney's fees, and expenses that Sublessor incurs as a result of a default by Sublessee, including those fees and expenses incurred in a bankruptcy proceeding involving Sublessee.

8. Guarantor hereby agrees that upon notice of default or upon an uncured default of the Sublease or any other agreement between Guarantor (or a legal entity thereof) and Sublessor or its affiliates, and with no prior notice, Guarantor consents to Sublessor's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Guarantor in order to evaluate as necessary the financial condition of Guarantor as principal, member, manager, franchisee, and/or guarantor in connection with the collection of monetary obligations as contemplated by the Franchise Agreement, the Sublease, this Guaranty, a promissory note, or any other agreements between Guarantor (or a legal entity thereof), and Sublessor or its affiliates. Guarantor hereby knowingly consents to the use of such credit reports consistent with the Federal Fair Credit Reporting Act as contained in 15 U.S.C. § 1681 et seq.

9. This Guaranty is personal to Guarantor and the obligations and duties imposed herein may not be delegated or assigned; provided, however, that this Guaranty shall be binding upon the successors, assigns and personal representatives of Guarantor. This Guaranty shall inure to the benefit of Sublessor, its affiliates, successors and assigns.

10. [The undersigned \_\_\_\_\_][include name(s) here of each of the undersigned who is not married] each represents that he/she is not married as of the date first set forth above.]

11. In the event that any one or more provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Guaranty shall be construed to bind Guarantor to the maximum extent permitted by law that is subsumed within the terms of such provision as though it were separately articulated herein.

12. This Guaranty shall be interpreted and construed under the laws of the State of Arizona, which laws shall prevail in the event of any conflict of law. Any appropriate state or federal court located in Maricopa County, Phoenix, Arizona has exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement and is the proper forum in which to adjudicate the case or controversy, and the parties hereto irrevocably submit to the jurisdiction of any such court. THE PARTIES AGREE THAT ALL DISPUTES ADMITTED TO THE COURT PURSUANT TO THIS SECTION 12 SHALL BE TRIED TO THE COURT SITTING WITHOUT A JURY, NOTWITHSTANDING ANY STATE OR FEDERAL CONSTITUTIONAL OR STATUTORY RIGHTS OR PROVISIONS.

13. If Guarantor consists of two (2) or more persons, then each person will be jointly and severally liable under the provisions of this Guaranty.

14. Guarantor acknowledges (i) that it is a condition to the granting of the Sublease to Sublessee that Guarantor shall execute and deliver this Guaranty to Sublessor, (ii) that Sublessor has entered into the Sublease in reliance upon the agreement of Guarantor to do so, and (iii) that, as owners of the Sublessee, if applicable, Guarantor has received adequate consideration to support its execution of this Guaranty. This Guaranty does not grant or create in the undersigned any interests, rights or privileges in any franchise or the Franchise Agreement.

GUARANTOR:

\_\_\_\_\_  
[Name], an individual

\_\_\_\_\_  
[Name], an individual



**EXHIBIT P**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Pre-Authorized Electronic Funds Transfer Form**

## ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION

### FRANCHISEE INFORMATION

Franchisee Name	Store No.	Franchisee Phone No.
Franchisee Mailing Address (street, city, state, zip)		
Contact Name, Address and Phone number (if different than above)		
Employer Identification Number (if applicable)	Principal's Name and Social Security Number	

### BANK ACCOUNT INFORMATION

Bank Name	Bank Account Number	Bank Routing Number [:           ]: 9 Characters
Bank Mailing Address (street, city, state, zip)		
Bank Phone Number		

### PAYMENT AUTHORIZATION

Franchisee hereby authorizes BF Acquisition Holdings, LLC, its affiliates or agents ("Payee"), to initiate withdrawals from the Bank Account indicated on this form, and hereby authorizes the Bank to honor and debit the Bank Account for electronic funds transfers or drafts drawn on the Bank Account and payable to Payee. The amount of such charge shall be set forth in a notice from the Payee presented to the Bank on the day(s) of the week set forth in Franchisee's franchise agreement, promissory note and security agreement, gift card participation agreement (or similar agreement for the gift card program), and any other agreement Franchisee signs that authorizes Payee, its affiliate or agent to debit Franchisee's account for the fees, which may be modified by BF Acquisition Holdings, LLC, its affiliates or agents, for the payment of royalty fees, advertising fees, POS support fees, gift card and e-gifting program fees and funds flow, and any other fees, charges and other amounts payable to Payee, its affiliates or agents for any services Payee, its affiliates or agents provide or facilitate. Franchisee agrees to execute such additional documents as may be reasonably requested by Payee or the Bank to evidence the interest of this EFT Authorization. This authority shall remain in full force and effect until Payee has received written notification from Franchisee in such time and manner as to afford Payee and the Bank to act on such notice. Franchisee understands that the termination of this authorization does not relieve Franchisee of its obligations to make payments to Payee. Payee may assign its rights and obligations under this EFT Authorization to Payee's affiliates or agents. Payee may change its designated affiliates or agents at Payee's discretion.

Signature:	Date:
------------	-------

**NOTE: FRANCHISEE MUST ATTACH A VOIDED OR COMPLETED CHECK RELATING TO THE BANK ACCOUNT.**

**ATTACH VOIDED OR COMPLETED CHECK HERE**

# ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION

## Voided Check Requirements

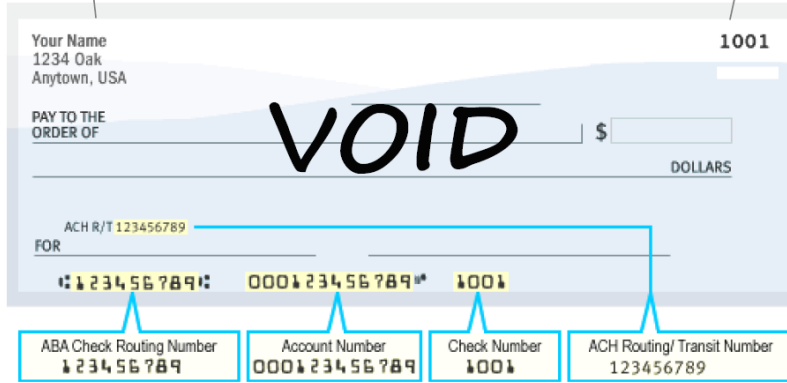
Starter checks may not be used.

### DBA or Legal Name

The DBA name or legal name of the business must be preprinted, included on the check and match the merchant account.

### Check Number

Check number must be present on the top right and bottom of the check.



## Bank Letter Requirements

### Bank Letter Requirements

#### DBA or Legal Name

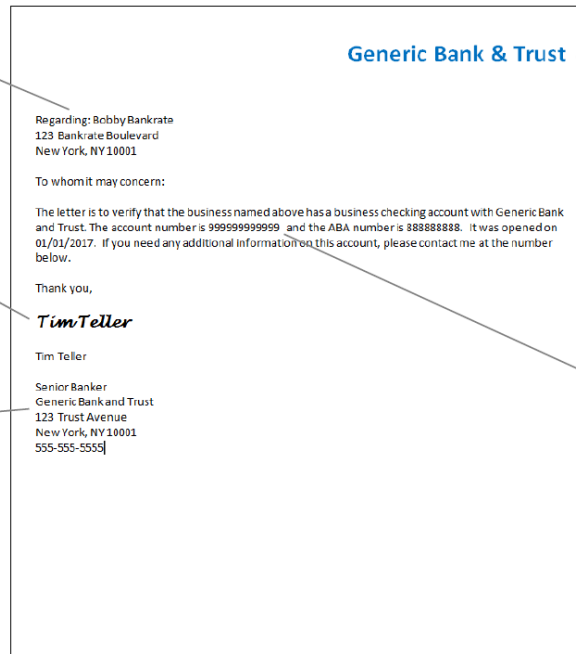
The DBA name or legal name of the business must be included on the letter and match the merchant account.

#### Banker Signature

The banker must sign the letter.

#### Contact Information

The bank officer name and phone number should be included in the letter.



#### Bank Letterhead

The letter must be printed on official bank letterhead.

#### Routing & Account #

Ensure complete ABA (routing #) and DDA (account #) is included.

**EXHIBIT P-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Gift Card Participation Agreement**



## Gift Card Enrollment Packet

Please use the overview and instructions on the following pages as a reference for completing the Baja Fresh® Gift Card enrollment packet. If you have any questions about completing these forms please contact your Franchise Director of Operations.

SECTION A: PROGRAM OVERVIEW ..... 2-3

SECTION B: ENROLLMENT INSTRUCTIONS ..... 4

    Givex Participation Agreement Instructions..... 4-5

    EFT Authorization Form Instructions..... 5

SECTION C: FORMS ..... 6

    Givex Participation Agreement ..... 6-9

    EFT Authorization ..... 10

Choice/Happy Card Program.....11

\*\*\*\*\*

**Return a completed and signed original of the Participation Agreement, EFT Authorization Form, Happy/Choice Card Form and voided check with the store opening documents to Kahala at the following address:**

Kahala Management, LLC  
Kahala Gift Card Program Manager  
9311 E. Via de Ventura  
Scottsdale, AZ 85258

### Questions regarding gift transactions? Please contact:

Joni Haycock at Kahala: [jhaycock@kahalamgmt.com](mailto:jhaycock@kahalamgmt.com)

Givex Client Services: (800) 962-4935. The Client Services phone line is staffed 24/7.

Details are subject to change anytime without notification. Please contact your Franchise Director of Operations to ensure you have the most up-to-date information.

## Section A: Program Overview

A gift card is an alternate payment mechanism customers can use to purchase products in your restaurant. Customers can load gift cards with a value to use for personal use or to give to someone as a gift. A gift card provides endless choices for the cardholder to decide which items to purchase in your restaurant. Each time the card is used in a Baja Fresh restaurant, the purchase amount is deducted from the total value of the card in real-time. Gift cards help encourage brand loyalty, help increase the overall customer base and help bring additional revenue to your restaurant.

### PROGRAM STRUCTURE

A stored value card, also known as a “gift card,” is a prepaid card that allows spending up to the value loaded onto the card. A stored value card provides endless choices as the cardholder can decide which items they want.

### BENEFITS TO FRANCHISEES

Why offer your customers the option to purchase gift cards?

More and more consumers prefer the convenience of gift cards and expect the brands that they frequent to have them. One study found that 44% of consumers visit a store they would not have visited otherwise because of a gift card, and 53% are likely to visit a store more often as the result of receiving one.

Gift cards aren't just about giving gifts anymore – More than 50% of people buy gift cards for self-use.

On average, gift card recipients will spend 20% more than the value of their gift card and 75% of those who overspend spend a whopping 60% more than the card's value. Stored value/gift cards put the Baja Fresh brand into consumer's wallets and creates loyalty through convenience.

### BENEFITS TO THE CONSUMER

- Allows the consumer to determine what value to load onto the card.
- Does not require consumers to have a bank account or a credit card.
- Amount on the card can be loaded either by cash or by credit while in-store.
- Can be re-loaded and reused, and given as a gift.

### PROGRAM COSTS

- In-store: 0% discount at redemption
- Costco®: 30% discount at redemption
- Bulk/Non-profit Cards: 20% discount at redemption
- InComm/ Blackhawk Network: 11% discount at redemption
  - For example: Walmart®, Safeway®, Target®, Chase® Reward, etc.
- Choice/Happy Cards: Western Region Multi-brand Stored Value Payment Cards - offered through Blackhawk Network/ run as Visa® card in store.



- Stores will pay 5% at redemption
- Store will also be responsible for their usual Visa fees
- Attached information for the Choice/Happy Cards needs to be filled out and sent in prior to store opening – see the last page for the Choice/Happy Card Program Form
- No Kid Hungry Gift Cards (2015/2016): 20% discount at redemption

## Section B: Enrollment Instructions

### PARTICIPATION AGREEMENT – INSTRUCTIONS FOR COMPLETION

#### Participation Agreement - Page 1

##### Participant Information:

Legal Name: Name of the Participating Franchisee  
Trade Names: Enter the legal entity name of the store  
On Remaining Lines: Enter street address, city, state and zip code of the store, along with the store's telephone number and fax

##### Contact Information

Lead Contact: Name, phone and email  
Secondary Contact: Name, phone and email – as needed  
Technical Contact: POS Team contact or leave blank  
Financial Contact: Finance Team contact leave blank

##### Merchant Information

Merchant Name:  
Contact: Baja Fresh, phone and email – this is who to contact

Participant Initials: Initial bottom right

#### Participation Agreement - Page 2

Participant Initials: Initial bottom right

#### Participation Agreement - Page 3

Sign your name and title under "PARTICIPANT"  
Print name and Title below signature

Participant Initials: Initial bottom right

#### Participation Agreement - Page 4

Schedule A – Direct Debit and Credit Request Form

#### Direct Debit/Direct Credit Request

Participant Name:

##### Account Details

Financial Institution Name:  
Financial Institution Address:  
Participant Account Name (to be debited):  
Transit/Branch Number:

Participant Account Number:

Acknowledgement

First Authorized Signatory:

Signature:

Title:

Full Name:

Second Authorized Signatory: - *If this is a joint banking account, all account owners must sign.*

Signature:

Title:

Full Name:

Participant Initials:      Initial bottom right

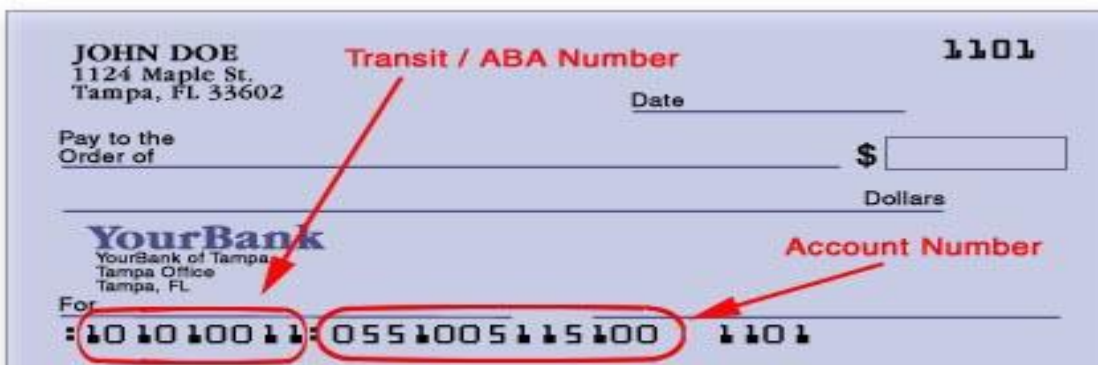
**Return a completed and signed original of the Participation Agreement, EFT Authorization Form, and voided check to Kahala with the store opening documents.**

### EFT Authorization Form – Instructions for Completion

Step 1:            Please fill out all requested information on the EFT Authorization form. Include Store #(s), address, phone, and bank information (see image below).

Step 2:            Sign and print your name. Print your Title. Write in the date.

Step 3:            Attach a voided check to the bottom of the form with the word “**Void**” written across the middle of the check.





# USA PARTICIPATION AGREEMENT

## Participant Information

Legal Name (herein referred to as the "Participant"): \_\_\_\_\_

Trade Name(s): \_\_\_\_\_

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

City, State and Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

## Contact Information

Lead Contact Name, Phone and Email: \_\_\_\_\_

Secondary Contact Name, Phone and Email: \_\_\_\_\_

Technical Contact Name, Phone and Email: \_\_\_\_\_

Financial Contact Name, Phone and Email: \_\_\_\_\_

## Merchant Information

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

Contact Name, Phone and Email: \_\_\_\_\_

In this Agreement, "Givex" shall mean Givex USA Corporation and "Participant" shall mean the above-mentioned Participant, an authorized franchisee, licensee or affiliate of the above-mentioned Merchant. Givex and Participant shall be collectively referred to as the "Parties" or "parties". For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Givex and Participant agree to be legally bound by the terms and conditions set forth in this Agreement.

### 1. MERCHANT PROGRAM

1.1 Merchant Program. Merchant has established a program for the sale and processing of gift and/or loyalty cards at its participating locations (the "Merchant Program"). Pursuant to a written agreement between Merchant and Givex (the "Merchant Agreement"), Givex has agreed to perform the transaction processing and settlement services for the Merchant Program (the "Givex Services").

1.2 Participation. Participant has elected to participate in the Merchant Program, as described in the Merchant Agreement and any work orders entered into by Merchant and Givex from time to time (the "Work Orders"). Participant further agrees to participate in the Merchant Program for lawful purposes. Participant shall be solely responsible for complying with all applicable laws and regulations in its jurisdiction. Participant shall be bound by the terms and conditions of the Merchant Agreement applicable to Participant, as well as the policies and procedures established by Merchant and Givex from time to time.

1.3 Debit and Credit Authorization. Participant agrees to maintain a bank account at a chartered bank or financial institution in the United States of America (the "Participant Account") and to enable the settlement of gift card transactions in connection with the Merchant Program. Participant agrees to execute the Direct Debit and Credit Request form attached as Schedule A hereto (the "Request Form") and to return same to Givex. If Participant does not execute and return a copy of the Request Form to Givex, Givex shall have no further obligations to Participant hereunder, notwithstanding the parties' separate obligations to Merchant. Participant agrees and acknowledges that Givex is authorized to debit, credit or otherwise transfer funds from the Participant Account to settle all transactions in connection with the Merchant Program.



## USA PARTICIPATION AGREEMENT

**1.4 Bank Account and Settlement Charges.** Participant agrees to reimburse Givex for all bank charges incurred as a result of errors occurring during the settlement of gift card transactions, unless such bank charges result from errors made by Givex. For greater certainty, Participant shall reimburse Givex for all bank charges resulting from incorrect banking information, insufficient funds, recalled, rejected or incomplete direct debit transactions, invalid transaction type codes, inactive service, late processing fees, and duplicate files provided by Participant. Participant acknowledges that Givex shall be permitted to debit and credit the Participant Account in order to settle reversing entries. Givex shall apply an administration fee of US\$25.00 for each reversing entry not resulting from an error made by Givex. If Participant does not cure the error or default within fifteen (15) days after written notice thereof has been given by Givex, Givex shall have no further obligations to Participant hereunder, notwithstanding the parties' separate obligations to the Merchant.

**1.5 Equipment and Communication Lines.** Participant understands that the delivery and operation of the Givex Services is dependent upon Participant ensuring that its designated locations(s) will connect to the Givex Services through ADSL, frame relay or any other suitable connection as determined by Givex. Participant shall install, operate and maintain, at its sole expense, all point-of-sale systems, terminals, computers, connections, hardware and software necessary for participating in the Costa Program and using the Givex Services

**1.6 Exclusivity.** Participant agrees to use Givex exclusively for the processing and settlement of gift and/or loyalty card transactions at its designated locations in connection with the Merchant Program.

### 2. GIVEX SERVICES

**2.1 Givex Services.** Givex shall perform the Givex Services in a professional and workmanlike manner, consistent with generally accepted standards in the gift and loyalty card industry.

**2.2 Reports.** Givex will force close all gift and loyalty card transactions daily for the purpose of generating settlement reports for the Merchant Program. A settlement reports showing all gift card transactions processed in a calendar day from midnight to midnight will be made available to the Participant on a reporting website maintained by Givex, unless otherwise agreed by Givex and Merchant in writing.

### 3. TERM AND TERMINATION

**3.1 Term and Termination.** This Agreement shall commence on the date hereof and shall continue during the currency of the Merchant Agreement for so long as Participant remains an authorized franchisee, licensee or affiliate of Merchant. Participant's participation in the Merchant Program shall commence on a date to be mutually agreed upon by Merchant and Givex. Participant and Givex shall have the rights of termination available to the parties, as applicable, under the Merchant Agreement.

### 4. GENERAL

**4.1 Notice.** Unless otherwise specified, all notices required to be given under this Agreement shall be made in writing, by registered mail or facsimile, and shall be addressed as follows:

(a) in the case of Givex, to Givex USA Corporation, 991 Soaring Drive, Marietta, Georgia, USA 30062. Attention: President. Email: admin@givex.com. Fax: (416)350-9661.

(b) in the case of Participant, to the address or fax number set forth in this Agreement, Attention: President.

**4.2 Assignment.** This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

**4.3 Restriction on Damages.** GIVEX SHALL NOT BE LIABLE TO PARTICIPANT OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES RESULTING FROM THE PERFORMANCE OF THE GIVEX SERVICES OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF GIVEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

**4.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to any conflict of law rules.



## USA PARTICIPATION AGREEMENT

**4.5 Entire Agreement.** This Agreement, together with the applicable provisions of the Merchant Agreement, constitutes the entire agreement of the parties with the respect to the subject matter hereof. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

**4.6 Counterparts and Electronic Signatures.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of the Agreement may be executed and delivered by facsimile or other electronic means, and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

### ACCEPTANCE

IN WITNESS WHEREOF, the Parties, hereby represented by their respective duly authorized legal representatives, have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

GIVEX USA CORPORATION

PARTICIPANT

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

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



# USA PARTICIPATION AGREEMENT

## SCHEDULE A - DIRECT DEBIT AND CREDIT REQUEST FORM

### Direct Debit/Direct Credit Request

Participant Name:

Participant agrees to provide Givex USA Corporation with its banking information in order to facilitate the settlement services and billing obligations set forth in the USA Participation Agreement. By signing this Authorization, Participant authorizes and requests Givex USA Corporation, as the facilitator of the Participant, to arrange funds to be debited from and credited to the bank account at the financial institution identified below. Participant further authorizes Givex, at its facilitator, to arrange funds to be debited from the bank account for the Service Fees, if any, owing to Givex USA Corporation for the Givex Services.

### Account Details

Financial Institution Name:

Financial Institution Address:

Participant Account Name  
(to be debited):

Transit/Branch Number:

Participant Account Number:

### Acknowledgement

Your signature below acknowledges that you have read, understood and accepted the terms and conditions governing the debit and credit arrangements as set out in this form and the USA Participation Agreement, and confirms that the banking information set forth in this form has been checked and is correct. In the case of a joint financial institution account, this form must be signed by all owners of the financial institution account. In the case of companies, this form must be signed by at least one authorized signatory of the Participant.

#### First Authorized Signatory:

Signature:

Title:

Full Name:

Date:

#### Second Authorized Signatory:

Signature:

Title:

Full Name:

Date:



# EFT AUTHORIZATION FORM

## Electronic Funds Transfer (EFT) Authorization

FRANCHISEE INFORMATION		
Franchisee Name	Store No.	Franchisee Phone No.
Franchisee Mailing Address (street, city, state, zip)		
Contact Name, Address and Phone number (if different than above)		
Employer Identification Number (if applicable)	Principal's Name and Social Security Number	

BANK ACCOUNT INFORMATION		
Bank Name	Bank Account Number	Bank Routing Number [:           ]: 9 Characters
Bank Mailing Address (street, city, state, zip)		
Bank Phone Number:		

PAYMENT AUTHORIZATION
Franchisee hereby authorizes Kahala Franchising, L.L.C. (the "Payee"), to initiate withdrawals from the Bank Account indicated on this form, and hereby authorizes the Bank to honor and charge the Bank Account for electronic funds transfers or drafts drawn on the Bank Account and payable to Payee. The amount of such charge shall be set forth in a notice from the Payee presented to the Bank on the day(s) of the week set forth in your franchise agreement, gift card participation agreement (or similar agreement for the gift card program), and any other agreement you sign that authorizes us or our affiliate to debit your account for the fees, which may be modified by Kahala Franchising, L.L.C. or its affiliates, for the payment of royalty fees, advertising fees, POS support fees, gift card and e-gifting program fees and funds flow, and any other fees, charges and debits payable to us or our affiliates for any services we provide or facilitate. The Franchisee agrees to execute such additional documents as may be reasonably requested by the Payee or the Bank to evidence the interest of this EFT Authorization. This authority shall remain in full force and effect until the Payee has received written notification from the Franchisee in such time and manner as to afford the Payee and the Bank to act on such notice. The Franchisee understands that the termination of this authorization does not relieve the Franchisee of its obligations to make payments to the Payee. Payee may assign its rights and obligations under this EFT Authorization to Payee's affiliates or agents. Payee may change its designated affiliates or agents at Payee's discretion.

Signature:	Date:
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NOTE: FRANCHISEE MUST ATTACH A VOIDED OR COMPLETED CHECK RELATING TO THE BANK ACCOUNT.

<b>ATTACH VOIDED OR COMPLETED CHECK HERE</b>
--



## HAPPY/CHOICE CARD PROGRAM FORM

Happy/Choice Cards are plastic payment cards that represent a collection of brands, distributed by Blackhawk in national grocery chains and big box stores. Happy/Choice Cards give customers—with a single card—more options and flexibility with no fees. Customers present the Happy/Choice Card at time of payment, and **cards are run like a Credit Card.**

To help ensure that these cards can be redeemed at your location, please complete the information below. Cards will not work at your location without providing this information.

### STORE INFORMATION

BRAND \_\_\_\_\_

STORE NUMBER \_\_\_\_\_

STORE ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_

STATE & ZIP \_\_\_\_\_

### BILLING DETAILS

The MID is a unique number assigned to you, the merchant, by your acquirer (bank or other financial institution) to identify the merchant during the transaction process. Please contact your bank/acquirer to obtain your MID(s) - make sure to ask for your "authorization and settle MIDs for Debit or Credit transactions". You can find it on the monthly statement from your bank or acquirer. There is no "standard" format of Visa/MasterCard MIDs – the only restriction is that they CAN NOT be more than 15 digits; some are as short as 8 digits. **Note: This number is different than your account number.**

Acquirer/Bank Debit & Credit Card Processing: \_\_\_\_\_

AUTHORIZATION MID\* \_\_\_\_\_

SETTLEMENT MID\* \_\_\_\_\_

**EXHIBIT Q**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**General Release for Renewal of Franchise Agreement**

**GENERAL RELEASE  
FOR RENEWAL OF FRANCHISE AGREEMENT**

(General Release)

\_\_\_\_\_, a(n) \_\_\_\_\_ (Franchisee) and each of its current, past and future predecessors, successors and assigns, and each of its and the foregoing entities' respective parents, subsidiaries, shareholders, members, managers, owners, partners, directors, officers, employees, representatives, agents, successors, assigns, guarantors, insurers, spouses, heirs, executors, trustees and estates, if any, of any and all such entities (collectively with Franchisee, "Franchisee Parties"), hereby irrevocably and unconditionally release, remise and forever discharge BF Acquisition Holdings, LLC, a Delaware limited liability company ("Franchisor") and each of its current, past and future predecessors, successors and assigns, and of its and the foregoing entities respective parents, subsidiaries, shareholders, members, managers, owners, partners, directors, officers, employees, representatives, agents, successors, assigns, guarantors, insurers, spouses, heirs, executors, trustees, and estates, if any, of any and all such entities (collectively with Franchisor "Franchisor Parties"), from any and all claims, demands, causes of action suits, debts, duties, accounts, covenants, contracts, agreements, promises, damages, judgments, taxes, liabilities and obligations, both contingent and fixed, known and unknown, now existing or hereafter, of every kind and nature whatsoever, in law or equity, or otherwise, under local state, or federal law including, without limitation the Americans with Disabilities Act ("ADA"), or the law of any other applicable jurisdiction, that any of the Franchisee Parties have against any of the Franchisor Parties, including, without limitation, those arising from, in connection with or relating to: (i) the Franchise Agreement dated \_\_\_\_\_, 20\_\_ (including any amendments or modifications thereto) for *Baja Fresh* Store No. \_\_\_\_\_ ("Store"); (ii) the operation, leasing or subleasing of the Store; and (iii) the offering and sale of the franchise for the Store; arising from an act, omission, conduct or activity occurring before and including the date hereof.

It is understood by Franchisee that if the facts or law with respect to the foregoing release hereafter turn out to be different from the facts or law known to be or believed by Franchisee to be true at the time of the date hereof, then Franchisee expressly assumes the risk of the facts or law turning out to be so different, and agrees that the foregoing release shall be in all respects effective and not subject to termination or rescission, in whole or in part, based upon such differences.

**[SIGNATURE PAGE FOLLOWS]**

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

**FRANCHISEE**

\_\_\_\_\_, a(n) \_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

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

My commission expires: \_\_\_\_\_

Notary Public Seal

**EXHIBIT R-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Consent to Transfer and Release Agreement without Sublease**

## CONSENT TO TRANSFER AND RELEASE AGREEMENT

(Store #; City, State)

This CONSENT TO TRANSFER AND RELEASE AGREEMENT ("Agreement") is entered into on \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignee"), and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company [, as ultimate assignee of \_\_\_\_\_] ("Franchisor"). All capitalized terms not defined expressly in this Agreement shall have the meaning assigned to such terms in the Franchise Agreement (as defined in Recital A. below).

### Recitals

A. Franchisor and Assignor are parties to a Franchise Agreement dated \_\_\_\_\_, 20\_\_ [ , as amended], ("collectively the ]Franchise Agreement") for the *Baja Fresh* restaurant located at \_\_\_\_\_ ("Store"). The Brand franchise located at the address listed in the foregoing sentence will hereinafter be referred to as the "Franchised Business"

B. Assignor desires to assign the Franchised Business to Assignee, and Assignee desires to accept the assignment. [Assignor and Assignee hereby represent and warrant to Franchisor that the assignment of the Franchised Business is supported by a purchase agreement entered into by Assignor and Assignee and hereby agree that, consistent with their indemnification obligations provided for below, they have sole responsibility for any disputes related to the accuracy and content of such purchase agreement].

C. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor hereby agrees that Assignor is the responsible franchisee under the Franchise Agreement from \_\_\_\_\_, 20\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible franchisee under the Franchise Agreement as of and after the Effective Date and continuing through the Term of the Franchise Agreement[, as amended by the [First] Amendment to Franchise Agreement].

D. [FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA] Assignee and Assignor each acknowledges that upon assignment, Assignee must execute Franchisor's current form of franchise agreement, which includes its current royalty fees and advertising contributions that may be greater than the amount of such corresponding fees in Assignor's Franchise Agreement. The Franchise Agreement shall be deemed expired as of and after the effective date of Assignee's current form of franchise agreement executed concurrently with this Agreement.

[OR FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignee acknowledges receipt of a copy of the Franchise Agreement from Assignor.

E. Franchisor agrees to consent to the assignment of the Franchised Business from Assignor to Assignee, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms contained in this Agreement, the parties agree as follows:

### Agreement

1. The foregoing Recitals are hereby incorporated in and made a part of this Agreement.

2. Pursuant to the terms and conditions of the Franchise Agreement, Assignor requested Franchisor's prior written consent to assign the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] from Assignor to Assignee. Franchisor hereby consents to the transfer of the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

3. Assignor agrees to transfer the Franchised Business [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*: and Franchise Agreement] to Assignee pursuant to the transfer provisions in Assignor's Franchise Agreement, and Assignee accepts the transfer of the Franchised Business pursuant to the transfer provisions in Assignor's Franchise Agreement, including, but not limited to, the payment of the applicable transfer fees.

4. [*FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignor and Assignee agree that, pursuant to the terms of the Franchise Agreement, Assignee is required to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto prior to the closing of the transfer of the Franchised Business. Franchisor hereby waives Assignee's obligation to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto as required by the terms of the Franchise Agreement for this transfer only. Assignor hereby acknowledges and agrees that Franchisor's waiver of Assignor's obligations under the terms of the Franchise Agreement is not a permanent waiver and that Franchisor, its assigns and their respective affiliates hereby reserve the right to require Assignor, Assignee or their respective affiliates, authorized assignees or principals to sign Franchisor's then-current form of franchise agreement and all exhibits attached thereto in connection with other transfers that may be requested by and between the parties.

5. Subject to Section 13 below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Franchise Agreement until the date immediately preceding the Effective Date.

6. [*FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA*] Assignee hereby agrees to execute Franchisor's current form of franchise agreement with Franchisor, and to be bound by the terms and conditions set forth in the current form of franchise agreement.

[OR] *FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER*] Assignee hereby agrees to be bound by the terms and conditions set forth in the Franchise Agreement.

7. [*USE WHEN BUYER IS PAYING THE TRANSFER [FRANCHISE] FEE*] Pursuant to the terms of the Franchise Agreement, Franchisor is owed a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00). Assignor, Assignee and Franchisor hereby agree that the Transfer [Franchise] Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the Transfer [Franchise] Fee if Assignee fails to pay the Transfer [Franchise] Fee in full.

[OR] *USE WHEN SELLER IS PAYING THE TRANSFER [FRANCHISE] FEE*] Pursuant to the terms of the Franchise Agreement, Franchisor is owed, contemporaneous with the execution of this Agreement, a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00).

8. [*USE IF BUYER IS PAYING THE [TRANSFER] TRAINING FEE*] Pursuant to the terms of the Franchise Agreement, Franchisor is owed a [Transfer] Training Fee in the amount of

\_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00). Assignor, Assignee and Franchisor hereby agree that the [Transfer] Training Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the [Transfer] Training Fee if Assignee fails to pay the [Transfer] Training Fee in full.

[OR USE IF SELLER IS PAYING THE [TRANSFER] TRAINING FEE] Pursuant to the terms of the Franchise Agreement, Franchisor is owed, contemporaneous with the execution of this Agreement, a [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00).

9. Assignor agrees to cure any and all monetary defaults due and payable under their phone service agreement, complete and sign a letter of agency, letter of authorization or equivalent form, and provide the form to Assignee at least one week prior to the transfer of the Franchised Business to allow Assignee to retain the telephone number of the Franchised Business.

10. Assignee agrees to provide the letter of agency, letter of authorization or equivalent form to their phone service provider in an effort to retain the telephone number of the Franchised Business.

11. Assignor agrees to cure any and all defaults and/or debts of any monetary consideration due and payable to Franchisor (or its affiliates) prior to the execution of this Agreement, including, without limitation, any past due and current royalties and advertising contributions under the Franchise Agreement through the date immediately preceding the Effective Date, along with any accruing interest, late fees or other penalties as allowed under the Franchise Agreement and/or applicable law. Notwithstanding the foregoing, in the event Assignor fails to cure any and all defaults and/or fully satisfy any debts as required, Franchisor has the sole and absolute discretion to move forward with the transfer as contemplated by this Agreement but without waiving any amounts due and owing to Franchisor and/or its affiliates and reserves all rights to pursue such defaults and debts and charges against Assignor at a later time.

12. Assignor represents and warrants that it has not failed to disclose to Franchisor any information, which, if known by Franchisor, might provide grounds for Franchisor to reasonably withhold its consent to this Agreement, and that Assignor has disclosed all of the terms of the transfer to Franchisor.

13. Assignor ratifies and reaffirms any and all provisions and/or agreements with Franchisor intended to survive the assignment and/or termination of the Franchise Agreement and agrees to remain bound by them, including but not limited to any provisions pertaining to confidential information and covenant against competition.

14. Assignor agrees that it has no rights in any of the trademarks, trade names, or service marks of Franchisor, except in connection with other *Baja Fresh* franchises owned by Assignor, if any. Assignor also stipulates that such trademarks, trade names, service marks and the like are the sole property of Franchisor and that Assignor has no rights in them, except as authorized by Franchisor in connection with other *Baja Fresh* franchises owned by Assignor, if any. Assignor quitclaims to Franchisor any rights in any trademarks, trade names, and service marks of Franchisor, in the event Assignor has any such rights, except those rights acquired through other *Baja Fresh* franchises authorized by Franchisor and owned by Assignor, if any.

15. Assignee acknowledges that Franchisor has not made any express or implied verbal or written representations or promises whatsoever that:



- a. future assignments will be approved;
- b. Assignee will have financial success operating the Franchised Business;
- c. the consideration, if any, paid for the Franchised Business represents the true value of the Franchised Business; or
- d. Assignor is not in default under the terms of the Franchise Agreement.

16. Assignee acknowledges that Franchisor has made no representations whatsoever concerning the value of the Franchised Business.

17. All notices required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx® or UPS®, or by U.S. Mail, sent certified or registered mail, return receipt requested to the address set forth below, which address may be amended from time to time pursuant to the terms of this Section. Notices provided under this Section shall be deemed received upon personal delivery or delivery by courier and within three (3) days after deposit in the U.S. Mail. You have an obligation to promptly notify us pursuant to this Section whenever your mailing address, phone number or facsimile number change. Notices shall be provided to the parties at the address specified below:

If to Assignee:                    [Name]  
    [Attn:]  
    [Address]  
    [City, State, Zip]  
    Telephone Number:  
    Facsimile Number:

If to Assignor:                    [Name]  
    [Attn:]  
    [Address]  
    [City, State, Zip]  
    Telephone Number:  
    Facsimile Number:

If to Franchisor:                BF ACQUISITION HOLDINGS, LLC  
    Attn: Legal Department  
    9311 E Via de Ventura  
    Scottsdale, Arizona 85258  
    Telephone Number: (480) 362-4800  
    Facsimile Number: (480) 362-4819

18. Franchisor hereby consents to the transfer of the Franchised Business to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

19. Assignor and Assignee understand the Effective Date is the closing date indicated on the escrow statement/closing statement.

20. IN CONSIDERATION OF FRANCHISOR'S AGREEMENTS SET FORTH IN THIS AGREEMENT, ASSIGNOR REPRESENTS THAT FRANCHISOR HAS NOT FAILED TO PERFORM, AND IS NOT IN ANY RESPECT IN DEFAULT IN THE PERFORMANCE OF, ANY OF

ITS OBLIGATIONS UNDER THE FRANCHISE AGREEMENT, AND ASSIGNOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH ASSIGNOR, "ASSIGNOR AFFILIATES") HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE FRANCHISOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH FRANCHISOR, "FRANCHISOR AFFILIATES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE ASSIGNOR AFFILIATES HAVE AGAINST ANY OF THE FRANCHISOR AFFILIATES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE FRANCHISEE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION OF THE FRANCHISED BUSINESS, INCLUDING ANY LEASING OR SUBLEASING RELATED THERETO; AND (III) THE OFFERING AND SALE OF THE FRANCHISED BUSINESS; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE EFFECTIVE DATE.

IT IS UNDERSTOOD BY ASSIGNOR THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY ASSIGNOR TO BE TRUE AT THE TIME OF THE DATE HEREOF, THEN ASSIGNOR EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION IN WHOLE OR IN PART BASED UPON SUCH DIFFERENCES.

21. Assignor and Assignee hereby agree to protect, defend and indemnify each of the Franchisor Affiliates and hold them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including, without limitation, attorney's fees, court costs, expert witness fees and costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of (i) this Agreement, (ii) the Franchise Agreement, (iii) any transfer of the Franchised Business by Assignee or Assignor, (iv) acts or omissions of Assignee and/or Assignor which are not in strict compliance with this Agreement, the Franchise Agreement, and/or the Operations Manual in respect of use or display of the Proprietary Marks, or (v) acts or omissions of Assignee and/or Assignor which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Franchisor Affiliates, at their sole discretion, may hire legal counsel to defend any actions brought against any Franchisor Affiliates which arise out of Assignor's obligations under all agreements entered into between Assignor and any of the Franchisor Affiliates, including, without limitation, this Agreement, and Assignee's obligations herein. Assignor and Assignee hereby agree to pay any and all

attorneys' fees, expert costs, and any other fees and costs incurred by Franchisor Affiliates to said selected counsel upon the request of Franchisor Affiliates. Assignor and Assignee will, if requested by any Franchisor Affiliates, defend any suits at the sole cost and expense of Assignor and Assignee. Assignor and Assignee hereby agree to defend said suits with the use of attorneys requested by Franchisor Affiliates. For purposes of this provision, requests shall be made pursuant to the notice provisions set forth in this Agreement. Notwithstanding the other provisions of this Section to the contrary, if any, except as otherwise specified in this Agreement, Assignor shall not be responsible for any of the acts or omissions of Assignee after the Effective Date.

22. Assignor agrees for itself and its successors and assigns that it will not disparage, denigrate or, defame the Franchisor Affiliates, or any of their business dealings, financial condition, pending litigation and arbitrations, officers, directors, employees, agents, representatives or attorneys, either publicly or privately, by any means whatsoever (including electronic means) (collectively, "Non Disparagement Provision"). In the event such a communication is made to anyone, including, but not limited to, third party legal counsel adverse to Franchisor Affiliates in any fashion, former employees of Franchisor Affiliates, former shareholders of Franchisor Affiliates, current or former vendors, franchisees, licensees, or area representatives of Franchisor Affiliates' quick service restaurant brands, media government agencies, public interest groups, and publishing companies, it will be considered a material breach of the terms of this Agreement and Franchisor Affiliates shall be entitled to bring a legal action for appropriate equitable relief as well as damages. In addition to any other rights or remedies available at law, in equity, or by statute, Assignor consents to the specific enforcement of this Non Disparagement Provision through an injunction or restraining order issued by an appropriate court, without the requirement of posting a bond. Notwithstanding the above, nothing in this provision shall prevent or prohibit Assignor from testifying in any legal proceeding, including a deposition, hearing or trial, from cooperating in good faith in any governmental investigation or action, or from making any report required by law.

23. Each individual executing this Agreement on behalf of a partnership, limited liability company or corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the partnership, limited liability company, or corporation, and agrees to deliver evidence of his or her authority to Franchisor upon request by Franchisor.

24. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. If the provision found to be unenforceable was material to this Agreement, the parties agree to promptly negotiate the terms of a substitute provision to replace the severed provision consistent with the then-current law and the parties' original intent.

25. This Agreement shall be construed under and according to the laws of the State of Arizona, without regard to conflict of laws principles.

26. ANY AND ALL COURT PROCEEDINGS ARISING FROM THIS AGREEMENT SHALL BE BROUGHT IN, AND ONLY IN, A COURT OF COMPETENT JURISDICTION LOCATED IN MARICOPA COUNTY, ARIZONA. THE PARTIES CONSENT TO THE EXERCISE OF SUBJECT MATTER AND PERSONAL JURISDICTION BY SUCH COURTS AND HEREBY WAIVE ANY OBJECTIONS OR DEFENSE THERETO.

27. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature.

28. No amendment, addendum, modification, supplement or waiver of this Agreement or any of its provisions shall be binding on the parties unless made in writing and duly executed by an authorized representative of Franchisor and Assignor and Assignee. A failure of any party to enforce at any time any of the provisions of this Agreement or to require at any time performance by another party or any provision of this Agreement, shall in no way be construed as a continuing waiver of those provisions or of any other rights under this Agreement.

29. Except as otherwise specified in this Agreement, this Agreement shall not be construed in any way as modifying, waiving, or affecting any of the terms, covenants, conditions, or agreements contained in the Franchise Agreement executed by Assignor, or the current form of franchise agreement to be executed by Assignee.

30. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each party hereto has executed this Agreement by and through its duly authorized representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, as of the Effective Date of this Agreement.

**ASSIGNOR:**

**ASSIGNEE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT R-2**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Consent to Transfer and Release Agreement with Sublease**

## CONSENT TO TRANSFER AND RELEASE AGREEMENT

(Store #; City, State)

This CONSENT TO TRANSFER AND RELEASE AGREEMENT ("Agreement") is entered into on \_\_\_\_\_ ("Effective Date") by and between \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignor"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Assignee"), and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company[, as ultimate assignee of \_\_\_\_\_] ("Franchisor") and \_\_\_\_\_, a(n) \_\_\_\_\_ ("Sublessor") (Franchisor and Sublessor may collectively be referred to in this Agreement as "Company"). All capitalized terms not defined expressly in this Agreement shall have the meaning assigned to such terms in the Franchise Agreement (as defined in Recital A. below) or the Sublease (as defined in Recital B. below).

### Recitals

A. Franchisor and Assignor are parties to a Franchise Agreement dated \_\_\_\_\_[, as amended], (collectively the "Franchise Agreement") for the *Baja Fresh* restaurant located at \_\_\_\_\_ ("Store"). The Brand franchise located at the address listed in the foregoing sentence will hereinafter be referred to as the "Franchised Business."

B. Sublessor and Assignor are parties to a Sublease Agreement dated \_\_\_\_\_[, as amended], (collectively the "Sublease") for the Franchised Business.

C. Assignor desires to assign the Franchised Business to Assignee, and Assignee desires to accept the assignment. [Assignor and Assignee hereby represent and warrant to Company that the assignment of the Franchised Business is supported by a purchase agreement entered into by Assignor and Assignee and hereby agree that, consistent with their indemnification obligations provided for below, they have sole responsibility for any disputes related to the accuracy and content of such purchase agreement.

D. [FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA] Assignee acknowledges that upon assignment, Assignee must execute Franchisor's current form of franchise agreement, which includes its current royalty fees and advertising contributions that may be greater than the amount of such corresponding fees in Assignor's Franchise Agreement. The Franchise Agreement shall be deemed expired as of and after the effective date of Assignee's current form of franchise agreement executed concurrently with this Agreement.

[OR FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignee acknowledges receipt of a copy of the Franchise Agreement from Assignor.

E. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor hereby agrees that Assignor is the responsible franchisee under the Franchise Agreement from \_\_\_\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible franchisee under the Franchise Agreement as of and after the Effective Date and continuing through the Term of the Franchise Agreement[, as amended by the [First] Amendment to Franchise Agreement].

F. [FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW SUBLEASE] Assignee acknowledges that upon assignment, Assignee must execute Sublessor's current form of sublease. The Sublease shall be deemed expired as of and after the effective date of Assignee's current form of sublease executed concurrently with this Agreement.

[OR FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER]  
Assignee acknowledges receipt of a copy of the Sublease from Assignor, together with all amendments, supplements, riders, exhibits, and revisions, including a copy of the underlying Master Lease, and fully understands and acknowledges the obligations under the Sublease

G. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor hereby agrees that Assignor is the responsible sublessee under the Sublease from \_\_\_\_\_ until the date immediately preceding the Effective Date. Assignee hereby agrees that Assignee is the responsible sublessee under the Sublease as of and after the Effective Date and continuing through the Term of the Sublease [, as amended by the [First] Amendment to Franchise Sublease].

H. Franchisor agrees to consent to the assignment of the Franchised Business from Assignor to Assignee, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions and terms contained in this Agreement, the parties agree as follows:

#### Agreement

1. The foregoing Recitals are hereby incorporated in and made a part of this Agreement.

2. Pursuant to the terms and conditions of the Franchise Agreement, Assignor requested Franchisor's prior written consent to assign the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement] from Assignor to Assignee. Franchisor hereby consents to the transfer of the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement] to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

3. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Pursuant to the terms and conditions of the Sublease, Assignor has requested Sublessor's prior written consent to assign the Sublease from Assignor to Assignee. Sublessor hereby consents to the transfer of the Sublease to Assignee, subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

4. Assignor agrees to transfer the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement and Sublease] to Assignee pursuant to the transfer provisions in Assignor's Franchise Agreement, and Assignee accepts the transfer of the Franchised Business [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER: and Franchise Agreement and Sublease], pursuant to the transfer provisions in Assignor's Franchise Agreement, including, but not limited to, the payment of the applicable transfer fees.

5. [FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER] Assignor and Assignee agree that, pursuant to the terms of the Franchise Agreement, Assignee is required to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto prior to the closing of the transfer of the Franchised Business. Franchisor hereby waives Assignee's obligation to execute Franchisor's then-current form of franchise agreement and all exhibits attached thereto as required by the terms of the Franchise Agreement for this transfer only. Assignor hereby acknowledges and agrees that Franchisor's waiver of Assignor's obligations under the terms of the Franchise Agreement is not a permanent waiver and that Franchisor, its assigns



and their respective affiliates hereby reserve the right to require Assignor, Assignee or their respective affiliates, authorized assignees or principals to sign Franchisor's then-current form of franchise agreement and all exhibits attached thereto in connection with other transfers that may be requested by and between the parties.

6. Subject to Section \_\_\_ below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Franchise Agreement until the date immediately preceding the Effective Date.

7. *[FOR FULL TRANSFER AND ASSIGNEE ENTERS INTO A NEW FA]* Assignee hereby agrees to execute Franchisor's current form of franchise agreement with Franchisor, and to be bound by the terms and conditions set forth in the current form of franchise agreement.

*[OR FOR CHANGE IN OWNERSHIP INTEREST THAT IS NOT A TRANSFER]* Assignee hereby agrees to be bound by the terms and conditions set forth in the Franchise Agreement.

8. *[USE WHEN BUYER IS PAYING THE TRANSFER [FRANCHISE] FEE]* Pursuant to the terms of the Franchise Agreement, Franchisor is owed a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00). Assignor, Assignee and Franchisor hereby agree that the Transfer [Franchise] Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the Transfer [Franchise] Fee if Assignee fails to pay the Transfer [Franchise] Fee in full.

*[OR USE WHEN SELLER IS PAYING THE TRANSFER [FRANCHISE] FEE]* Pursuant to the terms of the Franchise Agreement, Franchisor is owed, contemporaneous with execution of this Agreement, a Transfer [Franchise] Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$XX,X00.00).

9. *[USE IF BUYER IS PAYING THE [TRANSFER] TRAINING FEE]* Pursuant to the terms of the Franchise Agreement, Franchisor is owed a [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00). Assignor, Assignee and Franchisor hereby agree that the [Transfer] Training Fee will be paid by Assignee to Franchisor, contemporaneous with the execution of this Agreement, on behalf of Assignor. Assignor shall be liable to Franchisor for the [Transfer] Training Fee if Assignee fails to pay the [Transfer] Training Fee in full.

*[OR USE IF SELLER IS PAYING THE [TRANSFER] TRAINING FEE]* Pursuant to the terms of the Franchise Agreement, Franchisor is owed, contemporaneous with the execution of this Agreement, a [Transfer] Training Fee in the amount of \_\_\_\_\_ Thousand \_\_\_\_\_ Hundred and 00/100 Dollars (\$X,X00.00).

10. Assignor agrees to the assignment of Assignor's interest in and to the lease security deposit, if any, currently held by the Landlord to the Assignee.

11. Subject to Section 18 below, Assignor hereby agrees to continue to be bound by the terms and conditions set forth in the Sublease through the date immediately preceding the Effective Date.

12. *[IF ASSIGNEE IS SIGNING A NEW SUBLEASE]* Assignee hereby agrees to execute Sublessor's current form of sublease, and to be bound by the terms and conditions set forth in the current form of sublease.

store #  
doc #

[OR IF ASSIGNEE IS NOT SIGNING A NEW SUBLEASE] Assignee hereby agrees to be bound by the terms and conditions set forth in the Sublease.

13. Assignor agrees to cure any and all monetary defaults due and payable under their phone service agreement, complete and sign a letter of agency, letter of authorization or equivalent form, and provide the form to Assignee at least one week prior to the transfer of the Franchised Business to allow Assignee to retain the telephone number of the Franchised Business.

14. Assignee agrees to provide the letter of agency, letter of authorization or equivalent form to their phone service provider in an effort to retain the telephone number of the Franchised Business.

15. Assignor agrees to cure any and all defaults and/or debts of any monetary consideration due and payable to Franchisor (or its affiliates) prior to the execution of this Agreement, including, without limitation, any past due and current royalties and advertising contributions under the Franchise Agreement through the date immediately preceding the Effective Date and any rental and other occupancy charges under the Sublease through the date immediately preceding the Effective Date, along with any accruing interest, late fees or other penalties as allowed under the Franchise Agreement, Sublease and/or applicable law. Notwithstanding the foregoing, in the event Assignor fails to cure any and all defaults, fully satisfy any debts and/or pay any charges as required, Franchisor has the sole and absolute discretion to move forward with the transfer as contemplated by this Agreement but without waiving any amounts due and owing to Franchisor and/or its affiliates and reserves all rights to pursue such defaults, debts and charges against Assignor at a later time.

16. Assignor and Assignee hereby understand and agree that there may be additional charges and/or credits under the Lease and/or Sublease for rent including, without limitation, common area and maintenance charges/reconciliations, insurance, and/or taxes, related to the Franchised Business. Assignor and Assignee further hereby agree that Assignee shall be entitled to receive the credits and/or pay the actual charges incurred to the Landlord or Sublessor, as directed by Sublessor, within ten (10) days from receipt of Sublessor's notice of such charges and/or credits to Assignee. Assignor and Assignee hereby represent and warrant to Sublessor that Assignor and Assignee have taken such actions as necessary to account for such charges and/or credits in the purchase price for the Franchised Business.

17. Assignor represents and warrants that it has not failed to disclose to Company any information, which, if known by Company, might provide grounds for Company to reasonably withhold its consent to this Agreement, and that Assignor has disclosed all of the terms of the transfer to Company.

18. Assignor ratifies and reaffirms any and all provisions and/or agreements with Company intended to survive the assignment and/or termination of the Franchise Agreement and Sublease and agrees to remain bound by them, including but not limited to any provisions pertaining to confidential information and covenant against competition.

19. Assignor agrees that it has no rights in any of the trademarks, trade names, or service marks of Franchisor, except in connection with other *Baja Fresh* franchises owned by Assignor, if any. Assignor also stipulates that such trademarks, trade names, service marks and the like are the sole property of Franchisor and that Assignor has no rights in them, except as authorized by Franchisor in connection with other *Baja Fresh* franchises owned by Assignor, if any. Assignor quitclaims to Franchisor any rights in any trademarks, trade names, and service marks of Franchisor, in the event Assignor has any such rights, except those rights acquired through other *Baja Fresh* franchises authorized by Franchisor and owned by Assignor, if any.

20. Assignee acknowledges that Company has not made any express or implied verbal or written representations or promises whatsoever that:

- a. future assignments will be approved;
- b. Assignee will have financial success operating the Franchised Business;
- c. the landlord will grant an extension of the Master Lease where the Franchised Business is located and operates;
- d. the consideration, if any, paid for the Franchised Business represents the true value of the Franchised Business; or
- e. Assignor is not in default under the terms of the Franchise Agreement and/or the Sublease.

21. Assignee acknowledges that Company has made no representations whatsoever concerning the value of the Franchised Business.

22. All notices required or permitted under this Agreement shall be in writing and shall be delivered by personal delivery, courier, such as FedEx® or UPS®, or by U.S. Mail, sent certified or registered mail, return receipt requested to the address set forth below, which address may be amended from time to time pursuant to the terms of this Section. Notices provided under this Section shall be deemed received upon personal delivery or delivery by courier and within three (3) days after deposit in the U.S. Mail. You have an obligation to promptly notify us pursuant to this Section whenever your mailing address, phone number or facsimile number change. Notices shall be provided to the parties at the address specified below:

If to Assignee:                    [Name]  
  [Attn:]  
  [Address]  
  [City, State, Zip]  
  Telephone Number:  
  Facsimile Number:

If to Assignor:                    [Name]  
  [Attn:]  
  [Address]  
  [City, State, Zip]  
  Telephone Number:  
  Facsimile Number:

If to Franchisor:                BF ACQUISITION HOLDINGS, LLC  
  Attn: Legal Department  
  9311 E Via de Ventura  
  Scottsdale, Arizona 85258  
  Telephone Number: (480) 362-4800  
  Facsimile Number: (480) 362-4819

If to Sublessor:

[NAME OF SUBLESSOR]  
Attn: Real Estate Department  
9311 E Via de Ventura  
Scottsdale, Arizona 85258  
Telephone Number: (480) 362-4800  
Facsimile Number: (480) 362-4792

23. Franchisor hereby consents to the transfer of the Franchised Business to Assignee subject to the terms and conditions of this Agreement being fully met by both Assignor and Assignee.

24. Assignor and Assignee understand the Effective Date is the closing date indicated on the escrow statement/closing statement.

25. IN CONSIDERATION OF COMPANY'S AGREEMENTS SET FORTH IN THIS AGREEMENT, ASSIGNOR REPRESENTS THAT COMPANY HAS NOT FAILED TO PERFORM, AND IS NOT IN ANY RESPECT IN DEFAULT IN THE PERFORMANCE OF, ANY OF ITS OBLIGATIONS UNDER THE SUBLEASE AND/OR THE FRANCHISE AGREEMENT, AND ASSIGNOR AND EACH OF ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH ASSIGNOR, "ASSIGNOR AFFILIATES") HEREBY IRREVOCABLY AND UNCONDITIONALLY RELEASE, REMISE AND FOREVER DISCHARGE COMPANY AND EACH ITS CURRENT, PAST AND FUTURE PREDECESSORS, SUCCESSORS AND ASSIGNS, AND EACH OF ITS AND THE FOREGOING ENTITIES RESPECTIVE PARENTS, SUBSIDIARIES, SHAREHOLDERS, MEMBERS, MANAGERS, OWNERS, PARTNERS, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNS, GUARANTORS, INSURERS, SPOUSES, HEIRS, EXECUTORS, TRUSTEES, AND ESTATES, IF ANY, OF ANY AND ALL SUCH ENTITIES (COLLECTIVELY WITH COMPANY "FRANCHISOR AFFILIATES"), FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, SUITS, DEBTS, DUTIES, ACCOUNTS, COVENANTS, CONTRACTS, AGREEMENTS, PROMISES, DAMAGES, JUDGMENTS, TAXES, LIABILITIES AND OBLIGATIONS, BOTH CONTINGENT AND FIXED, KNOWN AND UNKNOWN, NOW EXISTING OR HEREAFTER, OF EVERY KIND AND NATURE WHATSOEVER, IN LAW OR EQUITY, OR OTHERWISE, UNDER LOCAL STATE, OR FEDERAL LAW OR THE LAW OF ANY OTHER APPLICABLE JURISDICTION, THAT ANY OF THE ASSIGNOR AFFILIATES HAVE AGAINST ANY OF THE FRANCHISOR AFFILIATES, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM, IN CONNECTION WITH OR RELATING TO: (I) THE SUBLEASE AND/OR FRANCHISE AGREEMENT (INCLUDING ANY AMENDMENTS OR MODIFICATIONS THERETO); (II) THE OPERATION OF THE FRANCHISED BUSINESS, INCLUDING ANY LEASING OR SUBLEASING RELATED THERETO; AND (III) THE OFFERING AND SALE OF THE FRANCHISED BUSINESS; ARISING FROM AN ACT, OMISSION, CONDUCT OR ACTIVITY OCCURRING BEFORE AND INCLUDING THE EFFECTIVE DATE.

IT IS UNDERSTOOD BY ASSIGNOR THAT IF THE FACTS OR LAW WITH RESPECT TO THE FOREGOING RELEASE HEREAFTER TURN OUT TO BE DIFFERENT FROM THE FACTS OR LAW KNOWN TO BE OR BELIEVED BY ASSIGNOR TO BE TRUE AT THE TIME OF THE DATE HEREOF, THEN ASSIGNOR EXPRESSLY ASSUMES THE RISK OF THE FACTS OR LAW TURNING OUT TO BE SO DIFFERENT, AND AGREES THAT THE FOREGOING RELEASE

SHALL BE IN ALL RESPECTS EFFECTIVE AND NOT SUBJECT TO TERMINATION OR RESCISSION IN WHOLE OR IN PART BASED UPON SUCH DIFFERENCES.

26. Assignor and Assignee hereby agree to protect, defend and indemnify each of the Franchisor Affiliates and hold them harmless from and against any and all costs and expenses actually incurred by them or for which they are liable, including, without limitation, attorney's fees, court costs, expert witness fees and costs, losses, liabilities, damages, claims and demands of every kind or nature, and including those incurred pursuant to a settlement entered into in good faith, arising out of or in connection with the Franchised Business, including specifically without limitation any claim or controversy arising out of (i) this Agreement, (ii) the Franchise Agreement, (iii) Sublease and/or Master Lease, (iv) any transfer of the Franchised Business by Assignee or Assignor, (v) acts or omissions of Assignee and/or Assignor which are not in strict compliance with this Agreement, the Franchise Agreement, Sublease and/or the Operations Manual in respect of use or display of the Proprietary Marks, or (vi) acts or omissions of Assignee and/or Assignor which tend to create an impression that the relationship between the parties hereto is other than one of Franchisor and Franchisee. Franchisor Affiliates, at their sole discretion, may hire legal counsel to defend any actions brought against any Franchisor Affiliates which arise out of Assignor's obligations under all agreements entered into between Assignor and any of the Franchisor Affiliates, including, without limitation, this Agreement, and Assignee's obligations herein. Assignor and Assignee hereby agree to pay any and all attorneys' fees, expert costs, and any other fees and costs incurred by any Franchisor Affiliates to said selected counsel upon the request of any Franchisor Affiliates. Assignor and Assignee will, if requested by any Franchisor Affiliates, defend any suits at the sole cost and expense of Assignor and Assignee. Assignor and Assignee hereby agree to defend said suits with the use of attorneys requested by any Franchisor Affiliates. For purposes of this provision, requests shall be made pursuant to the notice provisions set forth in this Agreement. Notwithstanding the other provisions of this Section to the contrary, if any, except as otherwise specified in this Agreement, Assignor shall not be responsible for any of the acts or omissions of Assignee after the Effective Date.

27. Assignor agrees for itself and its successors and assigns that it will not disparage, denigrate or, defame the Franchisor Affiliates, or any of their business dealings, financial condition, pending litigation and arbitrations, officers, directors, employees, agents, representatives or attorneys, either publicly or privately, by any means whatsoever (including electronic means) (collectively, "Non Disparagement Provision"). In the event such a communication is made to anyone, including, but not limited to, third party legal counsel adverse to Franchisor Affiliates in any fashion, former employees of Franchisor Affiliates, former shareholders of Franchisor Affiliates, current or former vendors, franchisees, licensees, or area representatives of Franchisor Affiliates' quick service restaurant brands, media government agencies, public interest groups, and publishing companies, it will be considered a material breach of the terms of this Agreement and Franchisor Affiliates shall be entitled to bring a legal action for appropriate equitable relief as well as damages. In addition to any other rights or remedies available at law, in equity, or by statute, Assignor consents to the specific enforcement of this Non Disparagement Provision through an injunction or restraining order issued by an appropriate court, without the requirement of posting a bond. Notwithstanding the above, nothing in this provision shall prevent or prohibit Assignor from testifying in any legal proceeding, including a deposition, hearing or trial, from cooperating in good faith in any governmental investigation or action, or from making any report required by law.

28. Each individual executing this Agreement on behalf of a partnership, limited liability company or corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the partnership, limited liability company, or corporation, and agrees to deliver evidence of his or her authority to Company upon request by Company.

29. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be unenforceable, in whole or in part, the remaining provisions shall nevertheless be binding and enforceable. If the provision found to be unenforceable was material to this Agreement, the parties agree to promptly negotiate the terms of a substitute provision to replace the severed provision consistent with the then-current law and the parties' original intent.

30. This Agreement shall be construed under and according to the laws of the State of Arizona, without regard to conflict of laws principles.

31. ANY AND ALL COURT PROCEEDINGS ARISING FROM THIS AGREEMENT SHALL BE BROUGHT IN, AND ONLY IN, A COURT OF COMPETENT JURISDICTION LOCATED IN MARICOPA COUNTY, ARIZONA. THE PARTIES CONSENT TO THE EXERCISE OF SUBJECT MATTER AND PERSONAL JURISDICTION BY SUCH COURTS AND HEREBY WAIVE ANY OBJECTIONS OR DEFENSE THERETO.

32. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

33. No amendment, addendum, modification, supplement or waiver of this Agreement or any of its provisions shall be binding on the parties unless made in writing and duly executed by an authorized representative of Company and Assignor and Assignee. A failure of any party to enforce at any time any of the provisions of this Agreement or to require at any time performance by another party or any provision of this Agreement, shall in no way be construed as a continuing waiver of those provisions or of any other rights under this Agreement. The signatures required for execution may be transmitted to the other party via facsimile or a scanned .pdf file sent via email and such signature shall be deemed a duplicate original, shall be effective upon receipt by the other party, may be admitted in evidence and shall fully bind the party and person making such signature.

34. Except as otherwise specified in this Agreement, this Agreement shall not be construed in any way as modifying, waiving, or affecting any of the terms, covenants, conditions, or agreements contained in the Franchise Agreement and Sublease executed by Assignor, or the current form of franchise agreement or sublease to be executed by Assignee.

35. This Agreement shall inure to the benefit of and shall be binding upon each of the parties hereto and their respective successors and assigns.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, each party hereto has executed this Agreement by and through its duly authorized representative with full rights, power and authority to enter into and bind his or her respective party, without further consent or approval of any kind, as of the Effective Date of this Agreement.

**ASSIGNOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**ASSIGNEE:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**SUBLESSOR:**

\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**EXHIBIT S**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**State Addenda to Franchise Documents**



## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF CALIFORNIA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF CALIFORNIA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **1. CALIFORNIA LAW MODIFICATIONS**

- A. The California Franchise Investment Law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the Disclosure Document.
- B. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C.A. Sec. 101 et seq.).
- C. The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California Law.
- D. The Franchise Documents require application of the laws of the State of Arizona. This provision may not be enforceable under California Law.
- E. Section 31125 of the California Corporations Code requires us to give you a Disclosure Document, in a form containing the information that the Commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.
- F. California Corporations Code §31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code §§31000 through 31516). Business and Professions Code §20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§20000 through 20043).
- G. The Franchise Agreement requires binding arbitration. The arbitration will occur at the American Arbitration Association office in Maricopa County, Arizona, or, if our headquarters are no longer located in Maricopa County, Arizona, then the arbitration shall take place in the county in which our headquarters are located at the time the arbitration is commenced, with all of the costs of the arbitration, including the fees of

the arbitrator and the reasonable attorney's fees of the prevailing party to be paid by the party that did not prevail. Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

H. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning transfer, termination or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

I. If the franchisee resides in the State of California or the franchised business is located within the State of California, the venue for any dispute may be within the State of California. Business and Professions Code Section 20040.5 voids restricting a venue to a forum outside California with respect to any claim arising under or relating to a franchise involving a franchise business operating in California.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the California law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

By: \_\_\_\_\_  
[Name, Title]

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

By: \_\_\_\_\_  
[Name, Title]

## ADDENDUM TO FRANCHISE DOCUMENTS

(FOR THE STATE OF HAWAII)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF HAWAII) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement], [as amended], [Consent to Transfer and Release Agreement], [General Release], [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

1. The Director of the Hawaii Department of Commerce and Consumer Affairs requires that certain provisions contained in franchise documents be amended to be consistent with Hawaii law, including the Hawaii Franchise Investment Law, Hawaii Revised Statutes, Title 26, Chapter 482E-1 through 482E-12 (1988). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Hawaii Franchise Investment Law provides rights to you concerning non-renewal, termination and transfer of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Law, the Law will control. Among those rights, the law may require that upon termination or non-renewal Franchisor purchase for fair market value Franchisee's inventory, supplies, equipment and furnishings purchased from Franchisor or a supplier designated by Franchisor; provided that personalized materials which have no value to Franchisor need not be compensated for. If the non-renewal or termination is for the purpose of converting the Franchisee's business to one owned and operated by Franchisor, Franchisor may, additionally, be obligated to compensate the Franchisee for loss of goodwill. Franchisor may deduct all amounts due from Franchisee and any costs related to the transportation or disposition of items purchased against any payment for those items. If the parties cannot agree on fair market value, fair market value shall be determined in the manner set forth in the Franchise Agreement. If the Franchise Agreement does not provide for determination of fair market value of assets for purchase by Franchisor, such amount will be determined by an independent appraiser approved by both parties, and the costs of the appraisal shall be shared equally by the parties.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims, such release shall exclude claims arising under the Hawaii Franchise Investment Law. Any condition, stipulation or provision binding the Franchisee to waive compliance with any provision of Section 482E-6 of the Hawaii Franchise Investment Law shall be void.

- c. The requirement of a franchisee to purchase or lease goods or services of the franchisor or from designated sources may not be enforceable under Hawaii Franchise Investment law unless it is reasonably necessary for a lawful purpose, and does not substantially affect competition.
- d. The Hawaii Franchise Investment Law prohibits the Franchisor from establishing a similar business or granting a franchise for the establishment of a similar business to that of the Franchisee's within the Franchisee's exclusive territory. To the extent the Franchise Documents contain a provision that is inconsistent with the Act, the Act will control.

2. Section 482E-3(a) of the Hawaii Franchise Investment Law requires us to give you a copy of the Franchise Disclosure Document at least 7 calendar days prior to signing the Agreement.

3. The Franchise Documents permits us to terminate the Agreement upon your bankruptcy. This provision may not be enforceable under Federal Bankruptcy Law. (11 U.S.C. §101, et seq.).

4. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Hawaii Franchise Investment Law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

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

By: \_\_\_\_\_  
[Name, Title]]

**FRANCHISEE:**

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF ILLINOIS)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF ILLINOIS) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **ILLINOIS LAW MODIFICATIONS**

1. The Illinois Attorney General's Office requires that certain provisions contained in franchise documents be amended to be consistent with Illinois law, including the Franchise Disclosure Act of 1987, Ill. Comp. Stat. Ch. 815 para. 705/1 –705/44 (1994). To the extent that the Franchise Documents contain provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Illinois Franchise Disclosure Act Sections 19 and 20 provide rights to the Franchisee concerning non-renewal and termination of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Illinois Franchise Disclosure Act, and such acknowledgements shall be void with respect to claims under the Act.
- c. If the Franchise Documents designate jurisdiction or venue in a forum other than the State of Illinois, the requirement is void under the Illinois Franchise Disclosure Act except that the Franchise Documents may provide for arbitration in a forum outside the State of Illinois.
- d. If the Franchise Documents requires that it be governed by a state's law, other than the State of Illinois, to the extent that such law conflicts with the Illinois Franchise Disclosure Act, the Act will control.

- e. Section 41 of the Illinois Franchise Disclosure Act states that “any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act is void.”

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Illinois Franchise Disclosure Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF INDIANA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF INDIANA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **INDIANA LAW MODIFICATIONS**

1. The Indiana Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with Indiana law, including the Indiana Franchises Act, Ind. Code Ann. §§ 1-51 (1994) and the Indiana Deceptive Franchise Practices Act, Ind. Code Ann. § 23-27 (1985). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning non-renewal and termination of the Franchise Agreement. To the extent the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule of order under the Act, such release shall exclude claims arising under the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, and such acknowledgements shall be void with respect to claims under the Act.
- c. If the Franchise Agreement contains covenants not to compete upon expiration or termination of the Franchise Agreement that are inconsistent with the Indiana Deceptive Franchise Practices Act, the requirements of the Act will control.
- d. The Indiana Deceptive Franchise Practices Act provides that substantial modification of the Agreement by Franchisor requires written consent of the Franchisee. If the Agreement contains provisions that are inconsistent with this requirement, the Act will control.

- e. If the Franchise Documents requires litigation/arbitration to be conducted in a forum other than the State of Indiana, the requirement may be unenforceable as a limitation on litigation under the Indiana Deceptive Franchise Practices Act §§ 23-2.2.7(10).
- f. If the Franchise Documents requires that it be governed by a state's law, other than the State of Indiana, to the extent that such law conflicts with the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, the Acts will control.
- g. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning the waiver of claims or rights. To the extent the Franchise Documents contains a provision that is inconsistent with the Act, the Act will control.
- h. The Indiana Deceptive Franchise Practices Act provides rights to Franchisee concerning the time period to bring an action against the Franchisor. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- i. The Indiana Deceptive Franchise Practices Act prohibits the Franchisor from operating a substantially identical business to that of the Franchisee's within the Franchisee's territory, regardless of trade name. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- j. The Indiana Deceptive Franchise Practice Act excludes any indemnification for liability caused by the Franchisee's proper reliance on or use of procedures or materials provided by the Franchisor. To the extent the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- k. If the Franchise Agreement requires goods, supplies, inventories, or services to be purchased exclusively from the franchisor or sources designated by the franchisor where such goods, supplies, inventories or services of comparable quality are available from sources other than those designated by the franchisor, to the extent that such law conflicts with the Indiana Deceptive Franchise Practices Act and the Indiana Franchises Act, the Acts will control. Providing a list of approved suppliers to comply with specifications and standards prescribed by Franchisor does not constitute designation of a source under the Indiana Deceptive Franchise Practices Act.

2. Indiana Code § 23-2-2.5-9(2) requires us to give you a copy of the Franchise Disclosure Document at the earlier of: (i) 10 days prior to signing the Agreement; or (ii) 10 days prior to our receipt of any consideration.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Indiana Deceptive Practices Act and the Indiana Franchises Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

store #  
doc#



IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, has duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF MARYLAND)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF MARYLAND) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **MARYLAND LAW MODIFICATIONS**

1. The Maryland Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Maryland law, including the Maryland Franchise Registration and Disclosure Law. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The general release required as a condition of assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
- b. The general release required as a condition of renewal shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.
- c. The Franchise Documents requires litigation to be conducted in the State of Arizona. The Franchise Documents are amended to state that the requirement for litigation to be conducted in a forum other than the State of Maryland shall not be interpreted to limit any rights Franchisee may have to bring suit in the state of Maryland. A Franchisee may file a civil lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.
- d. The Franchise Documents provide that certain disputes are resolved through arbitration. A Maryland franchise regulation states that it is an unfair or deceptive practice to require a franchisee to waive its right to file a lawsuit in Maryland claiming a violation of the Maryland Franchise Law. In light of the Federal Arbitration Act, there is some dispute as to whether this forum selection requirement is legally enforceable.

- e. Based upon the Franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owed by franchisees shall be deferred until the Franchisor completes its pre-opening obligations under the Franchise Documents.
- f. All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF MICHIGAN)

Section 445.1508(1) of the Michigan Franchise Investment Law requires franchisor to give you a copy of the Franchise Disclosure Document earlier of: (i) 10 business days prior to signing the Franchise Agreement; or (ii) 10 business days prior to franchisor's receipt of any consideration.

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

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

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

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

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

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

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

Any questions regarding this Notice shall be directed to :

STATE OF MICHIGAN  
DEPARTMENT OF THE ATTORNEY GENERAL  
ATTENTION: FRANCHISE SECTION  
P.O. BOX 30213  
LANSING, MICHIGAN 48909  
(517) 373-7117

**ADDENDUM TO FRANCHISE DOCUMENTS**  
(FOR THE STATE OF MINNESOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF MINNESOTA) (“Addendum”) dated \_\_\_\_\_ (“Addendum Effective Date”) to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, “Franchise Documents”) between \_\_\_\_\_ (“Franchisee”) and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company (“Franchisor”) [and LEASING ENTITY, a[n] \_\_\_\_\_ “Sublessor”] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

**MINNESOTA LAW MODIFICATIONS**

1. The Commissioner of Commerce for the State of Minnesota requires that certain provisions contained in franchise documents be amended to be consistent with Minnesota Franchise Act, Minn. Stat. Section 80.01 et seq., and of the Rules and Regulations promulgated under the Act (collectively “Franchise Act”). To the extent that the Franchise Documents and Disclosure Document contain provisions that are inconsistent with the following, such provisions are hereby amended:

- a. Minnesota Statutes, Section 80C.21 and Minnesota Rules 2860.4400(J) prohibit the franchisor from requiring litigation to be conducted outside Minnesota, requiring waiver of a jury trial, or requiring the franchisee to consent to liquidated damages, termination penalties or judgment notes. In addition, nothing in the Franchise Disclosure Document or agreement(s) can abrogate or reduce (1) any of the franchisee’s rights as provided for in Minnesota Statutes, Chapter 80C or (2) franchisee’s rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction. Any condition, stipulation or provision, including any choice of law provision, purporting to bind any person who, at the time of acquiring a franchise is a resident of this state, or, in the case of a partnership or corporation, organized or incorporated under the laws of this state, or purporting to bind a person acquiring any franchise to be operated in this state to waive compliance or which has the effect of waiving compliance with any provision of sections 80C.01 to 80C.22 or any rule or order thereunder is void under the Minnesota Franchise Act, Minn. Stat. § 80C.21.
- b. With respect to franchises governed by Minnesota law, the franchisor will comply with Minnesota Statutes, Section 80C.14, Subd. 3-5, which require (except in certain specified cases) (1) that a franchisee be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for non-renewal of the franchise agreement and (2) that consent to the transfer of the franchise will not be unreasonably withheld.

- c. Minnesota considers it unfair to not protect the franchisee's right to use the trademarks. Refer to Minnesota Statutes, Section 80C.12, Subd. 1(g). The franchisor will protect the franchisee's rights to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
- d. Minnesota Rules 2860.4400(D) prohibits a franchisor from requiring a franchisee to assent to a general release, assignment, novation, or waiver that would relieve any person from liability imposed by Minnesota Statutes 1973 Supplement, sections 80C.01 to 80C.22; provided, that this part shall not bar the voluntary settlement of disputes.
- e. The franchisee cannot consent to the franchisor obtaining injunctive relief. The franchisor may seek injunctive relief. See Minn. Rules 2860.4400J. Also, a court will determine if a bond is required.
- f. The Limitations of Claims section must comply with Minnesota Statutes, Section 80C.17, Subd. 5.
- g. Minnesota limits a service charge not to exceed \$30 for any dishonored check by the payee or holder of the check. See Minn. Rules 604.113.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Minnesota law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

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

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF NORTH DAKOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF NORTH DAKOTA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **NORTH DAKOTA LAW MODIFICATIONS**

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota Law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17 (1993). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete during the term and upon termination or expiration of the Franchise Agreement are enforceable only under certain conditions according to North Dakota Law. If the Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.
- c. If the Franchise Documents require litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.
- d. If the Franchise Documents require that it be governed by a state's law, other than the State of North Dakota, to the extent that such law conflicts with the North Dakota Franchise Investment Law, the North Dakota Franchise Investment Law will control.



- e. If the Franchise Documents require mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.
- f. If the Franchise Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.
- g. Section 51-19-08 of the North Dakota Franchise Investment Law requires Franchisor to give you a copy of the Franchise Disclosure Document at the earlier of: (i) seven days prior to signing the Franchise Agreement; or (ii) seven days prior to Franchisor's receipt of any consideration.

**2. THE SECURITIES COMMISSIONER HAS HELD THE FOLLOWING TO BE UNFAIR, UNJUST OR INEQUITABLE TO NORTH DAKOTA FRANCHISEES (NDCC SECTION 51-19-09):**

- A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to NDCC Section 9-08-06, without further disclosing that such covenants will be subject to the statute.
- B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to the arbitration of disputes at a location that is remote from the site of the franchisee's business.
- C. Restrictions on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
- D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
- E. Applicable Laws: Franchise agreements which specify that they are to be governed by the laws of a state other than North Dakota.
- F. Waiver of Trial by Jury: Requiring North Dakota Franchises to consent to the waiver of a trial by jury.
- G. Waiver of Exemplary & Punitive Damages: Requiring North Dakota Franchisees to consent to a waiver of exemplary and punitive damage.
- H. General Release: Franchise Agreements that require the franchisee to sign a general release upon renewal of the franchise agreement.
- I. Limitation of Claims: Franchise Agreements that require the franchisee to consent to a limitation of claims. The statute of limitations under North Dakota law applies.
- J. Enforcement of Agreement: Franchise Agreements that require the franchisee to pay all costs and expenses incurred by the franchisor in enforcing the

agreement. The prevailing party in any enforcement action is entitled to recover all costs and expenses including attorney's fees.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

By: \_\_\_\_\_  
[Name, Title]

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

By: \_\_\_\_\_  
[Name, Title]

## ADDENDUM TO FRANCHISE DOCUMENTS

(FOR THE STATE OF NEW YORK)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF NEW YORK) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents

### NEW YORK LAW MODIFICATIONS

1. The New York Department of Law requires that certain provisions contained in franchise documents be amended to be consistent with New York law, including the General Business Law, Article 33, Section 680 through 695 (1989). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the General Business Law, regulation, rule or order under the Law, such release shall exclude claims arising under the New York General Business Law, Article 33, Section 680 through 695 and the regulations promulgated thereunder, and such acknowledgements shall be void. It is the intent of this provision that non-waiver provisions of Sections 687.4 and 687.5 of the General Business Law be satisfied.
- b. If the Franchise Documents requires that it be governed by a state's law, other than the State of New York, the choice of law provision shall not be considered to waive any rights conferred upon the Franchisee under the New York General Business Law, Article 33, Sections 680 through 695.
- c. If the Franchisee is required in the Franchise Documents to waive compliance with General Business Law or rule under the Law, such condition, stipulation or provision shall be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of New York General Business Law, with respect to each such provision are met.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the New York law applicable to the provision are met independent

of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth above, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware  
limited liability company

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_,  
\_\_\_\_\_  
By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF RHODE ISLAND)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF RHODE ISLAND) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **RHODE ISLAND LAW MODIFICATIONS**

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. ch. 395 Sec. 19-28.1-1 – 19-28.1-34. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchise Documents restricts jurisdiction or venue to a forum other than the State of Rhode Island, the requirement is void under Rhode Island Franchise Investment Act Sec. 19-28.1-14.
- b. If the Franchise Documents requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with Rhode Island Franchise Investment Act it is void under Sec. 19-28.1-14.
- c. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act, or a rule or order under the Act, such release shall exclude claims arising under the Rhode Island Franchise Investment Act, and such acknowledgements shall be void with respect to claims under the Act.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met.

3. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act applicable to the

provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF SOUTH DAKOTA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF SOUTH DAKOTA) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **SOUTH DAKOTA LAW MODIFICATIONS**

1. The Director of the South Dakota Division of Securities requires that certain provisions contained in franchise documents be amended to be consistent with South Dakota law, including the South Dakota Franchise Investment Law, South Dakota Codified Laws, Title 37, Chapter 37-5B, Sections 37-5B-1 through 37-5B-53 (2008). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. If the Franchisee is required in the Franchise Documents to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the South Dakota Franchise Investment Law, and such acknowledgements shall be void with respect to claims under the Law.
- b. Covenants not to compete upon termination or expiration of the Franchise Agreement are generally unenforceable in the state of South Dakota, except in certain limited instances as provided by law. If the Agreement contains a covenant not to compete which is inconsistent with South Dakota Law, the covenant may be unenforceable.
- c. Regardless of the terms of the Franchise Agreement concerning termination, if Franchisee fails to meet performance and quality standards or fails to make any royalty payments under the Franchise Agreement, Franchisee will be afforded thirty (30) days' written notice with an opportunity to cure the default before termination.
- d. If the Franchise Documents require payment of liquidated damages that are inconsistent with South Dakota law, the liquidated damage clause may be void under SDCL 53-9-5.

- e. If the Franchise Documents require litigation to be conducted in a forum other than the State of South Dakota, the requirement is void with respect to any cause of action otherwise enforceable under South Dakota Law.
- f. If the Franchise Documents require that it be governed by a state's law, other than the State of South Dakota, matters regarding franchise registration, employment, covenants not to compete, and other matters of local concern will be governed by the laws of the State of South Dakota; but as to contractual and all other matters, the Agreement and all provisions of this Addendum will be and remain subject to the application, construction, enforcement, interpretation under the governing law set forth in the Agreement.
- g. If the Franchise Documents require that disputed between Franchisor and Franchisee be mediated/arbitrated at a location that is outside the State of South Dakota, the mediation/arbitration will be conducted at a location mutually agreed upon by the parties. If the parties cannot agree on location for the mediation/arbitration, the location shall be determined by the mediator/arbitrator selected.
- h. Any condition, stipulation or provision in the Franchise Documents requiring Franchisee to waive compliance of a provision under the South Dakota Franchise Investment Law may be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the South Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]



**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_ ]  
[Name, Title]

**ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF VIRGINIA)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF VIRGINIA (“Addendum”) dated \_\_\_\_\_ (“Addendum Effective Date”) to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, “Franchise Documents”) between \_\_\_\_\_ (“Franchisee”) and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company (“Franchisor”) [and LEASING ENTITY, a[n] \_\_\_\_\_ “Sublessor”] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

1. Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any grounds for default or termination stated in the Franchise Agreement does not constitute “reasonable cause,” as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Virginia Retail Franchising Act applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_ ]  
[Name, Title]

**ADDENDUM TO THE FRANCHISE DOCUMENTS**  
(REQUIRED BY THE STATE OF WASHINGTON)

The state of Washington has a statute, RCW 19.100.180, which may supersede the Franchise Documents in your relationship with the Franchisor, including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Documents in your relationship with the Franchisor, including the areas of termination and renewal of your Franchise.

1. If any provisions governing termination or non-renewal disclosed herein are inconsistent with Washington law, then Washington law shall apply. The applicable law reads as follows:

Section 19.100.180. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(2) For the purpose of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a Franchise Agreement without fairly compensating the franchisee for the fair market value, at the time of expiration of the Franchise Agreement, or the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchised business: PROVIDED, that compensation need not be made to a franchisee for good will if: (i) the franchisee has been given one year's notice of nonrenewal; and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, that after three willful and material breaches of the same term of the Franchise Agreement occurring within a twelve month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the Franchise Agreement upon any subsequent month period without providing notice or opportunity cure: PROVIDED FURTHER, that a franchisor may terminate a Franchise Agreement without prior notice or opportunity to cure a default if the franchisee: (i) is adjudicated bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchised business; (iii) voluntarily abandons the franchised business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchised business. Upon termination for good cause the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of: (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchised business; and (iii) if the franchisee is to retain control of the premises of the franchised business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, that a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor."

2. In any arbitration involving a franchise purchased in Washington, the arbitration site shall be either in the State of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

3. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW shall prevail.

4. A release or waiver of rights executed by a franchisee shall not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable.

5. Transfer fees are collectable to the extent that they reflect the Franchisor's reasonable estimated or actual costs in effecting a transfer.

Each provision of this Addendum to Franchise Documents shall be effective only to the extent that the jurisdictional requirements of the Washington law applicable to the provision are met independent of this Addendum. This Addendum to Franchise Documents shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum to Franchise Documents, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum to the Franchise Documents on \_\_\_\_\_.

**FRANCHISOR:**

BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company

By: \_\_\_\_\_  
[Name, Title]

**FRANCHISEE:**

\_\_\_\_\_,  
\_\_\_\_\_

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]

## **ADDENDUM TO FRANCHISE DOCUMENTS**

(FOR THE STATE OF WISCONSIN)

This ADDENDUM TO FRANCHISE DOCUMENTS (FOR THE STATE OF WISCONSIN) ("Addendum") dated \_\_\_\_\_ ("Addendum Effective Date") to the [Franchise Agreement[, as amended], [Consent to Transfer and Release Agreement,] [General Release,] [Promissory Note and Security Agreement] [Sublease] [each] dated \_\_\_\_\_, and including any and all exhibits attached thereto (individually and collectively, "Franchise Documents") between \_\_\_\_\_ ("Franchisee") and BF ACQUISITION HOLDINGS, LLC, a Delaware limited liability company ("Franchisor") [and LEASING ENTITY, a[n] \_\_\_\_\_ "Sublessor"] hereby amends the Franchise Documents by the addition of the following language, which shall be considered an integral part of the Agreement. To the extent this Addendum contains terms and conditions that differ from those contained in the Franchise Documents, this Addendum shall control. The parties agree that a concept or principle covered in this Addendum shall apply and be incorporated into all other provisions of the Franchise Documents in which the concept or principle is also applicable, notwithstanding the absence of any specific cross-reference thereto. All capitalized terms not otherwise defined in this Addendum will have the same meanings ascribed to such terms in the Franchise Documents.

### **WISCONSIN LAW MODIFICATIONS**

1. The Securities Commissioner of the State of Wisconsin requires that certain provisions contained in franchise documents be amended to be consistent with Wisconsin Fair Dealership Law, Wisconsin Statutes, Chapter 135 ("Fair Dealership Law") and the Wisconsin Franchise Investment Law, Chapter 553. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of non-renewal and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- b. The Wisconsin Fair Dealership Law, among other things, grants you the right, in most circumstances, to 90 days' prior written notice of termination and 60 days within which to remedy any claimed deficiencies. If the Franchise Agreement contains a provision that is inconsistent with the Wisconsin Fair Dealership Law, the provisions of the Agreement shall be superseded by the Law's requirements and shall have no force or effect.
- c. If the Franchise Documents require that they be governed by a state's law, other than the State of Wisconsin, to the extent that any provision of the Franchise Documents conflicts with the Wisconsin Fair Dealership Law such provision shall be superseded by the law's requirements.
- d. Any condition, stipulation or provision in the Franchise Documents requiring Franchisee to waive compliance with any provision under the Wisconsin Franchise Investment law may be void.

2. Each provision of this Addendum shall be effective only to the extent that the jurisdictional requirements of the Wisconsin law applicable to the provision are met independent of this Addendum. This Addendum shall have no force or effect if such jurisdictional requirements are not met. Except as set forth in this Addendum, the terms and provisions of the Franchise Documents shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto, by and through its respective representative with full rights, power and authority to enter into and bind his or her respective party without further consent or approval of any kind, have duly executed and delivered this Addendum as of the Addendum Effective Date.

**FRANCHISOR:**

**FRANCHISEE:**

BF ACQUISITION HOLDINGS, LLC, a Delaware  
limited liability company

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

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

By: \_\_\_\_\_  
[Name, Title]

**[SUBLESSOR:**

\_\_\_\_\_, a[n]  
\_\_\_\_\_

By: \_\_\_\_\_]  
[Name, Title]]



**EXHIBIT T**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

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**List of Franchise Owners**

## Baja Fresh Franchise List as of November 30, 2021

The name of the franchisee, store address and telephone numbers of the stores are listed below:

Franchise Company	Owners	Address	City	State	Zip	Phone
MINDIES BFF, INC.	Kelly.Smith,Robert.Smith,Kent.Allred,Rawad.Massoud	1615 East Camelback Road	Phoenix	AZ	85016	6022644229
MINDIES BFF, INC.	Kelly.Smith,Robert.Smith,Kent.Allred,Rawad.Massoud	4979 West Ray Road	Chandler	AZ	85226	4807050192
Electra House, Inc.	Hamid Razipour,Ahmad Razipour	1464 Madera Rd	Simi Valley	CA	93065	8055207301
Mehrens Investments, Inc.	Carolyn Mehrens,Kevin Mehrens,Ron Mehrens, Jr.,Ron Mehrens, Sr.	30231 Golden Lantern	Laguna Niguel	CA	92677	9492490488
Electra House, Inc.	Ahmad Razipour,Hamid Razipour	8495 W 3rd St	Los Angeles	CA	90048	3106599500
Electra House, Inc.	Hamid Razipour,Ahmad Razipour	2679A Tapo Canyon Rd	Simi Valley	CA	93063	8055816001
Ashfaq Bhura	Ashfaq Bhura	13248 Jamboree Rd	Irvine	CA	92602	7145087777
Bassi Foods, Inc.	Harpreet Bassi,Ramandeep Gill	3801 Pelandale Ave	Modesto	CA	95356	2095454111
Uroos Trading Incorporated	George Daniel,Jimmy George	19711 # C Rinaldi St	Northridge	CA	91326	8188313100
Electra House, Inc.	Hamid Razipour,Ahmad Razipour	10768 Venice Blvd	Culver City	CA	90232	3102800644
Bassi Foods, Inc.	Harpreet Bassi,Ramandeep Gill	801 Oakdale Rd	Modesto	CA	95355	2092380222
Mehrens Investments, Inc.	Ron Mehrens, Sr.,Carolyn Mehrens,Kevin Mehrens,Ron Mehrens, Jr.	979 Avenida Pico	San Clemente	CA	92673	9493614667
Mehrens Investments, Inc.	Carolyn Mehrens,Kevin Mehrens,Ron Mehrens, Jr.,Ron Mehrens, Sr.	24022 Alicia Pkwy	Mission Viejo	CA	92691	9494724468
Arz Partners, Inc.	Syed Zahar Raza	23697 Calabasas Rd	Calabasas	CA	91302	8185912262
Swan Restaurants, LLC.	Deepak Sinha,Pravin Kumar,Swati Kishore	2540 Main Street, Unit N	Irvine	CA	92614	9492612214
Baja Granada Inc.,	Rouhollah 'Nick' Nikkhessal,Ghodratollah Khalil Shakibai	16912 Devonshire Street	Granada Hills	CA	91344	8183601472
Singh, Joginder	Joginder Singh	41027 S Glen Ave	Coalinga	CA	93210	5599353400
Kim, Young Jin and Yoon Jung	Yoon Jung Kim,Young Jin Kim	11439 South Street	Cerritos	CA	90703	5626530300
Anne Noto Corporation	Olivia Rodriguez	3990 El Camino Real	Palo Alto	CA	94306	6504248599
Dhillon Restaurants Inc.	Parminder Bhatia,Victor Bhatia	11000 Crow Canyon Road	Danville	CA	94506	9259649647

Jaleo Inc.	Jackie Magana,Leopoldo Rojas,Leopoldo Rojas,Leopoldo Rojas	5021 Verdugo Way	Camarillo	CA	93012	8054846731
Bako Baja, LLC	Jerry Stueve, Jr.,Charlene Stueve	9000 Ming Ave	Bakersfield	CA	93311	6616652252
Fresh Cater, Inc.	Frank Hemaidan,Lemir Abillamah	1101 1/2 Fair Oaks Avenue	South Pasadena	CA	91030	6264417620
Mi Promesa L.L.C.	Alison Bono,Andrew Kerr	929 Rancho Pkwy	Arroyo Grande	CA	93420	8059947166
Anne Noto Corporation	Olivia Rodriguez	15466 Los Gatos Boulevard	Los Gatos	CA	95032	4083562252
LAC Fresh Menus, Inc.	Frank Hemaidan,Lemir Abillamah	2637 Foothill Boulevard	La Crescenta	CA	91214	8185410568
Bob Shiralian	Bob Shiralian	25712 Ward Drive	Kettleman City	CA	93239	5593869774
CSU Fullerton Auxiliary Services Corporation	Tony Lynch	800 N State College Blvd	Fullerton	CA	92831	6572787841
Adolfo and Elena Cid	Adolfo Cid,Elena Cid	12800 Seal Beach Boulevard	Seal Beach	CA	90740	5625981555
Aramark Educational Services, LLC	Santa Singh,Denise Mears	6000 J St	Sacramento	CA	95819	9162782252
Chase Food Services, Inc.	Bob Shiralian	25206 W Dorris Ave	Coalinga	CA	93210	5599352442
Trimurti Management Inc.	Anuradha Singh	30861 E Thousand Oaks Blvd	Westlake Village	CA	91362	8189001846
KAN Heritage, Inc.	Abhishek R Agrawal	7620 Folsom Auburn Rd	Folsom	CA	95630	9169891786
Chase Food Services, Inc.	Bob Shiralian	5545 Laval Rd	Arvin	CA	93203	6618582933
APHR, LLC	Ahmad Razipour,Hamid Razipour,Mohammad Reza Razipour	13424 Maxella Avenue	Marina Del Rey	CA	90292	3105782252
Anne Noto Corporation	Olivia Rodriguez	1708 Oakland Rd	San Jose	CA	95131	4084365000
Chase Food Services, Inc.	Bob Shiralian	46360 W Panoche Rd	Firebaugh	CA	93622	(559) 307-1620
ACORN MANAGEMENT INC	Anuradha Singh	23630 Valencia Blvd	Valencia	CA	91355	6612546060
Pariam, LLC	Ami Patel,Arun Patel	3615 E Foothill Boulevard	Pasadena	CA	91107	6263512033
Pariam, LLC	Arun Patel	943 W Huntington Dr	Monrovia	CA	91016	6263059260
NRV Eateries	Nalin Mallik,Rishi Mallik,Savita Mallik,Vijay Malik	10760 Riverside Drive	Toluca Lake	CA	91602	8187627326
NRV Eateries	Nalin Mallik,Rishi Mallik,Savita Mallik,Vijay Malik	2921 Los Feliz Blvd	Los Angeles	CA	90039	3236440164
PATTERSON MOBIL, INC.	Harneet.Bhullar,Sukhbir.Bhandal,Jagroop.Bhandal,Harmandeep Bhullar,Peter.Singh	2965 Annamarie Avenue	Patterson	CA	95363	2098921055
Alada Management, LLC	Carlos Lau,Lucy Yan	4550 Tassajara Rd	Dublin	CA	94568	9255569199



Baja Fresh Valencia, Inc.	Syed Kosar Raza	9159 Reseda Boulevard	Northridge	CA	91324	8183414575
Bukhowa Military Development LLC	Omar Bukhowa	796 Reeves Blvd	Lemoore	CA	93245	5599984393
Dalla Family Stores	Devan.Dalla	952 Simmerhorn Rd	Galt	CA	95632	2099124119
DIA Corporation, INC.	Karandeep Singh	1990 K St NW	Washington	DC	20006	2025252967
Consortium Food Group LLC.	Manuel Houellemont, Kevin Erickson	10505 Jeff Fuqua Blvd N	Orlando	FL	32827	3218006373
Raval Investment Group, LLC	Mayur Raval	250 Park Ave W	Atlanta	GA	30313	4046812252
Mack II Incorporated	Mack Wilbourn	10700 Spine Road	Atlanta	GA	30320	4047689977
NEMMEC Investments LLC	Efrain.Villareal	810 Hwy 96	Warner Robins	GA	31088	4783593141
Pacific Fresh, LLC	DeAnna Andersen, Bradley Andersen	1440 N Eagle Rd	Meridian	ID	83642	2088552468
BFMD1, LLC	Sumeet Goel	2080 York Rd	Timonium	MD	21093	4105611050
BFMD1, LLC	Sumeet Goel	7645 Arundel Mills Blvd	Hanover	MD	21076	4437550485
Jai Ho Fresh, Inc.	Satish Gulhar	302 King Farm Blvd	Rockville	MD	20850	2406833907
Gurbaaz, LLC	Pritpal Singh	600 N Wolfe St	Baltimore	MD	21284	4432875597
Kiwi Fresh, LLC	Satish Gulhar, Shammi Gulhar, Shelly Gulhar	5595 Spectrum Dr	Frederick	MD	21703	3013782187
Sodexo Operations, LLC	Don Wood, Don Wood	5100 Cherry St	Kansas City	MO	64110	8162355080
Compass Group USA, Inc.	Richard Rossitch	1664 N Virginia St	Reno	Nevada	89557	
BETTORIA LLC	Victor Russomanno, Courtney Russomanno	2311 State Route 66	Ocean Township	NJ	7712	7324935300
Electra House, Inc.	Hamid Razipour, Ahmad Razipour	5140 Kietzke Ln	Reno	NV	89511	7758268900
BAJAEX, LLC	LuAnne Balelo, John Balelo, Kristin Richardson, Robb Richardson	3850 Las Vegas Blvd S	Las Vegas	NV	89109	7027984003
Fresh Eateries Inc.	Mohit Mal, Vijay Malik	8780 W Charleston Blvd	Las Vegas	NV	89117	7023330083
CMS Transaction Company, LLC	HMS Host	5757 Wayne Newton Boulevard	Las Vegas	NV	89019	7022617370
Oklahoma University	Oklahoma University, Oklahoma University	900 Asp Parrington Oval	Norman	OK	73019	4053255519
Fresh Ventures LLC	Ramsey Zawideh	17805 SW 65th Avenue	Lake Oswego	OR	97035	5036206732
Thomasson Group Franchise Corporation	Ashley Thomasson, Brian Thomasson	10090 SE Washington Street	Portland	OR	97216	5035950550
Jasmine Group LLC	Lalit Patel, Preva Patel	899 NE 25th Avenue	Hillsboro	OR	97124	5037180030

Burden Group LLC	Sun Sun Burden	9757 SE Sunnyside Rd	Clackamas	OR	97015	5036524448
L&P Group, LLC	Lalit Patel	12286 SW Scholls Ferry Road	Tigard	OR	97223	5035909789
YAM Investments, LLC	Lalit Patel	7421 SW Barbur Blvd	Portland	OR	97219	5035950399
GLORY TO GOD LLC	Samuel Zerihun,Yeshimebet Yifru	2695 SW Cedar Hills Blvd	Beaverton	OR	97005	5032772252
BZ Ventures II LLC	Ramsey Zawideh,Sun Sun Burden	11685 SW Pacific Hwy	Portland	OR	97223	5033521350
Baja Gresham LLC	Sun Sun Burden	1053 NW Civic Drive	Gresham	OR	97030	5036671687
Fresh Ventures II, LLC	Gablen Zawideh,Ramsey Zawideh	945 Lancaster Drive NE	Salem	OR	97301	5035860090
Solo Uno, LLC	Luis Flores,Melissa Flores	463 Coburg Road	Eugene	OR	97401	5413930183
Columbia Fresh Investments, LLC	David Bristol,Lisa Haberthur,Phillip Haberthur,Rebecca Bristol	16002 SW Tualatin Sherwood Rd	Sherwood	OR	97140	5039258050
El Cuarto LLC	Melissa Flores,Luis Flores	539 Medford Ctr	Medford	OR	97504	5412458999
Reedville Baja, LLC	Lalit Patel	2981 SE 75th Ave	Hillsboro	OR	97123	5039415139
Gomez.Macario	Macario.Gomez	1211 Medical Center Drive	Nashville	TN	37232	6159364529
NEMMEC Investments LLC	Efrain.Villareal	3260 N Zaragoza Rd	El Paso	TX	79938	9152342171
Duke St Fresh Inc.	Mohammed Jashim Uddin	3231-3233 Duke Street	Alexandria	VA	22314	7038232888
Sneha and Sayeema, Inc.	Golam Saroar	7003A Manchester Blvd	Springfield	VA	22310	7039241313
SK and HK LLC	Hee Lee,Sang (Sammy) Lee	12150 Fairfax Towne Ctr	Fairfax	VA	22033	7033521792
Muy Fresco LLC	Luis Flores,Melissa Flores	8821 S 180th St	Kent	WA	98032	4252640131
Ta-Rico, LLC	Luis Flores,Melissa Flores	16010 SE Mill Plain Blvd	Vancouver	WA	98684	3608232252
GLORY TO GOD LLC	Samuel Zerihun,Yeshimebet Yifru	7801 NE Highway 99	Vancouver	WA	98665	3608238001
Muckleshoot Indian Tribe	Virginia.Cross	2402 Auburn Way S	Auburn	WA	98002	235-804-4444
Sodexho Management, Inc.	Don Wood	2001 Alford Park Drive	Kenosha	WI	53140	2625516303

Baja Fresh Franchisees who have signed Franchise Agreements but whose stores were not open as of November 30, 2021:

Franchise Company	Owners	Address	City	State	Zip	Phone or Email
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MINDIES BFF, INC.	Kelly.Smith,Robert.Smith,Kent.Allred,Rawad.Massoud	TBD	Casa Grande	AZ		480-216-4663
MINDIES BFF, INC.	Robert.Smith,Kent.Allred,Rawad.Massoud,Kelly.Smith	TBD	Gilbert	AZ		480-961-0098
MINDIES BFF, INC.	Rawad.Massoud,Kelly.Smith,Robert.Smith,Kent.Allred	TBD	Scottsdale	AZ		480-685-7195
Sidhu, Jaspal	Jaspal.Sidhu	6077 E Fire Grounds Road	Kingman	AZ	86401	jaspal@aceengineering.us
Chase Food Services, Inc.	Bob Shiralian	21970 CA-46, Suite 102	Lost Hills	CA	93249	(559) 307-1620
Singh, Peter & Singh, Karampal	Peter.Singh,Karampal.Singh		Greenfield	CA		petersingh4610@aol.com,pali2200@yahoo.com
Westside Texas T Food Court LLC	Colon.Hemrick,Craig Hemrick	10 Franklin Road	Newnan	GA	30263	chemrick123@gmail.com
HAIS Investments Inc	Qasim.Saeed	817 E Renfro St	Burleson	TX	76028	817-517-1787

The name, city, state and current business telephone number (or if unknown, the last known home telephone number) of every franchisee who had a business terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business during the most recently completed fiscal year:

Franchise Company	Franchisee Names	City	State	Phone or Email
G & D Investments - Miracle Mile, Inc.	Gary Finefrock,Greg Finefrock,Peggy Finefrock	Los Angeles	CA	(310) 478-0270
G&D Investments - Orange, Inc.	Dennis Rohde,Greg Finefrock	Los Angeles	CA	(310) 478-0270,3104780270
Jibe Ho Ventures, Inc.	Roy Ferrara	Castaic	CA	baja30380@gmail.com
Shrine Properties Inc	Abhishek R Agrawal	Folsom	CA	abhishekraj.agrawal@gmail.com
Del Mar SR Group, LLC	Ahmad Razipour,Hamid Razipour	Los Angeles	CA	310-908-7986

MSC Dining Inc.	Mahendra Chhaunkar,Sangita Chhaunkar	Fremont	CA	(510) 661-9335
Vessel Operating Holdco LLC*	Ikbal, Recai	Portland	OR	maya.geschwind@reefkitchens.com
La Valley Foods, Inc.**	Martin Lopez	Stockton	CA	209-604-8134
Electra House, Inc.	Ahmad Razipour,Hamid Razipour	Los Angeles	CA	310-908-7986
KND Best Dining LLC	Dhiren Mavani	Brick	NJ	732-322-0859

*\*Former Franchisee of 3 outlets*

*\*\*Former Franchisee of 3 outlets that were reacquired (2 of which later resold in the same fiscal year)*

Baja Fresh Franchisees who had an outlet transfer during the year ending November 30, 2021:

Prior Company Name	Prior Franchisee Names	City	State	Prior Franchisee Phone
Fresh Ventures LLC	Gablen Zawideh	Bloomfield,Lake Oswego	MI	(248) 705 5497
University Enterprises, Inc.	Steven Davis	Sacramento	CA	(916) 278-5708

**EXHIBIT V**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Financial Statements**

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# Consolidated financial statements of MTY Franchising USA, Inc.

For the years ended November 30, 2021 and 2020

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## ***Report of Independent Auditors***

### **To the Stockholder of MTY Franchising USA, Inc.**

We have audited the accompanying consolidated financial statements of MTY Franchising USA, Inc. and its subsidiaries (the Company), which comprise the consolidated balance sheets as of November 30, 2021 and November 30, 2020, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholder's equity and cash flows for the years then ended.

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

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

#### ***Auditors' Responsibility***

Our responsibility is to express an opinion on the consolidated 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 consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the consolidated 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 Company'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 consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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*PricewaterhouseCoopers LLP/s.r.l./s.e.n.c.r.l.  
1250 René-Lévesque Boulevard West, Suite 2500, Montréal, Quebec, Canada H3B 4Y1  
T: +1 514 205 5000, F: +1 514 876 1502*





***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of November 30, 2021 and November 30, 2020, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

**/s/PricewaterhouseCoopers LLP<sup>1</sup>**

Montréal, Quebec, Canada  
January 31, 2022

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<sup>1</sup> CPA auditor, CA, public accountancy permit No. A123475

**MTY Franchising USA, Inc.****Consolidated statements of operations and comprehensive income (loss)**

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

	Notes	2021	2020
		\$	\$
<b>Revenue</b>	19	<b>216,655</b>	192,657
<b>Costs and expenses</b>			
Operating expenses	20	<b>142,077</b>	141,443
Depreciation - property, plant and equipment	6	<b>1,057</b>	1,415
Amortization - intangible assets	8	<b>13,888</b>	14,174
Impairment charge - property, plant and equipment	6 & 10	<b>27</b>	579
Impairment charge - intangible assets and goodwill	8, 9 & 10	<b>2,862</b>	62,143
Interest expense	21	<b>16,264</b>	16,764
Management fees charged by parent company	25	<b>1,733</b>	1,830
		<b>177,908</b>	238,348
<b>Other income (expenses)</b>			
Interest income		<b>1,536</b>	683
Gain (loss) on disposal of property, plant and equipment and assets held for sale		<b>1,986</b>	(276)
Gain on extinguishment of holdback		<b>27</b>	—
		<b>3,549</b>	407
<b>Income (loss) before income taxes</b>		<b>42,296</b>	(45,284)
<b>Income tax expense (recovery)</b>	23		
Current		<b>12,727</b>	3,076
Deferred		<b>(399)</b>	(11,133)
		<b>12,328</b>	(8,057)
<b>Net income (loss) and comprehensive income (loss)</b>		<b>29,968</b>	(37,227)

The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.****Consolidated statements of changes in stockholder's equity**

Years ended November 30, 2021 and 2020

(In thousands of US dollars, except number of common stock issued)

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	<b>Common stock issued</b>	<b>Common stock value</b>	<b>Retained earnings</b>	<b>Total stockholder's equity</b>
		\$	\$	\$
Balance as at November 30, 2019	15	179,154	45,152	224,306
Net loss and comprehensive loss	—	—	(37,227)	(37,227)
Balance as at November 30, 2020	<b>15</b>	<b>179,154</b>	<b>7,925</b>	<b>187,079</b>
Net income and comprehensive income	—	—	<b>29,968</b>	<b>29,968</b>
Balance as at November 30, 2021	<b>15</b>	<b>179,154</b>	<b>37,893</b>	<b>217,047</b>

The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.**  
**Consolidated balance sheets**

As at November 30, 2021 and 2020  
(In thousands of US dollars)

	Notes	2021 \$	2020 \$
<b>Assets</b>			
Current assets			
Cash		17,868	16,017
Restricted cash		361	361
Accounts receivable	4	17,207	19,559
Inventories		2,462	2,296
Current portion of loans receivable	5	551	690
Receivable from company under common control	13	3	11
Receivable from ultimate parent	13 & 25	100,926	58,895
Prepaid expenses and deposits		5,463	3,585
Other current assets		1,918	1,030
Income taxes receivable		2,367	—
		<b>149,126</b>	<b>102,444</b>
Loans receivable	5	561	919
Contract cost asset		2,749	2,291
Property, plant and equipment	6	2,989	2,741
Intangible assets	8	409,147	425,894
Goodwill	9	185,576	185,576
		<b>750,148</b>	<b>719,865</b>
<b>Liabilities</b>			
Current liabilities			
Accounts payable		9,980	12,225
Accrued liabilities		19,293	23,270
Gift card liability	11	76,097	70,571
Promotional funds payable		16,521	10,589
Current portion of deferred revenue and deposits	12	6,358	5,894
Income taxes payable	23	—	11,904
Advance from parent company	13 & 25	1,733	1,830
Advances from companies under common control	13 & 25	184	184
Current portion of holdback payable	15	7,076	3,810
		<b>137,242</b>	<b>140,277</b>
Long-term loan from company under common control	14	299,850	299,850
Other liabilities		804	—
Deferred revenue and deposits	12	21,669	18,725
Deferred income taxes	23	73,536	73,934
		<b>533,101</b>	<b>532,786</b>

**MTY Franchising USA, Inc.****Consolidated balance sheets (continued)**

As at November 30, 2021 and 2020

(In thousands of US dollars)

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		2021	2020
	Notes	\$	\$
<b>Stockholder's equity</b>			
Common stock	17	179,154	179,154
Retained earnings		37,893	7,925
		<b>217,047</b>	187,079
		<b>750,148</b>	719,865

The accompanying notes are an integral part of these consolidated financial statements.

Approved by the Board on January 31, 2022

\_\_\_\_\_, Director

**MTY Franchising USA, Inc.****Consolidated statements of cash flows**

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

	2021	2020
Notes	\$	\$
<b>Operating activities</b>		
Net income (loss)	<b>29,968</b>	(37,227)
Items not affecting cash, restricted cash:		
Depreciation - property, plant and equipment	<b>1,057</b>	1,415
Amortization - intangible assets	<b>13,888</b>	14,174
Interest expense	<b>16,264</b>	16,764
(Gain) loss on disposal of property, plant, and equipment and assets held for sale	<b>(1,986)</b>	276
Impairment charge - property, plant and equipment	<b>27</b>	579
Impairment charge - intangible assets and goodwill	<b>2,862</b>	62,143
Gain on extinguishment of holdback	<b>(27)</b>	—
Deferred income tax recovery	<b>(399)</b>	(11,133)
	<b>61,654</b>	46,991
Interest paid	<b>(16,192)</b>	(16,192)
Changes in non-cash working capital items		
Accounts receivable	<b>450</b>	(4,344)
Inventories	<b>(166)</b>	(1,006)
Prepaid expenses and deposits	<b>(2,336)</b>	1,487
Loans receivable	<b>497</b>	(236)
Other current assets	<b>(888)</b>	(1,030)
Income taxes	<b>(5,276)</b>	25
Accounts payable	<b>(2,245)</b>	3,080
Accrued liabilities	<b>(4,075)</b>	(2,662)
Promotional funds payable	<b>5,932</b>	6,297
Gift card liability	<b>5,526</b>	2,474
Deferred revenue and deposits	<b>3,408</b>	5,009
Other	<b>(445)</b>	(703)
Net cash provided from operating activities	<b>45,844</b>	39,190

**MTY Franchising USA, Inc.****Consolidated statements of cash flows (continued)**

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

	<b>2021</b>	2020
Notes	\$	\$
<b>Investing activities</b>		
Additions to property, plant and equipment	<b>(2,338)</b>	(1,273)
Additions to intangible assets	<b>(3)</b>	(68)
Proceeds on disposal of property, plant and equipment	<b>4,339</b>	300
Proceeds on disposal of assets held for sale	<b>—</b>	8,405
Net cash provided from investing activities	<b>1,998</b>	7,364
<b>Financing activities</b>		
Net advance to ultimate parent	<b>(42,128)</b>	(53,125)
Net advance from (to) companies under common control	<b>8</b>	(105)
Repayment of holdback payable	<b>(3,871)</b>	(1,433)
Net cash used in financing activities	<b>(45,991)</b>	(54,663)
Net increase (decrease) in cash, restricted cash	<b>1,851</b>	(8,109)
Cash, restricted cash, beginning of year	<b>16,378</b>	24,487
<b>Cash, restricted cash, end of year</b>	<b>18,229</b>	16,378

Supplemental cash flow information

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The accompanying notes are an integral part of these consolidated financial statements.

# MTY Franchising USA, Inc.

## Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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### 1. Nature of operations

MTY Franchising USA, Inc. (the “Company” or “MTY USA”) was incorporated on March 14, 2001. The Company develops and franchises restaurants under a multitude of different banners in the United States of America (the “U.S.”).

### 2. Significant accounting policies

#### *Basis of presentation*

The accounting policies of the Company are in accordance with accounting principles generally accepted in the U.S. (“U.S. GAAP”). The Company uses the U.S. dollar as its functional and reporting currency, and tabular amounts are rounded to the nearest thousand (\$000) except when otherwise indicated. MTY USA is a wholly owned subsidiary of MTY Food Group Inc.

The preparation of the consolidated 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 consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Presented below are those policies considered particularly significant:

#### *Basis of consolidation*

The consolidated financial statements reflect the financial position and operating results of the Company, including wholly owned subsidiaries and investees that we control.

The principal subsidiaries of the Company are as follows:

<u>Principal subsidiaries</u>	<u>Percentage of equity interest</u>
	%
BF Acquisition Holdings, LLC	100
Built Franchise Systems, LLC	100
CB Franchise Systems, LLC	100
Kahala Brands Ltd.	100
Papa Murphy’s Holdings Inc.	100

Revenues and expenses of subsidiaries are included in the consolidated statement of operations and comprehensive income from the effective date of acquisition. The subsidiaries are consolidated from the acquisition date until the date on which the Company ceases to control them.

All intercompany transactions, balances, revenues and expenses are eliminated in full upon consolidation.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Business combinations*

The Company accounts for acquired businesses using the acquisition method of accounting in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 805, Business Combinations. The consideration transferred for the acquisition is the fair values of the assets transferred, the liabilities incurred, and the equity interest issued. The consideration transferred includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Acquisition-related costs are expensed as incurred. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair value at the acquisition date.

Goodwill is measured as the excess of the purchase price over the estimated fair values of the net assets acquired. If, after reassessment, the net of the acquisition date amounts of the identifiable assets acquired and liabilities assumed exceeds the sum of the consideration transferred, the amount of any non-controlling interests in the acquiree and the fair value of the acquirer’s previously held interest in the acquiree (if any), the excess is recognized immediately in profit or loss as a bargain purchase gain.

Goodwill reflects how the acquisition will impact the Company’s ability to generate future profits in excess of existing profits. The consideration paid mostly relates to combined synergies, related mainly to revenue growth. These benefits are not recognized separately from goodwill as they do not meet the recognition criteria for identifiable intangible assets.

When the consideration transferred by the Company in a business combination includes assets or liabilities resulting from a contingent consideration arrangement, the contingent consideration is measured at its acquisition date fair value and included as part of the consideration transferred in a business combination.

When a business combination is achieved in stages, the Company’s previously held equity interest in the acquiree is remeasured to fair value at the acquisition date (i.e. the date when the Company obtains control) and the resulting gain or loss, if any, is recognized in profit or loss. Amounts arising from interests in the acquiree prior to the acquisition date that have previously been recognized in other comprehensive income are reclassified to profit or loss where such treatment would be appropriate if that interest were disposed of.

If the initial accounting for a business combination is incomplete by the end of the reporting period in which the combination occurs, the Company reports provisional amounts for the items for which the accounting is incomplete. Those provisional amounts are adjusted retrospectively during the measurement period or additional assets or liabilities are recognized, to reflect new information obtained about facts and circumstances that existed at the acquisition date that, if known, would have affected the amounts recognized at that date.

### *Goodwill*

Goodwill represents the excess of cost over the net tangible assets and identifiable intangible assets of acquired businesses. Goodwill is carried at cost reduced by previous impairment losses, if any.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Functional currency*

The functional currency of the Company and its subsidiaries is the US dollar. The Company translates monetary assets and liabilities that are denominated in currencies other than the US dollar at the exchange rates prevailing at the end of the reporting period; non-monetary assets denominated in foreign currencies are translated using the exchange rate prevailing at the transaction date; all revenue and expense items denominated in foreign currencies are translated at the exchange rate prevailing at the transaction date. All foreign exchange gains and losses are reported in profit or loss.

### *Revenue recognition*

Revenue is recognized upon the transfer of control of promised goods or services to customer in an amount that reflects the consideration the Company expects to receive for those goods or services.

### *Revenue from franchise locations*

- i) Royalties are based either on a percentage of gross sales as reported by the franchisees or on a fixed monthly fee. They are recognized on an accrual basis in accordance with the substance of the relevant agreement, as they are earned.
- ii) Promotional fund contributions are based on a percentage of gross sales as reported by the franchisees. Corresponding promotional fund transfers are presented directly on the consolidated balance sheets. The Company is not entitled to retain these promotional fund payments received and is obligated to transfer these funds to be used solely for use in promotional and marketing-related costs for specific restaurant banners. The Company sometimes charges a fee for the administration of the promotional funds.
- iii) Initial franchise fees are recognized on a straight-line basis over the term of the franchise agreement as the performance obligation relating to franchise rights is fulfilled. Amortization begins once the restaurant has opened.
- iv) Upfront fees related to master license agreements are recognized over the term of the master license agreements on a straight-line basis.
- v) Renewal fees and transfer fees are recognized on a straight-line basis over the term of the related franchise agreement.
- vi) The Company earns rent revenue on certain leases it holds; the Company's policy is described below.
- vii) Revenue from equipment sale and retail sales are recognized upon transfer of control, generally upon shipment of the equipment or goods. This revenue is recorded in resale material and retail sales.
- viii) The Company recognizes breakage income proportionately as each gift card is redeemed, based on the historical redemption patterns of the gift cards. The Company also charges various program fees to its franchisees as gift cards are redeemed. Notably, this does not apply to gift card liabilities assumed in a business acquisition, which are accounted for at fair value at acquisition date.
- ix) The Company receives considerations from certain suppliers. Fees are generally earned based on the value of purchases during the period. Agreements that contain an initial upfront fee, in addition to ongoing fees, are recognized on a straight-line basis over the term of the respective agreement. Supplier contributions are recognized as revenue as they are earned and are recorded in franchising revenue.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Revenue from franchise locations (continued)*

- x) The Company earns e-commerce fees, which includes point-of-sale (“POS”) support fees transaction fees for purchase made through one of the Company’s brands’ e-commerce platform. POS supports fees are received quarterly in advance and are recognized over the period they cover. Transaction fees are recognized when the food items purchased from a store are delivered or pick up by customers.

### *Revenue from corporate-owned locations*

Revenue from corporate-owned locations is recorded when goods are delivered to customers.

### *Contract cost asset*

The Company recognizes incremental costs of obtaining a contract as an asset if they are expected to be recoverable, unless their amortization period would be less than one year, in which case they are expensed as incurred. The costs are amortized to operating expenses over the term of the related franchise agreement.

### *Leasing*

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

#### The Company as lessor

Rental income from operating leases is recognized on a straight-line basis over the term of the relevant lease.

#### The Company as lessee

Operating lease payments are recognized as an expense on a straight-line basis over the lease term, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed. Contingent rentals arising under operating leases are recognized as an expense in the period in which they are incurred.

In the event that lease incentives are received to enter into operating leases, such incentives are recognized as a liability. The aggregate benefit of incentives is recognized as a reduction of rental expense on a straight-line basis, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed.

### *Income taxes*

The Company accounts for income taxes pursuant to ASC 740, Income Taxes (“ASC 740”). Deferred tax assets and liabilities are recorded for differences between the financial statement and tax basis of the assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is recorded for the amount of income tax payable or refundable for the period increased or decreased by the change in deferred tax assets and liabilities during the period.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Income taxes (continued)*

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

### *Allowance for doubtful accounts*

Allowance for doubtful accounts is calculated based on historical experience, customer credit risk and application of the specific identification method.

### *Assets held for sale*

Assets are classified as held for sale when management with the appropriate authority commits to a plan to sell the assets, the assets are available for immediate sale, the assets are actively marketed at a reasonable price, the sale is probable within a year, and certain other criteria met. Assets held for sale consist primarily of Company-owned stores where the Company has committed to a plan to sell specific stores. Assets designated as held for sale are held at the lower of the net book value or fair value less costs to sell. Depreciation is not charged against property, plant and equipment classified as assets held for sale.

### *Property, plant and equipment*

Cost includes expenditures that are directly attributable to the acquisition of the asset, including any costs directly attributable to bringing the asset to a working condition for its intended use.

Equipment, leasehold improvements, rolling stock and computer hardware are stated at cost less accumulated depreciation and accumulated impairment losses.

Depreciation is recognized so as to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation methods are reviewed at the end of each year, with the effect of any changes in estimate accounted for on a prospective basis.

An item of property, plant and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in profit or loss.

Depreciation is based on the following terms:

Equipment	Straight-line	Three to 10 years
Leasehold improvements	Straight-line	Term of the lease
Rolling stock	Straight-line	Five to seven years
Computer hardware	Straight-line	Three to seven years

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Intangible assets*

#### Intangible assets acquired separately

Intangible assets with finite useful lives that are acquired separately are carried at cost less accumulated amortization and accumulated impairment losses, if applicable. Amortization is recognized on a straight-line basis over their estimated useful lives. The estimated useful lives and amortization methods are reviewed at the end of each year, with the effect of any changes in estimate being accounted for on a prospective basis. Intangible assets with indefinite useful lives that are acquired separately are carried at cost less accumulated impairment losses, if applicable.

#### Intangible assets acquired in a business combination

Intangible assets acquired in a business combination and recognized separately from goodwill are initially recognized at their fair value at the acquisition date.

Subsequent to initial recognition, intangible assets having a finite life acquired in a business combination are reported at cost less accumulated amortization and accumulated impairment losses, if applicable, on the same basis as intangible assets that are acquired separately. Intangible assets having an indefinite life are not amortized and are therefore carried at cost reduced by previous impairment losses, if applicable.

#### Derecognition of intangible assets

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in profit or loss when the asset is derecognized.

The Company currently carries the following intangible assets in its books:

#### *Franchise rights*

The franchise rights acquired through business combinations are recognized at the fair value of the estimated future cash inflows related to the acquisition of franchises. The franchise rights are generally amortized on a straight-line basis over the term of the agreements which typically range between 10 to 20 years.

#### *Trademarks*

Trademarks acquired through business combinations are recognized at their fair value at the time of the acquisition and are not amortized. Trademarks are determined to have an indefinite useful life based on their brand recognition and their ability to generate revenue through changing economic conditions with no foreseeable time limit.

#### *Other*

Included in other intangible assets are purchased software, which are being amortized over their expected useful life on a straight-line basis.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Intangible assets (continued)*

#### *Impairment of long-lived assets other than goodwill*

The Company continually reviews whether events or circumstances subsequent to the acquisition of any long-lived assets, including intangible assets with finite useful lives, have occurred that indicate the remaining estimated useful lives of those assets may warrant revision or that the remaining balance of those assets may not be recoverable. If events and circumstances indicate that the long-lived assets should be reviewed for possible impairment, the Company uses projections to assess whether future cash flows on an undiscounted basis related to the assets exceed the recorded carrying amount of those assets to determine if an asset is impaired. Should an impairment be identified, a loss would be recorded to the extent that the carrying value of the impaired assets exceeds their fair values as determined by valuation techniques appropriate in the circumstances that could include the use of similar cash flow projections on a discounted basis. The reporting units of indefinite intangible assets are individual brands, comprised of franchise rights, trademarks, and perpetual licenses.

#### *Impairment of goodwill*

For the purposes of impairment testing, goodwill is allocated to the unit or group of units ("reporting unit") that are considered to represent the lowest level within the group at which the goodwill is monitored for internal management purposes. As at November 30, 2021, goodwill is allocated as follows:

	<b>Reporting unit description</b>
U.S. excluding Papa Murphy's goodwill	A group of units comprised of acquired brands in the U.S., excluding the Papa Murphy's brand
Papa Murphy's goodwill	One unit comprised of the Papa Murphy's brand

Goodwill is tested for impairment on an annual basis (August 31 for the Company) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Fair value is determined using a discounted cash flow methodology with a risk adjusted weighted average cost of capital.

#### *Cash and restricted cash*

Cash and restricted cash include cash on hand and short-term investments, if any, with maturities upon acquisition of generally three months or less or that are redeemable at any time at full value and for which the risk of a change in value is not significant. As at November 30, 2021, cash and restricted cash included \$361 of restricted cash (2020 – \$361) that is required as part of guarantees on certain lease commitments.

#### *Inventories*

Inventories are measured at the lower of cost and market value. Costs of inventories are determined on a first-in-first-out basis and include acquisition costs and other costs incurred to bring inventories to their present location and condition.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Inventories (continued)*

Market value represents the current replacement cost, provided that the cost does not exceed the net realizable value or is not less than the net realizable value reduced by a normal profit margin.

### *Contingencies*

#### *Litigation, disputes and closed stores*

Contingencies for the expected cost of litigation, disputes and the cost of settling leases for closed stores are recognized when it becomes probable the Company will be required to settle the obligation, at management's best estimate of the expenditure required to settle the Company's obligation.

#### *Contingent liabilities acquired in a business combination*

Contingent liabilities acquired in a business combination are initially measured at fair value at the acquisition date. At the end of subsequent reporting periods, such contingent liabilities are measured at the higher of the amount that would be recognized, and the amount initially recognized less cumulative amortization recognized, if any.

### *Financial instruments*

The Company's financial instruments consist of cash, restricted cash, accounts receivable, loans receivable, receivable from company under common control, receivable from ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from parent company, advances from companies under common control, long-term loans from company under common control and long-term debt. Unless otherwise noted, it is management's opinion that the Company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair values for cash, restricted cash, accounts receivable, loans receivable, receivable from ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from ultimate parent, advance from parent company and advances from companies under common control approximate their carrying values due to their immediate or short-term maturities, unless otherwise noted. Long-term loans from company under common control and long-term debt are measured at amortized cost using the effective interest method.

### *Promotional funds*

Pursuant to the franchise agreements, franchisees must pay a fee to the promotional fund. These amounts are collected by the Company in its capacity as agent and must be used for promotional and advertising purposes, since the amounts are set aside to promote the respective banners for the franchisees' benefit. The promotional funds collected, and the related expenditures are reported on a gross basis in the consolidated statements of operations and comprehensive income. To the extent that promotional funds received exceed the related promotional expenditures, the excess contributions will be recorded in accounts payable or accrued liabilities.

Cash held pursuant to the promotional funds received are classified as unrestricted cash as there are no legal restrictions on the use of these funds; however, the Company intends to use these funds solely to support the promotional funds rather than to fund its ongoing operations. As at November 30, 2021, promotional funds were in a net liability position amounting to \$14,603 (2020 – net liability position of \$9,559).

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## **2. Significant accounting policies (continued)**

### *Subsequent events*

Subsequent events were evaluated through the date that the consolidated financial statements were issued, which was January 31, 2022.

### *Estimates and assumptions*

#### *Business combinations*

For business combinations, the Company must make assumptions and estimates to determine the purchase price accounting of the business being acquired. To do so, the Company must determine the acquisition date fair value of the identifiable assets acquired, including such intangible assets as franchise rights and master franchise rights, trademarks, step-in rights and liabilities assumed. Among other things, the determination of these fair market values involves the use of discounted cash flow analyses and future system sales growth. Goodwill is measured as the excess of the fair value of the consideration transferred including the recognized amount of any non-controlling interest in the acquiree over the net recognized amount of the identifiable assets acquired and liabilities assumed, all measured at the acquisition date. These assumptions and estimates have an impact on the asset and liability amounts recorded in the consolidated statement of financial position on the acquisition date. In addition, the estimated useful lives of the acquired amortizable assets, the identification of intangible assets and the determination of the indefinite or finite useful lives of intangible assets acquired will have an impact on the Company's future profit or loss.

#### *Goodwill and indefinite-lived intangible assets*

The fair value calculation includes estimates of revenue growth, which are based on past performance and internal projections for the intangible asset group's forecasted growth, and royalty rates, which are adjusted for our particular facts and circumstances. The discount rate is selected based on the estimated cost of capital that reflects the risk profile of the related business. These estimates are highly subjective, ability to achieve the forecasted cash flows used in our fair value calculations is affected by factors such as the success of strategic initiatives, changes in economic conditions, changes in our operating performance and changes in our business strategies.

#### *Contingencies*

The Company makes assumptions and estimations based on its current knowledge of future disbursements it will have to make in connection with various events that have occurred in the past and for which the amount to be disbursed and the timing of such disbursement are uncertain at the date of producing its financial statements. This includes contingencies for onerous contracts, litigations and disputes and other contingencies.

#### *Gift card liabilities*

Management is required to make certain assumptions in both the prorated recognition based on redemption pattern and remoteness recognition of gift card breakage. The significant estimates are breakage rate and the redemption patterns.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Estimates and assumptions (continued)*

#### *Impact of COVID-19*

During the year ended November 30, 2021, the COVID-19 pandemic continued to impact the markets in which MTY USA, its franchise partners and suppliers operate. Certain parts of the United States ("US") continued to be impacted by the continuation of government-imposed restrictions including restrictions on dine-in guests, reduced operating hours and/or temporary closures. The year ended November 30, 2021, saw the ramp-up of the global vaccination campaign, which led to the gradual lifting of restrictions in some territories, including the resumption of indoor and outdoor dining, and the reopening of a number of restaurants. However, the end of the year saw the rise of a fourth wave driven by the Delta variant, resulting in more infections and certain additional public health measures, including indoor masks and proof of vaccination for seated dining in restaurants in some territories. The disruptions are expected to persist into 2022 with uncertainty surrounding the rollout of the vaccine boosters and the spread of the Omicron variant, as well as the longer-term impact on the economy and the rules that will apply to MTY USA's restaurants as more sheltering measures are gradually reduced. The impact of the virus and the efforts to stop it continue to impact MTY USA and many of its franchisees materially.

As a result of the continued and uncertain economic and business impacts of the COVID-19 pandemic, the Company continues to monitor the estimates, judgments and assumptions used in the financial statements. For the year ended November 30, 2021, the Company determined that there was no indication of impairment attributable to COVID-19. Accordingly, the Company did not record impairment charges on its property, plant and equipment, intangible assets, and goodwill attributable to COVID-19. These estimates, judgments and assumptions are subject to change.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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### 3. Changes in accounting policies

*New accounting pronouncements adopted during the year*

<b>Standard</b>	<b>Issue date</b>	<b>Effective date for the Company</b>	<b>Impact</b>
ASU 2021-03 - Accounting Alternative for Evaluating Triggering Events	March 2021	December 1, 2020	No impact

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*Incoming new standards affecting the Company not yet adopted*

#### **ASU 2016-02 – Leases (Topic 842) (“ASU 2016-02”)**

In February 2016, the FASB issued new guidance on leases. The new guidance requires lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by finance and operating leases with lease terms of more than 12 months, amends various other aspects of accounting for leases by lessees and lessors, and requires enhanced disclosures. The new guidance requires a modified retrospective transition approach with application in all comparative periods presented (the “comparative method”), or alternatively, as of the effective date as the date of initial application without restating comparative period financial statements (the “effective date method”). The new guidance also provides several practical expedients and policies that companies may elect under either transition method.

In June 2020, as a result of the adverse impact of the COVID-19 pandemic on the global economy, causing significant and widespread business and capital market disruptions, the FASB issued ASU 2020-05 as a limited deferral of the effective date of ASU 2016-02 to provide immediate, near-term relief for certain entities for whom this update was either currently or imminently effective. Under ASU 2020-05, the FASB deferred the effective date for (a) public not-for-profit entities that have not yet issued (or made available for issuance) financial statements to annual reporting periods beginning after December 15, 2019 (including interim periods therein); and (b) private entities to annual reporting periods beginning after December 15, 2021 and interim periods within annual reporting periods beginning after December 15, 2022. Earlier application is permitted for all entities. The Company intends to defer its adoption of ASU 2016-02 to the fiscal year beginning after December 1, 2022.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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### **3. Changes in accounting policies (continued)**

*Incoming new standards affecting the Company not yet adopted (continued)*

#### **ASU 2016-02 – Leases (Topic 842) (“ASU 2016-02”) (continued)**

The Company elected to apply the effective date method and the package of practical expedients under which it will not reassess the classification of our existing leases, re-evaluate whether any expired or existing contracts are or contain leases or reassess initial direct costs under the new guidance. Additionally, the Company has elected lessee and lessor practical expedients to not separate non-lease components from lease components. The Company did not elect the practical expedient that permits a reassessment of lease terms for existing leases. The Company performed a preliminary analysis of the impact of the new lease guidance and is in the process of completing the final phase of a comprehensive plan for its implementation of the new guidance, including implementation of a new lease accounting system. Upon its transition to the new guidance, the Company anticipates a lease liability to be recorded that is in line with lease commitments identified in note 23, adjusted for discount rates, options and as well the Company will be recording a corresponding lease receivable or right-of-use asset. MTY USA is still determining the key estimates surrounding the implementation of this standard.

#### **ASU 2016-13 – Financial Instruments (“ASU 2016-13”)**

In June 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-13 "Financial Instruments - Credit Losses (Topic 326) Measurement of Credit Losses on Financial Instruments."

ASU 2016-13 requires an entity to utilize a new impairment model known as the current expected credit loss ("CECL") model to estimate its lifetime "expected credit loss" and record an allowance that, when deducted from the amortized cost basis of the financial asset, presents the net amount expected to be collected on the financial asset. The CECL model is expected to result in more timely recognition of credit losses. ASU 2016-13 also requires new disclosures for financial assets measured at amortized cost, loans and available-for-sale debt securities. ASU 2016-13 is effective for the Company beginning after December 1, 2021.

The Company currently uses the simplified expected credit-loss ("ECL") model for its trade receivables, which permits the use of the lifetime expected loss provision for all trade receivables and also incorporates forward-looking information. Lifetime ECL represents the ECL that will result from all probable default events over the expected life of a financial instrument.

For its loans receivable balance carried at amortized cost, the Company currently uses the general ECL model. Unlike the simplified approach, the general ECL model depends on whether there has been a significant increase in credit risk. The Company considers the probability of default upon initial recognition of the financial asset and whether there has been a significant increase in credit risk on an ongoing basis throughout each reporting period. To assess whether there is a significant increase in credit risk, the Company compares the risk of a default occurring on the asset as at the reporting date with the risk of default as at the date of initial recognition of the financial asset.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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### 3. Changes in accounting policies (continued)

*Incoming new standards affecting the Company not yet adopted (continued)*

#### **ASU 2016-13 – Financial Instruments (“ASU 2016-13”) (continued)**

A significant increase in credit risk is assessed based on changes in the probability of default since initial recognition along with borrower-specific qualitative information, or when loans are more than 30 days past due. Loans are considered impaired and in default when they are 90 days past due or there is sufficient doubt regarding the ultimate collectability of principal and/or interest. Loans that are 180 days past due are written down to the present value of the expected future cash flows. Impairment under the general ECL model is assessed on an individual basis. In assessing the risk of default, the Company also incorporates available reasonable and supportive forward-looking information.

When credit risk is assessed as being low or when there has not been a significant increase in credit risk since initial recognition, the ECL is based on a 12-month ECL which represents the portion of lifetime ECL expected to occur from default events that are possible within 12 months after the reporting date. If a significant increase in credit risk has occurred throughout a reporting period, impairment is based on lifetime ECL.

The adoption of ASU 2016-13 is not expected to result in a material change to the Company's allowance for trade receivables and loans receivable. Furthermore, pursuant to Accounting Standards Update 2019-10 – Financial Instruments – Credit Losses (Topic 326), Derivatives and Hedging (Topic 815), and Leases (Topic 842) the Company will defer adoption to December 1, 2023.

#### **ASU 2017-04 – Intangibles - Goodwill and other (topic 350): simplifying the test for goodwill impairment (“ASU 2017-04”)**

In January 2017, the FASB issued guidance that simplifies the measurement of goodwill impairment. Under this new guidance, an impairment charge, if triggered, is calculated as the difference between a reporting unit's carrying value and fair value, but it is limited to the carrying value of goodwill. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2023. Early adoption is permitted. The adoption of ASU 2017-04 is not expected to result in a material change to the Company's consolidated financial statements

#### **ASU 2019-12 – Simplifying accounting for income taxes (“ASU 2019-12”)**

In December 2019, the FASB issued guidance to simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The ASU will be effective for the Company for fiscal years beginning after December 1, 2022. Early adoption of the amendments is permitted. The Company is in the process of evaluating the impact of the amendments on its consolidated financial statements.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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### 3. Changes in accounting policies (continued)

*Incoming new standards affecting the Company not yet adopted (continued)*

#### **ASU 2021-08 – Business Combinations (Topic 805) – Accounting for Contract Assets and Contract Liabilities from Contracts with Customers (“ASU 2021-08”)**

In October 2021, the FASB issued new guidance on how to measure contract assets and liabilities acquired in a business combination. The amendments in this Update require that an entity (acquirer) recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Topic 606. At the acquisition date, an acquirer should account for the related revenue contracts in accordance with Topic 606 as if it had originated the contracts. To achieve this, an acquirer may assess how the acquiree applied Topic 606 to determine what to record for the acquired revenue contracts. Generally, this should result in an acquirer recognizing and measuring the acquired contract assets and contract liabilities consistent with how they were recognized and measured in the acquiree’s financial statements (if the acquiree prepared financial statements in accordance with generally accepted accounting principles [GAAP]).

For public business entities, the amendments in this Update are effective for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. For all other entities, the amendments are effective for fiscal years beginning after December 15, 2023, including interim periods within those fiscal years. The amendments in this Update should be applied prospectively to business combinations occurring on or after the effective date of the amendments. Early adoption of the amendments is permitted, including adoption in an interim period.

The ASU will be effective for the Company for fiscal years beginning after December 1, 2024.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 4. Accounts receivable

Details of accounts receivable are as follows:

	2021	2020
	\$	\$
Total accounts receivable	19,270	23,330
Less: Allowance for credit losses	(2,063)	(3,771)
Total accounts receivable, net	17,207	19,559
Of which:		
Not past due	12,835	13,483
Past due for more than one day but no more than 30 days	793	841
Past due for more than 31 days but no more than 60 days	358	707
Past due for more than 61 days	3,221	4,528
Total accounts receivable, net	17,207	19,559

	2021	2020
	\$	\$
Allowance for credit losses, beginning of year	(3,771)	(1,507)
Current period recovery (provision)	829	(2,547)
Reversal of amounts previously written off	(1)	(10)
Write-offs	880	293
Allowance for credit losses, end of year	(2,063)	(3,771)

#### 5. Loans receivable

Loans receivable generally result from the sales of franchises and of various advances to certain franchisees and consist of the following:

	2021	2020
	\$	\$
Loans receivable bearing interest between 0% and 8% per annum, receivable in monthly instalments of \$98 in aggregate, including principal and interest, ending in 2026	1,112	1,609
Current portion	(551)	(690)
	561	919

The total allowance for uncollectible amounts on loans receivable amounted to \$826 as at November 30, 2021 (2020 – \$1,383).

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

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#### 5. Loans receivable (continued)

The capital repayments in subsequent years will be:

	\$
2022	551
2023	177
2024	76
2025	64
2026	244
	<u>1,112</u>

#### 6. Property, plant and equipment

Cost	Equipment	Leasehold improve- ments	Rolling stock	Computer Hardware <sup>(1)</sup>	Total
	\$	\$	\$	\$	\$
Balance as at November 30, 2019	3,208	1,901	64	271	5,444
Additions <sup>(1)</sup>	884	190	—	199	1,273
Dispositions	(844)	—	—	—	(844)
Impairment (note 11)	(579)	—	—	—	(579)
Balance as at November 30, 2020	2,669	2,091	64	470	5,294
Additions	<b>1,316</b>	<b>345</b>	<b>—</b>	<b>677</b>	<b>2,338</b>
Dispositions	<b>(841)</b>	<b>(1,794)</b>	<b>(24)</b>	<b>—</b>	<b>(2,659)</b>
Impairment (note 11)	<b>(27)</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>(27)</b>
<b>Balance as at November 30, 2021</b>	<b>3,117</b>	<b>642</b>	<b>40</b>	<b>1,147</b>	<b>4,946</b>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 6. Property, plant and equipment (continued)

Accumulated depreciation	Equipment	Leasehold improve- ments	Rolling stock	Computer Hardware <sup>(1)</sup>	Total
	\$	\$	\$	\$	\$
Balance as at November 30, 2019	1,041	373	30	111	1,555
Depreciation expense	709	632	7	67	1,415
Dispositions	(417)	—	—	—	(417)
Balance as at November 30, 2020	1,333	1,005	37	178	2,553
Depreciation expense	<b>510</b>	<b>398</b>	<b>3</b>	<b>146</b>	<b>1,057</b>
Dispositions	<b>(462)</b>	<b>(1,171)</b>	<b>(20)</b>	<b>—</b>	<b>(1,653)</b>
<b>Balance as at November 30, 2021</b>	<b>1,381</b>	<b>232</b>	<b>20</b>	<b>324</b>	<b>1,957</b>

Carrying amounts	Equipment	Leasehold improve- ments	Rolling stock	Computer Hardware <sup>(1)</sup>	Total
	\$	\$	\$	\$	\$
November 30, 2020	1,336	1,086	27	292	2,741
<b>November 30, 2021</b>	<b>1,736</b>	<b>410</b>	<b>20</b>	<b>823</b>	<b>2,989</b>

(1) Prior year amounts have been restated to reflect a reclassification between equipment and computer hardware.

#### 7. Divestitures

During the year ended November 30, 2021, the Company disposed of two portfolios comprised of seven and twenty-four corporately-owned locations that were refranchised upon completion of the sale. The Company received a total consideration of \$3,343 (2020 – \$8,405) for both portfolios and recorded a gain on disposal of \$1,093 (2020 – loss of \$93), presented in Gain (loss) on disposal of property, plant, equipment and asset held for sale in its consolidated statement of income (loss). The Company recorded a liability for marketing and material defect expenditures of \$260 as accrued liabilities on the Company's Consolidated Balance Sheets. These dispositions did not meet the criteria for accounting as a discontinued operation.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 8. Intangible assets

Cost	Franchise	Trademark	Other	Total
	rights	s		
	\$	\$	\$	\$
Balance as at November 30, 2019	179,881	311,630	987	492,498
Additions	8	—	60	68
Impairment (note 11)	(4,489)	(9,001)	—	(13,490)
Balance as at November 30, 2020	175,400	302,629	1,047	479,076
Additions	—	—	3	3
Impairment (note 11)	(530)	(2,332)	—	(2,862)
<b>Balance as at November 30, 2021</b>	<b>174,870</b>	<b>300,297</b>	<b>1,050</b>	<b>476,217</b>
Accumulated amortization	Franchise	Trademark	Other	Total
	rights	s		
	\$	\$	\$	\$
Balance as at November 30, 2019	38,802	—	206	39,008
Amortization expense	13,982	—	192	14,174
Balance as at November 30, 2020	52,784	—	398	53,182
Amortization expense	13,730	—	158	13,888
<b>Balance as at November 30, 2021</b>	<b>66,514</b>	<b>—</b>	<b>556</b>	<b>67,070</b>
Carrying amounts	Franchise	Trademark	Other	Total
	rights	s		
	\$	\$	\$	\$
November 30, 2020	122,616	302,629	649	425,894
<b>November 30, 2021</b>	<b>108,356</b>	<b>300,297</b>	<b>494</b>	<b>409,147</b>

#### 9. Goodwill

The changes in the carrying amount of goodwill are as follows:

	2021	2020
	\$	\$
Goodwill, beginning of year	234,229	233,743
Purchase price allocation adjustments	—	486
Goodwill, end of year	234,229	234,229
Accumulated impairment, beginning of year	(48,653)	—
Impairment (note 11)	—	(48,653)
Accumulated impairment, end of year	(48,653)	(48,653)
Carrying amount	185,576	185,576

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

## 10. Impairment

The Company performed its annual impairment test as at August 31, 2021, which resulted in the recognition of \$2,862 of impairment losses on its intangible assets for three of its brands, following indicators of impairment that were noted.

Additionally, the Company recorded \$27 of impairment losses on its property, plant and equipment, for a total of \$2,889 of impairment charges on its property, plant and equipment and intangible assets for the year ended November 30, 2021, which have recognized in the consolidated statement of operations.

Impairment charges were based on the amount by which the carrying values of the assets exceeded fair value, determined using expected discounted future cash flows for trademarks and franchise rights.

Impairment by reporting unit for the year ended November 30, 2021:

	Intangibles				Total
	Property plant and equipment	Franchise rights	Trademarks	Goodwill	
	\$	\$	\$	\$	\$
U.S. excluding Papa Murphy's	27	530	2,332	—	2,889
Papa Murphy's	—	—	—	—	—
	<b>27</b>	<b>530</b>	<b>2,332</b>	<b>—</b>	<b>2,889</b>

Impairment by reporting unit for the year ended November 30, 2020:

	Intangibles				Total
	Property plant and equipment	Franchise rights	Trademarks	Goodwill	
	\$	\$	\$	\$	\$
U.S. excluding Papa Murphy's	579	4,489	9,001	48,653	62,722
Papa Murphy's	—	—	—	—	—
	<b>579</b>	<b>4,489</b>	<b>9,001</b>	<b>48,653</b>	<b>62,722</b>

The key assumptions used, where the recoverable amount was measured as a reporting unit's fair value, are those related to uncertainties around the impact of COVID-19 on projected sales, as well as the discount rate. The sales forecasts for cash flows were based on the subsequent fiscal year's budgeted operating results, which were prepared by management and approved by the Board, and internal forecasts for subsequent years, which were prepared by management and developed from the budgeted operating results.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 10. Impairment (continued)

The following table presents the key assumptions used in the Company's impairment tests, as well as the recoverable amounts measured at fair value as at August 31, 2021 and 2020:

(\$, except percentage data)	2021		2020	
	U.S. excluding Papa Murphy's	Papa Murphy's	U.S. excluding Papa Murphy's	Papa Murphy's
Long-term growth rates	0% to 2%	1.50%	0% to 2%	1.50%
Discount rates after tax	8.0%	8.0%	8.3%	8.3%
Discount rates pre-tax	10.1%	10.2%	10.5%	10.5%
Recoverable amounts	695,525	305,133	431,609	323,543

A change of 100 basis points in discount rates in the US excluding Papa Murphy's would result in additional impairment charges on intangible assets of three brands (2020 – 11 brands) representing less than 0.1% (2020 – 2.9%) of the total carrying value of the franchise rights and trademarks in that unit. A change of 100 basis points in discount rates in the US excluding Papa Murphy's would not result in additional impairment charges on goodwill (2020 – additional impairment charges on goodwill representing 5.3% of the total carrying value of goodwill in that unit). For the US excluding Papa Murphy's reporting unit, an increase of 500 basis points (2020 – 60 basis points) in the discount rate would have resulted in its recoverable amount being equal to its carrying value.

A change of 100 basis points in discount rates in Papa Murphy's would not result in additional impairment charges on intangible assets or goodwill for the years ended November 30, 2021 and 2020. For the Papa Murphy's reporting unit, an increase of 230 basis points (2020 – 300 basis points) in the discount rate would have resulted in its recoverable amount being equal to its carrying value.

#### 11. Gift card liability

The changes in the carrying amount of the gift card liability are as follows:

	2021	2020
	\$	\$
Gift card liability, beginning of year	70,571	68,097
Activations during the year	31,827	26,186
Redemptions during the year	(21,976)	(19,930)
Deferred program fees and other	(708)	(434)
Gift card breakage recorded	(3,617)	(3,348)
Gift card liability, end of year	76,097	70,571

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

## 12. Deferred revenue and deposits

	2021	2020
	\$	\$
Franchise fee deposits	22,188	17,628
Unearned rent	1,931	1,926
Supplier contributions and other allowances	3,908	5,065
	28,027	24,619
Current portion	(6,358)	(5,894)
	21,669	18,725

Deferred revenues consist mostly of initial, transfer and renewal franchise fees paid by franchisees, as well as upfront fees paid by master franchisees, which are generally recognized on a straight-line basis over the term of the related agreement. Deferred revenues also include amounts paid in upfront fees received from agreements with suppliers, which are amortized over the term of the related agreement.

\$6,548 (2020 – \$6,248) of revenue recognized in the current year was included in the deferred revenue balance at the beginning of the year.

The following table provides estimated revenues expected to be recognized in future years related to performance obligations that are unsatisfied as at November 30, 2021:

Estimate for fiscal year:	
	\$
2022	6,358
2023	3,630
2024	3,227
2025	2,041
2026	1,494
Thereafter	11,277
	<u>28,027</u>

## 13. Receivables and advances from ultimate parent, parent company and companies under common control

The receivable from ultimate parent is primarily comprised of a renewable one-year term loan facility of \$100,776 (2020 – \$58,497). The term loan is unsecured and bears interest at the rate set at the Applicable Federal Rates as issued by the U.S. Internal Revenue Service for short-term instruments. The term loan may be repaid, in whole or in part, at any time, without premium or penalty. MTY USA may also request repayment, in whole or in part, at any time, without penalty.

The receivable from company under common control and advances from parent company and companies under common control are non-interest bearing and receivable/due on demand with no specified collection/repayment terms.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 14. Long-term loan from company under common control

	2021	2020
	\$	\$
Interest-bearing loan at 5.4%, repayable by November 27, 2026 <sup>(1)</sup>	299,850	299,850
Balance, end of year	299,850	299,850

<sup>(1)</sup> The loan is subject to a maximum debt to EBITDA ratio of 6.00 to 1 starting on November 27, 2019 and a minimum EBITDA interest coverage ratio of 2.00 to 1 to be calculated in conjunction with interest payments based on the past 12 months.

#### 15. Holdback payable

	2021	2020
	\$	\$
Non-interest-bearing holdback acquired on acquisition of The Counter repayable in December 2020	—	1,542
Non-interest-bearing holdback acquired on acquisition of SweetFrog repayable in September 2021	—	2,268
Non-interest-bearing holdback acquired on acquisition of Kahala repayable in August 2020	7,076	—
Current portion of holdback payable <sup>(1)</sup>	7,076	3,810

<sup>(1)</sup> During the year ended November 30, 2021, the Company reclassified non-interest-bearing holdbacks acquired on acquisition of Kahala Brands Ltd. that were previously being applied to an income tax payable related to the acquisition of Kahala Brands Ltd. The holdbacks will be repaid within the next 12 months.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

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#### 16. Contingencies

The contingencies for litigation and disputes represent management's best estimate of the outcome of litigations and disputes that are ongoing at the date of the consolidated balance sheet. These contingencies consist of multiple items; the timing of the settlement of these contingencies is unknown given their nature, as the Company does not control the litigation timelines.

The provision related to closed stores mainly represents amounts that are expected to be disbursed to exit leases of underperforming or closed stores. The negotiations with the various stakeholders are typically short in duration and are expected to be settled within a few months following the recognition of the contingencies. The provisions for litigations, disputes and closed stores are recorded in accrued liabilities.

	2021	2020
	\$	\$
Provision for litigation, disputes, closed stores and other contingencies, beginning of year	2,909	9,300
Reversals	(522)	(779)
Purchase price allocation adjustment	—	196
Amounts used	(200)	(7,165)
Additions	360	1,357
Provision for litigation, disputes, closed stores and other contingencies, end of year	2,547	2,909

#### 17. Common stock

	2021		2020	
	Shares issued	\$	Shares issued	\$
Balance, beginning of year	15	179,154	15	179,154
Balance, end of year	15	179,154	15	179,154

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

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## 18. Financial instruments

In the normal course of business, the Company uses various financial instruments which by their nature involve risk, including market risk and the credit risk of non-performance by counterparties. These financial instruments are subject to normal credit standards, financial controls, risk management as well as monitoring procedures.

### *Fair value of recognized financial instruments*

The Company has determined that the fair value of its financial assets and financial liabilities with short-term maturities approximates their carrying value. These financial instruments include cash, restricted cash, accrued liabilities, promotional funds payable, and advances from parent company and from companies under common control.

The table below shows the fair value and the carrying value of other financial instruments as at November 30, 2021 and November 30, 2020. Since estimates are used to determine fair value, they must not be interpreted as being realizable in the event of a settlement of the instruments.

	2021		2020	
	Carrying amount	Fair value	Carrying amount	Fair value
	\$	\$	\$	\$
Financial assets				
Loans receivable	1,112	1,112	1,609	1,609

### *Determination of fair value*

The following methods and assumptions were used to estimate the fair values of each class of financial instruments:

*Cash, restricted cash, accounts receivable, receivable from ultimate parent, deposits, accounts payable, accrued liabilities, advances from parent company, advances from companies under common control* – The carrying amounts approximate fair values due to the short maturity of these financial instruments.

### *Risk management policies*

The Company, through its financial assets and financial liabilities, is exposed to various risks. The following analysis provides a measurement of risks as at November 30, 2021.

### *Credit risk*

The Company's credit risk is primarily attributable to its trade receivables, loans receivable and deposits. For accounts receivable and loans receivable, the amounts disclosed on the consolidated balance sheets are net of allowances for bad debts, estimated by the Company's management based on past experience and counterparty specific circumstances. The Company believes that the credit risk of accounts receivable is limited for the following reasons:

- The Company's broad client base is spread mostly across the U.S., which limits the concentration of credit risk.
- The Company accounts for specific bad debt provisions when management considers that the expected recovery is less than the actual account receivable.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

The credit risk on cash is limited because the Company invests its excess liquidity in high-quality financial instruments and with credit-worthy counterparties.

#### 18. Financial instruments (continued)

*Risk management policies (continued)*

*Credit risk (continued)*

The credit risk on deposits is also limited as these are mostly with well-established and credit-worthy companies.

*Interest rate risk*

Interest rate risk is the Company's exposure to increases and decreases in financial instrument values caused by the fluctuation in interest rates. The Company has limited exposure to interest rate risk as its long-term loans from company under common control as well as its long-term debt have fixed interest rates.

#### 19. Revenues

Revenues are broken down as follows:

	Franchising	Corporate	2021 Total
	\$	\$	\$
Corporate store revenues	—	32,074	32,074
Royalties	94,977	—	94,977
Franchise fees, transfer fees and master license fees	3,474	—	3,474
Promotional funds	48,237	—	48,237
Program allowances	20,632	—	20,632
Breakage income	3,616	—	3,616
Resale material and retail sales	7,708	—	7,708
Other	5,937	—	5,937
	<b>184,581</b>	<b>32,074</b>	<b>216,655</b>

	Franchising	Corporate	2020 Total
	\$	\$	\$
Corporate store revenues	—	34,553	34,553
Royalties	80,231	—	80,231
Franchise fees, transfer fees and master license fees	3,174	—	3,174
Promotional funds	42,628	—	42,628
Program allowances	17,335	—	17,335
Breakage income	3,348	—	3,348
Resale material and retail sales	4,755	—	4,755
Other <sup>(1)</sup>	6,633	—	6,633
	<b>158,104</b>	<b>34,553</b>	<b>192,657</b>



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

- (1) Prior year amounts have been restated to reflect a reclassification between revenue and other income.

## 20. Operating expenses

Operating expenses are broken down as follows:

	<b>Franchising</b>	<b>Corporate</b>	<b>2021 Total</b>
	\$	\$	\$
Cost of goods sold	3,330	10,765	14,095
Wages and benefits	30,975	12,675	43,650
Advertising, marketing and promotion	121	2,403	2,524
Rent	3,872	4,077	7,949
Professional & consulting fees and commission	10,616	—	10,616
Office, travel, meals & entertainment and utilities	5,452	3,044	8,496
Promotional funds	48,237	—	48,237
Gift card program costs	5,012	—	5,012
Other	716	1,914	2,630
Bad debt expense (recovery)	(1,139)	7	(1,132)
	<b>107,192</b>	<b>34,885</b>	<b>142,077</b>

	<b>Franchising</b>	<b>Corporate</b>	<b>2020 Total</b>
	\$	\$	\$
Cost of goods sold	1,260	11,874	13,134
Wages and benefits	33,143	13,401	46,544
Advertising, marketing and promotion	555	2,767	3,322
Rent	4,520	4,734	9,254
Professional & consulting fees and commission	9,431	—	9,431
Office, travel, meals & entertainment and utilities	4,444	2,920	7,364
Promotional funds	42,628	—	42,628
Gift card program costs	4,143	—	4,143
Other	1,127	1,944	3,071
Bad debt expense	2,531	21	2,552
	<b>103,782</b>	<b>37,661</b>	<b>141,443</b>

#### *Franchising operations*

The franchising business mainly generates revenues from royalties, supplier contributions, franchise fees and rent.

#### *Corporate store operations*

Corporate stores generate revenues from the direct sale of prepared food to customers.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 21. Interest expense

Interest expense is broken down as follows:

	2021	2020
	\$	\$
Interest charged by companies under common control (note 26)	16,192	16,192
Accreted interest expense on interest-bearing holdbacks	72	572
Interest expense	<b>16,264</b>	16,764

#### 22. Operating lease arrangements

Operating leases as lessee relate to leases of premises in relation to the Company's operations. Leases typically have terms ranging between five and 10 years at inception. The Company does not have options to purchase the premises on any of its operating leases.

The Company has entered into various long-term leases and has sub-leased substantially all of the premises based on the same terms and conditions as the original lease to unrelated franchisees. The minimum rentals, exclusive of occupancy and escalation charges, and additional rent paid on a percentage of sales basis, payable under the leases are as follows:

	Lease commitments	Sub-leases	Net commitments
	\$	\$	\$
2022	31,759	25,471	6,288
2023	27,404	21,867	5,537
2024	21,240	16,451	4,789
2025	15,337	11,737	3,600
2026	11,426	8,357	3,069
Thereafter	16,718	10,451	6,267
	<b>123,884</b>	<b>94,334</b>	<b>29,550</b>

Operating leases as lessor relate to the properties leased or owned by the Company, with lease terms ranging between five to 10 years. Some have options to extend the duration of the agreements, for periods ranging between one and 15 years. None of the agreements contain clauses that would enable the lessee or sub-lessee to acquire the property.

The Company has recognized a liability of \$861 (November 30, 2020 – \$1,166) for the leases of premises in which it no longer has operations but retains the obligations contained in the lease agreement (note 17).

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

#### 23. Income taxes

The Company accounts for income taxes in accordance with ASC 740. ASC 740 prescribes the use of the liability method whereby deferred tax asset and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates. The effects of future changes in tax laws or rates are not anticipated.

Under ASC 740, income taxes are recognized for the following: a) amount of tax payable for the current year and b) deferred tax liabilities and assets for future tax consequences of events that have been recognized differently in the consolidated financial statements than for tax purposes.

	2021	2020
Income tax expense (recovery)	\$	\$
Current tax expense	12,727	3,076
Deferred tax recovery	(399)	(11,133)
Total tax expense (recovery)	12,328	(8,057)

The provision for income taxes recorded in the consolidated financial statements differs from the amount which would be obtained by applying the statutory federal income tax rate of 21% (2020 – 21%) to the income for the period as follows:

	2021	2020
	\$	\$
Income (loss) before income taxes	42,296	(45,284)
Income tax expense (recovery) at federal statutory rate	8,882	(9,510)
State and local income taxes net of federal tax benefit	2,130	50
Non-deductible/non-taxable items	(2)	7,666
True up of prior year tax provision	(144)	293
Rate variation on deferred income tax	1,219	(2,429)
Revision of estimates for tax exposures	—	(4,173)
Other	243	46
Income tax expense (recovery)	12,328	(8,057)

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2021 and 2020

(In thousands of US dollars)

## 23. Income taxes (continued)

Components of the net deferred tax asset or liability:

	2021	2020
	\$	\$
Inventory	45	77
Allowance for doubtful accounts	451	401
Deferred revenue	4,018	2,770
Gift cards	14,181	13,042
Accrued liabilities	8,009	6,309
Non-capital losses and other tax credits	28	657
Total deferred tax assets	26,732	23,256
Deferred costs	(486)	(422)
Property, plant and equipment	(4,078)	(2,511)
Intangible assets	(95,623)	(94,153)
Long-term debt	(81)	(104)
Total deferred tax liabilities	(100,268)	(97,190)
Net deferred tax liability	(73,536)	(73,934)

## 24. Supplemental cash flow information

During the year, the Company paid \$13,660 (2020 – \$2,732) in income taxes. Furthermore, there are non-cash item included in the proceeds on disposition amounting to \$1,370. The change in income taxes in operating activities in the consolidated statement of cash flows includes the reclassification of a holdback payable.

## 25. Related party transactions

The Company has transactions in the normal course of business with its ultimate parent, parent company and companies under common control. These transactions were in the normal course of business and measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

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# Consolidated financial statements of MTY Franchising USA, Inc.

For the years ended November 30, 2020 and 2019

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February 5, 2021

## **Report of Independent Auditors**

**To the Stockholder of  
MTY Franchising USA, Inc.**

We have audited the accompanying consolidated financial statements of MTY Franchising USA, Inc. and its subsidiaries (the Company), which comprise the consolidated balance sheets as of November 30, 2020 and November 30, 2019, and the related consolidated statements of operations and comprehensive income, changes in stockholder's equity and cash flows for the years then ended.

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

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditors' Responsibility**

Our responsibility is to express an opinion on the consolidated 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 consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the consolidated 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 Company'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 consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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**Opinion**

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of November 30, 2020 and November 30, 2019, 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.

*PricewaterhouseCoopers LLP<sup>1</sup>*

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<sup>1</sup> CPA auditor, CA, public accountancy permit No. A123475



**MTY Franchising USA, Inc.****Consolidated statements of operations and comprehensive income**

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

	Notes	November 30, 2020	November 30, 2019
		\$	\$
<b>Revenue</b>	20	<b>193,340</b>	179,562
<b>Cost and expenses</b>			
Operating expenses	21	141,443	133,100
Depreciation – property, plant and equipment	8	1,415	886
Amortization – intangible assets	9	14,174	13,147
Impairment charge of property, plant and equipment	8 & 11	579	—
Impairment charge of intangible assets and goodwill	9, 10 & 11	62,143	1,249
Interest expense	22	16,764	15,296
Management fees charged by parent company	26	1,830	1,155
		<b>238,348</b>	164,833
<b>Other (loss) income</b>			
(Loss) gain on disposal of property, plant and equipment		(276)	69
		<b>(276)</b>	69
(Loss) income before income taxes		<b>(45,284)</b>	14,798
<b>Income tax expense (recovery)</b>	24		
Current		3,076	2,481
Deferred		(11,133)	868
		<b>(8,057)</b>	3,349
<b>Net (loss) income and comprehensive (loss) income</b>		<b>(37,227)</b>	11,449

The accompanying notes are an integral part of these consolidated financial statements.

**MTY Franchising USA, Inc.****Consolidated statements of changes in stockholder's equity**

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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	<b>Common stock issued</b>	<b>Common stock value</b>	<b>Retained earnings</b>	<b>Total stockholder's equity</b>
		<b>\$</b>	<b>\$</b>	<b>\$</b>
Balance as at November 30, 2018	5	89,154	33,703	122,857
Share issuance (note 18)	10	90,000	—	90,000
Net income and comprehensive income	—	—	11,449	11,449
Balance as at November 30, 2019	15	179,154	45,152	224,306
Net loss and comprehensive loss	—	—	<b>(37,227)</b>	<b>(37,227)</b>
Balance as at November 30, 2020	<b>15</b>	<b>179,154</b>	<b>7,925</b>	<b>187,079</b>

The accompanying notes are an integral part of these consolidated financial statements.

# MTY Franchising USA, Inc.

## Consolidated balance sheets

As at November 30, 2020 and 2019

(In thousands of US dollars)

	Notes	November 30, 2020	November 30, 2019
		\$	\$
<b>Assets</b>			
<b>Current assets</b>			
Cash		16,017	24,126
Restricted cash		361	361
Accounts receivable	5	19,559	15,557
Inventories		2,296	1,290
Assets held for sale	6	—	8,338
Current portion of loans receivable	7	690	727
Receivable from company under common control	14	11	—
Receivable from ultimate parent	14 and 26	58,895	5,215
Prepaid expenses and deposits		3,585	5,210
Other current assets		1,030	—
		<b>102,444</b>	<b>60,824</b>
Loans receivable	7	919	646
Contract cost asset		2,291	2,153
Property, plant and equipment	8	2,741	3,889
Intangible assets	9	425,894	453,490
Goodwill	10	185,576	233,743
		<b>617,421</b>	<b>693,921</b>
		<b>719,865</b>	<b>754,745</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Accounts payable		12,225	9,145
Accrued liabilities		23,270	25,932
Gift card liability	12	70,571	68,097
Promotional funds payable		10,589	4,292
Current portion of deferred revenue and deposits	13	5,894	6,148
Income taxes payable	24	11,904	11,712
Advance from parent company	14 and 26	1,830	1,275
Advances from companies under common control	14 and 26	184	278
Current portion of long-term debt	16	3,810	2,834
		<b>140,277</b>	<b>129,713</b>
Long-term loan from company under common control	15	299,850	299,850
Long-term debt	16	—	2,180
Deferred revenue and deposits	13	18,725	13,462
Deferred income taxes	24	73,934	85,234
		<b>532,786</b>	<b>530,439</b>

## MTY Franchising USA, Inc.

### Consolidated balance sheets (continued)

As at November 30, 2020 and 2019

(In thousands of US dollars)

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	Notes	November 30, 2020	November 30, 2019
		\$	\$
<b>Stockholder's equity</b>			
Common stock	18	179,154	179,154
Retained earnings		7,925	45,152
		<b>187,079</b>	<b>224,306</b>
		<b>719,865</b>	<b>754,745</b>

Contingencies

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The accompanying notes are an integral part of these consolidated financial statements.

Approved by the Board on February 5, 2021

\_\_\_\_\_, Director

**MTY Franchising USA, Inc.**  
**Consolidated statements of cash flows**

Years ended November 30, 2020 and 2019  
(In thousands of US dollars)

Notes	<b>November 30, 2020</b>	November 30, 2019
	\$	\$
<b>Operating activities</b>		
Net (loss) income	<b>(37,227)</b>	11,449
Items not affecting cash, restricted cash		
Depreciation – property, plant and equipment	<b>1,415</b>	886
Amortization – intangible assets	<b>14,174</b>	13,147
Interest expense	<b>16,764</b>	15,296
Loss (gain) on disposal of property, plant and equipment	<b>276</b>	(69)
Impairment charge of property, plant and equipment	<b>579</b>	—
Impairment charge of intangible assets and goodwill	<b>62,143</b>	1,249
Deferred income tax (recovery) expense	<b>(11,133)</b>	868
	<b>46,991</b>	42,826
Interest paid	<b>(16,192)</b>	(14,365)
Changes in non-cash working capital items		
Accounts receivable	<b>(4,344)</b>	167
Inventories	<b>(1,006)</b>	10
Prepaid expenses and deposits	<b>1,487</b>	518
Loans receivable	<b>(236)</b>	869
Other current assets	<b>(1,030)</b>	—
Income taxes	<b>25</b>	(2,959)
Accounts payable	<b>3,080</b>	(1,233)
Accrued liabilities	<b>(2,662)</b>	(742)
Promotional funds payable	<b>6,297</b>	(163)
Gift card liability	<b>2,474</b>	3,019
Deferred revenue and deposits	<b>5,009</b>	1,645
Other	<b>(703)</b>	—
Net cash provided from operating activities	<b>39,190</b>	29,592

**MTY Franchising USA, Inc.****Consolidated statements of cash flows (continued)**

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

	Notes	<b>November 30, 2020</b>	November 30, 2019
		\$	\$
<b>Investing activities</b>			
Net cash outflow on acquisitions, net of cash acquired		—	(190,291)
Additions to property, plant and equipment		<b>(1,273)</b>	(1,075)
Additions to intangible assets		<b>(68)</b>	(35)
Proceeds on disposal of property, plant and equipment and assets held for sale		<b>8,705</b>	5,632
Net cash provided from (used in) investing activities		<b>7,364</b>	<b>(185,769)</b>
<b>Financing activities</b>			
Net advance to ultimate parent		<b>(53,125)</b>	(13,423)
Net advance (to) from companies under common control		<b>(105)</b>	100,034
Issuance of shares to parent company		—	90,000
Repayment of long-term debt		<b>(1,433)</b>	(6,277)
Net cash (used in) provided from financing activities		<b>(54,663)</b>	170,334
Net (decrease) increase in cash, restricted cash		<b>(8,109)</b>	14,157
Cash, restricted cash, beginning of year		<b>24,487</b>	10,330
<b>Cash, restricted cash, end of year</b>		<b>16,378</b>	24,487

**Supplemental cash flow information**

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The accompanying notes are an integral part of these consolidated financial statements.

# MTY Franchising USA, Inc.

## Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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### 1. Nature of operations

MTY Franchising USA, Inc. (the “Company” or “MTY USA”) was incorporated on March 14, 2001. The Company develops and franchises restaurants under a multitude of different banners in the United States of America (the “U.S.”).

### 2. Significant accounting policies

#### *Basis of presentation*

The accounting policies of the Company are in accordance with accounting principles generally accepted in the U.S. (“U.S. GAAP”). The Company uses the U.S. dollar as its functional and reporting currency, and tabular amounts are rounded to the nearest thousand (\$000) except when otherwise indicated. MTY USA is a wholly owned subsidiary of MTY Food Group Inc.

The preparation of the consolidated 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 consolidated financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

Presented below are those policies considered particularly significant:

#### *Basis of consolidation*

The consolidated financial statements reflect the financial position and operating results of the Company, including wholly owned subsidiaries and investees that we control.

The principal subsidiaries of the Company are as follows:

<u>Principal subsidiaries</u>	<u>Percentage of equity interest</u>
	%
BF Acquisition Holdings, LLC	100
Built Franchise Systems, LLC	100
CB Franchise Systems, LLC	100
Kahala Brands Ltd.	100
Papa Murphy’s Holdings Inc.	100

Revenues and expenses of subsidiaries are included in the consolidated statement of operations and comprehensive income from the effective date of acquisition. The subsidiaries are consolidated from the acquisition date until the date on which the Company ceases to control them.

All intercompany transactions, balances, revenues and expenses are eliminated in full upon consolidation.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Business combinations*

The Company accounts for acquired businesses using the acquisition method of accounting in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 805, Business Combinations. The consideration transferred for the acquisition is the fair values of the assets transferred, the liabilities incurred, and the equity interest issued. The consideration transferred includes the fair value of any asset or liability resulting from a contingent consideration arrangement. Acquisition-related costs are expensed as incurred. Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair value at the acquisition date.

Goodwill is measured as the excess of the purchase price over the estimated fair values of the net assets acquired. If, after reassessment, the net of the acquisition date amounts of the identifiable assets acquired and liabilities assumed exceeds the sum of the consideration transferred, the amount of any non-controlling interests in the acquiree and the fair value of the acquirer’s previously held interest in the acquiree (if any), the excess is recognized immediately in profit or loss as a bargain purchase gain.

Goodwill reflects how the acquisition will impact the Company’s ability to generate future profits in excess of existing profits. The consideration paid mostly relates to combined synergies, related mainly to revenue growth. These benefits are not recognized separately from goodwill as they do not meet the recognition criteria for identifiable intangible assets.

When the consideration transferred by the Company in a business combination includes assets or liabilities resulting from a contingent consideration arrangement, the contingent consideration is measured at its acquisition date fair value and included as part of the consideration transferred in a business combination.

When a business combination is achieved in stages, the Company’s previously held equity interest in the acquiree is remeasured to fair value at the acquisition date (i.e. the date when the Company obtains control) and the resulting gain or loss, if any, is recognized in profit or loss. Amounts arising from interests in the acquiree prior to the acquisition date that have previously been recognized in other comprehensive income are reclassified to profit or loss where such treatment would be appropriate if that interest were disposed of.

If the initial accounting for a business combination is incomplete by the end of the reporting period in which the combination occurs, the Company reports provisional amounts for the items for which the accounting is incomplete. Those provisional amounts are adjusted retrospectively during the measurement period or additional assets or liabilities are recognized, to reflect new information obtained about facts and circumstances that existed at the acquisition date that, if known, would have affected the amounts recognized at that date.

### *Goodwill*

Goodwill represents the excess of cost over the net tangible assets and identifiable intangible assets of acquired businesses. Goodwill is carried at cost reduced by previous impairment losses, if any.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Functional currency*

The functional currency of the Company and its subsidiaries is the US dollar. The Company translates monetary assets and liabilities that are denominated in currencies other than the US dollar at the exchange rates prevailing at the end of the reporting period; non-monetary assets denominated in foreign currencies are translated using the exchange rate prevailing at the transaction date; all revenue and expense items denominated in foreign currencies are translated at the exchange rate prevailing at the transaction date. All foreign exchange gains and losses are reported in profit or loss.

### *Revenue recognition*

Revenue is recognized upon the transfer of control of promised goods or services to customer in an amount that reflects the consideration the Company expects to receive for those goods or services.

### *Revenue from franchise locations*

- i) Royalties are based either on a percentage of gross sales as reported by the franchisees or on a fixed monthly fee. They are recognized on an accrual basis in accordance with the substance of the relevant agreement, as they are earned.
- ii) Promotional fund contributions are based on a percentage of gross sales as reported by the franchisees. Corresponding promotional fund transfers are presented directly on the consolidated balance sheets. The Company is not entitled to retain these promotional fund payments received and is obligated to transfer these funds to be used solely for use in promotional and marketing-related costs for specific restaurant banners. The Company sometimes charges a fee for the administration of the promotional funds.
- iii) Initial franchise fees are recognized on a straight-line basis over the term of the franchise agreement as the performance obligation relating to franchise rights is fulfilled. Amortization begins once the restaurant has opened.
- iv) Upfront fees related to master license agreements are recognized over the term of the master license agreements on a straight-line basis.
- v) Renewal fees and transfer fees are recognized on a straight-line basis over the term of the related franchise agreement.
- vi) The Company earns rent revenue on certain leases it holds; the Company's policy is described below.
- vii) Revenue from equipment sale and retail sales are recognized upon transfer of control, generally upon shipment of the equipment or goods. This revenue is recorded in resale material and retail sales.
- viii) The Company recognizes breakage income proportionately as each gift card is redeemed, based on the historical redemption patterns of the gift cards. The Company also charges various program fees to its franchisees as gift cards are redeemed. Notably, this does not apply to gift card liabilities assumed in a business acquisition, which are accounted for at fair value at acquisition date.
- ix) The Company receives considerations from certain suppliers. Fees are generally earned based on the value of purchases during the period. Agreements that contain an initial upfront fee, in addition to ongoing fees, are recognized on a straight-line basis over the term of the respective agreement. Supplier contributions are recognized as revenue as they are earned and are recorded in franchising revenue.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Revenue from franchise locations (continued)*

- x) The Company earns e-commerce fees, which includes point-of-sale (“POS”) support fees transaction fees for purchase made through one of the Company’s brands’ e-commerce platform. POS supports fees are received quarterly in advance and are recognized over the period they cover. Transaction fees are recognized when the food items purchased from a store are delivered or pick up by customers.

### *Revenue from corporate-owned locations*

Revenue from corporate-owned locations is recorded when goods are delivered to customers.

### *Contract cost asset*

The Company recognizes incremental costs of obtaining a contract as an asset if they are expected to be recoverable, unless their amortization period would be less than one year, in which case they are expensed as incurred. The costs are amortized to operating expenses over the term of the related franchise agreement.

### *Leasing*

Leases are classified as capital leases whenever the terms of the lease transfer substantially all the risks and rewards of ownership to the lessee. All other leases are classified as operating leases.

#### The Company as lessor

Rental income from operating leases is recognized on a straight-line basis over the term of the relevant lease.

#### The Company as lessee

Operating lease payments are recognized as an expense on a straight-line basis over the lease term, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed. Contingent rentals arising under operating leases are recognized as an expense in the period in which they are incurred.

In the event that lease incentives are received to enter into operating leases, such incentives are recognized as a liability. The aggregate benefit of incentives is recognized as a reduction of rental expense on a straight-line basis, except where another systematic basis is more representative of the time pattern in which economic benefits from the leased asset are consumed.

### *Income taxes*

The Company accounts for income taxes pursuant to ASC 740, Income Taxes (“ASC 740”). Deferred tax assets and liabilities are recorded for differences between the financial statement and tax basis of the assets and liabilities that will result in taxable or deductible amounts in the future based on enacted tax laws and rates. Valuation allowances are established when necessary to reduce deferred tax assets to the amount expected to be realized. Income tax expense is recorded for the amount of income tax payable or refundable for the period increased or decreased by the change in deferred tax assets and liabilities during the period.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Income taxes (continued)*

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

### *Allowance for doubtful accounts*

Allowance for doubtful accounts is calculated based on historical experience, customer credit risk and application of the specific identification method.

### *Assets held for sale*

Assets are classified as held for sale when management with the appropriate authority commits to a plan to sell the assets, the assets are available for immediate sale, the assets are actively marketed at a reasonable price, the sale is probable within a year, and certain other criteria met. Assets held for sale consist primarily of Company-owned stores where the Company has committed to a plan to sell specific stores. Assets designated as held for sale are held at the lower of the net book value or fair value less costs to sell. Depreciation is not charged against property, plant and equipment classified as assets held for sale.

### *Property, plant and equipment*

Cost includes expenditures that are directly attributable to the acquisition of the asset, including any costs directly attributable to bringing the asset to a working condition for its intended use.

Equipment, leasehold improvements, rolling stock and computer hardware are stated at cost less accumulated depreciation and accumulated impairment losses.

Depreciation is recognized so as to write off the cost or valuation of assets less their residual values over their useful lives, using the straight-line method. The estimated useful lives, residual values and depreciation methods are reviewed at the end of each year, with the effect of any changes in estimate accounted for on a prospective basis.

An item of property, plant and equipment is derecognized upon disposal or when no future economic benefits are expected to arise from the continued use of the asset. Any gain or loss arising on the disposal or retirement of an item of property, plant and equipment is determined as the difference between the sales proceeds and the carrying amount of the asset and is recognized in profit or loss.

Depreciation is based on the following terms:

Equipment	Straight-line	Three to 10 years
Leasehold improvements	Straight-line	Term of the lease
Rolling stock	Straight-line	Five to seven years
Computer hardware	Straight-line	Three to seven years

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Intangible assets*

#### Intangible assets acquired separately

Intangible assets with finite useful lives that are acquired separately are carried at cost less accumulated amortization and accumulated impairment losses, if applicable. Amortization is recognized on a straight-line basis over their estimated useful lives. The estimated useful lives and amortization methods are reviewed at the end of each year, with the effect of any changes in estimate being accounted for on a prospective basis. Intangible assets with indefinite useful lives that are acquired separately are carried at cost less accumulated impairment losses, if applicable.

#### Intangible assets acquired in a business combination

Intangible assets acquired in a business combination and recognized separately from goodwill are initially recognized at their fair value at the acquisition date.

Subsequent to initial recognition, intangible assets having a finite life acquired in a business combination are reported at cost less accumulated amortization and accumulated impairment losses, if applicable, on the same basis as intangible assets that are acquired separately. Intangible assets having an indefinite life are not amortized and are therefore carried at cost reduced by previous impairment losses, if applicable.

#### Derecognition of intangible assets

An intangible asset is derecognized on disposal, or when no future economic benefits are expected from use or disposal. Gains or losses arising from derecognition of an intangible asset, measured as the difference between the net disposal proceeds and the carrying amount of the asset, are recognized in profit or loss when the asset is derecognized.

The Company currently carries the following intangible assets in its books:

#### *Franchise rights*

The franchise rights acquired through business combinations are recognized at the fair value of the estimated future cash inflows related to the acquisition of franchises. The franchise rights are generally amortized on a straight-line basis over the term of the agreements which typically range between 10 to 20 years.

#### *Trademarks*

Trademarks acquired through business combinations are recognized at their fair value at the time of the acquisition and are not amortized. Trademarks are determined to have an indefinite useful life based on their brand recognition and their ability to generate revenue through changing economic conditions with no foreseeable time limit.

#### *Other*

Included in other intangible assets are purchased software, which are being amortized over their expected useful life on a straight-line basis.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Intangible assets (continued)*

#### *Impairment of long-lived assets other than goodwill*

The Company continually reviews whether events or circumstances subsequent to the acquisition of any long-lived assets, including intangible assets with finite useful lives, have occurred that indicate the remaining estimated useful lives of those assets may warrant revision or that the remaining balance of those assets may not be recoverable. If events and circumstances indicate that the long-lived assets should be reviewed for possible impairment, the Company uses projections to assess whether future cash flows on an undiscounted basis related to the assets exceed the recorded carrying amount of those assets to determine if an asset is impaired. Should an impairment be identified, a loss would be recorded to the extent that the carrying value of the impaired assets exceeds their fair values as determined by valuation techniques appropriate in the circumstances that could include the use of similar cash flow projections on a discounted basis. The reporting units of indefinite intangible assets are individual brands, comprised of franchise rights, trademarks, and perpetual licenses.

#### *Impairment of goodwill*

For the purposes of impairment testing, goodwill is allocated to the unit or group of units ("reporting unit") that are considered to represent the lowest level within the group at which the goodwill is monitored for internal management purposes. As at November 30, 2020, goodwill is allocated as follows:

	<b>Reporting unit description</b>
U.S. excluding Papa Murphy's goodwill	A group of units comprised of acquired brands in the U.S., excluding the Papa Murphy's brand
Papa Murphy's goodwill	One unit comprised of the Papa Murphy's brand

Goodwill is tested for impairment on an annual basis (August 31 for the Company) and between annual tests if an event occurs or circumstances change that would more likely than not reduce the fair value of a reporting unit below its carrying value. Fair value is determined using a discounted cash flow methodology with a risk adjusted weighted average cost of capital.

#### *Cash and restricted cash*

Cash and restricted cash include cash on hand and short-term investments, if any, with maturities upon acquisition of generally three months or less or that are redeemable at any time at full value and for which the risk of a change in value is not significant. As at November 30, 2020, cash and restricted cash included \$361 of restricted cash (2019 - \$361) is required as part of guarantees on certain lease commitments.

#### *Inventories*

Inventories are measured at the lower of cost and market value. Costs of inventories are determined on a first-in-first-out basis and include acquisition costs and other costs incurred to bring inventories to their present location and condition.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## 2. Significant accounting policies (continued)

### *Inventories (continued)*

Market value represents the current replacement cost, provided that the cost does not exceed the net realizable value or is not less than the net realizable value reduced by a normal profit margin.

### *Contingencies*

#### *Litigation, disputes and closed stores*

Contingencies for the expected cost of litigation, disputes and the cost of settling leases for closed stores are recognized when it becomes probable the Company will be required to settle the obligation, at management's best estimate of the expenditure required to settle the Company's obligation.

#### *Contingent liabilities acquired in a business combination*

Contingent liabilities acquired in a business combination are initially measured at fair value at the acquisition date. At the end of subsequent reporting periods, such contingent liabilities are measured at the higher of the amount that would be recognized, and the amount initially recognized less cumulative amortization recognized, if any.

### *Financial instruments*

The Company's financial instruments consist of cash, restricted cash, accounts receivable, loans receivable, receivable from company under common control, receivable from ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from parent company, advances from companies under common control, long-term loans from company under common control and long-term debt. Unless otherwise noted, it is management's opinion that the Company is not exposed to significant interest, currency or credit risks arising from these financial instruments. The fair values for cash, restricted cash, accounts receivable, loans receivable, receivable from ultimate parent, accounts payable, accrued liabilities, promotional funds payable, advance from ultimate parent, advance from parent company and advances from companies under common control approximate their carrying values due to their immediate or short-term maturities, unless otherwise noted. Long-term loans from company under common control and long-term debt are measured at amortized cost using the effective interest method.

### *Promotional funds*

Pursuant to the franchise agreements, franchisees must pay a fee to the promotional fund. These amounts are collected by the Company in its capacity as agent and must be used for promotional and advertising purposes, since the amounts are set aside to promote the respective banners for the franchisees' benefit. The promotional funds collected, and the related expenditures are reported on a gross basis in the consolidated statements of operations and comprehensive income. To the extent that promotional funds received exceed the related promotional expenditures, the excess contributions will be recorded in accounts payable or accrued liabilities.

Cash held pursuant to the promotional funds received are classified as unrestricted cash as there are no legal restrictions on the use of these funds; however, the Company intends to use these funds solely to support the promotional funds rather than to fund its ongoing operations. Promotional funds are currently in a net liability position amounting to \$9,559 (2019 – \$4,292).

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## **2. Significant accounting policies (continued)**

### *Subsequent events*

Subsequent events were evaluated through the date that the consolidated financial statements were issued, which was February 5, 2021.

### *Estimates and assumptions*

#### *Business combinations*

For business combinations, the Company must make assumptions and estimates to determine the purchase price accounting of the business being acquired. To do so, the Company must determine the acquisition date fair value of the identifiable assets acquired, including such intangible assets as franchise rights and master franchise rights, trademarks, step-in rights and liabilities assumed. Among other things, the determination of these fair market values involves the use of discounted cash flow analyses and future system sales growth. Goodwill is measured as the excess of the fair value of the consideration transferred including the recognized amount of any non-controlling interest in the acquiree over the net recognized amount of the identifiable assets acquired and liabilities assumed, all measured at the acquisition date. These assumptions and estimates have an impact on the asset and liability amounts recorded in the consolidated statement of financial position on the acquisition date. In addition, the estimated useful lives of the acquired amortizable assets, the identification of intangible assets and the determination of the indefinite or finite useful lives of intangible assets acquired will have an impact on the Company's future profit or loss.

#### *Goodwill and indefinite-lived intangible assets*

The fair value calculation includes estimates of revenue growth, which are based on past performance and internal projections for the intangible asset group's forecasted growth, and royalty rates, which are adjusted for our particular facts and circumstances. The discount rate is selected based on the estimated cost of capital that reflects the risk profile of the related business. These estimates are highly subjective, ability to achieve the forecasted cash flows used in our fair value calculations is affected by factors such as the success of strategic initiatives, changes in economic conditions, changes in our operating performance and changes in our business strategies.

#### *Contingencies*

The Company makes assumptions and estimations based on its current knowledge of future disbursements it will have to make in connection with various events that have occurred in the past and for which the amount to be disbursed and the timing of such disbursement are uncertain at the date of producing its financial statements. This includes contingencies for onerous contracts, litigations and disputes and other contingencies.

#### *Gift card liabilities*

Management is required to make certain assumptions in both the prorated recognition based on redemption pattern and remoteness recognition of gift card breakage. The significant estimates are breakage rate and the redemption patterns.

## **MTY Franchising USA, Inc.**

### **Notes to the consolidated financial statements**

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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## **2. Significant accounting policies (continued)**

### *Estimates and assumptions (continued)*

#### *Impact of COVID-19*

In December 2019, a novel strain of coronavirus was reported to have surfaced, later to be renamed COVID-19. The spread of this virus caused business disruption beginning in March 2020, due to the closure or modified operating hours in certain restaurants, and traffic decline in the U.S.

Further while the disruption is currently expected to come in waves, there is uncertainty around the duration of the pandemic, its medium to longer term impact on the economy and the rules that will apply to MTY USA's restaurants as sheltering measures are gradually reduced. The impact of the virus and the efforts to stop it impact MTY USA and many of its franchisees materially.

As a result of the continued and uncertain economic and business impacts of the COVID-19 pandemic, the Company continues to monitor the estimates, judgments and assumptions used in the consolidated financial statements. These estimates, judgments and assumptions are subject to change.

The consolidated financial statements have been impacted with respect to the following as a result of COVID-19:

- Additional expected credit losses on accounts receivable and loans receivable were taken;
- Impairment testing on property, plant and equipment was carried out, resulting in impairments;
- Impairment testing on franchise rights, trademarks and goodwill was carried out and material impairments were recorded; and
- Provisions for closed stores, and related litigations and disputes were increased to reflect new risks.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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### 3. Changes in accounting policies

*New accounting pronouncements adopted during the year*

<b>Standard</b>	<b>Issue date</b>	<b>Effective date for the Company</b>	<b>Impact</b>
ASU 2016-16 – Income taxes (topic 740) Intra-entity transfer of assets other than inventory	October 2016	December 1, 2019	No material impact
ASU 2016-01 – Recognition and Measurement of Financial Assets and Financial Liabilities	January 2016	December 1, 2019	No impact
ASU 2017-01 – Clarifying the definition of a business	January 2017	December 1, 2019	No impact

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*Incoming new standards affecting the Company not yet adopted*

#### **ASU 2016-02 – Leases (Topic 842) (“ASU 2016-02”) and ASU 2020-05 – Revenue from contracts with customers (Topic 606) and Leases (Topic 842): Effective dates for certain entities (“ASU 2020-05”)**

In February 2016, the FASB issued new guidance on leases. The new guidance requires lessees to recognize on the balance sheet the assets and liabilities for the rights and obligations created by finance and operating leases with lease terms of more than 12 months, amends various other aspects of accounting for leases by lessees and lessors, and requires enhanced disclosures. The new guidance requires a modified retrospective transition approach with application in all comparative periods presented (the “comparative method”), or alternatively, as of the effective date as the date of initial application without restating comparative period financial statements (the “effective date method”). The new guidance also provides several practical expedients and policies that companies may elect under either transition method.

In June 2020, as a result of the adverse impact of the COVID-19 pandemic on the global economy, causing significant and widespread business and capital market disruptions, the FASB issued ASU 2020-05 as a limited deferral of the effective date of ASU 2016-02 to provide immediate, near-term relief for certain entities for whom this update was either currently or imminently effective. Under ASU 2020-05, the FASB deferred the effective date for (a) public not-for-profit entities that have not yet issued (or made available for issuance) financial statements to annual reporting periods beginning after December 15, 2019 (including interim periods therein); and (b) private entities to annual reporting periods beginning after December 15, 2021 and interim periods within annual reporting periods beginning after December 15, 2022. Earlier application is permitted for all entities. The Company intends to defer its adoption of ASU 2016-02 to the fiscal year beginning after December 1, 2022.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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### 3. Changes in accounting policies (continued)

*Incoming new standards affecting the Company not yet adopted (continued)*

#### **ASU 2016-02 – Leases (Topic 842) (“ASU 2016-02”) and ASU 2020-05 – Revenue from contracts with customers (Topic 606) and Leases (Topic 842): Effective dates for certain entities (“ASU 2020-05”) (continued)**

The Company elected to apply the effective date method and the package of practical expedients under which it will not reassess the classification of our existing leases, re-evaluate whether any expired or existing contracts are or contain leases or reassess initial direct costs under the new guidance. Additionally, the Company has elected lessee and lessor practical expedients to not separate non-lease components from lease components. The Company did not elect the practical expedient that permits a reassessment of lease terms for existing leases. The Company performed a preliminary analysis of the impact of the new lease guidance and is in the process of completing the final phase of a comprehensive plan for its implementation of the new guidance, including implementation of a new lease accounting system. Upon its transition to the new guidance, the Company anticipates a lease liability to be recorded that is in line with lease commitments identified in note 23, adjusted for discount rates, options and as well the Company will be recording a corresponding lease receivable or right-of-use asset. MTY USA is still determining the key estimates surrounding the implementation of this standard.

#### **ASU 2016-13 – Financial Instruments (“ASU 2016-13”)**

In June 2016, the FASB issued Accounting Standards Update (“ASU”) 2016-13 "Financial Instruments - Credit Losses (Topic 326) Measurement of Credit Losses on Financial Instruments."

ASU 2016-13 requires an entity to utilize a new impairment model known as the current expected credit loss ("CECL") model to estimate its lifetime "expected credit loss" and record an allowance that, when deducted from the amortized cost basis of the financial asset, presents the net amount expected to be collected on the financial asset. The CECL model is expected to result in more timely recognition of credit losses. ASU 2016-13 also requires new disclosures for financial assets measured at amortized cost, loans and available-for-sale debt securities. ASU 2016-13 is effective for the Company beginning after December 1, 2021.

The Company currently uses the simplified expected credit-loss (“ECL”) model for its trade receivables, which permits the use of the lifetime expected loss provision for all trade receivables and also incorporates forward-looking information. Lifetime ECL represents the ECL that will result from all probable default events over the expected life of a financial instrument.

For its loans receivable balance carried at amortized cost, the Company currently uses the general ECL model. Unlike the simplified approach, the general ECL model depends on whether there has been a significant increase in credit risk. The Company considers the probability of default upon initial recognition of the financial asset and whether there has been a significant increase in credit risk on an ongoing basis throughout each reporting period. To assess whether there is a significant increase in credit risk, the Company compares the risk of a default occurring on the asset as at the reporting date with the risk of default as at the date of initial recognition of the financial asset.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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### 3. Changes in accounting policies (continued)

*Incoming new standards affecting the Company not yet adopted (continued)*

#### **ASU 2016-13 – Financial Instruments (“ASU 2016-13”) (continued)**

A significant increase in credit risk is assessed based on changes in the probability of default since initial recognition along with borrower-specific qualitative information, or when loans are more than 30 days past due. Loans are considered impaired and in default when they are 90 days past due or there is sufficient doubt regarding the ultimate collectability of principal and/or interest. Loans that are 180 days past due are written down to the present value of the expected future cash flows. Impairment under the general ECL model is assessed on an individual basis. In assessing the risk of default, the Company also incorporates available reasonable and supportive forward-looking information.

When credit risk is assessed as being low or when there has not been a significant increase in credit risk since initial recognition, the ECL is based on a 12-month ECL which represents the portion of lifetime ECL expected to occur from default events that are possible within 12 months after the reporting date. If a significant increase in credit risk has occurred throughout a reporting period, impairment is based on lifetime ECL.

The adoption of ASU 2016-13 is not expected to result in a material change to the Company’s allowance for trade receivables and loans receivable.

#### **ASU 2017-04 – Intangibles - Goodwill and other (topic 350): simplifying the test for goodwill impairment (“ASU 2017-04”)**

In January 2017, the FASB issued guidance that simplifies the measurement of goodwill impairment. Under this new guidance, an impairment charge, if triggered, is calculated as the difference between a reporting unit’s carrying value and fair value, but it is limited to the carrying value of goodwill. The ASU will be effective for the Company for the fiscal years beginning after December 1, 2021. Early adoption is permitted. The adoption of ASU 2017-04 is not expected to result in a material change to the Company’s consolidated financial statements.

#### **ASU 2019-12 – Simplifying accounting for income taxes (“ASU 2019-12”)**

In December 2019, the FASB issued guidance to simplify the accounting for income taxes by removing certain exceptions to the general principles in Topic 740. The ASU will be effective for the Company for fiscal years beginning after December 1, 2022. Early adoption of the amendments is permitted. The Company is in the process of evaluating the impact of the amendments on its consolidated financial statements.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

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(In thousands of US dollars)

#### 4. Business acquisitions

##### Papa Murphy's (2019)

On May 23, 2019, the Company acquired all the outstanding shares of Papa Murphy's Holdings Inc. The purpose of the transaction was to diversify the Company's range of offering in the US with a new concept offering take-and-bake freshly made pizza.

	2019
	\$
Consideration paid:	
Cash and amount paid for early settlement of options	192,107
Less: cash acquired	(1,816)
Net consideration paid/cash outflow	<u>190,291</u>

The final purchase price allocation is as follows:

	2019		
	As previously reported	Adjustments	Final purchase price allocation
	\$	\$	\$
Net assets acquired:			
Current assets			
Cash	1,816	—	1,816
Accounts receivable	2,888	—	2,888
Inventory	891	—	891
Prepaid expenses and deposits	1,748	—	1,748
Assets held for sale <sup>(2)</sup>	15,188	(467)	14,721
	<u>22,531</u>	<u>(467)</u>	<u>22,064</u>
Property, plant and equipment	786	—	786
Other intangible assets	952	—	952
Franchise rights	33,753	—	33,753
Trademark	98,106	—	98,106
Goodwill <sup>(1 &amp; 2)</sup>	94,448	486	94,934
	<u>250,576</u>	<u>19</u>	<u>250,595</u>
Current liabilities			
Accounts payable	5,926	—	5,926
Accrued liabilities <sup>(2)</sup>	19,853	196	20,049
Gift card liability	2,117	—	2,117
	<u>27,896</u>	<u>196</u>	<u>28,092</u>
Deferred income taxes <sup>(2)</sup>	30,573	(177)	30,396
	<u>58,469</u>	<u>19</u>	<u>58,488</u>
Net purchase price	<u>192,107</u>	<u>—</u>	<u>192,107</u>

(1) Goodwill is not deductible for tax purposes.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 4. Business acquisitions (continued)

##### Papa Murphy's (2019) (continued)

(2) The Company has recorded adjustments to its previously reported preliminary purchase price allocation reported as at November 30, 2019 for accrued liabilities and assets held for sale.

The purchase price allocation is final.

Total expenses incurred related to acquisition costs amounted to \$3,200.

#### 5. Accounts receivable

Details of accounts receivable are as follows:

	2020	2019
	\$	\$
Total accounts receivable	23,330	17,064
Less: Allowance for doubtful accounts	(3,771)	(1,507)
Total accounts receivable, net	19,559	15,557
Of which:		
Not past due	13,483	12,283
Past due for more than one day but no more than 30 days	841	681
Past due for more than 31 day but no more than 60 days	707	469
Past due for more than 61 days	4,528	2,124
Total accounts receivable, net	19,559	15,557
	2020	2019
	\$	\$
Allowance for doubtful accounts, beginning of year	(1,507)	(2,009)
Current period (provision) recovery	(2,547)	269
Additions through acquisition (note 4)	—	(74)
Reversals amounts previously written off	(10)	—
Write-off	293	307
Allowance for doubtful accounts, end of year	(3,771)	(1,507)

#### 6. Assets held for sale

During the year ended November 30, 2020, the Company disposed of two portfolios comprised of seven and nine corporately-owned locations that were refranchised upon completion of the sale. The Company received a total consideration of \$8,405 (2019 – nil) for both portfolios and recorded a loss on disposal of \$93 (2019 – nil).

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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#### 7. Loans receivable

Loans receivable generally result from the sales of franchises and of various advances to certain franchisees and consist of the following:

	2020	2019
	\$	\$
Loans receivable bearing interest between 0% and 8% per annum, receivable in monthly instalments of \$114 in aggregate, including principal and interest, ending in 2026	<b>1,609</b>	1,373
Current portion	<b>(690)</b>	(727)
	<b>919</b>	646

The total allowance for uncollectible amounts on loans receivable amounted to \$1,383 as at November 30, 2020 (2019 - \$1,363).

The capital repayments in subsequent years will be:

	\$
2021	690
2022	340
2023	177
2024	75
2025	61
Thereafter	266
	<u>1,609</u>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 8. Property, plant and equipment

Cost	Equipment	Leasehold improvements	Rolling stock	Computer hardware	Total
	\$	\$	\$	\$	\$
Balance as at November 30, 2018	1,772	79	71	145	2,067
Additions	1,054	9	4	8	1,075
Transfer from assets held for sale <sup>(1)</sup>	410	1,640	—	—	2,050
Additions through business combinations (note 4)	613	173	—	—	786
Dispositions	(523)	—	(11)	—	(534)
Balance as at November 30, 2019	<b>3,326</b>	<b>1,901</b>	<b>64</b>	<b>153</b>	<b>5,444</b>
Additions	<b>1,083</b>	<b>190</b>	—	—	<b>1,273</b>
Dispositions	<b>(844)</b>	—	—	—	<b>(844)</b>
Impairment (note 11)	<b>(579)</b>	—	—	—	<b>(579)</b>
Balance as at November 30, 2020	<b>2,986</b>	<b>2,091</b>	<b>64</b>	<b>153</b>	<b>5,294</b>

<sup>(1)</sup> As part of the acquisition of Papa Murphy's Holdings Inc., the Company identified several portfolios of corporate stores that were deemed to be assets held for sale. During the year ended November 30, 2019 a change in facts and circumstances led one portfolio to no longer meet the definition of assets held for sale and the carrying amount was transferred to property, plant and equipment. The Company recorded depreciation expense to reflect as though the asset was recorded initially to property, plant and equipment on acquisition.

Accumulated depreciation	Equipment	Leasehold improvements	Rolling stock	Computer hardware	Total
	\$	\$	\$	\$	\$
Balance as at November 30, 2018	750	14	30	80	874
Depreciation expense	489	359	9	29	886
Dispositions	(196)	—	(9)	—	(205)
Balance as at November 30, 2019	<b>1,043</b>	<b>373</b>	<b>30</b>	<b>109</b>	<b>1,555</b>
Depreciation expense	<b>756</b>	<b>632</b>	<b>7</b>	<b>20</b>	<b>1,415</b>
Dispositions	<b>(417)</b>	—	—	—	<b>(417)</b>
Balance as at November 30, 2020	<b>1,382</b>	<b>1,005</b>	<b>37</b>	<b>129</b>	<b>2,553</b>

Carrying amounts	Equipment	Leasehold improvements	Rolling stock	Computer hardware	Total
	\$	\$	\$	\$	\$
November 30, 2019	2,283	1,528	34	44	3,889
<b>November 30, 2020</b>	<b>1,604</b>	<b>1,086</b>	<b>27</b>	<b>24</b>	<b>2,741</b>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

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#### 9. Intangible assets

Cost	Franchise	Trademarks	Other	Total
	rights			
	\$	\$	\$	\$
Balance as at November 30, 2018	139,786	202,683	—	342,469
Additions	—	—	35	35
Adjustment for prior year acquisitions	7,378	11,054		18,432
Acquisition through business combinations (note 4)	33,753	98,106	952	132,811
Impairment (note 11)	(1,036)	(213)	—	(1,249)
Balance as at November 30, 2019	179,881	311,630	987	492,498
Additions	<b>8</b>	<b>—</b>	<b>60</b>	<b>68</b>
Impairment (note 11)	<b>(4,489)</b>	<b>(9,001)</b>	<b>—</b>	<b>(13,490)</b>
Balance as at November 30, 2020	<b>175,400</b>	<b>302,629</b>	<b>1,047</b>	<b>479,076</b>

Accumulated amortization	Franchise	Trademarks	Other	Total
	rights			
	\$	\$	\$	\$
Balance as at November 30, 2018	25,861	—	—	25,861
Amortization expense	12,941	—	206	13,147
Balance as at November 30, 2019	38,802	—	206	39,008
Amortization expense	<b>13,982</b>	<b>—</b>	<b>192</b>	<b>14,174</b>
Balance as at November 30, 2020	<b>52,784</b>	<b>—</b>	<b>398</b>	<b>53,182</b>

Carrying amounts	Franchise	Trademarks	Other	Total
	rights			
	\$	\$	\$	\$
November 30, 2019	141,079	311,630	781	453,490
<b>November 30, 2020</b>	<b>122,616</b>	<b>302,629</b>	<b>649</b>	<b>425,894</b>



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 10. Goodwill

The changes in the carrying amount of goodwill are as follows:

	2020	2019
	\$	\$
Balance, beginning of year	233,743	157,727
Additional amounts recognized from business acquisitions (note 4)	—	76,016
Purchase price allocation adjustments (note 4)	486	—
Impairment (note 11)	(48,653)	—
Balance, end of year	185,576	233,743

#### 11. Impairment

During the year ended November 30, 2020, impairment indicators were identified due to the adverse impact of COVID-19, which resulted in temporary store closures and reduction in sales at franchised and corporately-owned locations. Accordingly, the Company performed impairment testing during the year, in addition to its annual impairment test as at August 31, 2020, which resulted in the recognition of \$62,722 of impairment losses. Impairment charges were based on the amount by which the carrying values of the assets exceeded fair value, determined using expected discounted future cash flows for trademarks and multi-period excess earnings for franchise rights.

Impairment by reporting unit for the year ended November 30, 2020:

	Property plant and equipment	Intangible assets <sup>(1)</sup>	Goodwill	Total
	\$	\$	\$	\$
U.S. excluding Papa Murphy's	579	13,490	48,653	62,722
Papa Murphy's	—	—	—	—
	579	13,490	48,653	62,722

<sup>(1)</sup> Comprised of \$4,489 and \$9,001 of impairment of franchise rights and trademarks, respectively.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

## 11. Impairment (continued)

Impairment by reporting unit for the year ended November 30, 2019:

	Property plant and equipment	Intangible assets <sup>(1)</sup>	Goodwill	Total
	\$	\$	\$	\$
U.S. excluding Papa Murphy's	—	1,249	—	1,249
Papa Murphy's	—	—	—	—
	—	1,249	—	1,249

(1) Comprised of \$1,036 and \$213 of impairment of franchise rights and trademarks, respectively.

The key assumptions used in the Company's impairment tests, where the recoverable amount was measured as a reporting unit's value in use, are those related to uncertainties around the impact of COVID-19 on projected sales, as well as the discount rate. The sales forecasts for cash flows considered the weighted average impact of multiple scenarios based on operating results and internal forecasts prepared by management.

The following table presents the key assumptions used in the Company's impairment tests, as well as the recoverable amounts measured at value in use:

	2020		2019	
<i>(\$, except percentage data)</i>	U.S. excluding Papa Murphy's	Papa Murphy's	U.S. excluding Papa Murphy's	Papa Murphy's
Long-term growth rates	0% to 2%	0% to 2%	0% to 2%	0% to 2%
Discount rates after tax	8.3% to 9.2%	8.3% to 9.2%	8.3%	8.3%
Discount rates pre-tax	10.5% to 11.8%	10.5% to 11.8%	10.5%	10.5%
Recoverable amounts	431,609	323,543	519,482	307,425

A change of 1% in discount rates in the U.S. excluding Papa Murphy's would result in additional impairment charges on intangible assets of 11 brands (2019 – one brand) representing 2.9% (2019 – 0.7%) of the total carrying value of the franchise rights and trademarks in that unit, and additional impairment charges on goodwill representing 5.3% (2019 – nil) of the total carrying value of goodwill in that unit. A change of 1% in discount rates in the U.S. excluding Papa Murphy's would not result in additional impairment charges on property, plant and equipment for the years ended November 30, 2020 and 2019.

A change of 1% in discount rates in Papa Murphy's would not result in additional impairment charges on property, plant and equipment, intangible assets or goodwill for the years ended November 30, 2020 and 2019.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 12. Gift card liability

The changes in the carrying amount of the gift card liability are as follows:

	2020	2019
	\$	\$
Gift card liability, beginning of year	68,097	62,961
Activations during the period	26,186	33,921
Redemptions during the period	(19,930)	(25,518)
Gift card liability acquired (note 4)	—	2,117
Deferred program fees and other	(434)	(806)
Gift card breakage recorded	(3,348)	(4,578)
Gift card liability, end of year	70,571	68,097

#### 13. Deferred revenue and deposits

	2020	2019
	\$	\$
Franchise fee deposits	17,628	15,286
Unearned rent	1,926	2,528
Supplier contributions and other allowances	5,065	1,796
	24,619	19,610
Current portion	(5,894)	(6,148)
	18,725	13,462

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 13. Deferred revenue and deposits (continued)

Deferred revenues consist mostly of initial, transfer and renewal franchise fees paid by franchisees, as well as upfront fees paid by master franchisees, which are generally recognized on a straight-line basis over the term of the related agreement. Deferred revenues also include amounts paid in upfront fees received from agreements with suppliers, which are amortized over the term of the related agreement.

\$6,248 (2019 – \$5,903) of revenue recognized in the current year was included in the deferred revenue balance at the beginning of the year.

The following table provides estimated revenues expected to be recognized in future years related to performance obligations that are unsatisfied as at November 30, 2020:

Estimate for fiscal year:	\$
2021	5,894
2022	3,306
2023	2,962
2024	2,507
2025	4,015
Thereafter	5,935
	<u>24,619</u>

#### 14. Receivables and advances from ultimate parent, parent company and companies under common control

The receivable from ultimate parent is primarily comprised of a renewable one-year term loan facility of \$58,497. The term loan is unsecured and bears interest at the rate set at the Applicable Federal Rates as issued by the U.S. Internal Revenue Service for short-term instruments. The term loan may be repaid, in whole or in part, at any time, without premium or penalty. MTY USA may also request repayment, in whole or in part, at any time, without penalty.

The receivable from company under common control and advances from parent company and companies under common control are non-interest bearing and receivable/due on demand with no specified collection/repayment terms.

#### 15. Long-term loan from company under common control

	2020	2019
	\$	\$
Interest-bearing loan at 5.4%, repayable by November 27, 2026 <sup>(1)</sup>	299,850	299,850
Balance, end of year	<u>299,850</u>	<u>299,850</u>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

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#### 15. Long-term loan from company under common control (continued)

<sup>(1)</sup> The loan is subject to a maximum debt to EBITDA ratio of 6.00 to 1 starting on November 27, 2019 and a minimum EBITDA interest coverage ratio of 2.00 to 1 to be calculated in conjunction with interest payments based on the past 12 months.

The Company is currently in breach of its debt covenants on its long-term loan. The Company has obtained a waiver from the company under common control that is valid until February 28, 2022.

#### 16. Long-term debt

	2020	2019
	\$	\$
Non-interest-bearing holdback acquired on acquisition of The Counter repayable in December 2020	1,542	1,414
Non-interest-bearing holdback acquired on acquisition of Grabbagreen	—	264
Non-interest-bearing holdback acquired on acquisition of SweetFrog repayable in September 2021	2,268	3,336
	3,810	5,014
Current portion	(3,810)	(2,834)
	—	2,180

The Company has contractual cash flows of \$7,092 (2019 – \$7,092) on non-interest-bearing holdbacks acquired on acquisition of Kahala Brands Ltd., that are currently being applied to an income tax payable related to the acquisition of Kahala Brands Ltd. An amount of \$1,901 (2019 – \$2,244) has been transferred to accounts receivable as it relates to an indemnification receivable also related to the acquisition of Kahala Brands Ltd.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 17. Contingencies

The contingencies for litigation and disputes represent management's best estimate of the outcome of litigations and disputes that are ongoing at the date of the consolidated balance sheets. These contingencies are made of multiple items; the timing of the settlement of these contingencies is unknown given their nature, as the Company does not control the litigation timelines.

The provision related to closed stores mainly represents amounts that are expected to be disbursed to exit leases of underperforming or closed stores. The negotiations with the various stakeholders are typically short in duration and are expected to be settled within a few months following the recognition of the contingencies. The provisions for litigations, disputes and closed stores are recorded in accrued liabilities.

	November 30, 2020	November 30, 2019
	\$	\$
Provision for litigation, disputes, closed stores and other contingencies, beginning balance	9,300	1,211
Reversals	(779)	(302)
Acquired through our business acquisitions (note 4)	—	9,514
Purchase price allocation adjustment (note 4)	196	—
Amounts used	(7,165)	(1,690)
Additions	1,357	567
Provision for litigation, disputes, closed stores and other contingencies, ending balance	2,909	9,300

#### 18. Common stock

	2020		2019	
	Shares issued	\$	Shares issued	\$
Balance, beginning of year	15	179,154	5	89,154
Share issuance related to Papa Murphy's acquisition	—	—	10	90,000
Balance, end of year	15	179,154	15	179,154

On May 23, 2019, the Company issued 10 common shares to its parent company in exchange for its parent company assuming debt of \$90,000 in conjunction with the acquisition of Papa Murphy's Holdings Inc.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

## 19. Financial instruments

In the normal course of business, the Company uses various financial instruments which by their nature involve risk, including market risk and the credit risk of non-performance by counterparties. These financial instruments are subject to normal credit standards, financial controls, risk management as well as monitoring procedures.

### *Fair value of recognized financial instruments*

The Company has determined that the fair value of its financial assets and financial liabilities with short-term maturities approximates their carrying value. These financial instruments include cash, restricted cash, accrued liabilities, promotional funds payable, and advances from parent company and from companies under common control.

The table below shows the fair value and the carrying value of other financial instruments as at November 30, 2020 and November 30, 2019. Since estimates are used to determine fair value, they must not be interpreted as being realizable in the event of a settlement of the instruments.

	2020		2019	
	Carrying amount	Fair value	Carrying amount	Fair value
Financial assets	\$	\$	\$	\$
Loans receivable	1,609	1,609	1,373	1,373

### *Determination of fair value*

The following methods and assumptions were used to estimate the fair values of each class of financial instruments:

*Cash, restricted cash, accounts receivable, receivable from ultimate parent, deposits, accounts payable, accrued liabilities, advances from parent company, advances from companies under common control* – The carrying amounts approximate fair values due to the short maturity of these financial instruments.

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019  
(In thousands of US dollars)

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## 19. Financial instruments (continued)

### *Risk management policies*

The Company, through its financial assets and financial liabilities, is exposed to various risks. The following analysis provides a measurement of risks as at November 30, 2020.

### *Credit risk*

The Company's credit risk is primarily attributable to its trade receivables, loans receivable and deposits. For accounts receivable and loans receivable, the amounts disclosed on the consolidated balance sheets are net of allowances for bad debts, estimated by the Company's management based on past experience and counterparty specific circumstances. The Company believes that the credit risk of accounts receivable is limited for the following reasons:

- The Company's broad client base is spread mostly across the U.S., which limits the concentration of credit risk.
- The Company accounts for specific bad debt provisions when management considers that the expected recovery is less than the actual account receivable.

The credit risk on cash is limited because the Company invests its excess liquidity in high-quality financial instruments and with credit-worthy counterparties.

The credit risk on deposits is also limited as these are mostly with well-established and credit-worthy companies.

### *Interest rate risk*

Interest rate risk is the Company's exposure to increases and decreases in financial instrument values caused by the fluctuation in interest rates. The Company has limited exposure to interest rate risk as its long-term loans from company under common control as well as its long-term debt have fixed interest rates.



## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

## 20. Revenues

Revenues are broken down as follows:

	Franchising	Corporate	2020 Total
	\$	\$	\$
Corporate store revenues	—	34,553	34,553
Royalties	80,231	—	80,231
Franchise fees, transfer fees and master license fees	3,174	—	3,174
Promotional funds	42,628	—	42,628
Program allowances	17,335	—	17,335
Breakage income	3,348	—	3,348
Resale material and retail sales	4,755	—	4,755
Other revenue	7,316	—	7,316
	<b>158,787</b>	<b>34,553</b>	<b>193,340</b>

	Franchising	Corporate	2019 Total
	\$	\$	\$
Corporate store revenues	—	37,514	37,514
Royalties	73,023	—	73,023
Franchise fees, transfer fees and master license fees	2,616	—	2,616
Promotional funds	33,542	—	33,542
Program allowances	19,647	—	19,647
Breakage income	4,578	—	4,578
Resale material and retail sales	4,479	—	4,479
Other revenue	4,163	—	4,163
	<b>142,048</b>	<b>37,514</b>	<b>179,562</b>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

## 21. Operating expenses

Operating expenses are broken down as follows:

	Franchising	Corporate	2020 Total
	\$	\$	\$
Cost of goods sold	1,260	11,874	13,134
Wages and benefits	33,143	13,401	46,544
Advertising, marketing and promotion	555	2,767	3,322
Rent	4,520	4,734	9,254
Professional & consulting fees and commission	9,431	—	9,431
Office travel, meals & entertainment and utilities	4,444	2,920	7,364
Promotional funds	42,628	—	42,628
Gift card program, costs	4,143	—	4,143
Other	3,658	1,965	5,623
	<b>103,782</b>	<b>37,661</b>	<b>141,443</b>

	Franchising	Corporate	2019 Total
	\$	\$	\$
Cost of goods sold	1,120	12,879	13,999
Wages and benefits	30,904	14,232	45,136
Advertising, marketing and promotion	644	3,297	3,941
Rent	3,353	5,069	8,422
Professional & consulting fees and commission	9,378	—	9,378
Office travel, meals & entertainment and utilities	4,859	3,051	7,910
Promotional funds	33,542	—	33,542
Gift card program, costs	6,838	—	6,838
Other	1,708	2,226	3,934
	<b>92,346</b>	<b>40,754</b>	<b>133,100</b>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

## 21. Operating expenses (continued)

### *Franchising operations*

The franchising business mainly generates revenues from royalties, supplier contributions, franchise fees and rent.

### *Corporate store operations*

Corporate stores generate revenues from the direct sale of prepared food to customers.

## 22. Interest expense

Interest expense is broken down as follows:

	2020	2019
	\$	\$
Interest charged by ultimate parent company (note 26)	—	20
Interest charged by companies under common control (note 26)	16,192	14,365
Accreted interest expense on interest-bearing holdbacks	572	911
Interest expense	<b>16,764</b>	15,296

## 23. Operating lease arrangements

Operating leases as lessee relate to leases of premises in relation to the Company's operations. Leases typically have terms ranging between five and 10 years at inception. The Company does not have options to purchase the premises on any of its operating leases.

The Company has entered into various long-term leases and has sub-leased substantially all of the premises based on the same terms and conditions as the original lease to unrelated franchisees. The minimum rentals, exclusive of occupancy and escalation charges, and additional rent paid on a percentage of sales basis, payable under the leases are as follows:

	Lease commitments	Sub-leases	Net commitments
	\$	\$	\$
2021	33,644	27,154	6,490
2022	27,698	22,240	5,458
2023	21,562	17,243	4,319
2024	15,842	12,181	3,661
2025	10,196	7,578	2,618
Thereafter	19,279	10,802	8,477
	<b>128,221</b>	<b>97,198</b>	<b>31,023</b>

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 23. Operating lease arrangements (continued)

Operating leases as lessor relate to the properties leased or owned by the Company, with lease terms ranging between five to 10 years. Some have options to extend the duration of the agreements, for periods ranging between one and 15 years. None of the agreements contain clauses that would enable the lessee or sub-lessee to acquire the property.

The Company has recognized a liability of \$1,166 (November 30, 2019 – \$1,142) for the leases of premises in which it no longer has operations but retains the obligations contained in the lease agreement (note 17).

#### 24. Income taxes

The Company accounts for income taxes in accordance with ASC 740. ASC 740 prescribes the use of the liability method whereby deferred tax asset and liability account balances are determined based on differences between the financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates. The effects of future changes in tax laws or rates are not anticipated.

Under ASC 740, income taxes are recognized for the following: a) amount of tax payable for the current year and b) deferred tax liabilities and assets for future tax consequences of events that have been recognized differently in the consolidated financial statements than for tax purposes.

	2020	2019
Income tax expense (recovery)	\$	\$
Current tax expense	3,076	2,481
Deferred tax (recovery) expense	(11,133)	868
Total tax (recovery) expense	(8,057)	3,349

The provision for income taxes recorded in the consolidated financial statements differs from the amount which would be obtained by applying the statutory federal income tax rate of 21% (2019 – 21%) to the income for the period as follows:

	2020	2019
	\$	\$
(Loss) income before income taxes	(45,284)	14,798
Income tax (recovery) expense at federal statutory rate	(9,510)	3,108
State and local income taxes net of federal tax benefit	50	975
Non-deductible/non-taxable items	7,666	(461)
True up of prior year tax provision	293	(187)
Rate variation on deferred income tax	(2,429)	—
Revision of estimates for tax exposures	(4,173)	—
Other	46	(86)
Income tax (recovery) expense	(8,057)	3,349

## MTY Franchising USA, Inc.

### Notes to the consolidated financial statements

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 24. Income taxes (continued)

Components of the net deferred tax asset or liability:

	2020	2019
	\$	\$
Inventory	77	54
Allowance for doubtful accounts	401	50
Deferred revenue	2,770	3,132
Gift cards	13,042	11,297
Accrued liabilities	6,309	4,612
Long-term debt	—	381
Non-capital losses and other tax credits	657	1,652
Total deferred tax assets	23,256	21,178
Deferred costs	(422)	(520)
Property, plant and equipment	(2,511)	(2,969)
Intangible assets	(94,153)	(102,923)
Long-term debt	(104)	—
Total deferred tax liabilities	(97,190)	(106,412)
Net deferred tax liability	(73,934)	(85,234)

#### 25. Supplemental cash flow information

During the year, the Company paid \$2,732 (\$5,046 in 2019) in income taxes.

#### 26. Related party transactions

The Company has transactions in the normal course of business with its ultimate parent, parent company and companies under common control. These transactions were in the normal course of business and measured at the exchange amount, which is the amount of consideration established and agreed to by the related parties.

**EXHIBIT W**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Performance Guaranty**

## GUARANTEE OF PERFORMANCE

For value received, MTY Franchising USA, Inc., a Tennessee corporation ("Guarantor"), located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258, absolutely and unconditionally guarantees to assume the duties and obligations of BF Acquisition Holdings, LLC, a Delaware limited liability company, located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 ("Franchisor"), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its 2022 Franchise Disclosure Document, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, whichever first occurs. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor signs this guarantee at Scottsdale, Arizona on March 1<sup>st</sup>, 2022.

Guarantor:

MTY Franchising USA, Inc., a Tennessee corporation

By:   
Eric Lefebvre, Chief Executive Officer

By:   
Jenny Moody, General Counsel

**EXHIBIT X**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Addendum for Sale of Company-Affiliated Owned Stores**



**Addendum for Sale of Company-Affiliated Owned Stores #1**

**Below is information covering the last five fiscal years on a previously-owned franchised outlet now under the control of an affiliate of Franchisor.**

Address of Outlet for Sale: \_\_\_\_\_

Previous Franchise Owner 1:

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 2 (if applicable):

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 3 (if applicable):

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Note: The telephone number of the previous franchise owner(s) listed above is the current business telephone number, or if unknown, the last home telephone number Franchisor had for the previous franchise owner.

The time period(s) when affiliate of Franchisor retained control of the outlet: \_\_\_\_\_

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Addendum for Sale of Company-Affiliated Owned Stores #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Addendum for Sale of Company-Affiliated Owned Stores #2 must be signed and dated by the prospective franchisee and returned to BF Acquisition Holdings, LLC either by mailing it to BF Acquisition Holdings, LLC at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 or faxing it to BF Acquisition Holdings, LLC at (480) 362-4792.

**Addendum for Sale of Company-Affiliated Owned Stores #2**

**Below is information covering the last five fiscal years on a previously-owned franchised outlet now under the control of an affiliate of Franchisor.**

Address of Outlet for Sale: \_\_\_\_\_

Previous Franchise Owner 1:

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 2 (if applicable):

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Previous Franchise Owner 3 (if applicable):

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

City, State: \_\_\_\_\_

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

Time period outlet was controlled by previous franchise owner: \_\_\_\_\_

Reason for change in ownership: \_\_\_\_\_

Note: The telephone number of the previous franchise owner(s) listed above is the current business telephone number, or if unknown, the last home telephone number Franchisor had for the previous franchise owner.

The time period(s) when affiliate of Franchisor retained control of the outlet: \_\_\_\_\_

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

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Addendum for Sale of Company-Affiliated Owned Stores #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Addendum for Sale of Company-Affiliated Owned Stores #2 must be signed and dated by the prospective franchisee and returned to BF Acquisition Holdings, LLC either by mailing it to BF Acquisition Holdings, LLC at 9311 E. Via De Ventura, Scottsdale, Arizona 85258 or faxing it to BF Acquisition Holdings, LLC at (480) 362-4792.

**EXHIBIT X-1**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**State Effective Dates**

***Baja Fresh***  
**STATE EFFECTIVE DATES**

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

California	March 28, 2022
Hawaii	Not Registered
Illinois	March 28, 2022
Indiana	March 28, 2022
Maryland	Pending
Michigan	Pending
Minnesota	Pending
New York	March 28, 2022
North Dakota	Pending
Rhode Island	Not Registered
South Dakota	Not Registered
Virginia	Pending
Washington	Pending
Wisconsin	Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans

**EXHIBIT Y**

**TO THE FRANCHISE DISCLOSURE DOCUMENT**

**Receipts**

## RECEIPT #1

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 BF Acquisition Holdings, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**[New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

**[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 BF Acquisition Holdings, 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, DC 20580 and the state agency listed on Exhibit B.

The franchisor is BF Acquisition Holdings, LLC, located at 9311 E. Via De Ventura, Scottsdale, Arizona 85258. Its telephone number is (480) 362-4800. The franchise seller for this offering is \_\_\_\_\_, \_\_\_\_\_, (\_\_\_\_) \_\_\_\_\_.

Issuance date: March 28, 2022.

BF Acquisition Holdings, LLC authorizes the respective state agencies identified on Exhibit C to receive service of process for it in the particular state.

I received a Baja Fresh Disclosure Document dated March 28, 2022, that included the following Exhibits:

A	State Addenda to Franchise Disclosure Document	M	Lease Guaranty Acknowledgement
B	Directory of State Agencies and Administrators	N	Lease Review and/or Negotiation Agreement and Release and State Addenda
C	Franchisor's Agent for Service of Process	O-1	Sublease and Guaranty of Sublease (Franchisee pays rent directly to Landlord)
D	Asset Purchase Agreement (For Sale of a Corporate Store to a Franchisee) with Promissory Note Security Agreement and Guaranty (if applicable)	O-2	Sublease and Guaranty of Sublease (Franchisor or its affiliate collects rent from Franchisee and pays to Landlord)
E-1	Franchise Agreement (New) and Franchisee Questionnaire	P	Pre-Authorized Electronic Funds Transfer Form
E-2	Franchise Agreement (Renewal) and Franchisee Questionnaire	P-1	Gift / Loyalty Card Participation Agreement
E-3	Franchise Agreement (Transfer) and Franchisee Questionnaire		General Release for Renewal of Franchise Agreement
F-1	Guaranty of Franchise Agreement	Q	Consent to Transfer and Release Agreement (without Sublease)
F-2	Non-Disclosure and Non-Competition Agreement	R-1	Consent to Transfer and Release Agreement (without Sublease)
G	Collateral Assignment and Irrevocable Special Power of Attorney	R-2	Consent to Transfer and Release Agreement (with Sublease)
H	Amendment to Franchise Agreement (for non-traditional locations excluding those co-branded with another affiliated brand)	S	State Addenda to Franchise Documents
I	Intentionally Omitted	T	Intentionally Omitted
J	In-Store Training Release and Waiver of Liability Agreement	U	List of Franchise Owners
K	Addendum to the Franchise Agreement for SBA Loans	V	Financial Statements
L	Required Lease Terms (Lease Addendum to Lease Agreement)	W	Performance Guaranty
		X	Addendum for Sale of Company-Affiliated Owned Stores
		X-1	State Effective Dates
		Y	Receipts

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

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

Receipt #1 must be signed and dated and remains in the Franchise Disclosure Document as the prospective franchisee's copy. Receipt #2 must be signed and dated by the prospective franchisee and returned to BF Acquisition Holdings, LLC by mailing it to BF Acquisition Holdings, LLC at 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

## RECEIPT #2

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 BF Acquisition Holdings, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

**[New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.]**

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E-1	Franchise Agreement (New) and Franchisee Questionnaire	P	Pre-Authorized Electronic Funds Transfer Form
E-2	Franchise Agreement (Renewal) and Franchisee Questionnaire	P-1	Gift / Loyalty Card Participation Agreement
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		X	Addendum for Sale of Company-Affiliated Owned Stores
		X-1	State Effective Dates
		Y	Receipts

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

(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

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

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