

# FRANCHISE DISCLOSURE DOCUMENT

MTY FRANCHISING USA, INC.

9311 East Via de Ventura

Scottsdale, Arizona, 85258

(888) 729-7482 or (480) 362-4800

<https://www.thaiexpressfood.com/>

<https://thaiexpressfranchise.com/>



The franchise offered is for the rights to operate a Thai Express franchised restaurant, a retail quick service restaurant selling “Thai-style” foods and drinks, and other menu items using the trademark THAI EXPRESS.

The total investment necessary to begin operation of a Thai Express food court franchise ranges between \$350,400 and \$767,500, including \$40,000 to \$42,500 that must be paid to the franchisor or its affiliates. The total investment necessary to begin operation of a Thai Express standard franchise ranges between \$454,050 to \$846,700 including a total of \$40,000 to \$42,500 that must be paid to the franchisor or its affiliates.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact MTY Franchising USA, Inc., Attn: John Wuycheck, 9311 East Via de Ventura, Scottsdale, Arizona, 85258, and (480) 362-4800.

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

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. Information comparing franchisors is available. Call your state agency or your public library for sources of information. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” is available from the FTC. 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

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

**Issuance Date: 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 I.
<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 A 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 <i>Thai Express</i> 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 <i>Thai Express</i> franchisee?</b>	Item 20 or Exhibit I 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 D.

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.

## **TABLE OF CONTENTS**

<b><u>Item</u></b>	<b><u>Page</u></b>
ITEM 1 THE FRANCHISOR AND ANY PARENT, PREDECESSORS, AND AFFILIATES .....	1
ITEM 2 : BUSINESS EXPERIENCE .....	10
ITEM 3 : LITIGATION .....	12
ITEM 4 BANKRUPTCY .....	31
ITEM 5 INITIAL FEES .....	31
ITEM 6 OTHER FEES .....	31
ITEM 7 ESTIMATED INITIAL INVESTMENT .....	38
ITEM 8 RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES.....	46
ITEM 9 FRANCHISEE’S OBLIGATIONS.....	49
ITEM 10 FINANCING.....	51
ITEM 11 FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING.....	53
ITEM 12 TERRITORY .....	61
ITEM 13 TRADEMARKS .....	63
ITEM 14 PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION .....	65
ITEM 15 OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS.....	66
ITEM 16 RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL.....	67
ITEM 17 RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION .....	67
ITEM 18 PUBLIC FIGURES .....	75
ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS.....	75
ITEM 20 OUTLETS AND FRANCHISEE INFORMATION.....	76
ITEM 21 FINANCIAL STATEMENTS .....	80
ITEM 22 CONTRACTS .....	80
ITEM 23 RECEIPTS .....	81
<b>EXHIBITS:</b>	
Exhibit A: Financial Statements	
Exhibit B: Franchise Agreement with Schedules	
Exhibit B1: Asset Purchase Agreement	
Exhibit C: Intentionally Omitted	
Exhibit D: List of State Franchise Administrators and Agents for Service	
Exhibit E: List of Franchisees and Multiple Unit Operators	
Exhibit F: State Addendum	
Exhibit G: Operations Manual Table of Contents	
Exhibit H: In-Store Training Release and Waiver of Liability Agreement	
Exhibit I: List of Franchisees or Multiple Unit Operators Who Have Left the System	
Exhibit J State Effective Dates	

Exhibit K: Receipt

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

The Franchisor

MTY Franchising USA, Inc. is the franchisor. To simplify the language in this “Disclosure Document,” MTY Franchising USA, Inc. may be referred to as “MTY USA,” “we,” “us,” “our” and “Franchisor.” “You” and “your” mean the person(s), corporation, partnership, limited liability company, or other entity that buys a unit franchise. If “you” are a business entity, “you” includes shareholders, members or owners of the business to the extent each guaranties or otherwise agrees to perform or be bound by the obligations of the business entity.

We are in the business of franchising the right to own and operate quick service and full service restaurants. As it relates to this Disclosure Document, we conduct business under the name “Thai Express”. Our principal business address is 9311 E. Via de Ventura, Scottsdale, Arizona 85258.

MTY Franchising USA Inc. (formerly known as The Extreme Pita Franchising USA, Inc.), was incorporated in Delaware on March 14, 2001 and converted to MTY Franchising USA Inc., a Tennessee corporation, as of October 9, 2019. You will see references to our former corporate names in our audited financial statements. As of November 30, 2021, there were 11 Thai Express outlets (10 franchised outlets and 1 company-owned outlet). See ITEM 20 for additional information on these numbers.

Parents and Predecessors

Our direct corporate parent is MTY Franchising Inc. (formally known as MTY Tiki Ming Enterprises Inc.) (“MTY Canada”), a Canadian corporation incorporated on February 13, 1979 and having a principal business address at 8150 Route Transcanadienne, Suite 200, Ville Saint-Laurent, Quebec, H4S 1M5, Canada.

Our ultimate corporate parent is 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. MTY is a public corporation listed on the Toronto Stock Exchange.

MTY USA began offering Thai Express unit franchises in the United States in February 2015.

Agent for Service of Process

Our agents for service of process are listed in Exhibit D to this Disclosure Document. Unless otherwise specified, our registered agent for service of process is C T Corporation System, 300 Montvue Road, Knoxville, Tennessee 37919.

The Franchised Business and Franchise Unit Offering

Our principal business is the development of a system of retail quick-service restaurants utilizing the Thai Express name and other intellectual property, specializing in selling “Thai-style” foods and drinks, and other menu items related to the Thai Express concept. Most of these restaurants are operated by franchised operators (individuals and business entities) who are

independent contractors. We and our affiliates also may operate various Thai Express restaurants and other food facilities.

A Thai Express restaurant (“Thai Express Restaurant” or “Franchised Business”) serves its customers by operating a uniform system consisting of high standards of service, the use of consistent quality products, and in accordance with the business format created and developed by us and our affiliates (“System”). We authorize you to use the Marks (as defined below) to operate a Thai Express Restaurant.

We also offer to select qualified persons and/or companies the opportunity to acquire the right to license our Marks and confidential recipes for use in operating at a food facility that services colleges, universities and other institutions. In addition to the above, we license Thai Express franchises in certain other venues such as may be found in universities, colleges, hospitals, airports, highway rest stops, corporate office towers, etc. To the extent required by law or in cases in which an exemption to disclosure is not available to us, the franchise opportunities described in this paragraph is offered in connection with this Franchise Disclosure Document.

#### Other Franchises Offered by Us, Our Parents, or Our Affiliates

WE ARE ONLY OFFERING A THAI EXPRESS UNIT FRANCHISE UNDER THIS DISCLOSURE DOCUMENT. EACH OF THE FRANCHISES DETAILED BELOW ARE OFFERED BY US, OUR PARENT, OR OUR AFFILIATE UNDER SEPARATE DISCLOSURE DOCUMENTS FOR EACH BRAND.

We have the following U.S.-based affiliates through common ownership by MTY, that also offer franchises in the United States and internationally: (1) 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; (2) BF Acquisition Holdings, LLC (“BFAH”), a Delaware limited liability company 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.

The following summarizes Thai Express and these other quick service restaurant brands currently offered by us or a U.S.-based affiliate 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 we or our current or former affiliates started offering franchises in those brands:

#### BRANDS WE FRANCHISE:



<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 predecessor</b>
Ben & Florentine	Restaurant serving a superior breakfast & lunch experience	0 franchised units	From December 2018 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)	December 2017 under Built Franchise Systems, LLC. Then from March 2019 under MTY USA
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
Ginger Sushi Boutique+ Poke Shop	Restaurant serving a variety of sushi menu items and drinks	0 franchised units	From September 2015 under MTY USA
Grabbagreen	Restaurants serving healthy food, juice, smoothies and related products	13 franchised units	Since February 2018 under MTY USA
La Diperie	Restaurant serving retail sale of an ice cream product and various dips and toppings	0 franchised units	From April 2019 under MTY USA
Manchu WOK	Quick service restaurant serving fast and fresh Chinese cuisine	21 franchised units	March 2015: MTY USA
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
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)	September 2018 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

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)	December 2017 under CB Franchise Systems, LLC. Then from March 2019 under MTY USA
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BRANDS OUR U.S.-BASED AFFILIATES FRANCHISE:

<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 our U.S.-based affiliates and their predecessors</b>
America's Taco Shop	Restaurants serving freshly prepared Mexican food including tacos, burritos, and quesadillas	1 company-owned unit*  And, 2 licensed units.	November 2011 under Kahala Franchising
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 2010 by Kahala Franchise Corp. and since August 2010 under Kahala Franchising
Cereality cereal bar & cafe	Restaurants serving hot and cold cereals and cereal blends with toppings, oatmeal, and parfaits	0 franchised units	From 2007 until 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	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	1,248 franchised units (889 in the United States and 359 internationally)(plus 5 company-owned units).	From May 2007 until March 2008 by Cold Stone Creamery, Inc., from March 2008 until March 2010 by Kahala Franchise Corp., and since August 2010 under Kahala Franchising

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2021	Dates unit franchises began being offered by our U.S.-based affiliates and their predecessors
		<p>96 Cold Stone Creamery franchises also sell Rocky Mountain Chocolate Factory® products and 1 Cold Stone Creamery franchise also sells Tim Hortons® products.</p> <p>Additionally, 25 licensed units.</p>	
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 unit.	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

<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 our U.S.-based affiliates and their predecessors</b>
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, 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-Lite outlets.	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

Brand Name	Type of Restaurant Business	Number of Units as of November 30, 2021	Dates unit franchises began being offered by our U.S.-based affiliates and their predecessors
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
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)	October 2016 until July 2017 under Triune, LLC and since then under BF Acquisition Holdings, LLC
La Salsa	Restaurant offering a limited menu featuring fresh high quality Mexican-style food products	8 franchised units	October 2016 under La Salsa Franchise, LLC.
Papa Murphy's	Retail food outlets currently featuring take and bake pizza, salads, desserts and other related products	XXX franchised (XXX in the United States, 37 international) and XXX corporate-owned stores	From May 2019 Papa Murphy's International, Inc.

*\*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 also have internationally-based parents and affiliates that offer franchises.

Our Canadian-based direct parent MTY Canada currently operates or has franchised over (55) different restaurant concepts and has over 2,500 units under following brands primarily in Canada and other international countries: Allo Mon Coco, Baton Rouge Steakhouse & Bar, Ben & Florentine, Big Smoke Burger, Bunsmaster, Café Depot, Casa Grecque, Country Style, Cultures, Dagwoods, Eat Pure, Extreme Pita, Frat's Cucina, Giorgio, Jugo Juice, Karma, Kim Chi, Koryo, Koya, La Boite Verte, La Crémère, La Diperie, Madisons, Manchu Wok, Toujours Mikes, mmmuffins, Mr. Souvlaki, Mr. Sub, Mucho Burrito, Muffin Plus, O'Burger, Pizza Delight, SENSEASIAN, Scores, South St. Burger, Sukiyaki, Sushi Go, Sushman, Sushi Shop, Tandori, Thai Express, Thaizone, The Works, Tiki Ming, Timothy's World Coffee, The COOP Wicked Chicken, Tosto, Turtle Jack's, Tutti Frutti, Valentine, Vanellis, Van Houtte, Vie & Nam, Villa Madina, Steak Frites, Wasabi Grill & Noodle and YUZU.

Our Canadian-based ultimate parent MTY or one of its Canadian-based subsidiaries is the master licensee for the following brands: TCBY (Canada), and Taco Time (Canada). Effective March 1, 2018, MTY through the merger of a wholly-owned subsidiary with Imvescor Restaurant Group Inc., a Canada corporation, ("IRG"), also acquired all the outstanding shares of IRG. At closing, IRG operated 5 brands in Canada and had 261 locations in operation.

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 or 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.

#### Affiliates That Provide Products or Services to Our Franchisees

Kahala Advertising, LLC, an Arizona limited liability company ("Kahala Advertising"), is an affiliate of ours that helps administer the national advertising fund. Neptune Equipment Services, LLC, an Arizona limited liability company ("**Neptune Equipment**"), is an affiliate of ours that is an approved retailer of equipment and other logoed merchandise that sells, distributes, and coordinates logistics of equipment, menu boards, interior and exterior signage, and smallwares to franchisees and licensees. Kahala Management, L.L.C., an Arizona limited liability company ("Kahala Management"), an affiliate of ours, manages the gift card program and provides administrative, legal, accounting, sales, POS phone support, real estate, and marketing support services to MTY USA. In December of 2019 KGC, LLC, a Colorado limited liability company ("KGC") originally created to administer gift card programs, merged into Kahala Management.

Some existing restaurants of other concepts franchised by us are leased by either us or an affiliate of ours, Cold Stone Creamery Leasing Company, Inc., an Arizona limited liability company ("CSC Leasing"), or subsidiaries of our affiliate ("Blimpie Leasing Affiliates") KRES Holdings, L.L.C., an Arizona limited liability company ("KRES")(collectively, "Leasing Affiliates"). In these situations, we or our leasing affiliate enters into a direct lease with the property owner ("Master Lease") for the location of the restaurant, and then Sublease the location to the franchisee for that particular restaurant, using our standard form of Sublease (See Franchise Agreement Schedule K: Sublease). In most other cases, you will enter into a lease for the premises of your Franchised Business directly with the property owner. CSC Real Estate Management, LLC, an Arizona limited liability company ("CSC Real Estate") provides real estate

management services us or our affiliates. The affiliates listed herein do not operate businesses of the type being franchised nor do they offer or sell franchises. Kahala Holdings, LLC, an Arizona limited liability company, and Kahala Restaurants, LLC, an Arizona limited liability company, are affiliates of ours that may own and operate company-owned outlets.

The principal business address for each of the above-mentioned affiliates is 9311 E. Via De Ventura, Scottsdale, Arizona 85258.

Some company-owned Thai Express Restaurants may be leased by either us or our Leasing Affiliates. In these situations, our Leasing Affiliates enter into a direct lease with the property owner (“Master Lease”) for the location of the Thai Express Restaurant, and then Sublease the location to the franchisee for that particular Thai Express Restaurant. In most other cases, you will enter into a lease for the premises of your Thai Express Restaurant directly with the property owner.

### Other Agreements

Effective November 30, 2016 we entered into an agreement to acquire the assets of, and in particular the rights to franchise, the Big Smoke Burger brand from BSB Franchising USA, Inc. (“BSB”). BSB operated the Big Smoke Burger brand in the United States, but the few stores it opened all closed in 2017. From February 2016 until the close of the agreement mentioned above, Big Smoke Burger unit franchises were offered in the United States. Since 2016 the brand has not been franchised in the United States and as of November 30, 2021, there was no Big Smoke Burger restaurant in the United States.

Kahala Franchising previously offered franchises for a take and bake pizza concept called “Pizza Fresh Take●N●Bake.” It began franchising Pizza Fresh Take●N●Bake in November 2011 and ceased offering Pizza Fresh Take●N●Bake franchises in December 2014. During that time period, there were no Pizza Fresh Take●N●Bake franchises sold. Two corporately owned Pizza Fresh Take●N●Bake restaurants were opened in 2011 but both closed in 2014 and there are no Pizza Fresh Take●N●Bake restaurants currently in operation. Kahala Franchise Corp. previously offered franchises for a kiosk-style ice cream dessert concept called “Wafflō.” It began franchising Wafflō in 2005 and ceased offering Wafflō franchises in December 2007. During that time period, there were 21 Wafflō franchises sold. As of November 30, 2021, no Wafflō restaurants were open. Additionally, Kahala Franchise Corp. previously offered franchises for a premium soft serve frozen dessert product called “Tango.” It began offering Tango franchises in May 2007 and ceased selling Tango franchises in November 2007. During that time, there were no Tango franchises sold, and there are no Tango franchise locations currently in operation. As mentioned above, Tasti D-Lite LLC an affiliate of Kahala Franchising, previously franchised the Tasti D-Lite frozen dessert brand. Kahala Franchising is now offering Tasti D-Lite products as a menu offering in Planet Smoothie restaurants. As of November 30, 2021, there were 2 Tasti D-Lite franchises in the United States.

Except as described above, neither we nor any of our affiliates, have offered any other franchises in any other line of business.

### Competition and 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 Thai Express 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 Thai Express restaurant 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. Thai Express restaurants also compete with other food facilities operated or franchised by us or our affiliates.

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.

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 is required to be disclosed in this Item.

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

Upon signing a Thai Express Franchise Agreement (“Franchise Agreement”), you pay a lump sum Initial Franchise Fee of \$30,000. You must sign a separate Franchise Agreement for each Thai Express Restaurant you operate and pay the applicable Initial Franchise Fee when the Franchise Agreement is signed. The Initial Franchise Fee is deemed fully earned by us upon receipt and is not refundable under any circumstances. If you are a current Thai Express franchisee and if you refer a prospective Franchisee to us who ultimately purchases a franchise for a Thai Express Restaurant, we currently pay you \$1,000, although we reserve the right to cease this practice or change the amount at any time.

You and your attorney are solely responsible for negotiating the terms of your lease. If, prior to executing a Lease, Franchisee or its attorney request a full review of the Lease by Franchisor, including any and all exhibits attached thereto, and Franchisor or its designated affiliate review the entire Lease and exhibits and provides to Franchisee or its attorney its review of the entire Lease and suggested changes to the Lease (“Lease Review”), Franchisee must pay a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,500) (“Lease Review Fee”) to compensate for time and effort in reviewing the Lease. The Lease Review is optional and only completed by Franchisor or its designated affiliate at Franchisee’s or its attorney’s request. The Lease Review Fee is due only in the event that Franchisee or its attorney request Franchisor or its affiliate to complete a Lease Review. We may also charge you a Grand Opening Marketing fee of \$10,000 the earlier of prior to execution of a lease or prior to the construction of the premises.

The initial fees to be paid to us and/or our affiliate(s) before the franchisee’s business opens are the total of the Initial Franchise Fee, Grand Opening Marketing fee, and Lease Review Fee (if any). These amounts do not include the Document Administration Fee, which is only required if an amendment to your franchise documents must be prepared.

We reserve the right to waive or reduce the Initial Franchise Fee for our affiliates, our subsidiaries, or for other franchise candidates.

You must pay any sales tax, use tax, gross receipt tax, or other excise tax imposed on your payments to us by the states where we, you or your Thai Express Restaurant is located.

#### **ITEM 6 OTHER FEES**

<b>Type of Fee(1)</b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalties (2) and (16)	6% of Gross Sales	Pre-authorized	“Gross Sales” includes

		payments withdraw weekly, or such other method or frequency as we determine	all revenue you receive from your customers previous month's Gross Sales. Gross Sales does not include any sales taxes collected by you.
Marketing Fund Contributions (2) and (3)	3% of Gross Sales	Pre-authorized payments withdrawn weekly, or such other method or frequency as we determine	
Local Advertising Expense (4)	2% of Gross Sales	Payable monthly to your advertising supplier as determined by you	Used for promoting your Thai Express Restaurant in your local community. You may be required to submit reports to us.
Cooperative (2)	Proportionate share of regional and local advertising and public relations programs.	Monthly as required by your local cooperative	Payable only if a cooperative is formed in your area.
Manager Training or Retraining Costs (6)	\$500 to \$1,500	As incurred	Upon our determination that you require additional training.
Transfer fee (1)	\$15,000	Upon transfer	Payable when you transfer your franchise.
Transfer Escrow Fee (7)	As charged by third-party escrow agent	As agreed with escrow agent	Payable at closing when you transfer your franchise.
Transfer Advertising Requirement	\$5,000	Upon transfer	If you purchase an existing Thai Express Restaurant from a current franchisee, you must spend a minimum of \$5,000 in advertising to promote the transition to your ownership
Renewal Franchise Fee (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. Renewal term is five years.
Relocation Fee (1)	\$500	At signing of relocation amendment to	Payable if we approve the relocation of your

		Franchise Agreement	store.
POS Help Desk Phone Support Maintenance Service Fee	Up to \$55 per month	Monthly	We will debit your bank account for this fee.
Non-participation Fee	\$100 per day if you fail or refuse to participate in any required national, local, regional, seasonal, promotional or other program, initiative and campaign or in any new or modified product or service test or offering.	Upon failing or refusing to participate	Payable to us.
Document Administration Fee (15)	\$500	As incurred	Applicable if we must prepare an amendment to your franchise documents.
Early Termination Damages (1)	The average monthly Royalty and Marketing Fund Contributions 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.
Audit Fee (8)	Cost of audit estimated at \$2,000 - \$3,500	As incurred	Payable only if audit shows an understatement of at least 2%.
Administrative Fee	15% of expenses incurred by us to remedy any default by you	As incurred	Payable only if we must expend our time and money curing a default caused by you.
Interest on Overdue Amount due to Thai Express (9)	Prime Rate plus 5%	With payment of overdue amount	
Security Monitoring Costs	Up to - \$100 per month	Monthly	Applicable only if you install a security monitoring system.
Costs and Attorneys'	Will vary under	As incurred	Payable to us.

Fees	circumstances		
Indemnification	Will vary under circumstances	As incurred	You must reimburse us and our affiliates if any of us are held liable for claims related to Thai Express Restaurant operations
Renovating and remodeling expense (10)	\$30,000 to \$85,000	At least once every 6 years	We impose no cap or limitation on the amount of expense you may incur in renovating and remodeling your Thai Express Restaurant.
Cash Register Service Fees (11)	\$Up to \$180 per month (subject to reasonable annual and/or service enhancement increases)	Monthly	
Taxes on Fees	Varies by State	Payable when fee is due	
Technology Fees (12)	Up to \$200 per month (subject to reasonable annual and/or service enhancement increases)	As incurred	
Liquidated Damages for failure to open (14)	Loss of the Initial Franchise Fee	Upon termination	
Liquidated Damages for Deviation from system (14)	<p>\$350 for Second Deviation</p> <p>\$600 for Third Deviation</p> <p>\$1,500 for any additional deviations in a calendar year</p>	<p>Within 10 days of receipt of notice</p> <p>Within 10 days of receipt of notice</p> <p>Within 10 days of receipt of notice</p>	If Franchisee deviates from the requirements of the system during any calendar year



Damages for Breach of Non-Compete Obligations under the Franchise Agreement (14)	Will vary under the circumstances.	As incurred	Payable to Franchisor
Late Payment Fee and Default Interest (1 and 9)	The Default Rate plus a late charge of greater of five percent (5%) of the unpaid amount or \$100 for each late payment	Payable upon assessment	Payable on all overdue amounts.
Late Report Fee (1)	\$100 per report, per week or part thereof	Payable upon assessment	Payable if any required financial statement or report is delinquent.
Collection Costs (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 Thai Express franchisee.
Non-Sufficient Funds Fee (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 bank account or any check you remit to us is returned for non-sufficient funds.
Draft draw charge (1)	\$100 per day for failure to provide us with any necessary information with respect to drawing drafts against your bank accounts	Payable upon assessment.	Payable to Franchisor

**NOTES:**

(1) All fees are uniformly imposed by and are payable to us unless otherwise stated. All

fees are non-refundable. These fees are uniformly imposed by MTY USA; however, MTY USA, 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) You must pay all royalties, marketing contributions, and other fees due to us by participating in a pre-authorized payment plan or any other method we may require in our sole discretion. In this plan, we will be authorized to make weekly withdrawals (or at other times specified by us) from your bank as specified below. We also reserve the right to demand payment from you of all royalties, advertising contributions, and other fees due to us by other methods that we may specify in the Confidential Manual, as modified by us periodically in our discretion (See Section 8.3 of the Franchise Agreement).
- (3) We reserve the right to increase the Marketing Fund Contributions to 4% of Gross Sales at any time provided that at least 75% of the franchisees in the system at the time vote in favor of the increase in Marketing Fund Contributions (See Section 5.7 of the Franchise Agreement). For each of our company-owned or affiliate-owned restaurants, we will make contributions to the Regional Advertising Fund on the same basis as required of the other *Thai Express* franchise owners in the same geographic market. Company-owned or affiliate-owned restaurants have the same voting power as franchisee owned outlets.
- (4) You must spend a minimum of 2% of your Gross Sales on local and regional marketing, advertising and public relations each calendar month. You must make these expenditures directly, subject to approval by us, and we may request that you prepare and submit a report to us accounting for the use of these funds within five days following the end of each month. We reserve the right, in our sole discretion, to require that up to 100% of your Local Advertising Expense go toward cooperative advertising in your area. In regional and metropolitan areas where there are two or more Thai Express franchisees, you may be required to financially contribute to a advertising and public relations cooperative (“Local Advertising Cooperative”) and, if approved by a majority of such Thai Express franchisees, pay your proportionate share of the cost of joint regional and local public relations and advertising programs. 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 Local Advertising Cooperative makes. Any contributions made by you towards your Local Advertising Cooperative shall be credited towards the Local Marketing Expenses that you are required to make. In determining the level of expenditure and the type of advertising and public relations programs to be used, each Thai Express franchisee within the area participating in the Local Advertising Cooperative shall have one vote for each Thai Express Restaurant in operation and scheduled to be in operation during the promotional period. Notwithstanding anything to the contrary, no Local Advertising Cooperative may make decisions or spend advertising contributions without our prior written approval. (See Exhibit B: Franchise Agreement – Section 5.8; and ITEM 11 for further descriptions of the cooperative advertising.)
- (5) Reserved.
- (6) The Training Program for two individuals is paid for by us. You are responsible for all costs associated with any additional training, re-training sessions, or seminars. You are responsible for all additional training costs including travel and accommodation costs, salary, benefits, meals, lodging, and incidental expenses, associated with attending all

initial training and retraining programs which may take place at our head office or at another location designated by us (See Section 4.4 of the Franchise Agreement). The precise amount of your expenses will depend upon the cost of your air fare and how long the training and retraining lasts.

- (7) We reserve the right to require transferring franchisees to use and pay for the services of a third-party escrow agent designated or approved by us.
- (8) The audit fees will be based on the amount charged by our accountants and will vary depending upon the complexity of the Thai Express Restaurant being audited and the state of the books and records kept by you (See Section 8.8 of the Franchise Agreement).
- (9) Interest will be charged from the date of underpayment (See Section 10.10 of the Franchise Agreement).
- (10) You are required to paint your Thai Express Restaurant once every three (3) years. You are required to renovate, modernize, remodel and refurbish your Thai Express Restaurant to comply with our then-current standards at least once every six years.
- (11) This amount is for the service and maintenance agreement with the point of sale supplier.
- (12) You will need to pay a fee of up to \$200 per month for a service and maintenance contract plus the cost of your Internet connection. This monthly fee covers the cost of ongoing maintenance and POS software upgrades.
- (13) Reserved.
- (14) In the event of Franchisor's termination before commencement of operation for Franchisee's failure to comply with the terms of the Agreement. Franchisor may retain the Initial Franchise Fee paid as liquidated damages and not as a penalty (See Section 9.2 of the Franchise Agreement). Also, in the event of additional deviations from this Agreement in any calendar year under the agreement and/or mandatory provisions of the Confidential Manual, Franchisee shall pay to Franchisor the specified amounts, as liquidated and agreed upon damages not as a penalty (See Section 9.5 of the Franchise Agreement).
- (15) The Document Administration Fee in the amount of \$500 will only be charged to you if an amendment to your franchise documents must be prepared.
- (16) 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 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**

**YOUR ESTIMATED INITIAL INVESTMENT – RESTAURANT**

<b>Type of expenditure</b>	<b>Amount – (low)</b>	<b>Amount – (high)</b>	<b>Method of payment</b>	<b>When due</b>	<b>To Whom Payment is to be made</b>
Initial Franchise Fee (1)	\$30,000	\$30,000	Lump sum	Upon signing Franchise Agreement	Us
Electricity, Water, Gas, Telephone and Landlord's Deposits (2)	\$7,000	\$10,000	As incurred	As incurred during training	Utilities and Landlord
Lease Deposit plus three months' rent (2)	\$17,500	\$52,500	Lump sum	At signing of Lease	Landlord
Store Design Fees and Plans (3)	\$10,000	\$17,000	Lump sum	At signing of the Lease	Architects
Permits (4)	\$1,000	\$3,000	Lump sum	As incurred	State or Municipality
Landlord Capital Contribution / Construction Chargeback (5)	\$0	\$0	Lump sum as per the Lease	Lump sum as per the Lease	Landlord
Store Construction, Leaseholds and Fixtures (6)	\$140,000	\$300,000	As incurred	As agreed to.	General contractor
Exhaust (7)	\$40,000	\$75,000	As incurred	As agreed to.	General contractor and/or exhaust supplier
Equipment Package (8)	\$120,000	\$190,000	As incurred	After signing the Lease	Us, landlord or contractor
Furniture (9)	\$20,000	\$45,000	As incurred	Before opening store	Suppliers, third parties and/or vendors

Type of expenditure	Amount – (low)	Amount – (high)	Method of payment	When due	To Whom Payment is to be made
Signs (10)	\$7,000 -	\$20,000	As incurred	Before opening store	Us and Suppliers
Menu Box (11)	\$10,000	\$17,500	As incurred	As agreed	General contractor and/or supplier
Opening Uniform Package (12)	\$700 -	\$1,200	As needed	As incurred	Us
Small Wares (13)	\$10,000 -	\$12,000 -	As incurred	As agreed	Suppliers
Opening Promotion and Advertising (14)	\$750	\$5,000	As incurred	As agreed	Third parties
Grand Opening Marketing fee (15)	\$10,000	\$10,000	As incurred	Earlier of; prior to execution of a lease or prior to construction of premise	US
Security system (does not include monitoring cost) (21)	\$0	\$3,000	As incurred	As agreed	Suppliers
Training Attendance (16)	\$500 -	\$2,500	As incurred	As agreed	Third parties and/or vendors
Insurance	\$850	\$3,500	As incurred	As agreed	Third parties and/or vendors
POS System (20)	\$3,500	\$14,000	As incurred	As per supplier agreement signed	Suppliers
Additional Funds – First 3 months (17)	\$25,250	\$35,500	As incurred	Varied times	Suppliers
<b>Total Unit (18):</b>	<b>\$454,050</b>	<b>\$846,700</b>			

**YOUR ESTIMATED INITIAL INVESTMENT – RESTAURANT  
FOOD COURT LOCATION**

Type of expenditure	Amount – (low)	Amount – (high)	Method of payment	When due	To Whom Payment is to be made
Initial Franchise Fee (1)	\$30,000	\$30,000	Lump sum	Upon signing Franchise Agreement	Us
Electricity, Water, Gas, Telephone and Landlord's Deposits (2)	\$5,000	\$10,000	As incurred	As incurred during training	Utilities and Landlord
Lease Deposit plus three months' rent (2)	\$17,500	\$52,500	Lump sum	At signing of Lease	Landlord
Store Design Fees and Plans (3)	\$10,000	\$17,000	Lump sum	At signing of the Lease	Architects
Permits (4)	\$500	\$2,500	Lump sum	As incurred	State or Municipality
Landlord Capital Contribution / Construction Chargeback (5)	\$25,000	\$50,000	Lump sum as per the Lease	Lump sum as per the Lease	Landlord
Store Construction, Leaseholds and Fixtures (6)	\$110,000	\$320,000	As incurred	As agreed to.	General contractor
Exhaust (7)	\$15,000	\$60,000	As incurred	As agreed to.	General contractor and/or exhaust supplier
Equipment Package (8)	\$75,000	\$113,000	As incurred	After signing the Lease	Us, landlord or contractor
Furniture (9)	\$0	\$0	As incurred	Before opening store	Suppliers, third parties and/or vendors
Signs (10)	\$8,000	\$15,000	As incurred	Before opening store	Us and Suppliers

Type of expenditure	Amount – (low)	Amount – (high)	Method of payment	When due	To Whom Payment is to be made
Menu Box (11)	\$9,000	\$15,000	As incurred	As agreed	General contractor and/or supplier
Opening Uniform Package (12)	\$300	\$1,000	As needed	As incurred	Us
Small Wares (13)	\$5,000	\$10,000	As incurred	As agreed	Suppliers
Opening Promotion and Advertising (14)	\$500	\$3,000	As incurred	As agreed	Third parties
Grand Opening Marketing fee (15)	\$10,000	\$10,000	As incurred	Earlier of; prior to execution of a lease or prior to construction of premise	US
Security system (does not include monitoring cost) (21)	\$0	\$3,000	As incurred	As agreed	Suppliers
Training Attendance (16)	\$500	\$2,500	As incurred	As agreed	Third parties and/or vendors
Insurance	\$850	\$3,500	As incurred	As agreed	Third parties and/or vendors
POS System (20)	\$3,000	\$14,000	As incurred	As per supplier agreement signed	Suppliers
Additional Funds – First 3 months (17)	\$25,250	\$35,500	As incurred	Varied times	Suppliers
<b>Total Unit (18):</b>	<b>\$350,400</b>	<b>\$767,500</b>			

**NOTES:**

- (1) Initial Franchise Fee: You must sign a separate Franchise Agreement for each Thai Express Restaurant you operate and pay the applicable Initial Franchise Fee when the

Franchise Agreement is signed (See ITEM 5). The Initial Franchise Fee is not refundable. We do not offer refunds of any other fees or expenses. We do not finance any fees or expenses.

- (2) Electricity, Water, Gas, Telephone and Landlord's Deposits: A commercial lease normally requires payment of the first month's rent, a security deposit and a rent deposit equal to one month's rent. The estimated initial investment above includes the cost of a security deposit (\$2,500 to \$7,500) and three (3) months' rent (\$15,000 to \$45,000). A lease deposit may or may not be refundable and lease deposits vary widely from location to location. For example, downtown urban street front and food court locations as well as shopping centers may have higher first month's rent and a security deposit. The location of any commercial space must be approved in writing by us to ensure it meets our minimum criterion. You acknowledge and warrant that our approval of the location does not constitute a guarantee, recommendation, or endorsement of the Thai Express Restaurant and that the success of the Business to be operated at the Store depends on your abilities as an independent businessperson. You shall take all steps necessary to ascertain whether such location is acceptable to you. In addition to the lease deposit referred to above, you will be required to make monthly rental payments to your landlord or to us or one of our affiliates, as we may direct you in writing. These fees will vary based upon the square footage and the location of your Thai Express Restaurant. Rent for Thai Express Restaurants varies widely because of different locations, size of the premises, and market conditions in different areas. The landlord may impose other additional fees and expenses, depending on the terms and conditions of the lease or sublease, as the case may be. Additional fees and expenses, if any, will be as set out in the lease and sublease. For example, some additional expenses may include a capital contribution, promotion or advertising fees, or costs due to redevelopment of the shopping center or relocation of the premises.
- (3) Store Design Fees and Plans: This includes engineering drawings and architectural design layout drawings that may be purchased from your landlord or an architect.
- (4) Permits: This amount will vary depending on the municipality in which the project is located.
- (5) Landlord Capital Contribution / Construction Chargeback: This amount will vary depending on the landlord's requirement and criteria.
- (6) Store Construction, Leaseholds and Fixtures: The Landlord may provide some leasehold improvements, but if not, they will be at your expense. The total amount of leasehold improvements for your Thai Express Restaurant will vary greatly, depending on the type of premises for your restaurant, condition of the premises, and what improvements you require. To avoid excessive construction costs, it is strongly recommended that you choose contractors carefully by obtaining several competitive bids before construction begins. These estimates are based on constructing a 1,400 square foot vanilla shell for a standard location or a 600 square foot vanilla shell for a food court location, electrical requirements of 400 amps 3-phase, and HVAC of one ton per 150 square feet per site standards of the brand. This amount is based upon a national average for labor costs and does not include extensive renovations. Construction costs also vary considerably depending on fair market values in your area; size, condition, and location of the premises; labor costs (union versus non-union); and equipment requirements. There is a wide range of probable locations that a Thai Express Restaurant could be in, and therefore, a wide range for the approximate size of



the property and building. Typical locations for a standard restaurant are strip shopping centers, lifestyle centers, business centers, regional centers, or downtown areas that could range in size from 1,400 square feet for a stand-alone location to over one million square feet for a large regional shopping mall. Typical locations for a food court restaurant are airports, shopping malls, convenience stores, stadiums, entertainment pavilions, amusement parks, sports or entertainment venues, train stations, travel plazas, toll roads, cafeterias, retail stores, military bases, hospitals, hotels, casinos and high school and college campuses

- (7) Exhaust: Exhaust system requirement of 3000 - 5000 CFM together with approximate equivalent make up air and duct capabilities
- (8) Equipment Package: The amount will vary depending on the size of the project and whether or not extra or customised equipment is purchased. As an example, an equipment list may include printers, an Interac terminal, POS cash system, lid/cup dispenser, napkin dispenser, heat lamp, plate dispenser, soap dispenser, paper towel dispenser, box holder, lid holder, condiments box, utensil box, soda cooler, soda fountain, ice machine, coffee machine, soup unit, sneeze guard, work table, wok range, exhaust hood, hot water tank, mop sink, fryer, gas stock pot, refrigerators, sinks, cupboard, cabinet, doors, grease trap, freezer, dishwasher, shelves, hooks, digital menu board, radios, amplifiers, and speakers.
- (9) Furniture: Not required in food court locations. For standard locations, furniture may include tables, chairs, benches, counters, waste receptacles, and shelves.
- (10) Signs: This includes window graphics and design, interior and exterior signage that may be purchased from us or third-party suppliers. Approximately \$8,000 to \$12,000 paid to us. These payments are non-refundable.
- (11) Menu Box: Variable amount depending on size of the project and on landlord's criteria. We require Digital Menu Board solution that implements multiple professional grade digital displays (number dependent on space available) to present the approved menu offering using a combination of static and dynamic content. Content including layout, animation and pricing to be managed by franchisor.
- (12) Uniforms: You will be required to purchase an opening inventory of uniforms for your employees. At your discretion, you may charge your employees for their uniforms.
- (13) Small Wares. Small wares may include the following: bins, calculator, check spindle, chill pan, clear plastic shaker, clear food box, clipboards, clock, colander, gloves, cutting board, digital timer, dredger with handle, dust pan and broom, extra-large colander, file holder, first aid kit, food processor, forks, frying basket press, funnel, garbage bins, gas lighters, glove dispenser, heavy duty strainer, heavy duty can opener, holder for markers, hooks, ice scoop holder, kitchen scissor, ladle, large ice scoop kit, large ladle, magnet bar, mandolin, permanent marker, measuring cup, measuring spoon, mesh skimmer, mixing bowls, mop, mop bucket, mop handle, noodle strainer, oven mitts, p-touch, pans, pens, pitcher, rice paper tray, plastic rice spoon, pocket flashlight, pocket thermometer, retractable knife, ripple peeler, scale, scraper, slicer, soup bowls, spatulas, spice bins, sponges, spoon, squeegee, squeeze bottles, stapler, step ladder, stock pot, strainer, tape, thermometers, tongs, utility cart, vegetable peeler, whip, white board, white board marker, and woks.

- (14) Opening Promotion and Advertising: The promotional campaign will differ by region and may include printing and distribution of promotional coupons, newspaper advertisements, and charitable donations. You will use media we approve. The distribution of promotional food items is not included in this estimate, and you will incur additional costs in the preparation and distribution of sample food items at your grand opening event. These payments are non-refundable.
- (15) Grand Opening Marketing: You are required to pay a Grand Opening Marketing fee of \$10,000 for a store payable to us or our affiliates 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.
- (16) Training Attendance: The estimated initial investment includes all travel and accommodation costs incurred by up to two (2) people attending the Training Program at our head office or at another location designated by us. There is no fee charged to you for the training session itself. These payments are typically non-refundable.
- (17) Additional Funds (First 3 Months): This is the amount of additional funding that we recommend you have in your bank account upon store opening to cover various expenses during your first three months of operation, but is subject to change depending upon your circumstances and financing requirements imposed by your bank. The range is based on anticipated working capital required for the first three months including such items as estimated wage payments, food and beverage costs, supplies, utilities, ordinary maintenance and other operating expenses. You should consult with your independent advisors to develop your own business plan with a cash flow chart in order to ensure that you have the amount necessary to cover any cash short fall in the initial months of operation since the range provided is simply an estimate. We require that you have a minimum amount of \$5,000 of working capital at all times during the term of the Franchise Agreement. The amount of working capital is an estimation of wage payments, food and beverage costs, supplies, cleaning supplies, utilities, ordinary maintenance and other operating expenses. In addition, you should consider the cost of labor in operating your franchise when determining the right amount of working capital. Labor costs comprise a significant component of the costs of operating a franchise outlet. The cost of labor is influenced by factors such as the amount of time invested in a franchise outlet by the franchisee, the level of sales at the Thai Express Restaurant, the number of hours a franchised business is open and the average number of staff required and market rates for labor which can vary by location. As well, any incentive or bonus programs for employees of a franchisee would also form part of the labor costs for a franchised business. These costs are non-refundable. You should also be prepared to have cash available to pay your personal living expenses for at least the first six (6)

months of the Thai Express Restaurant's operation. The exact amount of working capital required will vary considerably with each Thai Express Restaurant and economic conditions but must be sufficient to finance your operations until the Thai Express Restaurant produces positive cash flow. You may want to consider having access to additional capital to cover slower sales. We have not included your personal living expenses in this estimate nor have we included any sales tax, or other use tax, income tax, or any other tax.

- (18) This includes a sufficient opening supply of food inventory, cleaning supplies and paper products. These payments are non-refundable.
- (19) These fees will vary based upon the square footage and the location of your Thai Express Restaurant. The landlord may impose other fees and expenses, depending on the terms and conditions of the lease and sublease. Additional fees and expenses, if any, will be as set out in the lease and sublease. As well, the city or county may impose higher permit and license fees. Deposits may be refundable, but permit and license fees are non-refundable.
- (20) The estimated initial investment includes costs related to the purchase of specified computer hardware and software for a custom designated point-of-sale system. The estimated initial investment also includes costs related to the personal computer you must use in the operation of your Thai Express Restaurant and a letter quality printer you must use to print reports generated by your personal computer. You are required to secure an email account and PC-compatible computer software and hardware and any letter quality printer that meet the standards and specifications required by us. The standards and specifications we are currently using are in the Operations Manual. These payments are non-refundable.
- (21) While we do not oblige you to do so, you may wish to install a security system and a safe at your Thai Express Restaurant. Our point of sale system is capable of supporting a security system and we advise to contact our point of sale system supplier should you require any additional information in this regard. We do not require or recommend any type of security system. The cost estimated in this ITEM 7 does not include any monthly monitoring fees. These payments are non-refundable.

In addition, you should consider the cost of labor in operating your franchise. Labor costs comprise a significant component of the costs of operating a Thai Express Restaurant. The cost of labor is influenced by factors such as the amount of time invested in a Thai Express Restaurant by you, the level of sales at the Thai Express Restaurant, the number of hours your Thai Express Restaurant is open and the average number of staff required and market rates for labor which can vary by location. Labor costs also typically include pension plan, unemployment insurance, worker's compensation, vacation and other payments which you as an employer would be required to make for employees. As well, any incentive or bonus programs for employees of yours would also form part of the labor costs of a franchised business.

These estimated ranges are based on our experience and information provided by franchisees. This is only an estimate of your initial investment and is based on our estimate of nationwide costs and market conditions prevailing as of the date of this Franchise Disclosure Document. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. Neither MTY USA, nor any of our affiliates, provides or

assists with financing arrangements for you. If you obtain financing from others to pay for some of the expenditures necessary to establish and operate your Thai Express franchise, the cost of financing will depend on many factors, such as your credit worthiness, collateral, the financier's lending policies, the financial condition of the lender, and the regulatory environment. In addition, you are encouraged to visit existing franchisees that may be willing to answer any questions you might have with respect to the foregoing matters.

The amounts expended may vary from one location to another. These amounts do not include the cost to you of any financing that may be required to establish your Thai Express Restaurant. Your costs will also depend on factors such as how well you follow the Thai Express System, your management skills, your experience, your business acumen, your active involvement at the Thai Express Restaurant, general and local market conditions, the location of your Thai Express Restaurant, the presence of any competition, prevailing wage rates, and the level of sales obtained by you during the initial period of operating your franchise.

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

### **Product Purchases**

In order to maintain our standards of consistent and high quality Thai Express Products and uniformity in Thai Express Restaurants, you must purchase all products and services required for the operation of your Store from suppliers or distributors that we have identified and approved as meeting all of our specifications and standards or from us directly. We will give to you and you must comply with our standards and specifications for the services and products offered at your Thai Express Restaurant regarding food and beverages, menu, food type and quality, promotional items, uniforms, smallwares, computer software and hardware, payroll services, facility services (for example, mats, mops and towels), telephone equipment, services, furnishings, fixtures, and equipment used in connection with operating your Thai Express Restaurant, leasehold improvements, food preparation and storage, supplies, recipes, materials, forms, and other Products sold or used at a Thai Express Restaurant. We reserve the right to change the standards and specifications from time to time on written notice to you or as may be specified by the Confidential Manual. We do not provide material benefits to franchisees based on their purchase of particular products or services. None of our officers owns an interest in any of our suppliers. We or our affiliates are approved suppliers of goods and services, including lease review services, leasehold improvements, equipment, furniture, freight services, signage, engineering drawings and architectural layout drawings. None of our officers own an interest in any of the approved suppliers not affiliated with us.

Neptune Equipment, an affiliate of MTY USA is currently one of the approved suppliers of certain equipment, menu boards, furniture, wall graphics, computer hardware and smallwares. MTY USA is not a supplier of any products or services. Kahala Management, an affiliate of MTY USA, 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, including negotiating a term sheet, negotiating the lease terms, and locating a site for a franchisee upon request from a franchisee. You may, but are not required, to use Kahala Management for real estate services. 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. We do not presently participate in any purchasing or distribution cooperatives, but we reserve the right to do so in the future.

We also receive rebates from certain of the approved suppliers, ranging from 1% to 2% of the amount of purchases by franchisees from those suppliers. We retain these payments to partially compensate us for our ongoing efforts in establishing and maintaining quality sources of supply, in evaluating potential new suppliers, and in monitoring and evaluating approved suppliers and upstream manufacturers to ensure that those suppliers and manufacturers meet our quality and performance standards.

Our consolidated revenue included \$30,329,806 from rebates and from providing these goods and services to franchisees during our most recent fiscal year ending November 30, 2021, which represents approximately 14% of our total consolidated revenue of \$216,655,000.

During our last fiscal year, our consolidated revenue received \$20,632,205 in rebates which represents approximately 9.5% of our total recognized revenue during such time. Other received revenues in the amount of \$3,395,704 are not applicable to your franchise.

During our last fiscal year, Neptune Equipment earned a total of \$862,172 of the \$30,329,806 from required franchisee purchases and Kahala Management earned a total of \$556,694 of the \$30,329,806 from POS Help Desk Phone Support Maintenance fees.

### **Standards and Specifications; Suppliers**

We have developed and, in the future may modify, our standards and specifications based on our commitment to provide Thai Express Products of a consistent quality and to protect and enhance the value of the System and the Marks. Standards and specifications for the items that we require you to use in developing and operating your Restaurant are available to you and suppliers from time to time through the Confidential Manual.

We have approved the suppliers identified in the Confidential Manual as approved suppliers based on our evaluation of, among other things, their price terms, their national distribution abilities, and their ability to meet our quality standards. If you wish to use suppliers that are not on our list of approved suppliers, you are required to notify us in writing before using your preferred supplier and, if we request, provide us with samples of the product and any relevant data. We will, upon receiving such request, determine whether the product meets our specifications and will notify you whether that is the case within 60 days of receiving samples of the product and other relevant data. If we determine that your preferred supplier does not meet our specifications, you must continue to use our approved supplier. When making our determination, some of our considerations will include whether or not your proposed supplier:

- (a) meets our specifications, including our quality, quantity, warranty, variety, service, health and safety specifications, for the product and for the facilities used in the production and distribution of the product;
- (b) has the capacity to supply your requirements;
- (c) has a sound financial condition and business reputation;
- (d) will supply product to a sufficient number of Thai Express franchisees to enable us to economically monitor compliance by the supplier with our specifications; and

(e) has met such other criteria as may be established by us, acting reasonably, from time to time and as set out in the Confidential Manual.

Other than making the System available to you as provided in the Franchise Agreement, we do not provide any specific benefits to you based on your use of approved sources of supply. However, your failure to use approved sources of supply or to comply with our standards and specifications would be a breach of the Franchise Agreement, and we would have the right to exercise our remedies for your breach of the Franchise Agreement, including our rights to terminate your Franchise Agreement. We may negotiate purchase arrangements with suppliers for your benefit, although we are not obligated to do so. You should not rely on the availability of any particular purchasing arrangements in deciding whether to purchase the franchise. You will not receive a material benefit from us based on your use of any particular designated or approved sources. (See Section 5.5 of the Franchise Agreement).

### **Computer Hardware and Software**

You must purchase or lease, use, maintain and update computer, POS, and other systems and software programs which meet our specifications as they evolve over time and which, in some cases, may only be available through us, our affiliates and/or designated suppliers.

We may change the designated suppliers from time to time on written notice to you. You acknowledge that we may receive a rebate or commission in connection with the point of sale computer software and hardware purchased, leased, or obtained by you from designated suppliers and that the benefit of such rebate or commission may not necessarily be passed onto you and that we and/or our subsidiaries and/or affiliates are entitled to keep such rebates or commissions for our own use and benefit.

We do require that you connect your point-of-sale hardware, at your expense, with a computer facility designated by us so as to enable us to collect information concerning Gross Sales and you must sign all documents and do such further acts as may be required by us from time to time in order to effect the foregoing. Without limiting the generality of the foregoing, you must purchase such point-of-sale computer software and hardware and telephone equipment as may be required to implement the point-of-sale program and/or for any other purposes that we may designate from time to time in the Confidential Manual or by notice in writing from suppliers designated by us and you must assume and pay all costs related to the program.

You shall maintain your systems network and must promptly update and otherwise change your computer and point of sale hardware and software systems, as we may require from time-to-time at your expense. You shall pay all amounts charged by any supplier or licensor of the system and programs used by you, including charges for use, maintenance, support and/or update of these systems or programs.

### **Insurance**

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 *Thai Express* 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.

## ITEM 9 FRANCHISEE'S OBLIGATIONS

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

Obligation	Section in Franchise Agreement (unless otherwise indicated)	Section in Sublease	Disclosure Document Item
a. Site selection and acquisition/lease	1.1, 4.1, 4.2	Preamble, 13	ITEM 11
b. Pre-opening purchases/leases	4.2, 5.4, 5.5, 8.10	Not Applicable	ITEM 5, ITEM 7, ITEM 8, ITEM 10, & ITEM 11
c. Site development and other pre-opening requirements	4.3,	5, Schedule A	ITEM 7 & ITEM 11
d. Initial and ongoing training	4.4, 5.3	Not Applicable	ITEM 11
e. Opening	4.5	Not Applicable	ITEM 7, ITEM 8 & ITEM 11
f. Fees	2.2(i), 4.6(b)(iv), 5.8, 8.1 - 8.3, 8.8, 8.9, 8.14, 9.5(b), 9.8, 9.9, 10.10	Preamble, 2, 3	ITEM 5, ITEM 6, ITEM 7 & ITEM 17
g. Compliance with standards and policies/Confidential Manual	5.6, 5.9, 5.12, 5.15, 5.16, 5.17	Not Applicable	ITEM 11
h. Trademarks and proprietary information	3	Not Applicable	ITEM 13 & ITEM 14
i. Restrictions on products/services offered	5.4, 5.5	6	ITEM 8 & ITEM 16
j. Warranty and customer service requirements	Not applicable	Not Applicable	None
k. Territorial development and sales quotas	Not applicable	Not Applicable	None
l. Ongoing product purchases	5.4, 5.5	Not Applicable	ITEM 8
m. Maintenance, appearance and remodeling requirements	2.2(h), 5.11, 5.12, 5.13, 5.15, 12.4(j)	5.g	ITEM 17
n. Insurance	6.1(f), 6.2	5.d	ITEM 6 & ITEM 8
o. Advertising	5.7, 8.9	Not Applicable	ITEM 6 & ITEM 11
p. Indemnification	10.9, 11 Guarantee and Indemnity	5.c	ITEM 6, ITEM 13 & ITEM 14
q. Owner's participation/management/staffing	5.2, 5.3, 8.11	Not Applicable	ITEM 15
r. Records and reports	8.4, 8.5, 8.7	5.h, 5.i	ITEM 6



Obligation	Section in Franchise Agreement (unless otherwise indicated)	Section in Sublease	Disclosure Document Item
s. Inspection and audits	8.8	5.h, 5.i	ITEM 6
t. Transfer	12	10	ITEM 17
u. Renewal	2.2	12	ITEM 17
v. Post-termination obligations	10.2 - 10.5, 10.8, 10.9, 10.11, 10.12, 10.14, 10.15	Not Applicable	ITEM 17
w. Non-competition covenants	15.1,	Not Applicable	ITEM 17
x. Dispute resolution	16.14	Not Applicable	ITEM 17
y. Guaranty	11 and Schedule E	Schedule B	ITEM 15

## 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 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 guarantee fee is non-refundable under all circumstances. We do not offer financing for the lease guarantee fee as it is payable in full upon the execution of the guarantee. 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 B1: Asset Purchase Agreement). If you finance any portion of the purchase price of the corporate-owned restaurant through us or one of our affiliates 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 that is in the restaurant at the time of purchase. The lender providing the financing is us or one of our affiliates, whichever entity owns the restaurant (“APA Lender”). 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 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 (7) 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 name in the Promissory Note and Security Agreement and granting APA Lender 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 as a result in any change in security given or change in person or entity who may become liable for the note or any 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 enter into a Sublease with our affiliate using our standard form of Sublease where you pay all monies owing under the Master Lease to our affiliate and the affiliate will pay the property owner, which are schedules to the Franchise Agreement (see Sublease, Schedule K of the Franchise 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 (See Schedule K of the Franchise Agreement). 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.

Please note, if you intend to lease the site of your restaurant, the lease must include certain required provisions (See Addendum to Lease, Schedule C of the Franchise Agreement; Franchise Agreement, Sections 4.1 and 4.2).

You agree in the Franchise Agreement that you will not, without our prior written consent, borrow more than the maximum allowed debt we prescribe for you. Currently, the maximum amount of debt we allow you to service is seventy percent (70%) of the total project costs for establishing a Thai Express Franchise. We will establish your maximum allowed debt based upon your financial condition, the initial investment necessary to open your particular Restaurant, and the location of your Thai Express Restaurant. We periodically may change this amount for you and other franchisees (that is, the amount may differ from franchisee to franchisee because of each franchisee's particular circumstances). We impose this requirement because excess debt may adversely affect your Thai Express Restaurant's operational results.

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

**Except as listed below, MTY Franchising USA, Inc. is not required to provide you with any assistance.**

**Pre-Opening Assistance**

1. Site Selection: We will assist you in selecting a site for your Thai Express Restaurant (See Section 1.1, 4.2, and Schedule A of the Franchise Agreement). Factors we use in reviewing a potential site include neighborhood, proximity to schools and businesses, traffic patterns, condition and size of premises, lease terms, parking and ease of access to the site. If a site cannot be agreed upon by you and us, the Franchise Agreement could be terminated. The decision to establish and operate your Thai Express Restaurant at the location will be made solely by you, without any reliance upon any information provided, recommendation made, or approval given by us, our affiliates or any third party we recommend to assist you.

2. Operations Manual. We will loan you a copy (paper, electronic or other format) of our confidential operations manual ("Operations Manual" or "Confidential Manual"), which contains mandatory and suggested specifications, standards, operating procedures and rules, recipes, food preparation instructions, and required product purchases, as prescribed from time to time by us. The Operations Manual is confidential and remains our property. We reserve the right to require you to use an electronic version of the Operations Manual and require you to access the document using the Internet or an intranet created and supported by us. The Operations Manual contains approximately 46 pages. We have included a copy of the Table of Contents for our Operations Manual as Exhibit G to this Franchise Disclosure Document. If your copy of the Operations Manual is lost, destroyed, or significantly damaged, you agree to obtain a replacement copy from us at our then applicable charge.

3. Store Specifications: We will provide you with specifications for the Thai Express Restaurant, including space requirements, build-out requirements, design and decoration requirements, plus specifications concerning signs, decor and equipment. Alternatively, should you wish to prepare the construction plans and specifications yourself, you must submit such construction plans and specifications to us for our approval before construction of the Store commences, and you must submit all revised plans and specifications to us for our approval during the course of construction. 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 restaurant. Our approval of the plans is solely for complying with our system standards, and not for determining compliance with codes, ordinances, or the ADA, or any lease-specific requirements. (See Section 4.3 of the Franchise Agreement).

Upon completion of construction, you may be required to provide us with a set of "as built" plans and specifications. You may also be required by us to renovate, remodel and refurbish your Store at least once every six (6) years during the Term of the Franchise Agreement, as a condition precedent for renewal of the Franchise Agreement to comply with our

then current standards as close to the date of renewal as possible, and/or prior to any transfer of the Franchise Agreement.

4. Purchase of Equipment and Furniture: We will assist you in obtaining the furniture and equipment required for your Thai Express Restaurant, and you must obtain such furniture and equipment from us or a designated supplier (See Section 5.5 of the Franchise Agreement).

Whether or not you build out the Licensed Location yourself, you will be required to pay us or our affiliate or subsidiary, before any work is commenced at the Licensed Location, for the supply and installation of the furniture and equipment to be purchased or leased by you. We will coordinate the installation of any leased equipment, but, unless otherwise provided, the lessor of the leased equipment will be responsible for its installation at the Licensed Location.

5. Training: Before the opening, you will have to attend approximately forty (40) hours of new owner training and then approximately one hundred sixty (160) hours of in-store training. We will train up to two (2) individuals, including the Designated Manager (as defined in ITEM 15 of this Franchise Disclosure Document) (“Training Program”). The Training Program is held each time a new franchisee joins the franchise system. You and your Designated Manager must attend and successfully complete the Training Program, which includes classroom (administrative and theoretical training) and in-store training (“In-Store Training”). (See Section 4.4 of the Franchise Agreement). 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 H).

You must complete to our full satisfaction all phases of our training program before you are entitled to open your Thai Express Restaurant for operation. If we indicate to you that you are so entitled to open your Thai Express Restaurant, then we will also provide you with one (1) or more representatives for at least five days to assist at your Thai Express Restaurant in the first week of your franchise operations.

### **Schedule for Opening**

You will have a maximum of 12 months from the date you sign the Franchise Agreement (“Site Location Period”) to locate a site approved by us, sign a lease or sublease, and open your Thai Express Restaurant. If you do not find a site, sign a lease or sublease, and open your Thai Express Restaurant by the end of that time period, we have the right to terminate your Franchise Agreement and retain the full amount of the Initial Franchise Fee or, in our sole discretion, to provide you with an extension to locate a site, sign a lease or sublease, and open your Thai Express Restaurant. You understand and agree that in certain circumstances it may take longer than 12 months to locate an appropriate site acceptable to us and to sign a lease or sublease for your Thai Express franchise.

If you fail to (a) locate a suitable location acceptable to us or fail to enter into a lease for the Thai Express Restaurant in the manner required by the Franchise Agreement; operations of your Thai Express Restaurant in accordance with the terms of the Franchise Agreement; or (d) successfully complete the initial training as required by the Franchise Agreement, then we will retain the full amount of the Initial Franchise Fee.

We estimate there will be an interval of approximately 60 days to 1 year between the execution of the Franchise Agreement and the opening of a Thai Express Restaurant. The

interval may be affected by the weather, finding of a location, negotiation of a lease, the location and condition of the proposed store, delays in obtaining construction and food-related permits, the construction schedule for the Thai Express Restaurant, and the construction schedule of the landlord to build or renovate the base building. We will notify you of our approval or disapproval of a proposed site within 30 days of receipt of your proposal. If we do not approve the proposed site, you will need to locate an alternative location. Franchisor shall be entitled to terminate the Franchise Agreement by written notice to Franchisee if the Franchisee is unable to find a suitable location within twelve (12) months following execution of the Franchise Agreement, and in such event, Franchisor may retain any and all monies paid to Franchisor, including the Initial Franchise Fee paid as liquidated damages and not as a penalty. (See Sections 4.1 and 8.1 of the Franchise Agreement).

You may not open the Thai Express Restaurant for business until: (1) we notify you in writing that all of your development obligations have been fulfilled; (2) pre-opening training of your personnel has been completed to our satisfaction; (3) all amounts then due to us have been paid; (4) we have been furnished with copies of all insurance policies and certificates required under the Franchise Agreement, or other evidence of insurance coverage and payment of premiums that we request; (5) you notify us that all approvals and conditions in the Franchise Agreement have been met; and (6) have provided us with a voided check for the payment of Royalties and Marketing Fund Contributions. Within 8 days after we notify you in writing that your pre-opening obligations have been met, we may visit the location and give final approval to open the Thai Express Restaurant. You must comply with these conditions and be prepared to open the Thai Express Restaurant for business and begin conducting business within 5 days after we advise you that the Thai Express Restaurant is ready to open. (See Sections 4.3, 4.4, 4.5, 6.1(f)) and Schedule D of the Franchise Agreement).

### **On-Going Assistance**

1. Continuing Research. We will research new products, new items, services and methods of doing business and provide you with information concerning developments of this research (See Section 7.1 of the Franchise Agreement).

2. On-Going Consultation. We will be available to you on a reasonable basis via telephone or electronic mail during regular business hours to discuss your operational questions and experiences. (See Section 7.1 of the Franchise Agreement).

3. Operational Guidance. In our discretion and at your reasonable request, we will furnish guidance to you with respect to: (1) recipes, methods, specifications, standards and operating procedures used in Thai Express Restaurants along with any modifications; (2) purchasing approved equipment, fixtures, furnishings, signs, products, materials and supplies; (3) development and implementation of local advertising and promotional programs, (4) general operating and management procedures of Thai Express Restaurants; and (5) establishing employee training programs at your Thai Express Restaurant. Any guidance will, in our discretion, be furnished in the form of Thai Express manuals, bulletins, video or audio cassette tapes, computer diskettes, written materials, reports and recommendations, other materials and intangibles, refresher training programs and/or telephonic consultations or consultations at our offices or at your Thai Express Restaurant. (See Section 7.1 of the Franchise Agreement).

4. Annual Meetings. We may hold annual conferences to discuss sales techniques, new product developments, preparation of new menu items, new service suggestions, bookkeeping, inventory control, performance standards, advertising programs and

merchandising procedures. There is no conference fee, but you must pay all of your travel and living expenses. We require you or your Designated Manager to attend these conferences. These conferences are held at a location chosen by us and/or online. In the event you fail to attend a conference or fail to send a representative to a conference, we may require you or your Designated Manager to attend a mandatory training seminar at your expense to learn about all of the topics covered at the conference.

5. Newsletter. We may send to you, on a quarterly basis, a copy of the then current newsletter if we elect to publish a newsletter.

6. Advertising. At our option, we will provide advertising materials to you in the form of an arts and graphics package, which will be included in your Confidential Manual. We may use outside advertising and marketing agencies to create advertising material. Upon prior written approval from us, you may develop your own advertising or promotional materials (including any use of the Internet, World-Wide Web, software application, an App (application), social media account, or other electronic media) for your own use, at your own cost. If you elect to develop your own website, with our approval, you must also engage your Internet service provider to host your website. We must approve the advertising materials in advance and in writing. If we do not advise you in writing that your advertising is approved, it will be deemed disapproved. You will not use any advertising or promotional materials or programs that we have disapproved or that does not include the copyright, trademark and other notices required by us (See Section 5.7 of the Franchise Agreement). We reserve the right to require that: (a) you include a brief statement regarding the availability of information regarding the purchase of Thai Express Restaurants in all advertising used by you, (b) a brochure regarding purchase of Thai Express Restaurants be placed in a prominent location in your Thai Express Restaurants, and (c) you hang a sign produced by us indicating that you are an independent contractor, that you own your franchise, and that all debts and liabilities incurred by you are for your own account. (See Section 6.1(a) of the Franchise Agreement).

## **Marketing**

You must actively participate in and cooperate with our national, regional and local advertising and sales promotion campaigns, and (without limiting the generality of the foregoing) you must:

1. obtain our prior approval to all promotions, special events, sales promotion materials and advertising used by you (including, without limitation, on-site, internet, direct mail, newspaper, radio and television advertising, and advertising by third parties at the Store or at any other location if in connection with the Thai Express Restaurant);

2. display in the Thai Express Restaurant, and in the manner specified by us, advertising material that we may present to you from time to time;

3. conduct such promotions and special events, offer such promotional items and accept such coupons, gift cards, and gift certificates as we may from time to time require;

4. not make any television or radio appearance or make any statement to any media in connection with the Thai Express System without first obtaining our written consent;

5. advertise and display such advertisements and solicitations at the Thai Express Restaurant to attract potential franchisees to the Thai Express System as we may require from time to time;

6. If you are opening a new restaurant, we or our designated affiliate will create a marketing plan for (i) a grand opening event and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan; and

7. If you purchase an existing Thai Express Restaurant, you must spend a minimum of \$5,000, plus the cost of promotional food, in additional advertising to promote the transition to your ownership.

All Marketing Fund Contributions, together with amounts contributed by you and other franchisees, will be maintained in a fund ("Marketing Fund") administered by us. We will use such funds for the purpose of advertising and promoting the licensed and company-owned operations associated with the Marks and producing such advertisement and promotion. However, we cannot and do not ensure that you will benefit directly or pro-rata or at all from the placement of advertising and promotion. We may consult with you from time to time concerning the advertising programs to be established by us and, for that purpose, may invite you to participate in a franchisee advisory board. The cost of establishing and maintaining such an advisory board may be charged to the Marketing Fund. We have the right to make all decisions concerning advertising and promotion in our sole discretion. This includes the right to use the Marketing Fund Contributions for broadcast, digital, or print advertising, the creation, development and production of advertising and promotional materials, including, but not limited to, ad slicks, radio, film and television commercials, videotapes, direct mail pieces, and other print advertising; any marketing or related research and development; developing, enhancing and maintaining our Website; vehicle advertising, menu development, point-of-sale advertising, retaining public relations firms, and uniform designs; and advertising and marketing expenses, including payment for research and development on new Thai Express Products and services, services provided by advertising agencies or other marketing, research or consulting firms or agencies, customer incentive programs, sponsorships, marketing meetings and sales incentives, development of the Internet, Internet access provider costs, personnel to support the marketing function, subscriptions to industry newsletters or magazines, and administrative costs. We may reimburse ourselves or our designated representatives (which may be one or more of our subsidiaries or affiliates) for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting, and legal expenses, taxes, and other reasonable direct and indirect expenses incurred by us or our representatives in connection with the programs funded by and the administration and operation of the Marketing Fund. We and our representatives will not be liable for any act or omission that is consistent with your Franchise Agreement and done in good faith. We and our representative, in our sole discretion, may spend in any fiscal year more or less than the aggregate Marketing Fund Contribution of all stores to the Marketing Fund in that year, and the Marketing Fund may borrow from us or others (including our affiliates) to cover deficits or invest surplus for future use. We may incorporate the Marketing Fund or operate it through a separate entity as we deem appropriate. We and our representatives have no obligation to ensure that the Marketing Fund benefits your Thai Express Restaurant in proportion to your respective Marketing Fund Contributions or at all. You must acknowledge and agree that the Marketing Fund's primary purpose is to support sales by the entire Thai Express System and to build brand identity. You also must agree to participate in any promotional campaigns and advertising and other programs that the Marketing Fund periodically establishes.

We have the right to increase the Marketing Fund Contributions to four percent (4%) of Gross Sales instead of the three percent provided for in the Franchise Agreement if the owners of at least 75% of the franchises in the United States agree to pay such increased percentage of sales to the Marketing Fund. Once such 75% agreement is reached, no further or continuing agreement shall be required in order to maintain the Marketing Fund Contributions at four percent of Gross Sales. The Fund is not audited, and the financial statements for the Fund and accounting of the Fund are not available to franchisees. None of the Marketing Fund Contributions will be used to solicit the sale of new franchises.

Although we intend the Marketing Fund to be of perpetual duration, we have the right to terminate the Marketing Fund. We will not terminate the Marketing Fund, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes.

We and our representatives have the right, but not the obligation, to use collection agents and to institute legal proceedings to collect Marketing Fund Contributions at the Marketing Fund's expense. We and our representatives also may forgive, waive, settle, and compromise any claims by or against the Marketing Fund. We and our representatives, reserve the right, in our sole discretion, to at any time defer or reduce Marketing Fund Contributions and operations for periods of any length.

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

Production	6.4%
Media Placement	26.5%
Administrative	51.7%
Other	15.4%
TOTAL	100%

The "other" expenses included public relations, research, concept development and communications.

In addition to the Marketing Fund Contributions to be made by you, you also must agree to spend an amount equal to two percent (2%) of your Gross Sales for purposes of conducting local advertising marketing campaigns ("Local Marketing Expenses"). You must spend this amount on a quarterly basis. We may require that you prepare and submit five days after the end of every quarter a report setting out the Local Marketing Expenses actually disbursed by you for that quarter during each month of the Term and any renewal term. (See Section 5.8(a) of the Franchise Agreement).

In regional and metropolitan areas where there are two or more Thai Express franchisees, you may be required to financially contribute to Local Advertising Cooperative and, if approved by a majority of such Thai Express franchisees, pay your proportionate share of the cost of joint regional and local public relations and advertising programs. 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 Local Advertising Cooperative makes. Any contributions made by you towards your Local Advertising Cooperative shall be credited towards the Local Marketing Expenses that you are required to make. In determining the level of expenditure and the type of advertising and public relations programs to be used, each Thai Express franchisee within the area participating in the Local Advertising Cooperative shall have one vote for each



Thai Express Restaurant in operation and scheduled to be in operation during the promotional period (“Total Operational Stores”). Your share of the expenses for public relations and electronic media advertising shall be the ratio of the number of the Thai Express Restaurants you have open and operating in the metropolitan area covered by the Local Advertising Cooperative to the Total Operational Stores in the relevant regional and metropolitan area. Your share of expenses for print media advertising shall be the ratio of the circulation of the publication within 250 feet from the front door of your restaurant to the circulation of that publication within 250 feet from the door of each of the franchisees’ restaurants in that relevant regional and metropolitan area. The rules of the Local Advertising Cooperative shall be in writing and established by its members, but must be submitted to us for prior approval. Each Local Advertising Cooperative must provide quarterly financial reports to us as required by us in the Confidential Manual. Notwithstanding anything to the contrary, no Local Advertising Cooperative may make decisions or spend advertising contributions without our prior written approval. We reserve the right, in our sole discretion, to form, change, merge or dissolve any Local Advertising Cooperative.

### **Computer System**

We designate point of sale equipment and systems (“POS System”), including point of sale equipment and systems, used in connection with operating your Thai Express Restaurant, which you must obtain from suppliers designated by us or from us directly. You must purchase such computer software and hardware from our designated suppliers or from us directly. We may designate additional computer software and hardware from time to time. We may change the designated suppliers from time to time on written notice to you. You acknowledge that we may receive a rebate or commission in connection with the computer software and hardware purchased, leased, or obtained by you from designated suppliers and that the benefit of such rebate or commission may not necessarily be passed onto you and that we and/or our subsidiaries and/or affiliates are entitled to keep such rebates or commissions for our own use and benefit. (See Section 5.5 of the Franchise Agreement)

We may require that you connect your POS System, at your expense, with a computer facility designated by us so as to generate or store the following information concerning Gross Sales, period totals, Royalties, demographic reports, transaction specifics, discounts and periodic tax summaries as an example of some of the information the POS vendor will collect and make available to us via a website. The system will include computer(s), modem(s), cash drawer(s), receipt printer(s) and report printer as well as POS software. You must sign all documents and do such further acts as may be required by us from time to time in order to effect the foregoing. Without limiting the generality of the foregoing, you must purchase such POS System and high speed internet as may be required to implement the cash register program and/or for any other purposes that we may designate from time to time in the Confidential Manual or by notice in writing from suppliers designated by us and you must assume and pay all costs related to the program. 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 Sections 8.3, 8.10 of the Franchise Agreement).

You must purchase or lease, use, maintain and update computer and other systems and software programs which meet our specifications as they evolve over time and which, in some cases, may only be available through us, our affiliates and/or designated suppliers. You must maintain your systems network and you must promptly update and otherwise change your computer and point of sale hardware and software system as we require from time-to-time, at

your expense, including but not limited to your operating system. You will pay all amounts charged by any supplier or licensor of the systems and programs used by you, including charges for use, maintenance, support and/or update of these systems or programs.

We estimate the cost of purchasing the computer system and POS system will range from \$3,000 to \$14,000 (per cash register). In addition, you will need to pay up to \$90 a month for a service and maintenance contract plus the cost of your Internet connection. This monthly fee covers the cost of ongoing maintenance and POS software upgrades. You are also required to purchase the POS Help Desk Phone Support Maintenance from Kahala Management.

We have the right to independently access your electronic information and data, and to collect and use your electronic information and data in any manner we choose to promote the development of the System and the sale of franchises. There is no contractual limitation on our right to receive or use your electronic information and data.

### **Training Program**

We will make a Training Program available to you and your Designated Manager 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 Thai Express franchise, including having, at a minimum, completed the entire Thai Express 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 each of the subjects. Other personnel involved with on-the-job training of franchisees are Regional 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. In-store training will be taught in a Thai Express 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.

#### **TRAINING PROGRAM**

<b>Column 1 Subject</b>	<b>Column 2 Hours of Classroom Training</b>	<b>Column 3 Hours of on-the-job training</b>	<b>Column 4 Location</b>
New Owner Training	40	---	Online, KTEC (Kahala Training & Education Center) in Scottsdale, AZ, or such other location designated by us
In-Store Training	---	160	Franchisee's restaurant location or such other location designated by us

You will need to begin operations of your franchise unit within 90 days of the completion of training or as soon as we have certified that your Thai Express Restaurant is ready to open for business (See Section 4.5 of the Franchise Agreement). Please note, at our sole discretion, the Training Program for a food court Thai Express Restaurant may differ slightly from the Training Program outlined above. You or another partner, shareholder or member of your business organization must have successfully completed our Training Program to our satisfaction.

If, whether as a result of observations, test results or otherwise during initial training or thereafter (including during operation of your Thai Express Restaurant) we determine that you are not meeting Thai Express System standards, after written notice and a 10-day opportunity to cure, we can require that: (1) a manager or other person designated by us be placed in your Thai Express Restaurant to supervise day-to-day operations for the purpose of assuring compliance with our standards (you will pay all costs in connection, including salary, benefits, travel, meals, lodging, and incidental expenses); and/or (2) you (or a managing partner or shareholder consented to by us) and/or your Designated Manager, re-attend and successfully complete training, at your sole cost and expense.

You (or a managing partner or shareholder consented to by us) and your Designated Manager (as defined in ITEM 15) must attend additional and/or refresher training programs (if we designate them as mandatory) conducted at location(s) specified by us, whether on a national or regional basis, and your other employees may be required to attend mandatory training programs presented by us at your Thai Express Restaurant location. We will not require you to attend national training programs more often than once every 12 months, but this limitation shall not apply to annual conventions and/or any other regional training or other programs. You and your managers and employees may attend any additional training programs offered by us from time to time, which we designate as optional. We may charge a fee for any optional training programs. You will be responsible for all travel, living, incidental and other expenses and compensation of you and your personnel attending any training program. (See Sections 4.4 and 5.3 of the Franchise Agreement).

## **ITEM 12 TERRITORY**

### **Franchise Agreement**

The franchise is granted for a specific location ("Licensed Location"). The Licensed Location is identified on Schedule A to the Franchise Agreement. You must operate from the Licensed Location and you must receive our written permission before relocating your Thai Express Restaurant. You may not conduct business from any site other than the Licensed Location without our written consent, including unapproved catering or delivery services, and you may not use other channels or methods of distribution, including the Internet (or any existing or future form of electronic commerce), to conduct sales outside of your Licensed Location. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we or our affiliates own, or from other channels of distribution or competitive brands that we control.

Other than as stated in the Franchise Agreement, there are no conditions for keeping the rights to your Licensed Location, though we may terminate your Franchise Agreement on the grounds listed in ITEM 17 of this Franchise Disclosure Document. There are no minimum sales quotas. You maintain the same rights to your Licensed Location even if the population

increases or decreases in the area surrounding your Licensed Location. You do not receive the right to acquire additional franchises.

Except as expressly limited in the Franchise Agreement, we (for ourselves, our affiliates and our designees) retain all rights with respect to *Thai Express* restaurants, the Marks, all confidential and proprietary information, all copyrighted materials and the sale of *Thai Express* 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 (for ourselves, our affiliates and our designees) are under no obligation to compensate franchisees for soliciting or accepting orders in the franchisee's territory as the franchisee is granted no exclusive territory.

You must obtain our prior approval to relocate your Thai Express 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 Thai Express Restaurant may not be closed for business for more than thirty (30) days

### **Rights Reserved By Franchisor**

Except as expressly limited in the Franchise Agreement, we (for ourselves, our affiliates and our designees) retain all rights with respect to Thai Express Restaurants, the Marks, the Copyrighted Works and the sale of Thai Express Products anywhere in the world, including the right to:

- (a) establish, operate or license to any other person or entity the right to establish or operate, a Thai Express Restaurant owned or licensed by the Franchisor at any location;
- (b) develop, market, own, operate or participate in any other business under the Marks or any other trademarks;
- (c) develop, lease and license the use of, at any location, trademarks other than the Marks, in connection with the operation of a system which offers products or services which are the same as or similar to those offered under the System on any terms or conditions which we deem advisable;
- (d) merge with, acquire or be acquired by any other business, including a business that competes with your Thai Express Restaurant, or to acquire and convert to the System operated by us any retail stores, including retail stores operated by competitors at any location, or otherwise operated independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned;
- (e) distribute, sell or license other persons to distribute or sell non-System products and Thai Express Products, at any location, through all other channels without providing any compensation to you. "Other Channels" means locations other than traditional restaurants owned, franchised or licensed by us, and includes sale by or through other channels of trade including, without limitation, kiosks, carts, grocery stores, convenience stores, food chains, electronic mail, Internet sales, malls, universities, schools, hospitals, military bases, casinos, convention centers, arenas, stadiums, health and fitness facilities, office buildings, theme parks, movie theatres, and amusement facilities; and


(f) implement multi-area marketing programs which 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.

On July 26, 2016, Kahala Brands merged with a wholly-owned subsidiary of MTY. As of the date of this Franchise Disclosure Document, Kahala Brands or one or more of its subsidiaries has franchised or currently operates approximately 2,800 quick service restaurants of the brands detailed in Item 1. Certain of these restaurant concepts offer goods or services that are the same or similar to those that you will offer under the Thai Express brand, in particular *Samurai Sam's*.

**ITEM 13  
TRADEMARKS**

The Franchise Agreement grants you the nonexclusive right to use our trademarks, including the THAI EXPRESS logo, and various designs associated with our products and services (the "Marks"). You may also use our other current or future Marks as we may designate to operate your Thai Express Restaurant. You agree not to file any trademark, copyright or any other intellectual property application regarding the Marks, under which you could be recognized as the owner of the Marks or having any interest in the Marks, except as expressly permitted in the Franchise Agreement or by us in writing. The Franchise Agreement requires that you renounce to any and all of your common law interest in said Marks. You must indicate, as required in the Franchise Agreement and specified in the Confidential Manual, that you are an independent operator of the Thai Express Restaurant and you shall use only the appropriate and authorized Marks as indicated by us.

We have registered the following Marks with the United States Patent and Trademark Office ("USPTO") on the Principal Register.

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
	4,623,121	October 21, 2014
GENERAL THAI	5,132,578	January 31, 2017

There are no applications pending with the United States Patent and Trademark Office at this time.

We carry on business under the Marks. In addition, we use a number of unregistered trade-names, trade-marks and logos. You must follow our rules when you use any of the Marks. You may not use any of the Marks alone or with modifying words, designs or symbols as part of a corporate or business name or in any form on the Internet, including but not limited to URLs, domain names, e-mail addresses, locators, links, metatags or search techniques, except as we license to you. You must get our prior written approval of your company name

before you file any registration documents. Guidelines regarding proper trademark use and notices are in the Confidential Manual and will be updated periodically in our discretion.

You cannot establish a website on the internet using any domain name containing the words “Thai Express”, “ThaiExpress.ca”, or any variation thereof. Any website, software application, App (application, or social media site or 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®), designed or used by you, which contains any of the Marks and/or logos must be approved by us in advance in writing. If you elect to develop your own website, you must engage our Internet service provider to host your website. You may be required to use our pre-approved website template. We shall at all times have the right to approve the design and content of your website or any social networking site used by you in advance and in writing. We retain the right to pre-approve your use of linking and framing between our web pages and all other websites. You must within two days, dismantle any frames and links between our websites and any other websites, if and as requested by us.

You may not use our Marks with an unauthorized product or service, or in a manner not authorized in writing by us.

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, any pending infringement, opposition or cancellation proceedings or any pending material litigation involving any of our Marks which are relevant to the use of these Marks. No currently effective litigation affects our use or ownership rights in any Mark. No currently effective agreement limits our right to use or license the use of our Marks. We will have the sole discretion to take such action as we may deem appropriate to protect our trademarks and the right to exclusively control any litigation, United States Patent and Trademark Office proceeding, or other proceeding arising out of any such infringement, challenge or claim or otherwise relating to our trademarks.

You must notify us within three days of when you learn about an infringement of or challenge to your use of our Marks. We will take the action necessary, in our sole discretion, to protect the unauthorized use of our Marks, which may include payment of reasonable costs associated with the action. We are not obligated to protect your rights to use the Marks or protect you against any claims of infringement or unfair competition arising out of your use of Marks. We will have no obligation to defend or indemnify you if a claim against you relates to your use of the Marks in violation of the Franchise Agreement.

You must modify or discontinue the use of a Mark if we modify or discontinue its use. If this happens, we will not reimburse you for your reasonable out-of-pocket costs, if any, of changing your identifying signage at the Thai Express Restaurant, unless we require you to modify or discontinue use of our Marks and/or use other trademarks 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 Marks infringed upon a third party’s rights, in which case we will bear the direct, actual, and reasonable costs of those modifications or discontinuances, and we will not be liable for any other costs, expenses or damages you incur as a result of our decision to modify or discontinue use of the Marks. To receive reimbursement you must have notified us immediately when you learned about the infringement or challenge and have used the Marks only in accordance with the Franchise Agreement. You must not directly or indirectly contest our right to our Marks, trade secrets or business techniques that are part of our business or the Thai Express System. The rights

granted in this paragraph are your sole and exclusive remedy for any infringement by any part of the System.

We do not know of any infringing uses that could materially affect your use of our Marks. You should understand that there could be other businesses operating in or near the areas where you may do business or otherwise, using trademarks, trade names, or other commercial symbols similar to our Marks with superior rights to our rights. Before opening your Thai Express Restaurant, we strongly urge you to research this possibility, using telephone directories, trade directories, Internet directories, or otherwise prior to your signing the Franchise Agreement, any other documents, or expending or paying any sums or making any commitments, in order to avoid the possibility of having to change your Thai Express Restaurant name.

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

The information contained in the Confidential Manual is proprietary and is protected by copyright. The designs contained in the Marks, including the THAI EXPRESS logo, and the layout of our advertising materials are also protected by copyright. Although we have not filed an application for copyright registration for the Confidential Manual, the Marks, including the THAI EXPRESS logo, or the advertising materials, we claim copyrights in these items. We grant you the right to use this proprietary and copyrighted information (“Copyright Works”) in connection with your operation of a Thai Express Restaurant.

You must notify us within three days after you learn about another’s use of language or a visual image that you perceive to be identical or substantially similar to one of our Copyright Works or if someone challenges your use of our Copyright Works. We will take whatever action we deem appropriate, in our sole discretion, to protect our rights in and to the Copyright Works.

We will indemnify, hold harmless, and reimburse you for your liability and reasonable costs in connection with defending your use of our Copyright Works. To receive reimbursement you must have notified us within three days from the day on which you learned about the identical or substantially similar language or visual image and you must have used the Copyright Works only in accordance with the terms of the Franchise Agreement.

You must add, modify, or discontinue the use of a Copyright Work if we instruct you to do so. If this happens, we will reimburse you for your actual tangible, direct, and reasonable cost of changing your identifying signage but we will not be liable for any other costs, expenses, or damages you incur as a result of our decision to add, modify, or discontinue use of a Copyright Work. You must not directly or indirectly contest our rights to our Copyright Works, trade secrets, or business techniques that are part of our business.

We do not know of any infringing uses that could materially affect your use of our Copyright Works.

We will disclose certain confidential or proprietary information and trade secrets (“Confidential Information”) to you, as we periodically deem necessary or advisable for the development of Thai Express Restaurants during the term of the Franchise Agreement. You must agree to disclose the Confidential Information to your owners and employees only to the extent reasonably necessary and only if those individuals have agreed to maintain the information in confidence by entering into an agreement that we can enforce.

The Confidential Information is disclosed to you on the condition that you, and your owners and employees who have access to the Confidential Information, agree that during and after the term of the applicable agreement they: (1) will not use the Confidential Information in any other business or capacity; (2) will maintain the absolute confidentiality of the Confidential Information; (3) will not make unauthorized copies of any portion of the Confidential Information disclosed in written or other tangible form; and (4) will adopt and implement all reasonable procedures we periodically require to prevent unauthorized use or disclosure of the Confidential Information including requiring employees and owners who have access to the Confidential Information to execute non-competition and confidentiality agreements as we otherwise require periodically, and provide us, at our request, with signed copies of each of those agreements.

We claim proprietary rights to all confidential information, including proprietary recipes, contained in the Confidential Manual. Certain information in the Confidential Manual also constitutes Trade Secrets and is identified as such. All such information may be maintained in print or in electronic form as we deem appropriate in our discretion.

No patents or pending patent applications are material to the franchise at this time.

We own all records with respect to the customers, suppliers, and other service providers of, and related in any way to, your Thai Express Restaurant including, without limitation, all databases (whether in print, electronic, or other form), including all names, addresses, phone numbers, e-mail addresses, customer purchase records, etc., and may use, transfer, etc. such records in any way we wish, both before and after any termination, expiration, repurchase, transfer or otherwise. (See Section 5.18 of the Franchise Agreement). We may contact any or all of your customers, suppliers and other service providers for quality control, market research and such other purposes as we deem appropriate, in our sole and absolute discretion. (See Section 5.8 of the Franchise Agreement).

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

If you are an individual, you must personally supervise the operation of the Thai Express Restaurant at the Licensed Location. You also must attend and satisfactorily complete our training program. If you are a corporation, partnership or other business entity, the shareholders or partners do not need to personally supervise the operation of the Thai Express Restaurant at the Licensed Location. However, one of the shareholders and/or partners must attend and satisfactorily complete our training program. We require that you also send your manager (“Designated Manager”) to training. We require that your Thai Express Restaurant at the Licensed Location be under the direct, on-site supervision of a Designated Manager who has successfully completed our training program. Even if you chose to employ a Designated Manager to supervise your Thai Express Restaurant at the Licensed Location, we strongly recommend that you personally devote a substantial amount of time to the Thai Express Restaurant. Franchisees who do not devote their full time to the managing, operation, marketing of their Thai Express Restaurant may have lower sales, higher costs, and less name recognition than franchisees who devote their full time attention to the business. Your day to day tasks could include managing and training employees, bookkeeping, ensuring proper customer service, ensuring smooth and efficient operations, marketing the business, and reviewing sales and food costs.

Each individual, and their spouse (if applicable), who owns, directly or indirectly, a 5% or greater interest in the Franchisee entity must sign The Thai Express Guaranty and Indemnity



assuming and agreeing to discharge all obligations of the Franchisee and to comply with all restrictions under the Franchise Agreement. (See Schedule F to the Franchise Agreement). A reduction in an owner's equity interest in the entity that holds the franchise below 5% will not affect that equity owner's status as an owner and a guarantor unless expressly agreed to by us. Certain provisions of the Franchise Agreement and the Guaranty and Indemnity restrict you, your owners, and the immediate family members (your spouse) of each owner from participating in a competing business. (See ITEM 17).

You must sign The Thai Express Security Agreement giving us a priority interest in all present and future accounts, inventory, equipment, intangibles, proceeds and interest in the franchise. (See Schedule L to the Franchise Agreement).

You agree in the Franchise Agreement that you will not, without our prior written consent, borrow more than the maximum allowed debt we prescribe for you. Currently, the maximum amount of debt we allow you to service is seventy percent (70%) of the total project costs for establishing a Thai Express franchise. We will establish your maximum allowed debt based upon your financial condition, the initial investment necessary to open your particular Store, and the location of your Thai Express Restaurant. We periodically may change this amount for you and other franchisees (that is, the amount may differ from franchisee to franchisee because of each franchisee's particular circumstances). We impose this requirement because excess debt may adversely affect your Thai Express Restaurant's operational results.

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

You must offer for sale and sell all those products ("Thai Express Products") and services that we designate as required. You must not offer or sell any other types of products or services or operate or engage in any other type of business or profession from or through your Thai Express Restaurant. You acknowledge that it is essential to sell Thai Express Products made from confidential proprietary recipes and obtained from designated sources in order to assure the consistency and quality of the Thai Express System and the services offered at your Thai Express Restaurant. We have the right to change the types of authorized Thai Express Products and services, and there are no limits on our right to do so, although we will provide you with written notice 30 days before any changes become effective. Supplies and equipment used in your Thai Express Restaurant must be purchased from us or a vendor approved by us or meet the standards and specifications set by us from time to time in the Confidential Manual.

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

## THE FRANCHISE RELATIONSHIP

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

Provision	Section in Franchise Agreement (unless otherwise indicated)	Summary
a. Length of the franchise term	2.1	<u>If you are purchasing a new or existing non-operating Thai Express Restaurant</u> , 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 MTY affiliate, excluding any extensions and renewal options. <u>If you are purchasing an existing and operating Thai Express Restaurant</u> , 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 MTY affiliate, excluding any extensions or renewal options. <u>If you are purchasing a Thai Express Restaurant that will be co-branded into another MTY or MTY affiliate brand restaurant</u> , 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.
b. Renewal of the term	2.2	You have the right to operate the franchised business beyond the Term, for one (1) renewal term of five (5) years, so long as you comply with the renewal requirements.
c. Requirements for franchisee to renew	2.2	“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

Provision	Section in Franchise Agreement (unless otherwise indicated)	Summary
		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 then-current Franchise Agreement and Confidential Manual; not have received more than 3 notices of default or breach of the then-current 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 then-current 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 provided by us.
d. Termination by franchisee	None	Not Applicable
e. Termination by franchisor without cause	None	Not Applicable
f. Termination by franchisor with cause	9.2 - 9.5	We can terminate if you are in default of any of the listed provisions below and in the Franchise Agreement.
g. "Cause" defined – curable defaults	9.5	Including, but not limited to, breach of lease or sublease; material breach of other agreement with Franchisor or its affiliates, failing to file reports on time that are more than five days late on two or more occasions, operating in a hazardous manner after receiving a notice to correct such actions from any governmental body, us or the landlord, failure to pay amounts due Franchisor, Franchisor's affiliates or subsidiaries, Local Advertising Cooperative, authorized supplier, or Landlord within five (5) days after a demand for payment or fails to honor on

Provision	Section in Franchise Agreement (unless otherwise indicated)	Summary
		two (2) or more occasions checks presented for payment or repeatedly and consistently pays any amount due after its due date; selling any unauthorized product or service; selling any merchandise having an adverse effect on the System, the Marks or goodwill associated with the Marks; failing to comply with any provision of the Franchise Agreement or Confidential Manual; taking or threatening any action to liquidate assets, or not making payments in the usual course of business, failing to complete Franchisor's required training or retraining courses(s), failing to pay any required liquidated damages under the Franchise Agreement, failing to participate in Franchisor's group insurance plan.
h. "Cause" defined – non-curable defaults	9.2, 9.3 and 9.4	Including, but not limited to, failing to sign a lease if required, failing to commence operations as required, failing to successfully complete initial training as required, failing to sign certain agreements or schedules, beginning the operation of the business without Franchisor's written consent, subject lease is terminated, or if Franchisor or landlord, under the lease becomes entitled to terminate the lease, being convicted of a criminal offense, amends the lease without receiving Franchisor's prior written consent, filing bankruptcy or becoming insolvent or similar acts or events, assigning franchise without prior consent, abandoning the franchised business, knowingly making material false statement in connection with the franchise application, on 2 or more occasions underreporting gross sales, repeatedly failing to maintain accounts and records, violates any law, ordinance, rule, or regulation in connection with the operation of the business or involving moral turpitude, allowing another person or entity to take possession of the business, property, or assets, defaulting on a

Provision	Section in Franchise Agreement (unless otherwise indicated)	Summary
		contract of sale, mortgage, or other security instrument, receiving 3 or more notices of default from the Franchisor, changing control of the franchisee entity without consent, registering a trademark or using the words “Thai Express” or similar in the franchisee’s corporate name, trademark misuse; unauthorized use of any of the components of the System; materially impair the goodwill or reputation of the System;,, unauthorized disclosure of the confidential manual.
i. Franchisee’s obligations on termination/non-renewal	10.2, 10.3, 10.4, 10.8, 10.11, 10.12	Obligations include: you must stop using the Marks and return the confidential manual and other materials, pay all amounts owed to us and the landlord or other creditors, provide accounting, cancel trademark registrations, modify premises if necessary, disassociate from the system, execute any required agreements or documents
j. Assignment of contract by franchisor	12.9	We are unrestricted in our right to assign your contract
k. “Transfer” by franchisee – definition	12.1, 12.7	Transfer includes assigning, transferring, or granting a security interest in any rights under the Franchise Agreement or Lease, or subletting the premises, or granting a license to use or occupy any part of the premises
l. Franchisor approval of transfer by franchisee	12.1, 12.3 12.4, 12.7	You may transfer the franchise if you meet the criteria set out in the Franchise Agreement, and you secure our reasonable consent
m . Conditions for franchisor approval of transfer	12.2, 12.3, 12.4, 12.7	Transfer must be of all or substantially all of your assets or all of the shares of the franchisee, you must not be in default, provide written notice to Franchisor, assign lease if necessary, you must pay transfer fee, the assignee must qualify as a franchisee and current agreements, assignee must give guarantee and attend training, release must be given by you,

Provision	Section in Franchise Agreement (unless otherwise indicated)	Summary
		landlord must consent; a new Franchise Agreement, and other agreements if necessary, must be executed upon transfer. We reserve the right to require transferring franchisees to use and pay for the services of a third-party escrow agent designated or approved by us.
n. Franchisor's right of first refusal to acquire franchisee's business	12.5	We can match any offer for your business
o. Franchisor's option to purchase franchisee's business	10.4, 10.5	Upon termination of your franchise agreement, we may purchase any part of your business and receive an assignment of your interest in leases of equipment or the premises
p. Death or disability of franchisee	13.2	Your rights may be transferred to your heirs if you have our prior written consent and in accordance with the rules regarding transfers
q. Non-competition covenants during the term of franchise	15.1(a), 15.1(c)	You must not be involved in the operation of any other business which consists substantially of the sale of Thai food items as its main product line
r. Non-competition covenants after the franchise is terminated or expires	15.1(b), 15.1(c)	For 2 years, you must not be involved in the operation of any other business which consists substantially of the sale of Thai food items as its main product line and which is located within 10 miles of your restaurant or any Thai Express franchise
s. Modification of agreement	16.1, 16.5	All modifications/waivers must be in writing, though we may adjust operating standards in accordance with the franchise agreement and/or in the Confidential Manual
t. Integration/merger clause	16.5	Only the Franchise Agreement applies (subject to state and federal law); all other agreements or promises not enforceable; nothing in the Franchise Agreement is intended to disclaim the representations made in the Franchise Disclosure Document. Any representations or

<b>Provision</b>	<b>Section in Franchise Agreement (unless otherwise indicated)</b>	<b>Summary</b>
		promises outside of the disclosure document and franchise agreement may not be enforceable.
u. Dispute resolution by arbitration or mediation	16.14	Controversies or disputes arising out of or related to the Franchise Agreement must be arbitrated, except for certain excluded actions.
v. Choice of forum	16.14	Phoenix, Arizona (except as provided in a state specific Addendum)
w. Choice of law	16.2	Arizona law applies (except as provided in a state specific Addendum)

**Sublease**

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

<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
a. Term of the Sublease	1 and 12.a	Ends one day before expiration of the Prime Lease, including any renewals of the Prime Lease.
b. Renewal or extension of the term	12.a	If the Master Lease contains a renewal option, you must notify our Leasing Affiliate to exercise it.
c. Requirements for you to renew or extend	12	You must have been in full compliance with the Sublease, Franchise Agreement, and all other agreements with the Leasing Affiliate and/or its affiliates during your tenancy. You must notify our Leasing Affiliate of your intent to renew at least 60 days (but no earlier than 90 days) prior to the date that our Leasing Affiliate is required to notify the Landlord and our Leasing Affiliate must be able to secure a renewal of the Prime Lease.
d. Termination by you	Not Applicable	You have no right to terminate the Sublease.
e. Termination by us without cause	8.a	The Sublease will terminate if the Prime Lease is terminated for any reason.

<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
f. Termination by us with cause	8.b	Our Leasing Affiliate may terminate the Sublease for cause. Our Leasing Affiliate can terminate if you fail to timely cure defaults of the Sublease following notice or if your Franchise Agreement is terminated.
g. "Cause" defined – curable defaults	7.a, b	If also curable under the Prime Lease, curable defaults include: (i) non-payment of rent; (ii) non-monetary default of the Sublease; or (iii) default under the Franchise Agreement.
h. "Cause" defined – defaults that cannot be cured	7.a and 10	Any defaults under the Prime Lease that are not curable; our Leasing Affiliate may immediately re-enter and take possession if you improperly assign or sublet.
i. Your obligations on termination/nonrenewal	7.d, 9.a, and 10.d	Our Leasing Affiliate may enter and take possession of the premises and all improvements; you are not relieved of further obligations under the Sublease.
j. Assignment of agreement by us	10.e	Our Leasing Affiliate has the right to assign the Prime Lease and you must agree to any attornment or other requested agreement.
k. "Transfer" by you – defined	10.a, b	You may not assign, sublet, part with, or share possession of all or part of the Premises, or mortgage or encumber the Sublease or your interest in it without the written consent of our Leasing Affiliate and Landlord, other than in accordance with the Prime Lease and the Franchise Agreement. If you are a business entity, change in control is an assignment.
l. Our approval of transfer by you	10.a	Approval of Leasing Affiliate and Landlord may be required.
m. Conditions for our approval of transfer	10.a	Our Leasing Affiliate's consent may be required.
n. Our right of first refusal to acquire your business	Not Applicable	None.
o. Our option to purchase your business	Not Applicable	None.
p. Your death or disability	Not Applicable	None
q. Non-competition covenants during the term of the franchise	Not Applicable	None



<b>Provision</b>	<b>Section in Sublease</b>	<b>Summary</b>
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	22	The Sublease, Franchise Agreement, and any incorporated agreements and/or schedules contain 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	21	Arizona law applies

**You should refer to the State Addenda attached to this Franchise Disclosure Document as Exhibit F for exceptions to this ITEM 17.**

### **ITEM 18 PUBLIC FIGURES**

We do not currently use any public figure to promote the System.

### **ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to disclose 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 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 performance at a particular location or under particular circumstances.

We do not make any representations about a Franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. 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 franchisor's management by contacting John Wuycheck at (480) 362-4800, 9311 East Via de Ventura, Scottsdale, Arizona, 85258, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20  
OUTLETS AND FRANCHISEE INFORMATION**

Table No. 1

Systemwide Outlet Summary  
For Years 2019-2021

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	10	7	-3
	2020	7	9	2
	2021	9	8	-1
Company-Owned	2019	1	1	0
	2020	1	1	0
	2021	1	1	0
Total Outlets	2019	11	8	-3
	2020	8	10	2
	2021	10	9	-1

Table No. 2

Transfers of Franchised Outlets from Franchisees to New Owners (other than Franchisor)  
For Years 2019-2021

Column 1	Column 2	Column 3
<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
FL	2019	0
	2020	1
	2021	0
TX	2019	0
	2020	0
	2021	1

Totals	2019	0
	2020	1
	2021	1

Table No. 3

Status of Franchised Outlets  
For Years 2019-2021

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8	Col. 9
State	Year	Outlets at Start of the Year	Outlets Added	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations-Other Reasons	Outlets at End of the Year
AZ	2019	2	0	0	0	1	1	0
	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
CA	2019	1	0	0	0	0	0	1
	2020	1	1	0	0	0	0	2
	2021	2	0	0	0	0	1	1
FL	2019	0	1	0	0	0	0	1
	2020	1	1	0	0	0	0	2
	2021	2	0	0	0	0	0	2
GA	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	1	0
	2021	0	0	0	0	0	0	0
ID	2019	1	0	0	0	0	0	1
	2020	1	0	0	0	0	1	0
	2021	0	0	0	0	0	0	0
MN	2019	1	1	0	0	0	0	2
	2020	2	0	0	0	0	1	1
	2021	1	0	0	0	0	0	1
NC	2019	0	0	0	0	0	0	0
	2020	0	1	0	0	0	0	1

	2021	1	0	0	0	0	1	0
NV	2019	1	0	0	0	0	1	0
	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
OR	2019	0	0	0	0	0	0	0
	2020	0	1	0	0	0	0	1
	2021	1	0	0	0	0	0	1
TX	2019	2	0	0	0	0	1	1
	2020	1	0	0	0	0	0	1
	2021	1	1	0	0	0	0	2
Total	2019	9	2	0	0	1	3	7
	2020	7	5	0	0	0	3	9
	2021	9	1	0	0	0	2	8

Table No. 4

Status of Company-Owned Outlets  
For Years 2019-2021

Col. 1	Col. 2	Col. 3	Col. 4	Col. 5	Col. 6	Col. 7	Col. 8
State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
	2019	1	0	1	1	0	1
AZ	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1
Total Outlets	2019	1	0	1	1	0	1
	2020	1	0	0	0	0	1
	2021	1	0	0	0	0	1

Table No. 5

Projected Openings as of  
November 30, 2021

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets in the Next Fiscal Year
Arizona	2	0	0
California	5	0	0
Florida	1	0	0
Georgia	2	0	0
North Carolina	2	0	0
New Jersey	2	0	0
Ohio	1	0	0
Oregon	1	0	0
Texas	6	1	0
Utah	1	0	0
Total	23	1	0

As of the date of this Franchise Disclosure Document, we own and operate one company-owned store. See Exhibit E for a list of our franchised Thai Express Restaurants in the United States.

The name and last known address and telephone number of every Franchisee who, during the last fiscal year ended November 30, 2021, had an outlet terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement, or who has not communicated with us within 10 weeks of this Franchise Disclosure Document, is listed on Exhibit I. If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

We had two franchisees that had their Franchise Agreements voluntarily terminated or cancelled during the year ending November 30, 2021 for a restaurant that never opened. The name, city and state and current business telephone number, or if unknown, the last known home telephone number, of these franchisees are as follows:

Prior Franchisee Company	Franchisee Name	City	State	Telephone Number
Thanhson Nguyen Dinh	Thanhson Nguyen Dinh	Folsom	CA	(916)772-8002
BBH Thai Rivergate L.L.C.	Dipin Chellani, Neetu Chellani	Charlotte	NC	704-942-4403, 980-430-5472

We had one outlet transfer during the past fiscal year.

Franchisees who had an outlet transfer during the year ending November 30, 2021:

Prior Franchisee Company	Franchisee Name	City	State	Telephone Number
Lip Smacking Inc	Ajay Setty, Aravind Reddy Kamireddy Muni, Harshitha Nallapareddy, Lakshmi Chitra Rekha Turamalla	Troy	MI	248-686-9198, 403-464-0067, 403-775-7171, 403-971-9704

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 such franchisees will be able to communicate with you.

There are no trademark-specific franchisee organizations associated with the franchise system.

## ITEM 21 FINANCIAL STATEMENTS

Attached as Exhibit A are our audited consolidated financial statements for the years ended November 30, 2021 and November 30, 2020, along with the independent auditor's reports for years ended November 30, 2021 and November 30, 2020.

## ITEM 22 CONTRACTS

### **Exhibit B Franchise Agreement:**

- Schedule A Licensed Location
- Schedule B Acknowledgement
- Schedule C Addendum to Lease
- Schedule D Request for Pre-Authorized Payments
- Schedule E Guaranty and Indemnity
- Schedule F Shareholders/Members/Partners
- Schedule G Address for Notice
- Schedule H Collateral Assignment of Telephone Numbers, Addresses and Listings
- Schedule I Statement of Franchisee
- Schedule J Security Agreement
- Schedule K Sublease
- Schedule L Sample Acknowledgement of Termination and Release Agreement
- Schedule M SBA Addendum

### **Exhibit B1 Asset Purchase Agreement**

**Exhibit F      State Addendum**

**Exhibit H      In-Store Training Release and Waiver of Liability Agreement**

We do not currently use any other contracts or agreements.

**ITEM 23  
RECEIPTS**

Exhibit K contains two detachable pages acknowledging the receipt of the Franchise Disclosure Document by you. One copy is for your records, and one copy must be signed and dated by you and returned to us.



**EXHIBIT A**

**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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Independent auditor's report .....	1-2
Consolidated statements of operations and comprehensive income (loss) .....	3
Consolidated statements of changes in stockholder's equity .....	4
Consolidated balance sheets .....	5-6
Consolidated statements of cash flows .....	7-8
Notes to the consolidated financial statements .....	9-37

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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)

	<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)

		2021	2020
	Notes	\$	\$
<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>	102,444
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>	719,865
<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>	140,277
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>	532,786

**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)	29,968	(37,227)
Items not affecting cash, restricted cash:		
Depreciation - property, plant and equipment	1,057	1,415
Amortization - intangible assets	13,888	14,174
Interest expense	16,264	16,764
(Gain) loss on disposal of property, plant, and equipment and assets held for sale	(1,986)	276
Impairment charge - property, plant and equipment	27	579
Impairment charge - intangible assets and goodwill	2,862	62,143
Gain on extinguishment of holdback	(27)	—
Deferred income tax recovery	(399)	(11,133)
	<b>61,654</b>	46,991
Interest paid	(16,192)	(16,192)
Changes in non-cash working capital items		
Accounts receivable	450	(4,344)
Inventories	(166)	(1,006)
Prepaid expenses and deposits	(2,336)	1,487
Loans receivable	497	(236)
Other current assets	(888)	(1,030)
Income taxes	(5,276)	25
Accounts payable	(2,245)	3,080
Accrued liabilities	(4,075)	(2,662)
Promotional funds payable	5,932	6,297
Gift card liability	5,526	2,474
Deferred revenue and deposits	3,408	5,009
Other	(445)	(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

24

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)

#### 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:

	Property plant and equipment	Intangibles			Total
		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:

	Property plant and equipment	Intangibles			Total
		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

(In thousands of US dollars)

#### 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

(In thousands of US dollars)

## 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:

	Franchising	Corporate	2021 Total
	\$	\$	\$
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>

	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	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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Independent auditor's report .....	1-2
Consolidated statements of operations and comprehensive income .....	3
Consolidated statements of changes in stockholder's equity .....	4
Consolidated balance sheets .....	5-6
Consolidated statements of cash flows .....	7-8
Notes to the consolidated financial statements .....	9-39

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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	<b>141,443</b>	133,100
Depreciation – property, plant and equipment	8	<b>1,415</b>	886
Amortization – intangible assets	9	<b>14,174</b>	13,147
Impairment charge of property, plant and equipment	8 & 11	<b>579</b>	—
Impairment charge of intangible assets and goodwill	9, 10 & 11	<b>62,143</b>	1,249
Interest expense	22	<b>16,764</b>	15,296
Management fees charged by parent company	26	<b>1,830</b>	1,155
		<b>238,348</b>	164,833
<b>Other (loss) income</b>			
(Loss) gain on disposal of property, plant and equipment		<b>(276)</b>	69
		<b>(276)</b>	69
(Loss) income before income taxes		<b>(45,284)</b>	14,798
<b>Income tax expense (recovery)</b>	24		
Current		<b>3,076</b>	2,481
Deferred		<b>(11,133)</b>	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>	224,306
		<b>719,865</b>	754,745

Contingencies

17

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	November 30, 2020	November 30, 2019
		\$	\$
<b>Investing activities</b>			
Net cash outflow on acquisitions, net of cash acquired		—	(190,291)
Additions to property, plant and equipment		(1,273)	(1,075)
Additions to intangible assets		(68)	(35)
Proceeds on disposal of property, plant and equipment and assets held for sale		8,705	5,632
Net cash provided from (used in) investing activities		7,364	(185,769)
<b>Financing activities</b>			
Net advance to ultimate parent		(53,125)	(13,423)
Net advance (to) from companies under common control		(105)	100,034
Issuance of shares to parent company		—	90,000
Repayment of long-term debt		(1,433)	(6,277)
Net cash (used in) provided from financing activities		(54,663)	170,334
Net (decrease) increase in cash, restricted cash		(8,109)	14,157
Cash, restricted cash, beginning of year		24,487	10,330
<b>Cash, restricted cash, end of year</b>		<b>16,378</b>	<b>24,487</b>

**Supplemental cash flow information**

25

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

Years ended November 30, 2020 and 2019

(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

Years ended November 30, 2020 and 2019

(In thousands of US dollars)

#### 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	
	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 B**

**FRANCHISE AGREEMENT  
WITH SCHEDULES**



**MTY FRANCHISING USA, INC.**

**- and -**

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**THAI EXPRESS  
FRANCHISE AGREEMENT**

**MTY FRANCHISING USA, INC.  
FRANCHISE AGREEMENT**

**TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE</u></b>
1. DEFINITIONS .....	1
2. TERM AND RENEWAL TERM .....	4
3. GRANT OF LICENSE AND RIGHT TO USE MARKS.....	6
4. COMMENCEMENT OF OPERATIONS .....	8
5. OPERATION OF BUSINESS .....	12
6. COVENANTS OF FRANCHISEE .....	23
7. COVENANTS OF THE FRANCHISOR.....	29
8. PAYMENTS BY FRANCHISEE AND ACCOUNTING OBLIGATIONS .....	29
9. TERMINATION AND/OR DEFAULT .....	34
10. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION.....	41
11. GUARANTEE .....	48
12. SALE OF BUSINESS .....	48
13. ABSENCE, DISABILITY OR DEATH.....	53
14. RELATIONSHIP OF PARTIES .....	54
15. RESTRICTIVE COVENANTS.....	54
16. GENERAL CONTRACT PROVISIONS .....	56
17. ACKNOWLEDGMENT AND FRANCHISE DISCLOSURE QUESTIONNAIRE .....	62

**SCHEDULES:**

Schedule A:	Licensed Location and Designated Manager
Schedule B:	Acknowledgment
Schedule C:	Addendum to Lease
Schedule D:	Request for Pre-Authorized Payments
Schedule E:	Guaranty and Indemnity
Schedule F:	Shareholders/Members/Partners
Schedule G:	Address for Notice
Schedule H:	Collateral Assignment of Telephone Numbers, Addresses and Listings
Schedule I:	Statement of Franchisee
Schedule J:	Security Agreement
Schedule K:	Sublease
Schedule L:	Sample Acknowledgment of Termination and Release Agreement
Schedule M:	SBA Addendum

**MTY FRANCHISING USA, INC.**

**FRANCHISE AGREEMENT**

This Franchise Agreement ("**Agreement**") is dated this \_\_\_\_\_, 20\_\_\_\_, ("**Effective Date**") between **MTY FRANCHISING USA, INC.**, a Tennessee corporation, d.b.a. Thai Express ("**Franchisor**"), and \_\_\_\_\_, a(n) \_\_\_\_\_ ("**Franchisee**") and \_\_\_\_\_ an individual(s) (collectively and individually "**Guarantor**").

**WHEREAS** the Franchisor has expended time, effort and money to acquire experience and knowledge with respect to the operation and management of a retail food service business and the provision of services related thereto; and

**WHEREAS** the Franchisor has developed a System (as defined in Section 1.1(1)) for the establishment, development and operation of such a business and is continuing to develop the System; and

**WHEREAS** the System is identified by certain Marks (as defined in Section 1.1(h)) hereinafter described and certain copyrighted material embodying the use of such Marks, and the Franchisor has goodwill in connection with such Marks and copyrighted material; and

**WHEREAS** the Franchisee wishes to obtain a license to operate a retail food service business of the standard and quality set by the Franchisor and to utilize the System, the product lines approved by the Franchisor, the suppliers, the distinctive fixtures, accessories and color scheme specified by the Franchisor, and the know-how, experience, goodwill, and Marks of the Franchisor; and

**WHEREAS** the Franchisee recognizes the importance of maintaining the distinctive qualities and attributes of the products, services and facilities identified by the Marks.

**NOW THEREFORE** in consideration of the agreements hereinafter contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree with each other as follows:

**1. DEFINITIONS**

1.1 Definitions. Wherever used in this Agreement, the following words shall have the following meanings respectively:

(a) "**Franchised Business**" or "**Business**" means the retail food service business operated or to be operated by the Franchisee at the Store pursuant to this Agreement.

(b) "**Business Records**" means evidence of each business transaction, and all marketing and other operating aspects of the Business, and all evidence and records with respect to customers and other service professionals relating to the Business including, without limitation, all databases in print, electronic or other form, including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other records created and maintained by Franchisee in operation of the Business. The term Business Records

does not include any of Franchisee's tax or financial records related to the operation of the Business.

(c) **"Commencement Date"** means the date on which Franchisee executes this Agreement.

(d) **"Gross Sales"** means the aggregate of the actual selling price of all goods and services sold or provided in, on or from the Store or such other place as authorized by Franchisor (including, without limitation, all sales of food and beverages, concessions or catering made on or off premises by Franchisee, whether for cash, credit, or on a credit or time basis, including the reasonable market value of any goods or services sold or traded in any barter or trade transaction, without reserve or deduction for any failure or inability to collect, and including income of every kind and nature related to the Business), unless otherwise provided in this Agreement and any proceeds from business interruption insurance received by the Franchisee. No deductions shall be allowed for uncollected or uncollectible credit accounts and each charge or sale made on installment or credit shall be treated as a sale for the full selling price in the week during which such charge or credit is made, irrespective of the time when the Franchisee receives payment. Gross Sales shall include all amounts received or receivable in respect of orders taken or received at the Store, even though such orders may be filled elsewhere. Gross Sales shall not include:

(i) any retail sales tax(es) which does not form part of the quoted price for the goods or service and which is collected from customers by the Franchisee acting as agent for the sales tax authority; or

(ii) any gratuities collected by employees of the Franchisee.

(e) **"Lease"** means the lease, sublease, or agreement to lease or sublease the Store entered into by the Franchisee, as tenant, and any amendments made thereto from time to time.

(f) **"Licensed Location"** means the location identified on Schedule A to this Agreement. If the Licensed Location is not identified in **Schedule A** at the time of execution of this Agreement, then the Licensed Location will be such location as is subsequently agreed upon between the Franchisor and the Franchisee, such agreement to be evidenced in writing by completing **Schedule A** at the time the Licensed Location is identified.

(g) **"Confidential Manual"** means the operating manual ("Operations Manual") for the System developed by the Franchisor and related printed and electronic documents containing various mandatory specifications, standards, methods, techniques and procedures for the operation of the Business as may be prescribed by the Franchisor from time to time for the franchisees of the Franchisor and containing information relative to other obligations of the Franchisee under this Agreement.

(h) **"Marks"** means the trademark THAI EXPRESS™ and all other trademarks, logos, distinctive names, service marks, certification marks, trade names, commercial symbols, insignia, labels and designs or otherwise, now or hereafter owned or used (and not thereafter withdrawn) by Franchisor and authorized for use by Franchisee by notice in writing given by Franchisor. Marks also include all trademark,

logo, distinctive name, service mark, certification mark, trade name, commercial symbol, insignia, label and design mark applications that the Franchisor has pending at the United States Patent and Trademark Office.

(i) **“Products”** means food and beverages, promotional items, uniforms, smallwares, computer software and hardware, telephone equipment, furnishings, fixtures, and equipment used in connection operating the Store, leasehold improvements, supplies, recipes, materials, forms, and other products sold or used through a Store.

(j) **“Services”** means any services rendered to Thai Express customers outside of the Store, including, without limitation, the delivery of Products, catering services and such other services as may be expressly authorized by the Franchisor in writing from time to time.

(k) **“Store”** means the premises identified in **Schedule A** to this Agreement or any other location as may be mutually agreed upon between the Franchisee and the Franchisor in writing. If the Store is not identified in **Schedule A** at the time of execution of this Agreement, then the Store will be such premises as are subsequently agreed upon by the Franchisor and the Franchisee, such agreement to be evidenced in writing by completing **Schedule A** at the time the Store is identified.

(l) **“System”** means the systems, standards, methods and procedures conceived of, developed or used by the Franchisor or which may hereafter be conceived, developed, updated or used by the Franchisor for the operation of a retail food service business and includes, without limitation, the following:

(i) the standards of quality and service used in the operation of a retail food service business utilizing the Franchisor’s System;

(ii) the design, color, style and other distinguishing characteristics of the leasehold improvements, fixtures, signs and furnishings;

(iii) distinguishing characteristics relating to the basic image, design, appearance, layout and color scheme of the interior and exterior of a location licensed by the Franchisor.

(m) **“Termination”** has the meaning attributed to it in *Section 10.1* of this Agreement.

1.2 Schedules. The following are the schedules referred to in this Agreement:

Schedule A	Licensed Location and Designated Manager
Schedule B	Acknowledgment
Schedule C	Addendum to Lease
Schedule D	Request for Pre-Authorized Payments
Schedule E	Guaranty and Indemnity
Schedule F	Shareholders/Members/Partners
Schedule G	Address for Notice
Schedule H	Collateral Assignment of Telephone Numbers, Addresses and Listings

Schedule I	Statement of Franchisee
Schedule J	Security Agreement
Schedule K	Sublease
Schedule L	Sample Acknowledgment of Termination and Release Agreement
Schedule M	SBA Addendum

## 2. TERM

**2.1 Term.** This Agreement will commence on the Commencement Date and continue as set forth in either *Section 2.1a.* or *2.1b.* below (“**Term**”):

a. If you are purchasing a new or existing non-operating Business, the Term will expire on either: (1) the ten (10) year anniversary of the date you open this Business to the public if you own the property where this Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this 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 property where this Business is located excluding any extensions or renewal options, unless terminated earlier in accordance with *Section 9* or any other provisions of this Agreement; renewed in accordance with *Subsection 2.2*, or transferred in accordance with *Section 12*; or

b. If you are purchasing an existing and operating Business, the Term will expire on either: (1) the ten (10) year anniversary of the Effective Date if you own the property where this Business is located or if you enter into a lease directly with the landlord or other third-party for the property where this 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 property where this Business is located excluding any extensions or renewal options, unless terminated earlier in accordance with *Section 9* or any other provisions of this Agreement; renewed in accordance with *Subsection 2.2*, or transferred in accordance with *Section 12*

**2.2 Renewal.** Subject to the terms and conditions described below, you will have the right to renew your license to operate the Business for one (1) five (5) year renewal term. 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 Business for an additional term, you must also meet each of the following requirements:

(a) You must not then be in default under the then-current franchise agreement for this Store 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 the then-current franchise agreement for this Store, including all financial obligations to us;

(b) You must be in complete compliance with the terms of the then-current franchise agreement for this Store, 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 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 renewal;

(d) You must have the existing right to maintain possession of the property where this Business is located 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 (collectively and individually, "**Renewal Franchise Agreement**") then used by us in the renewal of franchises and then being required of new franchise owners in connection with the System. The Renewal Franchise Agreement 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 Franchise Agreement terminate or supersede any guaranty and indemnity agreement executed pursuant to this Agreement. The terms of the Renewal Franchise Agreement may vary materially from the current agreements used by us, including the payment of a higher Royalty and Marketing Fund Contributions;

(g) The equipment, fixtures and signage used in connection with the operation of the 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 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 point-of-sale system to the then-current required point-of-sale system, within the time period specified by us; and

(i) You shall have paid to us a renewal fee in the amount of fifty percent (50%) of the then-current initial franchise fee not including any discounts or reductions ("**Renewal Franchise Fee**").

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.

2.3 Interim Period. After the expiration of this Agreement, if a period of time transpires before (a) Franchisee's rights under this Agreement have been fully and finally terminated or (b) Franchisor has offered a Renewal Franchise Agreement to Franchisee and Franchisee has not yet signed such Renewal Franchise Agreement, and Franchisee continues to accept the benefits of this Agreement, then at the option of Franchisor, this Agreement may be treated either as (a) expired as of the date of expiration with Franchisee then operating without a franchise to do so and in violation of Franchisor's rights; or (b) continued on a month-to-month basis ("**Interim Period**") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate thirty (30) days after receipt of the notice to terminate the Interim Period. In the latter case, all obligations of Franchisee shall remain in full force and effect during the Interim Period as if this



Agreement had not expired, and all obligations and restrictions imposed on Franchisee upon expiration of this Agreement shall be deemed to take effect upon termination of the Interim Period.

### 3. GRANT OF LICENSE AND RIGHT TO USE MARKS

3.1 Grant of License. On and subject to the terms and conditions contained in this Agreement, the Franchisor grants to the Franchisee the following (collectively, the “**License**”):

- (a) an exclusive license to carry on the Business only at the Store under the name THAI EXPRESS™ or such other Marks as may be specified from time to time by the Franchisor during the Term or any Interim Period;
- (b) a non-exclusive license to use and display the Marks during the Term and any Interim Period in connection with the operation, advertising and promotion of the Business; and
- (c) a non-exclusive license to use, in connection with the Store, the System.

The License is non-exclusive and Franchisor does not grant Franchisee any territorial protection or any other exclusive rights. The License shall only remain in effect during the Term and so long as the Franchisee continues to operate the Business and does not commit an Event of Default under this Agreement. Upon Termination, such license shall immediately end and the Franchisee shall immediately cease the use of the Marks and the System and shall not thereafter in any way hold itself out as being associated with the Franchisor or the restaurant operations owned or licensed by the Franchisor.

Notwithstanding the foregoing, the Franchisee expressly acknowledges that the Franchisor expressly reserves the right to:

- (i) to approve the Licensed Location of the Store for which Franchisee’s franchise rights will be granted;
- (ii) establish, operate or license to any other person or entity the right to establish or operate, a restaurant owned or licensed by the Franchisor at any location;
- (iii) develop, market, own, operate or participate in any other business under the Marks or any other trademarks;
- (iv) develop, lease and license the use of, at any location, trademarks other than the Marks licensed by Franchisor under this Agreement, in connection with the operation of a system which offers products or services which are the same as or similar to those offered under the System on any terms or conditions which the Franchisor deems advisable;
- (v) merge with or be acquired by any other business, including a business that competes with Franchisee’s Business, or to acquire and convert to the System operated by the Franchisor any retail stores, including retail stores operated by competitors located at any location, or otherwise operated

independently or as part of, or in association with, any other system or chain, whether franchised or corporately owned;

(vi) distribute, sell or license other persons to distribute or sell non-System products and System products at any location through all other channels. “**Other Channels**” means locations other than traditional restaurants owned or franchised or licensed by the Franchisor and includes sale by or through other channels of trade including, without limitation, kiosks, carts, grocery stores, convenience stores, food chains, electronic mail, Internet sales, malls, universities, schools, hospitals, military bases, casinos, convention centers, arenas, stadiums, health and fitness facilities, office buildings, theme parks, movie theatres, and amusement facilities; and

(vii) implement multi-area marketing programs (including, without limitation, mail drops and other flyer distribution methods) which may allow Franchisor or others to solicit or sell to customers anywhere. Franchisor also reserves the right to issue mandatory policies to coordinate such multi-area marketing programs.

Each of the Franchisee and the Guarantor further agree to execute and provide the Franchisor with the acknowledgment in substantially the form attached hereto as **Schedule B**.

Franchisee expressly agrees that all right, title and interest in and to the Marks, the System, the goodwill associated with the System and confidential trade secrets are owned by the Franchisor or its affiliates, and shall remain solely owned by Franchisor or its affiliates, and are being revealed to Franchisee solely to enable Franchisee to establish and operate a Thai Express franchise only in accordance with the terms and conditions of this Agreement.

3.2 License Subject to this Agreement. The Franchisee acknowledges that the Franchisor is a licensee of the Marks and that the Franchisor has the right to grant the license granted to the Franchisee in Section 3.1 of this Agreement. The Franchisee agrees not to question the ownership of the Marks or the Franchisor’s right to grant to the Franchisee the right to use the Marks. Franchisee agrees not to file any trade mark, copyright or intellectual property application in regards to the Marks, except as expressly permitted herein. Furthermore, Franchisee renounces any and all of Franchisee’s common law interests in said Marks. The Franchisee’s right to use the Marks is derived solely from this Agreement and is limited to the conduct of business by the Franchisee pursuant to and in compliance with this Agreement and all-applicable standards, specifications, and operating procedures prescribed by the Franchisor and contemplated in this Agreement. Any unauthorized use of the Marks by the Franchisee shall constitute an infringement of the rights of the Franchisor in and to the Marks and shall constitute an Event of Default under this Agreement.

3.3 Usage Inures to Benefit of the Franchisor. The Franchisee agrees that all usage of the Marks by the Franchisee and any goodwill established thereby shall inure to the exclusive benefit of the Franchisor and/or its affiliates, as the case may be. The Franchisee acknowledges that this Agreement does not confer any interest in the Marks or goodwill associated therewith upon the Franchisee.

3.4 Identification of Business. The Franchisee agrees to use the Marks as the sole identification of the Business; provided that the Franchisee shall identify itself as a franchisee of

the Franchisor and as the independent owner of the Business as otherwise provided in this Agreement.

3.5 Display of Marks. The Franchisee agrees to prominently display the Marks in connection with the Business and in the manner prescribed by the Franchisor from time to time in the Confidential Manual or otherwise; provided that, prior to using the Marks on any signs, goods or materials for any reason whatsoever, the Franchisee shall obtain the written approval of the Franchisor to such usage. The Franchisee agrees to give such notices, at the Store or otherwise, as may be required by the Franchisor for the purpose of indicating that the Franchisee is a licensed user of the Marks. In its use of the Marks, the Franchisee shall include such notices as may be required by the Franchisor for purposes of preserving the interests of the Franchisor in the Marks, including trademark and copyright notices.

3.6 Unauthorized Use. The Franchisee shall not use the Marks as part of any corporate name or with any prefix, suffix or other modifying words, terms, designs or symbols, or in any modified form. The Franchisee shall only use the Marks in connection with the sale of goods, products, and services authorized by the Franchisor.

3.7 Infringement of or Challenges to the Marks. The Franchisee shall immediately notify the Franchisor of any actual or apparent infringement of or challenge to the Franchisee's use of the Marks, or any claim by any person of any rights in any of the Marks. The Franchisee shall not communicate with any person other than the Franchisor and its counsel in connection with any such infringement, challenge, or claim. The Franchisor shall have sole discretion to take such action as it deems appropriate and the right to exclusively control any litigation or other proceeding arising out of any such infringement, challenge or claim or otherwise relating to any of the Marks. The Franchisee agrees to execute any and all instruments and documents, render such assistance and do such acts and things as may, in the opinion of the Franchisor's counsel, be necessary or advisable to protect and maintain the interest of the Franchisor in the Marks. If it becomes advisable at any time, in the Franchisor's sole discretion, for the Franchisor and/or the Franchisee to modify or discontinue the use of any of the Marks, and/or use one or more additional or substitute Marks, the Franchisee agrees to comply with the directions of the Franchisor in that regard within a reasonable period of time after receipt of such directions and the sole obligation of the Franchisor, and the exclusive remedy of Franchisee, in any such event shall be for Franchisor to reimburse the Franchisee for its actual, direct, and reasonable out-of-pocket costs, if any, of changing the signage at the Store except if such change is required pursuant to Section 2.2 herein.

3.8 Termination of License. Upon Termination, the Franchisee shall immediately cease all use of the Marks, including any colorable imitation thereof, in connection with any goods, services or business and, without restricting the generality of the foregoing, the Franchisee agrees not to use the word "THAI EXPRESS" in any manner or form as a trademark, trade name or otherwise in connection with any goods, services or business. The Franchisee agrees that this covenant is reasonable and necessary to protect the integrity of the Marks, and that this covenant is enforceable by injunction, including a temporary restraining order, by any court of competent jurisdiction.

#### **4. COMMENCEMENT OF OPERATIONS**

4.1 Site Location Period. If the Store or the Licensed Location is not identified and agreed to by the Franchisor prior to the execution of this Agreement, then the Franchisee will have twelve (12) months following the Commencement Date of this Agreement ("**Site Location**

**Period**) to use its best efforts to find a suitable location for the Store acceptable to the Franchisee and the Franchisor in all reasonable respects and to sign a Lease for the Store. As set forth in *Section 2.1* of this Agreement, the Term of this Agreement will expire if Franchisee is unable to find a suitable location within the Site Location Period, and in such event, Franchisor may retain any and all monies paid to Franchisor, including the Initial Franchise Fee paid pursuant to *Section 8.1*, as liquidated damages and not as a penalty. Franchisee's failure to sign a Lease for the Store prior to the expiration of the Site Location Period will constitute abandonment of the Business by Franchisee and entitle the Franchisor to terminate this Agreement without providing Franchisee with notice or the opportunity to cure.

4.2 Lease of the Store. Franchisee will be solely responsible for selecting and negotiating the purchase or lease of the Store. If Franchisor or its affiliates holds the master lease for the Licensed Location, Franchisee shall enter into the sublease in substantially the form attached as **Schedule K**. Franchisor recommends that Franchisee retain a commercial real estate broker or salesperson who has at least five years of experience in locating restaurant sites to advise and counsel the Franchisee with regard to the price, economics, demographics, access, visibility, location, and the acquisition or lease of the site for Franchisee's Store. Franchisor further recommends that Franchisee retain an experienced attorney to provide advice and counsel on the terms, conditions and economics of the legal and other documents required to lease or purchase the site for the Store. Franchisee shall, as soon as practicable following the execution of this Agreement and within the Site Location Period, submit to the Franchisor for its review and approval a copy of the Lease (prior to the execution of the Lease) proposed to be entered into in respect of the Store. Such review is for the benefit of Franchisor, and Franchisee acknowledges that Franchisor's review and approval of a Lease for the Store does not constitute a recommendation, endorsement, or guarantee by Franchisor of the suitability, success of the Store or the Lease, and Franchisee and Guarantor shall take all steps necessary to ascertain whether such Store and Lease are acceptable to Franchisee including by seeking professional advice, legal and/or otherwise with respect to the Lease. It is understood that the terms of the Lease shall include the terms contained in the Addendum to Lease (currently in the form attached hereto as **Schedule C**) in Franchisor's then-current-form Addendum to Lease. In addition, the terms of the Lease must also give the Franchisor the right to enter the premises of the Franchised Location to conduct inspections during regular business hours. Following Franchisor's approval of any Lease to be entered into by Franchisee, Franchisee agrees not to terminate or in any way alter or amend the same during the Term of the Franchise Agreement or any renewal term thereof without Franchisor's prior written consent, and any attempted termination, alteration or amendment shall be null and void and have no effect as to Franchisor's interests hereunder. Franchisor acknowledges and agrees that Franchisor may grant or deny its consent for any reason in its sole discretion.

If, prior to executing a Lease, Franchisee or its attorney request a full review of the Lease by Franchisor, including any and all exhibits attached thereto, and Franchisor or its designated affiliate review the entire Lease and exhibits and provides to Franchisee or its attorney its review of the entire Lease and suggested changes to the Lease ("**Lease Review**"), Franchisee must pay a lease review fee in the amount of Two Thousand Five Hundred Dollars (\$2,5000) ("**Lease Review Fee**") to compensate for time and effort in reviewing the Lease. The Lease Review is optional and only completed by Franchisor or its designated affiliate at Franchisee's or its attorney's request. The Lease Review Fee is due only in the event that Franchisee or its attorney request Franchisor or its affiliate to complete a Lease Review.

4.3 Design and Construction. Franchisee shall construct and equip the Store in conformity with Franchisor's standard plans, specifications and drawings provided by the

Franchisor or Franchisor's affiliates or subsidiaries, and in compliance with federal, state or local laws including, without limitation, the Americans with Disabilities Act ("**ADA**"), as well as any requirements under the lease for your Store or Licensed Location. The cost of producing all plans and specifications and all costs and expenses pertaining to the planning, construction of leaseholds, signs, logos, graphics, permits, fees, equipment, machinery, and of whatever else the Franchisee encounters in the way of costs and expenses in bringing about completion of the Store to Franchisor's standards shall be borne exclusively by the Franchisee. Franchisee must also, at its 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 Franchisor for its files prior to the start of construction, alterations or improvements. In addition, Franchisee must obtain the appropriate construction documents and all mechanical, plumbing, electrical and architectural plans must be sealed and stamped, as Franchisor may require, even if local laws in the jurisdiction where your restaurant is located do not require same. Franchisee acknowledges that any guarantee or warranty with respect to the performance and function of any of the equipment for use in the Business will be limited to those provided by the manufacturer or supplier of such equipment. Franchisor makes no representation that its standard layout plans, specifications and drawings or any work already performed by the Franchisor or Franchisor's affiliates or subsidiaries at the Store are in compliance with federal, state or local laws including, without limitation, the ADA, or with any lease-specific requirements.

4.4 Training Program. Prior to opening the Store for business, the Franchisor shall provide, and the Franchisee shall attend and successfully complete, all training programs required by the Franchisor regarding the System. The Franchisor may designate the location of all such training programs, including online. The training program is made up of the "In-Store Training," which is approximately one hundred sixty (160) hours, and "New Owner Training," which is approximately forty (40) hours (collectively, "Training Program"). Unless otherwise agreed, the Franchisee shall cause the Designated Manager to participate in the Training Program. Franchisee acknowledges that the successful completion of the Training Program will require, among other things, that each attendee be able to communicate that he/she can read, write, and converse in English by passing a competency test. The Designated Manager may be required to take and pass a competency test when the Franchisee signs this Agreement and receive a passing score. Franchisee agrees that the Designated Manager will be fluent in the English language. Up to two (2) individuals including the Designated Manager are eligible to participate in Franchisor's Training Program without paying any tuition or fee. Franchisee shall be responsible for any and all travel and living expenses incurred in connection with attending the Training Program as well as wages or salaries, if any, of the person(s) receiving training or undergoing testing. Franchisee and the Designated Manager must successfully complete the Training Program before Franchisee begins operating the Store, failing which, Franchisor shall be entitled to terminate this Agreement by written notice to Franchisee and Franchisor shall retain any and all monies paid to Franchisor, including the Initial Franchise Fee paid pursuant to *Section 8.1*, as liquidated damages and not as a penalty. In the event Franchisor elects to terminate this Agreement, Franchisee must pay to Franchisor immediately upon demand, any and all costs and losses Franchisor incurred in administering the opening of the Store, including without limitation, any outstanding rent, operating losses, and construction cost shortfalls. Franchisor reserves the right to waive all or a portion of the Training Program, or alter the training schedule, in Franchisor's sole discretion.

The Franchisor may require that the Franchisee and its personnel attend and complete additional training, re-training sessions or seminars that it may offer from time to time during the currency of this Agreement at locations determined by Franchisor. Attendance at these training

sessions or seminars by Franchisee and/or the Designated Manager is required and mandatory. Franchisor will charge Franchisee a fee for such training of between Five Hundred Dollars (\$500) and One Thousand Five Hundred Dollars (\$1,500). All travel, living, and other expenses in connection with said training programs, including wages, shall be paid by the Franchisee.

If, whether as a result of observations, test results or otherwise during the Training Program or thereafter (including during operation of the Franchisee's Thai Express Store) the Franchisor determines in the Franchisor's reasonable discretion, that the Franchisee is not meeting the System standards, after written notice and a 10-day opportunity to cure, the Franchisor can require that: (1) a manager or other person designated by the Franchisor be placed in the Franchisee's Thai Express Store to supervise day-to-day operations for the purpose of assuring compliance with the Franchisor's standards (the Franchisee will pay all costs in connection therewith, including salary, benefits, travel, meals, lodging, and incidental expenses); and/or (2) the Franchisee (or a managing partner or shareholder consented to by the Franchisor) and/or the Franchisee's Designated Manager, re-attend and successfully complete training, at the Franchisee's sole cost and expense.

4.5 Opening for Business. The Franchisee shall do all such acts and things as are necessary (including, without limiting the foregoing, compliance with all contractual obligations) to ensure that the Store is timely open for business after first receiving Franchisor's written consent, which cannot be provided until the Franchisor has approved the Store and Franchisee has: (1) successfully completed the Training Program; (2) paid all amounts owing to the Franchisor or its affiliates or subsidiaries and their contractors and suppliers under this Agreement or any other agreements between the Franchisor and the Franchisee; (3) furnished to Franchisor copies of all insurance policies required by this Agreement; (4) built out and equipped the Store in accordance with Franchisor's standards and specification; (5) stocked the Store with an inventory of approved products and supplies; (6) staffed the Store as required by Franchisor's standards and specifications; (7) obtained all necessary approvals from local authorities and government agencies; (8) completed all other aspects of developing the Business as Franchisor has reasonably required; and (9) provided Franchisor with a voided check from Franchisee's business account for purposes of allowing Franchisor to collect payment of Royalties and Marketing Fund Contributions from such business account. In any event, the Franchisee agrees to open the Store for business at the Licensed Location within one (1) year of the Effective Date. If the Franchisee does not open the Store for business at the Licensed Location within one (1) year of the Effective Date, then the Franchisor may terminate this Agreement by giving you notice to that effect.

Franchisee acknowledges and warrants that the Franchisor's approval of the Business at the Store does not constitute a guarantee, recommendation, or endorsement of the Business and that the success of the Business to be operated at the Store depends on the Franchisee's Designated Manager's and Guarantor's abilities as independent businesspersons and the acceptance of them and the Products in the community where the Store is located.

#### 4.6 Relocation.

(a) If you desire to relocate the 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 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 4.6*.

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

(b) At the time you request to relocate the 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 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 Business at your cost and expense, in order to comply with our System standards then applicable to new franchise owners; and

(iv) You shall have paid to us a relocation fee in the amount of Five Hundred Dollars (\$500).

(c) If we approve the relocation of your Business, (i) you and we must execute an amendment to this Agreement indicating the address for your relocated Business, and (ii) you must open your Business at the new location within thirty (30) days after you close your Business at the current property where the Business is located. Provided that you comply with all of the terms and conditions set forth in this Agreement including this Section 4.6, during the period of time between the closure of your Business at the current location, and the opening of the Business at the approved relocation address, you will not owe the Royalty (as defined in *Section 8.2*).

## **5. OPERATION OF BUSINESS**

5.1 Acknowledgment. The Franchisee acknowledges that the goodwill associated with the Marks has been created through the use of certain marketing and operating methods established by the Franchisor and/or its affiliates, as the case may be. The Franchisee further acknowledges that, through the operation of the Business, the Franchisee shall have the opportunity to benefit from such goodwill and shall be in a position to affect such goodwill to the benefit or detriment of the Franchisor and other franchisees of the Franchisor. Accordingly, the

Franchisee agrees that the restrictions imposed on the conduct of the Business pursuant to this Section 5 shall be of the essence of this Agreement and that the Franchisee covenants to continuously and strictly observe and perform all of the conditions and agreements contained in this Section 5.

5.2 Full-Time Involvement. The Franchisee acknowledges that the success of the Business is dependent in part on the active involvement of an owner/manager in the Business. The Franchisee shall ensure that a person designated to operate the Business (“**Designated Manager**”) shall at all times devote his or her full time and attention to managing, supervising, and developing the Business and that such person is at all times identified to the Franchisor. The Designated Manager is, at the time of the execution of this Agreement, identified on **Schedule A**. The Franchisee shall secure the Franchisor’s written consent before changing or designating a new Designated Manager. The Designated Manager must attend and satisfactorily complete Franchisor’s Training Program.

5.3 Managers. Except as otherwise provided in this Agreement, the operation of the Business shall at all times be under the supervision and control of the Designated Manager. The Franchisor shall be entitled to hold information and training sessions from time to time during the Term and any Interim Period and the Franchisee shall, at its own cost, require the Designated Manager and one or more of its managers to attend each such information and training session. If the Designated Manager and/or manager fails to attend such information and training sessions, Franchisee shall pay to Franchisor One Thousand and Five Hundred Dollars (\$1,500.00) as liquidated damages and not as a penalty.

5.4 Authorized Food, Beverages and Services. The Franchisee agrees to offer at the Store goods, food, beverages, paper and packaging and services of a type and quality from time to time specified by the Franchisor. The Franchisee will not, without prior written approval from the Franchisor, offer any goods, food, beverage, paper and packaging or service that has not been authorized by the Franchisor for its outlets generally. The Franchisee agrees that all food and beverages served in the Store shall be prepared in accordance with recipes and procedures set out in the Confidential Manual from time to time specified by the Franchisor..

5.5 Designated Suppliers and Volume Rebates. The Franchisor shall be entitled (but shall not be obligated) to designate certain goods (including, without limitation, the Products, food and beverages, promotional items, uniforms, smallwares, computer software and hardware, telephone equipment, and other things), the Services, furnishings, fixtures, and equipment used in connection with the Business, which must be obtained by the Franchisee from suppliers designated by the Franchisor or directly from the Franchisor. Such designated Products shall only be purchased by the Franchisee from the designated supplier or from the Franchisor. Additional Products may be designated from time to time by the Franchisor notwithstanding that the same are not so designated on the date of this Agreement, or at any time hereafter. The designated suppliers may be changed by the Franchisor from time to time on written notice to the Franchisee. Franchisee grants permission to Franchisor to examine without prior notice to Franchisee, all records of any supplier relating to Franchisee’s purchases, and Franchisee hereby authorizes such suppliers to release Franchisee’s purchase records to Franchisor at such times and places Franchisor may request. Franchisee hereby consent to third-party vendors, suppliers and distributors sharing with Franchisor any and all information, reports, invoices and related documentation covering and otherwise detailing your purchases for the Franchised Business, and to Franchisor sharing your contact information with them when Franchisor reasonably believes they may offer Franchisee a desired benefit. The Franchisee acknowledges and agrees that the Franchisor or Franchisor’s affiliate or subsidiary may receive



a rebate, royalty, or commission in connection with Products and/or Services purchased, leased, or obtained by the Franchisee from designated suppliers and that the benefit of such rebate, royalty, or commission may not necessarily be passed onto the Franchisee and that the Franchisor and/or its subsidiaries and/or affiliates are entitled to keep such rebates, royalties, or commissions for their own use and benefit. Franchisee further acknowledges that Franchisor or Franchisor's affiliate or subsidiary in Franchisee's geographic area may derive a profit from the design and construction of the Store or as a result of tenant inducements or tenant allowances and Franchisee hereby waives any claims to such tenant inducements or tenant allowances.

If the Franchisee desires to use suppliers that are not on the Franchisor's list of approved suppliers, it shall notify the Franchisor in writing before using the said supplier and, if the Franchisor so requests, will provide the Franchisor with samples of the product and any relevant data. Upon receiving such request, the Franchisor will determine whether the product meets the required specifications and will notify the Franchisee accordingly within sixty (60) days of receiving samples of the product and other relevant data. 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 proposed supplier. If the Franchisor determines that any such supplier does not meet the required specifications, the Franchisee agrees that it will not use the said supplier in its Business. Without limiting the generality of the foregoing, the supplier proposed for use by the Franchisee under this *Section 5.5* may be required to demonstrate to the Franchisor's reasonable satisfaction that the proposed supplier:

- (a) meets the Franchisor's specifications, including its quality, quantity, warranty, variety, service, health and safety specifications, for the product and for the facilities used in the production and distribution of the product;
- (b) has the capacity to supply the Franchisee's requirements;
- (c) has a sound financial condition and business reputation;
- (d) will supply product to a sufficient number of Thai Express franchisees to enable the Franchisor to economically monitor compliance by the supplier with the Franchisor's specifications; and
- (e) has met such other criteria as may be established by the Franchisor, acting reasonably, from time to time and as set out in the Confidential Manual.

If it is deemed necessary by either Franchisor or any of the approved suppliers to recall from Franchisee any quantity of any of products, either as a result of failure of such products to satisfy the proprietary manufacturing specifications issued to approved suppliers by Franchisor, or for any other reason bearing on the quality and/or safety of such products, Franchisee shall comply diligently with all product recall procedures then in effect, as established from time to time by Franchisor and/or the suppliers. Franchisor shall not be required to bear the costs associated with the recall of any product unless such recall is the result of gross negligence on the part of Franchisor. If Franchisee fails or refuses to comply with the recall of such products hereunder upon request by Franchisor, Franchisor shall be authorized to take such action as it deems necessary to recall such products from the System and Franchisee shall promptly reimburse Franchisor for its costs and expenses (including, but not limited to, legal fees) incurred in such recall procedure; any such action taken by Franchisor shall not relieve Franchisee of its other obligations hereunder.

5.6 Operating Obligations. In the conduct of the Business, the Franchisee acknowledges that it is solely responsible for the successful operation of its Store and that Franchisee's successful operation depends on Franchisee's compliance with this Agreement and the Confidential Manual. In addition to all other obligations contained in this Agreement and the Confidential Manual, Franchisee agrees that it shall:

(a) maintain a clean, safe, and high quality Store operation and shall promote and operate the Business with due diligence and efficiency and maintain an adequate and properly trained staff to properly serve its customers;

(b) carry a sufficient inventory to meet the reasonable requirements of the Franchisee's customers;

(c) be open for business during such hours and on such days as the Franchisor may from time to time require, provided that nothing herein shall require the Franchisee to carry on the Business during any period prohibited by any law regulating the hours when such business may be carried on, Franchisor reserves the right, in Franchisor's sole discretion, to at any time reduce or increase the hours of operation for Franchisee's store. Franchisee acknowledges that its hours of operation may be greater or less than other Thai Express franchisees or licensees;

(d) from time to time accept and honor such nationally recognized credit/debit/gift/loyalty stored value cards (and only such credit/debit cards) as may be designated by the Franchisor;

(e) carry on the Business in accordance with the terms of this Agreement, all applicable laws, regulations, and other ordinances and in such a manner so as to promote a good public image in the community. Franchisee shall be solely and fully responsible for obtaining any and all licenses to operate the Business;

(f) at all times use its best efforts to promote the Business and the Marks;

(g) cooperate with Franchisor and all other franchisees in promoting good public and customer relations with the public generally and with customers and potential customers of the Business; and

(h) properly manage the Business and ensure that the Franchisee and/or its Designated Manager who has completed the Training Program will be responsible for managing the Business after commencement of operations and be present at the Store during its operation. Franchisee or the Designated Manager must work full-time at the Store.

5.7 Marketing and Marketing Fund Contributions. Except as prohibited or limited by law the Franchisee shall actively participate in and cooperate with the Franchisor's national, regional and local advertising and sales promotion campaigns, prize contests, special offers, and (without limiting the generality of the foregoing) the Franchisee shall:

(a) obtain the prior approval of the Franchisor to all promotions, special events, sales promotion materials and advertising used by the Franchisee (including, without limitation, on-site, Internet, direct mail, newspaper, radio and television

advertising, and advertising by third parties at the Store or at any other location if in connection with the Business);

(b) display in the Store, and in the manner specified by the Franchisor, advertising material provided to the Franchisee by the Franchisor from time to time;

(c) pay to the Franchisor an amount ("**Marketing Fund Contributions**") equal to three percent (3%) of Gross Sales, such amount to be calculated and paid weekly as provided for in *Section 8.3*;

(d) conduct such promotions and special events, offer such promotional items and accept such coupons, loyalty, stored value, and gift cards as the Franchisor may from time to time require;

(e) not make any television or radio appearance or make any statement to any media in connection with the System without first obtaining the written consent of the Franchisor;

(f) Pursuant to *Section 5.23* below, if you are opening a new restaurant we or our designated affiliate will create a marketing plan for (i) a grand opening event and (ii) the initial advertising of your Franchised Business, and will work with you to obtain your input on the marketing plan.

All Marketing Fund Contributions, together with amounts contributed by other franchisees of the Franchisor, shall be maintained in a fund ("**Marketing Fund**") administered by the Franchisor. Such funds shall be applied for the purpose of advertising and promoting the licensed and company-owned operations associated with the Marks and producing such advertisement and promotion. However, the Franchisor cannot and does not ensure that any particular franchisee will benefit directly or pro-rata or at all from the placement of advertising and promotion. The Franchisor may consult with its franchisees from time to time concerning the advertising programs to be established by the Franchisor and, for that purpose, may invite franchisees to participate in a franchisee advisory board. The cost of establishing and maintaining such an advisory board may be charged to the Marketing Fund. Notwithstanding any such consultation with franchisees, the Franchisor shall make all decisions concerning advertising and promotion in its sole discretion. This includes the right to use the Marketing Fund Contributions for broadcast, digital, or print advertising, the creation, development and production of advertising and promotional materials, including, but not limited to, ad slicks, radio, film and television commercials, videotapes, direct mail pieces, and other print advertising; any marketing or related research and development; developing, enhancing and maintaining Franchisor's Website; vehicle advertising menu development, point-of-sale advertising, retaining public relations firms, and uniform designs; and advertising and marketing expenses, including payment for research and development on new Products and Services, services provided by advertising agencies or other marketing, research or consulting firms or agencies, customer incentive programs, sponsorships, marketing meetings and sales incentives, development of the Internet, Internet access provider costs, personnel to support the marketing function, subscriptions to industry newsletters or magazines, and administrative costs. Franchisor may reimburse itself or its designated representatives (which may be one or more of Franchisor's subsidiaries or affiliates) for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting, and legal expenses, taxes, and other reasonable direct and indirect expenses incurred by Franchisor or its representatives in connection with the programs funded by and the administration and operation of the Marketing Fund. Franchisor and its

representatives will not be liable for any act or omission that is consistent with this Agreement and done in good faith. Franchisor and its representative may spend in any fiscal year more or less than the aggregate Marketing Fund Contribution of all stores to the Marketing Fund in that year, and the Marketing Fund may borrow from Franchisor or others (including Franchisor's affiliates) to cover deficits or invest surplus for future use. Franchisor may cause the Marketing Fund to be incorporated or operated through a separate entity at such time as Franchisor deems appropriate, and such successor entity, if established, will have all rights and duties specified in this Section. Franchisor and its representatives undertake no obligation to ensure that the Marketing Fund benefits Franchisee's Store in proportion to Franchisee's respective Marketing Fund Contributions or at all. Franchisee acknowledges and agrees that the Marketing Fund's primary purpose is to support sales by the entire THAI EXPRESS System and to build brand identity. Franchisee agrees to participate in any promotional campaigns and advertising and other programs that the Marketing Fund periodically establishes.

The Franchisor shall be entitled to increase the Marketing Fund Contributions to four percent (4%) of Gross Sales instead of the three percent (3%) provided for in *Section 5.7(c)* if the owners of at least seventy-five percent (75%) of the franchisees in the United States agree to pay such increased percentage of sales to the Marketing Fund. Once such seventy-five percent (75%) agreement is reached, no further or continuing agreement shall be required in order to maintain the Marketing Fund Contributions at four percent (4%) of Gross Sales. The Franchisee acknowledges that the Franchisor shall have sole discretion over the manner in which the Marketing Fund Contributions are used and allocated.

Franchisee acknowledges and agrees that, from time to time, Franchisee will incur certain food and advertising costs in connection with regional or national advertising programs offered in connection with the Marketing Fund, and that such costs are in addition to, and cannot be used to offset, Franchisee's obligation to pay its monthly Marketing Fund Contribution.

Except as expressly provided in this *Section 5.7*, the Franchisor shall assume no liability, direct or indirect or otherwise to the Franchisee with respect to the maintenance, direction or administration of the Marketing Fund Contributions.

Although the Franchisor intends the Marketing Fund to be of perpetual duration, the Franchisor has the right to terminate the Marketing Fund. The Franchisor will not terminate the Marketing Fund, however, until all monies in the Marketing Fund have been expended for advertising and promotional purposes.

Franchisor and its representatives have the right, but not the obligation, to use collection agents and institute legal proceedings to collect Marketing Fund Contributions at the Marketing Fund's expense. Franchisor and its representatives also may forgive, waive, settle, and compromise all claims by or against the Marketing Fund. Franchisor and its representatives, reserves the right, in Franchisor's sole discretion, to at any time defer or reduce Marketing Fund Contributions and operations for one (1) or more periods of any length.

#### 5.8 Local Advertising Contributions and Local Advertising Cooperatives.

(a) In addition to the Marketing Fund Contributions to be made by Franchisee in accordance with *Section 5.7* above, Franchisee agrees to spend an amount (the "**Local Marketing Expenses**") equal to two percent (2%) of Gross Sales, such amount to be calculated and spent monthly, for purposes of conducting local advertising

marketing campaigns. Franchisor may request that Franchisee prepare and submit five (5) days after the end of every month a report setting out the Local Marketing Expenses actually disbursed by Franchisee for that month during each month of the Term and any Interim Period.

(b) In regional and metropolitan areas where there are two or more Thai Express franchisees, Franchisee shall participate in an advertising and public relations cooperative (“**Local Advertising Cooperative**”) and pay Franchisee’s proportionate share of the cost of joint regional and local public relations and advertising programs, such proportionate share shall be a minimum of two hundred and fifty (\$250.00) dollars (“**Advertising Cooperative Fee**”), however, Franchisee acknowledges and agrees that such minimum Advertising Cooperative Fee may increase on the decision of Local Advertising Cooperative franchise members. The Advertising Cooperative Fee shall be used for joint regional and local public relations and advertising programs initiated by the Local Advertising Cooperative. Franchisor, in its sole and absolute discretion, may determine the boundaries of such regional and metropolitan areas and the number and identities of franchisees within such areas belonging to Franchisee’s Local Advertising Cooperative. Any contributions made by Franchisee towards Franchisee’s Local Advertising Cooperative shall be credited towards the Local Marketing Expenses that Franchisee is required to make as provided for in Section 5.8(a). In determining the level of expenditure and the type of advertising and public relations program to be launched by the Local Advertising Cooperative, each Thai Express franchisee within the area participating in the Local Advertising Cooperative shall have one vote for each Store in operation and scheduled to be in operation during the promotional period (“**Total Operational Stores**”). Franchisee’s share of the expenses for public relations and electronic media advertising shall be the ratio of the number of the Stores Franchisee has open and operating in the metropolitan area covered by the Local Advertising Cooperative to the Total Operational Stores in the relevant regional and metropolitan area. Franchisee’s share of expenses for print media advertising shall be the ratio of the circulation of the publication within 250 feet from the front door of your Licensed Location to the circulation of that publication in the same area for all the franchisees in that relevant regional and metropolitan area. The rules of the Local Advertising Cooperative shall be in writing and established by its members, but must be submitted to Franchisor for prior approval (and shall be deemed approved ten (10) days after submission if Franchisor does not disapprove such rules in writing). Each Local Advertising Cooperative shall provide quarterly financial reports to Franchisor as required by Franchisor in the Confidential Manual. Franchisor reserves the right, in its sole discretion, to form, change, merge or dissolve any Local Advertising Cooperative.

5.9 Approval of Advertising by Franchisor. Prior to their use by Franchisee, Franchisee must provide Franchisor with samples of all advertising and promotional materials and programs (including any proposed uses on the Internet or other electronic media or other forms of media approved by Franchisor) not prepared or previously approved by Franchisor, whether in respect to Franchisee’s local advertising or marketing campaigns or advertising to be conducted by the Local Advertising Cooperative. All such materials must be approved by Franchisor in writing prior to any use by Franchisee, and notwithstanding anything to the contrary, no Local Advertising Cooperative decision will be made or advertising collection spent without Franchisor’s prior written consent, and in each case Franchisor shall be entitled to grant, withhold or condition its consent for any reason whatsoever in Franchisor’s sole discretion. If Franchisee does not receive written approval by Franchisor within thirty (30) days of the day such materials are submitted to Franchisee, the materials shall be deemed disapproved.

Franchisee shall not use any advertising, marketing or promotional materials or programs that have been disapproved by Franchisor or that do not satisfy Franchisor's requirements with regard to copyright, trademark or other notices.

5.10 Entry by the Franchisor. Without prior notice, Franchisor, or its representatives, shall be entitled to enter upon the Store at any time during business hours for the purpose of determining whether the Franchisee is in compliance with the terms and conditions of this Agreement. Franchisor or its representatives shall be permitted to audit, photocopy, and videotape Franchisee's business operations and records, and to interview Franchisee's employees, suppliers, and customers at any time throughout the Term or any Interim Period of this Agreement.

5.11 Continuous Operation. Subject to the terms of this Agreement, the Franchisee shall, throughout the Term and any Interim Period, actively and continuously carry on the Business at the Store in compliance with the terms of this Agreement.

5.12 Maintenance of Store. The Franchisee shall only operate its Business at the Store and it shall maintain the condition and appearance of the Store so as to be consistent with the image of a clean, modern, attractive and efficiently operated business and in accordance with the image of a Thai Express franchise as dictated by the Franchisor from time to time. In connection therewith, the Franchisee shall at all times ensure that the Store is neat and clean, shall cause all necessary repairs to be made to the Store and (subject to *Section 5.13* and *Section 5.15*) shall periodically redecorate the Store and replace worn out or obsolete leasehold improvements, fixtures, furnishings, equipment, signs and wares as may be required by the Franchisor provided that the Franchisee shall not be required to do so within six (6) months of the expiration of the Lease unless the Franchisee has renewed or executed a new Lease for the Store. Franchisee shall also paint the entire Store, at Franchisee's sole cost and expense, at least once every three (3) years in colors that satisfy Franchisor's current standards. In the event of any dispute as to whether the Franchisee is in compliance with its obligations under this *Section 5.12*, the commercially reasonable determination of the Franchisor shall be final and binding. In the event the Franchisee fails to maintain the Store as required herein, the Franchisor or its designee may (in addition to any other remedy available to the Franchisor), but is not obligated to, perform such maintenance and do and perform, and cause to be done and performed, any further and other acts and things as may be necessary or desirable to effect the foregoing after giving fifteen (15) days prior written notice to the Franchisee, and all costs and expenses incurred by the Franchisor in doing so, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses, shall be paid by the Franchisee on demand.

5.13 Alterations to Store. The Franchisee shall not make any Material alteration to the Store, nor shall the Franchisee make any Material replacement or alteration to the layout, leasehold improvements, fixtures, furnishings, signs, equipment, wares or appearance of the Store, without the prior written approval of the Franchisor. For the purposes of this *Section 5.13*, "**Material**" shall mean any alteration(s) or replacement(s) having a value in the aggregate equal to or greater than Fifteen Hundred Dollars (\$1,500.00) during each year of the Term of this Agreement.

5.14 Suggested Retail Prices. The Franchisor shall from time to time provide the Franchisee with a suggested retail price for any or all of the food items, beverages, goods, and services sold by its franchisees generally, and the Franchisee be encouraged but not required to sell any such food items, goods, beverages or services for a price that exceeds the suggested retail price. The Franchisee is free to sell all food items, goods, beverages, and

services for a price, which is less or more than the applicable suggested retail price. The suggested retail price for food items, beverages, goods, and services, as determined by the Franchisor, may vary from region to region to the extent necessary in order to reflect differences in costs and other factors applicable to such regions. Franchisor reserves the right to establish maximum resale prices, in its sole discretion, on some or all items sold by Franchisee from the Store.

5.15 Remodeling of Store. The Franchisee, at its sole cost, shall undertake to renovate, modernize, remodel and refurbish the Store as the Franchisor may require, in Franchisor's sole discretion, to reflect and to comply with Franchisor's then-current standards, at least once every six (6) years during the Term of this Agreement, upon renewal of this Agreement, and/or prior to any transfer of this Agreement. Any such renovation, remodeling, and upgrade shall be subject to prior written approval by Franchisor of all plans, layouts, designs and other items specifically identified by Franchisor. Franchisee acknowledges and agrees these requirements are necessary and reasonable to preserve the identity, reputation, and goodwill developed by the Franchisor and the value of the Business. Franchisee shall promptly and fully comply with all such requirements and, if Franchisee fails to do so, Franchisor may do so on Franchisee's behalf, and Franchisee shall pay Franchisor the cost thereof, together with a reasonable administrative fee equal to fifteen percent (15%) of all costs incurred by Franchisor on Franchisee's behalf, within ten (10) days of the date Franchisor submits a bill detailing such expenditures to Franchisee.

5.16 Compliance with Laws. The Franchisee shall at all times ensure that there is strict compliance with all laws (including, without limitation, the ADA), regulations, orders, by-laws and restrictions which affect the Business or the Store and shall immediately notify the Franchisor in writing of any notices, documents or correspondence relating to any breach by the Franchisee of any such laws, regulations, orders, by-laws and restrictions, including, without limitation, any fire, health and building inspection reports. Franchisee shall keep copies of all health department, fire department, building department, and other similar reports of inspections on file and available for inspection by Franchisor and its affiliates. Franchisee shall immediately forward to Franchisor or its designated representatives any such reports or inspections in which Franchisee has been found not to be in compliance with the underlying regulation.

5.17 Unacceptable Conduct. Any conduct or practice carried on by the Franchisee, or Franchisee's employees, agents, or contractors, whether through advertising or operating procedures or otherwise, which, in the opinion of the Franchisor, may harm the goodwill associated with the Marks or the System, or which may reflect unfavorably on the Franchisor, the System, or other franchisees of the Franchisor, or which may tend to confuse, mislead, deceive or be fraudulent to the public is not permissible. Without limiting the foregoing, the Franchisee shall, or, if the Franchisee is a legal entity, the Franchisee shall cause its shareholders, partners, members, officers and directors, to conduct themselves in an upright and respectable manner while at the Store or any other the Franchisor licensed locations.

5.18 Operating Procedures. The Franchisor shall be entitled to establish mandatory specifications, standards and procedures relating to the operation of a Thai Express location generally, including without limitation:

- (a) the type and quality of food, beverages, goods, and services to be offered at the Store, the recipes and procedures to be used in connection with preparing and serving food and beverages and the standards of service to be offered to customers;

- (b) the safety, maintenance, cleanliness, operation and appearance of the Store and all fixtures, furnishings, equipment, wares and signs used in connection therewith;
- (c) the hiring, appearance, conduct and training of employees, including the use of uniforms to be worn by the Franchisee and its employees;
- (d) the use of the Marks and the use and protection of trade secrets;
- (e) the notices to be given for the purpose of indicating that the Business is owned by the Franchisee, that the Franchisee is a licensed user of the Marks and that the Marks are owned by the Franchisor;
- (f) the use and retention of standard forms;
- (g) the use and illumination of signs, posters, displays, standard formats and similar items;
- (h) the hours during which the Store shall be open for business to the public, Franchisee acknowledges that as of the date of this Agreement the current standard hours of operation are from 10:30 A.M. to 10:30 P.M. from Monday to Sunday. Franchisee further acknowledges that the Store may be required to open for Breakfast at 7:00 A.M.;
- (i) the limiting of the placement of any personal property security interest in the Franchisee's assets or any pledge of such assets; and
- (j) the use and honoring of gift cards, gift certificates, coupons and other such local and national promotional programs authorized by the Franchisor.

5.19 Operations Manual. 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. The Franchisee shall abide by the specifications, standards and procedures referred to in *Section 5.18* above in a manner consistent with this Agreement and all applicable laws. Specifications, standards and procedures prescribed from time to time by the Franchisor in the Operations Manual, Confidential Manual, or otherwise communicated to the Franchisee in writing, shall constitute provisions of this Agreement as if fully set forth herein. The Franchisee shall operate the Business strictly in accordance with the Confidential Manual and this Agreement. Franchisee agrees to require all of its employees to abide by all specifications, standards and procedures set forth in the Confidential Manual or otherwise communicated to Franchisee in writing. The Franchisor shall have the right to add to, and otherwise modify, the Confidential Manual from time to time to reflect changes in authorized Products and services, the System, or the operation of the Business. The Franchisee covenants to accept, implement and adopt any such additions and modifications at the Franchisee's own cost, except as provided in *Section 3.7* with respect to a change in the Marks. The Franchisee shall keep the Franchisee's copy of the Confidential Manual up-to-date with replacement pages and insertions as instructed by the Franchisor.



The Franchisee acknowledges that the Confidential Manual contains proprietary information of the Franchisor and the Franchisee agrees to keep the Confidential Manual and its contents confidential at all times during the Term, any Interim Period and at any time thereafter, and not to make any copies thereof. The Franchisor may transmit any additions or modifications by e-mail, internet, intranet or other electronic means.

The Confidential Manual shall at all times remain the property of the Franchisor and the Franchisee shall promptly return all copies of the Confidential Manual to the Franchisor upon the Franchisor's request and in any event upon the termination or expiration of this Agreement for any reason. The Confidential Manual may not be copied or duplicated or disclosed to persons other than employees or officers who need the information to perform their jobs. The provisions of this Agreement shall prevail in the event of a conflict between the specifications, standards and procedures set out in the Confidential Manual and this Agreement. The Franchisee acknowledges that the master copy of the Confidential Manual maintained by the Franchisor at its principal office shall be controlling in the event of any dispute relative to the content of the Confidential Manual.

5.20 Directions. The Franchisee shall comply with all written directions given by the Franchisor from time to time with respect to matters over which the Franchisor has authority or control pursuant to this Agreement.

5.21 Ownership of Business Records. Franchisee acknowledges and agrees that the Franchisor owns all Business Records with respect to customers and other service professionals of, and related to, the Store including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Business Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion. If the Franchisee requires any information contained in the Business Records for tax or other reasonable purposes then the Franchisor will provide Franchisee with copies of the relevant information contained in the Business Records as it deems appropriate.

5.22 Inspections and Temporary Management of Store. Franchisor and/or its representatives shall have the right at any time and without prior notice to Franchisee, to enter and remain in the Store to inspect it and to otherwise examine the manner in which the Business is being conducted. In such event, Franchisee and its staff shall cooperate fully with Franchisor and/or its representatives. Notwithstanding anything otherwise contained in this Agreement, if in Franchisor's judgment, acting reasonably, Franchisee is not conducting or otherwise managing the Business in a proper-manner and as a result, the Business is being affected detrimentally (whether financially, standards of quality are not being maintained or Franchisee is not otherwise complying with the System), Franchisor shall have the right but not the obligation, at Franchisee's expense, to send a representative(s) to remain at the Store to in fact operate and/or manage the Business and to charge a reasonable fee therefor. Any fee charged by Franchisor to Franchisee for such services shall be paid forthwith upon receipt of invoice or at Franchisor's option. Franchisor may also deduct such amount from the receipts of the Business.

5.23 Grand Opening Marketing.

Ten Thousand Dollars (\$10,000) ("**Grand Opening Marketing**") is payable to Franchisor on the earlier of: (i) prior to Franchisee 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. Franchisor or its designated affiliate will create a marketing plan for (i) a grand opening event at the Franchised Business, and (ii) the initial advertising of the Franchised Business, and will work with Franchisee to obtain Franchisee's input on the marketing plan. Franchisor or its designated affiliate will use the Grand Opening Marketing to pay for the grand opening and initial advertising, but may, in its sole discretion, reimburse Franchisee for some local store marketing expenses that Franchisee pays if Franchisee received Franchisor's prior approval. The Grand Opening Marketing should be used within six (6) months of the opening of the Franchised Business to the public. However, if a portion of the Grand Opening Marketing is not used within those six (6) months, Franchisor may, in its discretion, spend the remaining portion of the Grand Opening Marketing after six (6) months from the opening of the Franchised Business to the public.

## **6. COVENANTS OF FRANCHISEE**

6.1 Covenants of Franchisee. Throughout the Term and any Interim Period, the Franchisee covenants and agrees with the Franchisor:

(a) at all times to maintain and employ in connection with the Business such working capital as may be required, in the sole discretion of the Franchisor, to enable the Franchisee to properly and fully carry out and perform all of its duties, obligations and responsibilities under this Agreement. The current minimum amount of working capital required at all times during the currency of this Agreement is Five Thousand Dollars (\$5,000). The Franchisor may require that the such minimum amount be increased and the Franchisee shall comply with such requirements upon receipt of a written notice to that effect from the Franchisor;

(b) to advise each supplier, the public and all others with whom the Franchisee deals, that the Business is owned by the Franchisee, that the Franchisee is an independent contractor and that all debts and liabilities incurred by it are for the account of the Franchisee only, and not the Franchisor and without limiting the generality of the foregoing, the Franchisor may in its sole discretion require that the Franchisee hang a sign designated or produced by the Franchisor to that effect at a specific place at the Store, as may be directed by the Franchisor which states "The Thai Express™" trademarks are owned by MTY Franchising Inc. and the independent franchise operator of this restaurant is a licensed user of such trademarks." Any such sign or other signs bearing the name "Thai Express," or any of the Marks shall remain property of Franchisor without compensation to Franchisee;

(c) to deposit all monies received from each day's business not later than the following banking day in an account or accounts to be maintained specifically for such purpose with the Franchisee's bankers. The Franchisee shall advise the Franchisor of the name of the bank and the branch thereof where such account or accounts are being maintained and shall instruct the bank that the Franchisor shall at all times be entitled to information concerning the account of the Franchisee, to examine all bank statements and canceled checks and other bills of exchange and to institute the pre-authorized payment plan described at *Section 8.3*;

(d) to pay all taxes (levied or assessed), charges and expenses arising in connection with the Business, including, without limitation, rent, repair and maintenance charges, insurance premiums, staff wages and employer levies, business taxes, utility charges and accounts for goods and services purchased in connection with the operation of the Business. The Franchisee shall, upon request, produce receipts showing payment of all such expenses which become due and payable during the one (1) year period immediately preceding such request;

(e) to promptly and completely observe and perform all terms, covenants, conditions and agreements contained on the part of the Franchisee in the Lease, including but not limited to the Security Agreement;

(f) to comply with the following terms and conditions regarding insurance coverage:

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 MTY Franchising USA, Inc. as the certificate holder; (ii) name 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	\$1,000,000

TYPE OF COVERAGE	LIMITS/SPECIFICATIONS
Franchisor Defense coverage	
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 6.1*, 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 4*, 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 10.9*.

(g) that subject to *Section 8.12*, to not mortgage, charge, grant a security interest in or encumber any of the property and assets used in connection with the Business, without the prior written consent of the Franchisor;

(h) that all improvements in the System developed by the Franchisee or its employees, agents, contractors or affiliates shall be deemed to be sold to the Franchisor for \$10.00 and that it shall disclose such improvements to the Franchisor as soon as they are developed;

(i) to comply with all federal (including without limitations the ADA), state, municipal and local by-laws, rules and regulations, and shall obtain on a timely basis any and all permits, certificates or licenses necessary for the full and proper conduct of the Business, including, but not limited to, licenses to do business, name registrations, and sales tax permits Franchisee shall be solely and fully responsible for obtaining any and all licenses to operate the Store. Franchisee shall research the laws, building codes,

restaurant and equipment rules, and business regulations to be certain the Franchisee is in compliance with all rules and regulations in the Franchisee's jurisdiction. The Franchisee acknowledges that the Franchisor does not know these laws for every market, county or state. Franchisee shall keep copies of all health department, fire department, building department, and other similar reports of inspections on file and available for inspection by Franchisor or one of Franchisor's representatives. Franchisee shall immediately forward to Franchisor and/or its designated representatives any such reports or inspections in which Franchisee has been found not to be in compliance with the underlying regulation;

(j) to not establish a Website on the Internet using any domain name containing the words "Thai Express™," "ThaiExpress.ca," or any variation thereof, or an App (application). The Franchisor retains the sole right to advertise on the Internet and create a Website using "ThaiExpress.ca" or similar domain names. The Franchisee acknowledges that the Franchisor or any of its affiliates is the owner of all right, title and interest in and to such domain names as the Franchisor shall designate in the Confidential Manual. Any website software application, App (application, or including any social networking media site or account (including an account, group or page on Facebook®, Flickr®, Foursquare®, Google+®, Instagram®, LinkedIn®, Pinterest®, Snapchat®, Tumblr®, Twitter®, YouTube®, Vine®, VKontakte or Weibo®), designed or used by the Franchisee which contains the Franchisor's Marks and/or logo must be approved in advance in writing by the Franchisor. If Franchisee elects to develop its own website, Franchisee shall engage Franchisor's Internet service provider to host Franchisee's website. Franchisee may be required to use Franchisor's pre-approved website template. Franchisor shall at all times have the right to approve the design and content of Franchisee's website in advance and in writing. The Franchisor retains the right to preapprove Franchisee's use of linking and framing between the Franchisor's web pages and all other Websites. The Franchisee shall within two (2) days, dismantle any frames and links between the Franchisor's Websites and any other Websites, if and as requested by the Franchisor. The Franchisee further acknowledges that any representations and warranties of any kind whatsoever, express or implied, regarding the Franchisor's Website, including representations and warranties as to the operation, functionality, lack of interruption or resources of the Website, are expressly excluded. Without limiting the foregoing, the Franchisor disclaims any implied warranties of merchantability and fitness for a particular purpose as to its Website. As to any malfunctioning of the Franchisor's Website, the Franchisor will not be liable to the Franchisee for any consequential, incidental, indirect, economic, special, exemplary or punitive damages, such as, but not limited to, loss of revenue or anticipated profits or lost business, even if the Franchisee has advised the Franchisor that such damages are possible as a result of any breach of warranty or malfunction;

(k) Franchisee shall, at all times during the Term of this Agreement and any Interim Period, maintain an e-mail address on the Internet. Immediately upon securing such an e-mail address, Franchisee shall provide Franchisor with such e-mail address to be used by Franchisor for purposes of electronic communication with Franchisee. Franchisee's e-mail address shall not include the words "Thai Express" or any derivation of such words, unless such e-mail address is provided to the Franchisee by the Franchisor;

(l) Franchisor reserves the right to require Franchisee to purchase and implement new technology initiatives, which may include but will not be limited to loyalty

and case card programs, LCD or plasma monitors, high-speed/always-on Internet connection, music, Internet TV broadcasts, WIFI, and software management applications, surveillance systems, on-line ordering, remote ordering through PC's or handheld devices, E-learning, and software applications designed to better manage business functions and control costs. Franchisee will be responsible for all fees associated with these new technology initiatives. Franchisee acknowledges and understands that computer systems are vulnerable to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders. Franchisor has taken reasonable steps to ensure that these problems will not materially affect the System. Franchisor does not guarantee that information or communication systems supplied by Franchisor or its suppliers will not be vulnerable to these problems. Franchisee acknowledges and agrees that Franchisee is solely responsible for protecting itself from these problems. Franchisee must also take reasonable steps to verify that Franchisee's suppliers, lenders, landlords, customers, and governmental agencies on which Franchisee relies, are reasonably protected. This may include taking reasonable steps to secure Franchisee's systems, including, but not limited to, firewalls, access code protection, anti-virus systems, and use of backup systems;

(m) Franchisee shall permit Franchisor to speak and/or write to Franchisee's customers about the services being provided to such customers at or from the Store to ensure that the standards associated with the System are being achieved and maintained to Franchisor's satisfaction;

(n) should Franchisee be offered an opportunity to operate Franchisee's Store in combination with another store or quick service concept, which shall be licensed directly to Franchisee by a third party franchisor approved by Franchisor ("**Co-Brand Franchisor**"), and Franchisee agrees to offer the products and/or services offered by the Co-Brand Franchisor, Franchisee shall establish a retail outlet licensed by the Co-Brand Franchisor and offer the products and/or services offered by the Co-Brand Franchisor, and Franchisee shall cooperate with Franchisor and the Co-Brand Franchisor to accommodate the different requirements of this Agreement, the Confidential Manual and Franchisor's policies and requirements, with those of the Co-Brand Franchisor, to permit the efficient and harmonious operation of the co-branded concepts at Franchisee's Store. Franchisor or the Co-Brand Franchisor may require Franchisee, for example, to alter the design of the Store, its hours of operations, any applicable signs and operational procedures and to execute a Co-Brand Agreement in a form acceptable to Franchisor and/or the Co-Brand Franchisor;

(o) to actively participate and abide by Franchisor's requirements and/or guidelines with respect to any programs introduced by Franchisor from time to time, including, without limitation, any programs, services or initiatives involving payroll services or debit/credit card services;

(p) to use the brand of fountain service beverages or other non-fountain beverages that Franchisor may designate from time to time, upon prior notice to Franchisee;

(q) to offer for sale all products included in Franchisor's standard menu as specified in the Confidential Manual, and to not add nor remove any product from Franchisor's standard menu unless Franchisor authorizes such removal in writing; and

(r) to comply with all agreements with third parties related to the Store, including, in particular, all provisions of any Lease.

6.2 Group Insurance. The Franchisor shall be entitled at its sole discretion to require the Franchisee to subscribe to its group insurance plan for the purpose of providing all or part of the insurance coverage to be taken out pursuant to *Section 6.1(f)*. The Franchisor may, in its sole discretion, modify such group insurance plan from time to time as specified by the Franchisor in its Confidential Manual or by other written notice from time to time. The Franchisee agrees to participate in the plan if the plan is available to Franchisee. If the underwriters of such plan increase the premiums under the plan as a result of any act or occurrence at the Store, or as a result of any act or omission of the Franchisee, then the Franchisee shall, for the duration of this Agreement, pay the amount of such increase in premiums. The Franchisee shall comply with all recommendations made by the underwriters of the plan. The Franchisee acknowledges that the Franchisor may receive a rebate, royalty, commission or some other form of benefit in connection with the purchase of group insurance and that the Franchisor is entitled to keep such rebate, royalty, commission or other benefit for its own use and benefit.

6.3 Representation Regarding Terrorist Activity. Franchisee and its owners agree to comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its owners certify, represent, and warrant that none of their property or interests is subject to being "blocked" under any of the Anti Terrorism Laws and that Franchisee and its owners are not otherwise in violation of any of the Anti Terrorism Laws.

(a) Franchisee and its owners certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (which can be accessed at <http://www.treasury.gov/offices/enforcement/ofac/legal/eo/13224.pdf>). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(b) Franchisee and its owners certify that it and they have no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

(c) Franchisee and its owners are solely responsible for ascertaining what actions it and they must take to comply with the Anti Terrorism Laws, and Franchisee and its owners specifically acknowledge and agree that its and their indemnification responsibilities set forth in this Agreement pertain to its and their obligations under this *Section 6.3*.

(d) Any misrepresentation under this Section or any violation of the Anti Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of the Franchisor's affiliates.

(e) “**Anti Terrorism Laws**” means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control and any government agency outside the U.S.) addressing or in any way relating to terrorist acts and/or acts of war.

## 7. COVENANTS OF THE FRANCHISOR

7.1 Covenants of the Franchisor. The Franchisor hereby covenants and agrees that, upon the request of the Franchisee from time to time, the Franchisor shall provide such assistance and support to the Franchisee as the Franchisor, in its sole discretion, may deem appropriate in respect of the following:

- (a) advice concerning the maintenance of food, beverages, goods, and services offered at the Store;
- (b) advice in establishing stock controls for the Business;
- (c) training programs in systems, standards, methods and procedures developed and introduced by the Franchisor from time to time;
- (d) opening assistance consisting of one (1) or more representatives on site at the Store for not less than five (5) days to assist Franchisee in opening the Business; provided, however, Franchisee shall hire and exclusively be responsible for training, compensation, and control of its employees; and
- (e) loan one (1) copy of the Operations Manual, as described in *Section 5.19*, during the term of this Agreement.

## 8. PAYMENTS BY FRANCHISEE AND ACCOUNTING OBLIGATIONS

8.1 Initial Franchise Fee. In consideration of the Franchisor entering into this Agreement and the opportunity to establish the Business as herein provided, the Franchisee agrees to pay the Franchisor a fee (“**Initial Franchise Fee**”) of Thirty Thousand Dollars (\$30,000) concurrently upon execution of this Agreement. The Initial Franchise Fee shall be deemed fully earned upon receipt by Franchisor and non-refundable to the Franchisee after it is paid.

8.2 Royalty. The Franchisee shall pay to the Franchisor an ongoing royalty (“**Royalty**” or “**Royalties**”) equal to six percent (6%) of Gross Sales during the Term and any Interim Period.

8.3 Payment Dates.

- (a) On Tuesday of each week, Franchisee shall ensure that sales are reported to our designated accounting office, which as of the Effective Date, is via the



internet at <http://franchisee.kahalamgmt.com>. Additionally all sales must be available for polling from the point of sale system. The sales for the weekly period which ended on the preceding Sunday, or such other frequency which the Franchisor shall require (without prior notice to or approval from Franchisee) during the Term and any Interim Period, including details on Gross Sales and other statistical data as provided in this Agreement, the Confidential Manual, or as otherwise specified from time to time by us. Franchisee shall pay to Franchisor the Royalties and Marketing Contributions due in accordance with such polling or report. 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.

(b) During the Term and any Interim Period, the Franchisee shall pay all fees, including Royalties and Marketing Contributions, due and owing to the Franchisor by participating in a pre-authorized payment plan ("**Payment Plan**") whereby the Franchisor shall be authorized to debit the Franchisee's bank account on Wednesday of each week, which day or frequency may be modified by Franchisor without prior notice to or approval from Franchisee from time to time. The Franchisor also reserves the right to require payment from the Franchisee of all Royalties and Marketing Contributions due and owing to the Franchisor in such other form or manner as the Franchisor may determine from time to time. To effect the foregoing, Franchisee agrees to sign concurrently herewith any necessary documents that may be required to institute the Payment Plan, which may be the same or similar to the sample form of document entitled Request for Pre-Authorized Payment, attached to this Agreement as **Schedule D**.

#### 8.4 Books and Records.

(a) Franchisee will submit weekly summaries showing results of the Store operations by telephone, facsimile, electronically, or by other means at Franchisor's request within two (2) days after the end of each business week, which is currently Sunday. Weekly summaries showing results of the Store's operations will be submitted in writing or in electronic form as Franchisor requires to the locations designated by the Franchisor.

(b) The Franchisee shall maintain, at the Store, and/or its corporate head office or any other such location as agreed to in writing by the Franchisor, and for such period of time and in such manner as we may from time to time prescribe, full and accurate accounts and records of all transactions relating to Gross Sales, including without limitation, receipts, cash register tapes, control sheets, inventory counts, deposit slips, business bank statements, cancelled checks, business tax returns, and other records necessary to verify Gross Sales. Such accounts and records shall be maintained in such a form that the Royalties and Marketing Fund Contributions payable under this Agreement may be readily and accurately determined and verified by the Franchisor. The Franchisor shall be entitled to require the use of specified methods, procedures, standard forms, and/or formats in connection with the maintenance by the Franchisee of its accounts and records and the Franchisee shall comply with all such requirements, as they may be amended from time to time in the Confidential Manual. All such requirements of the Franchisor shall conform to American generally accepted accounting principles ("**GAAP**") applied consistently on a year-to-year basis. The Franchisor shall be entitled to specify equipment to be used by the Franchisee in

connection with recording sales by the Franchisee and the Franchisee shall promptly purchase and utilize such equipment as required by the Franchisor. Such specifications may be outlined in the Confidential Manual and may be changed from time to time in the Franchisor's sole discretion. All accounts and records of the Franchisee maintained hereunder shall be kept by the Franchisee for a period of at least four (4) years (or such other period as required by government or other agencies that may have jurisdiction).

8.5 Financial Statement. Unless otherwise agreed upon by the Franchisor, within fifteen (15) days of the end of each fiscal quarter during the Term and any Interim Period, the Franchisee shall submit to the Franchisor:

- (a) a statement of profit and loss for the quarter then ended,
- (b) a balance sheet of the Franchisee as at the end of such quarter, and
- (c) a listing of the Franchisee's outstanding payables as at the end of such quarter.

8.6 Taking of Inventory. The Franchisee shall take physical inventories at such intervals as may be required by the Franchisor and shall provide the Franchisor with the results of such inventories if the Franchisor so requires. The physical inventories shall be taken by the Franchisee with or without the participation of a representative of the Franchisor, which shall be in the discretion of the Franchisor.

8.7 Annual Statements. The year-end of the Franchisee shall correspond with the year end of the Franchisor, which is currently November 30. Within ninety (90) days following the end of each November 30 year end, the Franchisee shall provide the Franchisor, at Franchisee's expense, with financial statements of the Business as, at, and for the year then ended including a balance sheet, income statement, statement as to source and use of funds and notes thereto which are in compliance with GAAP. Such records shall be created exclusively for the Store and shall be separate and apart for records kept for any other business in which Franchisee and/or Guarantor have an interest (provided such interest in another business is an interest that is permitted under this Franchise Agreement). Each financial statement shall be accompanied by a sworn statement, executed by Franchisee or an officer of Franchisee, attesting that the items contained in the financial statement are true and accurate, that they completely and fully describe and disclose the information sought in such statement, and that the signer has made diligent and careful efforts to ascertain the truth, accuracy and completeness of such information. If at any time Franchisor believes this is not the case, Franchisor reserves the right to review or require submission of financial statements prepared, at Franchisee's expense, by an independent Certified Public Accountant acceptable to Franchisor.

8.8 Examination of Records. The Franchisor, or its authorized representative, may examine, audit and make copies of all records and accounts maintained by the Franchisee in connection with the Business at the Franchisor's own cost and expense, and, for that purpose, shall be entitled to enter any premises where such accounts and records are kept. If any such examination or audit shall disclose that Gross Sales have been understated in any report delivered by the Franchisee to the Franchisor by more than two percent (2%) or if the Franchisor or its representative shall determine that the accounts and records of the Franchisee are not in compliance with the terms of this Agreement and/or are misstated according to GAAP, then the cost of such examination or audit shall be borne by the Franchisee. Upon

notification of the Royalties and/or Marketing Contributions owing, as determined on the basis of such examination or audit, the Franchisee shall immediately pay to the Franchisor an amount equal to any deficiency in the Royalties and/or Marketing Contributions actually paid to the Franchisor together with the interest rate provided in *Section 10.10* below. In addition, if any such examination or audit discloses that Gross Sales or any other accounts have been misstated by more than two percent (2%) and/or do not comply with GAAP, in any report delivered by the Franchisee to the Franchisor then, unless otherwise agreed by the Franchisor, the Franchisee shall be required to conduct an annual review or audit of the financial statements for the Business by a firm of independent certified public accountants and the cost of such audit shall be borne by the Franchisee. If you do not deliver any statement of Gross Sales as required or such statement is incomplete, we or our accountants shall have the right to estimate the Gross Sales for the period in question and you shall immediately pay the amount so estimated. Any estimation made by us and/or any report of our accountants' shall be final and binding on all parties hereto. You and your staff shall cooperate fully with all persons carrying out any review, examination or audit conducted pursuant to this *Section 8.8*.

8.9 Recalculation of Royalties and Marketing Fund Contributions. If any examination or audit performed pursuant to *Sections 8.7* or *8.8* discloses, in the opinion of the Franchisor, that the accounts and records of the Franchisee are not in compliance with the terms of this Agreement and that an accurate determination of Gross Sales cannot be made, then the Franchisor shall be entitled to estimate Gross Sales on the basis of information available to the Franchisor (including the perceived volume of business in the Store as may be calculated by Franchisor), and the Franchisee shall pay to the Franchisor an amount equal to the amount by which the Royalties and Marketing Fund Contributions calculated on the basis of such estimated Gross Sales is in excess of the actual Royalties and Marketing Fund Contributions paid by the Franchisee to the Franchisor.

8.10 Point-of-Sale Software and Hardware. The Franchisor shall be entitled to require that the Franchisee, at Franchisee's expense, connect its point-of-sale computer programs, with a computer facility designated by the Franchisor so as to enable the Franchisor to collect information concerning Gross Sales and the Franchisee shall sign all documents and do such further acts as may be required by the Franchisor from time to time in order to effect the foregoing. Without limiting the generality of the foregoing, the Franchisee shall purchase such computer software and hardware and telephone equipment as may be required to implement the aforesaid point-of-sale programs and/or for any other purposes designated by the Franchisor from time to time in the Confidential Manual or by notice in writing from suppliers designated by the Franchisor and the Franchisee shall assume and pay all such costs related to the program. If Franchisee fails or refuses to deliver any statement of Gross Sales as required or such statement is incomplete, Franchisor or its accountants shall have the right to estimate the Gross Sales for the period in question and Franchisee shall immediately pay the amount so estimated. Any estimation made by Franchisor or any report of our accountants' shall be final and binding on all parties hereto. Franchisee and Franchisee's employees shall cooperate fully with all persons carrying out any review, examination or audit conducted pursuant to *Section 8.8*.

Franchisee further acknowledges and agrees that it shall purchase (or lease), use, maintain and update computer and other systems and software programs which meet the Franchisor's specifications as they evolve over time and which, in some cases, may only be available through the Franchisor, the Franchisor's affiliates and/or designated suppliers. The Franchisee shall maintain its systems network and must promptly update and otherwise change its computer and point of sale hardware and software systems, as the Franchisor may require

from time-to-time, at the Franchisee's expense. The Franchisee shall pay all amounts charged by any supplier or licensor of the systems and programs used by it, including charges for use, maintenance, support and/or update of these systems or programs. Franchisee will record all sales and designated business information in the point-of-sale system in the manner specified by Franchisor in the Confidential Manual. Franchisee will report information to Franchisor electronically as it may specify and Franchisor may call up or poll Franchisee's point-of-sale system to retrieve information at any time.

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 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 payment card processor for processing all such debit, credit, rewards, and gift/loyalty card transactions, including entering into any such approved vendor agreements for the gift/loyalty card processing services. 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 point-of-sale 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. We require your Franchised Business' point-of-sale 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.

8.11 Bookkeeper. Franchisee acknowledges that the maintenance of accurate financial records, and the preparation of financial statements on a timely basis, is essential to the efficient operation of the Business. If Franchisee is not qualified to maintain accurate financial records, in Franchisor's reasonable determination, then Franchisee agrees to hire a qualified bookkeeper who will maintain the financial records of the Franchisee and who will attend at the Store and/or the corporate head office for not less than once every two (2) weeks for that purpose. Franchisee shall purchase such accounting software and Franchisee and or its bookkeeper shall use the accounting software designated by Franchisor from time to time.

8.12 Security Interest. As security for the full and timely performance of Franchisee's obligations under this Agreement, including but not limited to monies Franchisee owes to Franchisor, Franchisee hereby grants to Franchisor a security interest in all equipment, fixtures, inventory, machinery, personal property, accounts receivable (including rights to payment under insurance claims), contract rights, (including all executory contracts pertaining to or arising from the operation of the Store), Franchisee's lease and license rights, customer lists, customer profiles, promotional brochures, mailing lists, goodwill, general intangibles and chooses in action, of every sort now owned or hereafter acquired by Franchisee, wherever located, in any way related to the operation by Franchisee of the Store, together with all cash and non-cash proceeds and products of any or all of the foregoing, including without limitation, all property purchased with the proceeds of any loan from Franchisor to Franchisee and all parts, fittings, accessories, accessions, additions, substitutions, replacements and proceeds (including insurance proceeds thereof) ("**Collateral**"). Franchisor may, at any time without prior notice to Franchisee, give notice of Franchisor's security interest in the Collateral to any and all persons. At our request, at any time and from time to time, Franchisee shall execute and deliver to

Franchisor any document or instrument necessary to perfect and record our security interest and maintain Franchisor's priority as the first lien upon the Collateral, including, but not limited to the Security Agreement attached to this Agreement as **Schedule J ("Security Agreement")**. Upon the occurrence of any act or event that would entitle Franchisor to terminate this Agreement, Franchisor: (i) may take possession of the Collateral or any portion thereof, wherever it may be found and using all reasonable force, or require Franchisee to assemble the Collateral and make it available to Franchisor at a place Franchisor designates which is reasonably convenient to Franchisee and Franchisor, and Franchisee hereby waives all claims for damages due to, arising from or connected with such taking; (ii) shall have the right, but not the obligation, to maintain possession of and dispose of the Collateral on the Premises or at any other location under Franchisee's or Franchisor's control; (iii) may exercise any and all rights under the Security Agreement; and (iv) may exercise any remedies of a secured party under the Uniform Commercial Code.

8.13 Maximum Borrowing Commitment. Franchisee acknowledges and agrees that Franchisor may from time to time designate the maximum amount of debt service ("**Maximum Debt Limit**") that the Business may be permitted to service. As of the date of this Agreement the Maximum Debt Limit is seventy percent (70%) of the Total Project Cost of establishing a Thai Express Franchise, which includes all costs associated with the construction of the Thai Express Store, working capital requirements, all fees payable to the Franchisor, including Initial Franchise Fees, and any other applicable costs ("**Total Project Cost**"). Franchisee shall not borrow in excess of the Maximum Debt Limit without Franchisor's prior written consent.

8.14 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.

8.15 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 and debited from your account.

## 9. TERMINATION AND/OR DEFAULT

9.1 Termination upon Expiration of Term and any Interim Period. This Agreement shall immediately terminate at the end of the Term or at the end of the Interim Period as set forth in *Section 2.3*.

9.2 Termination Before Commencement of Operations – Without Notice, Initial Franchise Fee Forfeited. As set forth in *Section 4.1(c)* of this Agreement, Franchisee's failure to sign a Lease for the Store prior to the expiration of the Site Location Period will constitute abandonment of the Business by Franchisee and entitle the Franchisor to terminate this Agreement and all rights granted the Franchisee hereunder without providing the Franchisee with notice or the opportunity to cure.

9.3 Termination Before Commencement of Operations - With Notice, Initial Franchise Fee Forfeited. The Franchisor shall have the right, at its option, to terminate this Agreement and all rights granted the Franchisee hereunder, subject to the provisions of applicable state law

governing franchise termination and renewal, effective upon receipt of notice by the Franchisee, upon the Franchisee failing to:

- (a) lease the Store in the manner required by 4.1(a), 4.1(b), and 4.2;
- (b) commence to operate the Business as required by Section 4.5;
- (c) successfully complete the initial training as required by Section 4.4.
- (d) RESERVED;
- (e) execute and deliver the Guarantee and Indemnity Agreement as required by this Franchise Agreement and the Security Agreement as required by this Franchise Agreement; or
- (f) execute and deliver to Franchisor any of the other Schedules as required by this Agreement.

In the event of such termination, the Franchisor shall have no liability to the Franchisee whatsoever and the Franchisee acknowledges, without limiting the generality of Section 8.1, that the Franchisor may retain the Initial Franchise Fee paid pursuant to Section 8.1 as liquidated damages and not as a penalty.

9.4 Termination - With Notice and No Opportunity to Cure, and Effective Immediately. The Franchisor may, at its sole option, terminate this Agreement and all rights hereunder, without affording Franchisee an opportunity to cure the default, effective immediately, unless otherwise specified herein or in the notice of termination, upon delivery of notice of termination if the Franchisee and/or Guarantor or any corporation to which the Franchisee and/or Guarantor have assigned this Agreement:

- (a) If Franchisee begins operating Business without having obtained Franchisor's written consent, as required under *Section 4.4* of this Agreement;
- (b) commits an act of bankruptcy or becomes an insolvent person within the meaning of the United States Bankruptcy Code; or files, or fails to contest within three (3) days of filing and subsequently defeats, any petition in bankruptcy; or fails to contest, satisfy or vacate within sixty (60) days any execution, levy, or distress against the assets of the Business;
- (c) fails to contest within ten (10) days and have removed the appointment of a receiver or other custodian (either temporary or permanent) of the Business or any part of its assets, except by the Franchisor pursuant to the provisions of this Agreement;
- (d) takes the benefit of any act or proceeding for winding up its affairs or compromising its debts or purports to make a general assignment for the benefit of creditors;
- (e) the Lease is terminated or if the Franchisor or the Landlord, under the Lease, shall become entitled to terminate the Lease (whether or not it exercises that right of termination);

(f) makes an assignment or sale of the Franchise or ownership in the Franchise without first complying with the provisions of this Agreement;

(g) knowingly make any material false statements to Franchisor in connection with Franchisee's application for the franchise;

(h) all or any part of the assets and property of the Business are seized by any of Franchisee's secured creditors, or if a receiver or manager is appointed with respect to Franchisee or the Business;

(i) abandons or surrenders or transfers control of the operation of its Business or fails to actively carry on business from the Store and such condition continues for two (2) days after notice of such default is given;

(j) submits on two (2) or more occasions during the Term or any Interim Period a report, financial statement, tax return, schedule or other information or supporting record which understates its Gross Sales by more than two percent (2%), unless the Franchisee demonstrates to the Franchisor's satisfaction that such understatement resulted from inadvertent error; or if any audit performed pursuant to *Sections 8.7 or 8.8* indicates that Gross Sales have been understated by more than two percent (2%) for any period; or if Gross Sales shall be understated by more than two percent (2%) on two or more occasions as determined on the basis of an examination of audits performed pursuant to *Sections 8.7 or 8.8*, or if the Franchisee shall repeatedly fail to maintain accounts and records in accordance with the terms of this Agreement;

(k) repeatedly fails to maintain accounts and records in accordance with the terms of this Agreement; for purposes of this *subsection 9.4(k)*, "repeatedly" shall mean three (3) or more occasions during the Term of this Agreement;

(l) violates any law, ordinance, rule, regulation of any governmental agency in connection with the operation of the Business or involving moral turpitude; which for purposes of this Agreement shall mean conduct that is contrary to justice, honesty or morality;

(m) violates any law, ordinance, rule or regulation of any governmental agency in connection with the operation of the Business or involving moral turpitude;

(n) is convicted of a criminal offense;

(o) allows any lessor or encumbrancer or any other person, corporation or entity lawfully entitled, to take possession of any of the undertaking, Business, property or assets of the Franchisee;

(p) commits or suffers any default under any contract of conditional sale, mortgage or other security instrument;

(q) receives from the Franchisor during the Term and any Interim Period three (3) or more notices of default regardless whether such notices of default relate to the same or different defaults, or whether such defaults have been remedied by the Franchisee;

(r) if the Franchisee is a legal entity, changes the effective control of the Franchisee, without the consent of the Franchisor as required under Section 12 of this Agreement;

(s) registers a trademark or trademarks utilizing the words "Thai Express" or a colorable imitation thereof using such words in its corporate name, or 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;

(t) discloses to any unauthorized person, copies or distributes the Confidential Manual, in whole or in part, through any means whatsoever, without Franchisor's written consent; or

(u) alters, amends or terminates its Lease without receiving Franchisor's prior written consent as required under *Section 4.2* of this Agreement.

Franchisor's waiver of any Franchisee's defaults will not constitute a waiver of any other default and will not prevent Franchisor from requiring Franchisee to strictly comply with this Agreement and/or any other agreement with the Franchisor and/or its affiliates.

9.5 Termination - With Notice and With Opportunity to Cure. The Franchisor may, at its sole option, terminate this Agreement and all rights hereunder, after affording Franchisee an opportunity to cure the default as set forth below, effective immediately, unless otherwise specified herein or in the notice of termination, upon delivery of notice of termination if the Franchisee and/or Guarantor or any corporation to which the Franchisee and/or Guarantor have assigned this Agreement:

(a) breaches the Lease or sublease and Franchisee fails to cure such default as provided in the Lease or sublease;

(b) commits a material breach of any other franchise agreement or other agreement entered into with the Franchisor or any of its affiliates and Franchisee fails to cure such default as provided in those other agreements;

(c) fails, or refuses, to submit any report, weekly summary, financial statement, tax return, schedule or other information or supporting records required herein, or submits such reports more than five (5) days late on two (2) or more occasions during the Term or any Interim Period unless due to circumstances beyond the control of the Franchisee, and Franchisee does not correct such failure within five (5) days, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(d) operates the Business in a manner that presents a health or safety hazard to its customers, employees or the public and such manner of operation continues uncorrected after notice to correct same from any governmental body, the Franchisor or the Landlord is delivered to the Franchisee, and Franchisee does not correct such failure within twenty-four (24) hours, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the



Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(e) fails or refuses to pay any amount owed to the Franchisor, or any affiliate, subsidiary, Local Advertising Cooperative, authorized supplier of the Franchisor, , or the Landlord for any debt whatsoever within five (5) days after a demand for payment or fails to honor on two (2) or more occasions during the Term or any Interim Period checks presented for payment or repeatedly and consistently pays any amount due hereunder after its due date;

(f) sells or offers for sale any unauthorized product or service, and Franchisee does not correct such failure within twenty-four (24) hours, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(g) sells or offers for sale any merchandise which is in, the Franchisor's sole opinion, of poor taste, or which the Franchisor believes is likely to have an adverse effect on the System, the Marks or the goodwill associated with the Marks; and Franchisee does not correct such failure within twenty-four (24) hours, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(h) fails to comply with any other provision of this Agreement or any specification, standard or procedure prescribed by the Franchisor and Franchisee does not correct such failure within five (5) days, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(i) fails to observe or perform any of the rules, bulletins, directives or other notices set forth in the Confidential Manual, which in the opinion of the Franchisor, are material and any such failure to observe or perform the same shall continue for a period of five (5) days, or such longer period of time as the Franchisor in its sole discretion deems appropriate, after written notice thereof has been given to the Franchisee;

(j) takes or threatens to take any action to liquidate its assets, or stops making payments in the usual course of business, and Franchisee does not correct such failure within five (5) days, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(k) fails to successfully complete the Franchisor's training or retraining course(s), and Franchisee does not correct such failure within five (5) days, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee;

(l) fails to pay Franchisor the liquidated damages amounts set out in this Franchise Agreement, and Franchisee does not correct such failure within five (5) days,

(or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee; or

(m) fails to participate in Franchisor's group insurance plan as required by this Franchise Agreement, and Franchisee does not correct such failure within five (5) days, (or such longer period of time as the Franchisor in its sole discretion deems appropriate,) after written notice from the Franchisor (which shall describe the action that the Franchisee must take) is delivered to the Franchisee.

Franchisor's waiver of any Franchisee's defaults will not constitute a waiver of any other default and will not prevent Franchisor from requiring Franchisee to strictly comply with this Agreement and/or any other agreement with the Franchisor and/or its affiliates.

9.6 Rights on Default. At any time following the occurrence of an event of default occurring set out in Sections 9.2, 9.3, 9.4, and 9.5 (referred to herein as an "**Event of Default**"), without prejudice to any other rights available to the Franchisor set out in this Agreement, the Franchisor shall be in its sole discretion entitled and authorized to:

(a) terminate this Agreement and the rights granted to the Franchisee hereunder in accordance with such sections; or

(b) attempt to remedy such Event of Default and for such purpose (but without limitation) the Franchisor or its authorized agent may, but is not obligated to, (i) enter the Store, (ii) make payments on behalf of the Franchisee, and/or (iii) take possession of the Store and operate the Business as agent for the Franchisee for such period as the Franchisor deems appropriate in the circumstances. Forthwith upon demand, the Franchisee shall reimburse the Franchisor for all costs and expenses incurred, and all payments made, by the Franchisor or its agent in exercising any of its rights under this Section, plus an administrative fee equal to fifteen percent (15%) of such costs and expenses, and shall indemnify and save the Franchisor harmless from all costs and expenses incurred in exercising any of its rights under this Section. The Franchisor shall not be under any obligation to attempt to remedy any Event of Default hereunder. The Franchisor may at any time terminate its efforts to remedy any Event of Default, without thereby incurring any liability or obligation to the Franchisee. Any attempt to remedy an Event of Default under this Section shall not constitute a waiver of such Event of Default, nor shall it prevent the Franchisor from terminating this Agreement pursuant to *Sections 9.4 or 9.5* during the continuance of such Event of Default; or

(c) exercise its rights under *Sections 10.4 or 10.6*; or

(d) demand that the Franchisee deliver to the Franchisor all the certificates for all issued shares in the capital of the Franchisee, if the Franchisee is a corporation, or all the certificates evidencing all membership interests, if the Franchisee is a limited liability company, outstanding at the time of the delivery by the Franchisor of notice requiring such delivery, by way of pledge, to be held as security for the performance by the Franchisee and the Guarantor of their obligations to the Franchisor set out herein and in any other agreements between the Franchisor, the Franchisee and/or the Guarantor. The Franchisee and the Guarantor shall cause all shareholders to deliver such shares in accordance with the terms set out in the notice.

## 9.7 Liquidated Damages.

(a) Franchisee acknowledges that the success of the System and enhancing the value of its investment and the overall value of the System depends on maintaining consistent products, services, and standards of appearance and Franchisee acknowledges the importance of operating the Business in accordance with the System, as modified from time to time. Franchisee further acknowledges that deviation from the requirements of the System, as specified in this Agreement and/or Confidential Manual, will damage Thai Express, the System, the Marks, and Franchisor's goodwill, which damage is difficult to quantify. Accordingly, the parties agree that in the event of deviations from this Agreement and/or mandatory provisions of the Confidential Manual, Franchisee shall pay to Franchisor, as liquidated and agreed upon damages ("**Liquidated Damages**"), and not as a penalty, the following amounts for each deviation from this Agreement, beginning with the second deviation in any calendar year:

(i) Second deviation in calendar year: Three Hundred Fifty Dollars (\$350.00);

(ii) Third deviation in calendar year: Six Hundred Dollars (\$600.00);

(iii) Each Additional deviation in calendar year: One thousand Five Hundred Dollars (\$1,500.00).

(b) The Liquidated Damages set out above shall be paid to Franchisor within ten (10) days of receipt of notice of the deviation from Franchisor. The imposition of Liquidated Damages as against Franchisee shall be at Franchisor's sole option. Franchisor is not required to impose Liquidated Damages and may instead elect to pursue our other remedies provided in this Agreement, including termination of this Agreement. Even if Franchisor imposes Liquidated Damages for any violation, Franchisor further reserves all other rights and may thereafter elect to terminate this Agreement or to pursue any other remedy available to Franchisor under law for a subsequent violation. For greater certainty, Franchisor, in its absolute and sole discretion, shall determine whether there has been a deviation from this Agreement.

9.8 Non-participation Fee. You must offer and sell at the Premises 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**").

9.9 Late Report; Interest; Late Charge; Non-Sufficient Funds Fee; Breaching Royalties; Draft Draw Charge. 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 and Marketing Fund Contributions, you must pay to us a late report charge of One Hundred Dollars (\$100) per report, per week or part thereof.

If any fees or assessments due under this Agreement, including the Royalty and Marketing Fund Contributions, 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 (**as defined in Section 10.10 below**) not to exceed the maximum legal interest rate if applicable, which amount, plus a late charge of five percent (5%) of the unpaid amount, or One Hundred Dollars (\$100), whichever is greater, 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. For any payments made by you to us under this Agreement which are returned for non-sufficient funds of an attempted electronic funds transfer, you shall be charged a non-sufficient funds fee of Fifty Dollars (\$50). 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 you (for example, without limitation, charges for non-sufficient funds, or other uncollected funds.

We have the absolute right to charge you the greater of: three (3) times the fixed Royalty; or, if on a percentage Royalty the Royalty will be increased up to eighteen percent (18%) of Gross Sales, with respect to any period during which you are in breach or default of your obligations under this Agreement. The Royalties paid or owing to us with respect to the period during which you are 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 you fail to provide us any necessary information or documentation with respect to our practice of drawing drafts against your bank accounts, you must pay us a draft draw charge in the amount of One Hundred Dollars (\$100) per day that that failure continues.

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* are in addition to any other rights or remedies that we may have as a result of your default under this Agreement.

## **10. RIGHTS AND OBLIGATIONS OF PARTIES UPON TERMINATION**

10.1 Termination Defined. "**Termination**" shall mean the termination or expiration of this Agreement, whether by reason of expiration of the Term or any Interim Period or by reason of the Franchisor exercising its right to terminate this Agreement as a result of an Event of Default or otherwise.

10.2 Franchisee Obligations on Termination. At all times up to the date of Termination, the Franchisee shall, in all respects, be bound by all the terms of this Agreement, and Termination shall not relieve the Franchisee of any obligation that shall have accrued under this Agreement to the date of Termination. Upon Termination:

(a) the License shall be terminated and the Franchisee shall immediately discontinue the use of the Marks in accordance with *Section 3.8* of this Agreement;

(b) Franchisee shall take such action within five (5) days as may be required to cancel all registrations, including trade name registrations, relating to Franchisee's use of the Marks. If Franchisee was awarded a telephone directory listing associated with the Marks, Franchisee shall notify the telephone company and all listing agencies of the termination or expiration of Franchisee's rights to use any telephone number and any classified or other telephone directory listings associated with the Marks and shall

authorize the transfer of same to Franchisor or any new franchisee approved by Franchisor. Franchisee acknowledges that, as between Franchisee and Franchisor, Franchisor has the sole right to, and interest in, all telephone numbers and directory listings associated with the Marks. Franchisee shall execute the Collateral Assignment of Telephone Numbers, Addresses, and Listings attached as **Schedule H**. Franchisee shall, within two (2) days following termination, dismantle any frames and links between Franchisor's Website and any other authorized or unauthorized Websites owned or controlled by Franchisee, if and as requested by Franchisor, such costs to be borne completely by the Franchisee. Franchisee hereby irrevocably appoints Franchisor as Franchisee's true and lawful attorney-in-fact, which appointment is coupled with an interest, to execute such directions and authorizations as may be necessary or prudent to accomplish the provisions of this *Section 10.2(b)*. Franchisee shall execute a document substantially in the form attached as **Schedule L** as further evidence of Franchisor's rights upon Termination;

(c) In the event Franchisee lawfully maintains possession of the Store subsequent to the Termination, Franchisee shall immediately upon Franchisor's request make such alterations and removals or changes in signs and colors as Franchisor may reasonably request so as to distinguish effectively the Store from its former appearance and from the then-prevailing image of the System. If Franchisee fails to make such changes in a timely manner, Franchisor may enter upon such Store premises and make such changes at Franchisee's expense without such action constituting a trespass and without being liable to Franchisee in any manner;

(d) the Franchisee shall immediately remove all signs, displays, logos, symbols, slogans, graphics, and other things, which contain or display any of the Marks or other names belonging to Franchisor;

(e) the Franchisee shall deliver to the Franchisor all advertising material, bulletins, all copies of the Confidential Manual, handbooks, training tapes, drawings, designs, uniforms, correspondence, stationery, files, and paper goods which are in the possession or control of the Franchisee and which belong to the Franchisor or which bear any Marks, and all copies thereof, including all disks, CD-Roms, DVDs and electronic copies;

(f) all amounts owing by the Franchisee to all third-party creditors and to the Franchisor and any affiliate and subsidiary of the Franchisor under any of the agreements entered into by the Franchisor or such affiliate or subsidiary shall immediately become due and payable; and

(g) take such action as the Franchisor may request to disassociate itself from the System including, without limitation, to cease and desist using Website addresses, e-mail addresses, domain names, and telephone numbers.

**10.3 The Franchisor May Pay Trade Debts.** The Franchisee agrees to pay within five (5) days of the effective date of Termination all amounts owed to the Franchisor, the Landlord of the Store and the Franchisee's trade and other creditors which are then unpaid. All periodic payments to the Franchisor shall be deemed to accrue daily and shall be adjusted accordingly.

Upon Termination, the Franchisor shall be entitled, but not obligated, to pay all or any part of the trade debts of the Franchisee in order to preserve the goodwill of the Franchisor with

trade creditors. If the Franchisor elects to make such payments, then the amount thereof shall become immediately due and payable by the Franchisee and the Guarantor to the Franchisor.

10.4 Options to Purchase. Upon Termination, the Franchisor shall have the option, but not the obligation to:

(a) purchase from the Franchisee all or any part of the inventory of food, beverages and paper goods owned by the Franchisee in connection with the Business, other than food, beverages and paper goods which are spoiled, stale dated or not then in use by other THAI EXPRESS™ franchisees generally, for a purchase price equal to the price paid by the Franchisee therefore plus verified shipping costs;

(b) purchase from Franchisor all or any part of the furniture, furnishings, fixtures, equipment and smallwares owned by Franchisee and used in connection with the Business for a purchase price to be agreed upon by the parties that are to be sold. If the parties are unable to agree as to a purchase price and terms, the fair market value of such property shall be determined by three appraisers chosen in the following manner: Franchisee shall select one appraiser and Franchisor shall select one appraiser, and the two appraisers so chosen shall select a third appraiser. The decision of the majority of the appraisers so chosen shall be conclusive. The cost of the third appraiser shall be shared equally by the parties. The determined purchase price shall be adjusted by setting off and reducing the purchase price by any amount owing by Franchisee to Franchisor or its affiliates, any losses Franchisor may incur from the interim operation of the business as outlined in Section 10.6 below, and including any amounts paid by Franchisor to cure Franchisee's defaults with third parties including, but not limited to, suppliers and Landlords (the decision to pay such cure amounts to be the sole decision of Franchisor);

(c) receive an assignment of the Franchisee's interest in all or any leases of the furniture, fixtures, equipment, and smallwares used in connection with the Business in consideration of the assumption by the Franchisor of all future obligations of the Franchisee under such leases; and/or

(d) receive an assignment of the Franchisee's interest in the Lease in consideration of the assumption by the Franchisor of all of the future obligations to the Franchisee under the Lease.

Each of the options described in this Section 10.4 may only be exercised by written notice given to the Franchisee by the Franchisor within ninety (90) days of Termination and each such option shall survive Termination. If the Franchisor elects to exercise the option described in Section 10.4(d), then the Franchisor shall not be obligated to exercise the options described in Sections 10.4(a), 10.4(b) and 10.4(c).

10.5 Completion of Purchase. Upon the exercise by the Franchisor of any of the options described in *Section 10.4*, there shall be a binding agreement of purchase and sale between the Franchisor and the Franchisee, pursuant to which the Franchisee shall be bound to sell or assign, and the Franchisor shall be bound to purchase or assume, the property or interest with respect to which such option was exercised ("**Purchased Property**"). Subject to *Section 10.6*, the closing of the transaction shall occur on the first business day after the fifteenth (15th) day following the exercise of such option. At the closing of the transaction, the Franchisee agrees to sell, transfer and assign to the Franchisor good and marketable title to the

Purchased Property, free and clear of all mortgages, charges, liens, security interests and other encumbrances whatsoever and to execute and deliver to the Franchisor such bills of sale, assignments and other conveyances of title as may be necessary in order to effectively transfer the Franchisee's interest in the Purchased Property to the Franchisor.

This transaction of purchase and sale shall be subject to all applicable bulk sales legislation and the Franchisor or its agent shall be entitled to act as trustee for the payment of money required to be paid thereunder. Unless mutually satisfactory arrangements are otherwise made between the Franchisor and the Franchisee, and subject to applicable bulk sales legislation, the purchase price shall be applied on closing as follows:

- (a) first, to the payment of all amounts necessary in order to obtain a discharge of all mortgages, liens, charges, security interests and other encumbrances on the Purchased Property;
- (b) second, to the payment of all amounts which are due and owing by the Franchisee (i) to the Franchisor, (ii) under the Lease, (iii) to the trade creditors of the Franchisee, and (iv) to any governmental agency; and
- (c) third, to the Franchisee, at Franchisor's option in full, or in eighteen (18) equal monthly installments, with interest at a rate equal to the prime lending rate as of the closing at Franchisor's bank.

If the Franchisee shall fail to close this transaction on the date set for closing, then the Franchisor shall be entitled to pay the purchase price as provided above, and in that regard shall be entitled to deposit that portion of the purchase price which is to be paid to the Franchisee into a bank account opened in the name of the Franchisee or to an account established for the benefit of the Franchisee, and to advise the Franchisee as to the particulars of such bank account or trust account, whereupon the Franchisor shall be entitled to take possession for its own account the Purchased Property, including the Store if the Franchisor is entitled to an assignment of the Lease.

#### 10.6 Interim Right to Operate Business.

(a) In order to enable the Franchisor to determine whether it will exercise any of its options under *Section 10.4* and to preserve the goodwill associated with the Business, the Franchisor, or its authorized agent, shall be entitled to take exclusive possession of the Store for a period of up to ninety (90) days prior to Termination and to operate the Business as agent for and on behalf of the Franchisee during that period.

(b) This right on the part of the Franchisor shall be exercised by written notice given by the Franchisor to the Franchisee. From and after the giving of such written notice, the Franchisee shall deliver exclusive possession of the Store to the Franchisor and shall provide the Franchisor with access to all books and records relating to the Business. If the Franchisor shall elect to exercise any of its options under *Section 10.4*, then the period of the Franchisor's occupancy of the Store under this *Section 10.6* shall be extended until the closing of the transaction of purchase and sale arising out of the exercise of such option. The Franchisor shall have the right to terminate its management of the Business at any time upon written notice to the Franchisee.

(c) In managing the Business as agent for the Franchisee, the Franchisor shall be liable to account to the Franchisee only in respect of the income received by it in managing the Business less its bona fide expenses, including its reasonable fees charged for such management and any legal fees incurred by the Franchisor or its agent relating to its management of the Business. The Franchisor shall not be liable or responsible for any losses, costs, expenses or damages suffered by the Franchisee during the management of the Business by the Franchisor or its agent, and the Franchisee agrees to indemnify the Franchisor for any losses, costs, expenses or damages suffered by the Franchisor in respect of the Business operated by the Franchisee up to and including the date of Termination and the period during which the Franchisor is managing the Business.

#### 10.7 Power-of-Attorney Upon Termination and Legal Incapacity.

(a) The Franchisee hereby irrevocably appoints the Franchisor, with full power of substitution, as the Franchisee's true and lawful attorney-in-fact, which appointment is coupled with an interest, to take any action, execute any document, or do any other act or things required by Section 10 at the Franchisee's sole risk and expense upon the Franchisee's failure or refusal to comply fully therewith within ten (10) days after termination or expiration of this Agreement.

(b) The Franchisee consents and agrees that the Franchisor or its designated agents shall have the right to enter the Store at any time, at the Franchisee's sole risk and expense and without liability for trespass, tort or other act, to make any alterations thereto upon the Franchisee's failure or refusal to do so within ten (10) days after the termination or expiration of this Agreement.

(c) The Franchisee hereby covenants and agrees for its successors and assigns to allow, ratify and confirm whatsoever the Franchisor shall do by virtue of the foregoing power-of-attorney. The Franchisee hereby declares that the power-of-attorney herein granted may be exercised during any subsequent legal incapacity on the Franchisee's part.

10.8 Accounting Between Parties. Within the latter of (a) one hundred twenty (120) days after Termination, or sixty (60) days following our possession and management of the Store should Franchisor exercise its interim right to operate the Business under *Section 10.6* hereof, and (b) ten (10) days following the closing of the transaction of purchase and sale pursuant to *Section 10.4*, there shall be an accounting between the parties with respect to the monies due by each to the other under the terms of this Agreement or under any agreement or instrument entered into between them, and each of the parties agrees promptly to pay to the other whatever monies shall be found as owing by one to the other pursuant to such accounting. Such accounting shall be subject to readjustment.

10.9 Indemnity. The Franchisee agrees to indemnify and hold the Franchisor and its affiliates and subsidiaries and their respective officers, directors, agents, employees, current, past, and future predecessors, successors and assigns, and contractors ("**Indemnified Parties**") harmless from and against any and all losses, damages, liability, costs and expenses, including, without limitation, legal fees, courts costs, and expert witness fees, suffered or incurred by any of the Indemnified Parties as a result of: (a) any violation of this Agreement, the Lease or any other agreement by the Franchisee or the Guarantor; (b) any act or omission on the part of the Franchisee or the Guarantor or any of their respective agents, servants,



employees or contractors; or (c) any claims, damages, suits or rights, of every kind and nature whatsoever, whether actual or threatened, of any persons, firms or corporations arising from the operation of the Business or anything which may occur at the Store.

10.10 Interest on Overdue Accounts. All amounts payable pursuant to this Agreement or any other agreement between the Franchisor or any of its affiliates or subsidiaries and the Franchisee shall bear interest after the date upon which the said payment becomes due until paid in full at the Key Bank prime rate of interest plus eight percent (8%) in effect at the time the said payment becomes due ("**Default Rate**"). The acceptance of any interest payment shall not be construed as a waiver by the Franchisor of its rights in respect of the default giving rise to such payment and shall be without prejudice to the Franchisor's right to terminate this Agreement in respect of such default in accordance with the provisions of this Agreement.

10.11 Survival of Obligations. All obligations of the parties hereto which expressly or by their nature survive the Termination of this Agreement shall continue in full force and effect notwithstanding such expiration or termination. In particular, but without limiting the generality of the foregoing, the provisions of Sections 3, 5.16, 9, 10 and 15 shall survive Termination of this Agreement.

10.12 Cross Default. Breach by the Franchisee and/or the Guarantor of the Lease and/or the Guarantee and Indemnity or any other agreement entered into by the Franchisee and/or the Guarantor with the Franchisor shall constitute a breach by the Franchisee, and the Guarantor, as the case may be, of each of the other agreements. Should the Franchisee or the Guarantor, or any partnership, joint venture, corporation, or limited liability company in which the Franchisee or the Guarantor has a controlling equity interest, be a franchisee pursuant to another franchise agreement with the Franchisor, respecting another franchised business using the Marks, a default under this Agreement shall constitute a default under such other franchise agreement and vice versa, with like remedies available to the Franchisor and should such other franchise agreement cease to be valid, binding and in full force and effect for any reason then the Franchisor may, at its option, terminate this Agreement and this Agreement shall be forthwith surrendered by the Franchisee and terminated. Likewise, should this Agreement cease to be valid, binding and in full force and effect for any reason, the Franchisor may at its option terminate the other franchise agreement and the other franchise agreement shall be forthwith surrendered and terminated.

In the event that this Agreement is terminated for any reason whatsoever by either party, and the Franchisor exercises its option to assume the Lease, the Franchisee shall immediately vacate the Store and deliver up possession to the Franchisor and shall leave the premises of the Store in a clean, tidy condition, free of debris, and shall remove therefrom only its own personal property.

10.13 Acceleration of Note and Security Interest. In the event that this Agreement expires or is terminated for any reason whatsoever and the Franchisor is the lender under any loan agreement ("**Loan**") or the holder of any promissory note ("**Note**") or the holder of any personal property, stock or membership certificates, security interest, chattel mortgage, debenture or mortgage of any nature whatsoever ("**Security Interest**") from the Franchisee concerning assets used at any time by the Franchisee in the Business or which are situated on the Store, such Loan, Note or Security Interest shall, upon the effective date of termination or expiration, immediately become fully due and payable as to all principal and interest so loaned and secured.

10.14 Early Termination Damages. If Franchisee discontinues operating its 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 Franchisee's default and breach of its provisions, Franchisee 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 Franchisee's payment of these damages shall not constitute a release of any other obligation owed to Franchisor. 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 and Marketing Fund Contributions 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 Franchisee failed to timely notify Franchisor 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 and Marketing Fund Contributions 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 and Marketing Fund Contributions 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 Franchisee unilaterally terminates this Agreement prior to the end of the Term, Franchisee must give Franchisor ninety (90) days prior notice of the early termination ("**Early Termination Notice**"). Within ten (10) days after Franchisor's receipt of Franchisee's Early Termination Notice, Franchisor will calculate the Early Termination Damages, which will be due and payable thirty (30) days prior to the closure of the Franchised Business. In the event of a termination arising from or related to Franchisee's default under this Agreement, or that Franchisee does not: (i) provide Franchisee with the Early Termination Notice at least ninety (90) days prior to the early termination of the Franchised Business and this Agreement; (ii) remain open for at least ninety (90) days after providing Franchisor 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 Franchisor's 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 Franchisee has not paid its Royalty and Marketing Fund Contributions for any period(s) within the forty-eight (48) months prior to notifying Franchisor of Franchisee's early termination, or if Franchisee has not reported its Gross Sales for any period(s) within the forty-eight (48) months prior to notifying Franchisor of Franchisee's intended early termination, Franchisor will estimate the Royalty and Marketing Fund Contributions based upon prior reports to calculate the Monthly Average.

## 11. GUARANTEE

11.1 Obligation to Execute Guarantee. The Guarantor hereby agrees to, and it is a condition of this Agreement that the Guarantor and the Guarantor's spouse or domestic partner shall, execute and deliver to the Franchisor an indemnity and guarantee in the form annexed hereto as **Schedule E** forthwith upon the execution of this Agreement.

## 12. SALE OF BUSINESS

### 12.1 No Transfer Unless Permitted.

(a) The Franchisee shall not (i) assign or transfer, or grant any security in, any of its rights under this Agreement or the Lease, or (ii) sublet or part with possession of the Store, or (iii) grant any license or concession to use or occupy all or any part of the Store, except in accordance with Sections 12.3 and 12.4 of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary but subject to Section 13, the Franchisee and any shareholder(s), partner(s), or member(s) of the Franchisee, if the Franchisee is a corporation, partnership, or a limited liability company, shall not assign, sell or transfer any rights that it has or they may have under this Agreement without first obtaining the written consent of the Franchisor, which consent may not be unreasonably withheld or delayed, and provided that Franchisee is in full compliance with the terms of this Agreement at the time of the requested transfer and at the time of the transfer.

12.2 Bona Fide Offer Defined. When used in this Agreement, the term "**Bona Fide Offer**" means an offer from an arm's length party to purchase the Business pursuant to which:

(a) the purchaser shall purchase in the case of an asset sale, all or substantially all of the assets then used in connection with the Business and shall receive an assignment of the Franchisee's rights under this Agreement, the Lease and any leases of equipment used in connection with the Business (and no other property or rights shall be purchased), and in the case of a sale of shares in the capital stock or membership interests of the Franchisee, all but not less than all of the shares or membership interests owned by the shareholder(s) or members of the Franchisee,

(b) the purchase price ("**Purchase Price**") for the Business shall be expressed solely as a monetary sum payable in cash or by certified check,

(c) not less than twenty-five percent (25%) of the Purchase Price shall be payable at closing and the remainder (if any) shall be paid in equal periodic installments over not more than five (5) years or the remaining Term of this Agreement, whichever is less,

(d) the sole security for the payment of the Purchase Price shall be, in the case of an asset sale, a purchase money security interest in the tangible assets being purchased and sold, and in the case of a share sale, a pledge of shares by the purchaser in favor of the Franchisee; provided, however, that the Franchisee shall not directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, donate, pledge, mortgage or otherwise encumber any such assets or shares or offer or attempt to do so or permit the same to be done without the Franchisor's prior written consent,

(e) the underlying terms and conditions are bona fide and are not so unique or unusual as to render it impossible for the Franchisor to perform and observe them on a commercially reasonable basis, and

(f) the purchaser shall have agreed in writing to pay all applicable taxes in respect of the Bona Fide Offer.

12.3 Transfer to Personal Corporation. If the Franchisee is not a corporation, then the Franchisee shall be entitled to assign all its rights under this Agreement to a corporation ("**Franchisee Corporation**"), provided that each of the following conditions are satisfied:

(a) the Franchisee shall not be in default under this Agreement on the date of such assignment;

(b) the Franchisee shall assign the Lease to the Franchisee Corporation and the Landlord shall consent to such assignment;

(c) the Franchisee shall own all of the issued and outstanding shares of the Franchisee Corporation at the time of the assignment, and the activities of the Franchisee Corporation shall be confined exclusively to operating a THAI EXPRESS™ franchise;

(d) the Franchisee Corporation shall enter into a written agreement with the Franchisor, in form satisfactory to the Franchisor, pursuant to which the Franchisee Corporation shall covenant to observe and perform all the terms, covenants and conditions to be observed and performed on the part of the Franchisee under this Agreement;

(e) the Franchisee shall provide the Franchisor with a guarantee and indemnity, in a form satisfactory to the Franchisor, whereby the Franchisee and any and all other future shareholders of the Franchisee Corporation shall guarantee the obligations of the Franchisee Corporation.

12.4 Transfer Under Bona Fide Offer. The Franchisee shall be entitled to assign its rights under this Agreement and the Lease pursuant to a Bona Fide Offer, subject to each of the following terms and conditions:

(a) the Franchisee shall comply with the provisions of Section 12.5;

(b) the Franchisee shall not be in default under this Agreement, the Lease, or any other agreement during both the sixty- (60-) day period prior to receiving Bona Fide Offer and the period to the date of such assignment, and prior to the time of transfer

Franchisee shall bring its Store into full compliance with Franchisor's then-current standards as set forth in the Confidential Manual or bulletin. Without limiting the generality of the foregoing, all of Franchisee's accrued monetary and other obligations to Franchisor shall have been satisfied in full;

(c) the Franchisee provides written notice to Franchisor at least sixty (60) days prior to the proposed effective date of such assignment and Franchisee shall have obtained the prior written consent of the Franchisor to such assignment, which consent shall not be unreasonably withheld; provided, however, without limiting the generality of the foregoing, the Franchisor shall be entitled to withhold its consent to such assignment where, in the opinion of the Franchisor, such assignee is not of good moral character and reputation or does not have adequate financial strength or a satisfactory credit rating, business experience, aptitude, fails to pass Franchisor's English competency test and other required tests, or does not possess appropriate business qualifications or does not satisfy any of the other qualifications required for franchisees joining the System at that time. The Franchisee shall provide the Franchisor with such reasonable information as the Franchisor may request in order to make such determination. Franchisor shall have thirty (30) days from the date of receipt of the written notice of the proposed assignment to approve or disapprove, in writing, Franchisee's proposed assignment. If Franchisee and the proposed assignee comply with all conditions for assignment set forth herein and the Franchisor has not given Franchisee written notice of Franchisor's approval or disapproval within a 30-day period, approval is deemed denied;

(d) the assignee shall enter into the Franchisor's then-current form of Franchise Agreement as franchisee, which may contain provisions substantially different from those contained in this Agreement, including higher Royalty and Marketing Fund Contributions and greater expenditures for advertising and promotion than are provided in this Agreement, and such other documents then customarily used by the Franchisor to grant franchises as may be reasonably requested by the Franchisor;

(e) if the assignee is a corporation, the shareholders of the corporation shall jointly and severally guarantee the obligations of the assignee under the franchise agreement referred to in *Section 12.4(d)* by entering into a guarantee and indemnity in form satisfactory to the Franchisor;

(f) on or before the date of such assignment, Franchisee shall pay to Franchisor the following amounts:

(i) a transfer fee ("**Transfer Fee**") equal to fifteen thousand dollars (\$15,000), plus all applicable taxes; and

(ii) Franchisor's legal fees;

(g) the assignee shall not have debt of more than forty percent (40%) of the sale price of the Business to the assignee and Franchisor has determined that the terms of payment are not so burdensome as to affect adversely the assignee's future operation of the Business;

(h) the assignee shall ensure that its Designated Manager and Guarantor successfully completes a training program established by the Franchisor and that the

assignee shall otherwise meet all criteria for a franchisee of the Franchisor as may be established by the Franchisor from time to time. The assignee shall not be permitted to attend training until such time it has satisfied all of Franchisor's conditions, which include the execution of the then-current form of Franchise Agreement and Franchisor having received the Transfer Fee; If the assignee or any of its employees or representatives cancel or reschedule participation in any training course or program which the assignee schedules with Franchisor, the assignee 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) the Franchisee shall execute Franchisor's then current form of assignment and consent agreement and the Franchisee shall release the Franchisor, its affiliates and subsidiaries and its and their officers, directors and employees from all claims, suits and actions which the Franchisee may have against any of them by reason of any act, omission, cause, matter or thing up to the date of such assignment;

(j) the assignee, at its own cost, agrees to make all capital expenditures requested by the Franchisor to renovate, refurbish, remodel and modernize the Store so as to reflect the then-current image for the Franchisor prior to the transfer or within a timeframe specified by Franchisor;

(k) the Landlord provides written consent to the assignment of the Lease for the Store to the proposed assignee;

(l) the proposed assignee provides such personal guarantees which the Franchisor may request, guaranteeing the proposed assignee's performance of its obligations under the agreements to be entered into;

(m) in the case of an asset sale, the assignee purchases all of the Franchisee's assets used in the Business in accordance with all applicable bulk sales legislation and assumes all of the Franchisee's business liabilities, including all tax liabilities, unless such liabilities have been paid prior to the closing of the transaction of purchase and sale;

(n) if Franchisee or its Guarantor's finance any part of the purchase price, Franchisee and its Guarantor's agree that all of the assignee's obligations under promissory notes, agreement, or security interests reserved in the Business are subordinate to assignee's obligations to pay fees and other amounts due to Franchisor and its affiliates and otherwise to comply with this Agreement and the Lease. Franchisee shall not take any security interest in the assets of the assignee or the assets of the Business without Franchisor's written consent;

(o) Franchisee abides by all post-termination covenants, including, without limitation, the covenant not to compete set forth in *Section 15*; and

(p) Neither the assignee or its owners, without Franchisor's prior written consent, take over possession of the Business at the Store until the assignment is complete;

(q) any advertisement for a transfer shall be approved by Franchisor in writing;

(r) the assignee shall have agreed in writing to spend a minimum of \$5,000 to conduct a grand opening advertising and promotional program for the Store at the time of transfer ("Transfer Advertising Requirement"). The assignee shall acknowledge and agree that it will incur certain food costs in connection with its grand opening upon transfer, and that such promotional food costs are in addition to the Transfer Advertising Requirement. The assignee shall agree to provide Franchisor with a summary of its Transfer Advertising Requirement within seventy five (75) days following the earlier of the Store opening or transfer. The assignee grand opening transfer program will only utilize the marketing and public relations programs and media and advertising materials that Franchisor has approved in writing; and

(s) If required by Franchisor, Franchisee must use and pay for the services of a third-party escrow agent, approved in advance by Franchisor, to facilitate the transfer process and ensure all debts and other payments are properly made.

12.5 Right Of First Refusal. Without in any way derogating or otherwise affecting the Franchisor's right to reject a proposed assignee pursuant to Section 12.4 herein, if at any time during the Term or any Interim Period, the Franchisee receives a Bona Fide Offer which the Franchisee wishes to accept, or the Franchisee intends to make a Bona Fide Offer, then the Franchisee shall deliver to the Franchisor a true copy of such Bona Fide Offer together with an offer in writing ("**Franchisee's Offer**") to sell the Business to the Franchisor on the same terms as described in the Bona Fide Offer. The Franchisor shall be entitled to accept the Franchisee's Offer at any time within ten (10) business days after receipt of the Franchisee's Offer by the Franchisor, whereupon such acceptance shall be deemed to be a binding agreement of purchase and sale between the Franchisor and the Franchisee on the terms and conditions contained in the Franchisee's Offer. If the Franchisor fails to accept the Franchisee's Offer within ten (10) business days following its receipt by the Franchisor, the Franchisee may make or accept the Bona Fide Offer subject to the provisions of Section 12.4, provided that the transaction contemplated under the Bona Fide Offer shall be completed within one hundred and twenty (120) days following the expiration of such period of ten (10) business days. If the transaction contemplated under the Bona Fide Offer is not completed within such one hundred and twenty (120) day period or if the terms of the Bona Fide Offer are changed from those described in the Franchisee's Offer, then the Franchisee shall be obligated to once again comply with the provision of this Section 12.5.

12.6 Continued Responsibility. Notwithstanding any assignment of the Franchisee's rights under this Agreement, the Franchisee shall remain liable for the prompt and complete observance and performance of all of the terms, covenants and conditions to be observed and performed on the part of the Franchisee under this Agreement on or before the said assignment.

12.7 Equity Holders. The Franchisee hereby warrants and represents to the Franchisor that the individuals named in **Schedule F** to this Agreement are the registered and beneficial owners of these equity interests of the Franchisee, if the Franchisee is a legal entity, set forth beside their names, which equity interests represent all of the issued and outstanding equity interests in the capital of the Franchisee. The Franchisee agrees that any transfer of the legal or beneficial ownership of such equity interests, or any issuance of further equity interests, or any change in effective control of the Franchisee, meaning a change equal to 51% or more of the ownership interest, without the prior written consent of the Franchisor, shall constitute an unauthorized assignment of this Agreement and a default under this Agreement. The Franchisor will not unreasonably withhold its consent to such transfer, issuance or change in

effective control if the same is to any of the shareholders or members identified in **Schedule F** or their children or spouses, provided that the Franchisor may, without limitation, withhold its consent for any of the reasons contemplated in Section 12.4 save and except Sections 12.4(f) and (j). Otherwise, the Franchisor shall be entitled to withhold its consent to such transfer, issuance, or change in control, for any reason or no reason whatsoever.

12.8 Advertising Sale of Business. The Franchisee shall not cause or permit any notice or advertisement indicating that the Business is for sale to appear at, on or about the Store or in printed media of general and regular circulation, radio, internet or television, unless the same is consented to in writing by the Franchisor.

12.9 Assignment by the Franchisor. This Agreement is fully assignable by the Franchisor in whole or in part and shall inure to the benefit of and be binding upon any assignee or other legal successor to its interest herein. In the event of any such assignment, the Franchisor, its directors, officers, employees and agents shall be released from any further liability for the obligations assigned other than any obligations relating to matters or periods prior to the effective date of such assignment. The Franchisee shall attorn to such assignee and shall execute any attornment agreement requested by the Franchisor or its assignee.

### **13. ABSENCE, DISABILITY OR DEATH**

13.1 Right to Operate Business. Without limiting the generality of *Section 13.2* below, in order to prevent any interruption of the Business which might cause harm to the Business and depreciate the value thereof, the Franchisee authorizes the Franchisor to operate the Business as agent for and on behalf of the Franchisee for a period of ninety (90) days, renewable as necessary up to one year, ("**Interim Operating Period**"), and without waiver of any of the rights or remedies the Franchisor may have under this Agreement, if the Franchisee is not, in the sole judgment of the Franchisor, able to operate the Business in accordance with its obligations under this Agreement as a result of the death, absence or incapacity of the Franchisee or any of its shareholders or members, the Designated Manager, or the Guarantor. During the Interim Operating Period, Franchisor shall periodically discuss the status of the Business with Franchisee. All monies from the operation of the Business during such period of operation by the Franchisor shall be kept in a separate account, and the expenses of the Business, including reimbursement for all costs and expenses incurred by the Franchisor and reasonable compensation for the services provided by the Franchisor including any legal fees, shall be charged to such account. The Franchisor shall not be obligated to operate the Business pursuant to this *Section 13.1* and shall be entitled to terminate its operation of the Business at any time immediately upon written notice to the Franchisee.

13.2 Death or Incapacitation. If the Franchisee dies or becomes incapacitated, which shall be deemed to include, in the reasonable opinion of the Franchisor, the inability of the Franchisee, by reason of physical or mental illness or disability, to operate the Business in the ordinary course for a period of thirty (30) days or more in any consecutive ninety (90) day period, so that the Franchisee, or, in the case of the Designated Manager's incapacity only, the Designated Manager, is not able to devote full time and attention to the operation of the Business, then the rights granted hereunder may be transferred to the heirs or personal representatives of the Franchisee, subject to Franchisee's heirs or personal representatives successful completion of the Training Program as described in *Section 4.4* above, if the Franchisor's prior written consent is obtained. In no event shall the Franchisor provide its consent to such transfer unless the conditions set out in *Section 12.4*, save and except the requirement to pay the Franchisor's then-current transfer fee, are satisfied. In the event that



such conditions, save and except the requirement to pay the Franchisor's then-current transfer fee, are not satisfied, the Franchisor shall have the right in its sole discretion to terminate this Agreement by notice, in the case of death, to the estate of the Franchisee and, in the case of incapacity of the Franchisee, to the Franchisee or his representative and the provisions of Section 10 shall then apply.

#### **14. RELATIONSHIP OF PARTIES**

14.1 No Agency Relationship. The Franchisee agrees that it is not an agent of the Franchisor, but is an independent contractor completely separate from the Franchisor, and that the Franchisee has no authority to bind or attempt to bind the Franchisor in any manner or form whatsoever or to assume or incur any obligation or responsibility, express or implied, for or on behalf of or in the name of the Franchisor. This Agreement shall not be construed so as to constitute the Franchisee a partner, joint venturer, agent or representative of the Franchisor for any purpose whatsoever. The Franchisee shall use its own name in obtaining goods and services, or when executing contracts or making purchases, so that the transaction shall clearly indicate that the Franchisee is acting on its own behalf and not on behalf of the Franchisor.

#### **15. RESTRICTIVE COVENANTS**

##### 15.1 Franchisee and Guarantor Not to Compete.

(a) During the Term or any Interim Period, neither the Franchisee nor the Guarantor shall either individually or in partnership or in conjunction with any person or persons, firm, association, syndicate or company as principal, agent, shareholder, employee, advisor, or in any other manner whatsoever, directly or indirectly, carry on or be engaged in or concerned with or interest in the operation of any business which consists substantially of the sale of Thai food items as its main product line.

(b) During the two- (2-) year period immediately following Termination, neither the Franchisee nor the Guarantor shall either individually or in partnership or in conjunction with any person or persons, firm, association, syndicate or company as principal, agent, shareholder, employee or in any other manner whatsoever, directly or indirectly, carry on or be engaged in or concerned with or interested in the operation of any business which consists substantially of the sale of Thai food items as its main product line and which is located within ten (10) miles of the Licensed Location or any business operating under the Marks.

(c) This Section 15.1 shall not apply to (i) any interest which the Franchisee or Guarantor may have in another Thai Express Franchise, or (ii) the ownership of shares in a company whose shares are listed on a stock exchange provided that the Franchisee or Guarantor does not participate in the management or direction of such public company. Promptly upon written request by the Franchisee or any Guarantor, the Franchisor shall advise the requesting party whether the proposed location is located within any of the restricted territories referred to in this Section 15.1.

(d) If the Franchisee is a legal entity, the Franchisee shall deliver to the Franchisor at any time the Franchisor may request, the written acknowledgment of any or all of the directors, members, partners, officers, shareholders or employees of the Franchisee as the Franchisor may determine, whereby they shall acknowledge that they

have reviewed the provisions of this Section 15.1 and that they each agree to abide by all such provisions.

15.2 Not Applicable.

15.3 Trade Secrets and Confidentiality. Franchisee expressly understands and agrees that a confidential relationship is established between Franchisee and Franchisor under this Agreement, and that Franchisor will be disclosing to Franchisee certain confidential and proprietary information in connection with the System and Franchisee's operation of the Business. Franchisee acknowledges and agrees that the recipes, operating procedures, food costs and margins, price structure, names of suppliers and promotional techniques supplied or communicated by Franchisor to Franchisee constitute our valuable trade secrets. Franchisee acknowledges that information relating to the operation of the Business (including, without limitation, the specifications, standards, procedures and rules of the System and the Business, and the entire contents of the Confidential Manual) is derived from information disclosed to Franchisee by Franchisor, and that all such information is confidential and Franchisor's trade secret. Franchisee agrees:

(a) not to disclose, use, or obtain any benefit from any such trade secrets except to the extent necessary in order to operate the Business;

(b) not to make copies of the Confidential Manual or any other operating manuals or lists of suppliers and further agree to return the Confidential Manual, and all other operating manuals and lists of suppliers to Franchisor immediately upon Termination;

(c) to maintain the absolute confidentiality of all such information and the contents of this Agreement during the Term and any Interim Period of this Agreement and after termination or expiration of this Agreement for any reason whatsoever, disclosing same to employees of the Business only to the extent necessary for the operation of the Business in accordance with this Agreement;

(d) not to use any such information in any other business or in any manner not specifically approved in writing by Franchisor;

(e) to advise Franchisee's employees and agents of the confidential nature of such information and not to disclose it. Franchisee shall require such employees to whom such information is disclosed to comply with the foregoing and, if required by Franchisor, to execute confidentiality agreements in a form acceptable to Franchisor;

(f) to promptly and permanently delete any and all e-mails or any other form of electronic data transfer or communication between the Franchisor and Franchisee from Franchisee's computer system or server that may contain references to any specific articles/provisions in the Confidential Manual or any updates to the Confidential Manual via insert pages or any other proprietary information.

15.4 Injunctive Relief. The Franchisee hereby acknowledges and agrees that the covenants and agreements given by it pursuant to this Section 15 are reasonable, having regard to the necessity of the Franchisor to protect its interests and rights in the Marks and the integrity thereof, and that without the express understanding and agreement of the Franchisee to take such steps as may be necessary to protect the interest and rights of the Franchisor in

the Marks, the Franchisor would not have granted any right and license to the Franchisee pursuant to this Agreement to use either the trade name or the Marks. Accordingly, the Franchisee agrees that the Franchisor, aside from any other rights and remedies to which it may be entitled under this Agreement, may enforce its rights under this Agreement by means of injunctive relief, including securing a temporary restraining order, by any court of competent jurisdiction.

15.5 Liquidated Damages. In addition to any other remedies or damages allowed and available to Franchisor under this Agreement, if Franchisee breaches any of the covenants set out in Section 15.1 hereof, Franchisee shall to pay Franchisor, as Liquidated Damages, and not as a penalty, the following amounts:

(a) a fee equal to Franchisor's then-current Initial Franchise Fee for each Competitive Business opened by Franchisee or any legal entity controlled by Franchisee or, individually or in partnership or in conjunction with any person or persons, firm, association, syndicate or company as principal, agent, shareholder, employee or in any other manner whatsoever, directly or indirectly, in violation of the said covenants; and

(b) five percent (5%) of each Competitive Business's gross sales until expiration of the non-competition period set forth in Section 15.1(b). Should Franchisee fail to provide Franchisor with a detailed account of such gross sales and all substantiating documentation deemed acceptable to Franchisor, Franchisor shall estimate such gross sales for the purposes of calculating the said amount payable by Franchisee under this Section 15.5 (b); and

(c) legal fees and disbursements incurred by Franchisor to enforce this Section 15.

## 16. GENERAL CONTRACT PROVISIONS

16.1 Waiver in Writing. No term, covenant or condition of this Agreement shall be deemed to have been waived by either the Franchisor or the Franchisee unless such waiver is in writing, and then such waiver shall apply only to the specific event or circumstance described in such waiver. 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. All rights and remedies of the Franchisor under this Agreement shall be cumulative and no remedy herein shall be exclusive of, but shall be in addition to, every other remedy contained herein or existing at law or in equity or by statute. The covenants and agreements of the parties hereto shall be independent and a breach by one party of any of its agreements or obligations hereunder shall not relieve the other of the performance of its covenants and agreements hereunder.

16.2 Governing Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of Arizona.

16.3 Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable, then such provision shall be considered separate and severable from this Agreement and the remaining provisions of this Agreement shall remain in full force and shall be binding upon the parties of this Agreement.

16.4 Headings for Reference Only. The index, article headings and section headings in this Agreement are for convenience of reference only and do not form part of, or affect the meaning of, the provisions of this Agreement.

16.5 Entire Agreement. This Agreement sets forth the entire understanding between the parties relating to the subject matter hereof, and there are no agreements, promises, representations or understandings between the parties other than as set forth herein. Nothing in this Agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document. No amendment or modification of this Agreement shall be effective unless in writing and signed by the Franchisor and the Franchisee.

16.6 Notices. Any notice or other communication required or permitted hereunder shall be sufficiently given if personally delivered, e-mailed, faxed or if mailed by prepaid registered mail and addressed to the party for whom it is intended at the address indicated on **Schedule G** or to such other address of which notice is given hereunder. Each such notice or other communication shall be deemed to have been given when personally delivered, e-mailed or faxed or on the third business day following the date on which it was deposited in the mail, provided that if such notice or other communication is mailed and if normal mail service is interrupted prior to such third business day, then such notice or other communication shall be deemed to have been received in the ordinary course unless otherwise personally delivered. For the purposes of this Agreement, personal delivery shall include delivery by a professional courier. The Franchisee is required under this Agreement to obtain an e-mail address in order to accept electronic communication from the Franchisor.

16.7 Grammatical Changes. The necessary grammatical changes required to make the provisions of this Agreement apply in the plural sense where there is more than one signatory named as Franchisee or Guarantor and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.

16.8 Joint and Several Obligations. If there is more than one person, firm or corporation named as Franchisee or Guarantor, they shall be bound jointly and severally by the terms, covenants and agreements contained on the part of the Franchisee or Guarantor (as the case may be) under this Agreement. Any notice required or permitted by the terms of this Agreement may be given by or to any one of them and shall have the same force and effect as if given by or to all of them.

16.9 Further Assurances. Each of the Franchisee and the Guarantor agrees to execute such further assurances, agreements, and documents and to do and perform or cause to be done and perform such further acts and things that may be considered necessary or desirable by the Franchisor, acting reasonably from time to time to give effect to the terms and conditions of this Agreement.

16.10 Inurement. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

16.11 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of strikes, labor troubles, inability to procure materials or services, power failure, restrictive governmental laws

or regulations, riots, insurrection, war, terrorism, sabotage, health disasters or outbreaks, including an outbreak of any virus, acts of God or other reasons beyond the control of such party whether all of a like nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then the performance of such term, covenant or act is excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay; 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. However, the provisions of this Section 16.11 shall not in any way permit Franchisee to permanently close the Franchised Business or operate to excuse the Franchisee from the prompt:

(a) payment of any fees, Royalties, or other sums required to be paid to Franchisor or Franchisor's affiliates or subsidiaries by the terms of this Agreement; or

(b) performance of any of Franchisee's other obligations under this Agreement where such prompt performance is delayed, hindered or prevented by reason of lack of funds; or

(c) performance of any of Franchisee's other obligations under this Agreement where such performance is delayed, hindered or prevented by reason of Franchisee's fault or negligence, including Franchisee's failure to exercise reasonable due diligence; or

(d) performance of any of Franchisee's other obligations under this Agreement where the act of force majeure was caused by Franchisee or those persons for whom Franchisee is by law responsible.

16.12 Withholding Payment and Set-off. The Franchisee agrees that it shall not, on grounds of an alleged nonperformance by the Franchisor of any of its obligations or any other reason, withhold payment of any amount due to the Franchisor whatsoever. No endorsement or statement on any check or payment of any sum less than the full sum due to the Franchisor shall be construed as an acknowledgment of payment in full or an accord and satisfaction, and the Franchisor may accept and cash such check or payment without prejudice to its right to recover the balance due or pursue any other remedy provided herein or by law. The Franchisor may apply any payments made by the Franchisee against any past due indebtedness of the Franchisee as the Franchisor may see fit in its sole discretion. The Franchisor may, in its sole discretion, set off against any payment due to the Franchisee hereunder any outstanding debts of the Franchisee to the Franchisor, and may, at the Franchisor's option and sole discretion, pay the Franchisee's trade creditors out of any sum otherwise due to the Franchisee.

16.13 No Misrepresentations. The Franchisee and the Guarantor jointly and severally represent to the Franchisor, as an inducement to the Franchisor's entry into this Agreement, that the Franchisee and the Guarantor have made no misrepresentations in obtaining the Franchise Agreement and that all such related information Franchisee has provided or otherwise made available to Franchisor is true, complete, accurate, and not intentionally misleading.

16.14 Arbitration.

(a) Except as otherwise provided in this Section, any controversy or dispute arising out of, or relating to the franchise or this Agreement including, but not limited to, any claim by the Franchisee, any Guarantor or any person in privity with or claiming through, on behalf of or in the right of the Franchisee, concerning the entry into, performance under, or termination of this Agreement or any other agreement entered into by the Franchisor, or its subsidiaries or affiliates, and the Franchisee, any claim against a past or present employee, officer, director or agent of the Franchisor, any claim of breach of this Agreement and any claims arising under State or Federal laws, except for claims brought pursuant to the Lanham Act, 15 U.S.C. Sections 1051 *et seq.*, shall be submitted to final and binding arbitration as the sole and exclusive remedy for any such controversy or dispute.

(b) Unless prohibited by applicable law, any claim shall be made by filing a written demand for arbitration within one (1) year following the conduct, act or other event or occurrence first giving rise to the claim; otherwise, the right to any remedy shall be deemed forever waived and lost.

(c) Persons in privity with or claiming through, on behalf of or in the right of the Franchisee include, but are not limited to, spouses and other family members, heirs, executors, representatives, successors and assigns.

(d) Subject to this Section 16.14, the right and duty of the parties to this Agreement to resolve any disputes by arbitration shall be governed exclusively by the *Federal Arbitration Act*, 9 U.S.C. § 1 *et seq.*, as amended, and arbitration shall take place according to the Commercial Arbitration Rules of the American Arbitration Association in effect as of the date the demand for arbitration is filed.

(e) The arbitration shall be held in Phoenix, Arizona and conducted entirely in the English language. However, arbitration will not be used for any dispute which involves the Franchisee's continued usage of any of the Marks or the System, business concept or any issue involving injunctive relief against the Franchisee, all of which issues will be submitted to a court within the State of Arizona. The parties expressly consent to personal jurisdiction in the State of Arizona and agree that the state and federal court(s) will have exclusive jurisdiction over any such issues not subject to arbitration.

(f) Each party shall agree on one arbitrator selected from a panel of neutral arbitrators provided by the National Franchise Mediation Program of the CPR Institute for Dispute Resolution (located at New York, NY) and the arbitrator shall be chosen by the striking method. The parties each shall bear all of their own costs of arbitration; however, the fees of the arbitrator shall be divided equally between the parties. The arbitrator shall have no authority to amend or modify the terms of this Agreement. Each party further agrees that, unless such a limitation is prohibited by applicable law, the other party shall not be liable for punitive or exemplary damages and the arbitrator shall have no authority to award the same. The prevailing party shall be entitled to actual costs and attorneys' fees incurred in any such arbitration. The award or decision by the arbitrator shall be final and binding on the parties and may be enforced by judgment or order of a court having subject matter jurisdiction in the state of Arizona. The parties consent to the exercise of personal jurisdiction over them by such courts and to the

propriety of venue of such courts for the purpose of carrying out this provision; and they waive any objections that they would otherwise have concerning such matters.

(g) Parties to arbitration under this Agreement shall not include, by consolidation, joinder or in any other manner, any person, other than the Franchisee and Guarantor, in privity with or claiming through, in the right of or on behalf of the Franchisee or the Franchisor, unless both parties consent in writing. To the extent permitted by applicable law, no issue of fact or law shall be given preclusive or collateral estoppel effect in any arbitration hereunder, except to the extent such issue may have been determined in another proceeding between the Franchisor and the Franchisee or any person in privity with or claiming through, in the right of or on behalf of the Franchisee or the Franchisor.

(h) Notwithstanding any provisions in this Agreement to the contrary, this Section 16.14 will not apply to a dispute where (i) Franchisor brings 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 Franchisee or Guarantor. 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.

(i) The parties waive, to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which either party may have against the other arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agree that in the event of a claim or other proceeding contemplated by this Agreement, recovery shall be limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

16.15 Waiver of Jury Trial. In the event that any state or federal court asserts jurisdiction over a dispute between Franchisor and Franchisee or any Guarantor of Franchisee, Franchisor, Franchisee, and Guarantor each waive their right to a trial by jury. Franchisee, Guarantor, and Franchisor acknowledge that the parties' waiver of jury trial rights provides the parties with the mutual benefit of uniform interpretation of this Agreement and resolution of any dispute arising out of this Agreement or any aspect of the parties' relationship. Franchisee, Guarantor, and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit.

16.16 Remedies. The court or arbitrator will have the right to award any relief which it deems proper in the circumstances, including, without limitation, money damages (with interest on unpaid amounts from the date due), lost profits, specific performance, injunctive relief, and attorney's fees and costs. The parties agree that any claim for lost earnings or profits by Franchisee shall be limited to a maximum amount equal to the net profits of the Business for the prior year as shown on Franchisee's federal income tax return. The parties further agree that, in addition to such other damages awarded by the court, if this Agreement is terminated because

of Franchisee's default, Franchisee shall be liable to Franchisor for a lump sum amount equal to the net present value of the Royalties and Marketing Fund Contributions that would have become due following termination of this Agreement for the period this Agreement would have remained in effect but for Franchisee's default. Royalties and Marketing Fund Contributions for purposes of this Section shall be calculated based on the Business' average monthly Gross Sales for the twelve (12) months preceding the termination date.

16.17 Rules of Construction. This Agreement shall not be construed against the party preparing it, and shall be construed without regard to the identity of the person who drafted it or the party who caused it to be drafted and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product, (except that copyright in it shall remain vested in Franchisor), and each and every provision of this Agreement shall be construed as though all the parties to it participated equally in its drafting; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

16.18 Disclosure Document. Franchisee acknowledges and confirms having received (as one document, and at one time) Franchisor's disclosure document containing disclosures required by federal or state franchise laws regarding the opportunity to acquire the rights to open a Thai Express Store, not less than fourteen (14) calendar days before the earlier of:

(a) the signing by Franchisee of this Agreement or any other agreement relating to the franchise; and

(b) the payment of any consideration by Franchisee or on Franchisee's behalf to Franchisor or its affiliates, relating to the franchise.

16.19 RESERVED.

16.20 Legal Fees. If Franchisee is in default under this Agreement, then Franchisee shall pay Franchisor all damages, costs, and expenses (including legal fees) that Franchisor incurs as a result of Franchisee's default under this Agreement or any other agreement between Franchisee (and its affiliates) and Franchisor (and our affiliates).

16.21 Social Media. Franchisee acknowledges that the use of any social networking website, including but not limited to Facebook, YouTube, LinkedIn, and Twitter, which exploits, utilizes, displays, or otherwise makes use of any of the Marks or Franchisor's intellectual property is Franchisor's sole property, and Franchisee shall promptly submit to Franchisor all passwords for such site(s) and any changes to a password shall be submitted to Franchisor within three (3) days of the change. Franchisor shall be granted full access to any social networking sites or webpages. Franchisee shall have no right, title or interest to any webpage on any of Franchisee's social networking sites including, but not limited to, all "fans", "followers", "friends" and "contacts" associated therewith which mentions, uses or refers in any way to the Marks or Franchisor's intellectual property even if such webpage is established by Franchisee or otherwise held in Franchisee's name or by any Guarantor. Upon expiration, transfer or termination of this Agreement, Franchisee shall immediately take whatever steps are necessary to cancel or dismantle any such social networking account or webpage or transfer the account or webpage and all related information, including all "fans", "followers", "friends" and "contacts" associated with such accounts or webpages, to Franchisor or as Franchisor may otherwise direct.



16.22 Franchisor's Use of Reasonable Business Judgment. Whenever Franchisor reserves discretion in a particular area or where Franchisor agrees to exercise its rights reasonably or in good faith, Franchisor will satisfy its obligations whenever it exercises reasonable business judgment ("**Reasonable Business Judgment**") in making a decision or exercising a right. Franchisor's decisions or actions will be deemed to be the result of Reasonable Business Judgment, even if other reasonable or even arguably preferable alternatives are available, if Franchisor's decisions or actions are intended, in whole or significant part, to promote or benefit the System generally even if the decision or action also promotes Franchisor's financial or other individual interests. Examples of items that will promote or benefit the System include, without limitation, enhancing the value of the Marks, improving customer service and satisfaction, improving product quality, improving uniformity, enhancing or encouraging modernization and improving the competitive position of the System.

16.23 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.

## 17. **ACKNOWLEDGMENT AND FRANCHISE DISCLOSURE QUESTIONNAIRE**

Franchisee and Guarantor represent and warrant that they have completed and executed the Acknowledgement, attached as **Schedule B**, and the Statement of Franchisee, attached as **Schedule I**, honestly and to the best of their actual knowledge as of the date of this Agreement.

Both Franchisee and the Guarantor jointly and severally acknowledge and agree that:

(a) Franchisee and each Guarantor has received, has had ample time to read, and has read and understands this Agreement, including all Schedules attached thereto;

(b) Franchisor has encouraged Franchisee and Franchisee has had an opportunity to be advised by professional advisors of Franchisee's own choosing regarding all pertinent aspects of this Agreement, the franchise granted by Franchisor and the business venture contemplated by this Agreement. If Franchisee did not use a professional advisor, Franchisee represents that Franchisee is satisfied relying on its own education, experience, and skill in evaluating the merits of a franchise offering;

(c) the success of the business venture contemplated to be undertaken by Franchisee pursuant to this Agreement is speculative and depends, to a large extent, on Franchisee's ability as an independent corporation or business person, the acceptance of the business in the community, the total square footage of the Store, and, most significantly, the qualities of Franchisee's character, business acumen, general drive and ambition as owner/manager and the employees of the Business and other factors beyond Franchisor's control;

(d) Franchisor's approval of the location for the Store does not guarantee the Store's success at that location and that the business may lose money or fail.

Franchisee is solely responsible for identifying the location for the Store. Franchisor's review of a lease or purchase agreement, or any advice or recommendation offered by Franchisor, shall not constitute a representation or guarantee that Franchisee will succeed at the location of the Store nor constitute an expression of Franchisor's opinion regarding the terms of such lease or purchase agreement. 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. Franchisee acknowledges and agrees that Franchisee shall solely rely on Franchisee's review and Franchisee's lawyer's review of any such lease or agreement;

(e) Franchisee and Guarantor have entered into this Agreement after making an independent investigation of the proposed Business, and Franchisee is not relying upon any representation or warranty, express or implied, by Franchisor or Franchisor's officers, directors, employees or agents as to revenue, profits or success which the you or the Guarantor might be expected to realize, nor has anyone made any other warranty or representation which is not expressly set out in this Agreement to induce Franchisee or any Guarantor to execute the Agreement;

(f) both Franchisee and each Guarantor acknowledges having received Franchisor's Disclosure Document and its exhibits, including this Agreement at least fourteen (14) calendar days before Franchisee signed this Agreement and that Franchisee signed a Receipt for the Disclosure Document;

(g) Franchisee understands that it is Franchisee's responsibility to obtain financing for its Store. In particular, Franchisor may assist Franchisee by providing Franchisee with the names of certain independent consultants who Franchisee could contact for the purposes of preparing a business plan appropriate for Franchisee's Store (in any case, without any personal or corporate liability to Franchisor). In such event, the choice to contact any such consultant will be completely Franchisee's and Franchisee may choose to contact another consultant altogether for the aforesaid purpose. In any event, apart from being more confident that Franchisee will be in a position to present to Franchisee's financial institution a business plan prepared under the guidance of a professional, Franchisor does not directly or indirectly benefit financially or otherwise from making such introductions. Provided further that Franchisee acknowledges that should Franchisor provide Franchisee with the names of such independent consultants, Franchisor shall assume no personal or corporate liability in this regard;

(h) if Franchisee or any Guarantor is NOT a citizen of the United States of America, purchasing a Thai Express Franchise may not entitle Franchisee or the Guarantor to a Visa and work permit to live and work in the United States of America and that it is solely the responsibility of the Franchisee to make the appropriate arrangements in this regard;

(i) all services provided by Franchisor for Franchisee's benefit, including but not limited to, technical and marketing advice, suggestions or recommendations are to be used by Franchisee at its own risk. Because any advice, suggestion or recommendation rendered is necessarily limited in scope to the extent that it may not consider local custom, practice, law or other nuance, Franchisor is unable to make any warranty or representation, either express or implied, with respect to the accuracy,

reliability or completeness of the information provided or the result of the use of the information provided;

(j) it shall be deemed a breach of this Agreement if Franchisee's spouse engage in any conduct prohibited by this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF** this Agreement has been executed on the date first above written.

**FRANCHISOR:**

MTY FRANCHISING USA, INC.

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

I have authority to bind the Corporation

**FRANCHISEE:**

[FRANCHISEE]

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

I have authority to bind the legal entity

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

I have authority to bind the legal entity

**GUARANTOR:**

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

**GUARANTOR:**

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

**GUARANTOR:**

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

**SCHEDULE A  
LICENSED LOCATION AND DESIGNATED MANAGER**

The “**Store**” shall only be the following street address:

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The Lease commencement date is \_\_\_\_\_.

The Lease Expiration Date is \_\_\_\_\_.

The Designated Manager is \_\_\_\_\_.

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**SCHEDULE B  
ACKNOWLEDGMENT**

**FROM:** \_\_\_\_\_ (“Franchisee”)  
**AND FROM:** \_\_\_\_\_ (“Guarantor”)  
**TO:** **MTY FRANCHISING USA, INC.**  
**RE:** **Thai Express Franchise Agreement dated the \_\_\_\_\_, 20\_\_**  
**(“Franchise Agreement”)**

In consideration of the Franchisor executing the Franchise Agreement and granting the Franchisee a franchise pursuant to the Franchise Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each of the Franchisee and the Guarantor acknowledge and agree as follows:

1. Each of the Franchisee and the Guarantor acknowledge that:
  - (a) They have received, have had ample time to read, and have read the Franchise Agreement, including all Schedules attached thereto;
  - (b) The Franchisee and the Guarantor have had an opportunity to be advised by advisors of their own choosing regarding all pertinent aspects of the franchise granted by the Franchisor and the business venture contemplated by the Franchise Agreement;
  - (c) The Franchisor may receive a rebate, fee or commission in connection with the goods, services or facilities purchased, leased, or obtained by the Franchisee from designated suppliers and that the benefit of such rebates or commissions may not necessarily be passed onto the Franchisee and that the Franchisor is entitled to keep such rebates or commissions for its own use and benefit;
  - (d) The success of the business venture contemplated to be undertaken by the Franchisee pursuant to the Franchise Agreement is speculative and depends, to a large extent, on the ability of the Franchisee as an independent corporation or business person, the acceptance of the business in the community and other factors;
  - (e) The Franchisor, its officers, directors, agents, employees or contractors do not make any representation or warranty as to the potential success of the business venture herein contemplated, nor did any one of them induce the Franchisee or the Guarantor to enter into the Franchise Agreement in reliance upon any such representation or warranty;
  - (f) They each have entered into the Franchise Agreement after making an independent investigation of the proposed business, and that they are not relying upon any representation or warranty, express or implied, by the Franchisor or its officers, directors, employees or agents as to revenue, profits or success which the Franchisee or the Guarantor might be expected to realize, nor has anyone made any other warranty or representation which is not expressly set out in the Franchise Agreement to induce the Franchisee or the Guarantor to execute the Franchise Agreement.

(g) While financing is normally arranged by Franchisee with the financial institution of its choice, Franchisor may, however, in Franchisor's sole and absolute discretion, choose to assist Franchisee in developing a business plan and presenting it on Franchisee's behalf. In particular, Franchisor may assist Franchisee by providing Franchisee with the names of certain independent consultants who Franchisee could contact for the purposes of preparing a business plan appropriate for Franchisee's Store (in any case, without any personal or corporate liability of Franchisor). In such event, the choice to contact any such consultant will be completely Franchisee's and Franchisee may choose to contact another consultant altogether for the aforesaid purpose. In any event, apart from being more confident that Franchisee will be in a position to present to Franchisee's financial institution a business plan prepared under the guidance of a professional, Franchisor does not directly or indirectly benefit financially or otherwise from making such introductions. Provided further that Franchisee acknowledges that should Franchisor provide Franchisee with the names of such independent consultants, Franchisor shall assume no personal or corporate liability in this regard.

2. When used in this Acknowledgment, all words and expressions which are capitalized shall have the same meaning as given thereto in the Franchise Agreement, unless otherwise defined herein.

**[Signatures on following page]**

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By signing below, you indicate that you fully understand and accept all of the risks described above and all other risks not described above that may affect your ability to profitably operate your franchise. Any questions or doubts which you may have about the Franchisor or the Franchise Agreement are stated as follows:

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Dated this \_\_\_\_\_, 20\_\_.

**FRANCHISEE**

[Franchisee]

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

I have authority to bind the legal entity

\_\_\_\_\_  
Witness

Witness

**GUARANTOR**

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

\_\_\_\_\_  
Witness

**GUARANTOR**

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

\_\_\_\_\_  
Witness

**GUARANTOR**

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

\_\_\_\_\_  
Witness

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**SCHEDULE C  
ADDENDUM TO LEASE**

This Addendum to Lease, dated \_\_\_\_\_, 20\_\_\_\_, is entered into by and between \_\_\_\_\_ (“**Lessor**”), and \_\_\_\_\_ (“**Lessee**”).

A. The parties hereto have entered into a certain Lease Agreement, dated \_\_\_\_\_, 20\_\_\_\_, and pertaining to the premises located at \_\_\_\_\_ (“**Lease**”).

B. Lessor acknowledges that Lessee intends to operate a Thai Express franchise from the leased premises (“**Premises**”) pursuant to a Franchise Agreement (“**Franchise Agreement**”) with MTY Franchising USA, Inc. (“**Franchisor**”) under the name Thai Express or other name designated by Franchisor (“**Franchised Business**”).

C. The parties now desire to amend the Lease in accordance with the terms and conditions contained herein.

**NOW, THEREFORE**, it is hereby mutually covenanted and agreed between Lessor and Lessee as follows:

1. Remodeling and Decor. Lessor agrees that Lessee shall have the right to remodel, equip, paint and decorate the interior of the Premises and to display such proprietary marks and signs on the interior and exterior of the Premises as Lessee is reasonably required to do pursuant to the Franchise Agreement and any successor franchise agreement under which Lessee may operate a Franchised Business on the Premises.

2. Assignment. Lessee shall have the right to assign all of its right, title and interest in the Lease to Franchisor, its parent, or any of its affiliates, at any time during the term of the Lease, including any extensions or renewals thereof, without first obtaining Lessor’s consent. However, no assignment shall be effective until such time as Franchisor or its designated affiliate gives Lessor written notice of its acceptance of such assignment, and nothing contained herein or in any other document shall constitute Franchisor or its designated affiliate a party to the Lease, or guarantor thereof, and shall not create any liability or obligation of Franchisor, its parent, or its affiliates unless and until the Lease is assigned to, and accepted in writing by, Franchisor, its parent, or its designated affiliate. In the event of any assignment, Lessee shall remain liable under the terms of the Lease. Franchisor shall have the right to reassign the Lease to another franchisee without the Landlord’s consent in accordance with Section 4(a)

3. Default and Notice.

(a) In the event there is a default or violation by Lessee under the terms of the Lease, Lessor shall give Lessee and Franchisor written notice of such default or violation within a reasonable time after Lessor receives knowledge of its occurrence. If Lessor gives Lessee a default notice, Lessor shall contemporaneously give Franchisor a copy of such notice. Franchisor will notify Lessor whether it intends to cure the default and take an automatic assignment of Lessee’s interest as provided in Paragraph 4(a). Franchisor will have an additional fifteen (15) days from the expiration of Lessee’s cure period in which it may exercise the option, but it is not obligated, to cure the default or violation.

(b) All notices to Franchisor shall be sent by registered or certified mail, postage prepaid, to the following address:

MTY Franchising USA, Inc.  
9311 E. Via De Ventura  
Scottsdale, AZ 85258  
Attention: Legal Department

Franchisor may change its address for receiving notices by giving Lessor written notice of such new address. Lessor agrees that it will notify both Lessee and Franchisor of any change in Lessor's mailing address to which notices should be sent.

(c) Following Franchisor's approval of such Lease, Lessee agrees not to terminate, or in any way alter or amend the same during the Term of the Franchise Agreement or any Interim Period thereof without Franchisor's prior written consent, and any attempted termination, alteration or amendment shall be null and void and have no effect as to Franchisor's interests thereunder; and a clause to such effect shall be included in such Lease.

4. Termination or Expiration.

(a) Upon Lessee's default and failure to cure a default under either the Lease or the Franchise Agreement, Franchisor will, at its option, have the right, but not the obligation, to take an automatic assignment of Lessee's interest and at any time thereafter to re-assign the Lease to a new franchisee without Landlord's consent and to be fully released from any and all liability to Landlord upon such reassignment.

(b) Upon the expiration or termination of either the Lease or the Franchise Agreement, Landlord will cooperate with and assist Franchisor in securing possession of the Premises and if Franchisor does not elect to take an assignment of the Lessee's interest, Lessor will allow Franchisor to enter the Premises, without being guilty of trespass and without incurring any liability to Lessor, to remove all signs, awnings, and all other items identifying the Premises as a Franchised Business and to make such other modifications (such as repainting) as are reasonably necessary to protect the Thai Express marks and system, and to distinguish the Premises from a Franchised Business. In the event Franchisor exercises its option to purchase assets of Lessee, Lessor shall permit Franchisor to remove all such assets being purchased by Franchisor.

5. Consideration; No Liability.

(a) Lessor hereby acknowledges that the provisions of this Addendum to Lease are required pursuant to the Franchise Agreement under which Lessee plans to operate its business and the Lessee would not lease the Premises without this Addendum.

(b) Lessor further acknowledges that Lessee is not an agent or employee of Franchisor and the Lessee has no authority or power to act for, or to create any liability on behalf of, or to in any way bind Franchisor or any affiliate of Franchisor, and that Lessor has entered into this Addendum to Lease with full understanding that it creates no duties, obligations or liabilities of or against Franchisor or any affiliate of Franchisor.

6. Sales Reports. If requested by Franchisor, Lessor will provide Franchisor with whatever information Lessor has regarding Lessee's sales from its Franchised Business.

7. Amendments. No amendment or variation of the terms of the Lease or this Addendum to the Lease shall be valid unless made in writing and signed by the parties hereto.

8. Reaffirmation of Lease. Except as amended or modified herein, all of the terms, conditions and covenants of the Lease shall remain in full force and effect and are incorporated herein by reference and made a part of this Agreement as though copies herein in full.

9. Beneficiary. Lessor and Lessee expressly agree that Franchisor is a third party beneficiary of this Addendum.

**IN TESTIMONY WHEREOF**, witness the signatures of the parties hereto as of the day, month and year first written above.

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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**SCHEDULE D  
MTY FRANCHISING USA, INC.  
REQUEST FOR PRE-AUTHORIZED PAYMENTS**

**INSTRUCTIONS:**

PAYMENT AMOUNT: All amounts due and owing under the Franchise Agreement with MTY Franchising USA, Inc. d.b.a. Thai Express dated \_\_\_\_\_, 20\_\_.

DATES OF PAYMENT: As outlined in the Franchise Agreement with MTY Franchising USA, Inc. d.b.a. Thai Express dated \_\_\_\_\_, 20\_\_.

BANK ACCOUNT NUMBER: \_\_\_\_\_

TRANSIT NUMBER: \_\_\_\_\_

BANK & BRANCH: \_\_\_\_\_

NAME OF ACCOUNT IN BANK RECORDS: \_\_\_\_\_

SIGNING OFFICER SIGNATURE: \_\_\_\_\_

**PLEASE COMPLETE THIS FORM AND RETURN IT TO FRANCHISOR ALONG WITH ONE OF YOUR UNSIGNED CHECKS MARKED VOID (FOR VERIFICATION PURPOSES) FROM YOUR BANK OR TRUST COMPANY**

I/We authorize MTY Franchising USA, Inc. (hereinafter referred to as “**Thai Express**”) and/or any of its subsidiaries or affiliates to debit the account of the undersigned maintained with the financial institution and according to the dates indicated above, in accordance with the PAYMENT AUTHORIZATION below, for purposes of paying weekly royalties, marketing contributions and any other outstanding payments due to Thai Express from time to time pursuant to the Franchise Agreement between Thai Express and the undersigned.

**AUTHORIZATION TO HONOR PAYMENTS**

NAME OF BANK: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

You are hereby requested and authorized to pay and debit my/our account at your office, or at another branch of your institution if it is transferred there; all checks drawn on you on my behalf and made payable to Thai Express and/or any of its subsidiaries or affiliates or drawn on you by Thai Express and/or any of its subsidiaries or affiliates; and all amounts specified on any magnetic or computer produced paper tapes requesting that you pay Thai Express and/or any of its subsidiaries or affiliates.

In consideration of your acting as aforesaid, it is agreed that your treatment of each check and/or tape and your rights with respect to it shall be the same as if it were signed by the undersigned personally, authorizing and requesting you to pay and credit such amount to the Thai Express and/or any of its subsidiaries or affiliates, debiting our account and failure to pay shall give no liability on your part, regardless of the loss or damage.

Any delivery of this authorization to you will constitute delivery by the undersigned.

I/we have read and understood the terms of this Authorization and acknowledge receipt of a copy thereof.

*(The signature appearing below must be the same as the signature appearing in the signature file of the financial institution identified above.)*

DATED at \_\_\_\_\_ this \_\_\_\_\_, 20\_\_\_\_.

**AUTHORIZED SIGNATURE(S):**

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

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## SCHEDULE E

### MTY FRANCHISING USA, INC. GUARANTY AND INDEMNITY

**TO: MTY FRANCHISING USA, INC. ("Franchisor")**

In order to induce the Franchisor to enter into a franchise agreement dated \_\_\_\_\_, 20\_\_\_\_[,as amended,] (collectively "**Franchise Agreement**") between each of the Franchisor and \*[insert corporate name of franchisee]\* ("**Franchisee**") and the undersigned ("**Guarantor**") for the Thai Express restaurant located at \_\_\_\_\_ ("**Location**"), and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Guarantor enters into the Guaranty and Indemnity and covenants with the Franchisor as follows:

1. The Guarantor hereby guarantees the due and punctual payment of all amounts stated to be payable on the part of the Franchisee under the terms of the Franchise Agreement or any other agreement entered into by Franchisee (or its affiliate(s)) with Franchisor or Franchisor's affiliate(s), and the prompt and complete performance of all of the terms, covenants, conditions and agreements contained on the part of the Franchisee pursuant to the Franchise Agreement or any other agreement.

2. The Guarantor further agrees to indemnify and save harmless the Franchisor and/or its affiliates from all losses, costs or damages arising out of any failure on the part of the Franchisee to pay the amounts referred to in Section 1 hereof or to perform any of the terms, covenants, conditions, or agreements referred to in Section 1 hereof.

3. This Guaranty is absolute and unconditional and applicable to all past and future indebtedness of the Franchisee without limit and however incurred and the Guarantor shall not be released, discharged, mitigated, impaired or affected by:

(a) any settlements, extensions of time, indulgences, or modifications which the Franchisor may extend to or make with the Franchisee or any co-surety in respect of any one or more of the provisions of the Franchise Agreement or any other agreement; or

(b) any waiver by the Franchisor and/or its affiliates of or any failure or delay on the part of the Franchisor and/or its affiliates, to enforce any of the terms, covenants, conditions or provisions of the Franchise Agreement or any other agreement by and between Franchisee, Franchisor or their affiliates; or

(c) any amendments or alteration to the Franchise Agreement or any of the covenants or terms thereof; or

(d) any assignment of the Franchise Agreement by the Franchisee or the Franchisor.

The Guarantor hereby expressly waives notice of the acceptance of this Guaranty and Indemnity and all notices of non-performance, non-payment, or non-observance on the part of the Franchisee of the terms, covenants, conditions and provisions of the Franchise Agreement.

4. In the event of any default of the part of the Franchisee under the Franchise Agreement or any other agreement by and between Franchisee, Franchisor or their affiliates, the Franchisor shall not be required prior to enforcing this Guaranty and Indemnity to:

(a) proceed against the Franchisee or pursue any rights or remedies with respect to the Franchise Agreement or other agreement;

(b) proceed against or exhaust any security of the Franchisee or any other person held by the Franchisor; or

(c) pursue any other remedies whatsoever in the power of the Franchisor.

5. The Franchisor shall have the right to enforce this Guaranty and Indemnity regardless of the release and/or discharge of the Franchisee or of any other surety or of any other security held by the Franchisor or by others whether by agreement or by operation of law.

6. Without limiting the generality of the foregoing, the liability of the Guarantor under this Guaranty and Indemnity shall not be deemed to be waived, relapsed, discharged, impaired or affected by any reason of the release or discharge of the Franchisee or any surety in any receivership, bankruptcy, winding-up, or other creditor's proceeding.

7. No action or proceeding brought or instituted pursuant to this Guaranty and Indemnity and no recovery or judgment in pursuance thereof, shall be a bar or defense to any further action or proceeding which may be brought under this Guaranty and Indemnity by reason of any further default or defaults under this Guaranty and Indemnity or in the performance and observance of the terms, conditions and provisions of the Franchise Agreement.

8. No modification of this Guaranty and Indemnity shall be effective unless it is in writing and signed by both the Guarantor and the Franchisor.

9. This Guaranty and Indemnity shall, without limiting the generality of the foregoing, bind the Guarantor in the same manner as though the Guarantor was the Franchisee named in the Franchise Agreement.

10. If two or more individuals execute this Guaranty and Indemnity as Guarantor, the liability of each such individual hereunder shall be joint and several.

11. This Guaranty and Indemnity shall remain in full force and effect for such period of time as the Franchise Agreement and any notation, extension or renewal thereof remains in force and effect, and shall continue through the entire Term of the Franchise Agreement as may be renewed or extended, and so long as any obligation thereunder remains outstanding and undischarged.

12. There are no representations, collateral agreements, or conditions with respect to this Guaranty and Indemnity or affecting the liability of the Guarantor other than as contained herein.

13. The Guarantor shall be bound by any account settled between the Franchisor and the Franchisee and, if such account has not been so settled, any account stated by the Franchisor shall be accepted by the Guarantor as conclusive evidence of the amount which at the date of the account is due and owing by the Franchisee to the Franchisor.

14. Any notice which the Franchisor wishes to serve on the Guarantor shall be sufficiently given if served personally on the Guarantor or mailed by prepaid registered mail addressed to the Guarantor at the address indicated below and every such notice shall be deemed to have been given on the day it was personally served, or if mailed, on the third (3rd) business day following the day on which it was mailed. The Guarantor may designate, by notice in writing to the Franchisor, a substitute address for service. If two or more persons are named as Guarantor, any notice hereunder shall be deemed to have been given to all such persons are served personally or mailed in the foregoing manner to any one or more of such persons.

15. All of the terms, agreements and conditions of this Guaranty and Indemnity shall extend to and be binding upon the Guarantor and the Guarantor's heirs, executors, administrator, successors and assigns and shall inure to the benefit of and may be enforced by the Franchisor, its affiliates, successors and assigns.

16. When used in this Guaranty and Indemnity, all words or expressions which are capitalized shall have the same meaning as given thereto in the Franchise Agreement.

17. The Guarantor represents, acknowledges and agrees that:

(a) he or she has obtained independent legal advice in connection with this Guaranty and Indemnity;

(b) he or she has read this Guaranty and Indemnity in its entirety and has full knowledge of its contents;

(c) he or she understands his or her rights, duties and obligations and all of the terms, conditions and representations contained in the Guaranty and Indemnity and the consequences thereof;

(d) he or she is subject to no compulsion or undue influence from the Franchisor; and

(e) he or she is signing this Guaranty and Indemnity freely, voluntarily and without constraint.

18. [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.]

**[Signatures on following page]**



Dated at \_\_\_\_\_ this \_\_\_\_\_, 20\_\_.

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

**GUARANTOR**

\_\_\_\_\_  
[insert full legal name on birth certificate]

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

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**SCHEDULE F**

**SHAREHOLDERS/MEMBERS/PARTNERS**

The shareholders, members, or partners (collectively the “**Shareholders**”) of the Franchisee and their respective shareholdings are as follows:

<u>NAME OF SHAREHOLDER</u>	<u>NUMBER &amp; DESIGNATION OF SHARES</u>
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**SCHEDULE G**

**ADDRESS FOR NOTICE**

Until notice of an alternate address is given in accordance with the Franchise Agreement, the addresses for notice for the Franchisee and the Guarantor shall be as follows:

**If to the Franchisee at:**

\_\_\_\_\_

e-mail address: \_\_\_\_\_

**If to the Guarantor at:**

\_\_\_\_\_

\_\_\_\_\_

e-mail address: \_\_\_\_\_

**If to the Franchisor at:**

MTY Franchising USA, Inc.  
9311 E. Via De Ventura  
Scottsdale, Arizona 85258  
Attention: Legal Department

## SCHEDULE H

### COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS, ADDRESSES, AND LISTINGS

This Collateral Assignment of Telephone Numbers, Addresses, and Listing (“**Assignment**”) is entered into this \_\_\_\_\_, 20\_\_\_\_, in accordance with the terms of that certain MTY Franchising USA, Inc. Franchise Agreement (“**Franchise Agreement**”) between \_\_\_\_\_ (“**Franchisee**”), and MTY Franchising USA, Inc., a Tennessee corporation (“**Franchisor**”), executed concurrently with this Assignment, under which Franchisor granted Franchisee the right to own and operate a Thai Express Store located at \_\_\_\_\_ (“**Franchise Business**”).

**FOR VALUE RECEIVED**, Franchisee hereby assigns to Franchisor those certain telephone numbers, addresses, domain names, locators, directories and listings (collectively, the “**Numbers, Addresses, and Listings**”) associated with Franchisor’s trade and service marks and used from time to time in connection with the operation of the Franchise Business at the address provided above. 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 telephone, Internet, email, electronic network, directory, and listing entities with which Franchisee has dealt (all such entities are collectively referred to herein as “**Provider Companies**”) to effectuate the assignment pursuant to the terms hereof.

Upon termination or expiration of the Franchise Agreement Franchisor shall have the right and is hereby empowered to effectuate the Assignment of the Numbers, Addresses, and Listings and, in such event, Franchisee shall have no further right, title or interest in the Numbers, Addresses, and Listings, and shall remain liable to the Provider Companies for all past due fees owing to the Provider Companies on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, upon termination or expiration of the Franchise Agreement, Franchisor shall have the sole right to an interest in the Numbers, Addresses, and Listings, and Franchisee appoints Franchisor as Franchisee’s true and lawful attorney-in-fact to direct the Provider Companies to assign the 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 notify the Provider Companies to assign the Numbers, Addresses, and Listings to Franchisor. If Franchisee fails to promptly direct the Provider Companies to assign the Numbers, Addresses and Listings to Franchisor, Franchisor shall direct the Provider Companies to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the Provider Companies may accept Franchisor’s written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor’s exclusive rights in and to the Numbers, Addresses, and Listings upon such termination or expiration and that such assignment shall be made automatically and effective immediately upon Provider Companies’ receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Provider Companies require that the parties execute the Provider Companies’ assignment forms 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.

**ASSIGNEE**

**ASSIGNOR**

**MTY FRANCHISING USA, INC.**

**[FRANCHISEE]**

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

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

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

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**SCHEDULE I**

**STATEMENT OF FRANCHISEE**

**[Note: Dates and Answers Must be Completed by the Prospective Franchisee]**

In order to make sure that no misunderstanding exists between you, the Franchisee, and us, MTY Franchising USA, Inc. (also called "Thai Express," the "Franchisor" or "we") and to make sure that no violations of law might have occurred, and understanding that we are relying on the statements you make in this document, you assure us as follows:

A. The following dates are true and correct:

- | Date           | Initials |  |
|----------------|----------|--|
| 1. _____, 20__ | _____    | The date on which I received a Franchise Disclosure Document regarding the Thai Express Business.  |
| 2. _____, 20__ | _____    | The date of my first face-to-face meeting with an employee of MTY Franchising USA, Inc. to discuss a possible purchase of a Thai Express Business. |
| 3. _____, 20__ | _____    | The date on which I received a completed copy (other than signatures) of the Franchise Agreement which I later signed.                             |
| 4. _____, 20__ | _____    | The date on which I signed the Franchise Agreement.  |
| 5. _____, 20__ | _____    | The earliest date on which I delivered cash, check or other consideration to an officer of MTY Franchising USA, Inc.                               |

B. Representations.

1. No oral, written, visual or other promises, agreements, commitments, representations, understandings, "side agreements," options, right-of-first-refusal or otherwise have been made to or with me with respect to any matter (including but not limited to advertising, marketing, site location, operational, marketing or administrative assistance, exclusive rights or exclusive or protected territory or otherwise), nor have I relied in any way on same, except as expressly set forth in the Franchise Disclosure Document or Franchise Agreement or an attached written Addendum signed by me and Thai Express, except as follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(If none, you should write NONE)

2. No oral, written, visual or other promises, agreements, commitments, representation, understandings, "side agreements" or otherwise which expanded upon or were inconsistent with the Franchise Disclosure Document or the Franchise Agreement or any attached written addendum signed by me and an officer of Thai Express, were made to me by

any person or entity, nor have I relied in any way on same, except as follows: \_\_\_\_\_  
\_\_\_\_\_

(If none, you should write NONE)

3. Other than what was previously disclosed to you in the *Thai Express* Federal Disclosure Document to which you acknowledge receipt thereof, no oral, written, visual or other claim or representation (including but not limited to charts, tables, spreadsheets or mathematical calculations to demonstrate actual or possible results based on a combination of variables, such as multiples of price and quantity to reflect gross sales, or otherwise,) which stated or suggested a specific level or range of actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise (or from which such items might be ascertained) from Thai Express Stores, was made to me by any person or entity, nor have I relied in any way on any such, except as follows: \_\_\_\_\_

(If none, you should write NONE)

4. No contingency, prerequisite, reservation or otherwise exists with respect to any matter (including but not limited to my obtaining financing, or my fully performing any of my obligations), nor have I relied in any way on same, except as expressly set forth in the Franchise Agreement or any attached written Addendum signed by me and Thai Express: \_\_\_\_\_

(If none, you should write NONE)

5. The individuals signing for me constitute all of the executive officers, partners, shareholders, investors and/or principals. Each of such individuals has reviewed the Franchise Disclosure Document and all exhibits and carefully read, discussed, understands and agrees to the Franchise Agreement, each attached written Addendum and any personal guaranties.

6. I have had an opportunity to consult with an independent professional advisor, such as an attorney or accountant, prior to signing any binding documents or paying any sums, and Thai Express has strongly recommended that I obtain such independent advice. I have also been strongly advised by Thai Express to discuss my proposed purchase of a Thai Express Store with any existing Thai Express franchisees prior to signing any binding documents or paying any sums and Thai Express has supplied me with a list of all existing franchisees.

7. I understand that (a) entry into any business venture necessarily involves some unavoidable risk or loss or failure; (b) while the purchase of a franchise may improve the chances for success, the purchase of a Thai Express Store or any other franchise is a speculative investment; (c) investment beyond that outlined in the Franchise Disclosure Document may be required to succeed; (d) there exists no guaranty against possible loss or failure in this or any other business; and e) the most important factors in the success of any Thai Express Store, including the one to be operated by me, are my personal business skills, which include marketing, sales, and management, and require sound judgment and extremely hard work.

If there are any matters inconsistent with the statements in this document or if anyone has suggested that you sign this document without all of its statements being true, correct and complete, immediately inform Thai Express via John Wuycheck (Phone: (480) 362-4800).

You understand and agree that we do not furnish, or authorize our salespersons, brokers or others to furnish, any oral or written information concerning actual or potential sales, costs, income, expenses, profits, cash flow, tax effects or otherwise (or information from which such items might be ascertained), from franchise or non-franchised units, that no such results can be assured or estimated, and that actual results will vary from unit to unit.

You understand and agree to all of the foregoing and represent and warrant that all of the above statements are true, correct and complete.

**FRANCHISEE:**

[FRANCHISEE]

By:

\_\_\_\_\_  
[Name, Title]

By:

\_\_\_\_\_  
[Name, Title]

**FRANCHISOR:**

MTY FRANCHISING USA, INC.

By:

\_\_\_\_\_  
[Name, Title]

Date



## SCHEDULE J

### SECURITY AGREEMENT

**BETWEEN FRANCHISEE:** \_\_\_\_\_ [Name(s) of Franchisee and, if applicable, a corporation incorporated under the laws of the State of \_\_\_\_\_] having its/his/her/their principal office/residence at \_\_\_\_\_, in the City of \_\_\_\_\_, State of \_\_\_\_\_ [Zip code] (the "**Franchisee**")

- and -

**MTY FRANCHISING USA, INC.**, a corporation incorporated under the laws of the State of Tennessee, having its principal office at 9311 E. Via de Ventura, Scottsdale, Arizona 85258 ("**Franchisor**")

#### **BACKGROUND:**

- A. Franchisor is franchisor of Thai Express™ System in the United States ("**System**") and, in that capacity, has granted to Franchisee a franchise to operate a Thai Express™ Store in accordance with the System.
- B. The Franchisee has entered into a Franchise Agreement with Franchisor, dated as set forth in Part 1 of **Schedule A** attached to this Security Agreement ("**Franchise Agreement**"), which is part of the Franchise Documents (as defined in this Security Agreement). Under the Franchise Agreement, Franchisee will own, acquire or establish a Thai Express Store ("**Store**") now located or to be located as set forth in Part 3 of **Schedule A**.
- C. Under the Franchise Agreement, Franchisee is required to grant Franchisor a security interest in the Store, as collateral for Royalties, Marketing Fund contributions, and such amounts as Franchisee may owe to Franchisor from time to time under the Franchise Documents.

#### **AGREEMENT:**

For good and valuable consideration (the receipt and sufficiency of which each of the Parties acknowledges), the Parties agree as follows:

#### **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** Terms used in this Security Agreement, which are defined in the UCC have the meanings given in the UCC. In addition:

1.1.1 "**Collateral**" means the property of the Franchisee which forms the subject matter of the Security Interest created by Section 2 of this Security Agreement.

1.1.2 "**Franchise Agreement**" shall have the meaning set forth in the Background, Paragraph B.

1.1.3 "**Franchise Documents**" means, collectively, this Security Agreement, UCC Financing Statements, any sublease, any assignment of lease,

assignment of telephone numbers and listing, construction agreement and any other document or instrument executed in connection with the Franchise Agreement.

1.1.4 “**Franchisee’s Franchised Business**” means the Store operated by the Franchisee at the Premises pursuant to the Franchise Documents.

1.1.5 “**Holiday**” means Saturday, Sunday and any other legal holiday in the United States of America.

1.1.6 “**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, property, condition (financial or otherwise) or prospects of Franchisee, (b) the ability of Franchisee to perform its obligations under this Security Agreement, or any of the other Franchise Documents, or (c) the validity or enforceability of this Security Agreement or any of the other Franchise Documents hereunder or thereunder.

1.1.7. “**Obligations**” means all obligations, liability and indebtedness of the Franchisee to Franchisor (including but not limited to all obligations, liability and indebtedness of the Franchisee under this Security Agreement, the Franchise Documents and under any other agreements which now exist or to which the Franchisee and Franchisor may subsequently be parties), whether present or future, direct or indirect, absolute or contingent, matured or unmatured, extended or renewed, and regardless of where or how incurred, or whether at any time reduced and subsequently increased, or whether totally extinguished and subsequently re-incurred, and whether the Franchisee is bound alone or with others and whether as principal or surety.

1.1.8 “**Party**” means each of the Franchisee and Franchisor, and “**Parties,**” unless the context requires otherwise, means all of them.

1.1.9 “**Permitted Encumbrances**” means the encumbrances (if any) listed in Part 2 of **Schedule A**, as may be amended from time-to-time, which Franchisor has consented to be a lien on the Collateral that may have priority over the lien created by this Security Agreement.

1.1.10 “**Person**” means and includes any individual, partnership, corporation, business trust, firm, trust, limited liability company, unincorporated association or organization, joint venture or other enterprise or any governmental or political subdivision, agency, development or instrumentality thereof.

1.1.11 “**Store**” shall have the meaning set forth in the Background, Paragraph B.

1.1.12 “**Security Agreement**” means this Security Agreement and all Schedules attached to this Security Agreement.

1.1.13 “**Security Interest**” means the security interests created by Section 2 of this Security Agreement.

1.1.14 “**UCC**” means the Uniform Commercial Code as in effect on the date hereof in the State of Arizona; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests in any

Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of Arizona, "UCC" shall mean the Uniform Commercial Code as in effect in the jurisdiction where the Collateral is located for purposes of the provisions hereof relating to such perfection, or effect of perfection or non-perfection.

## **ARTICLE 2 THE SECURITY INTEREST**

2.1 Grant of Security Interest. To secure: (i) the payment of the Obligations (ii) the payment, performance and observance of all the covenants and conditions contained in any notes executed by the Franchisee to evidence the Obligations, this Security Agreement, the Franchise Agreement, and any other Franchise Document; and (iii) the payment of all of Franchisee's other present and future debts, obligations and liabilities to Franchisor of whatever nature and whenever arising; Franchisee grants, conveys, assigns, transfers, mortgages and pledges to Franchisor, a continuing security interest in the properties, rights, interests and privileges, and in all proceeds and products thereof, and accessions thereto (collectively called the "**Collateral**") described in this Section 2.

2.2 Collateral. The Collateral shall include the following described property used, to be used or acquired for the Store: All equipment, fixtures, inventory, machinery, personal property, accounts receivable (including rights to payment under insurance claims), contract rights, (including all executory contracts pertaining to or arising from the operation of the Store), franchises lease and rights, customer lists, customer profiles, promotional brochures, mailing lists, goodwill, general intangibles and choses in action, of every sort now owned or hereafter acquired by Franchisee, wherever located, in any way related to the operation by Franchisee of the Store, together with all cash and non-cash proceeds and products of any or all of the foregoing, including without limitation, all parts, fittings, accessories, accessions, additions, substitutions, replacements and proceeds (including insurance proceeds thereof).

2.3 Franchise to Deal. Until the Franchisee defaults under this Security Agreement, the Franchisee may use the Collateral in any manner not inconsistent with the terms of the Obligations, may sell inventory and collect and deal with accounts receivable in the ordinary course of the Franchisee's business, and may sell or otherwise dispose of any part of the Collateral which has become worn out, damaged or is in any other way unsuitable for further use in the operation of the Franchisee's Franchised Business.

## **ARTICLE 3 CONDITIONS**

3.1 Conditions to Franchisor's Performance. Unless otherwise waived by Franchisor, Franchisor shall not be obligated to perform any of its obligations under the Franchise Documents until the following conditions have been satisfied to the satisfaction of Franchisor:

3.1.1 Franchise Documents. This Security Agreement, the other Franchise Documents and all transactions contemplated by this Security Agreement shall have been duly authorized by Franchisee. Franchisee shall have duly executed and delivered to Franchisor this Security Agreement and all other Franchise Documents.

3.1.2 Default or Event of Default. On the date hereof, no Default or Event of Default shall have occurred and be continuing.

3.1.3 Correctness of Representations. On the date hereof, all representations and warranties made by Franchisee in Article 4 below or otherwise in writing in connection herewith shall be true and correct with the same effect as though such representations and warranties had been made on and as of today's date, except that representations and warranties expressly limited to a certain date shall be true and correct as of that date.

3.1.4 Approvals. On the date hereof, all necessary consents, approvals, licenses, permissions, registrations or validations of any governmental authority or any other Person required for the execution, delivery, performance or carrying out of the provisions of this Security Agreement, and any other Franchise Document, shall have been obtained and shall be in full force and effect and copies thereof certified by a duly authorized officer of Franchisee to such effect shall have been delivered to Franchisor.

3.1.5 Filing of Financing Statements, etc. On or before the date hereof, UCC-1 financing statements or other appropriate documentation relating to the Security Interest and rights granted pursuant to this Security Agreement, shall have been duly recorded or filed in such manner and in such places as is required by law to establish, preserve, protect, and perfect such security interests and rights; and all taxes, fees and other charges in connection with the execution, delivery and filing of this Security Agreement, and such financing statements and other appropriate documentation shall have been duly paid.

3.1.6 Litigation. On the date hereof, no litigation, arbitration, proceeding or investigation shall be pending or, to the knowledge of Franchisee, threatened against Franchisee that, in the reasonable judgment of Franchisor, might have a Material Adverse Effect.

3.1.7 Adverse Change. There shall have been no adverse change in the financial condition or business of Franchisee between the date of the then most recent financial statements furnished to Franchisor and the date hereof which, in the reasonable judgment of Franchisor, might have a Material Adverse Effect.

3.1.8 Legal Matters. All documents and legal matters incident to the transactions contemplated by this Security Agreement shall be reasonably satisfactory to counsel for Franchisor.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF FRANCHISEE**

The Franchisee represents and warrants to Franchisor:

4.1 Corporate Status. Franchisee is a duly organized and validly existing corporation/limited liability company in good standing under the laws of the State organization and is duly qualified or licensed as a foreign corporation/limited liability company in good standing in each jurisdiction in which the failure to do so would have a Material Adverse Effect.

4.2 No Violation. Neither the execution or delivery by the Franchisee of this Security Agreement, the Franchise Agreement or any other Franchise Documents, nor the performance by the Franchisee of their obligations under any of said documents (i) violates any provision of law, or of any agreement which is binding upon the Franchisee, (ii) conflicts or is inconsistent

with or will result in any breach of, or constitute a default under, any contractual obligation of Franchisee, or (iii) violate any provision of the articles of incorporation or articles of organization, as the case may be, of Franchisee;

4.3 Financial Information. That all of the written financial information furnished to Franchisor by the Franchisee concerning the Franchisee is complete, true and correct as of the date furnished, and that there have been no material adverse changes in the financial condition, operations or business of the Franchisee since the date of such financial information. The Franchisee intends that Franchisor rely upon such written financial information in entering into the Franchise Documents.

4.4 Enforceability. This Security Agreement, the Franchise Agreement and all other Franchise Documents constitute valid, legal and binding obligations of the parties thereto, enforceable against the parties thereto in accordance with their terms.

4.5 Title to Collateral. Franchisee has good and marketable title to all of its properties and assets, including without limitation, the Collateral. Except for the Security Interest granted by this Security Agreement, Franchisee is or shall be the owner of the Collateral free from any adverse lien, claim, security interest or encumbrance; and Franchisee will defend the Collateral against all claims and demands of all persons at any time claiming same or any interest therein.

4.6 No Financing Statements. There is no financing statement now on file in any public office covering any of the Collateral and Franchisee will not execute any other financing statement or security agreement covering any of the Collateral while the Franchise Agreement is in effect, except financing statements or security agreements filed or to be filed in respect of and for the Security Interest provided in this Security Agreement or a Permitted Encumbrances.

4.7 Power and Authority. If the Franchisee is a corporation or other entity, the person or persons executing this Security Agreement and any other Franchise Documents on behalf of Franchisee have been duly authorized to execute such documents and have full power to bind the Franchisee, by proper and lawful action of the Board of Directors or other appropriate governing body of Franchisee, copies of which shall be provided to Franchisor, if requested.

4.8 Consents or Approvals. No order, permission, consent, approval, license, authorization, registration or validation of, or filing with, or exemption by, any governmental authority or any other Person is required to authorize, or is required in connection with, the execution, delivery and performance of this Security Agreement or any other Franchise Document by Franchisee, or the taking of any action contemplated hereby or thereby, except where the failure to obtain such authorization could reasonably be anticipated to have a Material Adverse Effect.

4.9 Litigation. There are no actions, suits or proceedings pending or threatened against or affecting Franchisee that in any one case or in the aggregate, if determined adversely to the interests of such party, could reasonably be anticipated to have a Material Adverse Effect.

4.10 Compliance with Other Instruments; Compliance with Law. Franchisee is not in default under any agreement, instrument or other undertaking to which Franchisee is a party or by which it or any of its property is bound (including any agreement, instrument or undertaking relating to any indebtedness of Franchisee) where such default could reasonably be anticipated

to have a Material Adverse Effect. Franchisee is not in default or in violation of any applicable statute, rule, writ, injunction, decree, order or regulation of any governmental authority having jurisdiction over Franchisee which default or violation could reasonably be anticipated to have a Material Adverse Effect.

4.11 Taxes. All tax returns of Franchisee required to be filed have been timely filed (after giving effect to any permitted extensions), and all material taxes, fees and other governmental charges (other than those being contested in good faith by appropriate proceedings diligently conducted and with respect to which adequate accruals have been established and, in the case of *ad valorem* taxes or betterment assessments, no proceedings to foreclose any lien with respect thereto have been commenced and, in all other cases, no notice of lien has been filed or other action taken to perfect or enforce such lien) shown thereon which are payable have been paid. The charges and reserves on the books of Franchisee for all income and other taxes are adequate, and Franchisee knows of no additional assessment or any basis therefor. The Federal income tax returns of Franchisee has not been audited within the last three years, all prior audits have been closed, and there are no unpaid assessments, penalties or other charges arising from such prior audits.

4.12 Disclosure. None of the representations or warranties made by Franchisee in this Security Agreement, or in any other document furnished to Franchisor by or on behalf of Franchisee in connection herewith contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements herein or therein, in light of the circumstances under which they are made, not misleading. There is no fact known to Franchisee on the date of this Security Agreement that has any reasonable likelihood of having a Material Adverse Effect that has not been set forth in or referred to in this Security Agreement.

## **ARTICLE 5 AFFIRMATIVE COVENANTS OF FRANCHISEE**

In addition to the warranties, representations and covenants in Article 4 and 6 of this Security Agreement, as long as any of the Obligations are outstanding, the Franchisee agrees as follows:

5.1 Operation of Store. The Franchisee will promptly acquire and maintain all equipment, fixtures, machinery and inventory as may be necessary to operate the Store in accordance with the terms of the Franchise Agreement and shall purchase such property with his own funds.

5.2 Conduct of Business; Maintenance of Existence. Franchisee will continue to engage in the business in which it is engaged and maintain its existence and comply with all applicable statutes, rules and regulations and remain duly qualified as a corporation/limited liability company, licensed and in good standing in each jurisdiction where such qualification or licensing is required by the nature of its business, the character and location of its property, business, or ownership or leasing of its property, except where such noncompliance or failure to so qualify would not have a Material Adverse Effect, maintain its properties in good operating condition and continue to conduct its business as presently conducted.

5.3 Compliance with Laws. Franchisee will comply in all material respects with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities and will obtain all governmental approvals, except where the failure to do so would not have a Material Adverse Effect.

5.4 Financial Statements. The Franchisee will furnish Franchisor with financial statements and balance sheets and Franchisee's most recent federal income tax returns within fifteen (15) days after the Franchisee's receipt of Franchisor's written request for such information. Such financial statements shall set forth all personal assets and liabilities of the Franchisee. If requested by Franchisor, such financial statements shall be prepared by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied.

5.5 Inspection. The Franchisee will permit Franchisor or its authorized representatives to inspect its books and records upon any reasonable request.

5.6 Taxes and Other Liens. The Franchisee shall pay or cause to be paid when due all taxes, assessments and governmental charges or levies, of every kind and description in any way relating to the Collateral or claims for labor, supplies, rent and other obligations made against it which, if unpaid, might become a lien against Franchisee or on its property.

5.7 Insurance. The Franchisee shall insure or cause to be insured all of the property, both real and personal, which constitutes a part of the Collateral, in an amount not less than the amount required by the Franchise Documents. Franchisor shall be made a co-payee of such insurance and such insurance policies shall prohibit cancellation or reduction of coverage except after 10 days' prior written notice to Franchisor.

5.8 Maintenance of Collateral. The Franchisee will maintain, or cause to be maintained, the Collateral in good condition and repair, so as not to impair the security provided under this Security Agreement.

5.9 Further Assurances. From time to time, on request of Franchisor, the Franchisee shall execute such financing statements, continuation statements and other documents and do such other acts and things, as Franchisor may reasonably deem necessary to establish and maintain a valid and perfected first priority security interest in the Collateral.

5.10 Notice of Default. As soon as practicable, and in any event, within three (3) business days of becoming aware of the existence of any condition or event which constitutes a Default, Franchisee will provide Franchisor with written notice specifying the nature and period of existence thereof and what action Franchisee is taking or proposes to take with respect thereto.

5.11 Financial Records. Franchisee will maintain books of accounts and records in which full and correct entries will be made of all of its business transactions in accordance with generally accepted accounting principles.

## **ARTICLE 6 NEGATIVE COVENANTS OF FRANCHISEE**

In addition to the warranties, representations and covenants in Article 4 and 5 of this Security Agreement, as long as any of the Obligations are outstanding, the Franchisee agrees as follows:

6.1. Disposition of Assets. The Franchisee will not sell, transfer or in any way convey any of the Collateral, except in the normal course of business, without the prior written consent of Franchisor.

6.2. Maintenance of Existence. Franchisee shall not change the name, address, identity or form of business organization of Franchisee from that shown on this Security Agreement without the prior written approval of Franchisor. Franchisee appoints Franchisor as Franchisee's attorney-in-fact to prepare, execute, acknowledge, verify, file, record and cause to be published all notices, agreements, documents or instruments as may be necessary or advisable to permit Franchisor to retain its first priority security interest in the Collateral. This power of attorney is coupled with an interest and is, therefore, irrevocable and shall survive the death, mental or physical disability or other incapacity of Franchisee or any assignment of an interest in the Collateral.

6.3. Indebtedness. Franchisee shall not create, incur, assume or suffer to exist any indebtedness against Franchisee, except the Obligations and, with the prior approval of Franchisor, which shall not be unreasonably withheld or denied, purchase money debt for the purchase of inventory, furniture, fixtures or equipment for the Store; and ("**Permitted Indebtedness**"). In connection with any Permitted Indebtedness, Franchisor agrees to execute a UCC-3 form subordinating the security interest granted in this Agreement to any Permitted Indebtedness.

6.4. Liens. Franchisee shall not create, incur, assume or suffer to exist any Lien on any of its properties or assets, except the following (collectively, "**Permitted Liens**"): (a) liens for taxes, fees, assessments and other governmental charges not delinquent or being contested in good faith and by proper proceedings, as to which adequate accruals are maintained on the books of Franchisee in accordance with GAAP; (b) carriers', warehousemen's, mechanics', materialmen's, landlord's or similar liens imposed by law incurred in the ordinary course of business in respect of obligations not overdue, or being contested in good faith and by proper proceedings and as to which adequate accruals with respect thereto are maintained on the books of Franchisee in accordance with GAAP; (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other types of social security legislation; (d) security deposits made to secure the performance of leases, licenses and statutory obligations incurred in the ordinary course of business; (e) liens in favor of Franchisor; and (f) liens securing Permitted Indebtedness.

## **ARTICLE 7 DEFAULT**

The Security Interest will become immediately enforceable on the happening of any one or more of the following events:

7.1 Failure to Perform Obligations. Any covenant, representation or warranty made by the Franchisee in this Security Agreement, the Franchise Agreement or in any certificate, agreement, instrument or statement contemplated hereby or made or delivered pursuant hereto or in connection herewith, is incorrect, if the Franchisee fails to pay, observe or perform any of the Obligations, and if any default by the Franchisee under the Franchise Agreement shall occur and be continuing.

7.2 Failure to Pay. If the Franchisee fails to pay when due any amount owing to Franchisor.

7.3 Failure to Perform Other Obligations. If the Franchisee fails to observe or perform any of the other Obligations and does not cure the default within 10 days after receiving



notice of default from Franchisor. The notice of default may (but need not) allow a longer time period to cure the default.

7.4 Bankruptcy. The Franchisee is adjudicated a bankrupt or debtor under the Bankruptcy Code, or makes an assignment for the benefit of creditors; or the Franchisee shall apply for or consent to the appointment of any receiver, trustee, or similar officer for Franchisee or for all or any substantial part of Franchisee's property; or such receiver, trustee or similar officer shall be appointed without the application or consent of the Franchisee or the Franchisee shall institute (by petition, application, answer, consent or otherwise) any bankruptcy or insolvency proceeding; or any final judgment in excess of \$5,000.00, writ, warrant of attachment or execution or similar process shall be issued or levied against a substantial part of the property of the Franchisee and such final judgment, writ, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within 30 days after its issue or levy.

## **ARTICLE 8 REMEDIES ON DEFAULT**

8.1 Upon the occurrence of any Event of Default Franchisor shall have all the rights and remedies stated in the Franchise Agreement, in addition to any other rights and/or remedies expressly provided for herein or otherwise available to Franchisor at law or equity.

8.2 Upon the occurrence of any Event of Default Franchisor may by written notice to the Franchisee, declare the commitments of Franchisor under this Security Agreement to be terminated, whereupon such commitments shall forthwith terminate and, regardless of when such event occurs, Franchisor by written notice to the Franchisee may terminate the Franchise Agreement, whereupon all amounts due under the Franchise Documents shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Franchisee.

8.3 Without limiting the foregoing, upon the occurrence of an Event of Default Franchisor shall have all the rights of a secured party under the Uniform Commercial Code, including the right to take possession of and to sell all, or any part, of the Collateral at public or private sale. Upon the request of Franchisor, the Franchisee shall assemble and deliver the Collateral to such location as Franchisor shall request. If any notification of intended disposition of any of the Collateral is required by law, such notification shall be deemed to have occurred if mailed, in accordance with Section 9.11 of this Security Agreement, at least seven (7) days before such disposition. Any proceeds of a disposition of the Collateral or any part thereof may be applied by Franchisor to the payment of expenses in connection with the collateral (including, without limitation, the storage and/or disposition thereof), including reasonable attorneys' fees and legal expenses, and any balance of such proceeds may be applied by Franchisor toward the payment of the any obligation of Franchisee arising under this Security Agreement or any Franchise Documents, in such order of application as Franchisor may from time to time deem appropriate.

8.4 No failure on the part of Franchisor to exercise, and no delay in exercising, any rights under this Security Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by Franchisor of any right preclude any further exercise thereof, or the exercise of any other right. Each and every right granted under this Security Agreement, or under any document delivered under this Security Agreement or in connection herewith, or allowed to

Franchisor in law or equity, shall be deemed cumulative and may be exercised from time to time.

## **ARTICLE 9 GENERAL CONTRACT PROVISIONS**

9.1 Headings and Table of Contents. The table of contents, the use of headings and the division of this Security Agreement into Articles and Sections is for the convenience of the reader only, and is not to affect the legal interpretation of this Security Agreement. References herein to Sections and Schedules means Sections and Schedules of or attached to this Security Agreement.

9.2 Governing Law. This Security Agreement is to be governed by and construed in accordance with the laws of the State of Arizona.

9.3 Disputes. The arbitration provision in the Franchise Agreement is hereby incorporated into this Security Agreement by this reference as if the same were fully set forth herein. In the event the arbitration provision set forth in the Franchise Agreement is determined by a court not to apply to this Security Agreement, then any lawsuit or other proceedings under the Franchise Documents shall be commenced and prosecuted in the United States District Court for the District of Arizona or the Superior Court of the State of Arizona, in and for the County of Maricopa and the parties hereto agree and acknowledge that such courts shall have jurisdiction over the Parties hereto and the subject matter of any such lawsuit or other proceedings.

9.4 Time. Time is of the essence of this Security Agreement. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Security Agreement, the date which is the reference date in calculating the period is to be excluded. If the last day of a period falls on a Holiday then the period shall end at the close of business on the next non-Holiday.

9.5 Gender and Number. In this Security Agreement, the use of the singular number includes the plural and vice versa, and the use of a particular gender includes all other genders.

9.6 Covenants Joint and Several. If any Party is comprised of more than one person, the covenants and obligations of such Party under this Security Agreement are intended to be both joint and several.

9.7 Successors. This Security Agreement inures to the benefit of and is binding upon the Franchisee and its heirs, executors, administrators, successors and assigns.

9.8 Cumulative Remedies and Security. All remedies of Franchisor at law or equity and under this Security Agreement are cumulative. The Security Interest is in addition to and not in substitution of any other security now held or which may subsequently be held by Franchisor.

9.9 Waiver. Franchisor may waive any default by the Franchisee in observing or performing any of the Obligations. No act or omission of Franchisor regarding any such default shall affect Franchisor's rights regarding any subsequent default of the Franchisee.

9.10 Indulgences. Franchisor may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, relinquish any of the Collateral to third parties and otherwise deal with any Person in any manner, without affecting either the liability of the Franchisee or Franchisor's right to hold and to realize on the Collateral.

9.11 Notices. All notices required or permitted to be given by one Party to the other under this Security Agreement or under the UCC shall be in writing and shall be given either by personal delivery or by prepaid registered mail, addressed to the other Party or delivered to the other Party at its address set out on page 1 of this Security Agreement. A Party may change its address for service by giving notice of change of address to the other Party. All notices given in accordance with this Section shall be deemed to have been received when delivered or, if mailed, two days after date of mailing.

9.12 Severability. If any provision of this Security Agreement is incapable of being enforced by reason of any rule of law or public policy, such provision shall be severed. However, it is the intention of the Parties that such severance not invalidate any other provision of this Security Agreement, and accordingly no provision of the Security Agreement shall be interpreted as being dependent on any other provision unless the contrary is stated.

9.13 Further Assurances. At the request of Franchisor and at the expense of the Franchisee, the Franchisee will from time to time do or cause to be done such acts and things, and will execute or cause to be executed such documents and assurances, as Franchisor may require to perfect and preserve the Security Interest.

9.14 No Waiver; Remedies. No failure on the part of Franchisor to exercise, and no delay in exercising, any right hereunder, under any of the other Franchise Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder, or under any of the other Franchise Documents preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

9.15 Right of Set-off. Upon the occurrence and during the continuance of any Event of Default, Franchisor is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all moneys received by Franchisor on Franchisee's behalf or any amounts owing by Franchisor to Franchisee (including, without limitation, vendor or promotional rebates, receivables collected for the benefit of Franchisee, cash or its equivalent in the Store or in any account of Franchisee of which Franchisor obtains custody or possession), at any time held and other indebtedness at any time owing by Franchisor to or for the credit or the account of Franchisee against any and all of the obligations of Franchisee now or hereafter existing under this Security Agreement, irrespective of whether or not Franchisor shall have made any demand hereunder.

9.16 Reproduction of Documents. This Security Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) documents received by Franchisor at the closing or otherwise, and (c) financial statements, certificates and other information previously or hereafter furnished to Franchisor, may be reproduced by Franchisor by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Franchisor may destroy any original document so reproduced. Franchisee agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding

(whether or not the original is in existence and whether or not such reproduction was made by Franchisor in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

9.17 Survival. All warranties, representations, and covenants made by Franchisee herein or on any certificate or other instrument delivered by it or on its behalf under this Security Agreement shall be considered to have been relied upon by Franchisor and shall survive the termination of this Security Agreement, regardless of any investigation made by Franchisor on its behalf. All statements in any such certificate or other instrument shall constitute warranties and representations by Franchisee.

9.18 Counterparts. This Security Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which taken 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. A fully-executed copy of this Security Agreement shall be of the same force and effect as the original.

9.19 No Third Party Benefit. This Security Agreement is intended for the exclusive benefit of the parties and their respective heirs, successors and assigns. Nothing contained in this Security Agreement shall be construed as creating any rights or benefits in or to any third party.

9.20 Complete Agreement. This Security Agreement, along with the Franchise Documents, contains the entire agreement among the parties and supersedes any prior discussions, negotiations, representations, or agreements among them respecting the subject matter.

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized as of the date first above written.

DATED this \_\_\_\_\_, 20\_\_.

**[FRANCHISEE]**

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

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

**MTY FRANCHISING USA, INC.**

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



STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the said State and County, personally appeared \_\_\_\_\_, to me known to be the person named in and the person executing the above and foregoing Security Agreement and he/she acknowledged that he/she executed the same as his/her free act and deed for the purposes therein expressed.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, a Notary Public in and for said state, personally appeared \_\_\_\_\_, of \_\_\_\_\_, a Corporation of the State of \_\_\_\_\_, known to me to be the person who executed the within instrument in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SCHEDULE A**

**PART 1 - FRANCHISE DOCUMENTS**

Franchise Agreement dated \_\_\_\_\_, 20\_\_.

Lease/Sublease dated \_\_\_\_\_, 20\_\_.

Other Documents [list here]

**PART 2 - PERMITTED ENCUMBRANCES (circle below whichever is applicable)**

NIL / SBA financing / bank financing

**PART 3 - PLACE OF FRANCHISEE'S FRANCHISED BUSINESS**

Store No. \_\_\_\_\_, \_\_\_\_\_ Shopping Center [or, if  
free-standing, as the case may be], Town/City of \_\_\_\_\_,  
State of \_\_\_\_\_.

**SCHEDULE K**

**THAI EXPRESS**

**SUBLEASE**

\_\_\_\_\_  
**(Name of Shopping Center)**

**THIS SUBLEASE** is made as of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Sublandlord**") and \_\_\_\_\_, a \_\_\_\_\_ ("**Subtenant**").

**WHEREAS:**

A. By a lease dated \_\_\_\_\_, 20\_\_\_\_, (the "**Prime Lease**") made between [\_\_\_\_\_, a \_\_\_\_\_ ("**Landlord**")], as landlord, and Sublandlord, as tenant, a copy of which is annexed hereto as **Schedule A** (or to be provided at a later date), the Landlord leased to the Sublandlord the premises described as follows:

\_\_\_\_\_ [Space Address], as marked on the Site Plan portion of **Exhibit \_\_\_\_\_** to the Prime Lease, having an estimated floor area of approximately \_\_\_\_\_ square feet, having a street address of \_\_\_\_\_ ("**Premises**").

B. The Subtenant, as franchisee, entered into a franchise agreement for the operation of a Thai Express casual restaurant, dated \_\_\_\_\_, 20\_\_\_\_ ("**Franchise Agreement**").

C. In furtherance of the Franchise Agreement and upon the giving of notice to the Landlord of, or obtaining its consent in connection with, a permitted transfer, assignment, or sublet, as may be applicable under the Prime Lease, the Sublandlord and Subtenant wish to enter into a sublease of the Premises.

Lease Review Fee is: \$ \_\_\_\_\_

Sublease Security Deposit is: \$ \_\_\_\_\_

NOW THEREFORE in consideration of the rents, covenants and agreements hereinafter set forth, other good and valuable consideration, and the sum of \$10.00 paid by each party to each other party (the receipt and sufficiency of which is hereby acknowledged by each party), the parties covenant and agree as follows:

1. Grant and Term of Sublease

a) The Sublandlord demises and subleases the Premises to the Subtenant, and the Subtenant hereby subleases the Premises from the Sublandlord, for a term commencing upon possession of the Premises (as defined in the Prime Lease) and terminating on the day which is one (1) day prior to the expiration date of the initial term of the Prime Lease (the "**Subterm**"), subject to the provisions of this Sublease.



b) Notwithstanding anything to the contrary, the Sublandlord reserves to itself the last day of the initial term of the Prime Lease.

c) Each party acknowledges that this Sublease is and is intended to be a sublease of the Premises and not an assignment of the Prime Lease to the Subtenant.

## 2. Rent

The Subtenant covenants and agrees to pay:

a) basic or minimum rent in accordance with the basic or minimum monthly rental provisions of the Prime Lease, initially \$\_\_\_\_\_ per month, subject to adjustment in accordance with the terms of the Prime Lease ("**Minimum Rent**"); and

b) as additional rent:

- i. all amounts required to be paid to the Sublandlord pursuant to the provisions of this Sublease or pursuant to the provisions of the Franchise Agreement; and
- ii. all amounts, without duplication, required to be paid by the tenant/lessee to the Landlord or otherwise pursuant to the Prime Lease calculated and payable in accordance with the additional rent provision(s) of the Prime Lease, as applicable, including but not limited to percentage rent and tenant/lessee's share of common area expenses, real estate taxes, and insurance, save and except as may be otherwise provided herein (collectively "**Additional Rent**").

## 3. Payment

a) All payments, for rent or otherwise, provided for in this Sublease shall be made by the Subtenant directly to the Sublandlord or to such other person as the Sublandlord may direct in writing, in advance, without setoff or deduction of any kind, 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 Sublandlord to ensure timely payment of all Minimum Rent and Additional Rent due under the Prime Lease, an amount equal to 1/12<sup>th</sup> of the annual Minimum Rent and 1/12<sup>th</sup> of the estimated Additional Rent and all applicable taxes thereon, as applicable, for the following month (i.e., Sublessee's first rental payments payable under this Section will be applied to the second month of the Subterm, so that Minimum Rent and Additional Rent will always be paid one month in advance.). If any such sum is not received by the Sublandlord within five (5) days from the date such sum becomes due, in lieu of interest, the Subtenant shall immediately become liable to the Sublandlord for a late charge equal to seven percent (7%) of the past due amount.

b) Notwithstanding the foregoing, at the Sublandlord's option, the Sublandlord may deliver a notice in writing to the Subtenant requiring the Subtenant to make all payments (except payments pursuant to the Franchise Agreement) to the Landlord in which event the Subtenant shall do so forthwith.

c) The Sublandlord also reserves the right to require the Subtenant to provide post-dated checks or authorization for automatic bank transfers for the purpose of satisfying the Subtenant's payment obligations hereunder, and upon written request by the Sublandlord, the Subtenant shall provide such checks or authorization forthwith.

#### 4. Benefit of Prime Lease and Sublandlord's Covenants

a) Subject to the terms and provisions of this Sublease, the Subtenant shall be entitled to all benefits granted to the Sublandlord pursuant to the provisions of the Prime Lease.

b) The Sublandlord covenants and agrees with the Subtenant that the Subtenant shall peaceably and quietly hold and enjoy the Premises for the Subterm without hindrance or interruption by the Sublandlord, subject to the terms and conditions of this Sublease, the Prime Lease, and the Franchise Agreement.

c) The Sublandlord covenants and agrees with the Subtenant that if the Landlord shall fail to observe or perform any of the obligations on the part of the Landlord contained in the Prime Lease, then the Sublandlord will give such notice to the Landlord and take such reasonable action as may be necessary to enforce such obligations, provided that the Sublandlord shall not be obligated to give such notice or to take such action unless:

- i. the same has been requested in writing by the Subtenant;
- ii. the Subtenant agrees to reimburse the Sublandlord for all its costs and expenses in giving such notice or taking such action and, if required by the Sublandlord, pay to the Sublandlord in advance an amount equal to the Sublandlord's reasonable estimate of such costs and expenses; and
- iii. no such notice or action shall subject the Prime Lease to risk of forfeiture or termination.

The Sublandlord's sole obligations under this Sublease are those expressly stated herein. The Sublandlord shall not be liable for any failure on the part of the Landlord to observe and perform the covenants and agreements contained on the part of the Landlord under the Prime Lease.

#### 5. Subtenant's Covenants

The Subtenant covenants and agrees with the Sublandlord that it shall:

a) assume and agree to be bound by and to keep and perform each and every covenant, agreement and obligation with respect to the Premises to be performed by the Sublandlord, as tenant in the Prime Lease, except as such obligations may be qualified by this Sublease;

b) perform all of the obligations of the Subtenant under this Sublease and the Franchise Agreement;

c) indemnify and save harmless the Sublandlord (including its affiliates, successors and assigns) against all proceedings, damages, costs, claims, counsel fees, liabilities, and expenses of every kind arising from or incurred by reason of:

- i. the Subtenant's failure to perform properly or promptly any of the covenants, agreements and obligations under this Sublease;
- ii. the use and occupation of the Premises by the Subtenant, its employees, agents, or any other person for whom it is in law responsible;

d) maintain in full force an effect throughout the Subterm, in the names of both the Sublandlord and the Subtenant, insurance coverage which at a minimum complies, to the satisfaction of the Sublandlord, with both the terms of the Prime Lease and the Franchise Agreement;

e) forthwith deliver to the Sublandlord any and all notices of default or non-compliance received from the Landlord, the Subtenant's insurers or any governmental body;

f) not contest any of the Subtenant's obligations under this Sublease without the prior written consent of the Sublandlord;

g) not make any alterations or repairs except in accordance with the terms and conditions of the Franchise Agreement. All such work shall be subject to inspection and reasonable supervision by the Sublandlord and shall be performed in accordance with any reasonable conditions or regulations imposed by the Sublandlord. The Sublandlord's costs of inspection and/or supervision shall be paid by the Subtenant to the Sublandlord on demand;

h) maintain and deliver to the Sublandlord all certificates, statements, reports, audited statements and any other records required to be delivered by:

- i. the franchisee to the franchisor pursuant to the Franchise Agreement; and
- ii. the tenant/lessee to the Landlord pursuant to the Prime Lease;

and shall permit the Sublandlord, its officers, agents or auditors to have the same access to the records of the Subtenant as granted to the Landlord under the Prime Lease;

i) within ten (10) days after the Sublandlord requests it from the Subtenant, deliver to the Sublandlord, on a form supplied by the Sublandlord, a certificate to the Sublandlord and/or any proposed mortgagee, purchaser or other transferee of part or all of the Sublease or the Premises, confirming the status of the Sublease; and

j) not file any claim or otherwise assert that it is entitled to any allowances or inducements received by or benefiting the Sublandlord under or pursuant to the Prime Lease and the Subtenant hereby waives any right, claim or entitlement to such allowances and/or inducements.

6. Use of Premises

a) The Premises shall be used by the Subtenant exclusively for the purpose of a “**Thai Express**” franchise and otherwise in accordance with the terms of the Prime Lease and the Franchise Agreement and for no other purpose.

b) The Subtenant covenants and agrees to continuously, actively and diligently carry on the business required to be conducted by it at the Premises pursuant to this Sublease and the provisions of the Franchise Agreement.

7. Subtenant’s Default

a) In the event that the Subtenant shall not observe, perform and keep each and every of the covenants, agreements, stipulations, provisions and conditions contained herein or in the Franchise Agreement or if the Franchise Agreement shall be terminated for any reason whatsoever or if the Subtenant shall be deemed to be in default under the Franchise Agreement and such default is not cured or remedied as provided for therein, then the Sublandlord shall have all of the rights, remedies, privileges, protections and indemnities against the Subtenant which the Landlord has under the Prime Lease for a breach of the obligations of the tenant/lessee thereunder.

b) It is the intention of the parties hereto that the Sublandlord shall, subject to the notice and curative provisions hereinafter set out, have the right but not the obligation to take remedial steps to cure or commence to cure any default by the Subtenant under this Sublease which default would give rise to the exercise by the Landlord of its rights, remedies, privileges, protections and indemnities under the Prime Lease (hereinafter collectively referred to as the “**Landlord’s Rights**”). Accordingly, if and whenever:

- i. a default with respect to the payment of rent by either (a) the tenant/lessee under the Prime Lease requires the Landlord to give the tenant/lessee under the Prime Lease notice and a finite curative period before the Landlord exercises the Landlord’s Rights in respect of such default, the notice and curative period afforded the Subtenant for a similar default hereunder shall be shortened by two (2) days; or (b) Subtenant fails to timely remit payment Rent, Additional Rent or any other amounts due and owing under this Sublease or the Prime Lease and the same is not cured within three (3) days after written notice thereof;
- ii. a non-monetary default by the tenant/lessee under the Prime Lease requires the Landlord to give the tenant/lessee under the Prime Lease notice and a finite curative period before the Landlord exercises the Landlord’s Rights in respect of such default, the notice and curative period afforded the Subtenant for a similar default hereunder shall be shortened by five (5) days;
- iii. a monetary or non-monetary default by the tenant/lessee under the Prime Lease requires the Landlord to give the tenant/lessee under the Prime Lease notice but no finite curative period is therein provided before the Landlord exercises the Landlord’s

Rights in respect of such default, the curative period, if any, afforded to the tenant/lessee by the Landlord, shall, with respect to the Subtenant, be shortened by such reasonable length of time as is necessary to enable the Sublandlord to take action to remedy or commence to remedy such default.

c) Within five (5) days after the Sublandlord gives the Subtenant an itemized statement therefore, the Subtenant agrees to reimburse the Sublandlord for any costs or expenses, including legal fees incurred by the Sublandlord in curing any default by the Subtenant hereunder.

d) If following an event of default, Sublandlord may, in its sole discretion, terminate Subtenant's right of possession but not the Sublease. Upon the termination of this Sublease or termination of Subtenant's right of possession, it will be lawful for Sublandlord, without formal demand or notice of any kind, to re-enter the Premises, by summary dispossession proceedings or otherwise, and to remove Subtenant and all persons and property therefrom. No action taken by Sublandlord pursuant to this Section 7 will relieve Subtenant 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 Subtenant by Sublandlord expressly setting forth therein that Sublandlord elects to terminate this Sublease or declare the Term ended.

#### 8. Termination

a) The Subtenant acknowledges and agrees that it has no greater interest in the Premises than the Sublandlord under the Prime Lease and that if the Prime Lease is terminated for any reason whatsoever this Sublease shall thereupon terminate forthwith.

b) Upon Subtenant's failure to timely cure any defaults following a notice to cure, Sublandlord may at any time thereafter at its election: (i) terminate this Sublease; (ii) terminate Sublessee's right of possession in the Premises; (iii) cure any such default and receive from Subtenant, 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; (iv) exercise any remedy available to Sublandlord under the Prime Lease; and/or (v) pursue any other remedies available at law or in equity. At Sublandlord's sole discretion, Sublandlord may terminate this Sublease in the event of termination of the Franchise Agreement.

The Subtenant acknowledges and agrees that it waives any rights it may have for itself or a trustee or a receiver in state receivership or insolvency proceedings to elect to retain the unexpired term of the Sublease.

c) Provided, the foregoing shall not be construed as a waiver or release by the Subtenant of any right to apply to Court for relief from forfeiture or for other relief to which it may be entitled or obtained including where the Sublandlord has defaulted under the terms of the Prime Lease.

#### 9. Surrender by Subtenant

a) Upon the termination of this Sublease, by lapse of time or otherwise, the Subtenant will immediately surrender to the Sublandlord possession of the Premises and

the improvements therein in the same condition in which the Subtenant received them, excepting only normal wear and tear and items specifically exempted by the Prime Lease.

b) No acceptance of rent by the Sublandlord after termination of this Sublease or after notice of such termination shall constitute a waiver of the termination or notice of the reinstatement of this Sublease. Nothing contained in this Sublease shall operate or in any way create a merger, or alter or prejudice any rights, remedies or priorities of the Sublandlord as against the Subtenant under any other agreement or agreements between them. The only notices necessary to terminate this Sublease are those expressly provided for in this Sublease.

#### 10. Assignment and Subletting

a) The Subtenant covenants not to assign, sublet or part with or share possession of all or any part of the Premises, or mortgage or encumber this Sublease or the Subtenant's interest herein without the consent in writing of the Sublandlord and Landlord, other than in accordance with the provisions of the Prime Lease and the Franchise Agreement with respect to assigning and subletting, such provisions being expressly incorporated into this Sublease *mutatis mutandis*.

b) Where the Subtenant is a business entity, any change in the registered or beneficial ownership of the shares of the Subtenant which results in any change from the date hereof in the effective voting control of the Subtenant shall be deemed to be an assignment hereunder.

c) Notwithstanding any such assignment or subletting, the Subtenant shall remain liable for the performance of all the obligations on the part of the Subtenant under this Sublease.

d) A breach by the Subtenant of this Section 10 shall entitle the Sublandlord, at its option, to immediately re-enter and take possession of the Sublet Premises without notice or demand and otherwise exercise its rights and remedies in accordance with this Sublease.

e) The parties agree that the Prime Lease shall be fully assignable by the Sublandlord in whole or in part and shall inure to the benefit of and be binding upon any assignee or other legal successor to the Subtenant's interest provided such assignment is completed in accordance with the terms set out in the Prime Lease. In the event of such assignment, the Sublandlord shall be released from any further liability for the obligations assigned other than any obligations relating to matters or periods prior to the effective date of the assignment. The Subtenant agrees to attorn to any such assignee and shall execute any attornment agreement or other agreement requested by the Sublandlord, Landlord or assignee.

#### 11. Amendments to Prime Lease

The Sublandlord and the Subtenant agree that the Sublandlord and Landlord may, from time to time, enter into amendments of the Prime Lease without notice to or consent by the Subtenant provided that such amendments do not materially increase the obligations or materially diminish the rights of the Subtenant under this Sublease. It is agreed that all other

amendments to the Prime Lease shall be subject to the consent of the Subtenant, such consent not to be withheld or delayed.

12. Renewal of Prime-Lease

a) If the Prime Lease contains renewal options and if the Subtenant has been in full compliance with this Sublease, the Franchise Agreement and all other agreements with the Sublandlord and/or its affiliates or subsidiaries during the currency of the Sublease, the Subtenant shall have the option to renew this Sublease provided that **Subtenant must notify Sublandlord in writing in accordance with Section 17 herein of Subtenant's intent to exercise such option ("Renewal Notice") not more than ninety (90) days, or less than sixty (60) days, before the date that Sublandlord is required to notify Landlord pursuant to the Prime Lease of its intention to exercise such option. Time is of the essence.** Notwithstanding the foregoing, Subtenant acknowledges and agrees that the decision to exercise any renewal option in connection with the Prime Lease is solely at the discretion of Sublandlord. In the event that the Sublandlord receives such notice, then the Sublandlord shall make all reasonable efforts (but shall not be required to make any expenditures in this regard) to exercise any option to extend the term of the Prime Lease. Under no circumstances, however, shall the Sublandlord be liable to the Subtenant for any failure on the Sublandlord's part to negotiate an extension or renewal of the Prime Lease.

b) If the Sublandlord is able to negotiate a renewal of the Prime Lease upon its expiration, the Sublandlord grants to the Subtenant a first right of refusal with respect to a new sublease for the Premises for the same term (less one day) as the length of the term of the renewal lease, at a rent and on such terms and conditions as may be established between the Sublandlord and the Landlord, and otherwise on all the terms and conditions contained in this Sublease.

c) The Sublandlord shall give the Subtenant notice that it has negotiated such a renewal and provide the Subtenant with a copy of the renewal agreement or particulars of the terms and conditions of the renewal. The Subtenant shall then have twenty-one (21) days from the delivery of the notice within which to notify the Sublandlord that it wishes to exercise the right of first refusal granted by this Section.

d) If the Subtenant does not exercise any right of first refusal within the specified twenty-one- (21-) day period, the Sublandlord shall have the free and unfettered right to deal with the Premises as it sees fit and to grant a sublease of the Premises to any third party, provided that such Sublease shall be on the terms not less favorable to the Sublandlord than those offered to the Subtenant.

13. Relocation

The Landlord and the Sublandlord may be entitled to relocate or rearrange the various facilities and improvements comprising the Premises from those existing at the commencement of the Prime Lease, and any such relocation, alteration or re-arrangement shall be at the Subtenant's sole expense. If as a result of the exercise by the Landlord or the Sublandlord of their rights set out herein, the facilities in or improvements to the Premises are altered in any manner whatsoever, or the Premises are relocated or rearranged in any manner whatsoever, in accordance with the provisions of this Sublease, neither the Landlord nor the Sublandlord shall be subject to any liability, nor is the Subtenant entitled to any compensation, diminution or

abatement of basic or minimum rent or additional rent nor is any alteration of the facilities or improvements in or to the Premises deemed a breach of any covenant for quiet enjoyment contained in this Sublease, or implied by law.

14. Exercise of Rights

The exercise by the Landlord of any of its rights contained in the Prime Lease shall, upon written notice by the Landlord to the Subtenant of such exercise, be binding upon the Subtenant. Notwithstanding the exercise by the Landlord of any of its rights contained in the Prime Lease, the Sublandlord may also exercise its rights hereunder in the same manner as the Landlord.

15. Waiver

The failure of the Sublandlord to insist upon the strict performance of any of the agreements, terms, covenants and conditions set forth herein shall not be deemed a waiver of any of the rights or remedies that the Sublandlord may have hereunder and shall not be deemed a waiver of any such terms, agreements, covenants or conditions, or any subsequent breach or default. The subsequent acceptance of rent or other payments hereunder or under the Franchise Agreement by the Sublandlord shall not be deemed to be a waiver of any preceding breach by the Subtenant of any term, covenant or condition of this Sublease or the Franchise Agreement, as the case may be, regardless of the Sublandlord's knowledge of such breach at the time of the acceptance of such rent or other payment.

16. No Recording

The Subtenant agrees that it will not record this Sublease in any real property records. Breach of this provision shall entitle the Sublandlord, at its option, to terminate the Sublease.

17. Notices

a) All notices or other documents either required to be or which may be given under this Sublease shall be in writing, duly signed by the party giving the notice, transmitted by registered or certified mail, or fax machine (with confirmation of transmission), and addressed as follows:

Sublandlord:	[Sublandlord] 9311 E. Via De Ventura Scottsdale, Arizona 85258 Attention: Real Estate Department
Subtenant:	_____ _____ _____
FAX No.	(____) ____ - ____

b) Any notice or document so given shall be deemed to have been received when delivered, or on the third business day following the date of mailing, if sent by registered mail, but shall be deemed to have been received on the next business day if



transmitted by fax machine. If the postal system is disrupted by labor strike, any notice shall be sent by fax machine, delivered via recognized private courier, or delivered personally by one party to the other. Any party may from time to time by notice given as provided above change its address for the service of notice.

18. Severability

If any provision of this Sublease shall be deemed illegal, invalid or unenforceable, then it shall be considered separate and severable from this Sublease and the remainder of this Sublease shall not be affected by the severance, but shall remain in force and be binding on the parties and enforceable to the fullest extent of the law.

19. Successors and Assigns

This Sublease and everything contained in it, including all schedules annexed to it, shall inure to the benefit of and be binding on the respective heirs, legal personal representatives, successors and permitted assigns of the parties.

20. Time

Time is of the essence of this Sublease and each and every provision in it.

21. Governing Law

This Sublease shall be construed and be governed by the laws of the State of Arizona.

22. Complete Agreement

This Sublease, the Franchise Agreement and any agreements contemplated herein or therein, including any schedules thereto, constitute the entire agreement among the parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, between the parties. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein.

23. Amendments in Writing

Subject to Section 12 hereof, no amendment or other modification to this Sublease shall be valid or binding upon the parties unless the same is in writing.

24. Further Assurances

Each party will from time to time hereafter and upon any reasonable request of any other party, execute, make or cause to be made, all such further acts, deeds, assurances, certificates and things as may be required to more effectually implement the true intent of this Sublease or the Prime Lease.

25. Interpretation

a) Each capitalization used in this Sublease shall have the meaning ascribed to it by the Sublease, and if such term is not defined herein, then it shall have the meaning ascribed to it in the Prime Lease.

b) Reference to the Subtenant as male shall include a female or a corporation or other legal business entity, with all appropriate grammatical and other changes wherever the context requires and refer in appropriate cases to corporations or other legal entities.

c) The headings in this Sublease are for ease of reference only and are not to be used as an aid in the interpretation of this Sublease.

d) It is the express intent of the parties that this Sublease is to be a lease absolutely net and carefree to the Sublandlord during the Subterm and all renewals thereof, free and clear of all payments, charges, taxes and obligations of any nature whatsoever with respect to the Premises, except as may be expressly set forth in this Sublease.

e) Wherever any provision of this Sublease and a provision of the Franchise Agreement address the same or similar matter it is acknowledged and agreed that the more restrictive provision set forth in this Sublease or the Franchise Agreement, as the case may be, shall prevail.

f) Save and except as may be otherwise provided in this Sublease, all provisions contained in the Prime Lease to be performed or observed on the part of the tenant/lessee thereunder are hereby incorporated *mutatis mutandis* into this Sublease as if the Sublandlord were the Landlord and the Subtenant were the tenant/lessee under the Prime Lease. If any provision of this Sublease is inconsistent with or at variance with any provision of the Prime Lease, then the provision of this Sublease shall prevail;

g) Wherever in the Prime Lease a covenant is made by the Landlord in favor of the Sublandlord, such covenant shall not be considered to be a covenant made by the Sublandlord in favor of the Subtenant, nor shall such covenant by this Sublease be considered a covenant by the Landlord in favor of the Subtenant. For greater certainty, the Subtenant acknowledges that any rights of renewal referred to in the Prime Lease are in favor of the Sublandlord, do not run with the leasehold estate hereunder, and do not benefit the Subtenant in any way.

h) Wherever in the Prime Lease a covenant is entered into by the Sublandlord in favor of the Landlord, such covenant shall not be deemed to be a covenant made by the Sublandlord in favor of the Subtenant. For greater certainty, the Subtenant acknowledges that any covenant in the Prime Lease between the Landlord and the Sublandlord with regard to the establishment and maintenance of competing businesses are entirely personal to the Landlord and Sublandlord, are subject to amendment at any time by those parties, do not run with the leasehold estate hereunder, and do not benefit the Subtenant in any way.

## 26. Conditions

This Sublease is expressly conditioned on the execution and delivery of the Guaranty in the form attached hereto as **Schedule B** and the Landlord's recognition of this Sublease as a permitted transfer, assignment, or sublease, as applicable under the Prime Lease.

IN WITNESS WHEREOF the parties have duly executed this Sublease by officers duly authorized in that regard as of the date first set out above.

**SUBLANDLORD:**

\_\_\_\_\_  
a \_\_\_\_\_

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

**SUBTENANT:**

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

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

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

**SCHEDULE A**

**LEASE**

B-K-A

## **SCHEDULE B**

### **GUARANTY**

\_\_\_\_\_, a \_\_\_\_\_ (“**Subtenant**”), seeks to enter into that certain Thai Express Sublease dated \_\_\_\_\_, 20\_\_\_\_, (“**Sublease**”) with \_\_\_\_\_, a \_\_\_\_\_ (“**Sublandlord**”), pertaining to certain retail space at \_\_\_\_\_ located at \_\_\_\_\_, as referenced in the Sublease (“**Premises**”); and

WHEREAS, as a condition of entering into the Sublease, Sublandlord requires that \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (jointly and severally, “**Guarantor**”), execute and deliver this continuing guaranty of Subtenant’s obligations under the Sublease (“**Guaranty**”).

NOW, THEREFORE, in consideration of the mutual promises of the parties, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged, and in order to induce Sublandlord to enter into the Sublease, Guarantor hereby covenants and agrees as follows:

1. Scope of Guaranty. Guarantor absolutely, irrevocably and unconditionally guarantees the payment of all minimum rent, additional rent and other sums of any nature payable by Subtenant pursuant to the Sublease, and the performance of all other obligations of Subtenant pursuant to the Sublease. Guarantor acknowledges that this is a guaranty of payment and performance, not merely of collection. For all purposes, Guarantor acknowledges that the date of this Guaranty shall be the same as the date of this Guaranty.
2. Continuing Nature of Guarantor’s Obligations. The obligations of Guarantor under this Guaranty shall remain in effect, undiminished and unchanged by any: (a) amendment or other modification of to the Sublease, and any accord, waiver, deferral or other compromise with respect to any obligations under the Sublease, (b) expansions, contractions or alterations of the Premises, (c) extensions of the term of the Sublease, (d) sublease, assignment or other transfer of any interest in the Sublease by the original parties or their successors or assignees, with or without the express consent of Sublandlord; (e) bankruptcy, reorganization or insolvency of Subtenant or any successor or assignee or any other Guarantor; (f) appointment of any trustee or receiver for Subtenant or any successor or assignee or any other Guarantor; and (g) disaffirmance or rejection of the Sublease or any obligations thereunder in any proceedings with respect to clauses (e) and (f) above. Guarantor waives any right to notice or approval of any of the matters set forth in clauses (a) through (f) above.
3. Independent Liability of Guarantor. The liability of Guarantor under this Guaranty shall be primary and independent of the liability of Subtenant; and in any action commenced by Sublandlord arising out of any Event of Default under the Sublease, Sublandlord may proceed against Guarantor without having commenced any action or having obtained any judgment against Subtenant. Guarantor hereby waives: (a) any rights of subrogation or similar rights against Subtenant, and (b) the relevant provisions of the State of Arizona Rules of Civil Procedure, as amended or superseded. Sublandlord’s election to proceed separately against either Subtenant or Guarantor shall not release the other from liability.

4. Attorneys' Fees. Guarantor shall pay Sublandlord's reasonable attorneys' fees and all costs and other expenses incurred in connection with any default under the Sublease and the enforcement of this Guaranty, whether or not an action is commenced by Sublandlord.
5. Waivers. Guarantor waives: (a) notice of Sublandlord's acceptance of this Guaranty, and (b) notice of any demand by Sublandlord on Subtenant, including notice of any breach or non-performance under the Sublease. In addition, Guarantor waives any right to require Sublandlord to (a) proceed against Subtenant; (b) proceed against or exhaust any security held from Subtenant, including any Sublandlord's liens; (c) proceed against any other Guarantor; and (d) pursue any other remedy in Sublandlord's power whatsoever.
6. No Waiver by Sublandlord. No delay on the part of Sublandlord in exercising any right or remedy under this Guaranty or failure to exercise any such right or remedy shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on Guarantor shall be deemed to be a waiver of the obligations of Guarantor or of the right of Sublandlord to take further action without notice or demand as provided in this Guaranty. No course of dealing between Guarantor and Sublandlord shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of Guarantor under this Guaranty.
7. Assignment. Sublandlord may, without notice to or consent of Subtenant or Guarantor, assign this Guaranty in whole or in part. No such assignment shall extinguish, diminish or otherwise change the liability of Guarantor. Guarantor shall have no right to assign, delegate or otherwise transfer any obligations under this Guaranty without the prior written consent of Sublandlord, which Sublandlord may withhold in its sole and absolute discretion.
8. Parties Bound. The provisions of this Guaranty shall be binding upon and inure to the benefit of the respective successors and assigns of the original parties, subject to the limitations of the preceding paragraph.
9. [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.]
10. Miscellaneous. The use of singular herein shall include the plural. The obligation of two or more parties signing below shall be joint and several. The provisions of this Guaranty shall be binding upon and inure to the benefit of the respective successors and assigns of the original parties, including any successors by corporate merger or acquisition. This Guaranty shall be governed by the substantive laws of the State of Arizona, without reference to choice of law principles. Guarantor stipulates that the state courts (and, to the extent applicable, federal courts) located in Maricopa County, Arizona shall have exclusive jurisdiction and venue with respect to all actions arising out of the Sublease or this Guaranty, and Guarantor submits to the personal jurisdiction of such courts and waives any rights to change venue.

**[Signatures on following page]**

IN WITNESS WHEREOF, the undersigned have caused this Guaranty to be executed to be effective as of the effective date of the Sublease.

**GUARANTOR:**

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

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

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

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

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

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

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

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

## SCHEDULE L

### THAI EXPRESS

#### SAMPLE ACKNOWLEDGMENT OF TERMINATION AND RELEASE AGREEMENT

This Acknowledgment of Termination and Release Agreement ("**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between MTY Franchising USA, Inc. ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**"). The Franchisee and the Franchisor will collectively be referred to herein as the "**Parties.**"

#### RECITALS

**WHEREAS**, Franchisor and Franchisee entered into that certain Franchise Agreement ("**Franchise Agreement**") dated \_\_\_\_\_, 20\_\_\_\_, in which Franchisor granted Franchisee the right to operate a Thai Express Store; and

**WHEREAS**, on \_\_\_\_\_ 20\_\_\_\_, Franchisee's rights under the terms of the Franchise Agreement were terminated ("**Termination**") as a result of

**WHEREAS**, the Parties desire to enter into this Agreement for the purpose of acknowledging the Termination; acknowledging Franchisor's retention of all rights and remedies under the Franchise Agreement including, but not limited to, Franchisor's right to retain all Initial Franchise Fees, Lease Review Fees, Royalties, Marketing Fund Contributions, Administrative Fees, Training Fees and any other fees or charges under the Franchise Agreement, and the right to audit Franchisee's books and records; and fully and finally resolving all legal and equitable claims, known or unknown, of Franchisee existing against Franchisor that were or could have been asserted by Franchisee in any action.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises and agreements herein contained, the parties hereto hereby covenant, promise and agree as follows:

#### AGREEMENT

1. Acknowledgment of Termination. Franchisee acknowledges and agrees that all of its rights under the Franchise Agreement were fully and finally terminated on \_\_\_\_\_, 20\_\_\_\_. Franchisee agrees to abide by all provisions which expressly survive the Termination of the Franchise Agreement, as more fully set forth in the Franchise Agreement.

2. Release by Franchisee. As of the date of this Agreement, Franchisee does hereby compromise, settle, and absolutely, unconditionally, and fully release, discharge, and hold harmless for itself and each of its respective heirs, executors, administrators, representatives, successors, assigns, officers, members, managers, directors, shareholders, employees, partners, and Affiliates (as hereinafter defined) (collectively, the "**Franchisee Releasing Parties**"), the Franchisor and its past, present and future officers, directors, agents, attorneys, employees, shareholders, successors, assigns, members, managers, and Affiliates (collectively, the "**Franchisor Released Parties**"), for all purposes, of and from any and all claims, debts, demands, damages, costs, expenses, actions, causes of action, or suits of any kind



whatsoever, at common law, statutory or otherwise, whether now known or not, whether contingent or matured, including, without limitation, any claim, demand, or cause of action arising out of or in connection with the Franchisee's Thai Express Store or the Franchise Agreement or any other contractual relation between Franchisee and Franchisor and/or any Affiliate of the Franchisor, which the Franchisee Releasing Parties may have had or may now have directly or indirectly against any or all of the Franchisor Released Parties based upon or arising out of any event, act, or omission that has occurred prior to the date hereof. The Franchisee Releasing Parties further covenant and agree to never institute, prosecute or assist others to institute or prosecute, or in any way aid any claim, suit, action at law or in equity, or otherwise assert any claim against any or all of the Franchisor Released Parties for any damages (actual, consequential, punitive or otherwise), injunctive relief, or other loss or injury either to person or property, cost, expense, attorneys' fees, amounts paid on account of recovery or settlement, or any other damage or harm whatsoever, based upon or arising out of any event, act, or omission that has occurred prior to the date hereof. The Franchisor Released Parties are not releasing any claim which they may have against the Franchisee Releasing Parties or any rights or remedies the Franchisor Released Parties may have under the Franchise Agreement or any applicable confidentiality agreements (including but not limited to the right to retain all Initial Franchise Fees, Lease Review Fees, Royalties, Marketing Fund Contributions, Administrative Fees, Training Fees any other sums paid to the Franchisor or its Affiliates by the Franchisee or its Affiliates and any audit rights), under law or equity, or under any other contractual relationship between the Franchisee and the Franchisor and/or any Affiliate of the Franchisor.

3. Affiliates. When used in this Agreement, the term "**Affiliates**" has the meaning as given in Rule 144 under the Securities Act of 1933.

4. Full Release. Except as is set forth in this Agreement, the Parties intend that this Agreement shall be effective as a full and final accord and satisfaction and release as to the Franchisor Released Parties and shall extend to all matters, claims, demands, actions or causes of action of any kind or nature whatsoever which the Franchisee Releasing Parties may have against the Franchisor Released Parties. The Parties acknowledge that they may hereafter discover facts in addition to, or different from, those which they now know or believe to be true with respect to the subject matter of this Agreement but that, notwithstanding the foregoing, it is their intention hereby to fully, finally, completely and forever settle and release the Franchisor Released Parties and that the release given herein shall be and remain irrevocably in effect as a full and complete general release notwithstanding the existence of any such additional or different facts.

5. No Coercion. The Parties acknowledge that they are freely and voluntarily entering into this Agreement, uncoerced by any person, and that they have been advised and afforded the opportunity to seek the advice of legal counsel of their choice with regard to this Agreement.

6. Notices. Any notices given under this Agreement shall be in writing and if delivered by hand, or transmitted by U.S. certified mail, return receipt requested, postage prepaid, or via telegram or telefax, shall be deemed to have been given on the date so delivered or transmitted, if sent to the recipient at its address or telefax number appearing on the records of the sending party.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

8. Amendments. This Agreement may not be changed or modified except in a writing signed by all of the parties hereto.
9. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona.
10. Jurisdiction. The Parties agree that any disputes relating to the enforcement of this Agreement will be governed by the dispute resolution provisions set out in the Franchise Agreement.
11. Fees and Costs. In any action to enforce, interpret or seek damages for violation of this Agreement, the prevailing Party shall recover all attorney's fees and litigation expenses.
12. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.
13. Authorization. Each Party warrants that each individual executing this Agreement on behalf of the respective Parties is fully authorized to do so by each of the respective Parties and each individual executing this Agreement warrants that he or she is acting within the scope of his or her employment and authority in executing this Agreement.
14. Counterparts. This Agreement may be executed in 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.
15. Entirety. This Agreement contains the entire agreement between the Parties related to the subject matter hereof, and in entering into this Agreement, each Party represents that he, she, or it is doing so voluntarily and of his, her or its own free will, and have executed this Agreement below acknowledging that each Party has completely read and fully understands the terms of this Agreement.

**[Signatures on following page]**

**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal, with the intent that this be a sealed instrument, as of the day and year first above written.

**FRANCHISOR:**

**FRANCHISEE:**

**MTY Franchising, USA Inc.**, a Tennessee corporation

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

**SCHEDULE M**

**SBA ADDENDUM TO  
MTY FRANCHISING USA, INC.  
FRANCHISE AGREEMENT**

**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 portion of the SBA Form 2462. At the top left is the SBA logo. The main heading 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 this menu. Below the heading, the form text includes: "THIS ADDENDUM ("Addendum") is made \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Franchisor"), located at \_\_\_\_\_, and \_\_\_\_\_ ("Franchisee"), located at \_\_\_\_\_". 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 LICENSE

<sup>1</sup> AGREEMENT

THIS ADDENDUM (“Addendum”) is made and entered into on \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (“Licensor”), located at \_\_\_\_\_, and \_\_\_\_\_ (“Licensee”), located at \_\_\_\_\_.

Licensor \_\_\_\_\_ and Licensee \_\_\_\_\_ entered into a License \_\_\_\_\_ Agreement on \_\_\_\_\_, 20\_\_\_\_, (such Agreement, together with any amendments, the “License Agreement”). Licensee \_\_\_\_\_ 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 License \_\_\_\_\_ Agreement or any other document Licensor \_\_\_\_\_ requires Licensee \_\_\_\_\_ to sign:

**CHANGE OF OWNERSHIP**

- If Licensee \_\_\_\_\_ is proposing to transfer a partial interest in Licensee \_\_\_\_\_ and Franchisor \_\_\_\_\_ has an option to purchase or a right of first refusal with respect to that partial interest, Franchisor \_\_\_\_\_ may exercise such option or right only if the proposed transferee is not a current owner or family member of a current owner of Licensee \_\_\_\_\_. If the Franchisor \_\_\_\_\_’s consent is required for any transfer (full or partial), Franchisor \_\_\_\_\_ will not unreasonably withhold such consent. In the event of an approved transfer of the (Enter type of) \_\_\_\_\_ interest or any portion thereof, the transferor will not be liable for the actions of the transferee Licensee \_\_\_\_\_.

**FORCED SALE OF ASSETS**

- If Franchisor \_\_\_\_\_ has the option to purchase the business personal assets upon default or termination of the License \_\_\_\_\_ 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 Licensee \_\_\_\_\_ owns the real estate where the licensee \_\_\_\_\_ location is operating, Licensee \_\_\_\_\_ will not be required to sell the real estate upon default or termination, but Licensee \_\_\_\_\_ may be required to lease the real estate for the remainder of the (enter type of) \_\_\_\_\_ 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 Licensee owns the real estate where the licensee location is operating, Franchisor has not and will not during the term of the License 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 Licensee's real estate, they must be removed in order for the Licensee to obtain SBA-assisted financing.

**EMPLOYMENT**

- Franchisor will not directly control (hire, fire or schedule) Licensee's employees. For temporary personnel franchises, the temporary employees will be employed by the Licensee not the Franchisor.

As to the referenced License Agreement, this Addendum automatically terminates when SBA no longer has any interest in any SBA-assisted financing provided to the Licensee.

Except as amended by this Addendum, the License Agreement remains in full force and effect according to its terms.

Franchisor and Licensee 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 FRANCHISOR :**

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

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

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

**Authorized Representative of LICENSEE :**

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

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

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

**Note to Parties:** This Addendum only addresses "affiliation" between the Franchisor and Licensee. Additionally, the applicant Licensee and the (type of agreement) system must meet all SBA eligibility requirements.



**EXHIBIT B1**

**ASSET PURCHASE AGREEMENT**



## 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 Thai Express® 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 MTY Franchising USA, Inc., a Tennessee corporation, affiliated with Seller ("Franchisor").

E. In conjunction with the execution of this Agreement, Purchaser executed a sublease effective \_\_\_\_\_ 20\_\_ ("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].

(a) **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 manuals (“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 Thai Express restaurant;
  - (b) The decision to establish and operate Purchaser's Thai Express 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 Thai Express restaurant provides no assurance or guaranty as to Purchaser's results of operations in connection with its Thai Express 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 Thai Express restaurant at the Premises.

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

- (a) Between the Execution Date and preceding the Closing Date, as applicable, Seller has operated the Franchised Business, in accordance with Seller's standard operating procedures for operating Thai Express 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.

**GRANTOR:**

[IF LIQUOR LICENSE ENTITY]

[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]

B1-B

**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 Thai Express® 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 ten (10) 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 ten (10) 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 five (5) 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), become immediately due and payable without further notice or demand by the Holder.

D. Consent to Credit Reports. Maker hereby agrees that upon notice of default or upon an uncured default of this Note, the Franchise Agreement or any other agreement between Maker (or a legal entity thereof) and Holder or its affiliates, and with no prior notice, Maker consents to Holder's (or its affiliates' or third-party contractors') acquisition and use of non-business consumer credit reports on Maker in order to evaluate as necessary the financial condition of Maker as principal(s), member(s), manager(s), franchisee(s), and/or guarantor(s) in connection with the collection of monetary obligations as contemplated by this Note, Maker's Franchise Agreement, the Guaranty of Agreement, or any other agreements between Maker (or a legal entity thereof), and Holder or its affiliates.

E. Acceleration in the Event of the Sale of the Store. In the event Maker sells the Store (as defined in Section 1 above) effective on or before \_\_\_\_\_, then the entire principal balance (plus all accrued interest) shall become due and payable upon the closing of the transaction of the sale of the Store.

12. Default Interest. After maturity, including maturity upon acceleration as described in Section 11 above, or at any time that Maker is more than seven (7) calendar days delinquent in the payment of money as required by this Note (whether or not Holder has given any notice of default or any cure period has expired), then all amounts outstanding hereunder and any advances thereafter made from the Debt evidenced hereby and any accruing costs and reasonable attorneys' fees which are the obligation of Maker shall thereafter bear interest at the rate of eighteen percent (18%) per annum until paid.

13. Indemnity. Maker shall indemnify, defend and hold Holder harmless for, from and against any and all claims, expenses and reasonable attorneys' fees actually incurred by Holder concerning or arising from the Collateral, this Note, or Maker's breach of any material representation, warranty or covenant. It includes, without limitation, any claims, losses or charges actually incurred concerning, arising out of or in connection with the manufacture, selection, delivery, possession, use, operation or return of the Collateral and any claims, losses or damages actually incurred concerning, arising out of or in connection with this Note. This obligation of Maker's to indemnify Holder continues even after satisfaction of this Note.

14. No Waiver by Holder. Failure of the Holder to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default or in the event of continuance of any existing default after demand for strict performance thereof.

15. Time of Essence. Time is of the essence of this Note.

16. Notices. All notices required or permitted to be given by either Party pursuant to



this Note shall be in writing and given by (a) hand delivery, (b) express overnight delivery service or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt, if hand delivered, (ii) the next business day following the date of deposit with the delivery service, if delivered by express overnight delivery service, or (iii) 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 Holder:                    [Seller Entity]  
   Attention: Legal Department  
   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 HEREFTER 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.

A. Franchisee and MTY Franchising USA, Inc. signed a Franchise Agreement, as amended, with respect to Thai Express® Store No. \_\_\_\_\_ ("Franchise") dated [Franchise Agreement Date] ("Franchise Agreement").

B. 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 for such period of time as the Franchise Agreement and any notation, extension or renewal thereof remains in force, and 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 C

Intentionally Omitted



**EXHIBIT D**

**LIST OF STATE FRANCHISE ADMINISTRATORS**

**EXHIBIT D**

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

<b>STATE</b>	<b>STATE ADMINISTRATOR</b>	<b>AGENT FOR SERVICE OF PROCESS</b>
<b>CALIFORNIA</b>	Department of Business Oversight One Sansome Street, Suite 600 San Francisco, CA 94104 415-972-8559 1-866-275-2677	Commissioner of Business Oversight 320 West 4th Street, Suite 750 Los Angeles 90013-2344 1-866-275-2677
<b>CONNECTICUT</b>	Securities and Business Investment Division Connecticut Department of Banking 260 Constitution Plaza Hartford, CT 06103 860-240-8230	Connecticut Banking Commissioner Same Address
<b>FLORIDA</b>	Department of Agriculture & Consumer Services Division of Consumer Services Mayo Building, Second Floor Tallahassee, FL 32399-0800 850-245-6000	Same
<b>GEORGIA</b>	Office of Consumer Affairs 2 Martin Luther King Drive, S.E. Plaza Level, East Tower Atlanta, GA 30334 404-656-3790	Same
<b>HAWAII</b>	Department of Commerce and Consumer Affairs Business Registration Division King Kalakaua Building 335 Merchant Street, Room 2035 Honolulu, Hawaii 96813 (808) 586-272244	Hawaii Commissioner of Securities Same Address
<b>ILLINOIS</b>	Office of the Illinois Attorney General General's Office Franchise Division Bureau 500 South Second Street Springfield, IL 627061 (217) 782-44651090	Illinois Attorney General Same Address
<b>INDIANA</b>	Securities Commissioner Indiana Securities Division 302 West Washington Street, Room E 111 Indianapolis, IN 46204 317-232-6681	Indiana Secretary of State 201 State House 200 West Washington Street Indianapolis, IN 46204
<b>IOWA</b>	Iowa Securities Bureau Second Floor Lucas State Office Building Des Moines, IA 50319	Same

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
	515-281-4441	
<b>KENTUCKY</b>	Kentucky Attorney General's Office Consumer Protection Division 1024 Capitol Center Drive Frankfort, KY 40602 502-696-5389	Same
<b>LOUISIANA</b>	Department of Urban & Community Affairs Consumer Protection Office 301 Main Street, 6th Floor One America Place Baton Rouge, LA 70801 504-342-7013 (gen. info.) 504-342-7900	Same
<b>MAINE</b>	Department of Business Regulations State House - Station 35 Augusta, ME 04333 207-298-3671	Same
<b>MARYLAND</b>	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202 410-576-6360	Maryland Securities Commissioner Same Address
<b>MICHIGAN</b>	Michigan Department of Attorney General Consumer Protection Corporate Oversight Division Antitrust and Franchise Unit G. Mennen Williams Building 525 W. Ottawa Street, 6th Floor Lansing, MI 4893309 (517) 373-7117	Michigan Department of Commerce Corporations and Securities Bureau Same Address
<b>MINNESOTA</b>	Minnesota Department of Commerce Securities Unit 85 Seventh 7th Place East, #500, Suite 280, Saint Paul, MN 55101-2198 (651) 539-163800	Minnesota Commissioner of Commerce Same Address
<b>NEBRASKA</b>	Nebraska Department of Banking and Finance 1526 "K" Street, Suite 300 Lincoln, NE 68508-2732 P.O. Box 95006 Lincoln, Nebraska 68509-5006 Tele: 402-471-2171	Same
<b>NEW HAMPSHIRE</b>	Attorney General Consumer Protection and Antitrust Bureau State House Annex Concord, NH 03301 603-271-3641	Same
<b>NEW YORK</b>	Office of the Attorney General	Secretary of State of New York 99 Washington Avenue

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
	New York State Department of Law Investor Protection Bureau 28 Liberty Street New York, NY 10005 (212) 416-6684	Albany, New York 12231
<b>NORTH CAROLINA</b>	Secretary of State's Office/Securities Division 2 South Salisbury Street Raleigh, NC 27601 919-733-3924	Secretary of State Secretary of State's Office Same Address
<b>NORTH DAKOTA</b>	North Dakota Securities Department 600 East Boulevard Avenue State Capitol, Fifth Floor Bismarck, ND 58505-0510 701-328-4712; Fax: 701-328-0140	North Dakota Securities Commissioner Same Address
<b>OHIO</b>	Attorney General Consumer Fraud & Crime Section State Office Tower 30 East Broad Street, 15th Floor Columbus, OH 43215 614-466-8831 or 800-282-0515	Same
<b>OKLAHOMA</b>	Oklahoma Securities Commission 2915 Lincoln Blvd. Oklahoma City, OK 73105 405-521-2451	Same
<b>OREGON</b>	Department of Insurance and Finance Corporate Securities Section Labor and Industries Building Salem, OR 96310 503-378-4387	Director Department of Insurance and Finance Same Address
<b>RHODE ISLAND</b>	Department of Business Regulation, Securities Division, Franchise Section 1511 Pontiac Avenue, Building 69-2 Cranston, Rhode Island 02920 (401) 462-9500	Director, Rhode Island Department of Business Regulation Same address
<b>SOUTH CAROLINA</b>	Secretary of State P.O. Box 11350 Columbia, SC 29211 803-734-2166	Same
<b>SOUTH DAKOTA</b>	Division of Insurance Securities Regulation 124 S. Euclid, Suite 104 Pierre, SD 57501-3185 605-773-4823	Director of South Dakota Division of Securities Same Address
<b>TEXAS</b>	Secretary of State Statutory Documents Section P.O. Box 12887 Austin, TX 78711-2887 512-475-1769	Same

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
<b>UTAH</b>	Utah Department of Commerce Consumer Protection Division 160 East 300 South (P.O. Box 45804) Salt Lake City, UT 84145-0804 TELE: 801-530-6601 FAX:801-530-6001	Same
<b>VIRGINIA</b>	State Corporation Commission Division of Securities and Retail Franchising Tyler Building, 9 <sup>th</sup> Floor 1300 E. Main Street Richmond, VA 23219 804-371-9733	Clerk of the State Corporation Commission Division of Securities and Retail Franchising 1300 E. Main Street, 1 <sup>st</sup> Floor Richmond, VA 23219
<b>WASHINGTON</b>	Department of Financial Institutions Securities Division 150 Israel Rd S.W. Tumwater, WA 98501 360-902-8762	Director, Dept. of Financial Institutions Securities Division 150 Israel Rd S.W.
<b>WISCONSIN</b>	State of Wisconsin Department of Financial Institutions Division of Securities 201 W Washington Ave, Suite 300 4822 Madison Yards Way, North Tower Madison, WI 537035 (608) 267-9140266-2139	Wisconsin Commissioner of Securities Same Address



**EXHIBIT E**

**LIST OF FRANCHISEES OR  
MULTIPLE UNIT OPERATORS**



## EXHIBIT E

### LIST OF FRANCHISEES OR MULTIPLE UNIT OPERATORS

The following is a list of our Franchisees in the United States as of November 30, 2021:

#### THAI EXPRESS FRANCHSE LIST AS OF NOVEMBER 30, 2021 WITH OPEN OUTLETS

The name of the franchisee, store address and store telephone number of the stores are listed below:

Franchise Company	Franchisee	Address	City	State	Zip	Phone
Mohammed Elhindi	Mohammed.Elhindi	66 Serramonte Center	Daly City	CA	94015	6509919621
International Food Ventures II, LLC	Kevin.Maragh,Marc Knezevic	4693 Gardens Park Blvd, Suite 113	Orlando	FL	32839	4078024426
INTERNATIONAL FOOD VENTURES, LLC	Kevin.Maragh,Marc Knezevic	3415 NE 1st Ave	Miami	FL	33137	3055488481
AL-BARR L.L.C.	Syed Khalid.Raza,Mohammed Ali.Fareed	11660 Elm Creek Blvd North	Maple Grove	MN	55369	7636570772
Toma Express LLC	Mohammed.Kamruzzaman,Delip.Gupta	9420 West Russel Road	Las Vegas	NV	89148	7022022505
Ukiah Partnership LLC	Ryan.Keeseey,Verna.Draper,Zachary.Draper,Charli.Keeseey	1335 NW 9th St	Corvallis	OR	97330	5412505172
Isosa Incorporated	Joseph.Omobogie	13350 Dallas Parkway	Dallas	TX	75240	2142383838
Alejandro Hinojosa, Jr., Individual	Alejandro.Hinojosa, Jr.	2600 W Expressway 83	McAllen	TX	78501	9563040360

#### THAI EXPRESS FRANCHSE LIST AS OF NOVEMBER 30, 2021 WITH OUTLETS NOT YET OPENED

The name of the franchisee, store address and store telephone number of the stores are listed below:

Franchise Company	Franchisee	Address	City	State	Zip	Phone or Email
Scope Foods Corp.	Shahina Mistry Punjani,Salim Punjani	5200 Medlock Bridge Road	Peachtree Corners	GA	30092	thaiexpressatl@gmail.com,bufordrental@gmail.com

Scope Foods Corp.	Shahina Mistry Punjani, Salim Punjani	1299 Northside Drive NW, Suite 720	Atlanta	GA	30318	thaiexpressatl@gmail.com, bufordrental@gmail.com
Changning Prior	Changning.Prior	TBD	Stockton	CA		510-325-8213
Rupinder S. Gill and Gagandeep Gill	Rupinder.Gill, Gagandeep Gill	Shops at Livermore	Livermore	CA	94551	408-854-6013
Manisha Batra & Sanjay Tillu, Individuals	Manisha.Matra, Sanjay Tillu	TBD	Secaucus	NJ		201-604-3935
Gudu Singh Husson & Sunitha V. Husson Individuals	Gudu.Husson, Sunitha.husson	TBD	Pasadena	CA		626-297-7721
Gudu Singh Husson & Sunitha V. Husson Individuals	Gudu.Husson, Sunitha.husson	TBD	Pasadena	CA		626-297-7721
Gudu Singh Husson & Sunitha V. Husson Individuals	Gudu.Husson, Sunitha.husson	TBD	Pasadena	CA		626-297-7721
Titi Phoukhamphet Phommachanh & Michael Senesoury, Individuals	Titi.Phoukhamphet Phommachanh, Michael.Senesoury	TBD	Dallas	TX		703-217-5560
Titi Phoukhamphet Phommachanh & Michael Senesoury, Individuals	Titi.Phoukhamphet Phommachanh, Michael.Senesoury	TBD	Dallas	TX		703-217-5560
Joseph Omobogie, Individual	Joseph.Omobogie	865 N Farm Market 548	Forney	TX	75126	972-880-2580
AHBAB CONNECTIONS LLC	Mansoor.Naqvi	TBD	Chandler	AZ		858-733-1515
AHBAB CONNECTIONS LLC	Mansoor.Naqvi	TBD	Tempe	AZ		858-733-1515
Ukiah Partnership LLC	Verna.Draper, Zachary.Draper, Charli.Keeseey, Ryan.Keeseey	TBD	Portland	OR		808-255-8687
Alejandro	Alejandro.Hinojosa	TBD	Edinburg	TX		956-491-4466

Hinojosa, Jr., Individual	, Jr.					
Arlene and Troy Larsen, Individuals	Arlene.Larsen,Troy .Larsen	TBD	Salt Lake City	UT		801-897-4385
Alexander Refaeian Individual	Alexander.Refaeia n	200 Springtown Way	San Marcos	TX	78666	915-433-5214
BBH Thai Rivergate L.L.C.	Dipin.Chellani,Neet u.Chellani	TBD	Charlotte	NC		704-942-4403
BBH Thai Rivergate L.L.C.	Neetu.Chellani,Dipi n.Chellani	TBD	Charlotte	NC		704-942-4403
Ishwar & Sanjaykumar Vaghasiya Individuals	Ishwar.Vaghasia,S anjaykumar.Vagha siya	TBD	Cleveland	OH		440-865-0433
Three Phoenix Group, LLC	Prabakaran.Vartha mana,Kamesh.Gop alan,Jayapal.Praba karan	TBD	Orlando	FL		407-881-1230
Pendse, Ameya	Ameya.Pendse		New Brunswick	NJ		ameya.s.pendse@gmail.com
F-Squared Enterprises LLC	Jean-Pierre.Foulon		Dallas	TX		jjpfoulon@yahoo.com



**EXHIBIT F**  
**STATE ADDENDUM**

## EXHIBIT F

### MTY FRANCHISING USA, INC. SPECIFIC DISCLOSURES REQUIRED BY VARIOUS STATES

MTY Franchising USA, Inc. Franchise Disclosure Document (“**FDD**”) and Franchise Agreement (“**FA**”) are modified and/or clarified as follows for franchisees and prospective franchisees in the following states:

#### **CALIFORNIA**

##### Franchise Disclosure Document

#### **ITEM 17 of the Franchise Disclosure Document is revised to including the following:**

“THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.”

Neither the Franchisor, any person or franchise broker in ITEM 2 of the Franchise Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling such persons from membership in such association or exchange.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [www.DBO.ca.gov](http://www.DBO.ca.gov).

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Section 101 and following).

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.

The franchise agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

The franchise agreement requires binding arbitration. The arbitration will occur in Phoenix, Arizona with the costs being borne by the non-prevailing party. 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 20040.4 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

The franchise agreement requires application of the laws of the State of Arizona. This may not be enforceable in the State of California.

Section 31125 of the Franchise Investment Law requires us to give to you a disclosure document approved by the Commissioner of Corporations before we ask you to consider a material modification of your franchise agreement.

You must sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 3100 Through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

## **ILLINOIS**

### **Franchise Disclosure Document**

#### **ITEM 17 of the Franchise Disclosure Document and the Franchise Agreement is amended by adding the following:**

In accordance with Illinois law 815 ILCS 705/19 and Rule Section 200.608, any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside Illinois is void with respect to any action which is otherwise enforceable in Illinois, except that the Franchise Agreement may provide for arbitration outside Illinois. In addition, Illinois law will govern the Franchise Agreement.

#### **The following should be added to Provision f. of ITEM 17 of the Franchise Disclosure Document:**

Illinois law may affect the conditions under which we may terminate the Franchise Agreement, 815 ILCS 705/19 and Rule 200.608.

#### **The following should be added to Provision i. of ITEM 17 of the Franchise Disclosure Document:**

Illinois law may affect your rights upon non-renewal, 815 ILCS 705/19 and 705/20.

Section 200.702 requires any person to whom the right to sell subfranchises or to service franchises is granted must first register as a subfranchisor prior to soliciting or servicing Illinois franchisees. The Franchise Disclosure Document is amended accordingly, to the extent required by Illinois law.

Franchise Agreement

**Article 2.2(a)(i) of the Franchise Agreement is deleted in its entirety.**

**Article 2 of the Franchise Agreement is amended by adding the following:**

**2.4. Illinois Law.** Your rights upon non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

**Article 12.4(i) of the Franchise Agreement is deleted in its entirety.**

**Article 9 of the Franchise Agreement is amended by adding the following:**

**Illinois Law.** The conditions under which your franchise can be terminated may be affected by Illinois law, 815 ILCS 7051/19 and Rule 200.608.

**Article 16.2 of the Franchise Agreement is deleted in its entirety, and in its place is added:**

This Agreement shall be interpreted under the laws of the State of Illinois except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 et seq.).

**The first sentence of Article 16.5 of the Franchise Agreement is revised to read as follows:**

This Agreement and the representations contained in the Franchise Disclosure Document set forth the entire understanding between the parties relating to the subject matter hereof, and there are no agreements, promises, representations or understandings between the parties.

**Article 16.14(e) is revised to provide that litigation under this provision will take place in Illinois.**

Any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside the State of Illinois is amended to the extent required by Illinois law.

The governing law or choice of law clause described in the Franchise Disclosure Document and contained in the Franchise Agreement may not be enforceable under Illinois law. This governing law clause shall not be construed to negate the application of the Illinois Franchise Disclosure Act in all situations to which it is applicable.

**Article 16.15 is amended by the addition of the following as the last sentence of the section:**

“However, this Section shall not act as a condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act of 1987 at Section 705/4.”

## INDIANA

The Indiana Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with Indiana law. To the extent that the Franchise Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended by the following language:

“Indiana law prohibits franchisors from requiring their franchisees to prospectively agree to a release, assignment, novation, waiver or estoppel that attempts to relieve any person from liability.”

“Franchisor will not permit a franchise to sell or renew without good cause or in bad faith. However, Indiana law does not prohibit a Franchise Agreement from providing that the agreement is not renewable on expiration or that the agreement is renewable if Franchisee meets certain conditions specified in the agreement.”

“Unilateral termination of the franchise is not permitted under Indiana law if the termination is without good cause or in bad faith. Good cause within the meaning of Indiana law includes any material violation of the Franchise Agreement.”

“Franchisee will not be required to indemnify Franchisor for any liability imposed upon Franchisor as a result of Franchisee’s reliance upon or use of procedures or products which were required by Franchisor, if such procedures or products were utilized by Franchisee in the manner required by Franchisor.”

“Franchisee is not responsible for tortious claims from Franchisor’s gross negligence or willful misconduct in the making of or causing of the changes necessary in Franchisor’s protection of its Marks.”

“Indiana prohibits covenants not to compete in an area greater than the Area of Primary Responsibility; therefore, Franchisee agrees to abide by the covenants not to compete terms within the Territory as defined in this Franchise Agreement.”

“If there is an alleged breach of Sections 5.18 or 5.19 of the Franchise Agreement, Franchisor may be entitled to seek immediate equitable remedies, including, restraining orders and injunctive relief to safeguard the proprietary and confidential information.”

“Indiana prohibits the limitation of litigation brought for breach of the Franchise Agreement in any matter. Any terms, which designate jurisdiction or venue or require you to agree to jurisdiction or venue in a forum outside of Indiana is void concerning any cause of action, which is otherwise enforceable in Indiana. The Franchise Agreement and all related agreements will be interpreted and construed under the Indiana Franchise Laws, except to the extent governed by the United States Trademark Act of 1946.”

“If there is an alleged breach of Section 15, Company may be entitled to seek immediate equitable remedies, including, restraining orders and injunctive relief to safeguard the proprietary and confidential information.”



“Despite anything to the contrary in this provision, Franchisee does not waive any right under the Indiana statutes with regard to prior representations made in the Indiana Uniform Franchise Offering Circular.”

## **MARYLAND**

The Franchise Agreement and the Statement of Prospective Franchisee are amended to state: “All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.”

ITEM 5 is revised to state: “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.”

The Franchise Agreement is amended to state; “Based upon our financial condition, the Maryland Securities Commissioner has imposed a financial assurance. Therefore, all initial fees and payments owed you to us and/or our affiliates shall be deferred until we complete all our pre-opening obligations to you under the Franchise Agreements.

ITEM 17 of the Franchise Disclosure Document, and the appropriate sections of the Franchise Agreement and/or Receipt are amended to provide that the 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.

ITEM 17 of the Franchise Disclosure Document and sections of the Franchise Agreement are amended to state that you may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration & 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.

ITEM 17 of the Franchise Disclosure Document and sections of the Franchise Agreement are amended to state that any limitation of claims provision will not act to reduce the amount of time afforded a franchise for bringing claims under the Maryland Franchise Registration and Disclosure Law.

ITEM 17 of the Franchise Disclosure Document and sections of the Franchise Agreement 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.

ITEM 17 of the Franchise Disclosure Document is hereby amended to the extent required under the Maryland Franchise Registration and Disclosure Laws.

The Franchise Disclosure Document and Franchise Agreement are amended to state that you may commence any cause of action against us in any court of competent jurisdiction, including the state or federal courts of Maryland. Any claims arising under the Maryland

Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

The following is added as the last paragraph to the Statement of Franchisee attached as Attachment J to the Franchise Agreement:

“The representations made in this Statement of Franchisee 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.”

The following is added to the end of Section 4 “Full Release,” to the Sample Acknowledgement of Termination and Release Agreement attached as Attachment M to the Franchise Agreement:

“The general release shall not apply to any liability under the Maryland Franchise registration and Disclosure Law.”

The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Section 101 and following).

### **MICHIGAN**

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

1. A prohibition on the right of a franchisee to join an association of franchisees.
2. A requirement that a franchisee asset 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.
3. 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.
4. 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: (a) the term of the franchise is less than five years, and (b) 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 six months' advance notice of franchisor's intent not to renew the franchise.

5. 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.
6. 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.
7. 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:
  - (a) The failure of the proposed transferee to meet the franchisor's then current reasonable qualifications or standards.
  - (b) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
  - (c) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (d) 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.
8. 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).
9. 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.**

### **MINNESOTA**

The following risk factor is added to the "Special Risks to Consider About This Franchise" on the Cover Page:

Intangible Assets. The franchisor's financial condition, as reflected in its financial statements (see Item 21), calls into question the franchisor's financial ability to provide services and support to you.

Minn. Stat. Sec. 80C.21 and Minn. Rule Part 2860.4400J, may prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Franchise Disclosure Document or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

The Franchise Disclosure Document and Franchise Agreement are amended to state that we will comply with Minnesota Statute 80C.14 subdivisions 3, 4, and 5, which require except in certain specific cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for non-renewal of the Franchise Agreement.

Pursuant to Minnesota Statute 80C.12 subdivisions 1(g), to the extent required by law, the Franchise Disclosure Document is amended to state that we will protect your right to use the trademark, service mark, trade name, logo or other commercial symbol or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of our trade name.

Minnesota Rule 2860.4400D prohibits us from requiring you to assent to a general release. The Franchise Disclosure Document and Franchise Agreement are modified accordingly, to the extent required by Minnesota law.

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."

#### Franchise Agreement

Section 8.1. of the Franchise Agreement is deleted in its entirety and replaced with the following:

8.1 Initial Franchise Fee. In consideration of the Franchisor entering into this Agreement and the opportunity to establish the Business as herein provided, the Franchisee agrees to pay the Franchisor a fee ("**Initial Franchise Fee**") of Thirty Thousand Dollars (\$30,000.00) upon execution of this Agreement. The Initial Franchise Fee shall be deemed fully earned upon receipt by Franchisor. The Initial Franchise Fee shall be refunded (without interest or deduction, except for any legal costs and other expenses reasonably incurred by the Franchisor in respect of dealing with the Franchisee of an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00), which amount may be deducted from the Initial Franchise Fee) if this Agreement is terminated for failure to identify and agree upon a Store pursuant to Section 4.1 but shall otherwise be fully paid and earned by the Franchisor and non-refundable to the Franchisee.

The third sentence in the second paragraph (beginning with "If any fees or assessments due under this Agreement . . .") in Section 9.9, is hereby deleted and replaced with:

For any payments made by you to us under this Agreement which are returned for non-sufficient funds of an attempted electronic funds transfer, you shall be charged a non-sufficient funds fee of Thirty Dollars (\$30).

**NEW YORK**

**Offering Prospectus**

**The following is added to the Cover Page of this Franchise Disclosure Document:**

**SPECIAL RISK FACTORS:**

**THE FRANCHISE AGREEMENT PERMITS YOU TO ARBITRATE WITH US ONLY IN ONTARIO, CANADA. OUT-OF-STATE ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE OR LITIGATE WITH THE FRANCHISOR IN THE ONTARIO THAN IN YOUR HOME STATE.**

**THE FRANCHISE AGREEMENT STATES THAT ARIZONA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.**

**THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.**

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

**WE MAY, IF WE CHOOSE, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE PROSPECTUS. HOWEVER, WE CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS THAT ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS.**

**The following should be added to ITEM 3 of this Franchise Disclosure Document:**

Neither Thai Express, its predecessor, a person identified in ITEM 2, or an affiliate offering franchises under Thai Express's principal trademark has an administrative, criminal or civil action pending against it alleging a fraudulent conversion, misappropriation of property; unfair or deceptive practices or comparable civil or misdemeanor allegations.

Neither Thai Express, its predecessor, a person identified in ITEM 2, or an affiliate offering franchises under Thai Express's principal trademark has been convicted of a felony or pleaded nolo contendere to a felony charge or within the ten-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 a violation of a franchise, antifraud or securities law; fraud, embezzlement

fraudulent conversion or misappropriation of property, or unfair or deceptive practices or comparable allegations.

Neither Thai Express, its predecessor, a person identified in ITEM 2, or an affiliate offering franchises under Thai Express's principal trademark 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 injunction or restrictive order relating to any to the business activity as a result of an action brought by a public agency or department, including without limitation, action affecting a license as a real estate broker or sales agent.

**The following should be added to ITEM 4 of this Franchise Disclosure Document:**

Neither Thai Express, its affiliate, its predecessor, officers or general partner during the 10-year period immediately before the date of the Franchise Disclosure Document: (a) filed as debtor or had filed against it) a petition to start an action under the U.S. Bankruptcy Code (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer or a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of the franchisor held this position in the company or partnership.

**The following should be added to ITEM 5 of this Franchise Disclosure Document:**

Proceeds from the Initial Franchise Fee will be used to cover our expenses associated with such things as:

- (1) Providing you with initial training;
- (2) Protection and enforcement of all trademarks, trade names and commercial symbols associated with our System;
- (3) Legal and accounting fees and compliance with state and federal laws;
- (4) Administrative expenses; and
- (5) Provision of an operations manual.

**The following should be added to Provision d. of ITEM 17 of this Franchise Disclosure Document:**

You may terminate upon any ground permitted by law.

**The following should be added to Provision j. of ITEM 17 of this Franchise Disclosure Document:**

However, no assignment will be made except to an assignee who, in our good faith and judgment, is willing and able to assume our obligations under the Franchise Agreement.

The following should be added to Provision s. of ITEM 17 of this Franchise Disclosure Document:

Revisions to the Manual will not unduly affect your obligations, including economic requirements, under the Franchise Agreement.

The following should be added to Provision w. of ITEM 17 of this Franchise Disclosure Document:

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

Franchise Agreement

**Section 5.19 of the Franchise Agreement is amended by adding the following to the last sentence of the first paragraph:**

however, no changes to the Manual will be made which would impose an unreasonable economic burden to you or unreasonably increase your obligation;

**Section 16.2 of the Franchise Agreement shall be amended by adding the following:**

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

**NORTH DAKOTA**

Sections of the Franchise Disclosure Document and Franchise Agreement requiring that you sign a general release, estoppel or waiver as a condition of renewal and or assignment, may not be enforceable as they relate to releases of the North Dakota Franchise Investment Law.

The Franchise Agreement and Non-Disclosure and Non-Competition Agreement contain a covenant not to compete which are generally considered unenforceable in the state of North Dakota.

Sections of the Franchise Disclosure Document and Franchise Agreement requiring resolution of disputes, including but not limited to arbitration, mediation or litigation, to be outside North Dakota may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are deleted accordingly to the extent required by law.

Sections of the Franchise Disclosure Document and Franchise Agreement relating to choice of law and jurisdiction, may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are amended accordingly to the extent required by law.

Sections of the Franchise Disclosure Document and Franchise Agreement requiring you to consent to liquidated damages and/or termination penalties, may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are deleted accordingly to the extent required by law.

Sections of the Franchise Disclosure Document and Franchise Agreement requiring you to consent to a waiver of trial by jury, may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are deleted accordingly to the extent required by law.

Sections of the Franchise Disclosure Document and Franchise Agreement requiring you to consent to a waiver of exemplary and punitive damages, may not be enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law, and are deleted accordingly to the extent required by law.

Sections of the Franchise Disclosure Document and Franchise Agreement requiring payment of the initial franchise fee are hereby amended to state that payment of the initial franchise fee shall be deferred until franchisor has completed all of its pre-opening obligations and the franchised location is open for business.

### **RHODE ISLAND**

§ 19-28.1-14 of the Rhode Island Franchise Investment Act provides that “A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act.” The Franchise Disclosure Document, and the Franchise Agreement are amended accordingly to the extent required by law.

The above language has been included in this Franchise Disclosure Document as a condition to registration. The Franchisor and the Franchisee do not agree with the above language and believe that each of the provisions of the Franchise Agreement, including all choice of law provisions, are fully enforceable. The Franchisor and the Franchisee intend to fully enforce all of the provisions of the Franchise Agreement and all other documents signed by them, including but not limited to, all venue, choice-of-law, arbitration provisions and other dispute avoidance and resolution provisions and to rely on federal pre-emption under the Federal Arbitration Act.



## **VIRGINIA**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for MTY Franchising USA, Inc. for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to ITEM 17.e.

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.

Pursuant to Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to use undue influence to induce a franchisee to surrender any right given to him under the franchise. If any provision of the Franchise Agreement involves the use of undue influence by the franchisor to induce a franchisee to surrender any rights given to him under the franchise, that provision may not be enforceable.

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document for MTY Franchising USA, Inc. for use in the Commonwealth of Virginia shall be amended as follows:

Additional Disclosure. The following statements are added to ITEM 17.h.

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.

## **WASHINGTON**

1. The Director of the Washington Department of Financial Institutions requires that certain provisions contained in franchise documents be amended to be consistent with Washington law, including the Washington Franchise Investment Protection Act, WA Rev. Code §§ 19.100.010 to 19.100.940 (1994). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

- a. The Washington Franchise Investment Protection Act, may supersede the Franchise Agreement including areas of termination and renewal of the franchise. There may also be court decisions which may supersede the terms of the Franchise Agreement including areas of termination and renewal of the franchise. If the Agreement contains a provision that is inconsistent with the Act, the Act will control.
- b. If the Franchisee is required in the Agreement to execute a release of claims, such release shall exclude claims arising under the Washington Franchise Investment Protection Act; except when the release is executed under a negotiated settlement after the Agreement is in effect and where the parties are

represented by independent counsel. If there are provisions in the Agreement that unreasonably restrict or limit the statute of limitations period for claims brought under the Act, or other rights or remedies under the Act, those provisions may be unenforceable.

- c. If the Agreement requires litigation, arbitration, or mediation to be conducted in a forum other than the State of Washington, the requirements may be unenforceable under Washington law. Arbitration involving a franchise purchased in the State of Washington, must either be held in the State of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.
- d. If the Franchisee wants to transfer its Agreement and upon Franchisor's approval, the Washington Franchise Investment Protection Act requires that parties deal with one another in "good faith" during this transfer process including collecting transfer fees as provided by the Agreement to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
- e. 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.
- f. If the Agreement requires that it be governed by the law of a state, other than the State of Washington, and there is a conflict between the law and the Washington Franchise Investment Protection Act, the Washington Franchise Investment Protection Act will control.

2. Each provision of this Amendment shall be effective only to the extent that the jurisdictional requirements of the Washington 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.

### **WISCONSIN**

Notwithstanding anything to the contrary set forth in the Disclosure Document, the following provisions shall supersede and apply to all franchises offered and sold in the State of Wisconsin:

- 1. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF THE STATE OF WISCONSIN.
- 2. The following shall apply to Franchise Agreements in the State of Wisconsin:

- a. The Wisconsin Fair Dealership Act, Wisconsin Statutes, Chapter 135 (the "Act"), shall apply to and govern the provisions of Franchise Agreements issued in the State of Wisconsin.
- b. The Act's requirements, including that in certain circumstances a Franchisee receive ninety (90) day notice of termination, cancellation, non-renewal or substantial change in competitive circumstances, and sixty (60) days to remedy claimed deficiencies, shall supersede the provisions of the Franchise Agreement to the extent they may be inconsistent with the Act's requirements.

**ACKNOWLEDGMENT:**

It is agreed that the applicable foregoing state law addendum, if any, supersedes any inconsistent portion of the Franchise Agreement dated the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, and of the Franchise Disclosure Document.

**MTY FRANCHISING USA, INC.:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**FRANCHISEE:**

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

**GUARANTOR:**

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



**EXHIBIT G**

**OPERATIONS MANUAL TABLE OF CONTENTS**

EXHIBIT G

LE GROUPE  
**MTY**  
GROUP

**THAI EXPRESS RESTAURANTS**  
OPERATIONS MANUAL

*Thai*

# Thai

## OPERATIONS MANUAL

<b>EMPLOYEE POLICIES &amp; PROCEDURES</b> .....	<b>5</b>
UNIFORMS.....	5
PERSONAL STANDARDS.....	6
EMPLOYEE MEAL POLICY.....	6
SCHEDULES.....	7
PAY PERIODS.....	7
PERFORMANCE REVIEWS.....	7
PROBATIONARY PERIOD.....	7
DISCIPLINE.....	7
SPECIAL CIRCUMSTANCES:.....	9
CUSTOMER SERVICE.....	9
COMPLAINT PROCEDURES.....	9
CELLULAR PHONE & TELEPHONE.....	9
<b>HEALTH, SAFETY &amp; SANITATION</b> .....	<b>10</b>
- A single incident could put your restaurant out of business.....	11
FOOD CONTAMINATION.....	11
PREVENTING FOOD CONTAMINATION & SPOILAGE.....	12
PREVENTING FOOD CONTAMINATION.....	12
PREVENTING CROSS CONTAMINATION FROM UTENSILS.....	13
PREVENTING CROSS CONTAMINATION FROM OTHER FOOD.....	13
MEASURING FOOD TEMPERATURES.....	14
FOOD STORAGE & DATING.....	14
SPOTTING SPOILED FOOD.....	15
CLEANING & SANITIZING.....	15
DISHWASHING PROCEDURES.....	15
CLEANING CHECKLISTS.....	16
FIRE EXTINGUISHER.....	17
<b>OPENING PROCEDURES (more staff is needed in busier locations)</b> .....	<b>18</b>
<b>SEE DETAILED CHECK LIST FOR OPENING PROCEDURES</b> .....	<b>18</b>
<b>MORNING</b> .....	<b>18</b>
<b>Soup server comes in at 10:30 a.m.:</b> .....	<b>18</b>
GENERAL CLEANING.....	19
KITCHEN.....	19
<b>CLOSING PROCEDURES</b> .....	<b>19</b>
FRONT COUNTER:.....	20
HOODS:.....	20
REPORT TO MANAGER ALL MISSING PRODUCTS AND THE ONES THAT ARE RUNNING LOW.....	20
FINAL CHECK BEFORE LEAVING.....	20
SERVING AREA/COUNTER.....	20
<b>GOOD SERVICE</b> .....	<b>21</b>
TREAT CUSTOMER AS A GUEST.....	21



TAKE THE INITIATIVE.....	22
SALES AND SERVICE.....	22
ATTRACT CUSTOMER.....	24
CLOSE THE SALE.....	25
SERVE THE CUSTOMER.....	26
3 WORKSTATIONS.....	26
<b>5 WORKSTATIONS.....</b>	<b>26</b>
<b>6 WORKSTATIONS.....</b>	<b>26</b>
<b>7 WORKSTATION.....</b>	<b>27</b>
<b>BACK SERVER.....</b>	<b>27</b>
PROPER SERVING TECHNIQUE.....	27
SERVING TRAYS.....	28
PORTION CONTROL.....	28
SOFT DRINKS AND BEVERAGE.....	29
SUGGESTIVE SELLING.....	29
<b>CASH HANDLING.....</b>	<b>30</b>
CASH REGISTER RECEIPTS.....	30
MAKING CHANGE.....	30
LARGE DENOMINATION BILLS.....	30
PERSONAL CHECKS.....	31
TRAVELERS CHECKS.....	31
CREDIT CARDS.....	31
CUSTOMERS LACKING FULL PAYMENT.....	31
MALL OR EMPLOYEE DISCOUNT CARDS.....	31
COMPLIMENTARY MEAL COUPONS.....	31
COUPONS.....	31
VOIDS AND REFUNDS.....	32
<b>HANDLING CUSTOMER COMPLAINTS.....</b>	<b>32</b>
ALLERGIES.....	32
SOUP UNIT/IMPERIAL ROLLS/BATTERED GENERAL THAI REFILL PROCEDURES.....	33
SMALLWARES.....	33
<b>CLEANING SCHEDULES AND CHECKLISTS.....</b>	<b>34</b>
KITCHEN - DAILY CLEANING SCHEDULES.....	34
HAND SINK & SOAP DISPENSER: Before closing every night, you must wipe clean the sink and dispenser surfaces, and to make sure dispenser is full.....	35
ICE MACHINE: Wipe & clean all surfaces. Clean the filter once a month and check over all condition of the machine.....	35
POTS, PANS, TRAYS, KNIVES & OTHER UTENSILS: Prepare sink as per dishwashing procedures. Scrub pots & pans (no knives) in soapy hot water. Rinse thoroughly and dry, and place clean items back in proper storage areas.....	35
WALK IN COOLER: Remove all items from shelves, wipe and clean all shelves and put back all items. Check temperature daily.....	35
SHELVES: Before closing, use a clean damp cloth to wipe all shelf surfaces.....	35
VEGETABLE PROCESSOR: Unplug after each use and take each unit apart. Wash removable parts in warm water, with approved cleaning & sanitising solution. Dry and store them in walk in cooler. Wipe motor unit housing and other area with clean, damp towel. Sharpening the blades should be done once every 4 to 5 months by a professional knife sharpener.....	35
FRONT COUNTER - DAILY CLEANING SCHEDULES.....	35





BACK COUNTER & STORAGE AREA: Use only a little water, as wood absorbs water and will warp. Soak towel in soapy water. Wring out towel thoroughly. Wipe all inside and outside surfaces and shelves, then wipe area with dry cloth..... 35

CASH REGISTER: Thoroughly and carefully clean the surfaces with a slightly damp cloth. Dry with a clean cloth. Make sure cloth is almost dry, as excess water can short out the cash register... 35

MENU BOARD: Wipe strips with damp clean cloth. Dust pictures. Clean light box and frames with glass cleaner..... 36

MIRRORS & TILES: Wipe and clean all surfaces, including all edges and corners, of mirror, glass, tiles and steam table glass, with glass cleaner and dry cloth..... 36

PASS THROUGH WINDOW: Use clean and damp cloth to wipe the surface. Clean as needed. 36

SOFT DRINK DISPENSER: Use clean damp cloth to wipe the entire area including the drain and ice containers. Soak dispenser heads in tap water nightly. Check the overall condition of the machine..... 36

TRAY RAILS: Do not use excess water. Wipe fixtures with a dampened cloth. Dry fixtures with clean and dry cloth..... 36

**CLEANING CHECKLISTS..... 36**

KITCHEN - DAILY ..... 36

KITCHEN - WEEKLY ..... 36

FRONT COUNTER - DAILY..... 37

FRONT COUNTER - WEEKLY..... 37

EQUIPMENT & PREVENTIVE MAINTENANCE ..... 37

EQUIPMENT RECORDS ..... 37

EQUIPMENT WARRANTY ..... 39

PREVENTIVE MAINTENANCE ..... 40

**ICE BIN - QUARTERLY..... 46**



**EXHIBIT H**

**IN-STORE TRAINING RELEASE  
AND WAIVER OF LIABILITY 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 MTY Franchising USA, Inc., a Tennessee corporation, 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 I**

**LIST OF FRANCHISEES OR  
MULTI UNIT OPERATORS**

**WHO HAVE LEFT THE SYSTEM**

**EXHIBIT I**

**LIST OF FRANCHISEES OR MULTIPLE UNIT OPERATORS WHO HAVE LEFT THE SYSTEM**

The following is a list of our Franchisees in the United States who have left the system during our last fiscal year ended November 30, 2021:

<b>Franchise Company</b>	<b>Owners</b>	<b>City</b>	<b>State</b>	<b>Phone</b>
Scope Foods Corp.	Salim Punjani, Shahina Mistry Punjani	Flowery Branch	GEORGIA	704-953-6191
CUZ UNC LLC	Jordan Daniel Rhoads	Coeur d	ID	509-280-0667



**EXHIBIT J**

**STATE EFFECTIVE DATES**

***Thai Express***  
**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	Not Registered
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 K

RECEIPT

**EXHIBIT K**  
**RECEIPT**  
**(Retain This Copy)**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Thai Express 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, Thai Express or an affiliate in connection with the proposed franchise sale. Under Illinois, Iowa, Maine, Nebraska, New York, Oklahoma, Rhode Island, or South Dakota law, if applicable, Thai Express must provide this disclosure document to you at your first personal meeting to discuss the franchise.

New York State Law requires a franchisor to provide the franchise disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Thai Express 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 appropriate state agency identified on **Exhibit D**.

The name, principal business address and telephone number of the franchise seller offering the franchise is Ray Zandi at 9311 East Via de Ventura, Scottsdale, Arizona, 85258, (480) 515-6250.

Issuance Date:            March 28, 2022

See **Exhibit D** for Thai Express's registered agents authorized to receive service of process.

I have received a disclosure document dated that included the following Exhibits:

- Exhibit A:     Financial Statements
- Exhibit B:     Franchise Agreement with Schedules
- Exhibit B1:    Asset Purchase Agreement
- Exhibit D:     List of State Franchise Administrators and Agents for Service
- Exhibit E:     List of Franchisees or Multiple Unit Operators
- Exhibit F:     State Addendum
- Exhibit G:     Operations Manual Table of Contents
- Exhibit H:     In-Store Training Release and Waiver of Liability Agreement
- Exhibit I:     List of Franchisees or Multi Unit Operators Who Have Left the System
- Exhibit J:     State Effective Dates
- Exhibit K:     Receipt

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Date	Signature	Printed Name
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Please sign this copy of the receipt, date your signature, and return it to Ray Zandi, 9311 East Via de Ventura, Scottsdale, Arizona, 85258

**EXHIBIT K**

**RECEIPT  
(Our Copy)**

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Thai Express 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, Thai Express or an affiliate in connection with the proposed franchise sale. Under Illinois, Iowa, Maine, Nebraska, New York, Oklahoma, Rhode Island, or South Dakota law, if applicable, Thai Express must provide this disclosure document to you at your first personal meeting to discuss the franchise.

New York State law requires a franchisor to provide the franchise disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

If Thai Express 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 appropriate state agency identified on **Exhibit D**.

The name, principal business address and telephone number of the franchise seller offering the franchise is: Ray Zandi at 9311 East Via de Ventura, Scottsdale, Arizona, 85258, (480) 515-6250.

Issuance Date: March 28, 2022

See **Exhibit D** for Thai Express's registered agents authorized to receive service of process.

I have received a disclosure document dated that included the following Exhibits:

- Exhibit A: Financial Statements
- Exhibit B: Franchise Agreement with Schedules
- Exhibit B1: Asset Purchase Agreement
- Exhibit D: List of State Franchise Administrators and Agents for Service
- Exhibit E: List of Franchisees or Multiple Unit Operators
- Exhibit F: State Addendum
- Exhibit G: Operations Manual Table of Contents
- Exhibit H: In-Store Training Release and Waiver of Liability Agreement
- Exhibit I: List of Franchisees or Multi Unit Operators Who Have Left the System
- Exhibit J: State Effective Dates
- Exhibit K: Receipt

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Date

Signature

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Printed Name

Please sign this copy of the receipt, date your signature, and return it to Ray Zandi, 9311 East Via de Ventura, Scottsdale, Arizona, 85258.