

**A Practical Guide to U.S. Franchise Sales Laws  
& Franchise Relationships**

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# Introduction

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The United States is the “franchising capital of the world.”<sup>1</sup> From about 100 franchising companies in 1950 to an estimated 3,000 franchisors today - in the United States alone – the business model known as “franchising” continues to grow in the United States. A recent study of franchised businesses across 10 broad business lines reveals impressive statistics and a continued positive outlook for U.S. franchising:<sup>2</sup>

- Nearly 770,000 franchised outlets were operating in the U.S. at the end of 2014, with this figure projected to grow by over 12,000 new franchised outlets in 2015.
- Both the quick service and full service segments of the restaurant industry experienced strong growth in 2014, with the same forecasted for 2015.

Franchising’s successful track record here has spawned numerous foreign “home-grown” franchise concepts that operate entirely in local or overseas markets. Universally, however, to foreign franchisors, the U.S. market is the “holy grail,” a market with unbounded opportunity offering foreign brands access to a vast consumer population.<sup>3</sup>

It is challenging for any franchisor, even U.S.-based companies, to expand their franchise system in a new country, and this is particularly true for foreign franchisors entering the U.S. Not only must foreign brands adjust their concepts to American tastes and customs, but foreign franchisors must understand and comply with complicated U.S. franchise laws. While the U.S., comparatively-speaking, is more hospitable than some countries in not limiting foreign business ownership or expatriation of profits from U.S.-based activities, foreign franchisors will likely find more cumbersome franchise sales laws here than elsewhere. Furthermore, the scope of required pre-sale franchise disclosures in the U.S. is considerably broader than in other countries and takes many foreign franchisors by surprise.

The Guide provides practical guidance to Japanese companies about the legal regulation of franchise sales in the U.S. The Guide introduces U.S. franchise sales laws without bogging the reader down with too much detail. While the Guide assumes the reader currently operates a franchise business in Japan, it will be useful to companies that do not currently operate a franchise program overseas, but are considering launching one in the U.S. The Guide highlights essential information that every foreign franchisor should know about bringing a franchise concept to the U.S. or starting a franchise program in the U.S.<sup>4</sup>

Besides federal and state franchise sales laws, there are other types of franchise and generally-applicable statutes that potentially regulate franchise relationships, and judicial-based or “common law” that may regulate franchise parties. The Guide only briefly addresses other laws; the main focus is to explain what a foreign franchisor can expect in order to sell franchises lawfully in the U.S.<sup>5</sup>

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1 <http://www.entrepreneur.com/article/226135> (March \_\_\_\_, 2015).

2 The 10 industry lines examined in the January, 2015 report prepared by IHS Economics for the International Franchise Association Educational Foundation were automotive, business services, commercial and residential services, lodging, personal services, quick service restaurants, real estate, retail food, retail products and services, and table/full service restaurants. See <http://emarket.franchise.org/FranchiseBizOutlook2015.pdf> (March \_\_\_\_, 2015).

3 <http://www.entrepreneur.com/article/226135> (March \_\_\_\_, 2015).

4 The Guide assumes the reader has a general understanding of business format franchising and the typical role of the franchisor and franchisee. The Guide only focuses on franchise sales laws and does not address business considerations for bringing a foreign franchise concept to the U.S.

5 Franchise sales laws apply to the sale of business arrangements that fall within the legal definition of a “franchise.” The term “franchise” is a technical term. Whether a business arrangement is a “franchise” depends on its unique facts and whether those facts satisfy the applicable statutory definition of a “franchise.” Federal and state franchise laws do not define “franchise” uniformly. Sometimes it is possible to structure a distribution program to lawfully avoid some or all franchise sales laws. However, there are few structural solutions available to franchisors of restaurant concepts. A franchisee cannot waive the statutory protections of franchise laws even if it wants to. This Guide does not discuss the question, “what is a franchise,” the legal definitions, or potential structuring solutions for lawfully avoiding U.S. franchise laws, but this is a question that a foreign franchisor may want to ask its U.S. legal counsel in planning its expansion into the U.S.

The sample Franchise Disclosure Document, Franchise Agreement and Area Development Agreement that accompany the Guide represent a typical set of U.S. franchise documents for a casual dining concept requiring 2,000 square feet of interior space (including dining area and food preparation area).

These franchise documents are not offered as a “template” and should not be copied. The sample documents reflect careful decisions that a franchisor entering the U.S. would make in consultation with an experienced U.S. franchise attorney and business advisor taking into account factors unique to the franchisor including the franchisor’s prior franchising experience in its home country, financial condition, expansion strategy, competitive concepts in the U.S., U.S. market conditions, tax treaties, U.S. immigration laws, home-country laws that may affect U.S. operations, and U.S. laws that may affect the export/import of any proprietary products essential to U.S. operations. Franchise documents are not “one size fits all.” A foreign franchisor should resist the temptation to take the sample documents and make simple adjustments to them for its own use in the U.S. These documents should be considered tools to aid a foreign franchisor’s due diligence investigation into the feasibility of expanding its brand into the U.S. market.

The Guide and accompanying franchise documents are not intended to provide specific legal advice nor substitute for direct counsel between attorneys and clients. Not only must franchise documents reflect each franchisor’s unique business strategies, but the application of franchise laws is an intensely fact-specific process. Engaging experienced franchise legal counsel and business advisors is an essential first step for any foreign company planning to franchise in the U.S.

U.S. franchise sales laws may change over time. The Guide is prepared based on the laws in effect and best practices observed by franchisors at the time of its publication, March 31, 2015.

# Table of Contents

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What U.S. Laws Govern Franchise Sales Activities? . . . . .	7
1. Federal Law: . . . . .	7
2. State Laws: . . . . .	7
3. Do U.S. Franchise Sales Laws Apply To Foreign Franchisors? . . . . .	8
Jurisdiction – When Does A Particular State Law Apply? . . . . .	8
4. What Activities Determine A State Law’s Jurisdiction? . . . . .	8
5. What Are Exemptions . . . . .	10
6. Must A Franchisor Register In A Franchise Registration State Before A Franchisor May Advertise For Franchisees? . . . . .	10
7. Must A Franchisor Register In A Franchise Registration State Before A Franchisor May Advertise For Franchisees? . . . . .	11
Franchise Disclosure Document (“FDD”) . . . . .	11
8. What Is The Purpose Of The FDD? . . . . .	11
9. What Is The Purpose Of The FDD? . . . . .	12
Franchise Sellers . . . . .	21
10. Who May Offer Or Sell Franchises For A Franchisor? . . . . .	21
The Disclosure Process . . . . .	22
11. When And How Must The FDD Be Delivered To A Candidate? . . . . .	22
The Franchise Registration Process . . . . .	23
12. What Does Registration Entail? . . . . .	23
13. What About Material Changes? . . . . .	25
Waivers . . . . .	26
14. May A Prospective Franchisee Waive Franchise Laws? . . . . .	26
Document Retention . . . . .	26
15. How Long Must A Franchisor Retain Franchise Records? . . . . .	26

Liability – Potential Consequences . . . . . 26

- 16. What Remedies Exist For Franchise Law Violations? . . . . . 26
- 17. How May A Franchisor Prevent Franchise Sales Violations? . . . . . 28
- 18. What Other Laws Govern The Franchise Relationship? . . . . . 28

Structuring The Franchise Business Relationship . . . . . 29

- 19. Types Of Franchise Structures . . . . . 29
- 20. Key Contracts That Document The Franchise Relationship . . . . . 32
- 21. Key Decisions For Area Development Agreements . . . . . 34
- 22. Key Decisions For Franchise Agreements . . . . . 36

# What U.S. Laws Govern Franchise Sales Activities?

## 1. Federal Law:

1.1 All franchise sales in the United States are subject to a federal law that is administered by the Federal Trade Commission (“FTC”), an independent agency of the U.S. government whose principal mission is to promote consumer protection and eliminate and prevent unfair and anticompetitive business practices. The federal franchise law is commonly referred to as the “Amended FTC Rule.”

1.2 The Amended FTC Rule regulates franchise sales in all 50 states, including transactions that take place entirely within the same state (for example, where the franchisee operates in the same state where the franchisor has its headquarters).

1.3 The basic requirement of the Amended FTC Rule is that a franchisor must deliver a disclosure document (called a Franchise Disclosure Document or FDD) containing specific information about the franchisor and franchise opportunity to each franchisee candidate a minimum period of time before the franchisee may sign any binding agreement to buy a franchise or may pay the franchisor any money for the franchise opportunity.

1.4 The Amended FTC Rule does not require a franchisor to file or register its FDD with any federal agency.

1.5 The FDD itself is not a contract. However, the guidelines for preparing the FDD require a franchisor to attach all contracts proposed for use including the Franchise Agreement and personal guarantees. Many FDD mandatory disclosures explain provisions in the franchise contracts.

## 2. State Laws:

2.1 Fifteen states have enacted statutes that also regulate franchise sales.<sup>1</sup> These states are commonly referred to as “franchise registration” states.<sup>2</sup>

2.2 From one state to the next, state franchise registration laws are similar, but not identical. In all cases, however, state franchise registration laws forbid a franchisor from making an “offer to sell” a franchise or from selling a franchise to a resident of the franchise registration state or for a location or territory in the franchise registration state before the franchisor registers its franchise program with the state’s franchise agency.

2.3 The specific registration process depends on whether the state is a “full review state,” “notice filing state,” or “business opportunity (“Bus/Op”) state.” These differences and registration duties generally are discussed further in Section \_\_\_\_.

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1 The registration states are: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin. Oregon has a franchise sales law, but no registration component.

2 Laws governing the sale of business opportunities (also called seller-assisted marketing plans) exist in 25 states. For the most part, a franchisor that complies with U.S. franchise sales laws should be able to qualify for an exemption from business opportunity laws, which are similar to franchise sales laws in that they require delivery of a pre-sale disclosure document and in many cases require registration with a state agency before a promoter may sell a business opportunity to a resident of the regulating state. States with business opportunity laws are: Alaska, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, and Washington.

2.4 All registration states impose pre-sale disclosure duties similar to the Amended FTC Rule and accept the FDD as the basic disclosure document, although some registration states require additional disclosures, which the franchisor can make by adding a special “State Addendum” exhibit to its FDD. Most registration states require the franchisor to file a copy of its FDD with the state agency. As a result, if the franchisor chooses to offer franchises in the state, the franchisor must accept the fact that its FDD is part of the public record and the terms of its franchise offer are not confidential.<sup>3</sup>

### **3. Do U.S. Franchise Sales Laws Apply To Foreign Franchisors?**

3.1 Yes. The nationality and citizenship of the franchisor is irrelevant as is the nationality and citizenship of the franchisee. Federal and state franchise sales laws apply to the award of a franchise for a location in the U.S. when a foreign franchisor awards the franchise or when a foreign national buys the franchise.

## **Jurisdiction – When Does A Particular State Law Apply?**

### **4. What Activities Determine A State Law’s Jurisdiction?**

4.1 Whether a state franchise registration law applies to a particular franchise sale requires a technical “jurisdictional” analysis. This is a subject area where guidance from an experienced franchise lawyer can save a franchisor from needless legal risk.

4.2 Registration states regulate franchises that are offered or sold in the registration state. The application of a state franchise registration law is triggered by either the “offer” or the “sale” of a franchise in the registration state. Evidence of either activity is enough to trigger application of a state franchise registration law.

4.3 Generally speaking, where an “offer” to sell a franchise or where the “sale” of a franchise takes place depends on some or all of the following facts: (i) where meetings between the franchisor and candidate take place; (ii) if the parties negotiate the Franchise Agreement, where those negotiations take place; (iii) where the candidate resides or maintains its headquarters; (iv) if the candidate is a business entity, the state or country under whose laws the entity is organized; (v) the location of the franchised business; and (vi) the franchise territory assigned to the candidate. It is possible for the laws of two or more franchise registration states to apply to the sale of a single franchise. For example, the franchisor may meet the candidate at a franchise expo trade show held in franchise registration state A, but the candidate may reside in franchise registration state

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<sup>3</sup> Franchise sales laws do not forbid franchise parties to negotiate the standard terms of the franchisor’s contracts. This is a persistent myth in U.S. franchising. The negotiability of franchise agreements largely depends on the relative bargaining power of the franchise parties and classic market factors like supply and demand. A highly respected, well-established, successful franchisor may have little reason to entertain a candidate’s desire to change standard terms. Franchisors also have sound business reasons not to negotiate their standard contracts since there is an administrative burden in administering a franchise system with multiple versions of the franchise agreement in place. Negotiation of a franchise agreement is one thing; the evolution of a franchise program is another. All franchise systems change with time as the franchisor gains experience franchising, the concept itself matures as a brand and competitive circumstances, technology, consumer preferences and legal regulations invariably change. Every franchise program ends up with multiple generations of standard contracts used at one point by the franchisor for some period of time. This is the reality of every franchise program even those where the franchisor’s policy is not to negotiate standard contract terms with individual franchisees. The fact that a franchisor’s FDD and standard contracts is part of the public record does not therefore mean that the specific terms that are negotiated by the franchisor will be exposed to the public, with one exception: in California, which imposes special registration and disclosure duties on franchisors that negotiate special deals with franchisees. A discussion of the California negotiated sales rules is beyond the scope of the Guide.

B, and the parties may reach an agreement that the candidate will open the franchised business in franchise registration state C and that the protected area awarded to the franchisee includes area in both franchise registration state C and neighboring franchise registration state D.

4.4 Courts and state franchise agencies interpret what activities amount to an “offer” very broadly. An “offer” includes all methods of soliciting an offer to buy a franchise so it includes advertising for franchisee candidates. As a result, a franchisor may not (i) advertise for candidates to open franchised outlets in a franchise registration state; or (ii) engage in a franchise expo trade show in a franchise registration state before the franchisor is registered to sell franchises in that registration state.<sup>4</sup>

4.4.1 An “offer” to sell a franchise requires some degree of substantive discussion between the franchisor and candidate about the franchise opportunity.

4.4.2 Because franchise laws are broadly construed, it takes very little for a conversation to constitute an “offer,” especially to an overeager candidate.

4.4.3 What constitutes “substantive communications” is a factual question. Any communication with a candidate about the terms and conditions of the franchise opportunity that are specific to that candidate, e.g., potential locations, financing, fees, territory, or other Franchise Agreement duties, regardless of whether the parties engage in negotiations of the standard contract, will likely be considered sufficient to constitute an “offer.”

4.4.4 Communications with a candidate need not be face-to-face and may occur by telephone or email. Not infrequently, a franchise “offer” may happen on an impromptu basis at a trade show or in response to the franchisor’s general franchise recruiting activities, advertising or website.

4.5 As soon as conversations cross the line and move from a general, non-specific discussion of the franchise opportunity to something that may liberally be described as relating to an individual candidate’s opportunity, the conversation becomes an “offer” and the franchisor must identify any registration states that may be implicated in the franchise offer. The franchisor should confer with franchise counsel to assist with this analysis.<sup>5</sup>

4.6 Franchisors are responsible for the activities of their franchise sales team. Therefore, franchisors must educate their franchise sales team about registration state “jurisdictional” triggers.

4.7 The “sale” of a franchise generally refers to the execution of a Franchise Agreement or other binding agreement (e.g., Franchise Agreement, Area Development Agreement, area representative agreement, option agreement, or binding letter of intent) or the payment of any fees for

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<sup>4</sup> Some states exempt certain franchisors from having to file advertising and also exempt certain types of advertising from registration. Section \_\_\_ briefly discusses advertising exemptions.

<sup>5</sup> If a franchisor discovers that it or its sales team has made an “offer” to a candidate in a franchise registration state where the franchisor is not yet registered, the franchisor should discontinue further discussions about the franchise opportunity with the candidate, except to take down the candidate’s contact information. The franchisor may inform the candidate that it will resume discussions if and when it completes the state’s franchise registration process. Generally speaking, if activities constituting an offer take place in a franchise registration state before the franchisor is registered to sell franchises in that state, but the franchisor puts further discussions on hold while the franchisor completes the state’s registration process, delivers a registered FDD to the candidate, and waits the minimum waiting period before allowing the franchisee to sign a binding agreement or pay the franchisor any money for the franchise rights, the resulting sale will comply with state law. Although state franchise registration laws do not formally say that these steps will cure the prior unregistered offer, as a practical matter, the prior unregistered offer should not support any legal claims by the franchisee or be of any enforcement interest to a state franchise regulator.



the franchise rights. Where these events take place will also trigger the jurisdiction of a state franchise registration law.

## **5. What Are Exemptions:**

5.1 Certain franchisors and franchise transactions may be exempt from either the Amended FTC Rule, or from all or certain state registration law requirements if they meet specific exemption conditions spelled out in the statute. Just as there is no uniform definition of a franchise, at this time there are no uniform exemptions. In some states, an exemption may only be from registration, not disclosure. Given the potential liability for violating a franchise sales law, a foreign franchisor should seek guidance from an experienced franchise lawyer on whether a particular franchise sale is exempt from federal or state franchise sales laws.

5.2 Unfortunately, there is no perfect alignment between state law exemptions and exemptions under the Amended FTC Rule.

5.3 If a franchisor wants to offer franchises in a registration state that requires pre-sale disclosure even if the franchisor is exempt from having to register with the state's franchise agency, the franchisor must prepare an FDD even though the arrangement may be exempt from the Amended FTC Rule.

5.4 If a state or federal exemption exists in one or more jurisdictions, a franchisor must comply with the law in the franchise registration states where the arrangement is not exempt if the franchisor wishes to offer franchises in that state.

## **6. Must A Franchisor Register In A Franchise Registration State Before A Franchisor May Advertise For Franchisees?**

6.1 Generally yes. Not every registration state regulates franchisor advertising, but most states do. This means that the franchisor must complete the state's registration process and receive a registration order before engaging in media advertising or other activities that promote the availability of franchises, like participating in a franchise trade show in the registration state.

6.2 There are three exceptions:

6.2.1 Out of state advertising - franchisors may advertise the availability of franchises in a publication with incidental circulation in a franchise registration state if at least two-thirds of the publication's paid circulation during the prior 12 month was outside of the registration state or if broadcast advertising originates outside of the registration state, even though a candidate may receive the broadcast in a registration state.<sup>6</sup>

6.2.2 Internet Advertising - franchisors may post information on their own or on a third party's website about franchise opportunities. The fact that a candidate in a registration state may come across and read the website information is not an "offer to sell" a franchise in the registration state by the franchisor unless the franchisor actually directs the candidate to the website by giving the candidate the website's URL or a link to the website. When the franchisor directs candidates to website content describing the franchise opportunity, the activity is treated as an offer to sell a franchise and the franchisor must be registered in the franchisee's home state.

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6 The franchisor is responsible for confirming with the publisher its paid circulation statistics. Publishers keep this information.



6.2.3 Exempt Franchisors – in most states, a franchisor that is exempt from registration is also exempt from registering its franchise advertising.

## Franchise Disclosure Document (“FDD”)

### 7. What Is The Purpose Of The FDD?

7.1 Pre-sale disclosure is designed to provide franchisee candidates with prescribed information to enable them to make better-informed decisions regarding the franchise offered for sale. Besides disclosing vital information about the franchise opportunity, the FDD also discloses information about the franchisor’s management team and financial condition. By requiring franchisors to follow a prescribed format of disclosure and respond positively or negatively to each disclosure item (rather than skip those items that might not apply), the FDD is designed to enable a candidate to compare different franchise programs easily.

7.2 The FDD helps to ensure that the franchisor and the franchisee candidate have a common understanding about their mutual rights and duties and align their expectations about their legal relationship. The FDD therefore serves the goal of preventing misunderstandings and false assumptions by franchisees.

7.3 The FDD ensures that candidates receive copies of the contracts that they will need to sign in order to become a franchisee and have a reasonably good understanding of their likely investment or have at least have enough reliable information from which to conduct their own due diligence about the costs and potential of becoming a franchisee. Franchisors increase the risk of franchisee failure if they sell franchises to uninformed or unprepared franchisees that may be able to pay the initial fee, but do not take the time to understand what operating the franchised business really entails. While it is the candidate’s job to do its own homework, a franchisor helps itself by making sure that each candidate understands the commitments before the candidate signs any binding agreements. The failure of a franchisor’s first few franchisees will make it harder for the franchisor to sell new franchises and may ultimately doom the franchisor’s U.S. expansion.

7.4 While the FDD is foremost a legal document, it also serves a marketing function. A well-written FDD is a franchisor’s most comprehensive explanation of its franchise program and an ideal place to set itself apart from its competitors. However, it must do this without adding “marketing hype” to the FDD since the rules for preparing the FDD forbid a franchisor from including extraneous information. “Marketing fluff” also increases the risk of misaligned expectations and legal challenges later on from a disappointed franchisee.

### 8. What Are The “FDD Guidelines”?

8.1 The Amended FTC Rule adopts specific rules for preparing the FDD. Specifically, the FDD must have a cover page and address 23 required substantive categories of information commonly referred to as “items.” Many disclosure items have multiple required subcategories.

8.2 To help franchisors properly prepare an FDD, the FTC has published (i) detailed Compliance Guides that explain the mandatory disclosure items and provide sample disclosures; and (ii) “FAQs,” i.e., answers to frequently-asked compliance questions posted by franchisors and lawyers.

8.3 Franchise registration states all adhere to the same disclosure guidelines as the Amended FTC Rule and accept the FDD as the basic disclosure document, with two additions: (i) states require a second cover page inserted immediately behind the FTC cover page where a franchisor must disclose specific risk-factors; and (ii) some states also require additional state-specific disclosures that may be placed in a “State Addendum” exhibit to the FDD.<sup>7</sup>

8.4 Because the basic FDD is accepted in all states, a franchisor that operates in multiple states including registration states may use the same FDD in all states. Most franchisor do use one, uniform FDD in all states in the U.S. where they sell franchises. While any disclosures in the FDD’s State Addendum exhibit apply only apply to franchisees in registration states, generally the benefits of using one FDD in all states outweigh the use of different state-specific FDDs. Candidates typically ignore information in a State Addendum if the information is not relevant to them and only applies to franchisees in a specific state. Other benefits of using a single FDD are that (i) a single FDD reduces the chance of mistakenly providing a candidate with the wrong FDD; (ii) all franchisees receive the same disclosure information; and (iii) it is less costly and significantly easier to work with and update one FDD instead of multiple state-specific FDDs.

8.5 The FDD must be written in “plain English.” This requirement ensures that the FDD is written in everyday language devoid of legal jargon and highly technical terms and understandable by a person not familiar with the franchised business. Some franchise regulators are notorious sticklers for enforcing FDD drafting rules and will reject an FDD if the rules are not carefully followed.

8.6 As noted, federal and state laws forbid a franchisor from adding information to its FDD that is not called for by the federal or state disclosure guidelines. As a result, there may be no extraneous information in the FDD or “marketing fluff.”

## 9. What Information Must Be Included In The FDD?

This section provides an overview of the contents of an FDD:<sup>8</sup>

9.1 **FDD Cover Page:** The cover page to the FDD must identify contact information for the franchisor; briefly describe the franchised business; identify all initial fees (FDD Item 5); identify the franchisee’s estimated initial investment (Item 7); and incorporate mandatory disclosures prescribed by the Amended FTC Rule.

9.2 **State Cover Page:** Franchisors must include specific risk factors in boldface type regarding choice-of-law and forum selection clauses in the Franchise Agreement. Additionally, regulators in registration states have authority to require franchisors to add additional risk facts if they believe the franchisor’s circumstances warrant highlighting to franchisee candidates. A franchisor may not add its own risk factors. If a franchisor uses a franchise broker or lead referral service, which many franchisors in the U.S. do to recruit candidates, the state cover page must include a mandatory statement that the broker or referral source does not represent the prospect and is paid by the franchisor for sales or leads. The names of the brokers or referral sources do not need to be disclosed on the state cover page, but the names of individual “franchise sellers” must be appear on

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<sup>7</sup> To standardize disclosure requirements in registration states, an umbrella organization comprised of state franchise examiners, the North American Securities Administrators Association (“NASAA”) has issued its own compliance guides for preparing the FDD. These state guides do not change the federal guides; they offer additional guidance for preparing the FDD.

<sup>8</sup> The ABC Franchise FDD that accompanies the Guide illustrates each disclosure item.

a particular franchisee's FDD receipt. See discussion of FDD Item 23.

**9.3 Item 1: The Franchisor and Any Parents, Predecessors, and Affiliates:** The FDD must contain basic identifying information for the franchisor and its predecessors (a company from whom the franchisor directly or indirectly acquired the major portion of its assets), its parent, and certain affiliates that sell or provide products or services to franchisees or sell franchises in any line of business anywhere in the world. The franchisor must also identify its agent for service of process. The franchisor must describe the franchise that it offers, its prior experience, and the general market for the products or services the franchisee will offer.

Even if the franchisor agreement puts the onus on the franchisee to investigate all local laws that may apply to its franchised business, a franchisor must disclose, in general terms, any regulations specific to the industry in which the franchised business will operate. For example, a franchisor of a restaurant concept would disclose possible menu labeling laws regarding calorie and nutritional content, laws regulating the sale of alcoholic beverages if sold by the restaurant, and laws regarding food handling and standards for restaurant sanitation. A franchisor need not give statutory citations and may describe the industry-specific laws fairly generally, although it need to disclose laws or regulations that apply to businesses generally, such as wage and hour and other labor laws.

**9.4 Item 2: Business Experience:** The franchisor must disclose the names and positions of all of its directors, trustees or general partners, its principal officers, and other individuals with management responsibility for the sale or operation of the franchise even if they do not have a formal title. For each individual, the franchisor must provide a work history for at least the last 5 years. Many franchisors want to go beyond the 5-year history or include a narrative of related experience, but state regulators are fairly consistent in forbidding extraneous information. Since disclosures in Item 3 (litigation) and Item 4 (bankruptcy) must be made about each person listed in Item 2, and registration state laws may impose personal joint and several liability on individuals in Item 2, franchisors should carefully evaluate who within its organization must be included in Item 2 rather than load up the Item to demonstrate a "deep bench."

**9.5 Item 3: Litigation:** Item 3 requires the disclosure of certain U.S. and foreign litigation and arbitration matters involving the franchisor, each person listed in Item 2, the franchisor's predecessor, and any affiliate of the franchisor that either offers franchises under the franchisor's principal trademark anywhere or formally or informally guarantees the franchisor's performance. Disclosures must cover both pending matters and matters concluded within the last 10 years alleging a violation of franchise, antitrust, or securities laws, fraud, unfair or deceptive practices, or comparable allegations. Disclosure is also required for all felony convictions as well as for currently effective injunctions or consent decrees brought by a public agency (e.g., by the FTC or a state franchise agency). The franchisor need not disclose ordinary routine litigation incidental to its business (which for a restaurant might include slip and fall cases, wage and hour and other employment disputes, and food poisoning). However, a franchisor must disclose pending material actions filed in the last year involving the franchise relationship, with materiality determined by reference to the number of franchisees as plaintiffs, the amount of damages sought in relation to the franchisor's financial condition, and similar considerations regardless of whether the actions involve any of the enumerated allegations.

A franchisor must carefully evaluate the nature and potential impact of all lawsuits and arbitrations filed against the franchisor and, when in doubt, the best practice is to disclose them. The

outcome of concluded actions within the last 10 years must be disclosed if the franchisor agrees to pay material consideration (i.e., a payment to settle a case regardless of whether the franchisor admits fault or liability) or agrees to be bound by obligations materially adverse to its interests even if the parties agree to keep the settlement terms confidential. The disclosure duty supersedes the parties' agreement to keep the settlement terms confidential.<sup>9</sup>

9.6 **Item 4: Bankruptcy:** The 10-year U.S. or foreign bankruptcy history of the franchisor, any parent, affiliate and predecessor, and each officer or general partner in Item 2, must be disclosed. For members of the franchisor's management, this includes bankruptcies filed by other companies while the Item 2 individual was employed by that company or within one year after the person left the other company.

9.7 **Item 5: Initial Fees:** The franchisor must disclose any payments the franchisee must, or may, make to the franchisor or to its affiliate before opening the franchised business, and whether the fees are refundable. The scope of this disclosure is broader than just the standard "initial franchise fee" that a franchisee customarily pays when they sign the Franchise Agreement. Item 5 applies to all "initial fees" so it also covers payments that a franchisee makes to a franchisor for services or goods received from the franchisor or an affiliate before the franchisee's business opens. This includes inventory that must be purchased from the franchisor or an affiliate; software license fees that are paid either for mandatory or optional software that the franchisor or its affiliate supplies when the software must be installed before the franchised business' opening date; fees payable to sublease retail premises when the franchisor or an affiliate is the landlord; and payments to a franchisor for leasehold improvements even when the franchisee may use a third party contractor. If initial fees are not set in a uniform manner, the franchisor must disclose the formula or range of the initial fees collected from franchises in the prior fiscal year. This disclosure is designed to alert candidates when initial fees may be negotiable.

9.8 **Item 6: Other Fees:** All other recurring or isolated fees or payments that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect on behalf of a third party, must be disclosed in a prescribed chart format that lays out the amount and type of fee, due date, and special remarks. When a fee is determined by formula, Item 6 must explain the formula. Item 6 must explain if any fees are refundable and conditions for refunds. If fees are not uniformly imposed, the franchisor must disclose if they varied in the prior year although the franchisor need not disclose the actual fees or range collected. When a franchise program requires a franchisee to participate in an advertising cooperatives (sometimes set up around media markets), the franchisor must disclose the voting power of company-owned outlets over any fees imposed by the cooperative.

9.9 **Item 7: Estimated Initial Investment:** Item 7 presents detailed information regarding the franchisee's estimated initial investment during the "initial phase" of the franchised business, which is the period beginning on the date the franchisee signs the first binding agreement with the franchisor, which is typically the Franchise Agreement, and ending, at a minimum, three months after the franchised business opens and begins serving the public. Most franchisors use an "initial phase" that extends for 3 months following the opening date.

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<sup>9</sup> Franchisors often misunderstand the duty to disclose a confidential settlement. The FDD disclosure duty benefits franchisee candidates, but does not cancel the agreement to keep settlement terms confidential as to other parties.

A franchisor must disclose the initial investment as a low/high range in a prescribed chart format and include all reasonably anticipated expenses whether paid to the franchisor, its affiliates or unrelated suppliers. Mandatory cost categories include: (i) initial franchise fee (Item 5); (ii) expenses for completing training courses in connection with the franchised business' opening including estimated travel and other out-of-pocket costs that a franchisee may incur to send its employees to training classes which typically are conducted somewhere close to the franchisor's headquarters; (iii) real property expenses (e.g., rent and other payments to a landlord) unless these expenses cannot fairly be estimated due to the franchisor's lack of experience operating in U.S. markets, in which case the franchisor would still need to describe real estate requirements by reference to the type of property and average square footage and add real property expenses to Item 7 once there are a few units operating in the U.S.; (iv) costs for necessary equipment, fixtures, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased; (v) initial inventory expenses; (vi) security deposits, utility deposits, business licenses, and other prepaid expenses; and (vii) "Additional Funds," a catchall category that covers all expenses necessary to maintain operation of the franchised business during at least the first three months after the opening date. Special remarks should be called out in detailed footnotes that explain the underlying assumptions for the low/high estimates so that candidates can formulate reasonable expectations for how much it will cost them to complete build-out and get through the end of the initial phase of business and set aside sufficient funds or secure appropriate financing. Item 7 also requires the franchisor to describe, in general terms, the facts and experience that the franchisor relies on in estimating "Additional Funds." Typically, this would be the experience of the franchisor, its affiliates or existing franchisees, but if there are no existing franchisees in the U.S., this should be called out.

Item 7 is one of the most important disclosure items for franchisee candidates. Consequently, franchisors using a multi-state FDD are advised to provide conservative estimates ample enough so that the "high" side takes into account cost variations across different U.S. geographic markets where they anticipate they might open units in the next 12 months.

**9.10 Item 8: Restrictions on Sources of Products and Services:** Item 8 discloses information regarding "sourcing restrictions," i.e., the franchisee's obligations to purchase or lease goods, services and equipment from (i) the franchisor, its affiliates, designated suppliers, and approved suppliers; or (ii) any supplier of the franchisee's own choosing that can meet the franchisor's specifications. The franchisor must disclose the categories of goods and services for which the franchisor or its affiliates are an approved or the only approved suppliers. The franchisor must also disclose if the franchisor or its officers own an equity interest in any required or recommended supplier: this tells candidates if designated suppliers are related to the franchisor or its management as the franchisor or its officers may profit from these supplier and sourcing restrictions.

The franchisor must disclose (i) the estimated proportion of all source-restricted purchases and leases to all of the purchases and leases of goods and services that the franchisee may make to establish and operate the franchise; (ii) the franchisor's total revenue during its last fiscal year from sales of source-restricted goods and services to franchisees<sup>10</sup>; and (ii) similar information for

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<sup>10</sup> Source-restricted revenue includes both (i) revenue that a franchisor derives when it sells goods or services to franchisees directly even if franchisees have the option of buying the same articles from unrelated approved suppliers; and (ii) revenue that a franchisor receives from suppliers on account of the supplier's transactions with franchisees. As to (ii), sometimes a franchisor will agree to recommend a particular supplier to its franchisees if the supplier agrees to pay the franchisor a percentage of the supplier's revenue from transactions with franchisees. The objective of the Item 8 disclosures is to inform candidates of the magnitude of sourcing restrictions as these restrictions are often imposed so that the franchise can derive additional

affiliates that sell or lease source-restricted goods or services to franchisees or receive payments from suppliers on account of their transactions with franchisees.

The franchisor must disclose if purchasing or distribution buying programs are in place or if the franchisor negotiates special purchase arrangements offering franchisees better prices or other material benefits if they buy from specific suppliers. The franchisor must also disclose any money or other benefits that it receives from suppliers that do business with franchisees. These disclosures may be made on an aggregate, rather than supplier-by-supplier, basis. The franchisor's policies for granting and revoking approval of alternative suppliers which the franchisee proposes must also be summarized.

**9.11 Item 9: Franchisee's Obligations:** Item 9 lists in a table format the franchisee's principal obligations under the Franchise Agreement and other agreements, with cross-references to the particular FDD Items that describe the obligations. The franchisor may not change the 23 prescribed contract categories, but may add additional categories as needed.

**9.12 Item 10: Financing:** Item 10 discloses installment contracts, loans and other types of financing arrangements that the franchisor or its affiliates directly or indirectly offer qualified franchisees including if the franchisor or its affiliates guarantee loans or leases. An indirect offer of financing includes a written arrangement between a franchisor or its affiliate and a lender for the lender to offer financing to franchisees. When direct or indirect loans are offered to franchisees, Item 10 must include detailed information about the terms of financing and copies of sample loan documents.

**9.13 Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training:** In Item 11, the franchisor must disclose all obligations that it is bound by the Franchise Agreement to perform before the franchisee opens for business and during the ongoing operation of the franchised business covering specific subjects including site selection, advertising, computer systems, operations manuals, and training.

The franchisor must disclose information concerning the methods it uses to select or approve the location of the franchisee's business as well as the typical length of time that it takes a franchisee to open its franchised business after signing the Franchise Agreement or lease or paying initial fees.

Among the mandatory disclosures about the franchisor's advertising programs, the franchisor must state if "company-owned" units must contribute advertising fees on the same basis as franchisees, and how it spent the advertising fund during its prior fiscal year (percentages spent on media placement, production, administration, and other costs).

Item 11 must disclose non-technically any required point-of-sale or other computer systems, the cost to purchase or lease these systems, the franchisee's duty to upgrade the system during the term, any contractual limits on the frequency and cost of computer system changes, and whether the franchisor will have independent access to the information generated or stored on the franchisee's computer system. Not uncommonly, in a restaurant franchise, the franchisor will impose

revenue from franchise relationships, besides charging franchisees fees. Item 8 requires disclosure of the franchisor's revenue, not its profits from source-restricted sales. A franchisor that sells goods to its franchisees will have offsetting expenses in its own cost of goods sold. Notwithstanding these offsetting costs, the disclosure rules require the franchisor to disclose its revenue, not a net amount after deducting direct and indirect costs.



computer configuration requirements which allow it to remotely access the franchisee's data at any time without prior consent.

To ensure that the franchisor actually has an operations manual, which typically spells out essential operating details that ensure that all branded units perform similarly, the franchisor must disclose its operations manual's table of contents along with the corresponding number of pages per section of the manual, or, alternatively, the franchisor allow the franchisee candidate to view the manual before purchasing the franchise.<sup>11</sup>

In a prescribed chart format, the franchisor must disclose detailed information regarding its training programs, including the subjects taught during initial training, where initial training is held and who must attend, instructional materials used, how many hours of classroom and on-the-job training are required, the experience of the instructors for each subject, continuing training requirements, training fees payable to the franchisor, and who pays for the costs of training and any related travel and living expenses during training.

**9.14 Item 12: Territory:** Item 12 discloses the territorial rights, if any, which the franchisee receives under the Franchise Agreement, including any exclusive territory, whether the franchisee is restricted from making sales outside its territory, and the franchisee's rights to relocate or acquire additional outlets or areas. The disclosure must include any development obligations or sales quotas the franchisee must meet. The disclosure does not mandate that franchisor's award an exclusive territory of any minimum size. If no exclusive territorial rights are awarded, Item 12 must prominently disclose this fact.

Item 12 must address the franchisor's reserved rights to compete with the franchisee either by opening franchisee or company-owned units in the franchisee's territory or making sales in the franchisee's territory using the same brand, or through other channels of distribution like the Internet or product sales at supermarkets. The franchisor must also disclose if it or its affiliates operate or franchise a business under a different trademark that sells products or services similar to those sold by the franchisee's business.

**9.15 Item 13: Trademarks:** In Item 13, the franchisor must provide information about the principal trademarks that it licenses to franchisees. If none of its principal trademarks are registered with the U.S. Patent and Trademark Office ("USPTO"), it must make a special disclosure that warns a franchisee that, without a federal registration, the franchisee may have to discontinue using and change to another trademark if someone else with the superior legal rights to use the same or similar mark in the franchisee's market area challenges the franchisee's use. The disclosure must indicate if the franchisor or franchisee must pay the expenses to replace signs and other property. The franchisor must disclose if it knows of any infringing uses of its trademarks that could affect the franchisee's use of the licensed trademarks in the state. Material agreements, litigation, opposition, or cancellation proceedings affecting the franchisee's use of the principal trademarks must be disclosed.

**9.16 Item 14: Patents, Copyrights, and Proprietary Information:** The franchisor must describe any rights it owns in any patents or copyrights that are material to the franchised business. If

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<sup>11</sup> Most franchisors attach the Confidential Manual's table of contents. If the franchisor allows the franchisee candidate the opportunity to view the Confidential Manual before signing a binding agreement, it may require the franchisee candidate to sign confidentiality agreement first.

the franchisor claims proprietary rights in confidential information or trade secrets, it must disclose their general subject matter and terms for use. Like Item 13, the franchisor must disclose any material agreements, litigation, infringing uses, opposition, or cancellation proceedings could affect the franchisee's use of patents or copyrights material to the franchised business.

**9.17 Item 15: Obligations to Participate in the Actual Operation of the Franchise Business:** The franchisor must explain if the franchisee must personally supervise or participate in operating the business on a day-to-day basis or may entrust operations to qualified management. Item 15 must also disclose who must sign a personal guaranty when the franchisee is a business entity.

**9.18 Item 16: Restrictions on what the Franchisee May Sell:** Item 16 discloses restrictions or conditions the franchisor imposes regarding the goods or services that the franchisee may sell, and the customers to whom the franchisee may sell goods or services. Here, the franchisor must specifically state if it restricts franchisees to selling only goods or services approved by the franchisor (typically, this is the case) and if there are limits on the franchisor's right to change the types of goods or services the franchisee must, or may, sell.

**9.19 Item 17: Renewal, Termination, Transfer, and Dispute Resolution:** Item 17 consists of a chart in a prescribed format that concisely summarizes 23 specific categories of information in the Franchise Agreement, including the length of the franchise term, renewal rights, termination conditions and procedures, post-termination and expiration duties, transfer, rights of first refusal, purchase options, consequences of the franchisee's death or disability, noncompetition covenants, integration or merger clauses, dispute resolution, venue for disputes, and governing law.

**9.20 Item 18: Public Figures:** Item 18 discloses if a franchisor uses the name of a "public figure," i.e., someone generally known to the public in the geographic area where the franchisee will operate, in the franchise name or in advertising promoting the sale of franchises, or if a public figure owns or is involved in management of the franchisor. When this is the case, Item 18 must disclose compensation or other benefits paid to the public figure.

**9.21 Item 19: Financial Performance Representations:** Also known as an "FPR," financial performance representations include any information that the franchisor wants to provide to candidates that represents, suggests or implies the actual or potential sales, income or profits of franchisee-owned or company-owned businesses, regardless of the format of the information (whether oral, written, electronic, visual presentations or something else). An FPR includes information appearing in general media when the information is placed there or used by the franchisor to attract franchisee candidates.<sup>12</sup>

A franchisor that wishes to make an FPR in connection with the offer or sale of a franchise must provide the information in Item 19 of the FDD. Statements like, "our franchisees earn \$100,000 on average in the first six months" or "earn enough money to buy a new Porsche" are examples of FPRs. Statements like "make big money" and "opportunity of a lifetime" are considered puffery, not an FPR.

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<sup>12</sup> The fact that a story about the franchisor or its franchise program appears in general media and includes information about actual or potential sales, income or profits of franchisee-owned or company-owned businesses is not a FPR as long as the franchisor does not direct franchisee candidates to the article.

U.S. franchise sales laws do not require franchisors to make an FPR. However, an estimated 30%-40% of all U.S. franchisors make some type of Item 19 claim today. A franchisor that chooses not to make a FPR must affirmatively state in FDD Item 19 that it does not make an FPR and franchisees should not rely on any statements about actual or projected sales, income or profits that are made by any representative of the franchisor.

The Item 19 disclosure rules do not mandate a specific format of disclosure for an FPR. The rules simply require that a franchisor have a “reasonable basis” for making the FPR, i.e., the FPR data must be consistent with the franchisor’s actual experience. The FPR must disclose the number and percentage of outlets that have attained or surpassed the stated results. Upon request, a franchisee must be provided with substantiating data. While a franchisor may fashion an FPR as a projection or forecast, few franchisors do and it is not recommended because projections that are not met can serve as an easy target for litigation by unsuccessful franchisees.

Item 19 is one of the most important FDD disclosures because it directly addresses what matters most to a candidate: “how much money can I make?” Yet, due to the disclosure hurdles, fewer than half of all FDDs include an Item 19 claim. Notably, the definition of an FPR excludes costs of operation. As a result, a franchisor is free to share detailed cost information with franchisee candidates as long as the information is not presented as a percentage of sales, profits or another measure that would allow a candidate to calculate the potential income, sales or profits from its investment. Of course, if a franchisor shares detailed cost information about build-out and other development (pre-opening) expenses, the information should be consistent with its disclosures in Item 7.

**9.22 Item 20: Outlets and Franchisee Information:** Five separate tables present state-by-state statistics for each of the franchisor’s last three fiscal years or shorter time in business. These tables summarize system-wise franchisee statistics; transfers in ownership of outlets between franchisees; changes in franchisee-owned outlets due to terminations, non-renewal of Franchise Agreements, acquisition of franchised businesses by the franchisor, or closures for other reasons; new openings and closures of company-owned outlets; and projected outlet openings in the next fiscal year.

The franchisor must identify the name, address and phone number of all existing franchisees and their outlets in an exhibit to the FDD; and the name, last known address and phone number of all franchisees who left the franchise system during the franchisor’s last fiscal year or have not communicated with the franchisor at all during the 10 weeks before the date of the FDD. When a franchisor has sub franchisors, i.e., franchisees whom the franchisor authorizes to award franchises in their own right in a specified geographic area of the U.S., data about their franchisees must also be included in Item 20.

The franchisor must disclose if any existing or former franchisees have signed confidentiality clauses that forbid them from discussing their experience in the franchise system with candidates. The franchisor must also disclose all franchisee associations that the franchisor endorses or supports as well as incorporated independent associations specific to the franchise network that specifically ask to be identified in the FDD.

When a franchisor franchises an outlet that, during the prior 5 years, was previously owned by

another franchisee, the franchisor must disclose by a separately addendum or supplement to the FDD the names and contact information of prior franchisee owners.

**9.23 Item 21: Financial Statements:** The franchisor must include audited financial statements consisting of a balance sheet for its last two fiscal years and statements of operations, stockholders' equity, and cash flows for the last three fiscal years. The data must be presented in a comparative, tabular (side-by-side) format covering at least two fiscal years. If a franchisor prepares a FDD or files any registration application more than 90 days after its fiscal year-end, the franchisor must include interim unaudited financial statements that are current within 120 days. In lieu of its own audited financial statements, the FDD may include the audited financial statements of a franchisor's affiliate if that affiliate unconditionally guarantees the franchisor's performance to those franchisees that receive the FDD and buy a franchise.

Some, but not all, registration states, allow a new franchisor with no audit history to use unaudited financial statements for its first year. Since some registration states like California do not permit this, a start-up franchisor will typically prepare an opening audit which shows little financial activity besides initial capital. Financial statements must be prepared by an independent certified public accountant either in accordance with U.S. generally accepted accounting principles ("GAAP") or as permitted by the U.S. Securities and Exchange Commission.

**9.24 Item 22: Contracts:** All standard agreements that the franchisor expects a franchisee to sign, including (as applicable) an Area Development Agreement, Franchise Agreement, leases, option, product purchase and supply agreements, personal guaranty, confidentiality agreement, and general release, must be listed in Item 22 and attached as exhibits to the FDD.

**9.25 Item 23: Receipts:** The last two pages of the FDD are duplicate copies of a detachable document that the candidate will sign to acknowledge that it has received the FDD. The Receipt must identify the exhibits and include certain mandatory disclosures in boldface type including a paragraph stating that if the franchisor fails to deliver the FDD on time or if the FDD contains false or misleading information, the franchisor may have violated state and federal law and should be reported to the FTC and the state agencies that regulate the sale of franchises. The Receipt must identify the name, principal business address and phone number of each individual "franchise seller" who has had significant contact with the candidate receiving the FDD and who receives a commission for the sale.

Applicable law allows a franchisor to update "franchise seller" information up to the time of sale. Franchisors should implement appropriate procedures to ensure that "franchise seller" information is added to duplicate copies of the Receipt (the franchisor's copy and the franchisee's copy) before the franchisee signs any binding agreement or pays any money for the franchise rights.

The executed Receipt is the franchisor's best proof that it has delivered the FDD in a timely manner.

# Franchise Sellers

## 10. Who May Offer Or Sell Franchises For A Franchisor?

10.1 The laws define a “franchise seller” broadly to include employees and independent contractors (i.e., brokers) whose duties include recruiting and discussing franchise opportunities with candidates. A franchise seller includes anyone who has a substantive conversation with a candidate about particular locations or helps the franchisee candidate complete an application to buy a franchise or find financing. It also includes anyone who receives a sales commission or sales quota credit if the candidate closes the deal.

10.2 There are many independent lead generation and franchise broker firms in the U.S. that franchisors may engage to help the franchisor generate a pipeline of pre-qualified franchisee candidates: all of the individuals within these companies whose job duties include lead generation and pre-qualification for a specific franchisor are a “franchise seller” for the franchisor. When lead generation is outsourced to one of these firms, the same individual may be a “franchise seller” for multiple brands.

10.3 Depending on the size of a franchisor’s organization and its recruiting process, there may be a core team who interview all candidates during a discovery day and each member of the team may be a franchise seller for every franchise sale.

10.4 Because franchisors have special duties vis-à-vis each franchise seller, it is important that a franchisor should always know who its franchise sellers are.

10.5 Each franchise seller who is involved in a particular sale must be identified on the duplicate FDD Receipt. The names of franchise sellers may be added any time to the time a sale is concluded.

10.6 Franchise sellers must also be disclosed in Item 2 of the FDD when they are an officer or director of the franchisor or have management responsibility for franchise sales or operations.

10.7 As part of a franchisor’s registration duties, a franchisor must file a Franchise Seller Disclosure form for each franchise seller who is not disclosed in Item 2 before the franchise seller may engage in any meaningful discussions with a candidate about the franchise opportunity in the registration state. Two states require a more formal registration of franchise brokers, i.e., persons not employed by the franchisor that are engaged to help recruit franchisee candidates. When a franchisor engages an outside lead generation or franchise broker firm, the franchisor must file a separate Franchise Seller Disclosure form for each individual at the firm who will discuss the franchisor’s franchise program with potential franchisee candidates.

## The Disclosure Process

### 11. When And How Must The FDD Be Delivered To A Candidate?

11.1 Both federal and state franchise sales laws require a franchisor to deliver a copy of the complete FDD, with all exhibits including all Franchise Agreements and the franchisor's financial statements, to a candidate no less than 14 days before the candidate (i) signs a binding agreement, or (ii) pays anything of value for the franchise to the franchisor or its affiliate, even a refundable deposit.<sup>13</sup>

11.2 If a candidate asks for the FDD earlier than the law otherwise requires the franchisor to deliver it, the franchisor must deliver it sooner if the franchisor wants to continue discussing the franchise opportunity with the candidate.<sup>14</sup>

11.3 The franchisor has the burden of proving compliance with FDD delivery rules. The best way to accomplish this is by directing the prospect to sign both sets of the Receipt pages, return the franchisor's copy, and retain the duplicate Receipt marked "Your Copy" with their important personal documents.

11.4 Before closing a sale, the franchisor must update both copies of the Receipt to identify every franchise seller involved in the particular candidate's sale. This includes every person in the franchisor's organization or engaged by the franchisor as a franchise broker who discussed the franchise opportunity with the franchisee candidate even if their name was not included on the Receipt when the FDD was originally delivered. These names may be added at the closing when the parties sign the Franchise Agreement. It is best to be over inclusive when franchise seller names are added at the time of the closing.

11.5 A franchisor may furnish its FDD to franchisee candidates either electronically or as a paper copy. Special rules apply to delivering the FDD in a non-paper format. Federal and state franchise sales laws do not require a franchisor to furnish prospects with a paper copy of the FDD if the company's policy is not to furnish paper copies at all.

11.6 Federal and state franchise sales laws do not require a franchisor to furnish a copy of its FDD to everyone who asks for a copy. A franchisor may pre-qualify prospects to ensure that they meet minimum eligibility requirements for a franchise.

11.7 There are no circumstances under which the minimum waiting period can be cut short. A prospect cannot waive the minimum delivery and waiting period.

11.8 If the minimum waiting period is not observed, the sale to the franchisee is voidable, not void. This means that a franchisee has certain legal remedies if it wishes that take advantage of them. Unless the franchisee asserts its legal rights in a timely manner, the Franchise Agreement is a valid and enforceable contract.

11.9 Franchisees who transfer their Franchise Agreement to an approved third party do not themselves have a duty to deliver the franchisor's FDD to their buyer, but the franchisor may have a duty to do so. If the franchisor's role in the transfer is simply to approve the buyer's qualifica-

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<sup>13</sup> In, Iowa, New York and Rhode Island, a franchisor must deliver the FDD at the "first personal meeting," i.e., at the first face-to-face meeting when a substantive conversation about the franchise opportunity takes place. Given technology today, franchisors communicate with prospects in many ways besides personal meetings, including by phone and email. In measuring the minimum 14 day waiting period, a franchisor does not count the date the candidate receives the FDD or the date the contracts are signed: a minimum of the 14 days must be sandwiched in between these two events.

<sup>14</sup> When an otherwise qualified candidate is in a registration state where the franchisor is not yet registered, the franchisor must complete the state registration process first.

tions and the buyer will assume the selling franchisee's Franchise Agreement, then the franchisor has no disclosure duty to the buyer as the transfer is not considered to be a new franchise sale. However, if buyer must sign the franchisor's current form of Franchise Agreement, which is often the case in the U.S., the transfer is treated as a new franchise sale and the franchisor must deliver a current FDD and wait the minimum waiting period before closing the sale. If the sale is in a registration state, the franchisor must be registered to sell franchises in the state at the time; otherwise the franchisor cannot require the buyer to sign a new form of Franchise Agreement and must allow the buyer to assume the seller's Franchise Agreement. This means that if the franchisor has, for example, increased its fees since the seller bought the franchised business, the buyer will pay the lower fees.

## The Franchise Registration Process

### 12. What Does Registration Entail?

12.1 Outside of the registration states, once the franchisor completes the FDD, the franchisor may begin using the FDD immediately to offer and sell franchises in all non-registration states since there is no duty to file or register the FDD with any federal agency.

12.2 In the 14 registration states,<sup>15</sup> the franchisor must register with a state agency first before offering or selling a franchise in the state. The franchise registration states can be broken into 3 types: Full Review states, Notice Filing states, and Business Opportunity ("Bus/Op") Notice states.

12.2.1 Full Review: In 10 states, the franchisor's franchise registration application and FDD are subject to full vetting by a state regulator before a registration decision is made: California, Hawaii, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, and Washington.

12.2.2 Notice Filing: In 3 states, a franchisor is deemed to be registered when the state franchise agency receives all required information: Indiana, Michigan and Wisconsin. State regulators have authority to review the documents filed with them and issue comments, but seldom do.

12.2.3 Bus/Op Notice States: In 5 states, a franchisor must file a simple notice with a state agency in order to qualify for an exemption from the state's business opportunity law: Florida (annual filing), Kentucky (one-time filing), Nebraska (one-time filing), Texas (one-time filing), and Utah (annual filing).

12.3 All 10 "full review" states accept a common application. Certain states add one or two of their own forms, but, by and large, the application and filing process from one "full review" state to the next is very similar.<sup>16</sup>

12.4 Franchise regulators in "full review" states have wide authority in reviewing franchise applications and FDDs. While the regulatory review is not for purposes of evaluating the merits or soundness of a franchise investment, the review is not confined just to information in the FDD. Regulators may ask about the background of the franchisor's management, the franchisor's

<sup>15</sup> See discuss in Guide Section \_\_\_\_.

<sup>16</sup> A discussion of the uniform franchise registration application forms is beyond the scope of the Guide, but can be found at <http://www.nasaa.org/wp-content/uploads/2011/08/6-2008UFOC.pdf> (March \_\_\_\_, 2015).

financial condition, past sales practices, or other substantive areas of the company's business. Regulators have been known to do their own research on an applicant. For instance, they may review a company's website and find listings of locations that do not match those in FDD Item 20.

12.5 When an FDD is deficient in some manner, regulators notify a franchisor via a "comment" or "deficiency" letter. Some regulators communicate their deficiencies by email, but others still communicate only by regular "snail" mail, which adds to the time-line for processing applications. Deficiencies may range from technical comments (failure to bold a table heading) to substantive comments like the adequacy of the franchisor's capital. Sometimes a simple exchange with the regulator will resolve the regulator's concerns; other times, the franchisor will need to revise its FDD or produce materials to resolve a regulator's objections. Franchisors regulators may deny a registration when (i) the FDD is grossly deficient in their judgment; (ii) they receive no response to a comment letter for a prolonged period; (iii) they believe the facts demonstrate an unreasonable risk to the public (e.g., if FDD disclosures demonstrate a pattern of not complying with the law); or (iv) they believe the franchisor is inadequately capitalized and the franchisor cannot or will not provide financial assurances to resolve the financial concerns raised by the financial statements.

12.6 Franchise regulators scrutinize a franchisor's audited financial statements for assurance that the franchisor has sufficient available capital to provide preopening support to new franchisees without having to resort to using the initial franchise fees paid by the franchisees. There is no formula and little practical guidance that explains the criteria that state regulators use to analyze if a franchisor is undercapitalized. There is wide variation among state regulators regarding the capitalization standards, financial measures, and minimum liquidity and net worth they apply in judging if a franchisor has adequate capital. Some states require financial assurance from every new start-up franchisor based on the franchisor's lack of prior franchising experience even though the franchisor's net worth is adequate to meet obligations to franchisees.

12.7 If a state regulator finds a franchisor to be undercapitalized, typically the franchisor has five options for providing financial assurance: (i) infuse more capital into the franchisor entity and have the company's auditors add a subsequent event note to the audited financial statements; (ii) provide a parent, affiliate or other third party guarantee, an option that requires the franchisor to include the guarantor's audited financial statements as part of the FDD; (iii) post a surety bond (it is difficult to find a surety company willing to write a bond and the bond is expensive); (iv) defer collecting initial fees until the franchised business opens to the public, the option that most franchisors select since it involves no out-of-pocket direct cost; or (v) deposit the franchisee's initial fees with a third party escrow until the franchised business opens (escrow companies impose fees so this option is more expensive than the fee deferral). Each option has its own pros and cons. Some state regulators also require a special risk factor disclosure if the franchisor has lost money in consecutive years.

12.8 When all deficiencies are cleared, the state issues a registration order for a specific registration period which, depending on the state, is either one year or until a specific number of days (either 110 or 120 days) after the franchisor's current fiscal year end.

### **13. What About Material Changes?**

13.1 Federal and state franchise sales laws require a franchisor to update its FDD at least annually and, more frequently, whenever a material change occurs. Information is considered material



if the information has a substantial likelihood of influencing a candidate's decision about whether to invest in the franchise opportunity. A material change may involve a program change that the franchisor wishes to implement, like raising fees. Some material changes may occur that are beyond the franchisor's control, e.g., a franchisor changes its management team or is sued by a group of franchisees.

13.2 In non-registration states, a franchisor must update its FDD at least quarterly if material changes take place, but may begin using the updated FDD immediately. For candidates who already received an earlier version of the FDD, depending on the nature of the material change, the franchisor may need to redeliver the updated FDD and restart a new minimum 14-day waiting period before the candidate may sign a binding agreement or pay any consideration for the franchise rights.

13.3 In registration states, the franchisor must not only update its FDD, it must amend its registration promptly by registering the new FDD. The franchisor may not close a pending sale or deliver the old FDD until it registers the updated FDD by filing a material change amendment. Consequently, a material change can disrupt a franchisor's sales activities and will require re-disclosure of the updated registered FDD to candidates in the pipeline before the franchisor may close a sale to those candidates.

13.4 The availability of a more recent audit is, in and of itself, a material change to a registration even if the new audit shows an improved bottom-line. Consequently, whether or not mid-year material changes occur, every franchisor must update their FDD at least annually within 120 days after their fiscal year end, or sooner in registration states, so that the FDD is current as of the franchisor's most recent fiscal year end.

13.5 Because most franchisors use a multi-state FDD, in order to avoid having to file renewal applications in different registration states at different times throughout the year and having different registration periods sprinkled throughout the year, most franchisors coordinate their renewal filings so that the registration period aligns with their fiscal year end. Aligning filing deadlines with a franchisor's fiscal year spares a franchisor from the inefficiency and expense of having to file renewal applications throughout the year and a separate material change amendment during a registration period when the new fiscal year audit is released.

13.6 There is no duty to renew a registration in a registration if the franchisor does not plan to continue to sell new franchises in the state. However, if the franchisor wants a franchisee to sign a newer form of Franchise Agreement in connection with exercising a renewal option or wants a buyer of an existing franchised business to operate under a newer form of Franchise Agreement than the selling franchisee's Franchise Agreement, the franchisor must be registered in the registration state at the time of renewal or transfer since the execution of a materially different form of Franchise Agreement is considered the sale of a new franchise. In a registration state, a franchisor may not offer or sell an unregistered Franchise Agreement; the form of contract that it wishes to use must be registered with the state franchise agency at the time of renewal or transfer.

## Waivers

### 14. May A Prospective Franchisee Waive Franchise Laws?

14.1 No. The franchise disclosure rules are technical and strictly construed. Any provision, condition or stipulation signed by a prospect or a franchisee purporting to waive compliance with any of the rules is void and of absolutely no effect. It is also an unfair trade practice to require a written waiver from a franchisee as a condition of selling the franchisee a franchise.

## Document Retention

### 15. How Long Must A Franchisor Retain Franchise Records?

15.1 Federal and state franchise sales laws give regulators authority to ask to see the franchisor's franchise sales records. Records that may be requested include each materially different version of the FDD; a copy of franchise sales advertising; all original signed FDD Receipts; all correspondence with franchisees and franchisee candidates including copies of emails; each materially different version of the operations manual; records showing attendance at training classes; training instructional materials; and copies of executed agreements entered into by the franchisor with each franchisee (this would include the Franchise Agreement, Area Development Agreement, and any other documents that the FDD requires or that a particular franchisee entered into with you if not a standard contract).

15.2 The Amended FTC Rule and some state laws dictate minimum document retention time periods that range from 3 to 6 years. Since a number of state franchise registration laws do not impose minimum retention periods, it is advisable that a franchisor adopt one document retention policy for the entire U.S. (or its entire franchise program if it has international franchisees) that is the longest retention period imposed by any state franchise registration law where the franchisor has in the past or currently sells franchises.<sup>17</sup>

## Liability – Potential Consequences

### 16. What Remedies Exist For Franchise Law Violations?

16.1 Federal Law: There is no private right of action for a violation of the Amended FTC Rule. Only the FTC may file a lawsuit stating a claim for violation of the Amended FTC Rule. Amended FTC Rule violations may be predicated not only on misrepresentations in the FDD, but also on delivery violations and practices that the Amended FTC Rule identify as unfair and deceptive practices, like asking a franchisee to waive the franchisor's compliance with the law.

Despite the lack of a private right of action, a franchisor's violation of the Amended FTC Rule provides the legal foundation for an unhappy franchisee to bring a claim for violation of a state unfair trade practices law. The alleged unfair act is the franchisor's violation of the Amended FTC Rule. By asserting claims for violation of state unfair trade practices laws, private parties are able to seek redress in non-registration states for a violation of the Amended FTC Rule notwithstanding that the Amended FTC Rule does not recognize claims by private parties. Some state unfair trade practices laws permit significant remedies including treble damages.

It is also a felony to violate the Amended FTC Rule, but criminal prosecutions are exceedingly rare and typically require multiple instances of fraud.

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A discussion of good file keeping practices is beyond the scope of the Guide. An experienced franchise attorney can provide sound advice.

16.2 State Law: Violation of state registration laws whether in connection with the sale of an unregistered franchise, failure to observe the minimum FDD delivery rule, failure to deliver a legally compliant FDD, or any other misrepresentations in connection with the offer or sale of the franchise, may subject a franchisor to civil liability, criminal liability, and administrative (regulatory) action. Civil liability can result in money damages or, if the violation is willful, in rescission of the Franchise Agreement. Rescission results in a complete unwinding of the franchise relationship, requiring the franchisor to restore the franchisee to its pre-contract position. This means that the franchisor not only would have to refund all franchise fees, it would have to pay the franchisee an amount sufficient to cover its investment and any businesses losses.<sup>18</sup>

It is also a felony to violate state franchise laws, but state criminal prosecutions are also rare. State regulators have broad authority to order restitution of victims.

16.3 The law recognizes very few defenses to statutory violations. For the most part, substantial compliance, falling short of technical compliance, is generally not a good defense.

16.4 Under federal and state franchise sales laws, the franchisor's officers, directors and executive management with authority for the franchise program or who commit the violation, and any franchise seller involved in the transaction, are personally jointly and severally liable to the victim along with the franchisor. Personal liability is possible even when the franchisor does business as a legal entity.<sup>19</sup>

16.5 There are insurance products in the U.S. that cover defense costs and liability for franchise sales law violations.

## 17. How May A Franchisor Prevent Franchise Sales Violations?

17.1 The best approach to reduce legal risks is to understand the complexities of franchise sales laws and not cut corners!

17.2 A franchisor should designate one person on its staff to serve as the company's franchise sales compliance officer and liaison with the company's franchise attorneys for purposes of preparing FDD updates and contract enforcement. Among the franchise sales compliance officer's duties is to identify areas where the company's management may require additional compliance counseling.

17.3 If a franchisor uses independent brokers to sell franchises, a franchisor should verify that brokers carry adequate errors and omissions insurance that names the franchisor and its manage-

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<sup>18</sup> Legal redress for franchise sales violations is typically only sought by franchisees that fail in business. If the franchisee can prove that a violation occurred in connection with its purchase of a franchise, the franchisee may be entitled to rescind the franchise sale regardless of whether the franchisee can demonstrate a causal connection between its business losses and the franchisor's statutory violations. Rescission is an equitable remedy that requires the franchisor to restore the franchisee to its economic position before it signed any binding agreement with the franchisor or paid the franchisor any money for the franchise rights. A franchisee that has profited from operating the franchise would not seek rescission even if the franchisor violated franchise sales laws in selling the franchise (e.g., if the minimum waiting period was not observed) since rescission would require the franchisee to disgorge (refund) all of its profits to the franchisor. While damages and rescission are alternative remedies, it would also be difficult for a successful franchisee to demonstrate that it suffered any damage from the franchise sales violation.

<sup>19</sup> As a result, a franchisee may recover its legal damages or rescission award against any one of these individuals without first seeking recovery from the franchisor and without having to sue all individuals or having relief apportioned among them.

ment as additional insureds.

17.4 Errors and omissions insurance products are also available to franchisors for their management's activities that cover lawsuits arising out of the franchise relationship including claims of franchise sales violations.

## 18. What Other Laws Govern The Franchise Relationship?

18.1 While there is no federal franchise relationship law, over 20 states and the territories of Puerto Rico and the Virgin Islands have legislation referred to as "relationship laws" that protect franchisees who operate in the state primarily with respect to termination and cancellation of franchise and renewal rights.<sup>20</sup> The scope of coverage of franchise relationship laws varies considerably. Each state law will define what relationships it protects and the specific subjects that it regulates.

18.2 As to termination, some franchise relationship laws require and define "good cause;" but other franchise relationship laws may not require good cause, but will impose minimal procedural protections in order to terminate a franchisee like requiring the franchisor to provide written (not oral) notice of termination, a minimum notice period, or a cure right. Sometimes, the state franchise relationship law requires the franchisor to repurchase a terminated franchisee's inventory at a price specified in the statute, such as at "fair wholesale market value," less any money that the franchisee owes the franchisor. Some relationship laws permit the heirs of the franchisee to inherit the agreement and continue the relationship for a prescribed length of time during which they may sell the franchised business to an approved buyer.

18.3 A majority of state relationship laws forbid a franchisor from cancelling a franchise without good cause or refusing to allow a franchisee to exercise a renewal right. These provisions do not prohibit a franchisor from imposing reasonable conditions for renewal, and do not imply a renewal right when the Franchise Agreement does not expressly award one.

18.4 A handful of state franchise relationship laws cover matters beyond termination and address the franchisees' right to associate with each other and ban discrimination by franchisors among similarly situated franchisees.

18.5 If the Franchise Agreement is terminated by the franchisor or some other action is taken without complying with a state franchise relationship law, the franchisee may be awarded damages or injunctive relief and recover attorneys' fees. Some franchise relationship laws provide for lost profits or treble damages. The net effect of some of these laws often means that the relationship will exist as long as the franchisee continues to comply with the terms of the Franchise Agreement until the Franchise Agreement expires of its own force after the last day of the initial term or, when renewal rights are awarded and exercised, renewal period.

18.6 State unfair trade practices laws are another source of legal rights. These laws are sometimes called "baby" FTC Acts because they broadly proscribe any unfair or unlawful trade practice, just as the federal FTC Act does, the authority under which the FTC adopted the Amended FTC

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20 Jurisdictions with some type of law that may be considered a relationship law that may protect franchise arrangements although it may not specifically pertain to termination include: Alaska, Arkansas, California, Connecticut, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin, Puerto Rico and the Virgin Islands.

Rule. Some state unfair trade practices laws permit recovery of “treble” damages, i.e., three times actual damages, injunctive relief, and attorney’s fees.

18.7 The federal Lanham Act, which establishes trademark rights, provides franchisors that own marks that are registered with the U.S. Patent and Trademark Office with additional rights to prevent former franchisees from continuing to use the franchisor’s trademarks after the relationship ends.

18.8 Franchise parties may also bring claims for breach of contract and other common law claims under state law.

## Structuring The Franchise Business Relationship

### 19. Types Of Franchise Structures

There are several common franchise models that franchisors may adopt to expand their franchise system: (i) unit franchises; (ii) area development; (iii) subfranchises; and (iv) area representation (sometimes called development agencies).<sup>21</sup> Some franchisors may adopt multiple structures. Each model presents advantages and disadvantages.

This section explains the basic differences among these four franchise models:

19.1 Unit Franchises: Individual or unit franchises are those where a franchisor grants a franchisee the right to open one franchised business at a specific location. The franchise may or may not include a protected territory around the franchise location within which the franchisor promises not to open or franchise another branded location. The parties’ relationship is documented in a unit Franchise Agreement.<sup>22</sup> Typically, the unit Franchise Agreement does not award the franchisee an option right or right of first refusal to acquire additional franchises. If additional franchise rights are awarded, they will be reflected in an Area Development Agreement that the parties would separately execute.

19.2 Area Development: Area development is where multiple unit franchises are sold in “bundles” awarding a single franchisee the right to develop a number of unit franchises usually within a defined territory, subject to a specific development schedule, with each unit subject to its own unit Franchise Agreement. The number of units to be developed (development quota) may be expressed as a set number or minimum. The parties’ relationship is documented in an Area Development Agreement which specifies, among other terms, the development quota, development territory, development schedule, development fee, and maximum time period or term during which the developer may obtain approval to open new units in the development territory.<sup>23</sup>

A frequently negotiated issue is whether the form of unit Franchise Agreement to be executed

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21 This section provides a general overview of the 4 primary structural models of franchise programs used by franchisors today in the U.S. Contracts for only two of the four profiled models - the Unit Franchise Agreement and Area Development Agreement - accompany the Guide. These are the two most popular structures of the four structures described in this section. The other two business structures – subfranchising and area representation – are very complex and neither one is as popular as the unit and area development models. NASAA has issued a commentary that explains the differences among these four business structures. <http://www.nasaa.org/wp-content/uploads/2011/08/Franchise-Multi-Unit-Commentary-effective-Adopted-Sept.-16-2014.pdf> (March \_\_, 2015).

22 See Section 22 for a discussion of typical Franchise Agreement provisions.

23 See Section 21 for a discussion of typical Area Development Agreement provisions

by the parties is (i) the franchisor's current form when the parties execute the Area Development Agreement and the same form for all locations; or (ii) the franchisor's then-current form that the franchisor is using in connection with its sale of new unit franchises when the developer obtains site approval for each new location.

Under an Area Development Agreement, the franchisee and developer are one and the same: the franchisee enters into the Area Development Agreement for its own account, not for purposes of reselling unexercised development rights to others. The parties frequently negotiate the transferability of unexercised development rights apart from the franchised businesses. Some Area Development Agreements limit a franchisee's right to transfer future development rights without simultaneously transferring to the same buyer in the same transaction all, or at least one, franchised business. Sometimes the unit Franchise Agreement will limit the franchisee to selling its entire bundle of franchises to the same buyer to ensure that there is always just one owner of all franchised units in the development territory. Other times, the unit Franchise Agreement will allow individual unit franchises to be transferred according to the customary transfer conditions in the unit Franchise Agreement. But in all cases, the Area Development Agreement will prohibit the franchisee from systematically selling off unexercised franchise rights to avoid the complicated disclosure and registration conditions that apply to the subfranchising and area representation models.

The area development model offers the potential of accelerating expansion with fewer franchisees than a pure unit franchise model. Operating with fewer franchisees, in turn, can simplify a franchisor's contract administration. On the other hand, an area developer with substantial unit-level holdings may be economically stronger than the franchisor, which can result in tougher bargaining by the developer and leave the franchisor economically vulnerable should the relationship with that developer end for any reason.

19.3 Subfranchising: Subfranchising is a 3-tiered structural approach utilized by some franchisors to accelerate simultaneous development of large market areas. At the top-level, the "master franchisor," i.e., the concept and brand owner, grants to the party at the middle level, the "subfranchisor," the right to sublicense independent parties at the bottom level, "subfranchisees," to operate single-unit or multiple-unit subfranchises by entering into Subfranchise Agreements with each subfranchisee. Subfranchising's principal attractions are the opportunity to compound expansion rates and leverage management resources through subfranchisors: by entering into contracts for different geographic markets with different subfranchisors that each sell franchises and supervise franchise development and operations in their assigned subfranchise territory, the master franchisor can scale franchise growth more quickly than through its own direct unit or even area development sales since the separate resources of each subfranchisor, not the master franchisor's resources, are responsible for delivering development and ongoing assistance to subfranchisees.

Typically, a master franchisor contracts with the subfranchisor for a percentage of the ongoing fees that the subfranchisor receives from its subfranchisees, subject to a minimum dollar amount. A master franchisor may not dictate the subfranchisor's fee structure with subfranchisees due to U.S. antitrust laws relating to resale price-fixing.

Subfranchising is a very complicated and less-favored business model in the U.S. for several reasons:

19.3.1 While the master franchisor may reserve final approval over the subfranchisee and each subfranchised location, the master franchisor has no direct contract with the subfranchisee, who is the party ultimately entrusted to use the master franchisor's brand and replicate the master franchisor's business concept. Thus, the master franchisor must rely on the subfranchisor to police the subfranchisees' compliance with brand standards. As a result, subfranchising can result in inconsistent execution and enforcement of brand standards since each subfranchisor is responsible for supervising its own staff to enforce the master franchisor's brand standards.

19.3.2 The sale of subfranchising rights is considered a distinct type of franchise in its own right. A master franchisor may not offer subfranchise rights in the same FDD that it uses to offer unit franchise rights and area development rights. Therefore, a master franchisor that sells subfranchises and unit/area development franchises must have two different FDDs and separate registrations, one for the unit/area development rights and the other for subfranchise rights. While some FDD disclosures may be identical in both FDDs, like Items 2, 3 and 4, the economic and legal relationship that the subfranchisor and franchisee/developer each have to the master franchisor are very different.

19.3.3 Because the subfranchisor acts as a franchisor in its own right in soliciting, selling and supervising subfranchisees, each subfranchisor must prepare its own FDD. If any portion of a subfranchisor's territory is in a registration state, the subfranchisor must comply with the same registration duties that apply to the master franchisor.

19.3.4 Federal and state franchise sales laws hold the master franchisor vicariously liable for a subfranchisor's failure to comply with pre-sale disclosure laws.

19.3.5 Unique problems arise if the relationship between the master franchisor and subfranchisor expire or terminate. The subfranchisor agreement usually provides for the automatic assignment to the master franchisor of the subfranchisor's interest in each Subfranchise Agreement to ensure operational continuity of subfranchisees and avoid reputational damage to the brand. However, if a subfranchisor has not been sufficiently selective in choosing its subfranchisees, the master franchisor will inherit marginal operators.

19.4 Area Representation: Yet another structural model is area representation, an alternative to subfranchising that features a master agreement between the franchisor and a development agent that gives the area representative limited rights to recruit new area developers and unit franchisees in a defined geographic market and requires the representative to provide certain field support services to franchisees/developers. The Area Representation Agreement specifies the representative's role in terms of soliciting, screening and prequalifying candidates; site selection and lease negotiation; outlet development and build-out; training and opening assistance; ongoing supervision and inspection; and enforcement of system standards.

Unlike subfranchising, the franchisor must approve all unit franchisees and area developer candidates and enters into a unit Franchise Agreement or Area Development Agreement directly with the ultimate franchisee or area developer. Still, franchise regulators regard an area representative to be a franchisee in its own right and forbid the franchisor from offering area representation rights in the same FDD that it uses to offer unit and area development franchises rights. Therefore, like subfranchising, a franchisor that wishes to develop an area representation program must

maintain a dedicated area representation FDD which it must separately register apart from the FDD that it uses to award unit franchises and area development rights. Under some state franchise sales laws, an area representative may be considered to be a subfranchisor even though it may not enter into any contract directly with the unit franchisee or area developer.

Because an area representative is considered to be the franchisor's agent, the franchisor is vicarious liable to third parties for an area representative's acts and omissions.

An area representative, like a subfranchisor, usually receives a percentage or fixed amount of the initial and continuing fees paid by unit franchisees, depending on the services the area representative provides. The area representative's payment of consideration to the franchisor for the right to recruit and provide support to unit franchisees typically distinguishes the area representative model from arrangements with franchise brokers and selling agents.

## **20. Key Contracts That Document The Franchise Relationship**

Franchising relationships are complicated legal relationships no matter what structural model a franchisor uses. Each business model has a prime contract: (i) unit franchises – the unit Franchise Agreement; (ii) multi-unit franchises – the Area Development Agreement; (iii) subfranchising – the master franchisor/subfranchisor agreement often called a Master Franchise Agreement or Subfranchise Agreement; and (iv) area representation – the Area Representative or Development Agent Agreement.

At the unit level, however, the relationship with a franchisee may be documented in multiple contracts that are interrelated with one another and with the Franchise Agreement. For example:

20.1 Some franchisors choose not to sign a Franchise Agreement until the parties identify the franchise location. Yet because confidential demographic information and other competitively sensitive information may be shared with the franchisee before the parties sign the unit Franchise Agreement, the franchisor may require the franchisee to sign some type of preliminary agreement (a "hunting license") that explains the franchisee's duties vis-à-vis site selection, sets forth deadlines for securing the franchisor's site approval, explains when fees are due, explains when the formal Franchise Agreement must be signed, and includes a confidentiality agreement.

20.2 Similarly, many franchisors want to exercise real estate control over the franchise premises without taking on economic liability by leasing the location directly to the franchisee or guaranteeing the franchisee's performance to a landlord. The solution that U.S. franchisors commonly adopt is a collateral lease assignment which provides that the franchisee's default under the lease and the termination of the Franchise Agreement are each an independent event that triggers the franchisor's right, but not its obligation, to assume the business premises lease. To facilitate the exercise of this right, the franchisor requires the landlord to consent in advance to the assignment of the franchisee's lease to the franchisor or the franchisor's designee for purposes of operating the premises as part of the franchised system. Depending on the terms of the Franchise Agreement, the exercise of the collateral lease assignment may require the franchisor to pay the franchisee for its business assets that are not attached to the leased premises. A collateral lease assignment agreement enables a franchisor to keep a desirable location in the franchise system after the Franchise Agreement terminates or expires without taking on any contingent economic liability since the franchisor has no obligation to exercise the lease assignment, which is optional. A



collateral lease assignment agreement does not prevent a franchisee that is in good standing from selling the franchised business to an approved purchaser pursuant to the customary transfer conditions in the Franchise Agreement.

20.3 The franchisor may have a separate Management Agreement that it would use in situations where it is permitted to step in to manage a franchised business. For example, a franchisor may want “step-in” rights after the franchisee’s primary owner dies or can no longer operate the franchised business under circumstances where good cause to terminate the Franchise Agreement does not exist, but the primary owner’s heirs or business partners are not operationally qualified in the franchisor’s opinion to assume day-to-day management. The Management Agreement would require payment of a management fee to the franchisor during the period that it operates the franchised business over and above the continuing fees which the franchisor is entitled to receive under the Franchise Agreement, which would continue in effect during the management period. The Management Agreement typically would spell out a maximum management period by the end of which the primary owner’s heirs or business partners would have to complete a transfer and fulfill the customary transfer conditions including selling the franchised business and assigning the franchise rights to a buyer meeting the franchisor’s then-current qualifications. A franchisee’s failure to complete the transfer to an approved buyer by the end of the maximum management period would allow the franchisor to terminate the Franchise Agreement.

20.4 For a number of reasons benefitting each party, it is highly recommended that franchisees, area developers, subfranchisors, and area representatives operate as a business entity. The franchisor will typically require that all owners, or, at a minimum, each owner holding more than a minimum percentage of the equity of the franchisee, developer, subfranchisor, or area representative, sign a Personal Guaranty agreement that makes each guarantor personally, jointly and severally, liable in their own right to the franchisor for the entity’s performance of all contracts that the entity enters into with the franchisor.

20.5 Sometimes a franchisor will require that the franchisee’s owners, guarantors, and key management each sign a non-compete and confidentiality agreement. This contract personally obligates the individuals to specific covenants and is separate from the unit Franchise Agreement entered into with the franchisee business entity.

## 21. Key Decisions For Area Development Agreements

A typical Area Development Agreement that a U.S. restaurant franchisor might use in the U.S. is included with these guides for illustration purposes. The basic components of the Area Development Agreement involve decisions pertaining to these subjects:<sup>24</sup>

21.1 **Development Territory:** Typically, this is defined by geographic boundaries. Occasionally, a franchisor will create flexible boundaries to account for population changes.

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<sup>24</sup> The ABC Area Development Agreement that accompanies the Guide illustrates a typical approach to structuring an area development program. There are numerous considerations applicable to each key component of an Area Development Agreement and few “right” and “wrong” answers in structuring an area development model. It is important to realize that no one form of contract fits all franchisors: despite a common core of issues, what is appropriate for one franchise system may not be appropriate for another. This section does not attempt to identify all of the factors behind each of key contract component in an Area Development Agreement. In reaching decisions about the terms of the Area Development Agreement, a franchisor must not only consider its own business objectives, it also needs to consider competitor practices. Franchise candidates have hundreds of franchises to choose from and franchisors compete for the most qualified candidates. A qualified franchise attorney should lead the prospective franchisor’s founders and executives through all of the decisions influencing the best means of structuring the franchise system highlighting advantages, disadvantages and opportunities associated with each variable.

21.2 Development Term and Renewal Rights: Typically, the term is fixed. Some Area Development Agreements may offer a developer that has met its development schedule the right to extend development rights for a prescribed period of time after the initial term ends conditioned on the parties being able to negotiate either a new development schedule or some type of right of first refusal or first negotiation for new franchises in the development territory. A developer will often try to negotiate for this right especially when its efforts are largely responsible for developing consumer brand awareness in the development territory.

21.3 Territorial Rights: The developer is typically awarded the exclusive right to open unit franchises in the development territory during the development term, even as to the franchisor, subject to any rights that the franchisor may expressly reserve for itself in the Area Development Agreement. A typical exclusion might include the acquisition of a chain of restaurants with one or more units located in the development territory that the franchisor wants to convert to the franchise brand or development of franchise units in nontraditional venues in the development territory, like airports and stadiums. The franchisor may also reserve the right to sell branded products through alternative distribution channels in the development territory, like supermarkets. For example, a restaurant franchisor may create a line of frozen food entrées that it wishes to market under the franchise brand. The franchisor's right to engage in specific activities in the development territory during the development term should be clearly delineated to avoid contract disputes later on with the developer.

21.4 Fee Structure: Fees typically include a development fee paid upon execution of the Area Development Agreement or in agreed-upon installments. Often, all or a specific portion of the development fee will be credited to the initial franchise fee that the Franchise Agreement requires the developer to pay upon execution of each unit Franchise Agreement. Commonly, development fees are not refundable if the developer fails to complete the development quota or the Area Development Agreement expires or terminates for some other reason.

21.5 Development Obligations: Development quotas are essential to avoid a non-productive developer from tying up the development territory for the duration of the development term and foreclosing the franchisor from pursuing other opportunities to develop the market. An Area Development Agreement may specify development obligations as a set number of units that must be opened by specific time intervals or development deadlines. Sometimes, the development obligation is expressed as a minimum number of units that the developer must open by specific deadlines, which offers the developer the opportunity of opening more units than the minimum. When a minimum is used, the Area Development Agreement may credit excess units that are opened above the minimum to future development periods. Regardless of whether the development obligation is expressed as a set number of units or as a minimum, franchisors often insist on unrealistic development quotas and franchisees often insist on unrealistic development commitments, which is not in either party's best interest.

Often the Area Development Agreement will require a developer to replace a unit that closes due to reasons not amounting to the developer's breach of a unit Franchise Agreement so that no fewer than the agreed-upon number of franchised locations operate in the development territory throughout their respective Franchise Agreement terms.

A franchisor has different options for the consequences that it might impose if the developer fails to comply with the mutually agreed-upon development schedule: (i) terminate the Area

Development Agreement or development rights; (ii) require the developer to surrender all or part of the development territory; (iii) require the developer to surrender its exclusive development rights thereby allowing the franchisor to open units directly or award unit franchises or area development rights within the same development territory to someone else subject to any territorial rights that have previously been awarded to the developer under a unit Franchise Agreement entered into with the developer; or (iv) require the developer to pay unit initial franchise fees as if the development schedule had been met.

**21.6 Unit Franchise Agreement:** If the developer will enter into the same form of unit Franchise Agreement for each unit, the form of contract will be attached as an exhibit to the Area Development Agreement. Typically, the unit Franchise Agreement is not executed until site approval is issued for each new unit that the developer will open.

**21.7 Transfer and Termination:** Transfer provisions must specify if the developer must transfer to the same buyer its unexercised development rights along with all Franchise Agreements then in existence between the parties or may sell off an individual unit Franchise Agreement without forfeiting its unexercised development rights. In most cases, the franchisor will reserve a right of first refusal.

An Area Development Agreement may be terminated for a variety of reasons including failure to comply with development obligations. As noted, the franchisor must consider what, if any, cross-default consequences termination of the Area Development Agreement should have vis-à-vis unit Franchise Agreements. The Area Development Agreement should specify if its termination, in and of itself, is good cause permitting the franchisor to also terminate unit Franchise Agreements then in effect between the parties.

## **22. Key Decisions For Franchise Agreements**

A typical unit Franchise Agreement that a U.S. restaurant franchisor might use in the U.S. is included with these guides for illustration purposes. The basic components of the unit Franchise Agreement involve decisions pertaining to these subjects: <sup>25</sup>

**22.1 Term and Renewal of Unit Franchise Rights:** A threshold question in structuring a franchise relationship is the duration of the franchise license, referred to as the “initial term.” Seldom is a franchise awarded for an unlimited or perpetual term; indeed, this is not recommended. The considerations for the initial term are similar to the Area Development Agreement term. Establishing the initial term is important to both the franchisee’s and the franchisor’s separate economic expectations for their relationship.

While Area Development Agreements do not typically include renewal or extension rights, though desired by developers, it is common for a unit Franchise Agreement to offer the franchisee one or more renewal options if stated conditions are met. Among restaurant franchises, a 10 year ini-

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<sup>25</sup> The ABC Franchise Agreement that accompanies the Guide illustrates a typical approach to structuring a unit franchise program. As with Area Development Agreements, there are numerous considerations behind each key component of a unit Franchise Agreement and multiple variations and options that a franchisor may prefer. Again, there is no one form of contract that fits all franchisors: despite a common core of issues, what is appropriate for one franchise system may not be appropriate for another. This section highlights only a few of the issues per subject. A franchisor’s decisions will be also influenced by competitor practices. An experienced franchise attorney will be familiar with the range of options and can help a prospective franchisor wade through all decisions by highlighting the advantages, disadvantages and opportunities presented by each possible variation.

tial term with one ten-year or two five-year renewal options is fairly typical. But many variations exist. For example, McDonald's has never awarded its franchisees the right to renew: it offers one 20-year term at the end of which the franchisee may apply to purchase a new franchise.

If a unit Franchise Agreement awards renewal rights, a franchisor generally may not cancel the renewal right apart from terminating the Franchise Agreement. Renewal is the franchisee's option, not the franchisor's option, so nonrenewal is typically the franchisee's decision. In addition to breach of contract remedies if a franchisor refuses to allow a franchisee to exercise a renewal option or applies renewal conditions arbitrarily, many state relationship laws limit the franchisor's right to cancel a franchisee's renewal option.

**22.2 Territorial Rights and the Franchisor's Reservation of Rights:** Similar considerations apply here as with the Area Development Agreement with respect to defining the unit franchisee's territorial rights and the franchisor's reserved rights to engage in specific activities in the franchisee's protected territory during the Franchise Agreement's term. Restaurant franchisees customarily expect some geographic zone of protection within which the franchisor will not place another branded unit. Because franchisors often want to retain complete flexibility concerning future outlet placement and ownership, some franchisors award unit franchise rights that are location-specific with no award of territorial rights, where the franchise is granted for a specific address. While large, mature franchisors with a highly popular brand may not need to enhance the appeal of their franchise program by offering some type of territorial protection to the franchisee, start-up franchisors lack this leverage and typically do offer unit franchisees some zone of protection against the placement of another branded unit. Sometimes placing branded outlets close to one another helps to develop consumer brand awareness. But other times franchised businesses that are placed too close to one another end up cannibalizing each other's sales thereby preventing either one from achieving optimal performance.

**22.3 Trademark Licensing Provisions:** The heart of a franchise relationship is a trademark license awarding the unit franchisee the right to use the franchisor's designated brand name and commercial symbols subject to complying with rules specific to the manner of trademark use.<sup>26</sup> The trademark sections of the unit Franchise Agreement should elaborate on how the franchisee may or may not use the franchisor's commercial symbols. They should explain the franchisor's responsibilities if a third party sues the unit franchisee alleging its superior right to use the same or a similar commercial symbol in the franchisee's market.

The licensing provisions should expressly allow the franchisor to add, delete and modify the trademarks that the franchisee must use and specify whether the franchisor or franchisee must bear the expense of making these changes. The licensing provisions may also cover other intellectual property besides the franchisor's commercial symbols, including the right to use distinctive décor elements or "trade dress" that serve a trademark function by identifying the franchise location as a source of particular goods or services, to prevent copying by competitors.

**22.4 Fees:** The initial franchise fee and continuing fees, payment dates, and method of payment will be spelled out in the unit Franchise Agreement. Typically, continuing fees like royalty

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<sup>26</sup> An Area Development Agreement typically does not include trademark license provisions because the area developer does not need to use the franchisor's trademark before opening up the franchised business. The unit Franchise Agreement is fundamentally a license agreement awarding the unit franchisee the right to use the franchisor's designated trademarks and other intellectual property at an approved location for the duration of the franchise term on the condition that the franchisee comply with the unit Franchise Agreement.

fees and advertising fees are expressed as a percentage of gross or net sales revenue, in which case the unit Franchise Agreement will provide the franchisor with the right to audit the franchisee's books and records to verify that it has received all continuing fees due to the franchisor. Franchise Agreements often include other revenue sources including renewal fees, transfer fees, and fees to approve alternative suppliers identified by the franchisee. As noted earlier, all fees and their terms of payment must be disclosed in FDD Item 6; otherwise, a franchisor would violate franchise sales laws if it tries to collect fees not disclosed before the franchisee signs the Franchise Agreement.

**22.5 Control of the Franchisee's Business Premises:** As noted earlier, real estate control, particularly important in restaurant franchises to enable the franchisor to ensure that desirable locations remain part of the franchise system after the relationship with a particular unit franchisee ends, are commonly achieved through a collateral lease assignment agreement. The collateral lease assignment agreement gives the franchisor the option, but not the obligation, to assume a former franchisee's lease. The collateral lease assignment agreement preserves real estate control while keeping the lease obligation off of the franchisor's balance sheet as a contingent liability. However, a landlord typically will not allow a franchisor to assume the lease without first satisfying any lease arrearages that the unit franchisee owes to the landlord.

**22.6 Construction and Build-Out of the Franchisee's Business Premises:** The unit Franchise Agreement will assign responsibility for building and constructing the franchised business premises consistent with prescribed specifications for design, appearance and signage. Franchisor practices run the gamut from selling "turnkey" packages where the franchisor handles 100% of all development and construction functions and is compensated by a larger initial fee, to making the franchisee exclusively responsible for finding architects, designers and contractors to prepare plans, pulling building permits, sourcing equipment and materials meeting the franchisor's specifications, and constructing the premises so that the finished premises incorporate all of the franchisor's distinctive trade dress elements in accordance with detailed specifications as to type, brand, model, and other features specified by the franchisor. These details typically are explained in the real estate development sections of the franchisor's Confidential Manual.

In between the turnkey and total franchisee responsibility extremes are numerous variations on the degree of the franchisor's involvement and control over the franchise premises' development. Sometimes controls include requiring the franchisee to use a designated architect to prepare construction drawings. Other times control may involve providing the franchisee with prototype building plans, recommending equipment and building suppliers, or offering purchasing assistance if equipment or fixtures are purchased from designated suppliers with which the franchisor may have worked out special discount prices or other favorable terms. Because smart franchisors know that the real money in franchising comes not from initial fees, but from continuing fees paid once the franchised business opens, it is in a franchisor's own interest to help a franchisee through the onboarding process and simplify the construction process, which can be daunting to a franchisee that may not have built a restaurant before.

A franchisor that sends each new franchisee off with a thick manual full of detailed construction specifications and instructions to find local sources may prolong the time before the franchised business is ready to open. The franchisor also misses the opportunity to reduce each franchisee's start-up costs by using the franchise program to scale each franchisee's development

expenses. Shortening the time period from the date that a unit franchisee signs the unit Franchise Agreement to the opening date of the franchised business and extending franchisees the benefits of economics of scale will help franchisors open franchise units earlier and enable franchisees to begin paying fees and making payments on financing secured for initial investment expenses sooner.

**22.7 Training Programs:** The unit Franchise Agreement will address the training programs that the franchisor offers or requires the franchisee to complete before and after opening the franchised business. The pre-opening training program teaches the franchisee's management the requisite know-how specific to executing brand concepts in a manner that will ensure that the brand is well represented in the local market. It also should introduce the franchisee's executives or primary owner to the franchisor's "company culture" and help align expectations and teach entrepreneurial skills if the franchisee has little prior restaurant management experience or not owned a business before. The unit Franchise Agreement will specify who must attend pre-opening training and whether the franchisor may terminate the Franchise Agreement if the initial training is not completed satisfactorily.

An increasingly significant area of potential liability for franchisors in the U.S. today is the risk that a franchisor may be considered to be the joint employer of their franchisees' workers, along with the franchisee. Among the many things that a franchisor should do to reduce joint employer legal risks is to clearly state in the Franchise Agreement that the franchisee is solely responsible for training its own workforce. It is acceptable to require that franchisee workers demonstrate minimum competency before the franchisor will recognize a particular employee as a supervisor or management-level employee, but a franchisor should establish training requirements by job title, not by singling employees out by name. Franchisors should explain to franchisees that if their employees execute brand standards poorly, the franchisee will be found to have violated brand standards creating grounds that may support termination of the Franchise Agreement.

**22.8 Franchisor Support, System Standards and Modification of the System:** Typically, the Franchise Agreement expresses the general operating assistance that the franchisor will offer in broad and rather vague terms, describing this assistance to be at the franchisor's discretion. More specific assistance may also be broadly described like assistance with the franchised business' grand opening period; serving as a source of proprietary goods or designating suppliers of proprietary goods; recommending suppliers for non-proprietary goods and services and approving suppliers that the franchisee identifies; running advertising and marketing programs; conducting inspections and audits; providing ongoing training programs; and providing purchasing assistance by identifying suppliers willing to offer franchisees discounted prices based on the aggregate volume of purchases by all branded locations.

Franchise sales laws do not impose minimum duties of support and supervision that a franchisor must offer its franchisees; they only forbid a franchisor from promising to making commitments and then not delivering on them. There is wide variation among franchisors in the support they offer their franchisees, which may affect the desirability of a particular franchise program and the franchisor's ability to attract and compete for the most qualified franchise candidates.

A Franchise Agreement is a long-term contract during which competitive circumstances, technology, consumer preferences and legal regulations invariably will change. A franchise system cannot

survive unless it, too, evolves to keep pace with these dynamic changes. All franchisors reserve authority to modify the franchise program and brand standards to implement system-wide changes universally on all branded outlets by modifying trade dress, product offerings, mandatory services, and prescribed operating formats as franchisors determine will best advance their franchise system competitively and their own economic and business goals.

Modification of the franchise system is a potentially controversial subject. A franchisor may not unilaterally impose system-wide modifications if they would alter a fundamental right awarded by the Franchise Agreement. This is because the Franchise Agreement is a contract and the common law requires both contracting parties to agree to contract changes in writing. For this reason, unless the franchisor expressly reserves the right to increase franchise fees during the initial term, a franchisor may not unilaterally increase the continuing fees that a franchisee must pay the franchisor in the name of an imposing a system-wide change without first obtaining the franchisee's written agreement to pay the higher fee because protection against having to pay more than the agreed-upon fees is a fundamental right awarded to the franchisee by the Franchise Agreement.

Franchise parties do not always agree on when a system-wide change affects a fundamental right. Sometimes, in order to modify system standards in a manner that franchisees might find objectionable the franchisor is best off not insisting on having its way, but being strategic and offering franchisees some extra benefit to "sweeten the deal" in order to obtain their agreement to the change. This eliminates the possibility of a legal challenge to the franchisor's desired system-wide change and potential liability to franchisees for breach of contract if the franchisor insists on having its way and is wrong with respect to whether the change alters a fundamental right awarded to the franchisee by the Franchise Agreement.

When system-wide changes require new investment by franchisees, franchisees may still resist adopting them unless the franchisor can convince franchisees that the changes will benefit them either by making the franchise brand more competitive or by offering better operating efficiencies that improve their bottom-line results. Franchisors may want all franchisees to make uniform changes regardless of the reason for the changes claiming that uniformity is essential to enforcing brand standards and strengthening consumer brand expectations. But franchisors should be sensitive to countervailing considerations from the franchisees' viewpoint. Franchisees that are approaching the end of a franchise term with no plan to exercise a renewal option may resist making new capital investments since they will have insufficient remaining time to amortize the investment. Even for franchisees with adequate time left, franchisors should pilot test all modifications requiring significant capital investment to demonstrate the soundness of the change even if the Franchise Agreement, itself, does not expressly require running pilot programs. A successful pilot will go a long way in building franchisee trust in the soundness of the franchisor's decisions and loyalty to the franchise brand. Some Franchise Agreements as a compromise may limit the amount the franchisee must invest in system-wide modifications.

22.9 Franchisee Duties: The franchisee's duties will be broadly described in the Franchise Agreement with the Franchise Agreement emphasizing as the central duties timely payment of fees and adherence to the franchisor's brand standards. Typically, the Franchise Agreement refers to brand standards broadly and without specificity. Other duties include carrying specific types of insurance policies that provide minimum coverage for specified risks and name the franchisor as an additional insured; hiring a sufficient workforce to operate the franchised business in a manner

that meets the franchisor's standards for customer service; keeping competitively sensitive information confidential; keeping the business premises, equipment and other physical assets in good condition and repair; and making periodic upgrades to franchise operations to reflect system-wide changes. The operations manuals explain brand standards by elaborating on system-wide requirements down to such details as prescribed menu names. A breach of a material duty constitutes grounds permitting the franchisor to terminate the Franchise Agreement. Not infrequently, a franchisee may challenge a termination claiming that the alleged breach of a so-called brand standard is not truly material.

Virtually all franchise agreements have covenants not to compete that prohibit the franchisee and its owners and key management from owning or engaging in competitive business activities during the Franchise Agreement's term and for a period after the Franchise Agreement terminates, expires or the franchisee sells the franchised business. Each state has its own public policies regarding the enforceability of non-compete agreements that apply after the franchise relationship ends for any reason, referred to colloquially as "post-term non-competes." Some states severely limit the circumstances under which a post-term non-compete agreement is enforceable against a franchisee operating in the state. Other states will enforce post-term non-compete agreements if they are reasonable as to their scope and duration.

22.10 Transfers: While franchisors typically reserve for themselves an unlimited right to transfer the Franchise Agreement or their ownership interests, promising only that their successor will assume their obligations under all Franchise Agreements that then exist, franchisee transfer provisions are far more limiting and reflect numerous business considerations.

Among the top issues that the Franchise Agreement must consider are: (i) what events constitute a franchisee transfer subject to transfer conditions; (ii) if the franchisor will reserve a right of first refusal to match any third party offer that the franchisee receives for its franchise rights; (iii) conditions a franchisee must satisfy to qualify for approval to complete a franchisor; (iv) approval standards before a franchisor will consent to a proposed transfer and whether those standards include approving the purchase price as ancillary to approving the proposed transferee's financial condition; (v) specifying if approval of a franchisee transfer request will not be unreasonably withheld or may be withheld for any reason in the franchisor's discretion without having to explain the reason; (vi) other conditions that must be met before consent to a proposed transfer will be granted including curing all amounts due to the franchisor through the effective date of transfer and paying transfer fees; (vii) if the selling franchisee must sign a general release as a condition to receiving consent to a transfer request; (viii) if the selling franchisee's owners will be released from their personal guaranty or will remain liable for some period of time for the transferee's performance; (ix) if the transferee may assume the selling franchisee's franchise agreement or must sign the franchisor's then-current form of Franchise Agreement; and (x) the rights and duties of the parties in the event of the death or incapacity of a primary owner of the franchisee.

22.11 Termination: Termination is another subject that involves numerous business considerations. Even if the Franchise Agreement is silent as to the franchisee's right to terminate, a franchisee may seek remedies for a franchisor's material breach of contract. The better practice is to include a provision that gives the franchisee the right to terminate, but requires a cure right for the franchisor. This prevents the franchisee from simply declaring a breach of contract and claiming that it is thereby excused from its own obligations, which generally is a non-breaching party's



common law right in the U.S. if the other party to the contract commits a material default.

Among the business issues involved in termination by the franchisor are: (i) delineating the grounds upon which the franchisor may terminate the Franchise Agreement either immediately or after a cure period has expired without a satisfactory cure by the franchisee; (ii) the franchisee's obligations following termination or expiration of the Franchise Agreement; (iii) the franchisor's option to purchase the franchised business if the Franchise Agreement terminates under specific conditions; and (iv) the franchisor's rights and obligations upon termination or expiration, including the right to purchase certain assets like salable merchandise displaying the brand at either an appraised or set price.

For a number of reasons, it is less common in the U.S. for a franchisor to reserve the right to terminate a Franchise Agreement without having good cause or a specific reason for termination that is spelled out in the Franchise Agreement. A franchisee may not qualify for financing if the franchisor reserves the right to terminate without good cause. Many state relationship laws forbid termination without good cause, which is generally defined as the franchisee's material breach of the Franchise Agreement.<sup>27</sup> These laws also dictate other minimum protections for franchisees like mandating a cure right for all defaults except for those enumerated grounds where a cure makes no sense, like where termination is premised on the franchisee's prolonged absence from the business long enough to be considered abandonment.

Most franchisors, for their own administrative convenience, typically use the same form of Franchise Agreement throughout the U.S. regardless of the particular state where the franchised business is located. Each franchisor will draft a set of termination conditions that may have to yield to local laws that are tougher and more protective than the termination provisions in the Franchise Agreement. As long as the franchisor complies with the tougher state relationship law in enforcing the Franchise Agreement, the fact the Franchise Agreement may conflict with the state relationship law will not prevent the franchisor from terminating the Franchise Agreement or expose the franchisor to liability based on the proper termination.

**22.12 Dispute Resolution:** The Franchise Agreement should specify how disputes will be resolved, whether by arbitration or litigation, and any pre-conditions to one party initiating an action against the other, like requiring some type of structured negotiation or mediation of the dispute.<sup>28</sup> When mediation is a pre-condition to initiating arbitration or litigation, a franchisor should reserve the right to seek provisional remedies like injunctive relief immediately, even before mediation, as this is often essential to prevent unauthorized trademark use by a former franchisee that refuses to abide by post-termination obligations. Venue, choice of law, and fee shifting provisions which allow the prevailing party to recover its attorney's fee in addition to the relief awarded by the court or arbitrator should also be spelled out. State relationship laws may limit a franchisor's ability to designate a venue or governing law different than the franchisee's home state.

**22.13 Other "Boilerplate" Provisions:** A substantial part of the Franchise Agreement, often found at the end of the contract, are so-called "boilerplate" clauses, i.e., provisions standard to any contract that regulate the contract's interpretation and enforcement. The fact that provi-

<sup>27</sup> As a result, many state relationship laws have been interpreted as forbidding a franchisor from terminating a Franchise Agreement based on the franchisor's own economic or business reasons unrelated to the franchisee's performance.

<sup>28</sup> The advantages and disadvantages of these alternatives are often debated. Some franchisors have strong preferences for, or against, one or the other option.

sions are called “boilerplate” is not meant to trivialize them. One of the most essential provisions often grouped with miscellaneous “boilerplate” is the Franchise Agreement “integration” clause, which establishes that only the specific agreements and representations written in the Franchise Agreement govern the parties’ relationship. The integration clause prevents either party from later claiming that it relied on other promises or representations and from introducing extraneous evidence to alter the written agreement. State franchise sales laws, however, prevent a franchisor from using the integration clause to deny statements and representations in the FDD.

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JETRO

Template U.S. FDD - Franchise Disclosure Document

March 30, 2015

# Franchise Disclosure Document

All information in this FDD is purely fictional.

U.S. franchise laws permit a foreign franchisor to sell franchises without needing to form a U.S.-based company or maintain offices in the U.S. This FDD assumes that ABC Franchise Co., LLC is a California corporation with headquarters in Los Angeles, California.

ABC Franchise Co., LLC  
1000 Main Street, Suite 100  
Los Angeles, California 90017  
Phone: 213-633-6800  
www.abcrestaurant.com

Franchised Business: ASIAN BOWL CAFÉ restaurants (“ABC Restaurants”) are casual dining restaurants featuring fresh and healthy Asian-inspired noodle and rice bowl selections with high quality ingredients, sauces and curries and serving complimentary side dishes, beer and wine and fountain drinks. We offer area development rights and single unit franchises for the right to open and operate one or more ABC Restaurants.

Total Initial Investment: The total investment necessary to begin operating one ABC Restaurant is \$724,600 to \$872,900. This includes the Initial Franchise Fee of \$39,500 and payments to us or our affiliate before opening for a start-up inventory of our proprietary sauce and spice mix.

For area developers, the total investment depends on the number of ABC Restaurants in the development commitment. You must pay us a Development Fee equal to \$39,500 for the first restaurant and \$30,000 for each additional restaurant in your Development Quota when you sign the Area Development Agreement. We credit a portion of the Development Fee in specific increments to the Initial Franchise Fee payable for each ABC Restaurant in your development commitment, as we explain in Item 5 of this Disclosure Document.

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

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Hai Tanaka, ABC Franchise Co., LLC, 1000 Main Street, Suite 100, Los Angeles, California 90017 (Phone: 213-633-6800); franchise@abcrestaurant.com.

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

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

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

Issuance Date: \_\_\_\_\_.

## State Cover Page

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in **Exhibit A** for information about the franchisor, about other franchisors, or about franchising in your state.

Many franchise agreements do not allow you to renew unconditionally after the initial term expires. You may have to sign a new agreement with different terms and conditions in order to continue to operate your business. Before you buy, consider what rights you have to renew your franchise, if any, and what terms you might have to accept in order to renew.

Please consider the following RISK FACTORS before you buy this franchise:

1. The area development agreement and franchise agreement each require you to resolve disputes with us by non-binding mediation and arbitration only in California. Out of state litigation may force you to accept a less favorable settlement for disputes. It may also cost you more to litigate with us in California than in your own state.
2. The area development agreement and franchise agreement each state that California law governs the agreement, and this law may not provide the same protections and benefits as local law if you reside outside of California. You may want to compare these laws.

A number of state relationship laws require venue for disputes arising out of the franchise agreement (“FA”) to be in the franchisee’s home state. In states with no venue-setting requirement, a foreign franchisor could set venue for disputes in their home country, but a non-U.S. venue provision may be viewed negatively by U.S. franchisee candidates. This FDD assumes that ABC Franchise, LLC is a California corporation based in Los Angeles and therefore sets venue for mediation and litigation in Los Angeles, California. See discussion in the Guides – 22.12.

The franchise laws that dictate venue do not control the venue of mediation or arbitration.
3. Your spouse must sign a spousal consent agreeing to the financial obligations under the area development agreement and franchise agreement which may place your spouse’s marital assets at risk if your franchise fails.
4. There may be other risks concerning this franchise.
5. We may use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should make sure to do your own investigation of the franchise.

## State Effective Dates

A franchisor would insert its latest registration date in the chart below. For states where it is not registered, it would insert “not applicable.” The other states not listed here are non-registration states.

The following states require that the 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 Franchise Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws with the following effective dates:

State	Effective Date
California	
Hawaii	
Illinois	
Indiana	
Maryland	
Michigan	
Minnesota	
New York	
North Dakota	
Rhode Island	
South Dakota	
Virginia	
Washington	
Wisconsin	

## Table of Contents

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Item 1 The Franchisor, and Any Parents, Predecessors, and Affiliates	49
Item 2 Business Experience . . . . .	54
Item 3 Litigation . . . . .	55
Item 4 Bankruptcy . . . . .	55
Item 5 Initial Fees . . . . .	55
Item 6 Other Fees . . . . .	58
Item 7 Estimated Initial Investment . . . . .	68
Item 8 Restrictions On Sources Of Products And Services .	73
Item 9 Franchisee’s Obligations . . . . .	77
Item 10 Financing . . . . .	78
Item 11 Franchisor’s Assistance, Advertising, Computer Systems, And Training	78
Item 12 Territory . . . . .	89
Item 13 Trademarks . . . . .	92
Item 14 Patents, Copyrights, And Proprietary Information.	94
Item 15 Obligation To Participate In The Actual Operation Of The Franchised Business	95
Item 16 Restrictions On What The Franchisee May Sell . . .	96
Item 17 Renewal, Termination, Transfer, And Dispute Resolution	97
Item 18 Public Figures . . . . .	108
Item 19 Financial Performance Representations . . . . .	108
Item 20 Outlets And Franchisee Information . . . . .	113
Item 21 Financial Statements . . . . .	115
Item 22 Contracts . . . . .	115
Item 23 Receipts . . . . .	116

## List Of Exhibits

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EXHIBIT A .....  
List of State Administrators

EXHIBIT B .....  
Agent for Service of Process

EXHIBIT C .....  
Franchise Agreement

- Exhibit A - Approved Location And Protected Area
- Exhibit B - Personal Guaranty
- Exhibit C - Addresses for Notice
- Exhibit D - Spousal Consent
- Exhibit E - Collateral Assignment of Telephone Numbers, Addresses, Listing and Assumed or Fictitious Business Name

EXHIBIT D ..... Lease Addendum

EXHIBIT E ..... General Release

EXHIBIT F ..... Personal Guaranty

EXHIBIT G ..... Confidentiality Agreement

EXHIBIT H ..... Confidential Manual Table of Contents

EXHIBIT I ..... State Addendum

EXHIBIT J ..... Financial Statements

EXHIBIT K ..... Operating ABC Restaurant Locations

EXHIBIT L ..... Franchise Application

EXHIBIT M ..... Closing Acknowledgement (Declaration of Franchise Applicant)

EXHIBIT N ..... Collateral Assignment of Telephone Numbers, Addresses, Listings and Assumed or Fictitious Business Name

EXHIBIT O ..... Area Development Agreement

- Exhibit 1 - Term Sheet: Development Territory, Development Quota, and Development Deadlines
- Exhibit 2 - Franchise Agreement
- Exhibit 3 - Spousal Consent

EXHIBIT P Receipts (2 copies)

We provide templates only for the documents in bold. However, applicable disclosure rules require a franchisor to attach to its FDD as an exhibit all standard contracts, which may include (and in the case of fictional ABC Restaurants does include) a lease addendum, personal guaranty, confidentiality agreement, closing acknowledgement, and collateral assignment of phone numbers.

For a discussion of some of these other ancillary contracts, see the Guides – Section 20.



# ITEM 1 The Franchisor, and Any Parents, Predecessors, and Affiliates

## Terminology

The franchisor is ABC Franchise Co., LLC, a California Limited Liability Company, and is referred to in this document as “Company,” “we,” “us” and “our.” A person who buys a franchise from us is referred to as “you.” If you are a corporation, limited liability company, partnership or other business entity, “you” also includes your owners.

In addition to capitalized terms that we define in the body of this Franchise Disclosure Document (“Disclosure Document”), these capitalized terms which appear in Item 1 and elsewhere in this Franchise Disclosure Document have the following meanings:

1. “ABC Intellectual Property” refers broadly to all of the rights that we own in the Licensed Marks and in any Designated Goods/Services and Confidential Information arising under any patent, trade secret, copyright, trade dress, design protection, database protection, trademark, or similar laws of the United States or any other country in which we or our affiliates operate. Among other things, the term “ABC Intellectual Property” includes trade dress and other proprietary indicia of goods and services, internet domain names and original works of authorship in any medium of expression.
2. “Captive Venue” refers to the location of an ABC Restaurant in a larger public or privately-owned destination or complex where the real estate developer includes restaurant services as an accommodation to a captive market. Examples of Captive Venues include regional shopping malls, airports, mass transit stations, professional sports stadiums and arenas, hotels and other types of lodging facilities, military bases, entertainment centers, amusement parks, casinos, universities and other types of schools, hospitals and other types of health care institutions, and similar types of captive market locations that we designate. Generally speaking, regional shopping malls have two or more anchor tenants and dedicated parking space within one or more buildings forming a complex of shops representing unrelated merchandisers with interconnecting walkways enabling visitors to easily walk from unit to unit. We alone determine what shopping destinations qualify as a regional shopping mall.
3. “Confidential Information” includes, without limitation, non-public information concerning (i) ingredients, formulas, and food storage and preparation procedures; (ii) our relationships with designated, recommended and approved suppliers; (iii) inventory requirements and control procedures; (iv) pricing, sales, profit performance, or other results of operations of any individual ABC Restaurant, including the Franchised Restaurant, or group of ABC Restaurants or the entire chain; (v) demographic data for determining Approved Locations and Protected Areas; (vi) strategic growth and competitive strategies; (vii) the design and implementation of marketing initiatives and the results of customer surveys and marketing and promotional programs; (viii) decisions pertaining to Designated Goods/Services; and (ix) non-public information pertaining to the ABC Intellectual Property.
4. “Designated Goods/Services” collectively refers to all of the ingredients, sauces, food products, beverages, supplies, equipment, collateral logo merchandise, services to support the build-out of your Franchised Restaurant, and any other goods or services for which we designate a

mandatory supplier. Designated Goods/Services typically fall into these categories: (i) goods or services that we regard as proprietary because they are produced or fabricated to our specifications; (ii) goods or services that you must use or sell in operating your Franchised Restaurant that display the ASIAN BOWL CAFE brand name or logo whether or not proprietary; and (iii) goods or services that are only available from a designated, exclusive supplier with whom we have entered into a purchasing arrangement providing special purchasing terms for ABC Restaurants.

5. “Licensed Marks” identify the specific names, trademarks, service marks, commercial symbols and logos that we identify and permit you to use to identify and promote the Franchised Restaurant to the public whether or not we have formally registered them and all rights of priority based on use of the Licensed Marks by us, our affiliates or licensees. The Licensed Marks include the logo that appears on page 1 of this Disclosure Document.

6. “ABC Restaurant” refers interchangeably to a restaurant that we, our affiliates or a franchisee owns and operates following our distinctive restaurant format, concept and operating methods, while “Franchised Restaurant” specifically refers to an ABC Restaurant that is owned by a franchisee.

## The Franchisor, Parents and Affiliates

We are a California limited liability company formed on January 15, 2010. Our principal place of business is 1000 Main Street, Suite 100, Los Angeles, California 90017 (Phone: 213-633-6800). We conduct business under the name “ASIAN BOWL CAFE.”

Exhibit B lists our agents for service of process.

We are a wholly-owned subsidiary of ABC Holdings Co., Ltd. (“Parent Co.”), a Japanese corporation, which has a principal business address located at Shinjuku i-Land Tower 6-5-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 163-1339 Japan.

Our affiliate, ABC Restaurants, LLC, a California limited liability company (“Operating Affiliate”), formed on July 5, 2008, has owned and operated ABC Restaurants in the United States since 2009. Our Operating Affiliate is also a wholly-owned subsidiary of Parent Co. and has the same principal place of business as we have. Our Operating Affiliate’s U.S. restaurants serve as the prototype for the ASIAN BOWL CAFÉ franchise program and are operationally identical to the ASIAN BOWL CAFÉ franchises that we describe in this Disclosure Document.

We are not affiliated with any company that presently offers franchises in the United States in any line of business.

Parent Co.’s wholly-owned subsidiary, Suzuki-Cai Enterprises Japan Co., Ltd, a Japanese corporation (“Suzuki-Cai Enterprises”), originated the ASIAN BOWL CAFÉ restaurant concept and opened the first ASIAN BOWL CAFÉ in Tokyo, Japan in 2001. As of the effective date of this Disclosure Document, Suzuki-Cai Enterprises directly owns and operates 20 ASIAN BOWL CAFÉ restaurants in Japan and is the franchisor of 55 ASIAN BOWL CAFÉ restaurants operating in Australia (22), Japan (12) and South Korea (19). While ASIAN BOWL CAFÉ restaurants operating outside of the United States offer some similar menu items to ABC Restaurants in the United States, they operate using more of a quick-service format with limited dine-in seating.

Suzuki-Cai Enterprises has the same principal business address as Parent Co.

Parent Co. has four other wholly-owned foreign subsidiaries that operate and offer franchise for varied types of restaurant concepts in Japan and other foreign markets under brands dissimilar to ASIAN BOWL CAFÉ. These foreign affiliates are:

Affiliates currently offering restaurant franchises outside of the United States under marks dissimilar to ASIAN BOWL CAFE:

<p>XYZ Restaurant Co., Ltd.</p> <p>Shinjuku i-Land Tower 6-5-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 163-1339 Japan.</p> <p>Phone: 81-6-6267-1219</p> <p>Franchise Brand: "XYZ Restaurants"</p> <p>First restaurant opened in 1998; franchising in Japan and other foreign markets since 2002</p>	<p>Cosmos Restaurant Japan, Ltd.</p> <p>Shinjuku i-Land Tower 6-5-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 163-1339, Japan</p> <p>Phone: 81-3-3226-2891</p> <p>Franchise Brand: "Cosmos Restaurants"</p> <p>First restaurant opened in 2001; franchising in Japan and other foreign markets since 2004</p>
<p>Convenient Restaurant Japan, Ltd.</p> <p>Shinjuku i-Land Tower 6-5-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 163-1339., Japan</p> <p>Phone: 81-3-3549-8701</p> <p>Franchise Brand: "Fast &amp; Easy Restaurant Bar"</p> <p>First restaurant opened in 2005; franchising in Japan and other foreign markets since 2007</p>	<p>Acme Restaurant Co., Ltd.</p> <p>Shinjuku i-Land Tower 6-5-1 Nishi-Shinjuku, Shinjuku-ku, Tokyo 163-1339, Japan</p> <p>Phone: 81-3-5784-3511</p> <p>Franchise Brand: "Acme Fine Dining Car"</p> <p>First restaurant opened in 2011; franchising in Japan and other foreign markets since 2012</p>

None of our foreign affiliates plans to open or franchise their restaurant concepts in the United States. The activities of these foreign affiliates are not material to our franchisees in the United States.

We were formed specifically to administer the ASIAN BOWL CAFE franchise program in the United States. We do not currently operate businesses of the type that we offer as franchises, have not engaged and do not currently engage in any other business activities besides administering the ASIAN BOWL CAFE franchise program. We have never offered franchises in any other line of business. We have no affiliates (U.S. or foreign) that will provide products or services to ASIAN BOWL CAFÉ franchisees in the United States.

## The Franchises We Offer

ABC Restaurants are casual dining restaurants featuring fresh and healthy Asian-inspired noodle and rice bowl selections prepared with high quality ingredients, sauces and curries and serving complimentary side dishes, beer and wine and fountain drinks. Our sauces and curries are prepared with original recipes and proprietary ingredients. Marketing and promotional emphasis is on the fresh quality of ASIAN BOWL CAFÉ menu offerings and value pricing.

ABC Restaurants feature an informal dining atmosphere with nautically-themed interior décor. Generally, ABC Restaurants are approximately 2,000 square feet and located in strip or convenience shopping centers although the layout and format are suitable for shopping mall food courts.

We promote ABC Restaurants on our website [www.abcrestaurant.com](http://www.abcrestaurant.com), various social media sites and through traditional advertising. From our website, we provide an active link for each ABC Restaurant in the United States where we display the restaurant's operating hours, location and travel directions.

We will award franchises to qualified area developers who agree to open a specific number of ABC Restaurants ("Development Quota") in a specified geographic area ("Development Territory") by specific development deadlines ("Development Deadlines"). We will mutually agree upon the Development Quota, Development Territory and Development Deadlines before you sign the Area Development Agreement (Exhibit O). You must sign a Franchise Agreement for the first ABC Restaurant when you sign the Area Development Agreement, and will sign a separate, but identical, form of Franchise Agreement (Exhibit C) for each additional ABC Restaurant in your Development Quota when you obtain site approval for the new ABC Restaurant.

We also offer single unit franchises awarding you the right to open just one ABC Restaurant on the terms of the Franchise Agreement (Exhibit C) at an "Approved Location," which is a location that you identify and which we approve following our site selection procedures which is identified by the Licensed Marks and other distinctive branding and trade dress elements that we designate.

The Franchise Agreement (Exhibit C) explains the requirements of the franchise license. You must operate the Franchised Restaurant in accordance with the "ABC System," which is a term that we use to describe our comprehensive business methods, standards, policies, requirements and specifications which cover the following subject matters: (i) the design, trade dress and build-out requirements for the Franchised Restaurant including kitchen layout, signs, dining room layout, and installation of our designated interior décor; (ii) specifications for restaurant equipment and supplies; (iii) designation of standard menu items and menu names; (iv) instructions for handling, preparing, presenting, serving and storing ingredients, foods and beverages including proprietary recipes; (v) requirements for using or selling Designated Goods/Services; (vi) use of a designated POS System, which includes record keeping, financial and operational reporting requirements; (vii) customer service and merchandising standards; (viii) advertising and branding strategies; (ix) comprehensive training programs; and (x) requirements for using the ABC Intellectual Property which includes the Licensed Marks and any knowledge or information that we identify, or that you should reasonably know, we treat as Confidential Information.

After you sign the Franchise Agreement, we will give you access to our confidential operations standards manual ("Confidential Manual") which contains our policies and procedures relevant to your franchise duties and operations and explains the ASIAN BOWL CAFE corporate culture and system standards and specifications. Our Confidential Manual is a collection of information and forms in written and electronic format including by posting information on our password-protected Intranet accessible only to network members. During the term of the Franchise Agreement, we may modify the ABC System as frequently as we feel is in the best interests of the entire ASIAN BOWL CAFE network to keep our brand relevant and competitive to consumers and will make corresponding changes to the Confidential Manual. We will notify you of all changes to the Confidential Manual by written or electronic bulletins or other announcements, and you must conform to all changes at your expense within the time we allow, which will be reasonable for the specific type of change that we implement. Changes that we make to the Confidential Manual will not modify your fundamental rights under the Franchise Agreement.

## Market and Competition

The restaurant business is highly competitive in matters concerning price, service, location, food quality, and quality of service. It is often affected by changes in consumer tastes, economic conditions, population and traffic patterns. You must anticipate competing with numerous other restaurants offering a wide range of comparably priced food and beverage items and a wide variety of service formats. The businesses with which you should expect to compete include national or regional

franchise systems and other chains, and independently owned local restaurants located in the area of the Franchised Restaurant. You should expect to compete not only with other restaurants, but also with food retailers generally, including supermarkets and convenience stores.

Your business will also be affected by its location, the locations of competing restaurants and other businesses, your financial and managerial capabilities, availability of labor, interest rates, changes in traffic patterns, demographic or cultural conditions, and other factors. There is also active competition for managerial and service personnel as well as for attractive commercial real estate sites.

Some competitors may have greater financial resources and longer operating histories than we have. You should take these competitive factors into account before deciding to purchase an ABC Restaurant franchise.

ABC Restaurants operate year-round and are not a seasonal business. However, our menu features market fresh ingredients and changes according to seasonal availability.

## Laws and Regulations

ABC Restaurants are subject to federal and state laws affecting restaurants and other food retailers generally including (i) restrictions against smoking in public places or specifically forbidding smoking inside of premises that serve food; (ii) the public posting of notices regarding health hazards (tobacco smoke or other carcinogens); (iii) fire safety and general emergency preparedness laws; (iv) rules regarding the proper use, storage and disposal of waste, insecticides and other hazardous materials; (v) environmental laws that may impact the operation of food retailers (including laws requiring recycling and regulating the use of containers and other materials potentially harmful to the environment); (vi) standards regarding employee health and safety, restaurant sanitation, and the storage, handling, cooking and preparation of food products; and (vii) mandatory public disclosures applicable to establishments that serve raw seafood (during some seasons we may include raw seafood on our standard menu). Some jurisdictions have also adopted or are considering proposals that would regulate indoor air quality at restaurants.

Some jurisdictions have also adopted or are considering food and/or nutrition labeling laws including calorie content disclosures that may apply to ABC Restaurants.

Federal, state and local agencies inspect food retailers and their employees to ensure compliance with these laws and regulations.

All ABC Restaurants must offer beer and wine which will require that you obtain an appropriate state or local license to serve beer and wine.

You are responsible for investigating and complying with all laws in the geographic area in which you are interested in opening a Franchised Restaurant and should consider their effect and cost of compliance. In addition to laws that specifically apply to restaurants and food retailers, ABC Restaurants are subject to laws and regulations affecting businesses generally. These laws include tax regulations, labor laws, business licensing requirements, laws affecting the construction of business premises, the American With Disabilities Act, false advertising and other unfair business practices, and the USA Patriot Act and Executive Order 13224.

## Our Prior Experience

Our principals, Yuki Suzuki and Rongwei Cai, originated the ABC Restaurant concept and opened the first ASIAN BOWL CAFÉ restaurant in Tokyo, Japan in 2001. They have overseen Suzuki-Cai Enterprises' expansion of ASIAN BOWL CAFÉ restaurants

in Japan through direct ownership and franchising and its global franchise expansion outside of Japan. They are responsible for modifying the ASIAN BOWL CAFÉ dining format for the U.S. market transforming the concept from a quick-service to a casual dining concept and, through our Operating Affiliate, opened the first ABC Restaurant in the United States in 2009 in Los Angeles. Our Operating Affiliate currently owns and operates two restaurants, both in Los Angeles, California, which serve as the prototype for the ASIAN BOWL CAFÉ franchise program and are operationally identical to the ASIAN BOWL CAFÉ franchises that we describe in this Disclosure Document.

## ITEM 2 Business Experience

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### Yuki Suzuki – Chair of our Board of Managers; Chief Executive Officer and President

Mr. Suzuki originated the ABC Restaurant concept with business colleague Rongwei Cai and opened the first ASIAN BOWL CAFÉ in Tokyo, Japan in 2001. Mr. Suzuki has served on the board of directors (board of managers), and as Chief Executive Officer and President of our Parent Co., Suzuki-Cai Enterprises and our company since each company's inception. On our behalf, Mr. Suzuki is responsible for strategic initiatives, brand management implementation, and our strategic leadership.

### Rongwei Cai – Board of Managers; Chief Financial Officer

Together with Mr. Suzuki, Mr. Cai originated the ABC Restaurant concept and opened the first ABC Restaurant in Tokyo, Japan in 2001. He has served on the board of directors (board of managers) and as Chief Financial Officer of our Parent Co., Suzuki-Cai Enterprises and our company since each company's inception. On our behalf, Mr. Cai is responsible for new store openings, financial matters, and our strategic leadership.

### Jonathan Smith – Board of Managers

Mr. Smith joined our board of managers on January 1, 2013. Since April 1, 2008, he has been a Managing Director of Golden Gate Capital, a private equity firm in San Francisco, California, with a diversified portfolio where his particular industry focuses are on (i) technology-related industries (specifically software and IT services), and (ii) restaurant and food service businesses. Prior to joining Golden Gate Capital, Mr. Smith was a Principal at Bain Capital, which he initially joined in 1991, and a strategy consultant at Bain & Company.

### Carlos Delgado – Chief Operating Officer

Mr. Delgado joined our team in June, 2010 as a consultant and was responsible for documenting and troubleshooting the core operating systems for ABC Restaurants owned and operated by our Operating Affiliate. From April, 2010 until December, 2014, he has served as our Operating Affiliate's Vice President of Development with responsibility for all areas of operations for ABC Restaurants owned by our Operating Affiliate. Mr. Delgado brings over 40 years of restaurant experience to our executive management team. From August, 1992 until June, 2000, he served as Regional Director of Operations of Hawaii for CPK (California Pizza Kitchen). From June, 2000 until September, 2008, he served as CPK's Director of Operations of Hawaii and International, and from September, 2008 through May, 2010, he served as Vice President of International & Domestic Franchise Operations for CPK working from offices in Los Angeles, California. On January 1, 2015 Mr. Delgado became our Chief Operating Officer where his responsibilities include oversight of operations at all franchised and affiliate-owned ABC Restaurants and strategic development of new programs to enhance operating efficiencies.

## Hai Tanaka – Director of Franchising

As a member of our executive management team, Mr. Tanaka brings to our Company 20 years of management experience in the food service industry working in management-level “front of the house” and “back of the house” positions with several restaurant companies with headquarters in New Orleans, Louisiana and Los Angeles, California. From 1995 through 1998, Mr. Tanaka was the food and beverage manager of five Ruth Chris Steakhouse restaurants then operating in New Orleans, Louisiana. From 1998 until 2005, he was Director of Operations for Johnny Rockets, a 1950s-style hamburger chain, working from its Los Angeles, California headquarters. From 2005 until August, 2009, Mr. Tanaka was Director of Operations of Yoshinoya America, Inc., where his responsibilities included introduction of new menu items and oversight for all company-owned and franchisee-owned restaurants. From September, 2009 until September, 2010, Mr. Takaka was Director of “Back of the House” Operations for all of our Parent Co.’s brands and worked at Parent Co.’s Tokyo, Japan headquarters. From October 1, 2010 through December, 2012, he served as Director of Operations of our Operating Affiliate where he was responsible for revamping the ABC Restaurant format for the U.S. market. On January 1, 2012, he became Director of Franchising of our company where he is responsible for overseeing franchise sales and helping new franchisees through the onboarding process including responsibility for site selection and overseeing the construction of new franchisee-owned restaurants, restaurant openings and franchisee training programs.

## Mei Takahashi – Director of Marketing

Ms. Takahashi brings 16 years of marketing, business development and project management experience to her position as our Director of Marketing. She has served as our company’s Director of Marketing since our inception and previously, since November, 2004, was Director of Marketing for Suzuki-Cai Enterprises working from its headquarters in Japan, Tokyo.

## ITEM 3 Litigation

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No litigation is required to be disclosed in this Disclosure Document.

## ITEM 4 Bankruptcy

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No bankruptcy is required to be disclosed in this Disclosure Document.

## ITEM 5 Initial Fees

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### Franchise Application

To apply to acquire a franchise for the right to own and operate one ABC Restaurant, you must submit preliminary financial and biographical information for yourself, and if you are a business entity, for your owners. We will evaluate this information and decide if more discussion about a franchise would be productive. If there is mutual interest in continuing discussion, you will at that time complete a comprehensive application (Exhibit L) and provide us with bank and personal references and any other information that we may reasonably request to complete our evaluation and pay us an application fee of \$5,000.

We have 45 days in which to accept or reject your application once we receive all information from you, and reserve complete discretion in selecting franchisees. We are not obligated to sell you a franchise if we accept your application; acceptance signifies only that we are interested in continuing discussions about the sale of a franchise with you. Before we will sell a franchise to you, you must complete a Declaration of Franchise Applicant (Exhibit M).

If we reject your application, we will refund all, but \$4,500 of the application fee. We will notify you in writing if we approve your application and will offer you a franchise. In that case, if you wish to purchase a franchise from us, we will credit the application fee to the Initial Franchise Fee and the balance of the Initial Franchise Fee will be payable in full when you sign the Franchise Agreement. We may withdraw our written approval of your application if you refuse to pay the balance of the Initial Franchise Fee and sign the Franchise Agreement within 30 days after we notify you of our approval.

## Initial Franchise Fee

The Initial Franchise Fee is \$39,500. For each additional franchise that we agree to award to you or a business entity in which you own a controlling interest, we will discount the then-current Initial Franchise Fee by 20% (so that you pay 80% of the then-current Initial Franchise Fee). In the future, the Initial Franchise Fee may be higher than \$39,500. We are under no obligation to sell an additional franchise to any existing franchisee. The Initial Franchise Fee, less any application fee, is due and payable in full when you sign the Franchise Agreement.

We determine the Initial Franchise Fee in a uniform matter. However, we may excuse or reduce the Initial Franchise Fee in individual cases in our discretion. For example, we may excuse or reduce the Initial Franchise Fee if we sell a franchise to friends and family of our owners or to an employee with at least two years management-level experience at any ABC Restaurant.

## Conditions for Refund

The Initial Franchise Fee is fully earned by us when paid and is non-refundable except if we terminate the Franchise Agreement under the following conditions:

- If within 120 days after the effective date of the Franchise Agreement, you fail (i) to obtain our written approval to the particular premises for the Franchised Restaurant; or (ii) deliver an executed copy of the lease and an Addendum to Lease in the form of Exhibit D for the Approved Location. If we terminate the Franchise Agreement because of the failure of either contingency, we will refund 80% of the Initial Franchise Fee paid.
- Based on our current Initial Franchise Fee of \$39,500, we would refund \$31,600 if we terminate the Franchise Agreement for either reason. You must sign our form of general release (Exhibit E) as a condition to obtaining the refund.

## Development Fee

If we agree to award you area development rights, you will pay us a Development Fee when you sign the Area Development Agreement. The amount of the Development Fee depends on the number of restaurants in your minimum development commitment or Development Quota. We compute the Development Fee in a uniform manner as the sum of \$39,500 for the first ABC Restaurant in the Development Quota and \$30,000 for each additional restaurant in the Development Quota. Of the Development Fee, we credit \$39,500 to the Initial Franchise Fee for the first ABC Restaurant in the Development Quota. Then, each time you obtain site approval to develop another ABC Restaurant in the Development Quota, we credit \$15,000 of the Development Fee to the Initial Franchise Fee payable under the new Franchise Agreement, and you will pay us an additional \$15,000, which represents the balance of the \$30,000 Initial Franchise Fee for the additional ABC Restaurant. The credit process continues in this manner until the aggregate credits that we apply towards the Initial Franchise Fee payable under each new Franchise Agreement that we execute for a new ABC Restaurant equals the Development Fee.

We may alter the way we compute and/or credit the Development Fee depending on the situation and in our sole discretion. We did not off area development rights during our last fiscal year.



The Development Fee is fully earned when paid and not refundable. If you fail to open an ABC Restaurant by a Development Deadline, we may terminate the Area Development Agreement, which will result in the loss of any unexpired development rights and a forfeiture of any unapplied Development Fees. As a result, if we terminate the Area Development Agreement before the final development deadline, we will not refund or credit any portion of the unused Development Fees to any other fees that you must pay to us under any Franchise Agreements then in effect.

## Sale of an Operating ABC Restaurant Owned by an Affiliate

If an affiliate of ours agrees to sell you all of the assets of an operating ABC Restaurant, you must, as a condition of the sale of assets, meet our qualifications for new franchisees and purchase franchise rights from us. In other words, we treat the sale of franchise rights, and the sale of assets, as two separate, but integrated transactions that must occur simultaneously so that, on the same date, you acquire title to the assets of the operating ABC Restaurant and a franchise license. Depending upon the physical condition of ABC Restaurant premises, equipment and other assets, we may require you to upgrade the premises and equipment to our then-current design standards for new ABC Restaurants. We will identify any mandatory renovation changes before you sign the Franchise Agreement or purchase the assets so that you can investigate the additional investment expenses.

You and our affiliate that owns the operating ABC Restaurant will negotiate the price and other terms and conditions of sale for the asset transaction. The price and other terms of sale will vary in individual cases based on the operating performance and market potential of ABC Restaurant being sold. Before you sign a letter of intent or open an escrow for the purchase and sale of ABC Restaurant assets, you must submit an application to us for the franchise rights and pay us the application fee. Depending on the payment terms that you negotiate, all or part of the purchase price for ABC Restaurant assets and goodwill may be payable to the selling affiliate before your business opens. On the closing date for the sale of ABC Restaurant assets, you will sign the Franchise Agreement and pay us the remaining balance of the Initial Franchise Fee.

## Other Initial Fees

At this time, we do not require you to make any other payments to us or our affiliates for goods or services before the “Opening Date,” which is the first day that an ABC Restaurant begins serving the general public. Immediately before the Opening Date, you will place an order with us for your initial inventory of proprietary spice mix and sauces for which we currently are the exclusive supplier. However, at this time, we extend 30 day payment terms so that payment for your initial order for spices and sauces is typically not due and payable until after the Opening Date. Payments for our proprietary spice mix and sauces are not refundable.

## ITEM 6 Other Fees

Type Of Fee	Amount	Due Date	Remarks
Royalty Fee  (See Note 1)	5% of Gross Sales.	Payable weekly on or before Tuesday of each week based on Gross Sales during the prior Monday through Sunday period. Payment is by our designated automated clearing house (“ACH”) system.	We define Gross Sales in the Franchise Agreement. We may debit your account for 120% of your last payment if you fail to report Gross Sales to us on time. The Franchise Agreement allows us to change the Accounting Period for payment periodically upon 30 days prior written notice.
Promotional Fees  (See Note 2)	Currently 1.5% of Gross Sales. However, but we may increase Promotional Fees to a maximum of 3% of Gross Sales at any time upon no less than 30 days’ written notice. Increases will be in increments of .5% and apply to all Franchisees. We will not impose increases more frequently than once every 6 months. You must pay the Promotional Fee at the rate in effect when your Franchised Restaurant opens for business.	Promotional Fees are payable together with and for the same period as the Royalty Fee.  Promotional Fees will begin upon 30 days’ written notice.	We deposit all Promotional Fees into the Promotional Fund. We may debit your designated bank account for 120% of your last payment if you fail to report Gross Sales to us on time.
Local Advertising  (See Note 2)	3% of Gross Sales per calendar quarter must be spent on local advertising and promotion in the area where the Franchised Restaurant is located.	You must account to us to verify that you have spent the required minimum amount on local advertising, but you do not pay us this fee except under the conditions that we describe in the Remarks column.	If 3% of Gross Sales is not spent in any calendar year, we may terminate the Franchise Agreement or, at our option, require you to pay us the difference between 3% of Gross Sales and the actual amount spent, plus 25% of the difference. We do not have to deposit the money that you pay us into the Promotional Fund.

Type Of Fee	Amount	Due Date	Remarks
Co-op Advertising Fee  (See Note 2)  (Not yet required)	Not to exceed 3% of Gross Sales.	The amount of Co-op Advertising Fees (not to exceed 3% of Gross Sales) and the terms of payment will be set by the Regional Advertising Co-op board, which members of the Co-op elect.	This obligation arises only if we create a Regional Advertising Co-op for your area. We have no Regional Advertising Co-ops at this time.  We credit all of the Co-op Advertising Fees that you pay to a Regional Advertising Co-op towards your minimum
Inventory	At this time, we are not a supplier of any inventory items or Designated Goods/Services except for the proprietary spice mix and sauces. We will sell Designated. Goods/Services according to the then-current price list and on the terms that we will publish in the Confidential Manual.	Net 30 days; however, we may change our payment terms at any time and may require payment in full on delivery upon no less than 30 days written notice.	See Item 8.
Compliance Audit by Us	Cost of audit (including our reasonable accounting, legal fees and travel expenses), plus full amount of any underpayment and interest and late charges on any underpayment.	30 days after we complete audit results.	Payable only if our audit shows an understatement of Gross Sales for any period of 2% or more.
Interest on Late Payments	1.5% per month per annum not to exceed the maximum legal rate of interest.	Interest accrues immediately after due date if you fail to pay full obligation. Late payment is a material default under the Franchise Agreement. By charging interest, we do not waive our right to terminate the Franchise Agreement on account of late payment.	Applies to all amounts payable to us under the Franchise Agreement. Interest is payable on the entire overdue amount beginning with the date payment is due until you pay the arrearage, late charge and interest in full.

Type Of Fee	Amount	Due Date	Remarks
Remedial Work to Correct Unhealthy or Unsafe Condition	Service charge equal to 25% of the cost of the remedial or corrective work if we elect to correct any unhealthy or unsafe condition at the Franchised Restaurant. Additionally, you must reimburse us for all of our actual direct costs in performing the work, including for labor, materials, travel, supervision and subcontractors.	Upon receipt of invoice.	We have no obligation to perform remedial work and may, instead, at our option terminate the Franchise Agreement based on your material breach of the obligation to operate in compliance with all laws and in a safe and sanitary manner.
Service Charge for Insurance  (See Note 3)	The cost of purchasing replacement insurance plus 25%.	Upon receipt of invoice.	The service charge is only payable if you fail to carry the insurance we require and if we decide to purchase the insurance coverage for you. We have no obligation to obtain coverage for you and may, instead, at our option terminate the Franchise Agreement based on your material breach.
Renewal Fee	20% of our then-current Initial Franchise Fee that we charge to franchisees buying their first ABC Restaurant franchise.	When you give notice of your exercise of the renewal option, at least 9 months, but not more than 12 months, before expiration of the current term.	See conditions of renewal in Item 17 and in the Franchise Agreement.  The Area Development Agreement does not provide for a renewal term.
Transfer Fee – (Area Development Agreement, Exhibit O)	\$10,000	When you apply for our consent to a proposed Event of Transfer pertaining to the area development rights.	If we refuse to consent to the proposed Event of Transfer, we may keep up to \$1,500 of the Transfer Fee to cover our expenses in reviewing the proposed transfer request.  If we consent to the proposed Event of Transfer and do not exercise our right of first refusal, the buyer will assume your Area Development Agreement for the remaining term.

Type Of Fee	Amount	Due Date	Remarks
Transfer Fee – (Unit Franchise Agreement, Exhibit C)	\$10,000	When you apply for our consent to a proposed Event of Transfer pertaining to any single ABC Restaurant.	<p>If we refuse to consent to the proposed Event of Transfer, we may keep up to \$1,500 of the Transfer Fee to cover our expenses in reviewing the proposed transfer request.</p> <p>If we consent to the proposed Event of Transfer and do not exercise our right of first refusal, the buyer will assume your Franchise Agreement for the remainder of your term and any unexpired renewal term.</p>
Transfer Fee - Qualified Transfers (See Note 4)	\$1,500 per Qualified Transfer.	When you apply for our consent to a proposed Event of Transfer.	“Qualified Transfers” are changes in ownership amounting to less than a controlling interest or the transfer of the franchise or development rights to a newly formed entity which you wholly own.
Public or Private Offering	Reasonable attorneys’ fees up to \$20,000 per Public or Private Offering.	When you apply for our consent to a proposed Event of Transfer that involves a Public or Private Offering.	A Public or Private Offering is an Event of Transfer involving the sale of a controlling interest of shares of a corporate Franchisee to the public under the terms of an offering memorandum, registration statement or comparable documents, which we must review.

Type Of Fee	Amount	Due Date	Remarks
Additional Training after Opening Date  (See Note 5)	We will provide additional training after the Opening Date either in the Franchised Restaurant or at another operating ABC Restaurant by mutual agreement. We may also require that you or your Certified Managers additional training to correct operating deficiencies. You must pay us our then-current per diem training fee, which at this time is \$500/day. Additionally, you must reimburse us for our reasonable travel costs to send one of our employees to the Franchised Restaurant if we provide additional training in the Franchised Restaurant after the Opening Date.	Before training begins or within 30 days after we invoice you for our direct expenses.	See Item 11 for additional information regarding each training module. You are responsible for your employees' expenses during all training programs, including travel costs, room and board expenses and salaries.  We publish our training fees in the Confidential Manual and may increase them at any time effective on 30 days' notice. We do not prorate the per diem rate for less than a full day (8 hours) of training.  In consideration of the payment of the transfer fee, we do not charge any training fees to provide the Owner Orientation and Certified Training modules of our then-Initial Training program to the approved buyer's owners and any new general manager who is not a Certified Manager or has not previously completed those modules.
Indemnification and Defense	All costs including attorneys' fees; amount will vary under the circumstances.	As we incur expenses and present them to you.	You must reimburse us for losses which we suffer resulting from the operation of your business. We may retain our own legal counsel. You must reimburse us for our legal and other professional expenses related to the claim.
Alternate Supplier Testing Fee	Based on our actual cost, but not to exceed \$2,500 per request, plus reimbursement of direct expenses, for example, to visit a proposed supplier's facility.	When you request approval of an alternate supplier.	See Item 8.

Type Of Fee	Amount	Due Date	Remarks
Mystery Shopper Fee  (Not yet required)  (See Note 6)	Based on actual costs which we currently estimate will range between \$200/year - \$500/year.  We base our estimate of mystery shopper fees on the range of fees that mystery shopper companies charge at this time and the average number of mystery shopper visits we anticipate the mystery shopper company will make each year to each ABC Restaurant in good standing.	We may direct you to pay us the Mystery Shopper Fee which we will forward to the mystery shopper company or have you remit payment directly to the mystery shopper company according to the company's payment terms. Payment to us is due within 10 days of invoice unless we indicate otherwise.	The amount of Mystery Shopper Fees depends on the charges which the mystery shopper company imposes and the frequency of mystery shopper visits. We invoice you periodically depending on whether the mystery shopper company's invoices indicate that the company made mystery shopper visits to the Franchised Restaurant during the invoice period. The mystery shopper company may increase its fee at any time. We may direct the mystery shopper company to increase the number of visits to a particular ABC Restaurant if the location's mystery shopper scores indicating operating deficiencies or customer relations problems in our judgment.
Management Fee  (See Note 7)	The t-current fee that we publish in the Confidential Manual, which currently is \$500/day. Additionally, you must reimburse us for our reasonable and direct overhead expenses.	Payable weekly for the same period as the Royalty Fee, but only if we elect to manage the Franchised Business after a death or permanent incapacity that results in a Change of Control.	See Item 17.

**The Following Notes Accompany the Item 6 Disclosures**

**To Whom Payments Are Made:** Except as indicated, you will make all payments to us.

**Refund Conditions:** All payments that we describe in Item 6 are non-refundable except for the transfer fee where we will refund all but \$1,500 if we refuse to consent to a proposed transfer.

**Uniformity:** At this time, we impose continuing fees in a uniform manner. However, we retain discretion to reduce fees in individual cases in our discretion. We also reserve the right to change the type and amount of fees that we require new franchisees to pay us.

**NOTE 1. Gross Sales.** "Gross Sales" means the aggregate of all revenue and income from operating the Franchised Restaurant, including the actual proceeds received from all sales of food, beverages or other goods, merchandise or services, whether payment is in cash, by credit card, gift cards, or other generally accepted form of payment. Gross Sales also include all proceeds from any business interruption insurance, revenue from the sale of menu items to employees, and the value of products and services bought by customers by redeeming authorized gift cards should we introduce a gift card program in the future. Excluded from Gross Sales are: (i) sales taxes and other taxes separately stated that you collect from customers and pay to taxing authorities; (ii) refunds and credits made in good faith to arms' length customers; (iii) the amount of any checks dishonored or returned and the amount of any charge backs or reversals of credit card transactions with customer;

(iv) proceeds from the sale of gift cards if we introduce a chain-wide gift card program; (v) proceeds from isolated sales of trade fixtures having no material effect on ongoing operations; (vi) employee tips; and (vii) the value of menu items that you furnish to employees at no cost to the employee.

We collect most fees by way of a preauthorized bank deduction or automated clearing house (“ACH”) system. Under the Franchise Agreement, you must maintain a dedicated operating account with sufficient funds in the account at all times so that we may debit the entire weekly Royalty Fees and Promotional Fees payable to us according to the actual Gross Sales for the week. The current POS System that you must use gives us the ability to access Gross Sales information and determine the amount of Royalty Fees and Promotional Fees payable to us. The terms of your agreement with your bank must include providing us with no less than 30 days’ written notice before you or the bank may make any change to the operating account that would affect our ability to collect Royalty Fees and Promotional Fees through our ACH payment system.

As we disclose in the remarks column, if you fail to report Gross Sales to us on time for any accounting period, we may, without waiving our right to terminate the Franchise Agreement, debit your ACH account for 120% of your last payment. Once we do so, your payment is non-refundable even if you subsequently report your Gross Sales for the accounting period and demonstrate to us that the amount that we debited exceeds 5% of your actual Gross Sales for the accounting period.

We may change the accounting period for paying and reporting all fees to us on no less than 30 days written notice. We may also designate different accounting periods for paying fees and reporting Gross Sales and other financial results of the Franchised Restaurant.

**NOTE 2. Promotional Fees; Local and Regional Advertising.**

We may defer collecting Promotional Fees until we reach a certain size. We may begin collecting Promotional Fees upon 30 days’ written notice.

The Promotional Fee currently is 1.5% of Gross Sales. However, effective upon no less than 30 days’ written notice, we may increase the Promotional Fee to a maximum of 3% of Gross Sales. We will not impose increases of greater than .5% more frequently than once every 6 months. However, you will pay the Promotional Fee rate that is in effect when your Franchised Restaurant opens for business. That rate may be greater than 1.5% of Gross Sales, but it will not exceed 3% of Gross Sales.

In addition to paying us a continuing Promotional Fee, you must spend a minimum of 3% on local advertising and marketing of the Franchised Restaurant after the Opening Date and account to us for your expenditures within 30 days after the end of each calendar quarter. We must approve all local advertising and marketing materials that you create before you may use them.

“Local advertising” is a term that covers all forms of advertising, marketing and promotion in any media channel and includes print, television and radio advertising; flyers and other printed advertising materials; in-store promotional materials; outdoor advertising; promotional and marketing events at or involving your restaurant; and website content, including advertising that you conduct on third party and social media websites. Local Advertising includes, for example, fees that you pay to a third party agency to create Local Advertising content, provide public relations exposure, or manage social networking outlets for you, including Facebook, Twitter, Yelp, LinkedIn, Pinterest and Instagram.

Additionally, upon no less than 30 days written notice, we may establish a Regional Advertising Co-op for a geographic area that includes the Franchised Restaurant. We may require that you pay Co-op Advertising Fees of up to 3% of Gross Sales to the Regional Advertising Co-op which the Regional Advertising Co-op will deposit into a Regional Promotional Fund. We, alone, may decide to create or end a Regional Advertising Co-op or merge one or more neighboring areas into a larger Regional Advertising Co-op.



We may charge each franchisee a fee of up to \$500 to customize their Franchised Restaurant’s webpage on the Asian Bowl Café website, www.abcrestaurant.com. If we do, we will credit the fee to your minimum obligation for local advertising expenditures.

**NOTE 3. Insurance.** We identify the types and minimum insurance coverage that you must carry. We make no representation that the coverage will be sufficient for your business or purposes. You need to evaluate if your business will require greater coverage or other types of insurance.

Payments for insurance are made to third party insurance companies unless you fail to have the required insurance and we elect to obtain it for you, in which case we may impose a service fee equal to 25% of our costs and immediate reimbursement of our expenses on your behalf.

We describe our current minimum, mandatory insurance requirements for each ABC Restaurant as follows:

1. Comprehensive general liability insurance with minimum coverage of with minimum liability coverage of \$1,000,000 per occurrence and \$4,000,000 aggregate combined single limit (including broad form contractual liability), or the higher amount required by the premises lease, insuring you, us and any of our affiliates that we designate against claims for personal injury or property damage from your business operations.
2. Workers’ compensation and employer’s liability insurance, together with any other insurance required by law at the minimum limits required by law or \$1,000,000 per accident, \$1,000,000 per disease, and \$1,000,000 policy limit, whichever is higher.
3. General casualty insurance, including fire and extended coverage, vandalism and malicious mischief insurance for the full replacement value of your premises and its contents with the following minimum limits:

Required Coverage	Minimum Limits Of Coverage
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (any one fire)	\$300,000
Umbrella Coverage	\$3,000,000

4. Additional insurance if required by the lease of the Approved Location.
5. Business interruption insurance sufficient to cover your expenses (including payments due to us), profits and losses for a minimum period of 12 months from the date of a closure due to an insured loss.

Any person or firm that you hire as a general contractor or to perform comparable services must maintain general liability and builder’s risk insurance with comprehensive automobile liability coverage and worker’s compensation insurance in the minimum amount of \$1,000,000 plus additional insurance that protects against damage to the premises and structure and other course of construction hazards.

We may periodically modify all minimum amounts to reflect inflation, general industry standards or our future experience with claims. If you do not maintain the insurance coverage we require, we may obtain the above insurance coverage for you and charge you a service fee as described in the Item 6 chart. For additional conditions applicable to mandatory insurance including the requirement that your insurance policies name us as an additional insured, see the Franchise Agreement

(Exhibit C).

**NOTE 4. Transfer.** The Area Development Agreement and Franchise Agreement each define what events constitute an Event of Transfer” and a “Qualified Transfer.” If a single Event of Transfer or Qualified Transfer involves multiple Franchise Agreements and the same buyer or successor, we will charge a separate Transfer Fee regardless of the number of franchises being sold to the same buyer that are involved in the same Event of Transfer.

**NOTE 5. Training Expenses.** At this time, our Initial Training program consists of 3 separate training modules: (i) Owner Orientation; (ii) Certified Manager training; and (iii) New Restaurant Opening. Item 11 describes these modules, their length and location, when they begin relative to when you sign the Franchise Agreement, and who must attend each module. The Initial Franchise Fee compensates us for providing the Initial Training program and we do not charge an additional training fee for providing these three modules of Initial Training before and in connection with the opening of the Franchised Restaurant. Similarly, the Transfer Fee compensates us for providing the Owner Orientation and Certified Manager training modules to your buyer if we consent to an Event of Transfer and you will not pay additional training fees in that context.

For any training that you and your employees receive, you are responsible for paying all personal expenses for yourself and your employees to attend training, including transportation, lodging, food, salary and other personal charges. We may modify our training programs at any time.

Once the Franchised Restaurant opens, we will publish a schedule of our Owner Orientation and Certified Manager training classes and you may enroll later-hires in certain classes according to their job classification subject to space availability. We may charge training fees for training classes that we provide to you and your employees at your or our request after the Franchised Restaurant opens. We publish our fee schedule in our Confidential Manual and may revise training fees at any time. You will pay our then-current per person training fee at the time you or your employee enrolls in the training class. At this time, our current per person training fee is \$500 per day (for up to 8 hours/day with no prorating for a partial day). We may limit enrollment in later training classes based on space availability.

Your Franchised Restaurant must be under the direct, full-time supervision of a Certified Manager, whom we define as a management-level employee who (i) successfully completes the entire Certified Manager training course; (ii) holds a ServSafe® Food Protection Manager Certification from the American National Standards Institute Conference for Food Protection; (iii) devotes full-time and attention to supervising the day-to-day operations of the Franchised Restaurant; and (iv) qualifies as a Certified Manager by passing a Certified Manager exam. A Certified Manager may provide internal training instruction for your employees and new hires. A Certified Manager may, but need not, be a “Primary Owner.” The term “Primary Owner” refers to any person who owns 25% or more of the equity or voting shares of a business entity that is a franchisee. Because of the possibility that management-level personnel may turn over and your Certified Manager may leave, we recommend that you employ at least two full-time management-level employees who qualify as a Certified Manager.

For training that we provide to your staff members after the Franchised Restaurant opens (either to qualify an employee as a Certified Manager or to a buyer or the buyer’s management if we consent to an Event of Transfer), we will not terminate the Franchise Agreement if an individual who enrolls in the Certified Manager training module fails to complete it to our reasonable satisfaction. However, you may be at risk of being in violation of the Franchise Agreement if you do not have at least one full-time Certified Manager operating the Franchised Restaurant at all times. With an Event of Transfer, you, as the selling franchisee, will remain responsible for the day-to-day supervision and performance of the Franchised Restaurant until the buyer qualifies at least one individual (which may be a Primary Owner) as a full-time Certified Manager. In other words, you may have to extend the closing date for the proposed Event of Transfer until the buyer qualifies at least one individual as a Certified Manager.

**NOTE 6. Mystery Shopper Fee.** In the future, we plan to introduce a mystery shopper program using the services of an

outside mystery shopper company that will perform regular mystery shopper visits at the Franchised Restaurant in order to provide you with critical feedback and insight into the effectiveness of your operations from a customer’s perspective. When we implement the program, you must participate in it. The mystery shopper program will supply us with benchmark data that will help us compare the performance of the Franchised Restaurant against local competitors and other ABC Restaurants and franchise owners and develop chain-wide benchmarks and competitive intelligence benefiting all ABC Restaurants. We may collect a Mystery Shopper Fee or, alternatively, at our option, have you pay the mystery shopper company’s fees directly to the company. In our discretion, we may use more than one mystery shopper company. In setting your Mystery Shopper Fee, we intend to pass through the fees which the mystery shopper company charges us to visit the Franchised Restaurant. Based on our knowledge of the fees that mystery shopper companies charge today and the number of mystery shopper visits we anticipate the mystery shopper company will make each year to Franchised Restaurant in good standing, we estimate that your Mystery Shopper Fees will range between \$200/year - \$500/year. However, the fees may be higher. Not only may the mystery shopper company that we select increase its fees per visit, but we may direct the mystery shopper company to increase the number of visits to a particular ABC Restaurant due to mystery shopper scores indicating operating deficiencies, customer relations problems or similar matters which, in our judgment, require further investigation and follow up.

**NOTE 7. Management Fee.** The death or permanent incapacity of one of your Primary Owners may result in a Change of Control and trigger an Event of Transfer that requires our prior written consent. If, immediately after a death or permanent incapacity of a Primary Owner resulting in a Change of Control, your remaining management cannot demonstrate to our satisfaction that they can operate the Franchised Business in accordance with the requirements of the Franchise Agreement during the interim period until they obtain our consent to the Event of Transfer, we may assume day-to-day management of the Franchised Restaurant for your account for up to 90 days. If you or your successors have not obtained our consent to the Event of Transfer by the end of 90 days, we must either mutually agree to extend the management arrangement or we may terminate the Franchise Agreement based on the lack of satisfactory management. During the period that we manage the Franchised Restaurant, we may retain enough out of the Franchised Restaurant’s cash flow to pay ourselves the continuing Royalty and Promotional Fees due under the Franchise Agreement, any Regional Co-op Fees that are payable at that time, and the Management Fee and reimburse ourselves for our out-of-pocket expenses. Your obligation for these fees does not depend on the Franchised Restaurant having positive cash flow.

## ITEM 7 Estimated Initial Investment

### Your Estimated Initial Investment – Single Unit Franchise

Column 1	Column 2	Column 3	Column 4	Column 5
Type Of Expenditure	Amount	Method Of Payment	When Due	To Whom Payment Is To Be Made
Initial Franchise Fee (See Note 1)	\$39,500	Cash	In full when you sign the Franchise Agreement	Us
Training Expenses (See Note 2)	\$5,000 to \$15,000	As incurred	As required	Miscellaneous third parties

Column 1	Column 2	Column 3	Column 4	Column 5
Real Property and Security Deposits (See Note 3)	\$21,600 - \$26,400	As incurred	See Note	Landlord
Equipment, Fixtures, Other Fixed Assets, Construction, Remodeling, Leasehold Improvements, Signs, Furniture, Décor Items, Decorating Costs, Small Wares and Signs (See Note 4)	\$467,000 to \$500,000	As required	As required	Contractor, Suppliers
Inventory to begin operating (See Note 5)	\$62,750 to \$65,000	As required	As required	Suppliers
Deposits and payments for licenses and permits including security deposits (excluding real estate), utility deposits, business licenses, beer and wine license, and other pre-paid expenses (See Note 6)	\$4,750 to \$10,000	As Arranged	As Arranged	Suppliers; Government Agencies; Utility Companies
Professional Fees (See Note 7)	\$7,000 to \$12,000	As Arranged	As Arranged	Third parties, including architects, lawyers and accountants
Grand Opening Marketing (See Note 8)	\$6,000 to \$10,000	As Arranged	As Arranged	Miscellaneous third parties
Insurance (See Note 9)	\$6,000 to \$10,000	As Arranged	As Arranged	Miscellaneous third parties
POS System and integrated security cameras (hardware and software) (Note 10)	\$25,000 to \$35,000	As required	As required	Approved third Parties
Additional Funds (See Note 11)	\$80,000 to \$150,000	As Arranged	As Arranged	Miscellaneous third parties
TOTAL (excludes real property costs)	\$724,600 to \$872,900			

## Your Estimated Initial Investment -Area Developer

Column 1	Column 2	Column 3	Column 4	Column 5
Type Of Expenditure	Amount	Method Of Payment	When Due	To Whom Payment Is To Be Made
Development Fee	\$39,500 for the first ABC Restaurant, and \$30,000 for each additional ABC Restaurant in in the Development Quota.	Cash	The sum of \$39,500 + \$15,000 per ABC Restaurant in the Development Quota is payable when you sign the Area Development Agreement; \$15,000 is also payable each time you sign a new Franchise Agreement after the first Franchise Agreement.	Us
TOTAL	Depends on the number of ABC Restaurants in the mutually-agreed upon Development Quota.			

### The Following Notes Accompany The Item 7 Chart

**General:** Item 7 explains your likely initial investment to open and begin operating a 2,000 square foot ABC Restaurant in a traditional retail venue during the initial period, which is the time period beginning with the date when you sign the Franchise Agreement through the end of the first 3 months after the Opening Date. In these notes, we explain each expense category in detail and the variables that influence the low and high initial investment estimates. You are responsible for investigating your own initial investment expenses, which may be materially different than these estimates. These notes are an integral part of Item 7.

If you acquire area development rights, as an area developer, your estimated initial expense consists of the Development Fee. Other than the Development Fee, we do not expect an area developer will have any other type of incremental expense during the initial phase that is specific to exercising area development rights. Area developers will incur expenses in fulfilling their development commitment including expenses for site selection, lease review and construction and development of each ABC Restaurant. However, we account for these expenses in the single unit franchise chart. An area developer may incur higher legal and other professional fees than a franchisee who acquires single unit franchise rights.

**Refund Conditions.** The Initial Franchise Fee is only refundable under the conditions that we explain in Item 5. The security deposit that you pay to the landlord for the Approved Location lease or to an equipment supplier as part of any equipment lease may be refundable at the end of the lease under the conditions in the applicable lease. Otherwise, none of the initial investment payments are refundable unless you negotiate for refund terms with the third party vendor or supplier. We make no representation regarding your ability to obtain refund terms with third parties with which you deal in establishing the Franchised Restaurant.

The Development Fee is not refundable.

**NOTE 1. Initial Franchise Fee.** See Item 5.

**NOTE 2. Initial Training.** This category reflects your likely expenses to complete the Owner Orientation and Certified Manager training modules. There is no training fee to attend these Initial Training modules before the Opening Date. The Owner Orientation module is only available to Primary Owners. The low and high estimates assume that four people (one Primary

Owner and three others whom you want to qualify as a Certified Manager), attend the same Certified Manager training module before the Opening Date. At this time, we conduct Owner Orientation and Certified Manager training at an operating ABC Restaurant in Southern California.

While we do not charge a fee to attend initial training, you will have costs to send your employees to the Certified Manager training module. Your expenses will depend on the distance you and your employees must travel and the type of accommodations you choose. The low estimate assumes that all participants reside locally and drive their own vehicle daily during the Owner Orientation and Certified Manager modules to ABC Restaurant where we conduct training. The high estimate assumes that you incur air, hotel, car rental, and other travel costs, room and board expenses to send one person to the Owner Orientation and four people to the Certified Manager training module. The low and high estimates include an allowance for salary during Certified Manager training for management-level employees who are not a Primary Owner. No allowance is made for any salary or draw to Primary Owners during the Initial Training modules or the initial phase of operations.

**NOTE 3. Real Estate Costs Including Lease Security Deposits.** Lease estimates are based on 2,000 square feet in-line construction, strip/convenience mall. We do not estimate costs to acquire the real estate as we do not expect franchisees to purchase the building or premises where they locate their Franchised Restaurants. Rental rates per square foot for commercial retail space varies considerably by geographic market (population density, demographic conditions, desirability and demand for space influence actual rent); physical size and conditions; type of retail space; the location's placement in a larger complex; prevailing market and economic conditions; and prior use of the space as a restaurant. In addition to rent, landlords also vary in their policy regarding the number of months' rent that they require as a security deposit, which will also affect your real estate expenses during the initial period. You should expect to pay at least one month, and as much as three months', rent as a security deposit. Additionally, you may also be required to pay a separate monthly common area maintenance fee in addition to rent. If you locate your Franchised Restaurant in a shopping mall, the high rent estimates include an advertising fee payable to the mall landlord.

Depending on vacancy rates, prevailing economic conditions and competition, landlords may offer free rent, tenant improvement allowances and other incentives. Some landlords will agree to defer the rent commencement date for some time period after you receive possession and during the build-out phase. Estimated costs do not anticipate financial assistance from the landlord. We cannot guaranty that you will be able to negotiate a tenant improvement allowance or other favorable lease terms, including rent deferrals, and make no allowance for these benefits in disclosing initial investment real estate costs. Depending on the lease terms that you negotiate, payment of rent may start before the Opening Date depending on, among other things, if the build-out phase takes longer than you anticipate.

You should investigate real estate costs in the market area where you desire to open an ABC Restaurant and add those costs to the low/high initial investment range that we disclose in this Item 7.

**NOTE 4. Equipment, Fixtures, Other Fixed Assets, Construction, Remodeling, Leasehold Improvements, Signs, Furniture, Décor Items And Decorating Costs.** The low estimate assumes that the space was previously used as a restaurant while the high estimate assumes that you take possession of an empty shell requiring complete remodeling. The low also estimate assumes that you negotiate lease or financing terms for a new commercial-grade stove with integrated fryer system, refrigerator/freezer, beer and beverage dispenser system, scales, seating package, alarm system, and signage, while the high estimate assumes that you purchase these items. Your initial investment expenses for this category may be lower if you are able to lease or finance the cost of equipment meeting our specifications. You must investigate equipment leasing and financing options on your own.

Fixtures and other fixed assets include all custom-made millwork, cabinetry, stainless steel countertops in the prep area, sinks, prep tables, restrooms, flooring, lighting, and counters.

Construction, remodeling and leasehold improvement costs include expenses to conform the approved space to our comprehensive specifications for lighting, flooring, mechanical systems, electrical systems, plumbing, carpentry, wall and ceiling treatments, exhaust/ventilation systems, storage areas, restrooms to code, signs, and other improvements to prepare the location for opening. Actual costs of construction, remodeling and leasehold improvements will depend on the size, pre-existing condition, location and previous use of the approved site, applicable local building codes, health codes, prevailing economic conditions and the need to use union labor which is generally more expensive than non-union labor. If you locate the Franchised Restaurant in a shopping mall food court or equivalent type of location, the location will typically be already improved with lighting, ceiling, flooring and plumbing.

This category also includes the cost of building permits. The permitting process and attendant costs vary substantially by local jurisdiction.

The low estimate reflects the cost of interior signs only while the high estimate reflects costs for both interior and exterior signs. Some locations, like shopping mall food courts, may not require or permit exterior signs.

Small wares and supplies include knives, chopping boards, food processors, spoons, ladles, and similar equipment, and an opening quantity of cleaning supplies, plastic ware, serving containers, napkins and other paper goods. We include expenses to replenish supplies during the remainder of the initial period under Additional Funds.

**NOTE 5. Opening Inventory.** The low and high opening inventory estimates cover your expenses for an initial supply of ingredients, foods and beverages sufficient to cover the immediate Opening Day period until depletion. We include expenses to replenish inventory during the remainder of the initial period (through the end of the first 3 months after the Opening Date) under Additional Funds. Your inventory needs will vary substantially according to the size of the Franchised Restaurant and the actual sales levels that you achieve during the initial period, which we cannot estimate.

**NOTE 6. Payments for Deposits, Licenses and Other Permits Including Other Security Deposits (Excluding Lease Security Deposit), Utility Deposits, Business License and Beer and Wine Licenses.** Some equipment suppliers and utility companies may require you to pay a security deposit. This category includes business license fees and an allowance for other pre-paid expenses that some suppliers may require.

The high estimate assumes you are a first-time business owner, the Approved Location is in a new development or building, and the local municipality or utility imposes a one-time charge for initial connection or activation, or for other special factors peculiar to a particular location and beyond the scope of our prototypical assumptions. This category also includes the cost to secure a state or local license to serve beer and wine, which can vary by jurisdiction.

**NOTE 7. Professional Fees.** Professional fees include fees that you may incur before the Opening Day and during the first three months of operation for architectural and design planning services, legal and accounting. You will require design assistance to prepare construction drawings based on the prototypical architectural and design plans that we provide to you when you sign the Franchise Agreement. You may require an accountant and an attorney to provide services with the formation of a new business entity to own the franchise and review contracts, including this Disclosure Document, the Franchise Agreement and premises lease.

**NOTE 8. Grand Opening Marketing.** The chart shows the minimum amount that you must spend on grand opening marketing activities to publicize the opening of the Franchised Restaurant. These amounts are paid to third parties, not us. We credit any amount that your lease requires you to pay to the landlord for opening advertising fees towards your minimum grand opening marketing obligation.

**NOTE 9. Insurance.** Insurance costs vary according to your insurability and the location of the Franchised Restaurant. The high estimate assumes that you pay your entire annual premium for workers compensation, property and casualty insurance

in advance and the low estimate includes premiums for required insurance through the end of the first 3 months after the Opening Date. We make no representation that the minimum coverage that we specify will be sufficient for your business.

**NOTE 10.** POS System. We describe the features of the POS System in Item 11.

**NOTE 11.** Additional Funds – Initial Period. This category includes miscellaneous expenses that you are likely to incur during the first 3 months after the Opening Date that we do not cover elsewhere like costs for employee uniforms, additional inventory and supplies during the initial period, janitorial services, telephones and internet connections, salaries and miscellaneous expenses during the New Restaurant Opening module of the Initial Training program, and computers and related office equipment that are not part of the POS System.

This category also includes an estimate of the working capital you will need for the initial period. The Additional Funds working capital estimate will vary greatly from one franchisee to the next based on a variety of factors including the number of employees you choose to hire initially and the salary and other benefits you choose to pay; the extent you will be actively involved in store-level activities; your skill, experience, business acumen and credit-rating; local competition; local economic conditions, including rent and wage scales and the cost of supplies; and the actual sales levels that you reach during the initial 3 month period after the Opening Date. Working capital needs are in addition to cash flow from operations. We cannot estimate your cash flow from operations.

These figures exclude payments of Royalty Fees, Promotional Fees, Local Advertising expenditures, and any Co-op Advertising Fees since the amounts that you pay or spend will depend upon your actual Gross Sales. We do not project what your actual Gross Sales will be. However, you should allow for these fees when you make your own calculations of working capital requirements. The Additional Funds category includes an allowance for payroll expenses for all opening employees, but does not include any allowance for a draw or salary to you or other owners of the franchise during the period before the Opening Date or during the first 3 months of operations.

The Additional Funds category does not include any allowance for payments made to a bank or financing company on any loan that you may obtain to finance initial investment expenses.

All figures in Item 7 are estimates only. We cannot guarantee that you will not have additional expenses, or other categories of expenses, to open and begin operating the business. You should not plan to draw income from operations during the initial period. You should have additional funds available in reserve, either in cash or through a bank line of credit, or have other assets which you may liquidate or against which you may borrow, to cover other expenses, losses or unanticipated events during the start-up and development stage or beyond. In estimating what your initial investment expenses will be, you should allow for inflation, discretionary expenditures, fluctuating interest rates and other financing costs, the unpredictability of costs for ingredients, and local market conditions, all of which are highly variable factors that can result in sudden and unexpected increases in costs. You must bear all cost escalations and budget for these contingencies.

We rely on the experience of our owners in developing, opening and operating ABC Restaurants and on the general management and business backgrounds of our management. You should review these figures and notes carefully with a business advisor before making any decision to purchase the franchise.

## ITEM 8 Restrictions On Sources Of Products And Services



## General Comments

In operating the Franchised Restaurant, you must adhere to our comprehensive business methods, standards, policies and specifications comprising the ABC System that we describe in Item 1 of this Disclosure Document.

We may identify the specifications and requirements of The ABC System by (i) designating the specific equipment, ingredients, food items, beverage products or supplies that you must or may use or sell by brand name, manufacturer, supplier, model number or minimum features or comparable specifications; (ii) providing minimum standards for freshness or appearance; (iii) supplying you with prototype drawings or other detailed operating instructions and procedures; or (iv) a combination of these approaches.

These specifications promote uniformity among ABC Restaurants, ensure consistency in the quality of the products and services that ABC Restaurants serve to customers, and strengthen customer confidence in ABC Restaurant brand name. We explain these specifications in the Confidential Manual. We may revise our specifications in our discretion as frequently as we believe is necessary through written or electronic bulletins or supplements to the Confidential Manual. You must conform to all changes in our specifications at your cost, within the time we allow.

We estimate that the proportion of required purchases and leases to all purchases and leases that you will make of products and services to establish and open the Franchised Restaurant is approximately 90% to 100% and will be approximately 90% of your ongoing monthly operating expenses. By “required purchases and leases,” we mean items that you must purchase, lease or use that must meet our specifications.

## Designated Goods/Services

We identify Designated Goods/Services in the Confidential Manual. For each item of Designated Goods/Services, we also indicate in the Confidential Manual any mandatory or recommended suppliers. In certain cases, we or an affiliate of ours may be the exclusive supplier of particular Designated Goods/Services.

The following chart identifies the items that we classify as Designated Goods/Services at this time and our best estimate of your expenses to purchase Designated Goods/Services from designated, recommended or approved suppliers as a percentage of your total initial investment and monthly operating expenses:

Designated Goods/Services	Estimated Cost (Aggregate) As A Percentage Of Total Initial Investment To Establish A Franchised Restaurant (Item 7)	Estimated Cost (Aggregate) As A Percentage Of Estimated Average Monthly Operating Expenses After The Opening Date
Proprietary spice mix and sauces - available exclusively from us or one of our affiliates	Less than 1%	Less than 2%
Proprietary Sauces	Less than 1%	Less than 2%
Fountain Drinks/equipment	Less than 1%	Less than 2%
Miscellaneous foods (list may vary; presently includes beef, chicken tenders, certain vegetables, sausages)	Less than 1%	Less than 2%

Designated Goods/Services	Estimated Cost (Aggregate) As A Percentage Of Total Initial Investment To Establish A Franchised Restaurant (Item 7)	Estimated Cost (Aggregate) As A Percentage Of Estimated Average Monthly Operating Expenses After The Opening Date
Employee uniforms	Less than 1%	Less than 2%
Logo/branded paper products	Less than 1%	Less than 2%
Social Networking Manager	Less than 1%	Less than 1%
	Aggregate – 7% or less	Aggregate: 15% or less

Each of these items of Designated Goods/Services is available for purchase only from the third party suppliers that we identify. We may modify the list of Designated Goods/Services and designated suppliers at any time through changes to the Confidential Manual, in which case we will allow you a reasonable amount of time to exhaust current inventories and begin purchasing new Designated Goods/Services from an approved or designated supplier. At this time, neither we nor any affiliate of ours is an exclusive or recommended supplier of any Designated Goods/Services. In the future, we may identify Designated Goods/Services for which we or one of our affiliates is the exclusive supplier. For example, in the future, we may require franchisees to buy an interior décor package from us or our affiliate.

We will receive revenue on account of your purchases of Designated Goods/Services from designated, recommended or approved suppliers. For our most recent fiscal year ending 12/31/14, we and our affiliates together received a total of \$1,422,932.10 comprised of (i) revenue from franchisees on account of their transactions directly with us or our affiliates where we are either an exclusive or recommended supplier, and (ii) revenue from third party suppliers on account of their transactions with our franchisees. This represents 23% of our total revenue of \$6,186,660 from all sources for our most recent fiscal year. More than 60% of the \$1,422,932.10 falls within category (i) and does not take into account the cost of goods sold and other direct expenses that we or our affiliate incurred in connection with the transaction.

We classify all of the other equipment, food and beverage products, ingredients, fixtures, furnishings, packaging and other supplies, signs, and other merchandise that you may, or must, use, offer or sell in operating the Franchised Restaurant that are not Designated Goods/Services as “Non-Designated Goods/Services.” We provide minimum specifications for Non-Designated Goods/Services in the Confidential Manual. In some cases, specifications may be by brand name. You may purchase or lease Non-Designated Goods/Services from any recommended or approved supplier. You must also purchase a maintenance contract for major items of equipment including the stove and refrigerator/freezer.

At this time, neither we nor any affiliate of ours is an exclusive or recommended supplier of any Non-Designated Goods/Services. Additionally, at this time, neither we nor our affiliates have any arrangement in place by which we or an affiliate of ours will derive revenue or other material benefits from recommended or approved suppliers of Non-Designated Goods/Services on account of your transactions with the supplier.

## Purchasing Arrangements

Except for Designated Goods/Services that you must purchase from us or our affiliate:

6. We have no current arrangements in place with any suppliers to make payments or provide material benefits to us on account of franchisee transactions. However, we may arrange with designated, recommended or approved suppliers to pay us revenue or non-cash benefits on account of transactions with our franchisees. We have no obligation to notify you of these arrangements in advance or obtain your prior consent. We may condition our approval of a particular supplier to their willingness to pay us revenue or non-cash benefits on account of their transactions with

our franchisees. However, all payments made to use by suppliers on account of their transactions with our franchisees will be deposited into the Promotional Fund.

7. There are no purchasing programs or distribution cooperatives in place at this time. In the future, we may negotiate special purchasing arrangements with suppliers of approved products and services. These arrangements may include price discounts based upon the collective volume of purchases by all ABC Restaurants (including purchases by affiliates of ours that own ABC Restaurants). We make no representation about our ability to secure certain prices, payment or credit terms, or delivery conditions. To our knowledge, all designated suppliers will offer the same purchase terms to our franchisees subject to differences in volumes and in shipping costs.

## Alternative Suppliers – Approval Process

With the exception of Designated Goods/Services, we may recommend one or more suppliers for each item of Non-Designated Goods/Services that you must use to operate the Franchised Restaurant. We identify current recommended suppliers of Non-Designated Goods/Services in the Confidential Manual and may revise the list of recommended suppliers periodically. At this time, neither we nor any affiliate of ours is a recommended supplier of any Non-Designated Goods/Services, but we may be included in a list of recommended suppliers in the future. As we note above, we have no arrangements currently in place by which we or an affiliate will derive revenue or other material benefits from any recommended supplier of Non-Designated Goods/Services on account of your purchases.

If you wish to purchase or lease any Non-Designated Goods/Services from a supplier who is not pre-approved by us, you must request our approval in writing before you may use or buy the Non-Designated Goods/Services. The Confidential Manual explains the procedures you must follow to apply for our approval. In some cases, we may ask you to submit samples or information about the supplier so that we can make an informed decision whether the products, services, equipment, fixtures, furnishings, signs, inventory and supplies, or proposed supplier, meet our specifications and quality standards. In evaluating a supplier that you propose to us, we consider not only the quality of the particular Non-Designated Goods/Services, but the supplier's production and delivery capability, overall business reputation and financial condition. We may inspect a proposed supplier's facilities and test its products and charge a testing fee based on our actual cost not to exceed \$2,500 per request, plus reimbursement of any direct expenses including travel expenses to visit a proposed supplier's facilities.

We will notify you in writing within 30 days after we receive all supporting information from you and complete our inspection or testing to advise you if we approve the proposed item and/or supplier. However, our failure to send you written notice by the end of 30 days signifies that we disapprove the proposed item and/or supplier. Each supplier that we approve must comply with our usual and customary requirements regarding insurance, indemnification and non-disclosure.

We may re-inspect or revoke our approval of a supplier or item at any time to protect the best interests of the entire ASIAN BOWL CAFE chain and the ABC Intellectual Property. Revocation is effective immediately when you receive written notice from us, and following receipt of our notice, you may not place any new orders for the item or with the supplier.

Any changes or additions to our purchasing standards or procedures are made in writing or electronically through supplements to the Confidential Manual. We may modify our specifications, recommended suppliers and purchasing procedures in our discretion and you must promptly conform to all changes at your sole expense. We do not provide material benefits to franchisees (for example, renewal or granting additional franchises) based on the fact that you purchase Non-Designated Goods/Services from a particular recommended or designated suppliers. We may, however, terminate your franchise if you purchase or use unapproved products, or approved Non-Designated Goods/Services from unapproved suppliers.

## Mandatory Addendum to Lease

You, we and the landlord of the franchise premises will sign our Addendum to Lease (Exhibit D). The Addendum is a contract that gives us the option to assume your lease if the Franchise Agreement expires or terminates for any reason. We do not derive any revenue by requiring the Addendum to Lease.

## Insurance

Before you open the Franchised Restaurant, you must purchase and throughout the Franchise Agreement term maintain in full force and effect insurance policies in the minimum coverage amounts and meeting the other specifications that we prescribe in the Confidential Manual protecting you and naming us as an additional insured. While we may be a beneficiary of your insurance, we do not derive any revenue from the insurance policies that you obtain for your business with one exception. If you fail to purchase required insurance, we may, at our election (and without waiving our right to terminate the Franchise Agreement because of your breach, purchase the insurance coverage for you and collect a service fee from you equal to 25% of the cost of the replacement insurance.

## Gift Card Program

In the future, we may introduce a system-wide electronic gift card program covering all ABC Restaurants and require you to participate in it. We will notify you before we launch the gift card program and explain the gift card program rules in the Confidential Manual including addressing how we treat gift card transactions in the calculation of your Gross Sales (whether at the time the gift card is sold or when a customer redeems a gift card for products or services). We do not expect to derive revenue from the sale of authorized gift cards if gift card transactions take place at an ABC Restaurant that we or an affiliate of ours owns.

You may not issue any type of gift or loyalty card that is redeemable at your Franchised Restaurant only without our prior approval in the same manner applicable to local advertising generally.

## Additional Disclosure re: Suppliers

We or an affiliate may be a designated or approved supplier. To that extent, our officers who are also owners of our company have an interest in a supplier, namely us or the affiliate supplier. Otherwise, at this time, no officer of our company owns an interest in any required, recommended or approved supplier except for a nominal interest in a supplier that is a public company.

## UCC-1 Financing Statement

To secure your performance under the Franchise Agreement, the Franchise Agreement includes a provision in which you grant us a security interest in and to all of the tangible and intangible property that you own and use to operate the Franchised Restaurant. Our rights as a secured party are subject to applicable law. To perfect our security interest, we will record a UCC-1 Financing Statement. We will subordinate our security interest to a bank or other conventional lender providing financing for your purchase of the franchise. Otherwise, you may not grant another person a security interest in the tangible or intangible assets of the Franchised Restaurant even if their security interest is subordinate to ours without our prior written consent.

## ITEM 9 Franchisee's Obligations

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

	Obligation	Paragraph In The Franchise Agreement (Fa)	Disclosure Document Item
a.	Site selection and acquisition/lease	IV	Items 5, 6, 7, 11
b.	Pre-opening purchases/leases	VI	Items 7, 8
c.	Site development and other pre-opening requirements	IV and VI	Items 6, 7, 11
d.	Initial and ongoing training	VII	Items 6, 11
e.	Opening	VI	Item 11
f.	Fees	X and XI	Items 5, 6
g.	Compliance with standards and policies/operating manual	II, IV and IX	Items 8, 11, 14, 16
h.	Trademarks and proprietary information	VIII	Items 13, 14
i.	Restrictions on products/services offered	XIII and XVI	Items 8, 16
j.	Warranty and customer service requirements	XIII	N/A
k.	Territorial development and sales quotas	III	Item 12
l.	Ongoing product/service purchases	XII	Items 8, 11
m.	Maintenance, appearance and remodeling requirements	IV, VI and XIII	Items 6, 8
n.	Insurance	XV	Items 6, 7, 8
o.	Advertising	X	Items 6, 11
p.	Indemnification	XX	Item 6
q.	Owner's participation/management/staffing	XIV	Item 15
r.	Records and reports	XII	Items 8, 11
s.	Inspection and audits	XII, XIII and XIV	Items 6, 11, 13
t.	Transfer	XIX	Items 6, 17
u.	Renewal	V	Item 17
v.	Post-termination obligations	XVII and XVIII	Item 17
w.	Non-competition covenants	XVI	Item 17
x.	Dispute resolution	XXII	Item 17

## ITEM 10 Financing

We do not offer direct or indirect financing. We do not guarantee your note, lease or obligations to a bank or landlord.

We intend to file an application to list the ASIAN BOWL CAFE franchise program on the U.S. Small Business Administration's Franchise Registry. Designation on the SBA's Franchise Registry will streamline the loan review process if you apply for a SBA-guaranteed bank loan to finance costs to purchase a single unit franchise and open and operate a Franchised Restaurant or to purchase area development rights.

## ITEM 11 Franchisor's Assistance, Advertising, Computer Systems, and Training

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

### Before Opening

Before you open the Franchised Restaurant, we will provide you with the following assistance:

1. We will provide you with a copy of or access to the Confidential Manual during the term of the Franchise Agreement which contains mandatory and suggested specifications, standards and operating procedures. (Franchise Agreement, Section IX). We may furnish the Confidential Manual in written and electronic format. The Confidential Manual is confidential and remains our property and you must either return your hard copy of any portion of the Confidential Manual that we furnish to you in written format and permanently remove any electronic content from your computer systems following our instructions when your Franchise Agreement expires or terminates. We may modify the Confidential Manual by written or electronic supplements which we will promptly share with you. We attach as Exhibit H a copy of the table of contents of our current version of the Confidential Manual indicating the approximate number of pages devoted to each subject and total number of pages in the Confidential Manual.
2. We will provide you with our written site selection criteria that consider important demographic and physical characteristics of ABC Restaurants. (Franchise Agreement, Section IV.A.4). While we may offer you possible sites, we have no obligation to do so. You must investigate potential sites meeting our site selection criteria within a geographic area available for franchise development. You must present us with one or more proposed sites in the form of a comprehensive written site package that demonstrates that the proposed site meets our general demographic and physical criteria. Your site proposal must include a letter of intent or comparable agreement with the landlord of the site indicating that the landlord is willing to enter into a lease and our Addendum to Lease in the form of Exhibit D. (Franchise Agreement, Section IV.A.4a).
3. After we receive your written site proposal, we may visit the area at our expense if we feel it is necessary to inspect the physical or demographic conditions of the proposed site and neighboring area to evaluate your proposal. (Franchise Agreement, Section IV.A.4b).
4. We may ask you to submit the proposed lease for the Franchised Restaurant to us for our review and approval as part of our site approval review process. (Franchise Agreement, Section IV.A.4c).
5. We will loan you a set of prototype plans and specifications for the design, appearance, trade dress elements, leasehold improvements, kitchen layout, and dining room layout based on a 2,000 square foot retail space in an in-line or small convenience shopping center. (Franchise Agreement, Section VI.A). While we may recommend an architect, space planner or contractor to assist you with the preparation of your construction and build-out plans, you may retain competent architectural, design and contracting services of your own choosing. However, we have the right to approve the architect, design personnel and contractor that you choose so that we can verify their overall reputation and credentials for workmanship, timeliness of performance, financial solvency and experience with retail construction. We will notify you of our decision within 15 days after we receive your request for approval of a particular architectural, design or contracting firm together with appropriate supporting information demonstrating the firm's qualifications.
6. We have 15 days after we receive complete construction and design drawings in which to indicate our approval or disapproval of your plans. We must approve your plans before you begin construction and remodeling. (Franchise Agreement, Section VI.A). During the build-out, we will address your questions about the development and construction process, but you are solely responsible for procuring building permits, purchasing or leasing fixtures

and equipment, making leasehold improvements and supervising all aspects of the build-out of the Franchised Restaurant. You must complete construction and remodeling at your expense in conformity with the construction drawings that we approve and applicable building codes and other laws governing retail food establishments in the area where you locate the Franchised Restaurant. (Franchise Agreement, Section VI.B).

7. After you sign the Franchise Agreement, we schedule the Owner Orientation and Certified Manager modules of our Initial Training program. If you are purchasing a second or subsequent franchise, we provide a separate Initial Training program for each Franchised Restaurant that you develop, however, upon request, we may excuse you from the Owner Orientation portion. We may require you to send one or more different management-level employees to complete the Certified Manager (or then-equivalent) training course for each additional ABC Restaurant that you may own.
8. We will provide you with specifications for all restaurant equipment and supplies, furnishings, exterior and interior signs, inventory and supplies, and a list of the suppliers that we currently designate or recommend. We will review your requests for approval of other suppliers of Non-Designated Goods/Services in exchange for payment of the testing fee that we disclose in Item 6. We or our affiliate will sell you our proprietary spice mix and sauces at the prices which we publish on our system-wide Intranet. (Franchise Agreement, Section XIII.C).
9. We will provide you with New Restaurant Opening training in the Franchised Restaurant and help you train your opening staff and implement our operating procedures. At that time, we will instruct your opening employees how to use the point-of-sale transaction functions and other features of the POS System relevant to their job duties. (Franchise Agreement, Section VII.A)
10. During the Certified Manager module of the Initial Training program, we will offer advice and advertising strategies for your grand opening advertising program that target the primary demographic profile of ABC Restaurants. (Franchise Agreement, Section XIV).

## After Opening

After you open the Franchised Restaurant, we provide you with the following assistance:

1. We will regularly consult with you and provide advice in response to your inquiries about specific administrative and operating issues at the Franchised Restaurant. In our discretion, we decide how best to communicate our consultation and advice, whether through our secure Intranet, by telephone, in writing, other electronic format like email, or in person. The method we choose in your case may be different than the methods we use for another franchisee. (Franchise Agreement, Section XIV.B).
2. Upon your or our request, we will provide additional on-site assistance and training to address specific operating issues or deficiencies. You must pay us our then-current training fee, as specified in the Confidential Manual, and reimburse us for our reasonable expenses in providing on-site instruction, including expenses for air and ground transportation, lodging, meals, and personal charges. (Franchise Agreement, Section VII.C).
3. In addition to periodically repeating the Owner Orientation and Certified Manager modules of our Initial Training program according to demand, we may periodically offer advanced and refresher training at an operating ABC Restaurant that we designate. The training location may be at or near to our headquarters. (Franchise Agreement, Section VII.D). We may charge a per person training fee for any additional training programs that we offer. While we may require that your Certified Managers attend specific additional training sessions, we will not require that more than 2 persons attend more than 3 days of additional training each per 12 months. (Franchise Agreement, Section VII.D).
4. When we reach sufficient size, we may conduct an annual business meeting of franchisees to address our new

Designated Goods/Services, recently-implemented changes in The ABC System, refresher and continuing training programs, and other topics of common interest to our franchisees, including customer relations, personnel administration, new products and menu offerings, new designated suppliers, and local promotions and marketing strategies. We will determine the length and location of the annual meeting and may require that you or at least one Primary Owner or at least one Certified Manager of the Franchised Restaurant (if not the Primary Owner) attend. No annual meeting will exceed 3 days in length nor require attendance by more than 2 persons. We may charge a registration fee of up to \$500 per person. If we conduct an annual meeting, we may select its location, which may vary from year to year. (Franchise Agreement, Section XIV.D). You must pay for all travel expenses for you and your employees and independent contractors who attend the annual meeting. (Franchise Agreement, Section XIV.D).

5. We will periodically revise the Confidential Manual. (Franchise Agreement, Section IX.B).
6. We will review your request to use or sell Non-Designated Goods/Services not already approved by us or to purchase Non-Designated Goods/Services meeting our specifications from a supplier not on our recommended list. (Franchise Agreement, Section XIII.C.3).
7. We or our designee will periodically visit the Franchised Restaurant to inspect your operations, observe your employees and review your books and records (including data stored on your POS System) in order to verify your compliance with the Franchise Agreement and the Confidential Manual. These inspections may be recorded on video or audio tape. (Franchise Agreement, Section XIV.C).
8. We will administer the Promotional Fund that we describe elsewhere in this Item 11 and review any advertising that you create for your local use. (Franchise Agreement, Section X.A and Section X.C).
9. We will maintain a website where we promote ABC Restaurants and identify the operating hours and location of all operating ABC Restaurants in the United States. (Franchise Agreement, Section X and Section X.D). You may not have your own website for your Franchised Restaurant. We, alone, determine all policies pertaining to the use of website subpages, which we regard as local advertising. (Franchise Agreement, Section X.C.).
10. We anticipate in the future introducing an ABC Restaurant gift card program. Under this program, you will purchase from us, and offer for sale to your customers, ABC Restaurant electronic gift cards that your customers may redeem at any ABC Restaurant. We will require you to honor the gift card if a customer presents one in paying for their order. You may not issue, redeem or otherwise authorize any other gift or loyalty cards, except those that we approve of in advance. (Franchise Agreement, Section X.A.5).
11. We plan to introduce a mystery shopper program using the services of an outside mystery shopper company that will perform regular mystery shopper visits at the Franchised Restaurant in order to provide you with critical feedback and insight into the effectiveness of your operations from a customer's perspective. When we implement the program, you must participate in it and pay the Mystery Shopper Fee that we disclose in Item 6. (Franchise Agreement, Section XIV.C).
12. When we reach sufficient size, we intend to implement a franchisee advisory council ("FAC") to provide us with input and feedback on different initiatives and programs. We will determine the FAC's governance rules, including the number of franchisee representatives and method for conducting elections.

## Advertising Services

### **1. Promotional Fund. See generally, Franchise Agreement, Section X.**

You must pay us Promotional Fees equal to 3% of the Gross Sales of your Franchised Restaurant. We deposit all Promotional



Fees into the Promotional Fund, which we administer for the benefit of all ABC Restaurants. As the administrator, we direct all advertising and promotional programs and have sole discretion over all creative concepts, materials and endorsements and the geographic, market and media placement of all programs. We do not promise that we will spend the Promotional Fund in any given geographic region or that the benefits you receive will be in proportion to your contributions.

We may use the Promotional Fund to pay for the cost to prepare and produce advertising materials; purchase media space or time; administer local, regional and national advertising programs, including buying direct mail pieces and promoting ABC Restaurants on social media sites; employ advertising, public relations and media buying agencies to assist us in these activities; and support general public relations, market research and other advertising and marketing activities. Additionally, we may use the Promotional Fund to furnish our franchisees with advertising and promotional formats and materials, like advertising art, radio and television commercials, print advertisements, point of sale materials, promotional graphics and videos, coupons, and social networking website content, in our discretion.

We may also use the Promotional Fund to pay for any direct expenses that we incur to support our gift card program if we introduce one in the future. Upon request, we may agree to provide you with multiple copies of Promotional Fund marketing, advertising and promotional materials if you pay us to reproduce the materials for you.

We intend to use the Promotional Fund to support the cost of maintaining the [www.abcrestaurant.com](http://www.abcrestaurant.com) website. Our website will identify all ABC Restaurants by address and provide operating hours and maps.

We may charge the Promotional Fund for our cost of maintaining a toll-free telephone number and system-wide Intranet to the extent we use each to provide our franchisees with marketing assistance.

We do not charge the Promotional Fund for marketing expenses that we incur directly to recruit new franchisees or for new franchisee advertising.

The Promotional Fund is not a trust. However, we keep and account for the Promotional Fund separately from our other funds. Out of the Promotional Fund, we may pay ourselves for the direct costs, salaries, travel expenses, administrative costs and other direct overhead that we incur to administer the Promotional Fund, including the cost of preparing the annual accounting of the Promotional Fund, expenses to collect Promotional Fees from delinquent franchisees (but only those direct costs and not other costs of enforcement), costs to develop and sign specific marketing and advertising programs (including costs for market research and production) and costs to fund any annual meeting of franchisees if we elect to hold one. Direct expenses in any year will not exceed 25% of the aggregate Promotional Fees that we collect from franchisees.

In any given year, we may spend more or less than the total amount of Promotional Fees that we collect for that year. In that case, we will carry-forward any Promotional Fund surplus or deficit to a future fiscal period. We treat interest paid on Promotional Fund balances as additional Promotional Fund revenue. You authorize us to collect and deposit in the Promotional Fund any advertising or promotional monies or credits that a designated supplier pays to us on account of your purchases.

If we receive any rebates from a supplier on account of the supplier's transactions with our franchisees that the supplier earmarks must be spent on marketing, we will deposit the rebates into the Promotional Fund as additional revenue unless a supplier requires us to apply the rebates for a different purpose. (Franchise Agreement, Section X.A.5b).

We will prepare an annual income and expense statement showing Promotional Fund collections and expenditures and will furnish you with a copy upon written request. These financial statements are prepared by our staff and are not audited by an outside accountant.

We may terminate, and resume, the Promotional Fund periodically during your franchise term, however, any decision to terminate or resume the Promotional Fund will apply to all current franchisees equally. We will not terminate the Promotional Fund before making arrangements to spend or rebate any balance in the Promotional Fund account after payment

of all expenses. If we resume the Promotional Fund, we will collect Promotional Fees at the rate specified in your Franchise Agreement at that time.

During our fiscal year ended 12/31/14, the percentage breakdown of Promotional Fund expenditures was as follows:

<b>Production costs to produce advertising materials and coupons</b>	<b>53.31%</b>
<b>Media placement costs</b>	<b>10.16%</b>
<b>Administrative expenses</b>	<b>14.53%</b>
<b>Other (coupons, employee discounts, discounts provided to uniformed active duty military, fire and safety personnel, and discounts in connection with special fund-raising and charity events for the 12 month reporting period)</b>	<b>8.43%</b>
<b>Promotional Fees collected but not spent (balance carried forward to 2008)</b>	<b>12.57%</b>
<b>TOTAL</b>	<b>100%</b>

Once we implement the Promotional Fund, ABC Restaurants that we or our affiliates own will contribute to the Promotional Fund at a rate that is equal to the lowest percentage contribution rate that any ABC Restaurant franchisee then pays to the Promotional Fund.

## **2. Local Advertising.**

You may not engage in any local advertising in any time of media or format or engage in activities to promote the Franchised Restaurant without our prior written approval. We also forbid you to solicit sponsorships or endorsements or enter into other types of strategic marketing alliances without our prior approval.

To apply for our approval of proposed local advertising, you must submit a copy or transcript of the materials in the exact form you intend to use them together with information that explains your proposed media plan, promotional event or other intended use. We have 7 days to review your request. If you do not receive our written approval within 7 days, that means we do not approve your materials (unless we notify you that we need additional time to review your materials). If you use materials that we approve, you must use them in the exact form that you submit them to us. (Franchise Agreement, Section X.C.3). As a condition of our approval, you must permit us and other franchisees that we authorize to use your materials without compensation.

You must spend a minimum of 3% of your Gross Sales each calendar quarter on local advertising after the Franchised Restaurant opens. You must substantiate your local advertising expenditures each calendar quarter upon request. By the end of each year, your average local advertising expenditures must average at least 3% of your Gross Sales. If the average over the course of a year is less than 3%, then you must promptly pay us the difference, plus an amount equal to 25% of the difference, which we will deposit into the Promotional Fund. Your failure to spend 3% of your Gross Sales on local advertising each year during the term of the Franchise Agreement is a material breach of the Franchise Agreement.

We will credit your local marketing requirement for the first calendar quarter after the Franchised Restaurant opens with sums that you spend on grand opening marketing. If we assign you to a Regional Advertising Co-op, we will credit the contributions that you make to the Co-op to your minimum local marketing requirement.

We consider the content that you place on your third party social media websites to be local advertising and we have the right to approve the content as part of our general right to approve all forms of local advertising. We require you to actively promote your Franchised Restaurant through various social media channels (Facebook, twitter, and others). All public or

private online communications must comply with our social media networking policy that we include in the Confidential Manual.

### **3. Grand Opening Marketing.**

During the Certified Manager module of our Initial Training program and afterwards, we will work with you to design a grand opening marketing program including opening day activities for the Franchised Restaurant.

In addition to fees payable to the Promotional Fund and any Regional Advertising Co-op, during the period beginning 30 days before and ending 60 days after the Opening Date, you must spend a minimum of \$6,000 on approved grand opening marketing activities during this 90 day time period. As local marketing, grand opening promotional activities require our prior written approval.

Within 30 days after we request the information, you must furnish us with documentation substantiating that you have spent at least the minimum required on grand opening marketing. If your lease requires you to pay grand opening fees to the landlord, we credit those payments towards your minimum obligation. See generally, Franchise Agreement, Section XIII.L.

### **4. Regional Advertising Co-op.**

We may establish a Regional Advertising Co-op in an advertising market once we believe there are enough ABC Restaurants operating in the market to provide a critical mass for joint advertising and promotion. We will determine the boundaries of the Regional Advertising Co-op and may modify the boundaries at any time effective upon written notice. We may require that one Regional Advertising Co-op merge with another Regional Advertising Co-op servicing an adjacent advertising market or we may subdivide a Regional Advertising Co-op into smaller groupings depending on changes in media penetration and marketing zones that traditional media use.

While no Regional Advertising Co-ops exist in our franchise system at this time, you must participate in any Regional Advertising Co-op that we later form that covers a geographic area encompassing the Franchised Restaurant. We will give you at least 30 days written notice before an assignment becomes effective and will not assign you to more than one Regional Advertising Co-op at any time. Presently, no Regional Advertising Co-ops exist. If we, one of our principals, an affiliate of ours or members of our or their management own an ABC Restaurant in a Regional Advertising Co-op's market, we or they will participate on the same basis as you do and contribute to the Regional Advertising Co-op at the same rate that our franchisees in that region contribute. Your Co-op Advertising Fees payable to the Regional Advertising Co-op will not exceed 3% of Gross Sales unless 65% of the owners of ABC Restaurants in your Regional Advertising Co-op approve an increase or special assessment, in which case you will be bound by the super-majority decision even if you vote against it. As we note above, we will credit all payments that you make to a Regional Advertising Co-op to your minimum local advertising requirement.

We will provide each Regional Advertising Co-op with standard governing rules that the members of the Regional Advertising Co-op may modify with our approval beforehand. Members may not modify certain rules, like voting rights, our right to approve all advertising in advance, or your maximum obligation for contributions to the Regional Advertising Co-op. The members of each Regional Advertising Co-op will elect their own leadership and each Regional Advertising Co-op is responsible for its own administrative expenses. The Regional Advertising Co-op must assign any rights in the materials that it creates to us without compensation so that we and our other franchisees may use the same materials. Each Regional Advertising Co-op must prepare quarterly and annual financial statements, which need not be audited, and make them available to all Regional Advertising Co-op members and to us.

We may dissolve a Regional Advertising Co-op, but only if we decide to dissolve all Regional Advertising Co-ops at the same time. For example, we may decide to centralize all group advertising activities in the Promotional Fund.

### **5. Advertising Council.**

At this time, there is no advertising council composed of franchisees that advises us regarding advertising and promotional programs or policies for promoting ABC Restaurants generally.

When we reach a sufficient size, we may implement a franchisee advisory council ("FAC") to provide us with input and feedback on different initiatives and programs. We may use the FAC to provide us with strategic input on system-wide marketing initiatives or may form a separate franchisee advertising council consisting of franchisees who do not then serve on the FAC. If we form a franchisee advertising council, we will appoint the members and the council will serve in an advisory capacity only. The council will not have operational or decision-making authority and its recommendations will not be binding on us. We may alter the function and/or composition of the franchisee advertising council at any time and may dissolve the council upon 30 days written notice.

## Additional Disclosures re: Site Selection

Unless you own or are leasing retail or restaurant space that meets our demographic and other site selection criteria that you would like to adapt to the design, appearance, trade dress and leasehold improvement elements of an ABC Restaurant and which we approve for conversion to an ABC Restaurant, you will begin the site selection process immediately after you and we sign the Franchise Agreement. You alone must evaluate potential sites, subject to our site approval process. We will loan you a set of prototype plans and specifications for the design, appearance, trade dress elements, kitchen and dining room layout and leasehold improvements of a 2,000 square foot restaurant in a traditional retail venue when you sign the Franchise Agreement to help you evaluate potential sites.

We consider a variety of demographic factors in approving locations for ABC Restaurants, including the following: (i) population and household size, average household income, median age of the market area, residential and commercial usage and comparable market data; (ii) general cleanliness and security of the area; (iii) parking availability; (iv) lighting, visibility of signs and general street exposure; (v) rental rates and lease terms; (vi) compatibility of neighboring and adjacent retail tenants; (vii) the proposed site's location within a larger shopping mall or complex in terms of pedestrian flow and pedestrian visibility; (viii) square footage, existing condition and adaptability of the space for retail food service; (ix) proximity of competitors; (x) convenient ingress and egress and foot and vehicular traffic; (xi) local economic conditions; and (xii) building, health, sign and other applicable codes, ordinances, regulations and restrictions. By approving a site for the Franchised Restaurant, we do not guaranty or warrant that operation of an ABC Restaurant at the site will be successful or profitable. Our approval signifies only that the site meets our current site criteria.

In obtaining site approval, you may propose two or more sites for our approval simultaneously, but in order for us to consider any site request, you must submit a complete site package for each site that you propose that includes a letter of intent or other suitable evidence confirming your ability to obtain a lease for the site and the landlord's willingness to sign our Addendum to Lease. (Franchise Agreement, Section IV.A.4a).

We have 30 days after we receive all required site information to consent to or reject the proposed site. If you propose more than one site, we only need to approve one site. If we do not consent to any of the sites that you propose within the 30 day period, it means that we reject the site (or all sites if you propose more than one). After we give our consent to a site, you and the landlord must enter into a lease and our form Addendum to Lease (Exhibit D). We may condition site approval on our review and approval of the lease for the Franchised Restaurant before you may enter into the lease with the landlord. Once you present us with a copy of the signed lease and Addendum to Lease and obtain our approval of construction drawings, you begin the build-out and remodeling of the Franchised Restaurant.

## Typical Length of Time Between Signing Franchise Agreement and Opening Date

We estimate that the length of time between when you sign the Franchise Agreement and the Opening Date of the Franchised Restaurant will be approximately 12-18 months. This assumes that you are able to obtain site approval, sign a lease and begin build-out within the first 120 days after you sign the Franchise Agreement.

The actual length of time you may require to open the Franchised Restaurant for business after you sign the Franchise Agreement will depend on a number of factors. These factors include the actual time it takes you to find a satisfactory site; secure needed financing; obtain our approval of construction drawings; secure all necessary building and zoning permits; obtain a beer and wine license; and complete the build-out process. Your actual time may be longer due to contingencies like weather, acts of God, material shortages and labor stoppages that are beyond your control.

Before you may begin serving customers, we must issue a written completion certificate signifying that the Franchised Restaurant, as built-out, substantially conforms to our design specifications, and you have met other pre-opening requirements, including completing the Primary Owner and Certified Manager modules of our Initial Training program. (Franchise Agreement, Section VI.C.1)

As we explain in Item 5, we may terminate the Franchise Agreement if you do not obtain site approval and sign a lease and Addendum to Lease within 120 days after signing the Franchise Agreement.

## Computer System

You must purchase from Micros Systems, Inc. with headquarters in Columbia, Maryland POS computer equipment pre-loaded with the MICROS restaurant point-of-sale software that we designate. There is no equipment leasing program in place at this time.

The MICROS POS software programs perform a variety of enterprise-level functions that will simplify operational and financial management of your ABC Restaurant, from managing sales data to inventory management, tracking employee utilization, closing out daily sales, collecting financial data, preparing financial reports, and managing credit card and gift card transactions (when we implement a gift card program).

Based on a 2,000 square foot prototype restaurant, you will need at least 3 thermal printers for printing guest receipts and kitchen printing, a cash drawer, 3 touch screens for taking customer orders, 2 touch screens for host and kitchen, a magnetic reader, and general business equipment (facsimile/copier/printer), high-speed internet connection, and VPN router to connect your POS system to our server. We estimate your initial investment expenses for the currently designated MICROS POS system in Item 6.

You must enter into a monthly service contract with the vendor or other service provider that we designate that covers hardware maintenance and technical support and we estimate that the cost of this contract will be approximately \$1,850/year. MICROS provides updates and upgrades without additional charge.

You must also purchase and install integrated security cameras, which we estimate will cost between \$2,000-\$5,000.

The software that we designate will allow you to access your POS system remotely and view and create reports, add employees, edit time slips, change security settings and view sales activities even if you are not on site. We also have unlimited remote access to the information stored on your POS System and may require you to provide us with all passwords, access keys and other security devices as necessary to permit our access.

You are solely responsible for training new employees who do not participate in the New Restaurant Opening module of the

initial training program in the proper use of the MICROS POS System.

Upon 30 days written notice, we may require you to replace obsolete or outdated hardware components or software with newer technology or designate a different exclusive vendor, including us or an affiliate. We may replace the MICROS POS System with another system entirely including with proprietary software. There are no contractual limitations on the frequency or cost of future updates, upgrades or replacement components or systems. We will endeavor to provide you with reasonable written notice of all upgrades, updates and replacement specifications to allow you sufficient time to implement changes. Although we cannot estimate the future cost of maintaining, updating, upgrading or replacing the current POS System, and although these costs might not be fully amortizable over the time remaining in the term of your Franchise Agreement, we may require you to implement these changes since a uniform POS and recordkeeping system is essential to our ability to evaluate individual store and network-wide performance.

In addition to the MICROS POS System, you must purchase and maintain a personal computer with high-speed internet and an active e-mail address capable of running the non-proprietary software applications so that you can prepare and print operating and financial reports, communicate through e-mail, receive, send and store documents and perform other back-office business functions. You must utilize the non-proprietary accounting software that we specify by brand name, install functional features for virus protection, and use the software to generate monthly profit and loss statements and other accounting reports following our uniform reporting system. You may purchase the personal computer hardware and non-proprietary software meeting our specifications from any source.

You must maintain on-line communication between your personal computer and our computer system and permit us independent access to, and retrieval of, data from your computer system on which you store the financial and operational data for the Franchised Restaurant at all times. Nothing limits our right to access or use the data we retrieve. (Franchise Agreement, Section XIII.E.5). We estimate that the cost to purchase a basic computer hardware system, printer and non-proprietary financial accounting software will cost less than \$3,000 initially and annual repair, maintenance and upgrade costs (other than to replace outdated hardware) will cost approximately \$300/year.

## Training

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### Training Program

Subject/Module	Hours Of Class-Room Training	Hours Of On-The-Job Training	Location
Owner Orientation  Total length: 1 day Who must attend: At least one Primary Owner	2-4 hours	2-4 hours	At an operating ABC Restaurant that we designate in the United States. We conduct the 1 day Owner Orientation after you sign a lease for the Approved Location on a mutually convenient date. You should aim to complete the Owner Orientation class by no later than 4 weeks before the scheduled Opening Date.

Subject/Module	Hours Of Class-Room Training	Hours Of On-The-Job Training	Location
Certified Manager  Total length: 21 days  Who must attend: The general manager whom you want us to certify as the Certified Manager, which may be a Primary Owner). We recommend that you send 3 general managers so that all qualify as initial Certified Managers.	1-2 hours	40-80 hours per 7 day week	At an operating ABC Restaurant that we designate in the United States. We begin the Certified Manager training module on a mutually convenient date after you complete the Owner Orientation. You or your designated manager should aim to complete the Certified Manager course by no less than 2 weeks before the scheduled Opening Date.
New Restaurant Opening  Total length: 14 days  (5 days per week)  Who must attend: All managers and other opening employees	1 day (6-8 hrs)	20-40 hours per 7 day week	At the Franchised Restaurant. We conduct New Restaurant Opening during a time period straddling the Opening Date.

Before you open the Franchised Restaurant, we will provide you with a comprehensive Initial Training program which presently consists of three separate modules: (i) Owner Orientation; (ii) Certified Manager training; and (iii) New Restaurant Opening. The actual length of each module may be shorter than we show in the chart depending upon previous experience. The above chart summarizes who must attend each module and the location and duration of each module. Our Confidential Manual serves as our instructional materials. See generally, Franchise Agreement, Section IX.

The Owner Orientation module is limited to persons who qualify as a Primary Owner. The Certified Manager module is limited to management-level personnel whom you want to qualify as a Certified Manager. If a Primary Owner will serve as the initial Certified Manager, you may enroll just the Primary Owner in the pre-opening Certified Manager training module. However, since we require the Franchised Restaurant to be under the direct supervision of a Certified Manager at all times and qualification as a Certified Manager depends, among other things, on successfully completing the Certified Manager training module, we strongly advise franchisees to qualify two or more Certified Managers before the opening of the Franchised Restaurant in case of employee turn-over. Currently, we do not limit the number of Primary Owners and management-level employees that you may enroll in the Certified Manager training module, but enrollment is subject to space availability. We encourage, but do not require, all Primary Owners to complete the Owner Orientation and Certified Manager training modules. We require that all of your opening employees participate in the New Restaurant Opening module of our Initial Training program that we conduct at the time of the Franchised Restaurant's opening.

While we do not charge a training fee for providing the Initial Training program before the opening of the Franchised Restaurant, we do charge a training fee to provide Owner Orientation to individuals who qualify as a Primary Owner after the Opening Date and to provide Certified Manager training to your post-Opening Date management hires, as we explain in Item 6.

Owner Orientation covers a variety of topics germane to the franchise relationship including a review of your contractual

duties under the Franchise Agreement; the philosophy and culture of The ABC System; customer service; use and protection of the Licensed Marks and Confidential Manual; recommendations for staffing to optimize operating efficiencies; and reporting obligations. Depending on when we actually conduct Owner Orientation relative to your progress with the build-out of the Franchised Restaurant, we will also address questions regarding build-out issues during Owner Orientation. We try to schedule Owner Orientation to begin at a mutually convenient time within 30 to 60 days after you sign a lease for the location that we approve for the Franchised Restaurant.

Within the scope of our Certified Manager module we cover (i) “front of the house” procedures including opening and closing procedures, customer service, order processing, use of the POS System and general troubleshooting; and (ii) “back of the house” procedures including recipe instruction and cooking methods; food storage, handling and preparation; ordering and inventory control; opening and closing procedures; non-management employee hiring, training and labor costs; customer service; financial accounting and operational reporting; delegation of operating functions to opening employees and general staff training; and implementing a grand opening program. Managers participate in the New Restaurant Opening segment by training other “front of the house” restaurant staff along with a member of our corporate training staff. We try to schedule the Certified Manager module so that you or your designated manager can complete the module at least 2 weeks before the scheduled Opening Date of the Franchised Restaurant.

We hold both the Owner Orientation and Certified Manager modules at an operating ABC Restaurant that we designate in Southern California. You must pay all personal expenses for yourself and your employees to attend training, including transportation, lodging, food, salary and other personal charges.

We may modify the Initial Training program at any time by adding, deleting or revising the modules, curriculum, training instructors, training locations, duration of training and other requirements. The lead instructor of our Initial Training program at this time is Hai Tanaka, Director of Franchising, who has supervised all franchisee training programs since January 1, 2012.

You are responsible for training your employees whom you do not enroll in our training classes. Once the Franchised Restaurant opens, we will publish a schedule of our Owner Orientation and Certified Manager module and you may enroll later Primary Owners and management-level hires in classes appropriate to their status and job duties subject to space availability and by paying our then-current training fee. All individuals who attend Owner Orientation and our Certified Manager module must complete training to our satisfaction.

We intend to periodically offer advanced and refresher training programs and may require that you, your Primary Owner and your Certified Managers may attend. As the need develops, we may offer special training if we introduce new Designated Goods/Services, services or programs or to address particular changes in The ABC System, promotional programs, vendor relationships, purchasing programs, or other matters of common interest to our franchisees. We will not require that more than 2 persons each complete more than 3 days of additional training during any 12-month period. See Item 6 regarding training fees for additional training classes. We intend to conduct all continuing training courses at an operating ABC Restaurant or other facility that we designate, or at the same time that we hold any regional or national franchisee meetings.

## ITEM 12 Territory

### Area Development Agreement.

By becoming an area developer and signing our Area Development Agreement (Exhibit O), you receive the right, subject to certain exclusions, to open a specific number of ABC Restaurants in an agreed-upon geographic area if you satisfy the development obligations by the development deadlines that we mutually establish. You and we will together agree on the



boundaries of your Development Territory and your Development Quota, or Development Quota, through negotiation before you sign the Area Development Agreement. We will describe the boundaries of the Development Territory by street names, geographical or political boundaries, like street name references, or other recognizable demarcations in an exhibit to the Area Development Agreement. The minimum size of a Development Territory will depend on demographic characteristics of the region, our evaluation of its development potential and the minimum Development Quota that you accept, which we mutually agree upon before you sign the Area Development Agreement.

We may terminate the Area Development Agreement if you do not meet your Development Quota by the specific development deadlines or fail to keep a minimum number of ABC Restaurants open and operating. Other than this requirement, the development rights that we award to you under an Area Development Agreement do not depend on your achieving or maintaining a minimum volume of sales.

If you close an ABC Restaurant for any reason other than due to your default under the Franchise Agreement and the closure leaves you with fewer ABC Restaurants than the then-current minimum Development Quota, we allow you 30 days after the closure to present us with a business plan for reopening the replacement restaurant, and 12 months to open a replacement location at a site that we approve in your Development Territory subject to the territorial rights of any other ABC Restaurants at the time you seek site approval for the replacement restaurant's location. A closure will not extend any remaining Development Deadlines or reduce your Development Quota. During the period of closure, until the substitute ABC Restaurant commences operating, you will remain liable to pay monthly Royalty Fees and any Promotional Fees and Co-op Advertising Fees, if any, for the closed ABC Restaurant equal to the average amount that you paid during the 6 months immediately before the date that you ceased operations or the shorter period that the restaurant was actually in business.

Neither we nor our affiliates will establish or award franchise rights to anyone else to operate an ABC Restaurant in the Development Territory during the term of the Area Development Agreement. However, we may engage in certain activities in your Development Territory during the term of the Area Development Agreement as we explain in this Item 12.

You will sign the Franchise Agreement for the first ABC Restaurant when you sign the Area Development Agreement, and sign a separate, but identical, form of Franchise Agreement (Exhibit C) for each additional ABC Restaurant in your Development Quota when you obtain site approval for the new ABC Restaurant. Under the Franchise Agreement, we assign each ABC Restaurant its own Protected Area, subject to certain exclusions that we describe in this Item 12.

## Single Unit Franchises - Protected Area

The Franchise Agreement gives you the right to open only one ABC Restaurant at a location that we must approve before you enter into a lease for the location.

We will assign your Franchised Restaurant with a one-mile "Protected Area" that we identify by the closest roads or other geographic or political demarcations in an exhibit to the Franchise Agreement. We will notify you of the boundaries of your Protected Area at the time of site approval. Once we identify the boundaries of your Protected Area, neither we nor our affiliates will establish or award franchise rights to anyone else to operate a Franchised Restaurant in the Protected Area that we assign to your Franchised Restaurant. However, we may engage in certain activities in your Protected Area during the term of the Franchise Agreement as we explain in this Item 12.

You may not relocate the Franchised Restaurant except to a location that we approve in writing. Relocation is at your sole expense and subject to certain conditions that we specify in the Franchise Agreement. If we approve the new premises that you propose, you must improve the new location consistent with our then-current trade dress and construction requirements for new ABC Restaurants and use your best efforts to complete relocation without any interruption in the continuous

operation of the Franchised Restaurant unless you obtain our written consent beforehand to close your Franchised Restaurant for business. The new location need not be within the original Protected Area, but will be subject to the rights of any existing Franchised Restaurant owner. Once we approve the new location, we will assign it a new Protected Area according to the same criteria that we describe in this Item 12. As a condition of consenting to a temporary closure until you complete relocation, we may require you to pay Royalty Fees, Promotional Fees, and any Co-op Advertising Fees (if we implement a program in your area) based on the average fees paid before the closure. Additionally, we may require you to spend the then-current minimum amount on grand opening marketing that we then require of new franchisees to publicize the new ABC Restaurant location.

The Franchise Agreement permits you to engage only in retail transactions of authorized goods and services to customers either for dine-in or take-out consumption. At this time, we do not authorize either catering or delivery services. In the future, should we introduce and authorize you to engage in delivery or catering services, you must comply with our minimum specifications that we will include in the Confidential Manual covering the following subjects: (i) food handling and storage requirements during transport or for food prepared outside of the Franchised Restaurant; (ii) delivery vehicle minimum signage and other specifications; (iii) areas within which a franchisee may offer delivery and provide catering services; (iv) employee staffing requirements. If we authorize catering and delivery services, we may designate a catering and delivery service area that is smaller than your Protected Area. In designating the catering and delivery area, we take into account traffic factors that may impinge on product quality issues. We will not ourselves engage in catering and delivery services or authorize another franchisee to engage in catering and delivery services in your Protected Area even if we designate a catering and delivery service area for you that is smaller than your Protected Area.

Your territorial rights relate strictly to the location of another ABC Restaurant, not to customers. You do not have the exclusive or superior right to service customers who reside or work in the Protected Area that we assign to your Franchised Restaurant. A customer who resides or works in your Protected Area may frequent any other ABC Restaurant without the owner of the other ABC Restaurant having to pay you compensation. The franchise rights that we award to you do not give you the exclusive or preferential right to use the Licensed Marks or The ABC System in the trade area where you do business and do not in any way limit our use of the Licensed Marks or The ABC System anywhere or for any purpose.

We do not restrict your advertising activities for prospective customers to your Protected Area. You may use the Internet and third party social media sites to advertise and promote your Franchised Restaurant with our prior written approval, but you may not use other channels of distribution to sell goods or merchandise that we authorize for sale at the Franchised Restaurant. By "channels of distribution," we mean channels like the Internet or catalog sales. You may not engage in wholesale sales of any kind without our written consent beforehand. "Wholesale sales" includes the sale or distribution of products or services to a third party for resale, retail sale or other method of distribution (for example, supplying a local restaurant with our proprietary spice mix or sauces).

The franchise rights that we award to you do not give you the exclusive or preferential right to use the Licensed Marks or The ABC System in the trade area where you do business and do not in any way limit our use of the Licensed Marks or The ABC System anywhere or for any purpose. We do not limit other franchisees or licensees of ours from engaging in advertising activities outside of their Protected Area and do not promise that they will not engage in activities soliciting customers who reside or work in your Protected Area.

Your franchise rights are not contingent on achieving any minimum sales level or other kind of sales or market penetration contingency. We will not modify the Protected Area depending on your performance or due to changes in the population or other demographic characteristics of your market area. We do not award any type of right of first refusal or preferential right to acquire additional franchises for areas immediately adjacent to, or abutting, the boundaries of your Protected Area.

## Reserved Rights

We reserve all rights to exploit the Licensed Marks and engage in all types, methods and channels of distribution regardless of whether we use the method now or adopt it in the future. Our reserved rights include the right to exploit the Licensed Marks and engage in directly competitive activities. The following are examples of the rights that we reserve in your Development Territory and Protected Area. We may engage in these activities directly or through an affiliate, franchisee or other licensee:

1. We or our affiliates may open or license others to open ABC Restaurants identified by the Licensed Marks in a Captive Venue in your Development Territory and Protected Area. We may alter the physical format or method of service at Captive Venues to suit the particular Captive Venue's location, physical characteristics, or customer base. These formats may differ from your Franchised Restaurant.
2. We or our affiliates may acquire another restaurant chain and convert any chain locations in your Development Territory and Protected Area to an ABC Restaurant. We define a chain as a network of 3 or more restaurants regardless of their location (whether within or outside of your Development Territory and Protected Area) that all use a common trade name and common operation systems to identify themselves to the public. We or our affiliate may operate the converted location or we may license the converted location to a franchisee. You do not have any preferential right to operate or acquire the former-chain location in your Development Territory and Protected Area.
3. We or our affiliates may open or license others to open in your Development Territory and Protected Area any other type of restaurant or food service business if they do not predominantly feature "Bowl" style items and operate under a trade name that is not confusing similar to ASIAN BOWL CAFE.
4. Other than opening or licensing others to open an ABC Restaurant in your Development Territory or in the Protected Area that we assign to your Franchised Restaurant, we or our affiliates may engage in all other activities identified by the Licensed Marks even if the activity is directed specifically to or takes place in the Development Territory or Protected Area. This means that we, our affiliates or other franchisees or other licensees may sell goods or services of any kind, including, without limitation, our proprietary spice mix, frozen entrees, merchandise, and other types of pre-packaged foods through any retail or wholesale channel of distribution, including by means of the Internet, mail order catalogues, direct mail advertising, and from supermarkets and other food service business or other retail stores of any kind that do not do business under the ASIAN BOWL CAFE trade name or under any confusingly similar name. For example, we may sell our proprietary spice mix or sauces in packaging identified by the Licensed Marks from supermarkets located in your Development Territory or in the Protected Area that we assign to your Franchised Restaurant and from our website to customers who reside in your Development Territory or Protected Area.

As a result of our reserved rights, neither your Development Territory nor your Protected Area is an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

Outside of the Development Territory and outside of the Protected Area that we assign to your Franchised Restaurant, we may open or award franchise rights to any person of our choosing to open an ABC Restaurant regardless of how close it may be located to the boundaries of the Development Territory or Protected Area.

## ITEM 13 Trademarks

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Under the Franchise Agreement, we grant you a non-exclusive license to use The ABC System under specific conditions. The ABC System refers collectively to all of the distinctive business methods, Designated Goods/Services, Confidential Information, and the ABC Intellectual Property that distinguish ABC Restaurants. You may only use the elements of The ABC System that we designate.

You must follow our rules when you use the ABC Intellectual Property. Among other rules and requirements, we forbid you to use any portion or feature of the Licensed Marks in your corporate, fictitious or other business entity name or with any prefix, suffix or other modifying words, terms, designs, colors or symbols. You may not use the Licensed Marks to sell any unauthorized products or services, in a way contrary to our instructions, or in any way that could result in our liability for your debts or cause us to be deemed to be the employer or your employees. You must use the Licensed Marks in the form and manner that we specify and follow our instructions for identifying yourself as the independent owner of the Franchised Restaurant. You must maintain appropriate trade name or fictitious name registrations. You may not use any other trademarks or service marks in combination with the Licensed Marks without our written approval beforehand. When you use the Licensed Marks, you must apply the special trademark symbols and ownership information that we designate. All use of the Licensed Marks is subject to our prior written authorization.

Parent Co. has registered our principal Licensed Marks on the Principal Register of the USPTO:

REG. NO.	Mark	REGISTRATION DATE	GOODS/SERVICES	USPTO Register
1234567	ASIAN BOWL CAFE	6/26/2007	Restaurant services	Principal
8912345	ASIAN BOWL CAFE (with design) (logo design on cover page where color is not a feature of the design)	7/17/12	Restaurant services	Principal

Parent Co. has granted us the non-exclusive right to grant sublicenses to third parties to operate ABC Restaurants under the ABC System and to administer marketing and support programs for our franchisees. The license from Parent Co. is perpetual and irrevocable unless we fail to cure a material breach within 30 days or if we are dissolved, go out of business or agree with our Parent Co. to terminate the license, in which case Parent Co. must assume our obligations under all Franchise Agreements in existence at the time. Neither our agreement with Parent Co. nor any other agreement significantly limits our right to use or license the use of all of the elements and features of the ABC System, including the ABC Intellectual Property, in any manner material to the franchise.

There are no agreements currently in effect that significantly limit our right to use or license the use the Licensed Marks in any manner material to the franchise.

All necessary affidavits to keep the federal registrations in force have been filed or the time for filing affidavits has not yet been reached. As of the effective date of this Disclosure Document, we are not aware of any (i) currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court; (ii) pending infringement, opposition or cancellation proceedings; or (iii) pending material litigation, involving the Licensed Marks.

There are no infringing or previous superior uses that we or our principals know of that could materially affect your use of

the Licensed Marks in the state where you operate. We are aware of a location in Georgia operating as Great Asian Bowl Café with designs similar to ours. We are in the process of notifying them that we believe their mark is confusingly similar to ours and will demand that they change their name and logos and stop any use to eliminate the likelihood of confusion with ASIAN BOWL CAFE and our logos.

In the Franchise Agreement, you acknowledge that, between the two of us, we own superior rights in the Licensed Marks. You agree that you will not do anything inconsistent with our rights. You may not challenge our ownership, rights or the validity of the Licensed Marks. You must permit reasonable inspection of your operations and supply us with specimens of all uses of the Licensed Marks upon request. You may not use the Licensed Marks in advertising or marketing materials unless and until we approve the materials beforehand following the procedures that we describe in Item 11.

You agree that the nature and quality of all products and services that you sell at or from the Franchised Restaurant or in using the Licensed Marks and all related advertising, promotional, and other activities that you engage in that associate you and the Franchised Restaurant with the Licensed Marks must conform to the standards for quality and other specifications that we establish.

You must notify us immediately if you learn about (i) any improper use of the Licensed Marks, (ii) a third party's use of a mark or design that is confusingly similar to any of the Licensed Marks, or (iii) any challenge to your use of any of the Licensed Marks. We will take whatever action we think is appropriate under the circumstances (including taking no action), and will control the prosecution, defense or settlement of any legal action. You must cooperate and assist us in defending our rights in the Licensed Marks with regard to any third party claims. You and your owners and management must agree not to communicate with any person other than us and our counsel about any infringement, challenge or claim. You may not take any action in your own name. Unless we establish that a third party claim is due to your misuse of the Licensed Marks, we will defend you in matters relating to your proper use of the Licensed Marks. However, we will not reimburse you for any lost profits or consequential damages of any kind and will only reimburse you for any actual expenses that you incur to change your signs and other uses of the Licensed Marks if we agree to cease using all, or particular elements of the Licensed Marks as part of the resolution of the third party claim.

You must modify or discontinue using any aspect of the Licensed Marks, and add new names, designs, logos or commercial symbols to the Licensed Marks as we instruct. We may at our sole discretion, impose changes whenever we believe the change is advisable. We do not have to compensate you for any costs you incur to make the changes we require. You will receive written notice of any change, and will be given a reasonable time to conform to our directions (including changing signs, menu boards, paper products that display the Licensed Marks and marketing displays, at your expense.

We forbid you to use the Licensed Marks in any electronic mail address or in any domain name. You may not maintain your own website to promote the Franchised Restaurant. You may not maintain a presence or advertise on the Internet or on any other public computer network, or any other kind of public modality, using the Licensed Marks or referencing ABC Restaurants without our written consent beforehand, which may be withheld in our sole judgment. This restriction applies to use of the Licensed Marks on third party social media websites like Facebook and twitter.

## ITEM 14 Patents, Copyrights, and Proprietary Information

There are no patents that are material to the franchise. We have obtained a copyright registration from the United States Copyright Office for our menu. Although we have not filed an application to copyright the Confidential Manual or any of the advertising or marketing materials that we have developed, we claim common law copyright rights in these materials and regard them as our proprietary information.

You may use the Confidential Manual, our advertising and marketing materials and any other confidential or proprietary information that we choose to share with you only to operate and promote the Franchised Restaurant during the term of the Franchise Agreement and only in the manner that we authorize. You may not duplicate, copy, disclose or disseminate the contents of the Confidential Manual or other Confidential Information without our consent beforehand.

We may modify the Confidential Manual at any time. We will notify you of all changes in writing and you must promptly adopt the changes at your cost. When the Franchise Agreement expires or terminates, depending on the format that we furnish the Confidential Manual, you must physically return all copies in your possession or delete electronic content from your computers and not retain any copies. You must keep the Confidential Manual confidential, updated and, depending on the format that we furnish it, in a secure or locked receptacle when not in use. If there is a dispute over the current version of the Confidential Manual, the terms of our master copy will control.

We are not aware of any agreements or third party claims of infringement that might limit our, or your, use of the Confidential Manual or any other confidential or proprietary materials that we allow you to use. We are not aware of any current determinations of the Copyright Office or any court, or any pending interference, opposition or cancellation proceedings or material litigation involving any materials in which we claim a copyright or regard as proprietary or as our trade secret.

You may not divulge Confidential Information about The ABC System or the results of the Franchised Restaurant's operations to any person, except to your employees and professional advisors who must know the information in order to carry on their employment duties or render professional advice to you. We may require those to whom you must disclose Confidential Information to sign a Confidentiality Agreement in a format that includes the non-disclosure provisions in Exhibit G, which gives us the right to seek equitable remedies, including restraining orders and injunctive relief, to prevent the unauthorized use of our Confidential Information.

You are encouraged to bring your own ideas and suggestions to us for our consideration as to whether we wish to implement the idea or improvement into the ABC System. You may not implement ideas or improvements that materially alter the ABC System without our prior written consent. As a condition of our approval, the Franchise Agreement provides that you quit-claim to us all rights that you may have in and to any idea or improvement. You must execute the agreements that we believe are necessary to give us exclusive ownership of the improvements, without compensation, and agree that we may use and incorporate the improvements and any ideas that you may originate in The ABC System.

The disclosures that we make in Item 13 regarding your duty to notify us about improper uses, infringement claims and challenges to your use of the Licensed Marks apply to all other intellectual property rights that we include in the term "the ABC Intellectual Property." This includes claims involving any proprietary spice mix or sauces, distinctive trade dress, and any information that we designate as Confidential Information including the content of our Confidential Manual and any source codes relevant to the POS System and any proprietary software that we may introduce later as part of the ABC System. If you bring a third party claim to our attention that involves other the ABC Intellectual Property besides the Licensed Marks, we will take whatever action we think is appropriate under the circumstances (including taking no action), and will control the prosecution, defense or settlement of any legal action. You must cooperate and assist us in defending our rights in the materials or information that we claim is our property. You and your owners and management must agree not to communicate with any person other than us and our counsel about any infringement, challenge or claim. You may not take any action in your own name. Unless we establish that a third party claim is due to your misuse of the Confidential Manual or any other confidential or proprietary materials that we allow you to use, we will defend you in matters relating to your use of The ABC System. However, we will not reimburse you for any lost profits or consequential damages of any kind and will only reimburse you for the amount of any settlement or liability imposed by the court and any for any actual expenses that you incur to change your operations to discontinue use of any infringing materials if we agree to do so as part of the resolution of the third party claim.

See Item 17 for additional information regarding confidentiality and covenants against competition.

## ITEM 15 Obligation To Participate In The Actual Operation Of The Franchised Business

You must devote the requisite time, energy, and best efforts to meet your obligations to us under the Franchise Agreement. Although we emphasize previous retail food service or restaurant experience in considering prospective franchisees, we do not require you or a Primary Owner personally to devote full time and attention to managing and supervising all administrative and operational activities of your Franchised Restaurant or perform the duties of a Certified Manager. However, we do require you or a Primary Owner to complete the Owner Orientation portion of our Initial Training program and recommend that you or a Primary Owner also complete the Certified Manager module.

At all times, the Franchised Restaurant must be under the direct, full-time supervision of a Certified Manager. A Certified Manager may, but need not, be a Primary Owner. We define a Certified Manager as a full-time management level employee who devotes full-time and attention to supervising the day-to-day operations of the Franchised Restaurant and qualifies as a Certified Manager. To qualify as a Certified Manager, you or the management-level employee must successfully complete the Certified Manager training module to our satisfaction and pass a Certified Manager exam which we administer at the conclusion of the Certified Manager training program. The manager must also complete ServSafe® training and hold a ServSafe® Food Protection Manager Certification from the American National Standards Institute Conference for Food Protection. The Certified Manager designation authorizes that individual to conduct internal training programs that you may wish to schedule periodically for your employees and new hires. For example, your Certified Manager may run training programs in management-level duties for employees whom you promote to the title of Assistant Certified Manager.

As the independent owner of the Franchised Restaurant, you control the manner and means of operating the Franchised Restaurant and have sole responsibility for your employees including your Certified Manager. As the employer, you, alone, will make all hiring and firing decisions and establish your own employment policies. All employees that you hire must be competent, conscientious, and properly trained by you to perform their duties. You are ultimately responsible for the performance of your employees and agents. You must keep us informed of the identity of your employees at the level of Certified Manager.

You must prominently display appropriate notices in a format that we designate to inform the public that you independently own and operate the Franchised Restaurant under a license from us and are not our agent.

Each of your owners, employees, independent contractors, and agents given access to any information that we deem to be proprietary or confidential must enter into a written confidentiality agreement either with us or with you. We designate the form of contract and attach a copy of our current contract as Exhibit G.

If you are a corporation, limited liability company or other business entity, then each person who owns 25% or more of the equity or voting interests of the business entity must sign a Personal Guaranty (Exhibit F) agreeing to be jointly and individually liable for all of your obligations under the Area Development Agreement and under each Franchise Agreement. This applies also to persons who acquire a 25% or greater interest after you sign the applicable contract.

If you are married, your spouse will be asked to execute a Spousal Consent (Exhibit D to the Franchise Agreement) acknowledging that your obligations under the Area Development Agreement and under each Franchise Agreement are binding upon the marital community

You are an independent contractor and not our representative, partner or employee. You have no authority to make any contract, agreement, warranty or representation or to create any obligation binding on us.

## ITEM 16 Restrictions On What The Franchisee May Sell

You must offer all of the menu items and other goods and services that we designate are part of The ABC System and nothing else except with our prior written approval. Among other changes that we may implement, we may require you to (i) change, add or discontinue certain recipes, menu items or other goods or services; (ii) add, modify and discontinue certain designated vendors of Designated Goods/Services or recommended vendors of Non-Designated Goods/Services; or (iii) modify trade dress and sign requirements. For example, at a later date, we may implement a delivery and catering program and require you to offer delivery and catering services to your customers. These changes may increase your operating expenses. We communicate all changes by written or electronic bulletins or revisions to the Confidential Manual. There is no limit on the frequency that we may impose these modifications. You will be given a reasonable time period after notice from us in which to implement these changes and discontinue any practices which we delete from The ABC System. You may not place new orders with any vendors whom we remove from our approved list.

You may sell only to retail customers and forbid you to engage in wholesale sales and distribution as we explain in Item 12. Otherwise, we do not impose any restrictions regarding the customers to whom you may sell authorized products and services.

We may use the Promotional Fund to advertise products and services at suggested resale prices. In the future, we may implement policies regarding the maximum and minimum prices at which you may advertise and sell approved menu items or other approved goods and services from the Franchised Restaurant consistent with applicable law.

Your operations must comply with all applicable laws. These include the laws and licensing requirements that we describe in Item 1 and laws pertaining to the sale of food and alcoholic beverages, food handling and storage, health and sanitation, and the American with Disabilities Act. You must investigate what laws apply to your business and ensure that you comply with them.

## ITEM 17 Renewal, Termination, Transfer, and Dispute Resolution

### The Franchise Relationship

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

#### Franchise Agreement

Provision	Section In Franchise Agreement	Summary
A. Length of the franchise term	V.A	10 years
B. Renewal or extension of the term	V.B	Two consecutive terms each for 5 years



Provision	Section In Franchise Agreement	Summary
C. Requirements for franchisee to renew or extend	V.B, V.D	<p>Your right to exercise each renewal option depends on whether we are still awarding new ASIAN BOWL CAFE franchises in the United States at the time you give us notice that you wish to exercise the renewal option. We may discontinue the franchise program at any time. In that case, your franchise rights will expire at the end of the original 10-year franchise term.</p> <p>In order to exercise a renewal option, you must be in good standing under the expiring Franchise Agreement; sign the then-current Franchise Agreement; satisfy our then-current design, appearance and trade dress elements for the Franchised Restaurant; pay the renewal fee; complete any training that we require for renewing franchisees; and sign a general release.</p> <p>You must negotiate with the landlord to extend your occupancy rights for the entire renewal term or relocate the Franchised Restaurant to a new location with our approval. In each case, the landlord must sign our then-current Addendum to Lease. The then-current Franchise Agreement that you sign may contain materially different terms and conditions than the expiring Franchise Agreement.</p>
D. Termination by franchisee	XVII.A	You may terminate the Franchise Agreement only if we fail to cure an alleged material breach of the Franchise Agreement or begin to cure the alleged breach within the cure period we are allowed under the Franchise Agreement.
E. Termination by franchisor without cause	N/A	Termination without cause is only possible by mutual agreement.
F. Termination by franchisor with cause	IV.C, XVII.B, XVII.D	We may only terminate the Franchise Agreement for good cause based on your material default.
G. "Cause" defined – curable defaults	XVII.C	Except for defaults that the Franchise Agreement identifies are not-curable, you have 30 days after notice to cure all defaults, except that you have 10 days after notice to cure a monetary default.

Provision	Section In Franchise Agreement	Summary
H. "Cause" defined – non-curable defaults	XVII.B	<p>The Franchise Agreement identifies non-curable defaults. They include the following:</p> <p>Your failure to obtain site approval and sign a lease for the Approved Location by 120 days after the date you sign the Franchise Agreement; your failure to use your best efforts to open the Franchised Restaurant within 120 days after you sign the lease and Addendum to Lease; your breach of the lease or loss of the right to occupy the Approved Location for cause; your bankruptcy or insolvency; your assignment for the benefit of creditors; if a liquidator or receiver is appointed for (i) all or substantially all of your Franchised Restaurant assets unless the appointment is dismissed within 60 days; a material misrepresentation or omission in your application for the franchise rights; your conviction or plea of no contest to a crime or offense that we reasonably believe is likely to adversely affect the reputation of the Licensed Marks; your misuse of any Confidential Information; if you fail to comply with any law within 10 days after being notified of non-compliance; an unauthorized transfer; misuse of the Confidential Manual, the Licensed Marks or any other Confidential Information; receipt of 3 or more notices of default within any 24-month period; the unauthorized closure of the Franchised Restaurant or failure to actively operate the Franchised Restaurant for any length of time under circumstances making it reasonable for us to assume you have abandoned the Franchised Restaurant; false reporting; or your acts or inactions resulting in an imminent danger to public health or safety at the Franchised Restaurant. Termination of a Franchise Agreement will not automatically result in the termination of any other Franchise Agreements then in-effect between us unless the same material breach constitutes a breach of the other Franchise Agreement and we follow the termination procedures in each Franchise Agreement.</p>

Provision	Section In Franchise Agreement	Summary
I. Franchisee's obligations on termination/non-renewal	XVIII.A	<p>Your obligations include the following:</p> <p>You must de-identify the Franchised Restaurant; upon request, you must assign any equipment leases to us; you must remove or stop using any property including signs and interior décor items that suggest or imply that you are, or were, an authorized franchisee or a former Franchised Restaurant or are still associated with us or The ABC System; you must sign a general release; you must allow us to exercise our right to assume your lease under the terms of the Addendum to Lease (Exhibit D); upon request, you must assign your telephone numbers and business listings to us; you must pay us all sums that you owe to us or our affiliates through the effective date of termination and any damages that we sustain in enforcing the termination provisions of the Franchise Agreement; and you must return the Confidential Manual and any other Confidential Information to us.</p> <p>We will repurchase your salable inventory of the proprietary spice mix and sauces at your original cost, but may offset from what we pay any amounts that you owe to us.</p> <p>The Franchise Agreement gives us a right of first refusal to purchase the non-fixture physical assets of the Franchised Restaurant upon termination. If we exercise our option, we may offset any other fees or sums that you owe to us from the purchase price.</p>
J. Assignment of contract by franchisor	XIX	There are no restrictions on our right to assign the Franchise Agreement, except that our obligations must be fully assumed by the assignee.
K. "Transfer" by franchisee: definition	XIX	The Franchise Agreement is a personal service contract. We forbid any kind of Event of Transfer, whether done voluntarily or by operation of law, unless you first obtain our written consent. An "Event of Transfer" includes the sale, assignment or disposal of any interest in the Franchise Agreement, the transfer of substantially all of your Franchised Restaurant assets, or a change in ownership of a controlling interest of a franchisee that is a corporation, limited liability company or partnership. An Event of Transfer also includes a Public or Private Offering.
L. Franchisor approval of transfer by franchisee	XIX	Any Event of Transfer requires our written consent beforehand, which we agree not to unreasonably withhold.

Provision	Section In Franchise Agreement	Summary
M. Conditions for franchisor approval of transfer	XIX	<p>The proposed buyer must submit an application to us and meet our qualifications. In addition, the proposed buyer must sign our then-current Franchise Agreement and related agreements (which may materially vary from your Franchise Agreement) for the remainder of your term and unexercised renewal term. If we are not awarding new franchises in your state at the time of the proposed Event of Transfer, we will allow the proposed buyer to assume your existing Franchise Agreement for the remainder of your franchise term and any unexercised renewal term.</p> <p>You or proposed buyer pay us a transfer fee, which will be different depending on whether the Event of Transfer is a Qualified Transfer or involves a Public or Private Offering.</p> <p>The proposed buyer must complete the Owner Orientation and qualify at least one person as a Certified Manager (if the buyer employs someone who has previously qualified as a Certified Manager, the buyer does not have to qualify a second person as a Certified Manager).</p> <p>You must sign a general release.</p>
N. Franchisor's right of first refusal to acquire franchisee's business	XIX.D	<p>We can match any third party offer to buy your franchise rights, assets or controlling interest which is the subject of a proposed Event of Transfer. We have 30 days in which to exercise our right of first refusal. We do not have a right of first refusal when the Event of Transfer is a Qualified Transfer.</p>
O. Franchisor's option to purchase your business	XVIII	<p>Upon termination or expiration of the Franchise Agreement, we may, at our option, purchase the tangible assets of the Franchised Restaurant and require you to assign us your leasehold interest under the terms of the Addendum to Lease (Exhibit D).</p>

Provision	Section In Franchise Agreement	Summary
P. Death or disability of franchisee	XIX.H	<p>Because the Franchise Agreement is a personal service contract, we treat the death of a Primary Owner that results in a change in the ownership of a controlling interest of a franchisee that is a business entity as an Event of Transfer subject to all transfer conditions.</p> <p>We also regard a permanent incapacity of a Certified Manager as an Event of Transfer if there is no other Certified Manager employed by you at the time. You must replace a Certified Manager who is unable to fulfill his or her duties due to disability with another Certified Manager who qualifies.</p> <p>The Franchise Agreement gives us the option to manage the Franchised Restaurant for up to 90 days. Whether litigation or arbitration is preferable as a dispute resolution method is highlighted below. There are advantages and disadvantages to each option. A foreign franchisor that wishes to require venue for disputes in its home country would need to select arbitration since a number of states have laws that require venue in the franchisor's home state when the dispute resolution method in the FA is litigation. These state laws supersede the parties' FA.</p>
Q. Non-competition covenants during the term of the franchise	XVI.A.1	<p>The Franchise Agreement forbids you from operating a Competitive Business. The Business as any business which is defined as a "Bowl" or produces Japanese rice bowls or similar foods; applies world-wide. We define "Covered Person" in the Franchise Agreement. The restriction against competition applies world-wide during the term of the franchise or for 2 years after a Covered Person severs his or her relationship with you.</p>
R. Non-competition covenants after the franchise terminates or expires	XVI.A.2	<p>The Franchise Agreement forbids you and each Covered Person from directly or indirectly engaging in a Competitive Business that is located within 5 miles of another ABC Restaurant anywhere in the world whether or not ABC Restaurant was open for business on the date your Franchise Agreement terminates or expires or opens at a later date. This restriction applies for 2 years after the termination or expiration of the Franchise Agreement.</p>
S. Modification of the agreement	XXIV.G	<p>The Franchise Agreement may not be modified except by a written agreement that both of us sign. As noted throughout this Disclosure Document, the Franchise Agreement, among other things, gives us the right to modify or change The ABC System in our discretion through changes in the Confidential Manual if the changes do not fundamentally alter your rights under the Franchise Agreement.</p>
T. Integration/merger clause	XXIV	<p>Only the terms of the Franchise Agreement are binding (subject to state law). Nothing in the Franchise Agreement requires you to waive or disclaim any of the representations that we make in this Disclosure Document.</p>

Provision	Section In Franchise Agreement	Summary
U. Dispute resolution by arbitration or mediation	XXII	With limited exceptions pertaining to claims for (i) damages under \$10,000; (ii) injunctive relief or other forms of provisional remedies; or (iii) unlawful detainer or similar remedy available to a landlord, all disputes arising out of the Franchise Agreement must first be submitted to mediation. If mediation does not resolve the dispute, the matter must be resolved through litigation.
V. Choice of forum	XXII.C	The Franchise Agreement has a forum selection provision which requires that a lawsuit to be filed in the state or federal courts located closest to our headquarters, which at this time are in Los Angeles, California. Certain states have laws that supersede the choice of forum in the Franchise Agreement and require that a lawsuit be brought in the state or federal courts in the franchisee's home state. See the State Addendum, Exhibit I.
W. Choice of law	XXII.F	California law applies. Certain states have laws that supersede the choice of law provision in the Franchise Agreement. See the State Addendum, Exhibit I.

NOTE TO ITEM 17: When you sign the Franchise Agreement, you will also sign the contract attached as Exhibit N to this Franchise Disclosure Document entitled Collateral Assignment of Telephone Numbers, Addresses, Listings and Assumed or Fictitious Business Name. Following expiration or termination of the Franchise Agreement, we may deliver a copy of the Collateral Assignment to third party providers. The Collateral Assignment instructs the third party providers to assign us the telephone numbers and other listings for our outlet in furtherance of your duty to de-identify from the ABC System.

## Area Development Agreement

Provision	Section In Area Development Agreement	Summary
A. Length of the Area Development Agreement term	I.D	Depends on Development Quota and Development Deadlines that we negotiate.
B. Renewal or extension of the term	N/A	N/A
C. Requirements for franchisee to renew or extend	N/A	N/A
D. Termination by franchisee	VI.A	You may terminate the Area Development Agreement only if we fail to cure an alleged material breach of the Area Development Agreement or begin to cure the alleged breach within the cure period we are allowed under the Area Development Agreement.

Provision	Section In Area Development Agreement	Summary
E. Termination by franchisor without cause	VI.A	Termination without cause is only possible by mutual agreement.
F. Termination by franchisor with cause	VI.A	We may only terminate the Area Development Agreement for good cause based on your material default.
G. "Cause" defined – curable defaults	VI.A	Except for defaults that the Area Development Agreement identifies are not curable, you have 30 days after notice to cure all defaults.
H. "Cause" defined – non-curable defaults	VI.A	<p>The Area Development Agreement identifies non-curable defaults. They include the following:</p> <p>Your failure to meet a Development Deadline; your bankruptcy or insolvency; your assignment for the benefit of creditors; if a liquidator or receiver is appointed for all or substantially all of your assets unless the appointment is dismissed within 60 days; a material misrepresentation or omission in your application for the area development or franchise rights; your conviction or plea of no contest to a crime or offense that we reasonably believe is likely to adversely affect the reputation of the Licensed Marks; if you fail to comply with any law within 10 days after being notified of non-compliance; an unauthorized transfer; misuse of the System; receipt of 3 or more notices of default within any 24-month period; or termination of a Franchise Agreement for any reason.</p> <p>Termination of the Area Development Agreement will not automatically result in the termination of any Franchise Agreements then in effect between us unless the same material breach constitutes a breach of the Franchise Agreement and we follow the termination procedures in the Franchise Agreement.</p>
I. Franchisee's obligations on termination/non-renewal	VI.B	<p>VI.B Your obligations include the following:</p> <p>You will lose your right to further development and must sign a general release.</p>
J. Assignment of contract by franchisor	VII.A	There are no restrictions on our right to assign the Area Development Agreement, except that our obligations must be fully assumed by the assignee.
K. "Transfer" by franchisee: definition	VII.B	The Area Development Agreement is a personal service contract. We forbid any kind of Event of Transfer, whether done voluntarily or by operation of law, unless you first obtain our written consent. The Area Development Agreement adopts the same definition for an "Event of Transfer."

Provision	Section In Area Development Agreement	Summary
L. Franchisor approval of transfer by franchisee	VII.B.4	Any Event of Transfer requires our written consent beforehand, which we agree not to unreasonably withhold.
M. Conditions for franchisor approval of transfer	VII.B.5	<p>The proposed buyer must submit an application to us and meet our qualifications. The proposed buyer must assume your existing Area Development Agreement for the remainder of your Development Term.</p> <p>We may condition our consent to an Event of Transfer involving the Area Development Agreement to the buyer also acquiring the assets of at least one of your ABC Restaurants in the Development Territory and satisfying the separate conditions applicable to an Event of Transfer under the Franchise Agreement.</p> <p>You or the proposed buyer must pay us a \$10,000 transfer fee or less if the Event of Transfer is a Qualified Transfer.</p> <p>You must sign a general release.</p>
N. Franchisor's right of first refusal to acquire franchisee's business	VII.B.3	We can match any third party offer to buy your franchise rights, assets or controlling interest which is the subject of a proposed Event of Transfer. We have 30 days in which to exercise our right of first refusal. We do not have a right of first refusal when the Event of Transfer is a Qualified Transfer.
O. Franchisor's option to purchase your business	N/A	N/A
P. Death or disability of franchisee	VII.B.3	Because the Area Development Agreement is a personal service contract, we treat the death of a Primary Owner that results in a change in the ownership of a controlling interest of a franchisee that is a business entity as an Event of Transfer subject to all transfer conditions.
Q. Non-competition covenants during the term of the franchise	VI.B.5	Once you sign the Area Development Agreement, you are subject to the same non-competition covenant during the term of the Area Development Agreement as you are during the term of the Franchise Agreement.
R. Non-competition covenants after the franchise terminates or expires	N/A	N/A
S. Modification of the agreement	XII.G	The Area Development Agreement may not be modified except by a written agreement that both of us sign.



Provision	Section In Area Development Agreement	Summary
T. Integration/merger clause	II.F.5	Only the terms of the Area Development Agreement are binding (subject to state law). Any representations or promises outside of this Disclosure Document and the Franchise Agreement may not be enforceable. Nothing in the Area Development Agreement requires you to waive or disclaim any of the representations that we make in this Disclosure Document.
U. Dispute resolution by arbitration or mediation	X.A	Same dispute resolution provisions as the Franchise Agreement.
V. Choice of forum	XII.C	The Franchise Agreement has a forum selection provision which requires that a lawsuit to be filed in the state or federal courts located closest to our headquarters, which at this time are in Los Angeles, California. Certain states have laws that supersede the choice of forum in the Franchise Agreement and require that a lawsuit be brought in the state or federal courts in the franchisee's home state. See the State Addendum, Exhibit I.
W. Choice of law	XII.C	California law applies. Certain states have laws that supersede the choice of law provision in the Franchise Agreement. See the State Addendum, Exhibit I.

## ITEM 18 Public Figures

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We do not use any public figure to promote our franchises, nor is there any public figure who is involved in any respect with the actual management or control of our company.

## ITEM 19 Financial Performance Representations

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

We set forth below Gross Sales information for all ABC Restaurants that were open and operated throughout 2014, both franchised locations and affiliate-owned locations, excluding the one "To Go" location which is operationally dissimilar from an ABC Restaurant and not a format that we offer as a franchise. "Gross Sales" excludes taxes and the other deductions that we explain in the notes to Item 6.

Except for the information in this Item 19, we do not furnish, or authorize any person who sells ASIAN BOWL CAFE franchises to furnish, any oral or written information concerning the actual or potential sales, costs, income or profits of an ABC Restaurant. Actual results may vary from restaurant to restaurant for a variety of reasons, and we make no representation regarding the results you may achieve. Substantiation of the data we use to prepare this Item 19 will be made available to you on reasonable request.

## 2014 Gross Sales By Reporting Restaurant – Annual

Unit	A/F	Month/Year Opened	2014 - Total Gross Sales (Annual)	2014 Average Monthly Gross Sales
1	A	3/2010	\$7,581,952.85	\$631,829.40
2	F	1/2011	\$6,958,750.20	\$579,895.85
3	F	3/2011	\$6,263,925.60	\$521,993.80
4	F	6/2012	\$6,134,490.60	\$511,207.55
5	A	3/2006	\$5,036,236.90	\$419,686.41
6	F	11/2011	\$4,694,503.40	\$391,208.62
7	F	1/2009	\$4,077,850.10	\$339,820.84
8	F	8/2010	\$4,017,137.20	\$334,761.43
9	F	4/2010	\$4,011,265.59	\$334,272.13
10	A	4/2004	\$3,996,768.10	\$333,064.01
11	F	3/2008	\$3,762,607.70	\$313,550.64
12	F	7/2007	\$3,605,203.75	\$300,433.65
13	F	7/2012	\$3,515,430.46	\$292,952.54

A/F signifies if the unit is owned by one of our Affiliates (A) or by a franchisee (F).

## 2014 Average Gross Sales For All Reporting Restaurants

A.	B.	C.
<b>Total # of Reporting Restaurants</b>	<b>Average Annual Gross Sales All Reporting Restaurants (A)</b>	<b># (%) of Reporting Restaurants (A) Meeting or Exceeding Average (B)</b>
13	\$5,304,676.87	4 (31%)

Of the 4 units meeting or exceeding the average, one was owned by an affiliate and 3 were owned by franchisees.

## 2014 Gross Sales Information By Reporting Restaurant – Monthly

Unit	Month/ Year Opened	2014 Gross Sales By Month											
		(Shading signifies that the unit is owned by an Affiliate; no shading signifies the unit is owned by a franchisee)											
		Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1	3/2010	\$624,880.20	\$598,418.80	\$707,152.00	\$653,576.10	\$677,992.10	\$678,891.60	\$690,957.55	\$701,004.40	\$585,426.30	\$578,049.40	\$559,623.40	\$525,981.00
2	1/2011	\$586,138.50	\$544,681.20	\$627,073.90	\$588,029.80	\$610,645.80	\$596,990.40	\$533,134.40	\$624,535.90	\$556,714.40	\$565,099.30	\$572,966.60	\$552,740.00
3	3/2011	\$480,866.90	\$466,103.70	\$568,920.90	\$533,027.50	\$594,705.10	\$344,413.50	\$564,405.30	\$617,828.40	\$521,031.40	\$512,211.30	\$556,549.90	\$503,861.70
4	6/2012	\$461,494.00	\$430,705.80	\$564,263.20	\$511,569.70	\$552,517.60	\$557,307.90	\$546,287.40	\$603,192.40	\$493,215.00	\$479,657.40	\$488,734.10	\$445,546.10
5	3/2006	\$418,399.10	\$380,028.00	\$471,814.60	\$443,826.50	\$439,803.90	\$440,223.00	\$443,947.30	\$463,490.80	\$404,445.80	\$390,351.30	\$379,626.70	\$360,279.90
6	11/2011	\$319,901.90	\$323,148.10	\$413,563.90	\$386,647.00	\$417,998.30	\$572,898.40	\$432,855.10	\$446,821.80	\$360,841.70	\$343,853.10	\$355,393.70	\$320,580.40
7	1/2009	\$308,414.70	\$296,212.10	\$366,885.30	\$341,470.40	\$386,578.80	\$360,628.30	\$359,150.80	\$390,623.00	\$324,367.60	\$316,679.30	\$324,729.70	\$302,110.10
8	8/2010	\$301,662.50	\$312,229.30	\$371,168.00	\$335,129.80	\$347,092.60	\$441,645.60	\$348,455.70	\$371,247.30	\$303,397.10	\$303,557.60	\$308,942.00	\$272,609.70
9	4/2010	\$280,924.60	\$305,790.00	\$373,652.30	\$345,912.60	\$377,331.19	\$361,704.80	\$353,629.40	\$382,661.20	\$332,451.60	\$322,213.90	\$296,737.40	\$278,256.60
10	4/2004	\$306,900.80	\$292,582.90	\$382,503.60	\$347,891.80	\$355,892.80	\$358,003.90	\$346,122.00	\$380,292.60	\$318,882.70	\$306,075.20	\$309,674.80	\$291,945.00
11	3/2008	\$297,714.30	\$300,163.60	\$414,954.80	\$339,421.30	\$349,437.30	\$326,638.10	\$338,190.20	\$328,460.70	\$297,660.70	\$262,830.50	\$282,560.70	\$224,575.50
12	7/2007	\$305,936.70	\$275,134.20	\$343,289.90	\$308,903.80	\$326,064.55	\$321,759.80	\$310,676.20	\$330,946.50	\$282,266.10	\$277,505.30	\$268,483.80	\$254,236.90
13	7/2012	\$244,194.81	\$247,698.76	\$342,129.32	\$304,926.04	\$329,580.17	\$323,396.94	\$315,417.04	\$350,934.48	\$265,068.21	\$277,476.36	\$266,031.64	\$248,576.69

## Notes

1. Item 19 presents Gross Sales information for all ABC Restaurants operating throughout the 2014 calendar year under the same ownership where the reporting location was opened and operating for at least 12 months before the 2014 reporting period. The reporting locations include both affiliate-owned and franchisee-owned ABC Restaurants.
2. The results reported by locations owned by our affiliates have been prepared in accordance with generally accepted accounting principles. However, the results have not been independently audited.
3. We rely on the accuracy of the information reported to us by our franchisees. We have not independently audited the information. We also rely on our franchisees' advice that they have prepared their financial statements in accordance with generally accepted accounting principles, but we have not independently reviewed their accounting methodologies to verify the accuracy of their representations.

## Comments And Assumptions

- Operationally, all of the reporting ABC Restaurants are comparable to the franchises described in this Franchise Disclosure Document. All reporting ABC Restaurants offered comparable menu items to one another and to the menu items currently on our menu.
- None of the affiliate-owned ABC Restaurants included in this Item 19 received more from us in the way of marketing support than the franchisee-owned ABC Restaurants included or that we offer to our franchisees. The 2014 Gross Sales results do not statistically vary depending on whether ABC Restaurant is owned by our affiliate or by a franchisee.
- The 2014 Gross Sales results do not statistically vary depending on how long an ABC Restaurant has been open for business.
- The 2014 Gross Sales results do not show a correlation between Gross Sales and (i) the state where ABC Restaurant is located; or (ii) the type of real estate that ABC Restaurant occupies. Of the California locations, two are in San Jose, one is in Sacramento, and the remaining are in Southern California. However, there is no correlation between the 2014 Gross Sales results of ABC Restaurants in Southern California where there may be greater consumer recognition of the ASIAN BOWL CAFE brand due to the presence of more ABC Restaurants versus the 2014 Gross Sales results of ABC Restaurants located elsewhere in California or in other states. While we identify the locations of all operating ABC Restaurants in Exhibit K, we regard individual results as confidential information and therefore omit identifying the address of the restaurants in the reporting group.
- While the reporting ABC Restaurants are located in markets with different size populations, all reporting ABC Restaurants are in market areas that would be classified as urban or suburban where many other restaurants compete for consumer business. By "market area," we refer to a geographic zone containing the people who are likely to frequent ABC Restaurants based on the residence, place of work, commuting patterns, and other factors. While the demographics of the market areas served by the reporting restaurants differ in terms of factors like average income, average consumer age, residential vs. office mix, and other variables, these differences do not correlate with 2014 Gross Sales results.
- The reporting ABC Restaurants are located in 3 different states and in different types of leased premises as shown in the chart below. While the reporting ABC Restaurants (both affiliate and franchise) range in actual square footage from 1,600 to 4,000 square feet, the 2014 Gross Sales results show no correlation between Gross Sales and restaurant size:

Store	Month/Year Opened	Type of Location	Sq. ft	2013 - Total Gross Sales (Annual)
1	3/2010	Suburban; free-standing in a strip mall	3900	\$6,677,266.00
2	1/2011	Urban	2600	\$6,012,701.00
3	3/2011	Suburban; part of a larger shopping plaza that includes a big box tenant. Restaurant is exterior-facing with its own entrance.	3100	\$5,464,206.00
4	6/2012	Suburban; free standing in a larger shopping plaza that includes large grocery store and fitness gym. Restaurant is exterior-facing with its own entrance.	3500	\$4,881,350.00
5	3/2006	Suburban; strip mall	2500	\$4,756,346.00
6	1/2009	Suburban; strip mall	2300	\$3,844,004.00
7	11/2011	Suburban; free-standing exterior-facing (own entrance); adjacent to larger tenant as part of a shopping mall	4000	\$3,776,742.00
8	7/2007	Suburban; free-standing	3800	\$3,696,287.00
9	8/2010	Suburban; strip mall	1800	\$3,436,670.00
10	4/2004	Suburban; strip mall	3550	\$3,434,790.00
11	3/2008	Suburban; strip mall	3000	\$3,357,139.00
12	4/2010	Suburban; strip mall	3200	\$3,292,292.00
13	7/2012	Suburban; free-standing in a strip mall	1600	\$3,039,621.00

- The 2014 Gross Sales results show some seasonal fluctuation with Gross Sales being higher during summer months.
- There may be minor variations in the operating hours among ABC Restaurants due to local factors, but these variations did not affect the 2014 Gross Sales results.
- The information in Item 19 only discloses Gross Sales. We make no representation regarding the actual operating costs, gross profit, net profit or any other financial information of the reporting ABC Restaurants.
- There is no assurance you do as well or achieve the same Gross Sales results as the reporting ABC Restaurants achieved in 2014. If you choose to buy an ABC Restaurant franchise, you must accept the risk of not doing as well. Your sales may be affected by a variety of factors including, among others, the location that you select; its visibility to passing traffic; traffic patterns; population; demographic and income levels in your restaurant's market area; the presence of local competition; your ability to follow our operating methods; your business, marketing and management skills, time and attention; inflation and other general economic factors; interest rates and lending conditions; and local laws.

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

We do not intend these figures to be used as a forecast of the sales results that you may achieve. Your own results will likely differ from those presented here. Accordingly, this analysis is provided purely as reference material for your use with the other information provided in this franchise disclosure document and other information you obtain about the asian bowl

cafe franchise opportunity through your own investigation. We urge you to consult with your financial, tax and legal advisors about the information presented here.

Except for the information presented in this financial performance representation, we do not furnish or authorize our salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of an abc restaurant.

## ITEM 20 Outlets And Franchisee Information

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Table 1 System-Wide Outlet Summary As Of December 31, 2014

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2012	8	10	+2
	2013	10	9	-1
	2014	9	9	0
Company-Owned	2012	4	4	0
	2013	4	4	0
	2014	4	4	0
Total Outlets	2012	12	14	+2
	2013	14	13	-1
	2014	13	13	0

Table 2 Transfers of Outlets from Franchisees to New Owners (other than to Us or Our Affiliates) as of December 31, 2014

Column 1 State	Column 2 Year	Column 3 Number of Transfers
All States	2012	0
	2013	0
	2014	0
Total	2012	0
	2013	0
	2014	0

Table 3 Status of Franchise Outlets as of December 31, 2014

Column 1 State	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets Opened	Column 5 Termi- nations	Column 6 Non- renewals	Column 7 Reacquired by Franchiser	Column 8 Ceased Operations- Other Reasons	Column 9 Outlets at End of the Year
CA	2012	5	2	0	0	0	0	7
	2013	7	0	0	0	0	0	7
	2014	7	0	0	0	0	0	7
NV	2012	1	0	0	0	0	0	0
	2013	1	0	0	0	0	0	1
	2014	1	0	0	0	0	0	1
TX	2012	2	0	0	0	0	0	2
	2013	2	0	1	0	0	0	1
	2014	1	0	0	0	0	0	1
Totals	2012	8	2	0	0	0	0	10
	2013	10	0	1	0	0	0	9
	2014	9	0	0	0	0	0	9

Table 4 Status of Company-Owned Outlets as of December 31, 2014

Column 1 State	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets Opened	Column 5 Outlets Reacquired From Franchisees	Column 6 Outlets Closed	Column 7 Outlets Sold To Franchisees	Column 8 Outlets at End of the Year
CA	2012	0	0	0	0	0	0
	2013	0	0	0	0	0	0
	2014	0	0	0	0	0	0
Totals	2012	0	0	0	0	0	4
	2013	4	0	0	0	0	4
	2014	4	0	0	0	0	4

Table 5 Projected New Franchised Outlets as of December 31, 2015

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlets in the Next Fiscal Year	Column 4 Projected New Company – Owned Outlets In the Next Fiscal Year
CA	2	3	2
Totals	2	2	2

No franchisee has had a franchise terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during a prior fiscal year or have not communicated with us during the 10 weeks before the filing of this Disclosure Document. If you buy this franchise, your contact information may be disclosed to other

buyers when you leave the franchise system.

We have not signed any confidentiality clauses with any current or former franchisee which would restrict them from speaking openly with you about their experience with us.

There are no trademark-specific franchisee organizations at this time that are associated with the franchise system which we have created, sponsored or endorsed.

## ITEM 21 Financial Statements

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Attached as Exhibit J are our audited financial statements for our 2012, 2013 and 2014 fiscal years, which are based on the calendar year.

## ITEM 22 Contracts

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The contracts we use in this state are exhibits to this Franchise Disclosure document as follows:

EXHIBIT A ..... List of State Administrators

EXHIBIT B ..... Agent for Service of Process

EXHIBIT C ..... Franchise Agreement

- Exhibit A - Approved Location And Protected Area
- Exhibit B - Personal Guaranty
- Exhibit C - Addresses for Notice
- Exhibit D - Spousal Consent
- Exhibit E - Collateral Assignment of Telephone Numbers, Addresses, Listing and Assumed or Fictitious Business Name

EXHIBIT D ..... Lease Addendum

EXHIBIT E ..... General Release

EXHIBIT F ..... Personal Guaranty

EXHIBIT G ..... Confidentiality Agreement

EXHIBIT H ..... Confidential Manual Table of Contents

EXHIBIT I ..... State Addendum

EXHIBIT J ..... Financial Statements





EXHIBIT K ..... Operating ABC Restaurant Locations

EXHIBIT L ..... Franchise Application

EXHIBIT M ..... Closing Acknowledgement (Declaration of Franchise Applicant)

EXHIBIT N ..... Collateral Assignment of Telephone Numbers, Addresses, Listings and Assumed or Fictitious Business Name

EXHIBIT O ..... Area Development Agreement

- Exhibit 1 - Term Sheet: Development Territory, Development Quota, and Development Deadlines
- Exhibit 2 - Franchise Agreement
- Exhibit 3 - Spousal Consent

EXHIBIT P Receipts (2 copies)

## ITEM 23 Receipts

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The last 4 pages of this Disclosure Document are detachable receipt pages (Exhibit O). Please insert the name, address and telephone number of the franchise seller, and date and sign both copies. Detach the last 2 pages and return to us promptly on execution. Retain the other copy of the receipt pages for your records. If these pages or any other pages or exhibits are missing from your copy, please contact us at this address or phone number:

Hai Tanaka  
ABC Franchise Co., LLC  
1000 Main Street, Suite 100  
Los Angeles, California 90017  
(Phone: 213-633-6800)  
franchise@abcrestaurant.com

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JETRO

Exhibit C - ABC Franchise CO., LLC

Franchise Agreement

March 30, 2015

## Table of Contents

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I.	Definitions.....	119
II.	Grant .....	127
III.	Protected Territory And Reserved Rights .....	129
IV.	Approved Location .....	131
V.	Area Development Agreement – Specific Provisions Applicable Only If Company And Franchisees Are Parties To An Area Development Agreement.....	134
VI.	Term And Renewal .....	134
VII.	Approved Location Development And Opening Date	136
VIII.	Training.....	139
IX.	Intellectual Property .....	141
X.	Confidential Manual.....	144
XI.	Marketing, Advertising And Other Promotional Activities .....	145
XII.	Payments .....	151
XIII.	Accounting And Records.....	153
XIV.	Standards Of Quality And Performance .....	157
XV.	Company’s Operations Assistance .....	164
XVI.	Insurance .....	166
XVII.	Covenants .....	167
XVIII.	Default And Termination .....	169
XIX.	Rights And Duties Of Parties Upon Expiration Or Termination .....	172
XX.	Assignment And Transfer.....	176



XXI. Relationship Of Parties: Indemnification: Security Interest .....	182
XXII. Personal Guaranty.....	183
XXIII. Dispute Resolution .....	184
XXIV. Representations Of Franchisee .....	187
XXV. Miscellaneous .....	189

## List Of Exhibits

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EXHIBIT A .....	Approved Location And Protected Area
EXHIBIT B .....	Personal Guaranty
EXHIBIT C .....	Addresses For Notice
EXHIBIT D .....	Spousal Consent
EXHIBIT E .....	Collateral Assignment Of Telephone Numbers, Addresses, Listings And Assumed Or Fictitious Business Name
EXHIBIT F .....	Addendum To Lease

# Franchise Agreement

This Franchise Agreement (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) by and between ABC Franchise Co., LLC, a California limited liability company (“Company”) and \_\_\_\_\_ (“Franchisee”).

## Recitals

A. Company owns a license to operate, and grant sublicenses to third parties to operate, casual dining restaurants in the United States featuring fresh and healthy Asian-inspired noodle and rice bowl selections with high quality ingredients, sauces and curries and serving complimentary side dishes, beer and wine and fountain drinks that do business under the trade name ASIAN BOWL CAFE and operate in accordance with Company’s comprehensive business methods. In this Agreement, each restaurant is referred to as “ABC Restaurant” and collectively as “ABC Restaurants.”

B. Franchisee desires to obtain a license to use Company’s comprehensive business methods to operate an ABC Restaurant at the Approved Location identified in this Agreement, and Company is willing to grant a license to Franchisee on the terms and conditions of this Agreement.

NOW, THEREFORE, the parties agree as follows:

## Terms And Conditions

### I. Definitions

In addition to definitions incorporated in the body of this Agreement, the following capitalized terms in this Agreement are defined in this Section. Additionally, if the parties are also parties to an Area Development Agreement, capitalized terms that are used, but not defined, in this Agreement shall have the meaning given to them in the Area Development Agreement and the parties incorporate those definitions by this reference.

The definitions section defines all capitalized terms that are used in a special way throughout the contract. It is efficient to place all definitions in one place rather than scatter them throughout the contract where they are first used. It also makes it easier for a franchisee to understand the contract.

A. “ABC Computer System” means, collectively, the computer hardware equipment, operating software, communications equipment and supporting peripherals devices that Company specifies by brand, model, supplier, features, functions or other type of specifications and that Franchisee must use to operate the Franchised Restaurant whether or not it incorporates Company’s Confidential Information. Company may revise the specifications as frequently as Company deems necessary in its sole discretion during the Term and may replace non-proprietary hardware or operating software with proprietary hardware or software applications created or developed specifically for the benefit of ABC Restaurants.

B. “ABC Intellectual Property” means the following intangible property and similar types of proprietary rights, interests and protections however arising under Applicable Law related to the

ABC Restaurant concept and business operations that currently exist or come into being after the Effective Date including without limitation all of the following and any equivalent rights under Applicable Law: (i) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by law, and all registrations and applications for registration of such trademarks, including intent-to-use applications, and all issuances, extensions and renewals of such registrations and applications; (ii) internet domain names, whether or not trademarks, registered in any generic top-level domain by any authorized private registrar or governmental authority; (iii) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered, unregistered or arising by law), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications; (iv) Confidential Information; (v) source codes for proprietary software that Company incorporates into the ABC Computer System; (vi) business methods utilized by Company in operating ABC Restaurants; (vii) moral rights under Applicable Law; and (viii) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, re-examinations and renewals of such patents and applications. For the elimination of doubt, the term “ABC Intellectual Property” includes all of the trade dress and other property rights subsumed within the defined terms ABC Licensed Marks and Confidential Information.

C. “ABC Intranet” means the private, secure area on Company’s networks using Internet communication protocols to which Company grants access to its franchisees and certain Company employees for purposes of sharing information, including a copy of the Confidential Manual, relevant to the ABC System.

D. “ABC Licensed Marks” collectively mean all of the trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered, unregistered or arising by Applicable Law, and all registrations and applications for registration of trademarks, including intent-to-use applications, and all issuances, extensions and renewals of registrations and applications that Company now or hereafter uses to identify, advertise or promote ABC Restaurants generally or individual ABC Restaurants and expressly authorizes or requires Franchisee to use as a condition of this Agreement.

E. “ABC System” means, collectively, Company’s comprehensive business methods, standards, policies, requirements and specifications which cover the (i) the design, trade dress and build-out requirements for the Franchised Restaurant including kitchen layout, signs, dining room layout, and installation of our designated interior décor package; (ii) specifications for restaurant equipment and supplies; (iii) designation of standard menu items and menu names; (iv) instructions for handling, preparing, presenting, serving and storing ingredients, foods and beverages including proprietary recipes; (v) requirements for using or selling Designated Goods/Services; (vi) use of the ABC Computer System, which includes record keeping, financial and operational reporting requirements; (vii) customer service and merchandising standards; (viii) advertising and branding strategies; (ix) comprehensive training programs; and (x) requirements for using The ABC Intellectual Property and any Confidential Information, as modified by Company during the Term as provided in this Agreement.

The “System” is defined comprehensively to cover all features that distinguish the brand and all brand standards.



F. “Accounting Period” means the specific period that Company designates from time to time in the Confidential Manual or otherwise through written or electronic communications for purposes of Franchisee’s financial reporting or payment obligations described in this Agreement. For example, an Accounting Period may, in Company’s sole discretion, be based on a seven-day week (e.g., Monday through Sunday), a Calendar Month, a Calendar Quarter; a Calendar Year; or another period of time which may be subdivided into blocks of 4 or 5 weeks, or a shorter or longer time period that Company selects in its sole discretion. Company may designate different Accounting Periods for purposes of paying fees and for discharging reporting obligations under this Agreement.

G. “Addendum to Lease” means the written agreement substantially in the form of Exhibit F to this Agreement by and between Franchisee and the landlord of the Approved Location that adds specific terms and conditions required by Company to the Lease and grants Company the right, but not the obligation, to accept an assignment of the Lease under stated conditions without the Landlord’s consent. At a minimum, the terms and conditions shall (i) require the landlord to provide concurrent written notice to Company if the landlord serves Franchisee with notice of default under the Lease; (ii) give Company the right, but not impose the obligation, to cure the default under the Lease; (iii) establish the conditions under which Franchisee must offer to assign its interest in the Lease to Company without the landlord’s consent; (iv) provide that the Lease may not be materially modified with Company’s prior written consent; and (v) allow Company to enter the Authorized Location premises to inspect and verify Franchisee’s compliance with this Agreement.

H. “Affiliate” means an entity that controls, is controlled by, or is under common control with, a party to this Agreement.

I. “Anti-Terrorism Laws” mean Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future Applicable Law and requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war.

J. “Applicable Law” means and includes applicable common law and all statutes, laws, rules, regulations, ordinances, policies and procedures established by any governmental authority with jurisdiction over the operation of the Franchised Restaurant that are in effect on or after the Effective Date, as they may be amended from time to time. Applicable Law includes, without limitation, those relating to building permits and zoning requirements applicable to the use, occupancy and development of the Approved Location; business licensing requirements; hazardous waste; occupational hazards and health; alcoholic beverages; consumer protection; privacy; trade regulation; worker’s compensation; unemployment insurance; withholding and payment of federal and state income taxes and social security taxes; collection and reporting of sales taxes; and the American With Disabilities Act.

K. “Approved Location” means the business premises approved by Company for the operation of the particular ABC Restaurant that is the subject of this Agreement.

L. “Area Development Agreement” refers to that certain written agreement which the parties may have entered into on or before the Effective Date of this Agreement in which Company has awarded Franchisee the right to open a mutually agreed upon number of ABC Restaurants

in a geographic area identified as the Development Territory according to specific Development Deadlines. All provisions in this Agreement that refer to an Area Development Agreement shall apply to the parties only if they have, in fact, executed an Area Development Agreement on or before the Effective Date of this Agreement; otherwise those provisions shall be of no force or effect.

M. “Business Entity” means a corporation, limited liability company, partnership, limited liability partnership, trust or other type of legal entity which, under Applicable Law, may enter into contracts in its own name.

N. “Calendar Month” means any one of the 12 Calendar Months of the Calendar Year starting on the first day of the Calendar Month.

O. “Calendar Quarter” means the 3-Calendar Month period ending on March 31, June 30, September 30 or December 31 of each Calendar Year.

P. “Calendar Year” means the 12-Calendar Month period starting on January 1 and ending on December 31.

Q. “Captive Venue” refers to the location of an ABC Restaurant in a larger public or privately-owned destination or complex where the real estate developer includes restaurant services as an accommodation to a captive market. For purposes of this Agreement, Captive Venues include, without limitation, regional shopping malls, airports, mass transit stations, professional sports stadiums and arenas, hotels and other types of lodging facilities, military bases, entertainment centers, amusement parks, casinos, universities and other types of schools, hospitals and other types of health care institutions, and similar types of captive market locations that Company may designate during the term. Company shall determine and designate those shopping malls that in Company’s judgment qualify as a regional shopping mall based on the size of the shopping complex, number of anchor tenants, existence of dedicated parking space, existence of unrelated merchandisers, and prevailing consumer and industry perceptions.

R. “Certified Manager” identifies each management-level employee who devotes full-time and attention to performing general management and supervisory responsibilities for one or more ABC Restaurants and who (i) successfully completes Company’s entire Certified Manager training course to Company’s reasonable satisfaction in the exercise of Company’s reasonable business judgment; (ii) passes a Certified Manager exam given at the end of the training course; (iii) holds a ServSafe® Food Protection Manager Certification from the American National Standards Institute Conference for Food Protection or an equivalent certification relating to food safety from a certifying body that Company approves; and (iv) devotes full-time and attention to supervising the day-to-day operations of the Franchised Restaurant.

S. “Change of Control” means a transaction or series of related transactions that result in the sale of all or substantially all of the assets of the Franchised Restaurant. If Franchisee is a Business Entity, “Change of Control” also means: (i) a transaction or series of related transactions that result in a transfer of 50% or more of the outstanding voting power of Franchisee or Franchisee Affiliate, whether voluntarily or by operation of law or due to a merger or consolidation; (ii) a change in the person identified on the Effective Date as the Primary Owner; or (iii) the right to appoint, or cause

to be appointed, a majority of the directors, officers or managers of the Business Entity.

T. “Competitive Business” means any business that predominately serves menu items denominated as a “Bowl” or produces Japanese rice bowls or similar foods for wholesales or distribution. In determining if a business is a Competitive Business, it is immaterial if the business sells “Bowl” foods in a pre-cooked, fresh, flash frozen or frozen state, or in some other way.

U. “Confidential Information” includes, without limitation, knowledge and information which Franchisee knows, or should reasonably know, Company regards as confidential concerning (i) ingredients, formulas, and food storage and preparation procedures; (ii) Company’s relationships with designated, recommended and approved suppliers; (iii) inventory requirements and control procedures; (iv) pricing, sales, profit performance or other results of operations of any individual ABC Restaurant, including the Franchised Restaurant, or group of ABC Restaurants or the entire chain; (v) demographic data for determining Approved Locations; (vi) strategic growth and competitive strategies; (vii) the design and implementation of marketing initiatives and the results of customer surveys and marketing and promotional programs; (viii) decisions pertaining to Designated Goods/Services; (ix) non-public information pertaining to the ABC Intellectual Property and any proprietary software applications that Company incorporates into the ABC Computer System and requires Franchisee to use to operate the Franchised Restaurant; and (x) in general, business methods, ideas, trade secrets, specifications, customer and supplier data, plans, cost data, procedures, information systems and knowledge about the operation of ABC Restaurants or the ABC System, whether the knowledge or information is now known or exists or is acquired or created in the future, patentable, included in the Confidential Manual, or Company expressly designates the information as confidential. Confidential Information does not include (x) information that Franchisee can demonstrate lawfully came to its attention independent of entering into this Agreement and not as a result of Franchisee’s wrongful disclosure (whether or not deliberate or inadvertent), or (y) information that Company agrees is, or has become, generally known in the public domain.

V. “Confidential Manual” refers collectively to all volumes of the confidential operating manuals, recipe manuals, training and operations guides, documentation for any proprietary point of sale or other ABC Computer System the use of which Company licenses to Franchisee, and other written instructions given to Franchisee by Company in confidence during the Term, which may be memorialized in written or electronic format and modified periodically to reflect changes in the ABC System.

W. “Covered Person” means (i) the individual executing this Agreement as Franchisee; (ii) each officer, director, shareholder, member, manager, trustee or general partner of Franchisee and each Franchisee Affiliate if Franchisee is a Business Entity; and (iii) the spouse, adult children, parents or siblings of the individuals included in (i) and (ii). Covered Person shall mean an individual who falls within the identified categories whether on the Effective Date or later during the Term of this Agreement.

X. “Designated Goods/Services” collectively refers to all of the ingredients, sauces, food products, beverages, supplies, equipment, collateral logo merchandise, services to support the build-out of the Franchised Restaurant, and any other goods or services for which Company designates a mandatory supplier. Designated Goods/Services typically fall into these categories: (i)

goods or services that Company regards as proprietary because they are produced or fabricated to Company's specifications; (ii) goods or services that Franchisee must use or sell in operating the Franchised Restaurant that display the ABC Licensed Marks whether or not the goods or services proprietary; and (iii) goods or services that are only available from a designated, exclusive supplier with whom Company has entered into a purchasing arrangement providing special purchasing terms for ABC Restaurants in the geographic region serviced by the supplier.

Y. "Effective Date of Expiration of this Agreement" is the last day of the Term.

Z. "Effective Date of Termination of this Agreement" means one of the following depending on the particular circumstances: (i) with respect to an event of default that this Agreement identifies is not curable, the date when a party is deemed to receive written notice of default and termination or the later effective date specified by the non-breaching party in the written notice as the effective date of termination; (ii) with respect to an event of default that this Agreement identifies is curable, the date on or after the end of a cure period that is specified by the non-breaching party as the effective date of termination; (iii) the date of termination of the Sublease, or (iv) the closing date of an Event of Transfer.

AA. "Effective Date of Termination or Expiration of this Agreement" means either the Effective Date of Termination of this Agreement or the Effective Date of Expiration of this Agreement as the context requires.

BB. "Event of Transfer" means any actual or attempted transaction or series of related transactions that, directly or indirectly, voluntarily or by operation of law that results or, if completed would result, in (i) the sale, assignment, transfer, pledge, gift, encumbrance or alienation of any interest in this Agreement or the right to use the ABC System or any portion or components; (ii) the offer to sell or sale of securities of a Franchisee that is a Business Entity pursuant to a transaction subject to registration under federal or state securities laws or by private placement pursuant to a written offering memorandum; or (iii) a Change of Control. For purposes of illustration, an Event of Transfer includes, without limitation: (a) an order dissolving the marriage of a Franchisee that is an individual; (b) the issuance of additional equity or voting interests of a Business Entity resulting in a Change of Control; (c) a financial restructuring or recapitalization that is secured by a sufficient number of equity or voting interests of a Business Entity such that, if foreclosed upon, would result in a Change of Control; or (d) the death or Incapacity of Franchisee if an individual or any person owning enough equity or voting interests of a Business Entity to result in a Change of Control.

CC. "Force Majeure" includes, without limitation, an event caused by or resulting from an act of God, labor issues, failure of suppliers or other industrial disturbance, war (declared or undeclared), riot, epidemic, fire or other catastrophe, epidemic or quarantine restrictions, material shortages or rationing, act of any government, and any other similar cause that is not within the control of the party whose performance is required.

DD. "Franchise Disclosure Document" means the Franchise Disclosure Document that Franchisee acknowledges that it received before executing this Agreement or paying any consideration to Company or Company's Affiliates for the award of franchise rights.

EE. “Franchised Restaurant” means the particular ABC Restaurant which Company authorizes Franchisee to operate under this Agreement at the Approved Location.

FF. “Grand Opening Marketing” means Local Advertising the primary purpose of which is to publicize the opening of the Franchised Restaurant and develop consumer awareness of the Licensed Marks.

GG. “Gross Sales” means the aggregate of all revenue and income from operating the Franchised Restaurant, whether payment is in cash or by credit card, gift cards or other generally accepted form of payment. Gross Sales includes the actual proceeds received from all sales of food, beverages or other goods, merchandise or services of any kind. Gross Sales exclude: (i) sales taxes and other taxes separately stated, if any, collected from customers and paid to taxing authorities; (ii) refunds and credits made in good faith to arms’ length customers; (iii) the amount of any checks dishonored or returned and the amount of any charge backs or reversals of credit card transactions with customers; (iv) proceeds from the sale of authorized gift cards to customers; (v) proceeds from isolated sales of trade fixtures having no material effect on ongoing operations; (vi) employee tips; and (vii) the value of meals furnished to employees at no cost. Gross Sales include, without limitation: (a) revenue received from employees for meals furnished to employees at a discount; (b) the value of goods and services bought by customers by redeeming authorized gift cards; and (c) the proceeds from any business interruption insurance.

HH. “Incapacity” is the inability due to medical reasons to devote full time and attention to duties of a Certified Manager due to a cause that continues for at least 120 days in the aggregate during any rolling 12 Calendar Month period during the Term, based upon the examination and findings of a physician selected by a hospital located within 20 miles of the Approved Location, as selected by Company. A period of Incapacity shall continue without interruption unless and until the person suffering the Incapacity resumes his or her duties on a full time basis for 30 consecutive days.

II. “Initial Training Program” means the training program that Company provides to a franchisee before the Opening Date of the franchisee’s ABC Restaurant which on the Effective Date consists of separate modules identified as (i) Owner Orientation; (ii) Certified Manager training; and (iii) New Restaurant Opening, as Company may revise the Initial Training Program at any time.

JJ. “Internet” means the global system of interconnected computer networks that utilize standard communication protocols, and any successor technology, whether now existing or developed after the Effective Date, accessible by the general public and other types of users linked by a broad array of electronic, wireless and optical networking technologies and that enables the general public, among other things, to obtain information and purchase goods or services from commercial, merchant-controlled websites.

KK. “Lease” means the written agreement by and between Franchisee and the owner of the business premises identified in this Agreement as the Approved Location that grants Franchisee the right to occupy and use the Approved Location for the operation of an ABC Restaurant.

LL. “Local Advertising” means, without limitation, all communications in all formats which Franchisee creates or adapts and intends to use, directly or indirectly, to advertise and promote

the Franchised Restaurant, Franchisee's status as an authorized franchisee, or which display the ABC Licensed Marks. Local Advertising includes, without limitation: (i) written, printed and electronic communications; (ii) communications sent by email or equivalent electronic technology; (iii) communications by means of a recorded telephone message, spoken on radio, television or similar communication media; (iv) promotional items or promotional or publicity events; (v) listings in approved telephone or business directories; (vi) the use of the ABC Licensed Marks on stationery, business cards, order forms, signs, merchandise, brochures, flyers, outdoor billboards and other forms of outdoor advertising, point-of-sale materials, uniforms, and other tangible personal property; and (vii) the use of the ABC Licensed Marks on any Internet website including content that Franchisee wishes to place on the web page that Company provides to Franchisee on Company's Internet website to promote the Franchised Restaurant.

MM. "Local Advertising Obligation" is an amount equal to 3% of the aggregate Gross Sales of the Franchised Restaurant.

NN. "Local Law" means the specific Applicable Law in the state where the Approved Location is located.

OO. "Non-Designated Goods/Services" refer collectively to all goods, services, merchandise, supplies or property which Franchisee may, or must, use, offer, sell or promote in operating the Franchised Restaurant that are not Designated Goods/Services.

PP. "Opening Date" is the date on which the Franchised Restaurant actually opens for business to the public.

QQ. "Personal Guarantor" refers to any person who owns or at any time during the Term acquires either legally or beneficially 25% or more of the outstanding equity or voting interests of a Franchisee that is a Business Entity.

RR. "Primary Owner" refers to any person who owns or at any time during the Term acquires either legally or beneficially 25% or more of the outstanding equity or voting interests of a Franchisee that is a Business Entity.

SS. "Protected Area" is the area identified on Exhibit A.

TT. "Provisional Remedies" mean any form of interim relief, including, without limitation, requests for temporary restraining orders, preliminary injunctions, writs of attachment, appointment of a receiver, for claim and delivery, or any other orders which a court may issue when deemed necessary in its sole discretion to preserve the status quo or prevent irreparable injury, including the claim of either party for injunctive relief to preserve the status quo.

UU. "Public or Private Offering" is an Event of Transfer that involves the offer of a Controlling Interest of Franchisee's shares to the public pursuant to an offering memorandum, registration statement or comparable documents.

VV. "Qualified Transfer" means (i) if Franchisee is an individual, the transfer by Franchisee of all of his or her rights under this Agreement to a newly-formed Business Entity if all of the equity

or voting interests of the new Business Entity will be owned by the person or persons identified as the Franchisee on the Effective Date; or (ii) If Franchisee is a Business Entity, the sale, assignment, transfer, pledge, donation, encumbrance or other alienation of equity or voting interests not resulting in a Change of Control.

WW. "Term" is the 10 year period starting on the Effective Date and expiring without notice at the close of business at the end of 10 years unless soon terminated pursuant to the procedures stated in this Agreement.

XX. "Wholesale Sales" means the direct or indirect sale of ingredients, Designated Goods/ Services or Non-Designated Goods/Services in association with the ABC Licensed Marks under circumstances where Franchisee knows, or after inquiry should reasonably suspect, the buyer is making the purchase with the intention of engaging in the further distribution and sale of the items to retail or wholesale customers through any trade method or distribution and to end-user customers for their consumption.

## II. Grant

### A. Award of Rights.

1. Company hereby awards to Franchisee, and Franchisee accepts, the non-exclusive right and license to use the ABC System in connection with the operation of one ABC Restaurant at the Approved Location subject to the terms and conditions of this Agreement. Franchisee may not relocate the Franchised Restaurant except in accordance with this Agreement.

The "grant" is the award of the franchise license. The license is different than territorial protection, which is covered elsewhere. The license to use the ABC System is considered non-exclusive because the franchisor will award licenses to others to also use the ABC System.

2. As a condition of the award of franchise rights, concurrently with the execution of this Agreement, Franchisee shall execute the form of Collateral Assignment of Telephone Numbers, Addresses, Listings and Assumed or Fictitious Business Name attached to this Agreement as Exhibit E.

3. In accepting the award of rights, Franchisee agrees at all times to faithfully, honestly and diligently perform its obligations under this Agreement and to continuously exert its best efforts to maximize Gross Sales of the Franchised Restaurant and promote and enhance the Franchised Restaurant and the reputation and goodwill associated with the ABC System.

### B. Limitations.

1. Company grants Franchisee no rights other than the rights expressly stated in this Agreement. Franchisee's use of the ABC System for any purpose, or in any manner, not permitted by this Agreement shall constitute a breach of this Agreement.

2. Nothing in this Agreement gives Franchisee the right to sublicense the use of the ABC System, or any portion or component thereof, to others.

3. Nothing in this Agreement gives Franchisee an interest in Company or the right to participate in Company's business activities, investment or corporate opportunities.
4. Nothing in this Agreement gives Franchisee any rights in or to any ABC Intellectual Property, other than the limited license expressly granted herein.
5. Nothing in this Agreement awards Franchisee any express or implied preferential right of any kind to acquire an additional franchise to operate another ABC Restaurant. Nothing in this Agreement gives Franchisee the right to object to Company's award of franchises to others regardless of how close the location may be located to the Approved Location.
6. This Agreement authorizes Franchisee to engage only in the sale of authorized goods and services to customers who complete transactions at the Approved Location with the exception that if Company authorizes delivery and catering services, Franchisee may engage in delivery and catering services, but only in accordance with the specific conditions imposed by Company for delivery and catering services. Nothing in this Agreement gives Franchisee the right to engage in Wholesale Sales of any kind or in any trade channel including, without limitation, from any Internet website or by mail order, catalog sales or comparable methods.

C. Improvements; Duty to Conform to Modifications.

See discussion in Guides – Section 22.8.

1. Any improvements, modifications or additions which Company makes to the ABC System, or which become associated with the ABC System, including, without limitation, ideas suggested or initiated by Franchisee, shall inure to the benefit, and become the exclusive property, of Company. Franchisee hereby assigns to Company or its designee all intellectual property rights, including, without limitation, all copyrights, patent or other intellectual property rights, in and to any improvements or works which Franchisee may create, acquire or obtain in operating the Franchised Restaurant. Franchisee agrees that Company may use, and authorize others to use, improvements which Franchisee suggests, initiates or originates without compensation to Franchisee and without Franchisee's permission. Franchisee understands and agrees that nothing in this Agreement shall constitute or be construed as Company's consent or permission to Franchisee to modify the ABC System or any portion or component thereof. Any modification which Franchisee desires to propose or make to the ABC System shall require Company's prior written consent.
2. Franchisee may provide suggestions, comments or other feedback (collectively, "Feedback") to Company with respect to the ABC System. Feedback is voluntary. Franchisee agrees that Company may use Feedback for any purpose without liability or compensation to Franchisee or obligation of any kind and hereby grants Company an irrevocable, non-exclusive, perpetual, fully-paid-up, royalty-free, world-wide license to use the Feedback in connection with any business activities conducted by Company or Company's Affiliates, including, without limitation, to make improvements to the ABC System.
3. Any goodwill resulting from Franchisee's use of the ABC System shall inure to the exclusive benefit of Company. This Agreement confers no goodwill or other interest in the ABC System upon Franchisee, except a license to use the ABC System during the Term subject to the terms and conditions stated in this Agreement. This provision shall not be construed to prevent Franchisee from



receiving the proceeds on the sale of the Franchised Restaurant if the sale is conducted in compliance with the requirements of this Agreement applicable to an Event of Transfer.

4. Franchisee understands and agrees that Company may modify the ABC System and any of its components from time to time in its sole discretion as often, and in the manner, that Company believes, in its sole discretion, is necessary to best promote ABC Restaurants, as a chain, to the public. Company shall give Franchisee written notice of all changes either by supplements to the Confidential Manual, in writing or electrically, or otherwise. Franchisee shall, at its own cost and expense, promptly adopt and use only those parts of the ABC System specified by Company and shall promptly discontinue the use of those parts of the ABC System which Company directs are to be discontinued. Franchisee shall not change, modify or alter the ABC System in any way, except as Company directs.

5. Franchisee recognizes that changes modifications that Company may make to the ABC System may necessitate that Franchisee make capital expenditures during the Term in amounts that Company cannot forecast. Nothing in this Agreement limits the frequency or cost of future changes to the ABC System that Company may require. Franchisee understands and agrees that Company has no ability to identify with specificity the nature of these future general improvements or their expected cost and accepts the risk that future general improvements may be imposed that will require significant capital expenditures in an amount that is unknown on the Effective Date and that cannot be fully amortized over the period of time then remaining in the Term.

D. Deviations from the ABC System. Company may allow other franchisees and licensees to deviate from the ABC System in individual cases in the exercise of Company's sole discretion. Franchisee understands and agrees that it has no right to object to any variances that Company may allow to itself, Company's Affiliates or other franchisees or licensees, and has no claim against Company for not enforcing the standards of the ABC System uniformly. Franchisee understands and agrees that Company has no obligation to waive, make any exceptions to, or permit Franchisee to deviate from, the uniform standards of the ABC System. Any exception or deviation that Company does allow Franchisee must be stated in writing and executed by Company in order to be enforceable against Company.

### **III. Protected Territory And Reserved Rights**

A. Protected Area.

1. Except as otherwise provided in this Section, Company agrees not to open or operate, or grant others, including, without limitation, Company's Affiliates or unrelated persons, the right to open or operate, an ABC Restaurant identified by the ABC Licensed Marks anywhere in the Protected Area shown or described on Exhibit A.

2. Nothing in this Agreement gives Franchisee the right to object to Company's award of franchises to others for locations outside the Protected Area regardless of how close it may be located to the boundaries of the Protected Area.

3. The Protected Area excludes all of the following types of properties that now, or in the future, are in the Protected Area:

a. Any Captive Venue in the Protected Area.

b. Any restaurant properties in the Protected Area that Company acquires as part of, and contemporaneous with, the acquisition of a chain of at least 3 or more restaurants regardless of their location (whether within or outside of the Protected Area) if, at the time of the acquisition, all restaurants in the chain do business under a trade name other than the ABC Licensed Marks. Following the acquisition, Company may convert any or all of the restaurant properties in the Protected Area to an ABC Restaurant or permit any of Company's Affiliates, the then-current owner or any other third party to operate the restaurant properties as an ABC Restaurant under a franchise license from Company.

4. Franchisee understands and agrees that the significance of designating a Protected Area is solely to indicate the geographic area within which Company will not open or operate, or grant others the right to open or operate, an ABC Restaurant except as expressly permitted under the exclusions and reserved rights set forth in this Section. The designation of a Protected Area does not give Franchisee any superior right (i) to sell authorized goods or services to persons who reside or work in the Protected Area, or (ii) to market or advertise its ABC Restaurant in media that circulates, broadcasts or otherwise is directed to or accessible by persons in the Protected Area. Furthermore, Franchisee understands that its rights to use the ABC System in the Protected Area are non-exclusive.

B. Company's Reserved Rights.

1. In addition to the properties excluded from Franchisee's Protected Area, Company reserves the right to engage in any and all activities in the Protected Area except opening or operating, or granting others, including, without limitation, Company's Affiliates or unrelated persons, the right to open or operate, an ABC Restaurant identified by the ABC Licensed Marks.

2. Company's reserved rights extend to any retail or wholesale channel of distribution, whether the channel now exists or is developed in the future including the right to engage in Wholesale Sales. Without limiting the scope of Company's reserved rights in the Protected Area, Company, on behalf of itself, Company's Affiliates and its or their other franchisees or licensees, may directly or indirectly, engage in any of the following activities in the Protected Area without prior notice or compensation to, or consent of, Franchisee:

a. Offer and sell any items that are now, or in the future, identified as Designated Goods/ Services through any retail or wholesale channel of distribution, including, without limitation, from (i) an Internet site, mail order catalogue, direct mail advertising; or (ii) any type of grocery, specialty, supermarkets and other type of food service businesses or other retail stores of any kind.

b. Open and operate any other type of restaurant or food service business in the Protected Area as long as the restaurant or food service business (i) operates under a name dissimilar to the ABC Licensed Marks, and (ii) does not predominately feature "Bowl" style menu items.

3. Company reserves the right to use all, or parts, of the ABC System and to exploit the ABC Licensed Marks in any manner, method or channel of distribution without prior notice or compensation to, or consent of, Franchisee. Without limiting the foregoing, Company, on behalf of itself,

Company's Affiliates and its or their other franchisees or licensees, may directly or indirectly, offer and sell any menu items through any retail or wholesale channel of distribution, including from any Internet website, mail order catalog, direct mail advertising, or from supermarkets and other food service businesses.

#### IV. Approved Location

##### A. Selection of Approved Location.

1. If Franchisee owns or leases an existing retail location which Company has determined meets its demographic requirements and the landlord is willing to execute Company's form of Addendum to Lease, the parties shall mutually indicate the Approved Location's street address and the boundaries of the Protected Area on Exhibit A and execute Exhibit A at the same time they execute this Agreement, in which case the balance of this subsection A. shall not apply to Franchisee.

2. If the parties have not identified the Approved Location on or before the Effective Date, Franchisee shall be responsible for evaluating potential sites and selecting the Approved Location, subject to Company's approval, pursuant to the procedures stated in this Section. Following Company's written approval of Franchisee's proposed site as the Approved Location, the parties shall amend this Agreement to set forth the Approved Location's street address and the boundaries of the Protected Area on Exhibit A.

3. The fact that Company may, in its sole discretion, offer Franchisee advice, recommendations or site location services of any kind shall not constitute an admission on Company's part that it is responsible for identifying potential sites, and Franchisee understands that site selection is Franchisee's sole responsibility, subject to Company's right to approve the site. Consistent with Franchisee's responsibility for site selection, Franchisee is solely responsible for investigating and complying with Applicable Law concerning development, occupancy and use of the Approved Location and evaluating the suitability of a site as an ABC Restaurant.

4. To assist Franchisee with site selection, Company shall provide Franchisee, without charge, with its current written site selection criteria and a set of current prototype plans and specifications for the construction, layout, design, appearance, trade dress elements, and leasehold improvements of a typical ABC Restaurant. Franchisee understands that Company's prototype plans and specifications may not reflect the requirements of Applicable Law governing public accommodations for persons with disabilities or similar rules, zoning restrictions, building codes, permit requirements or applicable Lease restrictions. Franchisee is solely responsible for investigating and complying with all matters pertaining to Applicable Law at Franchisee's sole expense.

a. To obtain Company's approval of a proposed site, Franchisee shall submit a written site proposal to Company, in the form indicated in the Confidential Manual. Franchisee's site proposal shall be accompanied by a letter of intent or other evidence satisfactory to Company which con-

This Franchise Agreement covers site selection duties and assumes that, in most cases, the Approved Location will be identified after the Franchise Agreement is signed. When the franchisor approves the site proposed by the franchisee, the parties would execute Exhibit A. If the parties know the Approved Location when they sign the Franchise Agreement, they would complete Exhibit A at the same time that they sign the Franchise Agreement. The ABC franchise program does not use a separate site agreement. See discussion in Guides – Section 20.1.

firmly the willingness of the owner or master tenant of the Approved Location to offer Franchisee a Lease and to execute an Addendum to Lease in the form required by Company. Company may condition site approval on its review and approval of the Lease which Franchisee proposes to enter into with the landlord of the proposed site.

b. Following receipt of Franchisee's written site proposal, Company may, in its sole discretion and at its sole expense, make an on-site visit to the proposed site at Company's expense if Company reasonably believes that physical inspection of the demographic conditions of the area, or the proposed site, is necessary or desirable to evaluate Franchisee's proposal. Franchisee understands and agrees that the on-site visit is at Company's option and not required by this Agreement.

c. Company shall have 30 days following receipt of Franchisee's completed site proposal to make any site visit that it chooses to make and approve or disapprove the proposed site by giving written notice to Franchisee (the "Site Approval Notice"). Franchisee may request site approval for more than one site; but it shall not extend the time period for obtaining site approval. If Franchisee proposes more than one site, Company need only approve one site, or it may disapprove all proposed sites. Company's failure to give timely notice of approval shall constitute Company's disapproval of all sites proposed by Franchisee. Company's approval of a site signifies only that the site meets Company's current site criteria. Company's approval of a site does not certify that Franchisee's development, use or occupancy of the site as an ABC Restaurant will conform to Applicable Law or guaranty or warrant that operation of an ABC Restaurant at the site will be successful or profitable. Company is not responsible if the site fails to meet Franchisee's or Company's expectations.

5. Following Company's written approval of Franchisee's proposed site as the Approved Location, the parties shall amend this Agreement to set forth the Approved Location's street address and the boundaries of the Protected Area on Exhibit A.

6. The parties' failure to execute Exhibit A shall not invalidate this Agreement, Company's site approval or the designation of the Protected Area.

B. Lease and Addendum to Lease. Promptly following the parties' execution of Exhibit A, Franchisee shall execute a Lease and Addendum to Lease with the landlord of the Approved Location and deliver to Company a copy of the fully-executed Lease and Addendum to Lease.

See discussion in Guides of the collateral lease assignment, which would be a separate contract that is included as an exhibit to the FDD – Section 20.2 and Section 22.5.

C. Termination (Applicable only if Franchisee and Company Have Not Executed an Area Development Agreement). If Franchisee and Company are not parties to an Area Development Agreement, Company may terminate this Agreement if Franchisee fails to (i) obtain Company's written site approval, (ii) deliver a copy of the executed Lease and Addendum to Lease to Company; and (iii) execute Exhibit A to identify the address of the Approved Location within 120 days after the Effective Date. If Company elects to terminate, Company will refund 80% of the Initial Franchise Fee that Franchisee has paid to Company upon Franchisee's delivery of an executed general release, in form satisfactory to Company, of any and all claims against Company, Company's Affiliates and their respective officers, directors,

shareholders, employees and agents. However, if Franchisee and Company are parties to an Area Development Agreement, in lieu of this provision, the parties are bound by the requirements in Section V of this Agreement and the Area Development Agreement.

D. Relocation.

1. If (i) the Lease expires or terminates for reasons other than Franchisee's breach; (ii) the Approved Location or building in which the Franchised Restaurant is located is destroyed, condemned or otherwise rendered unusable; or (iii) the parties' mutually believe that relocation will increase the business potential of the franchise, Franchisee shall relocate the Franchised Restaurant, at Franchisee's sole expense, to a new location selected by Franchisee, and approved by Company, in accordance with Company's then-current site selection procedures as specified in the Confidential Manual. Company shall indicate its approval of the new site by executing a new Site Approval Notice. The parties shall amend Exhibit A to reflect the address of the new Approved Location.

2. As a condition of approving Franchisee's request to relocate the Franchised Restaurant, Company may require Franchisee to conduct Grand Opening Marketing to publicize the new Approved Location's opening to the public. All of the terms and conditions in this Agreement pertaining to Grand Opening Marketing activities conducted at the original Approved Location in conjunction with the original Opening Date shall apply to Grand Opening Marketing activities at the new Approved Location including Franchisee's obligations to spend no less than the minimum amount on Grand Opening Marketing set forth in this Agreement.

3. At Franchisee's sole expense, Franchisee shall construct and develop the new premises to conform to Company's then-current specifications for design, appearance, trade dress elements, equipment, layout, and leasehold improvements for new ABC Restaurants, and remove any signs, trade dress, kitchen and other equipment, and similar property from the original Approved Location which identified the original Approved Location as belonging to the ABC System. All of the terms and conditions in this Agreement regarding the process for preparing and approving Franchisee's Design Plans for the original Approved Location shall apply equally to the new Approved Location.

4. Franchisee shall use its best efforts to complete relocation without any interruption in the continuous operation of the Franchised Restaurant unless Company's prior written consent is obtained. As a condition to consenting to a disruption in operations, Company may impose maximum time periods, which shall be reasonable under the circumstances compelling relocation, in which Franchisee must (i) obtain Company's site selection approval for the new Approved Location; and (ii) complete construction and development of the new Approved Location as expediently as reasonably possible in accordance with Company's then-current specifications. Franchisee understands that if Company consents to a disruption in operations and operations temporarily cease, the Term of this Agreement shall not be extended and Franchisee shall remain liable to pay Royalty Fees, Promotional Fees, and any Co-op Advertising Fee in amounts equal to the average amounts paid by Franchisee during the 4 complete Calendar Quarters immediately preceding the date that operations cease or the shorter period that Franchisee has been in business at the original Approved Location. Franchisee's failure to accept or abide by the relocation requirements shall constitute a material breach of this Agreement and grounds for termination.

## V. Area Development Agreement – Specific Provisions Applicable Only If Company And Franchisees Are Parties To An Area Development Agreement

In the ABC franchise program, the franchisor, ABC, uses the same form of franchise agreement for all units. See discussion in Guides – Section 21.6.

A. Application. The provisions in this Section only apply to the parties if they are parties to an Area Development Agreement and this Agreement is executed by them pursuant to the Area Development Agreement. Except as provided in this Section, all other provisions in this Agreement shall apply to the parties.

B. Procedures for Selection of the Approved Location, Delivery of the Executed Lease. The provisions in the Area Development Agreement pertaining to selection of the Approved Location and delivery of the executed Lease and Addendum to Lease shall apply to the parties in place of the provisions in this Agreement addressing those subjects.

C. Termination Conditions Related to Site Approval, Delivery of the Executed Lease and Addendum to Lease and the Opening Date. The provisions of this Agreement establishing deadlines on Franchisee to (i) obtain Company’s written site approval and to deliver a copy of the executed Lease and Addendum to Lease to Company within 120 days after the Effective Date; and (ii) use best efforts to open the Franchised Restaurant for business within 120 days after the date on which Franchisee signs the Lease for the Approved Location shall not apply to Franchisee when Franchisee and Company are parties to an Area Development Agreement. Instead, the Opening Date for the Franchised Restaurant shall be no later than the specific Development Deadline applicable to the Franchised Restaurant according to the order in which the Franchised Restaurant is developed out of the entire Development Quota specified in the Area Development Agreement. Developer is solely responsible for planning its site evaluation, lease negotiation, permitting and other development activities to allow sufficient time to complete the entire site approval, document execution and build-out process and open the Franchised Restaurant by no later than the applicable Development Deadline in the Area Development Agreement.

## VI. Term And Renewal

See discussion in Guides – Section 22.1.

A. Term. This Agreement shall begin on the Effective Date and shall expire without notice 10 years from the Effective Date, unless this Agreement is sooner terminated.

B. Renewal Term. Franchisee shall have an option to renew the franchise for two additional terms of 5 years each (each 5-year period is referred to as a “Renewal Term” and each option to renew is referred to as a “Renewal Option”). Franchisee understands that each Renewal Option is subject to the condition that Company must be awarding new ABC Restaurant franchises in the United States at the time when Franchisee is permitted to exercise the Renewal Option. To exercise each Renewal Option, Franchisee must furthermore comply the following conditions:

1. Franchisee must give Company written notice of Franchisee’s election to renew (the “Renewal Notice”) at least 9 Calendar Months, but not more than 12 Calendar Months, before the end of the Term or the first Renewal Term, as applicable. The Renewal Option shall be cancelled if Franchisee does not timely and effectively exercise the Renewal Option.

2. The Renewal Notice must each be accompanied by a non-refundable renewal fee (“Renewal Fee”) equal to 20% of the Initial Franchise Fee that Company is then charging to franchisees purchasing their first franchise awarding the right to operate one ABC Restaurant in the state where the Franchised Restaurant is located.

3. Franchisee must not be in default under this Agreement or any successor Franchise Agreement at the time it gives the Renewal Notice or on the first day of the Renewal Term. Further, Franchisee must not have received more than 3 notices of default during any 24 Calendar Month period during the Term or the first Renewal Term, as applicable, whether or not the notices relate to the same or to different defaults, and whether or not the defaults have each been timely cured by Franchisee.

4. To exercise each Renewal Option, Franchisee shall execute Company’s then-current form of Franchise Agreement for a 5 year term, which Franchise Agreement shall supersede this Agreement or any successor Franchise Agreement in all respects except as follows: (i) Franchisee shall not have the renewal rights set forth in any successor Franchise Agreement, but shall instead have the Renewal Options set forth in this Agreement; (ii) Franchisee shall not be required to pay the Initial Franchise Fee stated in any successor Franchise Agreement, but shall instead pay the Renewal Fee; and (iii) Franchisee shall not be required to participate in the Initial Training Programs described in any successor Franchise Agreement then offered by Company to new franchisees, but shall comply with the renewal training requirements set forth in this Agreement. Franchisee understands that any successor Franchise Agreement may be materially different than this Agreement, including, without limitation, requiring payment of additional or different fees to Company.

5. Franchisee shall satisfy Company’s then-current training requirements, if any, for renewing franchisees. Company may require that Franchisee pay a training fee to complete mandatory training in connection with exercising a Renewal Option in an amount equal to the training fee that Company then charges other franchisees who execute a renewal Franchise Agreement contemporaneously.

6. Franchisee shall conform the Franchised Restaurant to Company’s then-current design, appearance, trade dress elements, layout, equipment, leasehold improvements, imaging requirements, signs, and accounting and recordkeeping systems that apply to new ABC Restaurants, including, without limitation, making upgrades to the ABC Computer System to the extent any areas do not meet Company’s then-current requirements.

7. Franchisee shall execute and deliver a general release, in form satisfactory to Company, of any and all claims against Company, Company’s Affiliates and their respective officers, directors, shareholders, employees and agents.

C. Ineffective Exercise of Renewal Option. Franchisee’s failure to execute and deliver the renewal Franchise Agreement and release required by this Section within 30 days after Company delivers them to Franchisee for execution shall be deemed an election by Franchisee not to exercise the Renewal Option. If Franchisee fails to satisfy any renewal condition in a timely manner, this Agreement will expire on the last day of the Term without further notice from Company; provided, however, Franchisee shall remain obligated to comply with all provisions of this Agreement

which expressly, or by their nature, survive the expiration or termination of this Agreement.

D. Extension. If Company is in the process of revising, amending or renewing its franchise disclosure documents or registration to sell franchises in the state where the Franchised Restaurant is located, or under Applicable Law cannot lawfully offer Franchisee its then-current form of Franchise Agreement at the time Franchisee delivers the Renewal Notice, Company may, in its sole discretion, offer to extend the terms and conditions of this Agreement on a Calendar Month-to-Calendar Month basis following the expiration of the Term (or the first Renewal term, as applicable) for a maximum period of 12 months from the expiration date so that Company may lawfully offer its then-current form of Franchise Agreement. If (i) Company is granting new franchises for new ABC Restaurants in the United States at the time when Franchisee is permitted to exercise the Renewal Option, and (ii) Franchisee has otherwise satisfied the conditions for renewal and is in compliance with the provisions of this Agreement, and if, after 12 months, Company still cannot lawfully offer its then-current form of Franchise Agreement, the parties shall be deemed to have extended this Agreement for the remainder of the then-current Renewal Term. Nothing in this Section shall require Company to extend this Agreement if, at the time Franchisee delivers the Renewal Notice Franchisee is in material default under this Agreement.

## VII. Approved Location Development And Opening Date

See discussion in Guides – Section 22.6.

### A. Franchisee's Construction Drawings.

1. Following the Effective Date, Company shall provide Franchisee with one set of Company's prototype plans and specifications for the design, appearance, trade dress elements, equipment, layout and leasehold improvements of ABC Restaurants, which Franchisee shall use to evaluate potential sites for the Approved Location. Franchisee understands that Company's prototype plans and specifications may not reflect the requirements of Applicable Law governing public accommodations for persons with disabilities or similar rules, zoning restrictions, building codes, permit requirements or applicable Lease restrictions.

2. At Franchisee's sole expense, Franchisee shall retain competent architectural, design and contracting services to prepare design and construction plans ("Franchisee's Construction Drawings") that adapt Company's prototype plans and specifications to the specific dimensions, square footage and conditions of the Approved Location and to the requirements of the Lease and Applicable Law. Before engaging an architect, designer or contractor, Franchisee shall submit to Company the name and supporting credentials of each person that Franchisee desires to retain to demonstrate the individual's or firm's overall reputation and credentials for workmanship, timeliness of performance, financial solvency and experience with retail construction. Company shall have 15 days after receiving all supporting information in which to indicate its decision. Company's failure to respond within 15 days shall signify its approval. Company's approval of a particular firm or individual is not an endorsement or guaranty of the quality of workmanship, timeliness of completion or any other credential and Company shall have no liability whatsoever for the party's services.

3. At a minimum, Franchisee's Construction Drawings shall address, without limitation, layout, signs, lighting, flooring, mechanical systems, electrical systems, plumbing, carpentry, wall coverings, ceiling treatments, exhaust/ventilation systems, customer seating, preparation and storage areas, general trade dress components and other improvements that Franchisee intends



to make or install, together with such other information as may be specified in the Confidential Manual. Franchisee may only use Franchisee's Construction Drawings for purposes of developing the Approved Location as an ABC Restaurant.

4. Franchisee is solely responsible for investigating the requirements of Applicable Law governing public accommodations for persons with disabilities or similar rules, zoning restrictions, building codes, permit requirements or applicable Lease restrictions and conforming Franchisee's Construction Drawings to such requirements.

5. Franchisee shall submit Franchisee's Construction Drawings to Company for approval before Franchisee may begin permitting, construction or development of the Approved Location. In reviewing Franchisee's Construction Drawings, Company agrees not to withhold its approval unreasonably. Company shall have 15 days to review Franchisee's Construction Drawings and notify Franchisee in writing of its rejection or approval of Franchisee's Construction Drawings or its approval subject to specified modifications. Company's failure to give Franchisee timely notice shall constitute Company's disapproval of Franchisee's Construction Drawings as submitted. Company's approval of Franchisee's Construction Drawings, with or without additional conditions, does not certify that Franchisee's development, use or occupancy of the site as an ABC Restaurant pursuant to Franchisee's Construction Drawings as approved will conform to Applicable Law or guaranty or warrant that operation of an ABC Restaurant at the site will be successful or profitable.

B. Development of Approved Location.

1. Franchisee shall cause all construction and other development work to be carried out in compliance with the version of Franchisee's Construction Drawings that Company approves without any material variation. Franchisee shall not make any material changes to the Franchisee's Construction Drawings without first submitting the changes in writing to Company for its approval.

2. Franchisee shall cause all construction and development work to conform with the requirements of the Lease and Applicable Law, including, without limitation, all government and utility permit requirements (such as, for example, zoning, sanitation, building, utility and sign permits). Franchisee shall complete development of the Approved Location diligently, expeditiously and in a first-class manner at Franchisee's sole expense.

3. Franchisee is solely responsible for purchasing, leasing or licensing all of the equipment, fixtures, furniture, trade dress elements, signs, supplies, materials, and decorations required for development and operation of ABC Restaurants from recommended, approved or required sources as directed by Company in the Confidential Manual and this Agreement. Franchisee understands and agrees that Company may designate all, or particular items, of the equipment, fixtures, furniture, trade dress elements, signs, supplies, materials, and decorations as Designated Goods/ Services in which case the items must be purchased from the sources that Company identifies.

4. Franchisee understands and agrees that it is solely responsible for supervising, and for the acts and omissions of, the architect, design and construction personnel that it hires or retains. Franchisee shall obtain all customary contractors' lien waivers for the work performed. The fact that Company may recommend an architect, designer or construction personnel to assist

Franchisee in preparing Franchisee's Construction Drawings or with the performance of actual construction work shall not (i) excuse Franchisee from the duty to obtain Company's approval of Franchisee's Construction Drawings; (ii) constitute an admission on Company's part to responsibility for preparing Franchisee's Construction Drawings; or (iii) make Company liable for design or construction work, delays or defects of any kind.

5. Company shall have no responsibility for any delays in development or opening of the Franchised Restaurant or for any loss resulting from the design of the Approved Location or approval of Franchisee's Construction Drawings. Company shall have access to the Approved Location to inspect the work and performance by Franchisee's construction personnel, but is not obligated to inspect the project periodically during development or upon completion. Franchisee understands and agrees that if Company inspects the work and performance of Franchisee's construction personnel, the inspection is not for purposes of reviewing or certifying that development is in compliance with the Lease or Applicable Law, but solely to evaluate that development conforms with the version of Franchisee's Construction Drawings that Company has approved and otherwise with Company's specifications for design, appearance, trade dress elements, equipment, layout and leasehold improvements.

C. Opening Date.

1. Franchisee shall use its best efforts to open the Approved Location for business to the public within 6-12 months after the Effective Date. Franchisee shall not open the Approved Location for business to the public under the ABC Licensed Marks unless and until Company issues a written completion certificate. The certificate shall signify that Company finds that the Approved Location, as built, substantially conforms to the version of Franchisee's Construction Drawings that Company has approved and that Franchisee has met all other pre-opening requirements including, without limitation: (i) completing the Owner Orientation and Certified Manager's training modules of the Initial Training Program, having at least one person qualify as a Certified Manager; (ii) supplying Company with proof of all required insurance coverage all in accordance with the requirements of this Agreement; and (iii) implementing all of the other mandatory features of the ABC System. Company may require that Franchisee provide Company with photographs and video tapes showing the Approved Location's physical readiness to open for business.

2. Company agrees to use its reasonable best efforts to review Franchisee's Construction Drawings, conduct inspections of the work and performance by Franchisee's personnel, and inspect the Approved Location as built within time frames that will avoid causing an undue delay in Franchisee's ability to open the Franchised Restaurant within 120 days after the Effective Date.

3. If Franchisee believes Company has failed to adequately provide any services required by this Agreement to be performed by Company before or in connection with the Franchised Restaurant's opening, whether in regard to site selection, site development, Initial Training or any other matter affecting the establishment of the Franchised Restaurant, Franchisee shall so notify Company in writing within 60 days following the Opening Date. Absent timely notice to Company, Franchisee shall be deemed to acknowledge conclusively that (i) all required services to be performed by Company before or in connection with the Franchised Restaurant's opening were provided sufficiently and satisfactorily in Franchisee's judgment, and (ii) Franchisee and its officers, directors, shareholders, employees and agents have each waived any claim alleging facts to the contrary.

## VIII. Training

### A. Initial Training Program.

1. After Franchisee executes the Lease for the Approved Location, the parties shall mutually schedule the Owner Orientation and Certified Manager modules of the Initial Training Program so that the Owner Orientation is completed by no later than 4 weeks and the Certified Manager module is completed by no later than 2 weeks before the anticipated Opening Date. Company shall provide the New Restaurant Opening module at the Approved Location during the period immediately before and after the Opening Date. All modules will be for the duration and cover the subjects identified in the Manual.

See discussion in Guides – Section 22.7.

2. Company shall not charge any tuition or training fee in connection with providing the Primary Owner, Certified Manager or New Restaurant Opening modules of the Initial Training Program in connection with the Franchised Restaurant's initial opening regardless of the number of individuals whom Franchisee enrolls in each module. Company may limit enrollment (i) in any module depending on space availability; (ii) in the Owner Orientation module to the individual who is the Franchisee or a Primary Owner of the Franchisee; and (iii) in the Certified Manager Training module to management-level employees of the Franchisee. Company encourages that Franchisee include all of its opening employees in the New Restaurant Opening Module held at the Authorized Location before and in conjunction with the Opening Date.

3. If Franchisee is executing this Agreement in connection with exercising the Renewal Option, in consideration of Franchisee's payment of a renewal fee, Franchisee shall be entitled to participate in any training program that Company then provides for renewing franchisees on the same basis as other franchisees renewing contemporaneously.

4. Franchisee understands and agrees that Company may modify the Initial Training Program at any time without prior notice to Franchisee. Although the Initial Training Program as of the Effective Date consists of separate modules, Company's modifications may involve adding, deleting, shortening or lengthening modules or tracks within modules, changing the location, duration, content or scope of the Initial Training Program, or changing instructors or mandatory training requirements.

### B. Management-Level Employees; Certified Manager Qualifications.

1. All newly hired and replacement personnel whose employment responsibilities include day-to-day management of the Franchised Restaurant shall demonstrate the requisite competency to operate and manage an ABC Restaurant in Company's reasonable business judgment.

2. At all times after the Opening Date, the Franchised Restaurant must be under the direct supervision of at least one Certified Manager. Franchisee's designated Certified Manager may, but need not, be a Primary Owner. Franchisee shall notify Company in writing of the name of the Certified Manager of the Franchised Restaurant (or names of each Certified Manager if Franchisee qualifies more than one person as a Certified Manager of the Franchised Restaurant) and any changes in the identity of the Certified Manager during the Term promptly after they occur.

3. The Confidential Manual sets forth Company's criteria for earning a Certified Manager designation. Company may change the Certified Manager qualification criteria at any time effective upon notice to Franchisee. Company's notice shall specify any additional training or other requirements applicable to new Certified Managers which an existing Certified Manager must complete in order to maintain his or her designation as a Certified Manager. Company shall allow each existing Certified Manager 90 days after the new criteria become effective in which to satisfy the additional training and other requirements without suffering a lapse in their designation as a Certified Manager.

4. The award of a Certified Manager designation does not constitute a warranty, guaranty or endorsement by Company or its Affiliates of the person's skills, performance ability or business acumen. Neither Company nor its Affiliates shall have any responsibility for the operating results of the Franchised Restaurant or the performance of Franchisee's employees or agents.

C. **Additional Training.** After the Opening Date, Franchisee may request permission to enroll additional persons in the Certified Manager training module (or then-current equivalent) or receive additional training and on-site assistance. Franchisee understands and agrees that all additional training shall be at mutually scheduled times, subject to space availability and Company's other training commitments, and that, as a condition to receiving additional training, Franchisee must pay Company's then-current per person training fees stated in the Confidential Manual. In connection with additional instruction provided at the Authorized Location, Franchisee shall also reimburse Company for Company's reasonable travel expenses, including, without limitation, expenses for air and ground transportation, lodging, meals, and miscellaneous travel-related personal charges.

D. **Continuing Training.**

1. After the Opening Date, Company may periodically offer continuing education training programs at one or more designated locations and require attendance by Franchisee, a Primary Owner of a Franchisee that is a Business Entity, a Certified Manager or a particular employee category, such as General Manager; provided, however, Company shall not require that more than 2 persons designated by Company each complete more than 3 days of continuing training during any 12 Calendar Month period. Franchisee shall be solely responsible for covering the personal expenses of its employees attending continuing and additional training programs, including transportation, lodging, food, salary and other personal charges.

2. In connection with any Event of Transfer, the proposed transferee or its Primary Owner must complete Company's then-current Initial Training Program to Company's satisfaction, qualify at least one management-level employee as a Certified Manager. Before Franchisee's payment of the transfer fee require, and pay Company's then-current per person training fee as stated in the Confidential Manual before training begins. The transferee shall be solely responsible for all personal expenses that the transferee and its employees incur in connection with such training, including transportation, lodging, food, salary and other personal charges. Franchisee shall remain responsible for operation and management of the Franchised Restaurant until the transferee qualifies at least one person as a Certified Manager.

E. Additional Provisions.

1. Franchisee understands and agrees that (i) it is solely responsible for all personal expenses that it and its employees incur to attend any of the training program offered by Company whether before or after the Opening Date, including, without limitation, costs for air and ground transportation, lodging, meals, personal expenses and salaries, and (ii) Company will not pay compensation for any services performed by trainees during any training program provided by Company even if, for example and without limitation, the training program requires the Franchisee or its employees to work at an ABC Restaurant owned by Company or Company's Affiliates.

2. Franchisee agrees to allow Company to train persons unaffiliated to Franchisee at the Franchised Restaurant at a time mutually convenient to Franchisee and Company without compensation or reimbursement to Franchisee, for up to 30 days per Calendar Year.

**IX. ABC Intellectual Property**

See discussion in Guides – Section 22.3.

A. Ownership. Company owns all rights in the ABC System and its various components, and Franchisee owns no rights in the ABC System except for the license granted by this Agreement. Franchisee agrees not to contest, or assist any other person to contest, the validity of Company's rights and interest in the ABC System, or any component thereof, either during the Term or after this Agreement terminates or expires.

B. Use of the ABC System.

1. In operating the Franchised Restaurant, Franchisee shall (i) use only the elements of the ABC System designated by Company and only in the manner authorized and permitted by Company; (ii) use the ABC System only in connection with the operation of the Franchised Restaurant and not in connection with other unrelated activities; (iii) display notices of trademark and service mark registrations in the exact manner that Company specifies; (iv) obtain fictitious or assumed name registrations as required by Applicable Law; and (v) prominently post notices to customers, suppliers and others with whom Franchisee deals informing them that Franchisee is the independent owner of the Franchised Restaurant operating under a license from Company.

2. Franchisee shall not use any of the ABC Licensed Marks or any part thereof: (i) in its corporate or legal name (if Franchisee is a Business Entity); (ii) with any prefix, suffix or other modifying words, terms, designs, colors or symbols; (iii) in any modified form; (iv) in connection with the sale of any unauthorized goods or services; (v) in any manner not expressly authorized in writing by Company; or (v) in any manner that may result in Company's liability for Franchisee's debts or obligations.

3. Franchisee shall not cover up, remove or alter any patent, copyright, trademark or other notices that Company requires Franchisee to use to signify Company's ownership of, or rights in, the ABC Intellectual Property.

4. Company reserves the right to: (i) modify or discontinue licensing any of the ABC Intellectual Property or other features of the ABC System; (ii) add new names, marks, designs, logos or commercial symbols to the ABC Licensed Marks and require that Franchisee use them and

remove names, marks, designs, logos or commercial symbols from the ABC Licensed Marks and require that Franchisee discontinue their use within a reasonable time; (iii) modify or discontinue practices, components or requirements incorporated within the scope of the ABC System as of the Effective Date; and (iv) require that Franchisee introduce or observe new practices as part of the ABC System in operating the Franchised Restaurant. Franchisee understands that Company at any time, without notice to Franchisee, may modify the ABC System, in which case, Franchisee shall comply, at Franchisee's sole expense, with Company's directions regarding changes in the ABC System within a reasonable time after written notice from Company. Company shall have no liability to Franchisee for any cost, expense, loss or damage that Franchisee incurs in complying with Company's directions and conforming to required changes to the ABC System.

5. Franchisee understands and agrees that any unauthorized use of the ABC System or its components by Franchisee shall constitute both a breach of this Agreement and an infringement of Company's intellectual property rights.

C. Assignment of Copyrights. Franchisee and Company acknowledge that, during the Term, Company may authorize Franchisee to use certain works, property or business methods in operating the Franchised Restaurant in which Company owns a copyright or patent or owns a license to use a copyrighted work or patented property or methods owned by a third party. These works shall be treated as ABC Intellectual Property for all purposes whether or not the particular work, property, method or materials is the subject of a valid registration. Copyrighted/Patented Works may include, without limitation, the Confidential Manual, advertising and promotional materials supplied by Company, business methods incorporated in the ABC System, and other categories of works eligible for protection under federal trademark, patent or copyright laws that are created by, or for, Company and are designated by Company for use in connection with operating an ABC Restaurant.

1. To the extent Franchisee creates, or arranges to have created for Franchisee's benefit, any improvement or work eligible for protection under federal trademark, patent or copyright laws, Franchisee shall execute, or have the creator execute, all documents necessary to assign all intellectual property and ownership rights in the improvement or work to Company. Franchisee understands and agrees that the consideration for the assignment is the grant of the franchise to Franchisee.

2. Franchisee understands and agrees that nothing in this Agreement shall constitute or be construed as Company's consent to Franchisee modifying, or creating any derivative work based upon, any of the Copyrighted/Patented Works. Franchisee must obtain Company's prior written consent before modifying or creating, directly or indirectly, any type of derivative work based on any Copyrighted/Patented Works

D. Confidential Information. Franchisee acknowledges that Company will disclose Confidential Information to Franchisee throughout the Term in various ways which include, without limitation, by loaning Franchisee a copy of Confidential Manual, providing other written instructions and bulletins, arranging for the supply of Designated Goods/Services, and otherwise through the performance of Company's obligations and the exercise of its rights under this Agreement. Franchisee shall acquire no interest in Confidential Information, other than a license to utilize it in the operation of the Franchised Restaurant subject to the terms of this Agreement.

1. Franchisee's use, publication or duplication of Confidential Information for any purpose not authorized by this Agreement constitutes an unfair method of competition by Franchisee and, additionally, grounds for termination of this Agreement.

2. Franchisee agrees to: (i) confine disclosure of Confidential Information to those of its management, employees and agents who require access in order to perform the functions for which they have been hired or retained; and (ii) observe and implement reasonable procedures prescribed from time to time by Company to prevent the unauthorized or inadvertent use, publication or disclosure of Confidential Information including, without limitation, requiring that any employee with access to Confidential Information, who are not otherwise required to sign a Confidentiality and Non-Competition Agreement, execute Company's current form of Confidentiality and Non-Competition Agreement with Franchisee. Upon request from Company, Franchisee shall deliver to Company a copy of each executed Confidentiality and Non-Competition Agreement for its records. Company may terminate this Agreement if Franchisee, or any person required by this Agreement to execute a Confidentiality and Non-Competition Agreement with Company or Franchisee, breaches the Confidentiality and Non-Competition Agreement. All agreements contained in this Agreement pertaining to Confidential Information shall survive the expiration, termination or Franchisee's assignment of this Agreement.

3. The provisions concerning non-disclosure of Confidential Information shall not apply if disclosure of Confidential Information is legally compelled in a judicial or administrative proceeding if Franchisee has used its best efforts to provide Company a reasonable opportunity to obtain an appropriate protective order or other assurance satisfactory to Company of confidential treatment for the information required to be disclosed.

#### E. Defense of the ABC System.

1. Company shall have the sole right to handle disputes with third parties challenging the rights of Company or Company's Affiliates, or their respective owners, in, or Franchisee's use of, the ABC System or its components.

2. Franchisee shall immediately notify Company in writing if Franchisee receives notice, or is informed, of any: (i) improper use of any of the components of the ABC System; (ii) use by any third party of any mark, design, logo or commercial symbol which, in Franchisee's sole discretion, may be confusingly similar to any of the ABC Licensed Marks; (iii) use by any third party of any business practice which, in Franchisee's sole discretion, unfairly simulates the ABC System in a manner likely to confuse or deceive the public; or (iv) claim, challenge, suit or demand asserted against Franchisee based upon Franchisee's use of any of the components of the ABC System. A legal proceeding, use, demand or threat encompassing the subject matters described in (i), (ii), (iii) and (iv) is collectively referred to as a "Third Party Claim."

3. Company shall have sole discretion to take such action as it deems appropriate, including, without limitation, to take no action, and the sole right to control any legal proceeding or negotiation arising out of a Third Party Claim.

4. Franchisee shall not settle or compromise any Third Party Claim and agrees to be bound by Company's decisions over how to handle a Third Party Claim. Franchisee shall cooperate fully

with Company and execute such documents and perform such actions as may, in Company's sole discretion, be necessary, appropriate or advisable in the defense of a Third Party Claim and to protect and maintain Company's or Company's Affiliates', or their respective owners', rights in, or Franchisee's use of, the ABC System or its components.

5. Except as provided in this Section, Company agrees to defend Franchisee against the Third Party Claim provided Franchisee has notified Company immediately after learning of the Third Party Claim and fully cooperates in the defense of the Third Party Claim. Because Company will defend the third party claim, Franchisee is not entitled to be reimbursed for legal or other professional fees or costs paid to independent legal counsel or others in connection with the matter. Notwithstanding Company's agreement to defend Franchisee under the conditions stated in this Section, Franchisee understands and agrees that Company is not liable to indemnify or reimburse Franchisee for any liability, costs, expenses, damages or losses that Franchisee may sustain as a result of the Third Party Claim, with the exception that Company shall (i) reimburse Franchisee for Franchisee's actual direct costs to change any signs, uniforms or other materials that bear the ABC Licensed Marks or change any property incorporating any other feature of the ABC System that is found to infringe the rights of a third party, and (ii) if a judgment is rendered against Franchisee, indemnify Franchisee for the amount of any damages awarded as part of the judgment. Franchisee shall assign to Company any claims that it may have against the third party asserting the infringement claim. Franchisee, on behalf of itself and its Affiliates hereby waives any claim against Company, Company's Affiliates, and their respective officers, directors, shareholders, employees and agents for lost profits or consequential damages of any kind based on Third Party Claims involving the ABC System. The rights granted to Franchisee under this Section shall be Franchisee's sole and exclusive remedy in the event of any Third Party Claim involving any element of the ABC System.

6. Company's indemnity obligation set forth in this Section shall not extend to any Third Party Claim which is based, directly or indirectly, upon Franchisee's misuse of the ABC System. Furthermore, Company's indemnity obligation set forth in this Section shall not extend to any Third Party Claim which arises out of or relates to: (i) any form of misuse of the ABC System by any of Franchisee's employees, agents, customers or other invitees; (ii) the unauthorized physical entry into the Authorized Location or into the ABC Computer System by a third party if Franchisee has not used due care to implement and enforce customary security measures to prevent unauthorized entry by third parties.

## **X. Confidential Manual**

### **A. Use.**

This provision incorporates the provisions in the separate Confidential Manual so that they are a part of the Franchise Agreement.

1. Franchisee has the limited right to use Company's Confidential Manual during the Term. The Confidential Manual is, and at all times will remain, Company's sole property. Franchisee will cease accessing and, in accordance with Company's instructions, either promptly or destroy or return to Company any physical copies that Franchisee has made of any parts of the Confidential Manual upon expiration or termination of this Agreement or consummation of an Event of Transfer.

2. Franchisee will treat all information contained in the Confidential Manual as confidential, and will use all reasonable efforts to keep the information secret. Without Company's prior



written consent, Franchisee will not copy, duplicate, print, record or otherwise reproduce the Confidential Manual, in whole or in part, or otherwise make them available to any Franchisee employee or other person who is not required to have access to its contents in order to carry out his or her employment functions. To the extent that the Confidential Manual is furnished in a printed “hard” copy rather than electronically, Franchisee shall take adequate precautions to ensure that when the Confidential Manual is not in use by authorized personnel, Franchisee shall keep the Confidential Manual in a locked receptacle at the Approved Location and shall only grant authorized personnel, as defined in the Confidential Manual, access to the key or lock combination of the receptacle.

3. To the extent that the Confidential Manual is furnished in electronically or in an equivalent format, Franchisee shall only share the access password with authorized personnel. Franchisee will not share Franchisee’s password or other login information necessary to access the electronic version of the Confidential Manual or other information on the Company Intranet with employee or other person who is not required to have access to its contents in order to carry out his or her employment functions. Franchisee will furthermore take steps to ensure that Franchisee employees who are entitled to have access to the Confidential Manual do not share their individual passwords or other login information with any other person. If any content is printed, Franchisee will take steps to ensure that the copies are kept in a secure place to prevent their inadvertent disclosure to persons not authorized to have the information.

4. The Confidential Manual contains both mandatory and recommended specifications, standards, procedures, rules and other information pertinent to the ABC System and Franchisee’s obligations under this Agreement. The Confidential Manual, as modified by Company from time to time, is an integral part of this Agreement and all provisions now or hereafter contained in the Confidential Manual or otherwise communicated to Franchisee in writing are expressly incorporated in this Agreement by this reference and made a part hereof. Franchisee shall fully comply with all mandatory requirements now or hereafter included in the Confidential Manual, and understands and agrees that a breach of any mandatory requirement shall constitute a breach of this Agreement and grounds for termination.

B. Updating. Company reserves the right to modify the Confidential Manual from time to time to reflect changes that it may implement in the mandatory and recommended specifications, components, standards and operating procedures of the ABC System. All revisions will be reflected in written or electronic supplements to the Confidential Manual or in other written or electronic communications delivered to Franchisee, and each supplement or communication shall become effective upon receipt or on the later date specified by Company. If updates are provided by “hard” copy (as opposed to electronically or in some comparable format), Franchisee shall insert any updated pages in its copy of the Confidential Manual upon receipt and remove superseded pages and return them to Company within 5 days following receipt. Franchisee shall adapt its operations to all revisions in mandatory specifications, standards, operating procedures and rules prescribed by Company at Franchisee’s sole expense within the time period that Company’s designates.

## **XI. Marketing, Advertising And Other Promotional Activities**

Recognizing the value and importance of engaging in and standardizing advertising, marketing and promotional activities to maximize the reputation of and goodwill in the ABC Licensed Marks,

enhance general consumer awareness of ABC Restaurants, and promote the Franchised Restaurant, Franchisee agrees as follows:

A. Promotional Fund.

1. Beginning on and after the Opening Date, Franchisee shall pay to Company, without offset, credit or deduction of any nature, a Promotional Fee of up to 3% of Gross Sales (the "Promotional Fee") which shall be due and payable for the same period and on the same date as the Royalty Fee. Franchisee understands that on the Effective Date of this Agreement, the Promotional Fee charged by Company is 1.5% of Gross Sales. However, after the Effective Date, Company may, upon no less than 30 days' written notice, increase the Promotional Fee in increments of .5% of Gross Sales not more frequently than once every 6 months. Franchisee shall pay the Promotional Fee rate in effect on the Opening Date, which may be greater than 1.5% of Gross Sales, but will not exceed 3% of Gross Sales.
2. Company shall deposit the Promotional Fees paid by all franchisees and by Company and its Affiliates for any ABC Restaurants which they own into the Promotional Fund.
3. Company shall use the Promotional Fund solely for the purpose of paying expenses associated with the creation, development and publication of advertising and promotional programs designed to enhance consumer awareness and identity of the ABC Licensed Marks and ABC Restaurants generally for the benefit of all ABC Restaurants and their owners. Company shall maintain the Promotional Fund in a separate bank account segregated from the Company's other funds.
4. Company shall not be restricted with respect to what, where and how the Promotional Fund will be applied for the purposes described in this section with the exception that Company shall not use more than 25% of the aggregate Promotional Fees collected per Calendar Year to reimburse itself for internal expenses that it and its Affiliate incur that are directly associated with maintaining and administering the Promotional Fund including, without limitation, expenses to collect contributions and general operating expenses (such as for rent and salaries in proportion to time devoted to Promotional Fund matters) and for attorneys fees and other costs related to claims by, or against, the Promotional Fund.

Marketing is one of the franchisor's key duties. The benefit of aggregating marketing fees to purchase marketing promoting the brand for the benefit of all brand users is one of the attractions of a franchise. A franchisee that opens its own restaurant must pay 100% of its marketing costs; in a franchise system, marketing costs are shared expenses. Because of the importance of the subject to the franchisee, and also to align expectations, this subject is covered in its own section of the franchise agreement.

A franchisor typically makes no promise regarding where and how it will spend marketing fees and reserves complete discretion over these matters. See discussion in Guides – Section 22.8.

This section also addresses the franchisee's duty to conduct local advertising. Because local advertising expenses are not paid to the franchisor, they are not franchise fees. However, all uses of the brand, including in local advertising, require the franchisor's prior written approval. This ensures that the franchisee's local advertising activities present the brand appropriately.

5. Franchisee understands and agrees that the Promotional Fund is not a trust and Company does not owe Franchisee a fiduciary duty based on Company's authority to administer the Promotional Fund or for any other reason.

6. Company will retain complete sole discretion over the form, content, time, location, market and choice of media and markets for all advertising and promotion paid for from the Promotional Fund proceeds. Without limiting the scope of Company's general authority and sole discretion, Company may use the Promotional Fund to pay for the cost to (i) create, prepare and produce advertising and promotional formats, materials and samples including, without limitation, point of sale materials, advertising slicks and copy, promotional graphics, brochures, mailers, authorized gift cards and coupons; (ii) administer local, regional and national advertising programs, including buying media space or time, outdoor advertising art and space, direct mail lists, and Internet website customer lead generation and customer-directed advertising; (iii) maintain Company's website, individual subpages for each ABC restaurant, and any franchise network intranet or comparable internal communications portal to promote communication among franchisees and invited guests regarding consumer marketing activities; (iv) employ advertising, public relations and media buying agencies; (v) support public relations, market and consumer research; (vi) pay expenses directly associated with maintaining and administering the Promotional Fund, including, without limitation, the cost to prepare annual accountings, expenses to collect Promotional Fees from delinquent franchisees, and the cost of conducting the Annual Meeting if Company elects to hold one subject to the 20% limitation set forth in this Section; and (vii) support the cost of any network-wide gift card and loyalty card programs.

a. Company makes no representation that any amount of the Promotional Fund will be spent in any given geographic region or area, that monies will be spent on advertising or promotion which is national in scope, or that monies will be spent in Franchisee's market area in proportion to Franchisee's contributions to the Promotional Fund.

b. Company may (i) collect rebates, credits or other payments from suppliers based on purchases or sales by Franchisee, and (ii) condition its approval of a supplier on the supplier's willingness to agree to make such payments to Company or Company's Affiliates on account of Franchisee's purchases. Regardless of any designation given to the payments by a supplier, Company shall contribute all supplier payments to the Promotional Fund as additional revenue unless a supplier requires Company to apply the rebates for a different purpose. The supplier payments that Company contributes to the Promotional Fund shall not reduce Franchisee's obligation for Promotional Fees. In other words, if a particular supplier pays Company a .02% rebate on account of Franchisee's purchases from the supplier, the amount of the rebate which Company contributes to the Promotional Fund shall not reduce Franchisee's obligation for Promotional Fees.

c. Company shall make marketing, advertising and promotional formats and sample materials created by the Promotional Fund available to Franchisee with or without additional reasonable charge, in Company's sole discretion on the same terms which Company offers to other ABC Restaurant owners and franchisees. Franchisee shall be solely responsible for all costs to reproduce the formats and materials for its own use and distribution. In connection with reproduction and use of formats and materials created by the Promotional Fund, Franchisee shall observe Company's requirements with respect to protecting Company's rights in the ABC Intellectual Property.

d. Within 90 days after the end of each Calendar Year, Company shall prepare an annual accounting of the Promotional Fund, and will furnish a copy of it to Franchisee upon request. While Company will attempt to expend Promotional Fund collections on a current basis, it may recover over-expenditures from subsequent years and may carry forward under-expenditures.

e. Company may, but is not obligated to, loan money to the Promotional Fund in the event desired expenditures for any period exceed the balance in the Promotional Fund. Any funds loaned to the Promotional Fund will be repayable upon demand when funds are available and bear interest at no more than 2 points over the prime lending rate of Bank of America, its successor, or, if no longer in operation, another national banking institution with headquarters in the United States.

f. Although Company intends to maintain the Promotional Fund for the duration of the Term and any Renewal Term, Company reserves the right to terminate the Promotional Fund at any time. If there is a balance in the Promotional Fund after payment of final expenses when Company terminates the Promotional Fund, Company shall refund part of the balance to all ABC Restaurant owners and franchisees that paid Promotional Fees for the Accounting Period before Company announced the Promotional Fund's termination in proportion to the amount of each operator's contributions with Company's decision regarding the exact method for allocating the balance being final. Thereafter, Company may reinstate the Promotional Fund effective upon no less than 30 days written notice to Franchisee.

7. For each ABC Restaurant that Company or Company's Affiliates own, Company or Company's Affiliates shall contribute to the Promotional Fund on the terms and in an amount equal to the lowest percentage contribution rate that any AABC franchisee then is required to pay under a Franchise Agreement in effect at that time.

#### B. Regional Advertising Co-op.

1. At such time as Company determines, in its sole discretion, that there are a sufficient number of ABC Restaurants operating in an advertising market that includes the Approved Location, Company may establish a Regional Advertising Co-op that includes all ABC Restaurants in the advertising market, including the Franchised Restaurant.

2. Company shall determine the boundaries of the Regional Advertising Co-op in its discretion and may modify the boundaries at any time based on changes in media penetration, marketing zones, demographic considerations and other factors that Company determines, in the exercise of its reasonable business judgment, are relevant to the effectiveness of advertising directed to consumers within the advertising market. Among other things, Company shall have authority to require that one Regional Advertising Co-op merge with another Regional Advertising Co-op servicing an adjacent advertising market or subdivide a Regional Advertising Co-op into smaller groupings. In no event will the Franchised Restaurant be assigned to more than one Regional Advertising Co-op.

3. Company shall give Franchisee no less than 30 days written notice of Franchisee's assignment to a Regional Advertising Co-op. If Franchisee is assigned to a Regional Advertising Co-op, the following conditions shall apply:

- a. All advertising created by a Regional Advertising Co-op is subject to Company's prior written approval according to the procedure for Local Advertisements before Franchisee may use, distribute or publish it.
- b. Franchisee shall pay Co-op Advertising Fees of up to 3% of Gross Sales in any Calendar Month ("Co-op Advertising Fee"), unless 65% of the owners of ABC Restaurants in the Regional Advertising Co-op approve an increase or special assessment, in which case Franchisee shall be bound by the decision.
- c. Company will credit all of the Co-Op Advertising Fees paid by Franchisee to Franchisee's Local Advertising Obligation.
- d. Company shall notify Franchisee in writing of the Franchised Restaurant' assignment to a Regional Advertising Co-op. The notice shall specify the initial amount of Co-op Advertising Fee payable by Franchisee, the period and payment date for Co-op Advertising Fee, and the first date when Co-op Advertising Fee shall become payable, which shall not be earlier than 30 days after notice is given.
- e. If Company or any one of Company's Affiliates own an ABC Restaurant in the advertising market to which the Franchised Restaurant is assigned, it shall contribute to the Regional Advertising Co-op on the same basis as Franchisee.
- f. Company shall provide each Regional Advertising Co-op with standard governing and voting rules. Members of the Regional Advertising Co-op may modify certain governing and voting rules with Company's prior approval, but may not modify those rules that establish voting rights, the duty to pay Co-op Advertising Fee, Franchisee's rights or obligations under this Agreement, or Company's right to approve all advertising in advance. Franchisee understands that (i) the governing rules shall permit Regional Advertising Co-op members to elect their own leadership; (ii) the Regional Advertising Co-op shall be responsible for its own administrative expenses; and (iii) the Regional Advertising Co-op must assign any rights in the materials that it creates to Company without compensation. The Regional Advertising Co-op shall be responsible for preparing and distributing to Company and to Regional Advertising Co-op members quarterly and annual financial statements meeting Company's financial reporting standards.
- g. Upon no less than 60 days written notice, Company shall have authority to dissolve the Regional Advertising Co-op to which the Franchised Restaurant is assigned, but only simultaneously with Company's dissolution of all other Regional Advertising Co-ops then in existence.

C. Local Advertising.

- 1. From and after the Opening Date and continuing for the remainder of the Term, Franchisee shall spend during each Calendar Quarter an amount equal the Local Advertising Obligation, without offset, credit or deduction of any nature except as expressly provided in this Agreement. Franchisee understands that the Local Advertising Obligation is a minimum obligation and not intended to limit Franchisee's expenditures on Local Advertising.
  - a. Company shall monitor Franchisee's compliance with the minimum Local Advertising

Obligation each Calendar Quarter. Upon request, Franchisee shall submit appropriate documentation to substantiate the expenditures that it wishes Company to count to demonstrate its compliance with the minimum Local Advertising Obligation.

b. In determining if Franchisee is in compliance with the Local Advertising Obligation, Company shall give Franchisee credit for the following expenditures: (i) the cost of advertising, marketing and other forms of promotional activities that Franchisee undertakes to publicize and promote the Franchised Restaurant and increase customer awareness within Franchisee's trade area; (ii) Franchisee's reasonable internal expenses that Franchisee can substantiate were incurred specifically and directly to develop, produce or publish approved Local Advertising not to exceed 3% of Franchisee's documented expenses during any Calendar Quarter paid to third parties directly related to Local Advertising; and (iii) the amount of Co-op Advertising Fees that Franchisee pays to a Regional Advertising Co-op to which Franchisee is assigned.

c. Additionally, Company will credit Franchisee's Local Advertising Obligation for the first Calendar Quarter after the Opening Date for amounts that Franchisee spends on Grand Opening Marketing.

d. In no event shall the aggregate credit extended to Franchisee in any Calendar Quarter exceed 3% of Franchisee's Gross Sales for the Calendar Quarter. Company will not apply excess credits in a Calendar Quarter to reduce Franchisee's minimum Local Advertising Obligation in a later Calendar Quarter.

e. The parties agree that if, at the end of any given Calendar Year, Franchisee has not spent (or, in accordance with this sub-section, been given credit for spending) at least 3% of Franchisee's aggregate annual Gross Sales on Local Advertising, then, in addition to, and not in lieu of, Company's right to declare Franchisee to be in breach of this Agreement, Franchisee shall promptly pay the difference, plus an amount equal to 25% of the difference, to Company.

2. Franchisee shall comply with the written guidelines for Local Advertising set forth in the Confidential Manual. Franchisee understands that Company's written guidelines for Local Advertising may include (without limitation) the requirement that Local Advertising contain notices of Company's website domain name or similar information indicating the availability of ABC Restaurant franchises from Company in the manner that Company designates. All Local Advertising must be clear, factual and not misleading and conform to both the highest standards of ethical advertising and marketing and Company's written guidelines and other marketing policies that Company prescribes from time to time.

3. Franchisee shall not use, disseminate, broadcast or publish any Local Advertising in any media channel (whether print, broadcast, electronic or digital, including, but not limited to, third party and social media websites) without first obtaining Company's written approval of the copy, proposed media, method of distribution and marketing plan for the proposed Local Advertising. To apply for Company's approval of a proposed Local Advertising, Franchisee shall submit a true and correct copy, sample or transcript of the proposed Local Advertising, together with a written business plan which explains the proposed media plan, promotional event or other intended use of the proposed Local Advertising. Company shall have 7 days from the date of receipt in which to approve or disapprove of the submitted materials. If written approval is not received by

the end of 7 days, Company shall be deemed to have rejected the proposed Local Advertising. If written approval is given on or before the end of 7 days, Franchisee may use the proposed Local Advertising, but only in the exact form submitted to Company. All social media and other forms of public or private online communications must comply with our social media networking policy that we include in the Confidential Manual.

4. Franchisee shall observe Company's pricing policies, which Company may modify at any time. Franchisee recognizes that Company uses its pricing policies to differentiate ABC Restaurants from competitors and may use the Promotional Fund to advertise products and services at the specific resale prices that Company suggests. Nothing in this Agreement limits Company's right to implement policies regarding (i) the minimum prices at which Franchisee may advertise approved menu items or other products, merchandise or services authorized for sale from the Franchised Restaurant; (ii) the minimum or maximum retail prices that Franchisee may charge customers; or (iii) the obligation to participate in price promotions to the fullest extent permitted by Applicable Law. Franchisee shall have no right to object to Company's pricing policies and waives any claims arising from or related to Company's prescription or suggestion of retail prices to the fullest extent permitted by Applicable Law.

5. At Franchisee's expense, Franchisee shall immediately remove from circulation and cease using any previously approved Local Advertising if Company determines, in its sole discretion, that continued circulation or use may, or will, damage the integrity or reputation of the ABC Licensed Marks, is otherwise necessary to protect the goodwill of the ABC System and Company's and Company's Affiliates' reasonable business interests, or otherwise violates this Agreement.

6. Franchisee shall not maintain its own Internet website promoting the Franchised Restaurant or use the ABC Licensed Marks in any domain name. Company shall identify the Franchised Restaurant in its list of Approved Locations on Company's Internet website and provide comparable information on its Internet website about the Franchised Restaurant as Company provides for other ABC Restaurants that are in good standing.

D. Company's Website; Franchised Restaurant Subpage. Company alone shall own and control the design and functionality of Company's primary website and all subpages including the Franchised Restaurant subpage. Company shall identify the Franchised Restaurant in its list of Approved Locations on Company's website and technically support the Franchised Restaurant subpage for which Franchisee may determine the content consistent with the guidelines in the Confidential Manual. Franchisee shall pay an initial subpage setup fee of \$500 and a fee for all content changes that Franchisee wishes to make that require input by Company's webmaster based on the then-current hourly rates and actual time spent by Company's webmaster to accomplish Franchisee's requested changes. Fees that Franchisee pays Company for content changes to the Franchised Restaurant subpage shall not be credited to the minimum Local Advertising Obligation.

## **XII. Payments**

In addition to fees and payments identified elsewhere in this Agreement, in consideration of the franchise and license awarded to Franchisee pursuant to this Agreement, Franchisee shall make the following payments to Company:

See discussion in Guides – Section 22.4.

A. Initial Franchise Fee.

1. If the parties are not also parties to an Area Development Agreement, Franchisee shall pay to Company in full upon execution of this Agreement, an initial franchise fee (the "Initial Franchise Fee") in the amount shown below, less any deposit previously paid by Franchisee. The amount of the Initial Franchise Fee will depend on the total number of Franchise Agreements which the parties have entered into on or before the Effective Date (including this Agreement). The Initial Franchise Fee shall be fully earned when paid and no portion of it is refundable under any circumstance.

Number of Franchise Agreements	Amount
If this Agreement is the first Franchise Agreement entered into by the parties	\$39,500
If this Agreement is the second or subsequent Franchise Agreement entered into by the Parties	80% of the Initial Franchise Fee stated in this Agreement

2. If the parties are also parties to an Area Development Agreement, Franchisee shall pay to Company in full upon execution of this Agreement the applicable Initial Franchise Fee in accordance with this Section, reduced by the credit given pursuant to the Area Development Agreement for a portion of the Development Fees previously paid to Company for each Franchised Restaurant in Franchisee's development quota.

3. In all cases, the Initial Franchise Fee shall be fully earned when paid and no portion of it shall be refundable under any circumstance.

B. Royalty Fee. In consideration of the franchise and license awarded to Franchisee, beginning on the Opening Date and for the remainder of the Term, Franchisee shall pay to Company, without offset, credit or deduction of any nature, a Royalty Fee equal to 5% of the aggregate Gross Sales of the Franchised Restaurant. Until further notice, the Royalty Fee shall be due and payable weekly, on or before Tuesday of each week based upon the aggregate Gross Sales of the Franchised Restaurant for the 7 day period ending at the close of business on the preceding Sunday. Payment shall be accomplished following Company's automated clearing house procedures described in the Confidential Manual which may include payment by automatic direct debit or an equivalent system that eliminates delay in crediting Company's bank account with the Royalty Fees due for each period.

C. Method of Payment of Other Fees. Promotional Fees shall be due and payable in the same manner and for the same period as the Royalty Fee. All other payments required to be made to Company or Company's Affiliates pursuant to this Agreement shall be due and payable on the date indicated in this Agreement and in the same manner as the Royalty Fee. Payment of Co-op Advertising Fees shall be due and payable to the Regional Advertising Co-op on or before the date and pursuant to the procedures established by the Regional Advertising Co-op.

D. Late Charge. If Franchisee fails to pay any amount due to Company under this Agreement by the date payment is due, Franchisee shall additionally be obligated to pay, as a late charge, the product of the total amount past due multiplied by 1.5% per Calendar Month (but not to



exceed the maximum legal rate of interest then permitted under Applicable Law) calculated starting on the date payment was due and continuing until the entire sum and late charge is paid in full. Franchisee understands and agrees that the late charge is not an agreement by Company to accept any payment after the date payment is due or a commitment by Company to extend credit to, or otherwise finance, the Franchised Restaurant. Franchisee's failure to pay all amounts when due shall constitute grounds for termination of this Agreement in accordance with the requirements of this Agreement notwithstanding Franchisee's obligation to pay a late charge.

E. Application of Payments. Notwithstanding any designation given to a payment by Franchisee, Company shall have the sole discretion to apply any payments from Franchisee to any past due indebtedness owed to Company or Company's Affiliates in the amounts and in such order as Company shall determine.

F. Gross Receipts or Equivalent Taxes. Franchisee will pay to Company the amount of any state or local sales, use, gross receipts, or similar tax that Company may be required to pay now or in the future as determined by any state or local government on any Royalty Fees or other payments that Franchisee pays to Company under this Agreement regardless of whether the state or local tax is imposed directly on Company, is required to be withheld by Franchisee from amounts due to Company under this Agreement, or is otherwise required to be collected by Franchisee from Company. Franchisee's payment of taxes to Company must be paid on or before the date payment must be withheld by Franchisee or paid by Franchisee under Applicable Law and Franchisee shall pay Company the amount of taxes due and owing in the same manner as payment of the Royalty Fee. Franchisee's obligation under this Section will not be reduced or offset by any type of claim, credit or deduction of any kind. This provision will not apply to Company's liability for income or comparable taxes measured by income that Company receives on account of its relationship with Franchisee.

### **XIII. Accounting And Records**

A. Maintenance of Business Records. During the Term, Franchisee shall maintain full, complete and accurate business records in accordance with the standards stated in the Confidential Manual or otherwise prescribed by Company in writing. Franchisee shall keep all business records and required business equipment and business software systems together at the place where notices to Franchisee are required to be sent, unless Company grants Franchisee permission to keep its business records elsewhere. All business records that this Agreement requires Franchisee to maintain shall be retained by Franchisee for a minimum of 5 years during, and following, the expiration, termination, or Franchisee's assignment, of this Agreement.

See discussion in Guides – Section 22.4. By standardizing record keeping, the franchisor facilitates its own ability to audit the franchisee's books and records to ensure that all fees have been paid. It also enables the franchisor to provide operating assistance by, for example, checking to see why a particular franchisee may not be attaining optimal financial performance and offering suggestions for ways in which the franchisee might reduce its expenses.

B. Reports.

1. After the Opening Date, Franchisee shall submit to Company on or before the date specified in the Confidential Manual the financial, operational and statistical reports and information as Company may require to (i) provide Franchisee with consultation and advice in accordance with

this Agreement; (ii) monitor Franchisee's performance under this Agreement and Franchisee's purchases, revenue, operating costs, expenses and profitability; (iii) develop chain-wide statistics; (iv) develop new operating procedures; (v) develop new menu items including new Designated Goods/Services and remove unsuccessful menu items including unsuccessful Designated Goods/Services in the exercise of Company's reasonable business judgment; and (vi) implement changes in the ABC System to respond to competitive and marketplace changes or to improve and enhance the reputation of the ABC Licensed Marks and consumer awareness and identity of ABC Restaurants generally.

2. Without limiting the types of reports that Company may require, Franchisee shall prepare and submit the following financial reports in accordance with the accounting, recordkeeping and bookkeeping procedures and in the format prescribed in the Confidential Manual:

a. Reports summarizing Gross Sales which reports shall cover the same period and be due, and submitted with, all payments of continuing Royalty Fees and Promotional Fees; and

b. Financial reports substantiating and documenting actual Gross Sales and the results of operation of the Franchised Restaurant, including a profit and loss statement and balance sheet, for each Accounting Period that Company designates, which, until further notice, shall be every 4 or 5 week period according to the schedule in the Confidential Manual. Each financial report shall include not only the financial results for the immediate Accounting Period just ended, but also cumulative information for the Calendar Year-to-date, together with such additional information as Company may request. All financial reports shall follow the format and accounting guidelines prescribed by Company in the Confidential Manual and be submitted to Company within 10 days after the end of each Accounting Period.

3. Company shall have the absolute right to remotely poll Franchisee's ABC Computer System and point of sale and other financial records daily, or more frequently, by electronic or other remote means and Franchisee hereby grants Company authority to do so. Franchisee shall observe the mandatory requirements set forth in the Confidential Manual to enable Company's remote access to Franchisee's bank and operating records and, upon request, provide Company with all passwords, access keys and other security devices as necessary to permit Company's access to the information stored on Franchisee's ABC Computer System and other computers on which Franchisee stores the Franchised Restaurant's financial records.

4. Franchisee shall promptly comply with Company's requests for additional information. This obligation includes, without limitation: (i) supplying Company with an exact copy of all sales and income tax returns relating to the Franchised Restaurant at the time Franchisee files them with governmental authorities or within 10 days after Company requests a copy, and (ii) complying with Company's inventory control procedures to enable Company to evaluate ingredients, suppliers, food, beverage or other operating costs and the efficiency of Franchisee's operations.

5. Franchisee certifies that all reports, forms, records, information and data that Franchisee is required to maintain or submit, or voluntarily maintains or submits, or directs a third party to maintain or submit on its behalf, to Company, will be true and correct and not omit material facts that are necessary in order to make the information disclosed not misleading.

C. Recording of Transactions. Franchisee shall use the ABC Computer System prescribed by Company in the Confidential Manual, which Company may modify in its sole discretion from time to time, to track and record all sales and transactions with customers of the Franchised Restaurant. In addition to using the ABC Computer System, Franchisee shall use other business and accounting software programs that Company designates in order to record business activities, sales and inventories and prepare operating and financial reports and records in accordance with the requirements of this Agreement and the Confidential Manual. Franchisee is solely responsible for maintaining and upgrading all computer equipment and software at Franchisee's sole expense.

D. Audit Rights.

1. Company and its representatives shall have full access to examine, audit and copy Franchisee's business records relating to the Franchised Restaurant, including Franchisee's federal and state income tax returns and sales tax returns, bank statements (including deposit slips and canceled checks), data stored on Franchisee's ABC Computer System and any other documents and information that Company reasonably requests in order to verify Gross Sales and the other business activities of the Franchised Restaurant. When an examination or audit requires that Company or its representatives have access to the Authorized Location or other place where Franchisee keeps its business records, Franchisee shall cooperate and provide access during normal business hours reasonably promptly following Company's request.

2. If any examination or audit conducted by Company reveals any understatement in the Gross Sales or other false information reported by Franchisee to Company, then Franchisee shall, within 10 days after notice from Company, pay to Company any additional Royalty Fees and Promotional Fees which are owed, together with interest and late charges as provided in this Agreement. Additionally, Company may require that, until further notice from Company, all future reports and financial statements submitted by Franchisee pursuant to this Agreement be prepared by an independent certified public accountant acceptable to Company.

3. If Company discovers that Franchisee has underreported Gross Sales by an amount which is 2% or more of the actual Gross Sales for the period, Franchisee shall also pay and reimburse Company for all expenses that Company incurs connected with Company's examination and audit, including, but not limited to, Company's accounting and legal fees and travel expenses.

4. If 2 or more audits or examinations of Franchisee's business records conducted within any 24 Calendar Month period disclose that Franchisee has underreported Gross Sales by an amount which is 2% or more of the actual Gross Sales for the period, then the second understatement shall be conclusively presumed to have been intentional for purposes of this Agreement. In addition to the consequences identified in this Agreement arising because of the understatement, Company may terminate this Agreement upon discovery of the second understatement based upon Franchisee's intentional underreporting of Gross Sales.

E. Electronic Payment Systems.

1. All required payments to Company and any of Company's Affiliates must be made through a payment system designated by Franchising that uses pre-authorized transfers from Franchisee's designated operating account to Company through automated clearing house, or, if Company

requests, by special checks or other equivalent payment system that Company designates in the Confidential Manual or otherwise in writing.

2. Franchisee shall give its bank instructions in a form provided or approved by Company and obtain the bank's agreement to follow the instructions to effectuate the electronic payment system meeting Company's requirements. Without Company's prior written consent, the bank may not withdraw, modify or cancel its agreement to abide by the instructions provided by Franchisee. Franchisee must also execute any other documents or agreements relating to establishing or maintaining an electronic payment system as Company or the bank may reasonably request from time to time. Franchisee understands that Company may modify the electronic payment system at any time upon written notice and agrees to promptly conform to the changes at its sole expense, which may require changes to the bank's agreement.

3. Franchisee shall deposit all revenue and income from the Franchised Restaurant into the designated operating account accessed by the electronic payment system by no later than the close of business on the day after receipt. Franchisee shall maintain sufficient funds in the designated operating account at all times during the Term to ensure full payment of all fees and other payments required by this Agreement that are based upon the Gross Sales of the Franchised Restaurant, interest and all other obligations payable to Company and Company's Affiliates when due. In the event a payment cannot be made due to insufficient funds in Franchisee's operating account, Company may, in its sole discretion or election, declare a breach of this Agreement in which case Company may (i) terminate this Agreement in accordance with the procedures for termination, or (ii) require that Franchisee direct its bank to send Company a monthly or periodic statement showing all account activity at the same time that it sends such statements to Franchisee or give Company electronic access to Franchisee's account activity if the bank makes electronic access available to its account holders.

4. Franchisee understands and agrees that its failure to report Gross Sales for any period will prevent Company from debiting Franchisee's operating account with the appropriate amount due to Company. In that event, Franchisee authorizes Company to debit its operating account for 120% of the last payment of the Royalty Fee and Promotional Fee paid to Company (whether by debit or otherwise) together with the late fees and interest permitted by this Agreement. Unless Franchisee notifies Company in writing within 3 days after Company debits Franchisee's operating account of an error in the amount of the Royalty Fees and Promotional Fees which Company debits for any Accounting Period, Franchisee shall be barred from challenging the amount so debited at a later date. However, if at any time Company discovers that the amounts which Company has debited from Franchisee's operating account are less than the amounts actually due to Company based on the Franchised Restaurant's actual Gross Sales for the relevant Accounting Period, Company may immediately debit Franchisee's operating account for the balance. Company agrees that if the amounts which Company debits from Franchisee's operating account exceed the amounts actually due to Company for the relevant Accounting Period, Company will credit the excess to the next payment of Royalty Fees and Promotional Fees due from Franchisee. Nothing in this Section is intended to excuse Franchisee's obligation to report Gross Sales for any Accounting Period in a timely and accurate fashion.

5. Franchisee shall bear all costs to establish and maintain the required electronic payment system meeting Company's requirements and all fees and charges resulting from insufficient

funds being in Franchisee's bank accounts at the time funds are withdrawn to pay obligations owed to Company or Company's Affiliates. The duty to maintain an electronic payment system shall not change the date on which payments are due under this Agreement.

See discussion in Guides – Section 22.8 and Section 22.9.

#### **XIV. Standards Of Quality And Performance**

A. General Provisions. Franchisee understands and agrees that:

1. Its strict and punctual performance of all obligations set forth in this Agreement, the Confidential Manual or otherwise communicated to Franchisee in writing is a condition of the franchise granted to Franchisee.
2. Company's designation, recommendation or approval of a supplier of either Designated Goods/Services or Non-Designated Goods/Services does not constitute a representation or warranty of the supplier's ability to meet Franchisee's purchasing requirements or of the fitness or merchantability of the items sold by the supplier and that Franchisee's sole remedy in the event of any shortages, delays or defects in the items purchased shall be against the supplier and not against Company or Company's Affiliates unless Company or Company's Affiliate is the supplier, in which case Franchisee's remedies are set forth in this Agreement.

B. Designated Goods/Services.

1. Franchisee shall purchase, lease or license the particular Designated Goods/Services that Company identifies and introduces into the ABC System from time to time only from the supplier that Company specifies. The designated supplier of any particular Designated Goods/Services may include, or be limited to, Company or Company's Affiliates.
2. Company may add new Designated Goods/Services and delete existing items from those that Company identifies as Designated Goods/Services and change the specifications, features, methods of use, formula, recipes, ingredients, designations, and other features of any Designated Goods/Services, or the designated supplier, as frequently as Company deems necessary in its sole discretion. Company may withdraw its designation of a particular item as Designated Goods/Services at any time in Company's sole discretion.
3. Franchisee shall conform to all changes pertaining to Designated Goods/Services at its sole expense promptly following written notice from Company unless Company's written notice specifies a later implementation date. If Company withdraws its approval of a particular item of Designated Goods/Services for reasons relating to public health or safety, Franchisee shall cease using or selling the Designated Goods/Services identified in Company's notice immediately or by the date indicated in Company's notice. Franchisee shall not place a new order for Designated Goods/Services with a supplier after receiving written notice that Company's approval of the supplier has been withdrawn or revoked.
4. Nothing in this Agreement shall obligate Company to reveal the specifications, features, formulas, recipes, ingredients, or other non-public information regarding Designated Goods/Services or information regarding Company's relationship with suppliers of Designated Goods/

Services, all of which Franchisee understands and agrees constitute Confidential Information.

C. Non-Designated Goods/Services and Alternative Suppliers.

1. Company shall designate all Non-Designated Goods/Services which Franchisee may, or must, use, offer, sell or promote in operating the Franchised Restaurant by brand name or other means of identification in the Confidential Manual or otherwise in writing.

2. Franchisee shall purchase, lease or license Non-Designated Goods/Services meeting Company's specifications only from suppliers which Company recommends or approves, which Company may revise in its sole discretion at any time and which in certain cases may include Company and Company's Affiliates. All changes in specifications for Non-Designated Goods/Services, or to the list of approved suppliers, shall be communicated to Franchisee by written supplements to the Confidential Manual or otherwise in writing. Specification changes to Non-Designated Goods/Services may include replacing Non-Designated Goods/Services with Designated Goods/Services that perform or satisfy the same or similar function or purpose or by adding, deleting or changing a particular brand specification. Franchisee shall not place a new order for any Non-Designated Goods/Services with a supplier after receiving written notice (i) of changes unless Franchisee can demonstrate to Company's reasonable satisfaction, in the exercise of Company's reasonable business judgment, that the supplier will comply with Company's new requirements; or (ii) that Company's approval of the supplier has been withdrawn or revoked.

3. If Franchisee desires to offer for sale or use at the Franchised Restaurant any item which does not, at that time, meet Company's specifications for Non-Designated Goods/Services, or desires to purchase any Non-Designated Goods/Services from a supplier who is not on Company's approved supplier list, Franchisee shall submit a written request to Company identifying the proposed item or supplier, together with (i) samples of the item for examination and/or testing so that Company may evaluate if the item meets its specifications and quality standards, and/or (ii) information supporting the proposed supplier's financial capability, business reputation, delivery performance and credit rating. Company may charge a testing fee of up to \$2,500 per request for approval of an alternative product, service or supplier. Franchisee's payment of the testing fee shall be a condition to obtaining approval to offer for sale, or use, an item or buy from a supplier that is not at the time approved by Company and covers Company's direct costs incurred in processing Franchisee's request.

a. Company will notify Franchisee in writing within 30 days after receiving all requested information and the required testing fee and completing any inspection or testing if it approves the proposed item and/or supplier. Company's failure to timely respond shall constitute its disapproval. Each supplier designated or approved by Company must comply with Company's usual and customary requirements regarding insurance, indemnification and non-disclosure.

b. Franchisee understands and agrees that it is generally advantageous to the ABC System to limit the number of suppliers of certain Non-Designated Goods/Services in any given market area and that, among the factors Company may consider in deciding whether, in its sole discretion, to approve a proposed supplier the effect its approval may have on the ability of Company and its franchisees to obtain the lowest prices and on the quality and uniformity of Non-Designated Goods/Services used or sold from ABC Restaurants.

c. At any time, Company may re-inspect the facilities of an approved supplier and revoke its approval of a supplier or item if, in Company's sole discretion, Company determines that doing so is in the best interests of Company or the ABC System. Franchisee shall conform to all changes pertaining to Non-Designated Goods/Services at its sole expense promptly following written notice from Company unless Company's written notice specifies a later implementation date. If Company withdraws its approval of a particular item of Non-Designated Goods/Services or a supplier for reasons relating to public health or safety, Franchisee shall cease using or selling the Non-Designated Goods/Services identified in Company's notice immediately or by the date indicated in Company's notice.

d. While Company will use its reasonable best efforts to identify more than one recommended supplier per category of Non-Designated Goods/Services and to secure favorable pricing terms from third party suppliers whom Company recommends, Company makes no representation or warranty that the prices of Non-Designated Goods/Services offered for sale by recommended suppliers will be the lowest prices available from any supplier capable of furnishing the same Non-Designated Goods/Services meeting Company's specifications.

D. Purchases from Company or Company's Affiliate.

1. If Company or Company's Affiliate is designated as the supplier of Designated Goods/Services or as a recommended supplier of Non-Designated Goods/Services, Franchisee understands and agrees that Company or Company's Affiliate, as supplier, shall have sole discretion to establish and change prices and other terms of sale, shipment and delivery, which shall be stated on their invoice or purchase order forms or communicated to Franchisee by other means including by postings on the AABC Intranet; provided, however, the prices that Franchisee shall pay shall be the same as the prices charged to similarly situated franchisees. Company and any Affiliate of Company may receive a profit from the sale of Designated Goods/Services or Non-Designated Goods/Services to Franchisee. Company makes no representation or warranty that the prices of Non-Designated Goods/Services that it offers to sell as a recommended supplier will be the lowest price available from any other supplier capable of furnishing the same Non-Designated Goods/Services meeting Company's specifications. Company or Company's Affiliate, as supplier, may discontinue the sale of any Designated Goods/Services or Non-Designated Goods/Services for any reason upon reasonable notice to Franchisee, however, in the case of any Designated Goods/Services, Company shall not discontinue sales until after providing written notice identifying an approved substitute supplier of the item.

2. As a supplier, Company or Company's Affiliate shall use reasonable commercial efforts to fill and ship Franchisee's orders reasonably promptly, but shall not be (i) liable to Franchisee for shortages, delays or defects due to causes beyond their control; or (ii) obligated to fill or ship any orders to Franchisee if Franchisee at the time is in material breach of any obligation under this Agreement.

E. Standards of Service.

1. Franchisee shall (i) offer for sale, and sell, only the specific menu items designated by Company, which may include Designated Goods/Services and Non-Designated Goods/Services; (ii) label and identify all items offered for sale by the specific names and other designations given to

them by Company; (iii) use only the equipment, supplies, containers, materials, signs, and menu boards that conform to Company's current specifications and standards; (iv) adhere to Company's business operating methods including, without limitation, Company's instructions for storing and handling ingredients and other inventory items, preparing, and serving menu items, requirements for public safety, guidelines for Local Advertising, and specifications for reproducing the ABC Licensed Marks; (v) update the physical appearance of the Approved Location to incorporate changes that Company may periodically make to the then-current specifications for the design, appearance and trade dress of ABC Restaurants; (vi) utilize the ABC Computer System and other accounting and recordkeeping systems specific specified in the Confidential Manual or otherwise by Company in writing; and (vii) operate the Franchised Restaurant in accordance with Company's customer service standards and specifications including, without limitation, any gift card and loyalty programs. All specifications shall be set forth in the Confidential Manual or otherwise communicated to Franchisee and may be revised by Company as frequently as Company deems necessary in its sole discretion to promote the ABC System and respond to competitive and marketplace changes. Franchisee shall not offer for sale or sell any other kinds of products, merchandise or services, or otherwise deviate from Company's current operating standards or specifications for services, products or merchandise, except with Company's prior written consent.

2. Franchisee shall maintain sufficient quantities of ingredients, raw materials, supplies and other inventory items in stock in order to meet reasonably anticipated consumer demand.

3. Franchisee understands and agrees that (i) Company's authorized menu and menu formats may include, in Company's sole discretion, requirements concerning organization, graphics, use of brand names and other menu or product descriptions, illustrations and other design and content features; (ii) Company may vary the menu, menu format, descriptions and other designations by geographic market and other factors in Company's sole discretion; and (iii) Company may implement changes in (among other things) the menu, menu formats and customer service methods at certain ABC Restaurants or within selected geographic regions, but not in all ABC Restaurants in Company's sole discretion. Company may, from time to time, authorize Franchisee to test specific new products, services or delivery systems and Franchisee agrees to cooperate in test marketing programs in compliance with Company's guidelines without reimbursement or compensation of any kind.

4. Franchisee shall operate the Franchised Restaurant on all of the days and during the hours prescribed in the Confidential Manual, unless Company's prior written approval of different days or hours is obtained or unless prohibited by the Lease. Before the Opening Date, Franchisee shall advise Company of the Franchised Restaurant's operating hours and, after the Opening Date, Franchisee shall promptly notify Company of any changes in its operating hours required by the Lease. Franchisee shall prominently disclose its operating hours to the public in the manner required by the Confidential Manual, and shall be open and fully prepared to conduct business during all posted operating hours.

5. Franchisee shall, at its sole expense maintain (i) an active e-mail account and e-mail address with an established Internet service provider, keep Company informed of its current e-mail address and manage its e-mail account so that it does not become full or otherwise incapable of accepting new messages and downloads if Company elects to furnish all, or portions of, the Confidential Manual or other information or documents electronically by means other than



by postings on the AABC Intranet; and (ii) an electronic data exchange service designated by Company to enable Company to remotely retrieve sales, inventory and other operating data for the Franchised Restaurant as frequently as Company deems necessary.

6. Franchisee shall not install or maintain on the Approved Location any newspaper racks, pay-to-play video or other types of gaming devices, ATM machines, juke boxes, vending machines rides or other similar devices except with Company's prior written consent. Franchisee shall not display any "for-sale" signs or other words indicating or implying that the Franchised Restaurant is for sale or that Franchisee is seeking or desires any form or type of Event of Transfer.

F. Operating Expenses. Franchisee shall pay all of the operating expenses of the Franchised Restaurant in a timely manner and understands and agrees that its failure to do so could materially harm the reputation of the ABC Licensed Marks and the ability of Company and other franchisees to obtain the same favorable purchase, lease or finance terms. If Franchisee has a bona fide dispute with any supplier or vendor which Franchisee believes justifies non-payment or partial payment, Franchisee must promptly notify the supplier or vendor of the particulars of its claim and diligently pursue resolution of the claim or prosecution of appropriate legal action. Any trade debt which remains unpaid for more than 60 days after the date it is due shall constitute a breach of this Agreement unless, before the end of the 60-day period (i) Franchisee and the supplier or vendor agree to alternative payment terms; or (ii) Franchisee initiates appropriate legal action to contest the trade debt. Company shall have no liability for Franchisee's debts or obligations to third parties.

G. ABC Computer System.

1. Franchisee shall purchase or lease, and install all of the hardware components, and license the operating software that Company identifies as part of the ABC Computer System before the Opening Date and cause the ABC Computer System to be fully operational before the Opening Date from any supplier that Company designates or, if there is no designated supplier, from any recommended or approved supplier. Franchisee shall additionally maintain a service contract in force for the ABC Computer System with a designated or approved service provider that covers hardware maintenance, technical support, and software updates and upgrades.

2. Company may impose changes in the mandatory specification for the ABC Computer System as frequently as Company deems to be in the best interest of the ABC System, including, without limitation, (i) replacing all of the hardware and software systems with new technology, which may be proprietary to Company or Company's Affiliate; and (ii) designating a specific vendor for the ABC Computer System. Within a reasonable time following Company's written notice, Franchisee shall conform to the changes that Company specifies at Franchisee's sole expense.

H. Approved Location and Tangible Property.

1. Franchisee shall, at its sole expense, maintain the condition and appearance of the Approved Location and all tangible property used to operate the Franchised Restaurant in the highest degree of cleanliness, orderliness and repair, consistent with the standards, specifications and requirements of the ABC System and as Company may from time to time direct. Franchisee shall promptly replace any tangible property used to operate the Franchised Restaurant which

becomes worn, damaged and non-repairable, or mechanically impaired to the extent that it no longer adequately performs the function for which it was originally intended. All replacement items shall be of the same type, model and quality then specified in the Confidential Manual at the time replacement is required.

2. Franchisee understands and agrees that its failure to repair or maintain the Approved Location and the tangible property of the Franchised Restaurant in accordance with Company's standards shall constitute a breach of this Agreement. Without waiving its right to terminate this Agreement for such reason, Company may notify Franchisee in writing specifying the action to be taken by Franchisee to correct the deficiency. If Franchisee fails or refuses to initiate a bona fide program to complete any required repair, maintenance or corrective work within 30 days after receiving Company's written notice, Company shall have the right, in addition to all other remedies, to enter the Approved Location and complete the required repair, maintenance or corrective work on Franchisee's behalf. Company shall have no liability to Franchisee for any work performed. If Company elects to perform required repair, maintenance or corrective work, or replace non-conforming property with conforming property, Franchisee shall be invoiced for labor and materials, plus a 25% service charge and an amount sufficient to reimburse Company for Company's actual direct costs to supervise, perform and inspect the work and procure any replacement items, including, without limitation, labor, materials, transportation, lodging, meals, contractor fees and other direct expenses, all of which shall be due and payable upon receipt of invoice.

3. Franchisee shall not alter or modify the Approved Location or any of the tangible property used to operate the Franchised Restaurant in a manner contrary to Company's then-current standards.

4. In addition to maintaining the Approved Location and tangible property in continuous good condition and repair in accordance with this Agreement, Franchisee shall, at its sole expense, periodically make reasonable capital expenditures to remodel, modernize and redecorate the Approved Location so that the Franchised Restaurant at all times reflects the then-current image of the ABC System.

I. Compliance With Laws. Franchisee shall at all times operate the Franchised Restaurant in strict compliance with Applicable Law. At Franchisee's sole expense, Franchisee shall secure and maintain in good standing all necessary licenses, permits, deposits and certificates required to operate the Franchised Restaurant lawfully and shall provide Company with proof of compliance promptly following Company's request.

J. Credit Cards; Gift Card and Other System-Wide Marketing Programs. Franchisee shall honor all credit cards designated by Company and enter into and maintain, at Franchisee's sole expense, all necessary credit card agreements with the issuers of designated cards. If implemented, Franchisee shall participate in, and abide by, the ABC gift card program described in the Confidential Manual, as Company may revise it from time to time. Franchisee shall additionally participate in system-wide marketing programs identified by Company, including, without limitation, loyalty card programs, social networking programs, customer and marketing surveys, direct marketing programs and designated e-commerce programs.

K. Complaints and Other Actions. Franchisee shall promptly report to Company any incidents

involving personal injury or property damage sustained by customers of the Franchised Restaurant at the Approved Location. Franchisee shall submit to Company promptly upon receipt copies of all customer complaints and notices and communications received from any government agency relating to alleged violations of Applicable Law and hereby authorizes the government agency to provide the same information directly to Company upon Company's request. Additionally, Franchisee shall promptly notify Company of any written threat, or the actual commencement, of any action, suit or proceeding against Franchisee, any person who is required by this Agreement to personally guaranty Franchisee's obligations to Company or involving the Approved Location or the business assets which might adversely affect the operation or financial condition of the Franchised Restaurant, and provide Company with a copy of all relevant documents.

L. Grand Opening Marketing.

1. In addition to any fees payable to the Promotional Fund and any Regional Advertising Cop pursuant to this Agreement and expenditures for Local Advertising, during the 90 day period beginning 30 days before and ending 60 days after the Opening Date, Franchisee shall spend a minimum amount of \$6,000 on approved Grand Opening Marketing activities to publicize the opening of the Franchised Restaurant. All Grand Opening Marketing activities shall constitute Local Advertising and therefore are subject to the same conditions applicable to Local Advertising including the requirement that requiring Franchisee obtain Company's prior written approval regarding the media, materials, content, formats and activities proposed by Franchisee for all activities that comprise Grand Opening Marketing.

2. Within 30 days following Company's request, Franchisee shall furnish Company with documentation using Company's forms substantiating that it has spent at least the minimum required by this Agreement on approved Grand Opening Marketing activities. Company alone shall determine if a particular expense should be counted towards Franchisee's minimum obligation for approved Grand Opening Marketing activities. If the Lease requires Franchisee to pay any fee or other amount specifically earmarked for Grand Opening Marketing purposes, Company shall credit Franchisee's minimum Grand Opening Marketing obligation with the amount that Franchisee can document that it has paid to the landlord of the Approved Location pursuant to the Lease.

M. Staffing.

1. The Franchised Restaurant shall at all times be under the direct, personal supervision of at least one Certified Manager at all times during the Term. Additionally, Franchisee shall employ or retain a sufficient number of competent employees or independent contractors and cause each of them to receive appropriate training to perform their job or work duties in accordance with the standards and specifications of the ABC System as Company may require. Franchisee's Certified Manager shall be responsible for training Franchisee's other employees and independent contractors who do not participate in the New Restaurant Opening module of the Initial Training Program.

2. All employees and independent contractors whose duties include customer service shall have sufficient literacy and fluency in the English language, in Company's judgment, to serve the public. All employees and independent contractors, while working in the Franchised Restaurant, shall present a neat and clean appearance and wear the uniforms that Company designates for their jobs, in the color, style and design then specified by Company. Franchisee shall be responsi-

ble for the acts and omissions of its employees, independent contractors and other agents, including, without limitation, its Certified Manager, arising during the course of their employment or, as to independent contractors and agents, their engagement by Franchisee.

3. Franchisee is solely responsible for hiring, firing and establishing employment and engagement policies applicable to its employees and independent contractors, and understands and agrees that this Agreement does not impose any controls, or otherwise impinge, on Franchisee's sole discretion to make decisions pertaining to its employees, independent contractors and other agents.

4. Franchisee shall purchase logo uniforms for its employees and independent contractors from Company, from Company's designated vendor.

#### **XV. Company's Operations Assistance**

In addition to obligations stated elsewhere in this Agreement, and provided Franchisee is not in default under the terms of this Agreement, Company shall provide the following services:

A. **Grand Opening Marketing.** Company shall assist Franchisee design and implement a Grand Opening Marketing program to publicize the opening of the Franchised Restaurant to the public and advise Franchisee on strategies for developing local consumer awareness of the ABC Licensed Marks.

B. **Continuing Consultation and Advice.**

1. As and to the extent required in Company's sole discretion, Company shall provide regular consultation and advice to Franchisee in response to Franchisee's inquiries about specific administrative and operating issues that Franchisee brings to Company's attention. Company shall have sole discretion to determine the method for communicating the consultation or advice, which may differ from the methods used for other ABC franchisees. For example and without limitation, consultation and advice may be provided by telephone, in writing (in which case Company may furnish the written information electronically), on-site in person, or by other means.

2. If Franchisee requests additional on-site instruction and assistance after the Opening Date and the completion of the New Restaurant Opening module of the Initial Training Program and if Company, in its discretion, agrees to furnish the additional on-site instruction and assistance, the parties shall mutually schedule the time for the additional instruction and training. In connection with post-Opening Date on-site training delivered at Franchisee's request, Franchisee shall pay Company its then-current per diem training fee set forth in the Confidential Manual and reimburse Company for Company's reasonable travel expenses, including, without limitation, expenses for air and ground transportation, lodging, meals, and miscellaneous travel-related personal charges.

C. **Inspections.**

1. In addition to Company's audit rights described in this Agreement, Franchisee expressly authorizes Company and its representatives, at any reasonable time, and without prior notice to Franchisee, to enter the premises of the Approved Location and conduct regular inspections of the Franchised Restaurant and Franchisee's methods of operation, including, without limitation,

using digital and other monitoring services to observe and conduct discussions with Franchisee's employees, observe customer interaction and services, and review Franchisee's books and records (including, without limitation, data stored on the ABC Computer System) in order to verify compliance with this Agreement and the Confidential Manual. In order to enable Company and its representatives to conduct inspections, Franchisee shall provide free of charge reasonable quantities of ingredients or other inventory items, menu items, Local Advertising or other samples for inspection and evaluation purposes to make certain that the items conform with Company's then-current standards.

2. Company may implement a mystery shopper program using the services of an outside mystery shopper company to perform regular mystery shopper visits at the Franchised Restaurant in order to provide Company and Franchisee with critical feedback and insight into the effectiveness of Franchisee's operations from a customer's perspective. If Company engages a third party supplier to perform mystery shopper services, Franchisee agrees to pay the reasonable fees imposed by the third party mystery shopper supplier over which Company has no control and which will partially depend on the number and frequency of mystery shopper visits that the supplier makes to the Franchised Restaurant. At Company's election, Company may collect the mystery shopper service's fees or require Franchisee to remit payment directly to the mystery shopper company according to the mystery shopper company's payment terms.

3. Franchisee shall cooperate fully with Company's inspections and any mystery shopper or comparable programs that Company implements during the Term. At Franchisee's sole expense, Franchisee shall promptly cure all deviations from Company's standards, specifications and operating procedures of which Franchisee is notified either orally or in writing. Franchisee, on behalf of itself and, as applicable, its directors, officers, managers, employees, consultants, representatives and agents, hereby waives any claim that any inspections or recordings violate any person's rights of privacy.

D. Annual Meeting. In addition to additional training, Company may conduct an annual meeting at a location that Company selects (the "Annual Meeting") to address recently-implemented changes in the ABC System and other topics of common interest to franchisees, including, without limitation, new merchandising approaches, changes in Designated Goods/Services and Non-Designated Goods/Services, vendor relationships, industry trends, customer relations, personnel administration, local advertising and promotional strategies, and competitive changes. If Company chooses to conduct an Annual Meeting, Company will determine the content, location and length of the Annual Meeting; provided, however, the Annual Meeting shall not exceed 3 days in any 12 Calendar Month period. Company may require the attendance of Franchisee's Certified Manager, Primary Owner or other designated personnel at one or more Annual Meetings, provided, however, Company shall not require that more than 2 persons attend the Annual Meeting. Company may impose a registration fee of up to \$500 per person. Additionally, Franchisee shall pay the transportation, lodging, personal expenses and salary for each employee who attends an Annual Meeting.

## XVI. Insurance

See discussion in Guides – Section 22.9.

- A. Minimum Coverage. Before the Opening Date, Franchisee shall procure, at its own expense, and maintain in full force and effect during the Term policies of insurance in accordance with the requirements of this Agreement, including the following terms and conditions:
1. Comprehensive general liability insurance covering product liability, motor vehicle liability, bodily and personal injury/death, personal and advertising injury, and property damage liability with minimum liability coverage of \$1,000,000 per occurrence and \$4,000,000 aggregate, combined single limit (including broad form contractual liability), or the higher amount required by the Lease, insuring Company and Franchisee against all claims, suits, obligations, liabilities and damages, including attorneys' fees, based upon or arising out of actual or alleged personal injuries or property damage resulting from, or occurring in the course of, or otherwise relating to the Franchised Restaurant or the activities of Franchisee's employees. The required liability coverage shall not be limited in any way by reason of any insurance which Company maintains.
  2. Workers' compensation and employer's liability insurance, together with any other insurance at the minimum limits required by law or \$1,000,000 per accident, \$1,000,000 per disease, and \$1,000,000 policy limit, whichever is higher.
  3. All "Risks" or "Special" form general casualty insurance coverage including, without limitation, fire and extended coverage, vandalism and malicious mischief insurance, and coverage for additional perils (including, without limitation, flood and earthquake coverage if applicable to the area where the Franchised Restaurant is located), for the full replacement value of the Franchised Restaurant and its contents based on the cost of replacing the damaged or destroyed property with property meeting Company's current specifications at the time replacement is required. The minimum coverage shall be no less than the amounts specified in the Confidential Manual on the Effective Date.
  4. Any person that Franchisee hires as a general contractor or to perform comparable services at the Approved Location must maintain general liability and builder's risk insurance with comprehensive automobile liability coverage and worker's compensation insurance in the minimum amount of \$1,000,000 plus additional insurance that protects against damage to the premises and structure and other course of construction hazards.
  5. Business interruption insurance in an amount sufficient to cover the Franchised Restaurant's expenses (including payments due to Company), profits and losses for a minimum period of 12 months from the date of a closure due to an insured loss.
  6. Additional types and amounts of insurance coverage as may be required by the Lease, including coverage for all parties that the Lease requires be covered as additional insureds.
- B. Additional Insurance Specifications.
1. Company shall specify the deductible limits for each required insurance policy and may, from time to time, increase the minimum insurance requirements, establish and change deductible limits, require that Franchisee procure and maintain additional forms of insurance, and otherwise

modify the insurance requirements contained in this Agreement based upon inflation, general industry standards, Company's experience with claims, or for other commercially reasonable reasons. Franchisee shall comply with any change imposed by Company within 30 days after written notice from Company and shall submit written proof of compliance to Company upon request.

2. Each insurance policy required by this Agreement shall be written by insurance companies of recognized responsibility meeting the standards stated in the Manual. Before the Opening Date, or the earlier date specified in the Lease, and then not less than annually thereafter on or before January 1 of each Calendar Year after the Opening Date, Franchisee shall submit to Company certificates of insurance showing compliance with Company's insurance requirements. Franchisee shall not begin construction or development of, or install equipment in, the Approved Location pursuant to Franchisee's Construction Drawings until Franchisee submits proof of its general contractor's insurance required by this Agreement. All certificates of insurance shall state that the policy will not be canceled or altered without at least 30 days prior written notice to Company. Maintenance of required insurance shall not relieve Franchisee of liability under the indemnity provisions set forth in this Agreement.

3. Company and any Affiliates that Company designates shall each be named as an additional insured on all required insurance. Franchisee shall additionally cause each policy of insurance required by this Agreement to include a waiver of subrogation, which shall provide that Franchisee, on the one hand, and Company, on the other hand, each releases and relieves the other, and each waives its entire right to recover damages, in contract, tort and otherwise, against the other for any loss or damage occurring to Franchisee's property arising out of or resulting from any of the perils required to be insured against under this Agreement. The effect of these releases and waivers shall not be limited by the amount of insurance carried by Franchisee or as otherwise required by this Agreement or by any deductible applicable thereto.

4. Should Franchisee not procure or maintain the insurance required by this Agreement, Company may, without waiving its right to declare a breach of this Agreement based on the default, procure the required insurance coverage at Franchisee's expense, although Company has no obligation to do so. Franchisee shall pay Company an amount equal to the premiums and related costs for the required insurance in full upon receipt of invoice, plus a 25% service charge and an amount sufficient to reimburse Company for its actual direct costs in obtaining the required insurance.

5. Franchisee understands and agrees that the minimum insurance requirements set forth in this Agreement do not constitute a representation or warranty by Company that the minimum coverage and specified types of insurance will be sufficient for the Franchised Restaurant. Franchisee understands and agrees that it is solely responsible for determining if the Franchised Restaurant requires higher coverage limits or other types of insurance protection.

See discussion in Guides – Section 22.9.

## **XVII. Covenants**

A. Competition.

1. During the Term and any Renewal Term, it shall be a breach of this Agreement for

Franchisee, Franchisee's Affiliates or any Covered Person, directly or indirectly, to own (either beneficially or of record), engage in or render services to, whether as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, a Competitive Business located anywhere in the world; provided, however, the restrictions stated in this paragraph shall not apply to any Covered Person for a period longer than 2 years from the date the Covered Person ceases to be an officer, director, shareholder, member, manager, trustee, owner, general partner, employee or otherwise associated in any capacity with Franchisee.

2. For a period of 2 years after expiration or termination of the last Franchise Agreement between Franchisee and Company, it shall be a breach of this Agreement for Franchisee, Franchisee's Affiliates or any Covered Person, directly or indirectly, to own (either beneficially or of record), engage in or render services to, either as an investor, partner, lender, director, officer, manager, employee, consultant, representative or agent, any Competitive Business that is located anywhere within 5 miles of the Approved Location or any other ABC Restaurant anywhere in the world that is open for business on or after the Effective Date of Termination or Expiration of this Agreement or the effective date of an Event of Transfer; provided, however, the restrictions stated in this paragraph shall not apply to any Covered Person for longer than 2 years from the date that the Covered Person ceases to be an officer, director, shareholder, member, manager, trustee, owner, general partner, employee or otherwise associated in any capacity with Franchisee.

3. This Agreement does not prohibit Franchisee, Franchisee's Affiliates or any Covered Person from owning 5% or less of the voting stock of a Competitive Business whose shares are publicly traded on a national or foreign stock exchange.

4. Franchisee acknowledges that the restrictions set forth in this Section are reasonable and necessary to protect Company's legitimate business interests which include taking reasonable measure to prevent Franchisee, Franchisee's Affiliates and Covered Persons from using Company's Confidential Information while this Franchise Agreement is in full force and effect to engage in activities that directly or indirectly benefit a Competitive Business.

B. Interference. Neither Franchisee nor any Covered Person shall, directly or indirectly, for itself or on behalf of any other person (i) divert, or attempt to divert, any business or customer of the Franchised Restaurant to any competitor by direct or indirect inducement or perform any act which directly or indirectly could, or may, injure or prejudice the goodwill and reputation of the ABC Licensed Marks or the ABC System; or (ii) employ or seek to employ any person who is at that time employed by Company, Company's Affiliates or another franchisee of Company or otherwise directly or indirectly induce or seek to induce the person to leave his or her employment.

C. Written Agreement. As a condition of this Agreement, unless they have already done so, Franchisee shall cause each Covered Person to execute Company's form of Confidentiality and Non-Competition Agreement with Company containing restrictions substantively identical to the provisions of this Agreement.

D. Survival. The covenants stated in this Section shall survive termination, expiration or the transfer of this Agreement.

E. Savings Clause. The parties acknowledge that the covenants set forth in this Section are



independent of the other covenants and provisions of this Agreement. If any provision in this Section is void or unenforceable under California law, but would be enforceable as written or as modified under the laws of the state in which the Territory is located (the “Local Laws”), the parties agree that the Local Laws shall govern any dispute concerning or involving the construction, interpretation, validity or enforcement of the provisions of this Agreement with respect to the subjects covered in this Section, but only with respect to those subjects. Franchisee expressly authorizes Company to conform the scope of any void or unenforceable covenant in order to conform it to the Local Laws. Franchisee expressly agrees, on behalf of itself and each Covered Person, to be bound by any modified covenant conforming to the Local Laws as if originally stated in this Agreement.

F. Enforcement. Franchisee understands and agrees that Company will suffer irreparable injury not capable of precise measurement in money damages if Franchisee or any Covered Person breaches the covenants set forth in this Section. Accordingly, in the event a breach occurs, Franchisee, on behalf of itself and each Covered Person, hereby consents to issuance or entry of Provisional Remedies without the requirement that Company post bond or comparable security. Franchisee further agrees that the award of Provisional Remedies to Company in the event of such breach is reasonable and necessary for the protection of the business and goodwill of Company.

See discussion in Guides – Section 22.11.

## **XVIII. Default And Termination**

### **A. Termination by Franchisee.**

1. Franchisee may terminate this Agreement by written notice to Company for any reason constituting good cause, provided termination is accomplished in accordance with the requirements of this Agreement. Any attempt by Franchisee to terminate this agreement except on the grounds, or according to the procedures, stated in this Agreement shall be void.

2. Good cause means that Company has committed a material and substantial breach of this Agreement that it has not cured within the period allowed by this Agreement. Franchisee’s written notice must specify with particularity the matters cited to be in default and provide Company with a minimum of 30 days in which to cure the default. Additional time to cure must be provided as is reasonable under the circumstances if a default cannot reasonably be cured within the minimum 30-day period. Franchisee’s written notice of termination of this Agreement for good cause shall not excuse Franchisee from continuing to perform its obligations under this Agreement during the cure period or entitle Franchisee to a refund of any money that Franchisee has paid to Company or Company’s Affiliates pursuant to this Agreement.

### **B. Termination By Company Without Opportunity to Cure.**

1. Company may terminate this Agreement, in its sole discretion and election, effective immediately upon Company’s delivery of written notice of termination to Franchisee based upon the occurrence of any of the following events which shall be specified in Company’s written notice, and Franchisee shall have no opportunity to cure a termination based on any of the following events:

- a. If Franchisee and Company have not executed an Area Development Agreement, should Franchisee fail to obtain site approval and sign a Lease and Addendum to Lease for the Approved Location by 180 days after the Effective Date of this Agreement;
- b. If Franchisee and Company have executed an Area Development Agreement, should Franchisee fail to open the Franchised Restaurant for business by the specific Development Deadline for the Franchised Restaurant according to the order in which the Franchised restaurant is developed out of the entire Development Quota specified in the Area Development Agreement
- c. Should Franchisee fail to use best efforts to open the Franchised Restaurant for business within 120 days after the date on which Franchisee signs the Lease for the Approved Location;
- d. Should Franchisee fail or refuse to pay, on or before the date payment is due, all Royalty Fees, Promotional Fees or any other amounts payable to Company, Company's Affiliates, the Promotional Fund or any Regional Advertising Co-op, and should the default continue for a period of 10 days after written notice of default is given by Company to Franchisee;
- e. Should Franchisee fail or refuse to submit any report or financial statement on or before the date due, and should the default continue for a period of 10 days after written notice of default is given by Company to Franchisee;
- f. Should any person who is required by this Agreement to personally guaranty Franchisee's obligations to Company fail or refuse to execute and deliver Company's form of Personal Guaranty or deliver the financial statements required by this Agreement for a period of 10 days after written notice of default is given by Company to Franchisee;
- g. Should Franchisee lose the right to occupy the Approved Location due to Franchisee's breach of the Lease based on a default which either cannot be cured or which Franchisee fails to cure within the allowed time period;
- h. Should Franchisee commit an event of default under any other agreement by and between Franchisee and Company pertaining to the Franchised Restaurant and franchise awarded by this Agreement which, by its terms, cannot be cured or which Franchisee fails to cure within the allowed time period;
- i. Should Franchisee make any general arrangement or assignment for the benefit of creditors or become a debtor as that term is defined in 11 U.S.C. § 1101 or any successor statute, unless, in the case where a petition is filed against Franchisee, Franchisee obtains an order dismissing the proceeding within 60 days after the petition is filed; or should a trustee or receiver be appointed to take possession of all, or substantially all, of the assets of the Franchised Restaurant, unless possession of the assets is restored to Franchisee within 60 days following the appointment; or should all, or substantially all, of the assets of the Franchised Restaurant or the franchise rights be subject to an order of attachment, execution or other judicial seizure, unless the order or seizure is discharged within 60 days following issuance;
- j. Should Franchisee, or any duly authorized representative of Franchisee, make a material misrepresentation or omission in obtaining the franchise rights granted hereunder, or

should Franchisee, or any officer, director, shareholder, member, manager, or general partner of Franchisee, be convicted of or plead no contest to a felony charge or engage in any conduct or practice that, in the exercise of Company's reasonable business judgment, reflects unfavorably upon or is detrimental or harmful to the good name, goodwill or reputation of Company or to the business, reputation or goodwill of the ABC System;

k. Should Franchisee fail to comply with the conditions governing the transfer of rights under this Agreement in connection with an Event of Transfer;

l. If Franchisee is a Business Entity, should an order be made or resolution passed for the winding-up or the liquidation of Franchisee or should Franchisee adopt or take any action for its dissolution or liquidation;

m. Should Franchisee have received from Company, during any consecutive 24-Calendar Month period, 3 or more notices of default (whether or not the notices relate to the same or to different defaults and whether or not each default is timely cured by Franchisee);

n. Should Franchisee make any unauthorized use, publication, duplication or disclosure of any Confidential Information or any portion of the Confidential Manual, or should any person required by this Agreement to execute a Confidentiality and Non-Competition Agreement with Company or Franchisee breach the Confidentiality and Non-Competition Agreement during the time period that the person is employed or engaged by Franchisee;

o. Should Franchisee abandon or fail or refuse to actively operate the Franchised Restaurant for any period such that Company may reasonably conclude that Franchisee does not intend to continue operating it, unless Franchisee obtains Company's written consent to close the Franchised Restaurant for a specified period of time before Franchisee ceases regular activities;

p. Should Franchisee materially misuse or make an unauthorized use of any of the components of the ABC System or commit any other act which does, or can reasonably be expected, in the exercise of Company's reasonable business judgment to impair the goodwill or reputation associated with any aspect of the ABC System;

q. Should Franchisee intentionally underreport Gross Sales under the criteria established in this Agreement;

r. Should Franchisee fail to comply with any violation of federal, state or local law within 10 days after being notified of non-compliance, unless the violation involves public health and safety, in which case the length of the cure period shall be reasonable under the circumstances, but need not exceed 10 days; or

s. Should Company make a reasonable determination in the exercise of Company's reasonable business judgment that Franchisee's continued operation of the Franchised Restaurant will result in imminent danger to public health and safety.

C. Termination by Company With Right to Cure.

1. Should Franchisee breach, or refuse to fulfill or perform, any obligation arising under this Agreement not identified in Subsection B above, or fail or refuse to adhere to any mandatory operating procedure, specification or standard prescribed by Company in the Confidential Manual or otherwise communicated to Franchisee, Company may terminate this Agreement, in its sole discretion and election, effective at the close of business 30 days after giving written notice of default to Franchisee which specifies the grounds of default, if Franchisee fails to cure the default cited in the notice by the end of the 30-day cure period. Company may indicate its decision to terminate by written notice given to Franchisee any time before, or after, the end of the 30-day cure period including in the original notice of default.

2. If a default cannot reasonably be cured within 30 days, Franchisee may apply to Company for additional time to complete the cure. The length of the additional cure period, if any, allowed by Company shall be stated in writing signed by Company. The additional cure period, if any, shall, in Company's estimation, be sufficient in duration to enable a reasonable person acting diligently to complete the cure within the extended period. If Company grants an extension and if Franchisee does not complete the required cure within the extended cure period, termination of this Agreement shall be effective at the close of business on the last day of the extended cure period without further notice from Company.

D. Effect of Termination or Expiration.

1. If Company terminates this Agreement based on Franchisee's failure to obtain site approval and sign a Lease and Addendum to Lease within 120 days after the Effective Date of this Agreement, Company will refund 80% of the Initial Franchise Fee to Franchisee if Franchisee executes Company's form of General Release. Otherwise, Franchisee is not entitled to a refund of any portion of the Initial Franchise Fee in the event Company terminates this Agreement.

2. In any proceeding in which the validity of termination of this Agreement is at issue, Company will not be limited to the reasons set forth in the notice of default or termination given to Franchisee.

3. The termination or expiration of this Agreement shall result in the concurrent, and automatic, termination of any other agreements between Franchisee and Company or Company's Affiliates specifically pertaining to the license to operate the Franchised Restaurant. However, all other contracts then in effect between the parties concerning other ABC Restaurants owned by Franchisee shall remain in full force and effect unless Company takes steps independently to terminate the other contracts pursuant to their terms.

See discussion in Guides – Section 22.11.

## **XIX. Rights And Duties Of Parties Upon Expiration Or Termination**

A. Franchisee's Obligations. On and after the Effective Date of Termination or Expiration of this Agreement, Franchisee must comply with the following duties:

1. Franchisee shall immediately pay all Royalty Fees, Promotional Fees and other amounts owed to Company or Company's Affiliate, including, without limitation, amounts for purchasing goods or services and late charges and interest on any late payments. Royalty Fees and

Promotional Fees shall continue to be due and payable (and late charges thereon assessed) after the Effective Date of Termination or Expiration of this Agreement until the date that Franchisee completes all post-termination obligations required by this Agreement. When termination is based upon Franchisee's default, Franchisee shall also pay to Company all damages, costs and expenses, and reimburse Company for its reasonable fees to retain attorneys, accountants or other experts which it incurs to enforce its rights under this Agreement in the event of a default and/or termination whether or not mediation or judicial action is commenced. Franchisee's payments shall be accompanied by all reports required by Company regarding business transactions and the results of operations through the Effective Date of Termination or Expiration of this Agreement or until the date that Franchisee completes all post-termination or expiration obligations required by this Agreement, whichever occurs later.

2. Franchisee shall immediately pay any Co-op Advertising Fees owed to the Regional Advertising Co-op to which it has been assigned including any interest on any late payments.

3. Franchisee shall permanently cease using, in any manner whatsoever, all rights and property incorporated within or associated with the ABC System in a manner that suggests or indicates that Franchisee is, or was, an authorized ABC franchisee or continues to remain associated with the ABC System. Franchisee shall cancel all Local Advertising and other promotional activities that associate Franchisee with the ABC System. Franchisee shall cancel all fictitious or assumed name or equivalent registrations relating to its use of the ABC Licensed Marks. Continued use by Franchisee of rights or other property incorporated within or associated with the ABC System shall constitute willful trademark infringement and unfair competition by Franchisee.

4. Company shall notify Franchisee within 5 days after the Effective Date of Termination or Expiration of this Agreement if Company will either (i) demand an assignment of the telephone numbers and business directory listings for the Franchised Restaurant; or (ii) require Franchisee to disconnect the telephone number and take all steps necessary to remove all telephone and other business directory listings that display any of the ABC Licensed Marks. If Company gives timely notice that it will require an assignment, Franchisee hereby grants Company a power of attorney to complete the necessary documentation on Franchisee's behalf that the telephone company or listing services require in order to accomplish an assignment of the phone number and business listings. If Company gives timely notice that it will require Franchisee to disconnect the phone number and remove all telephone and business directory listings, Franchisee shall promptly furnish Company with evidence satisfactory to Company demonstrating Franchisee's compliance with this obligation within 10 days after the Effective Date of Termination or Expiration of this Agreement. Franchisee shall not be entitled to any compensation taking the actions required by this Section.

5. Franchisee shall immediately cease using and, within 48 hours after the Effective Date of Termination or Expiration of this Agreement, return to Company all copies of any portion of the Confidential Manual in Franchisee's possession or provide evidence satisfactory to Company that all information in Franchisee's possession pertaining to Confidential Information have been permanently removed from Franchisee's ABC Computer System and permanently erased or destroyed.

6. If on the Effective Date of Termination or Expiration of this Agreement the ABC Computer System includes proprietary software, Franchisee agrees to immediately (i) discontinue using the proprietary software and permanently remove the proprietary software from Franchisee's com-

puters. Franchisee understands that Company will terminate Franchisee's access to the Company Intranet on or after the Effective Date of Termination or Expiration of this Agreement. Continued use by Franchisee of any proprietary software or Confidential Information after the Effective Date of Termination or Expiration of this Agreement will constitute violation of this Agreement and willful copyright or other intellectual property infringement. Franchisee may not retain any copy or record of any of these materials.

7. Company shall give Franchisee written notice of its election to accept an assignment of the Lease within 10 days after the Effective Date of Termination or Expiration. Company's failure to timely notify Franchisee shall signify its decision not to accept an assignment of the Lease. If Company gives notice that it will accept an assignment of the Lease, Franchisee shall promptly vacate the Approved Location as required by the Addendum to Lease and leave the premises and all fixtures and equipment that are not capable of being removed without damage to the Approved Location, or which the Lease forbids to be removed, in good working order, condition and repair. If Company does not accept an assignment of the Lease, Franchisee shall, at its sole cost and expense, within 20 days after the Effective Date of Termination or Expiration, remove all signs and other physical and structural features that readily identify the site as an ABC Restaurant, in a manner acceptable to Company, so that the former Approved Location no longer suggests or indicates a connection with the ABC System. Company's right to accept an assignment of the Lease is independent of Company's right to acquire the physical non-fixtures assets in the Approved Location on the terms of this Agreement.

8. Franchisee shall execute and deliver a general release, in form satisfactory to Company, of any and all claims against Company, Company's Affiliates and their respective officers, directors, shareholders, employees and agents.

9. Franchisee shall keep and maintain all business records pertaining to the business conducted at the Franchised Restaurant for 5 years after the Effective Date of Termination or Expiration of this Agreement. During this period, Franchisee shall permit Company to inspect such business records as frequently as Company deems necessary.

B. Personal Guaranty. Upon the Effective Date of Termination or Expiration of this Agreement, Company may enforce the Personal Guaranty executed by any Personal Guarantor in order to secure payment and performance of Franchisee's obligations under this Agreement including those in this Section that arise upon the termination or expiration of this Agreement and those that survive the termination or expiration of this Agreement.

C. Company's Right to Purchase Physical Assets of the Franchised Restaurant.

1. Company shall have the right, but not the obligation, to purchase all, or any, of Franchisee's non-fixture physical assets relating to the Franchised Restaurant that are not treated by the Lease as fixtures of the Approved Location and part of the realty, at Franchisee's original cost less depreciation, based upon Franchisee's depreciation schedule, less the remaining balance, if any, of any financing that Franchisee owes to third parties for which the physical asset is pledged as security.

2. Company may exercise this option by giving Franchisee written notice within 10 days after

the Effective Date of Termination or Expiration of this Agreement, specifying in the notice the specific physical assets that it desires to purchase. Within 10 days following receipt of Company's written notice, Franchisee shall furnish Company with documentation substantiating the original cost of each item identified by Company and depreciation taken as reported by Franchisee in its federal and state income tax returns. Within 10 days following receipt of Franchisee's documentation, Company shall notify Franchisee of the particular assets it will purchase and calculate the purchase price for the items in accordance with this Section, and within 10 days after giving the notice, Company will pay Franchisee the purchase price, less permitted set-offs.

3. Franchisee shall deliver possession of the physical assets to Company upon Company's payment of the net purchase price free and clear of all liens and encumbrances not approved by Company in writing. If equipment is subject to an equipment lease and Company elects to accept an assignment, Franchisee shall cooperate with Company in arranging for an assignment of the equipment lease to Company, which shall assume the obligations under the equipment lease arising on or after the effective date of assignment. Company's failure to serve written notice of its election within 10 days after the Effective Date of Termination or Expiration of this Agreement shall signify its decision not to purchase any remaining non-fixture physical assets of Franchisee.

4. With respect to the non-fixture physical assets that Company purchases, Company shall have the absolute right to set off from the purchase price all sums then owed by Franchisee to Company, Company's Affiliates, the Promotional Fund or any Regional Advertising Co-op to which Franchisee has been assigned under this Agreement, including damages, costs and expenses and reasonable attorneys' fees in enforcing the default and termination. The right to set off shall not limit Company's remedies under this Agreement or Applicable Law.

D. **Survival of Obligations.** All obligations of the parties that expressly, or by their nature, survive the Effective Date of Termination or Expiration of this Agreement shall continue in full force and effect subsequent to the Effective Date of Termination or Expiration of this Agreement until they are satisfied in full. Franchisee shall remain fully liable for any and all obligations of the Franchised Restaurant, whether incurred before, or after, the Effective Date of Termination or Expiration of this Agreement, including, without limitation, obligations arising under this Agreement, the Lease, and all obligations owed to Company's Affiliates and other third parties including, without limitation, payments to designated or approved suppliers, independent contractors and salaries to employees and taxes.

E. **Third Party Rights; Available Remedies.**

1. No person acting for the benefit of Franchisee's creditors or any receiver, trustee in bankruptcy, sheriff or any other officer of a court or other person in possession of Franchisee's assets or business shall have the right to assume Franchisee's obligations under this Agreement without Company's prior consent.

2. Company's right to terminate this Agreement shall not be its exclusive remedy in the event of Franchisee's default, and Company shall be entitled, in its sole discretion and election, alternatively or cumulatively, to affirm this Agreement in the event of Franchisee's default and obtain damages arising from the default, injunctive relief to compel Franchisee to perform its obligations under this Agreement or to prevent Franchisee from breaching this Agreement, and any

other remedy available under Applicable Law.

See discussion in Guides – Section 22.10.

## **XX. Assignment And Transfer**

A. **Assignment by Company.** Franchisee acknowledges that Company maintains a staff to manage and operate the ABC System and that staff members can change from time to time. Franchisee represents that it has not signed this Agreement in reliance on any shareholder, director, officer, or employee remaining with Company in that capacity. Company is free to transfer and assign all of its rights under this Agreement to any person or Business Entity without prior notice to, or consent of, Franchisee if the assignee agrees in writing to assume Company's obligations under this Agreement. Upon the assignment and assumption, Company shall have no further obligation to Franchisee.

B. **Delegation of Duties.** In addition to Company's right to assign this Agreement, Company has the absolute right to delegate performance of any portion or all of its obligations under this Agreement to any third-party designee of its own choosing, whether the designee is Company's Affiliate, agent or independent contractor. In the event of a delegation of duties, the third-party designee shall perform the delegated functions in compliance with this Agreement. When Company delegates its duties to a third party (in contrast to when Company transfers and assigns all of its rights under this Agreement to a third party that assumes Company's obligations), Company shall remain responsible for the performance of the third-party to whom Company's duties are delegated.

C. **Assignment by Franchisee: In General.** Franchisee understands and agrees that the franchise rights awarded by this Agreement are personal and are awarded in reliance upon, among other considerations, the individual or collective character, skill, aptitude, attitude, experience, business ability and financial condition and capacity of Franchisee and, if Franchisee is a Business Entity, that of its officers, directors, shareholders, LLC managers and members, trustees, partners and Personal Guarantors.

1. Without Company's prior written consent, Franchisee shall not, directly or indirectly, attempt or complete an Event of Transfer either voluntarily or by operation of law except in accordance with this Agreement. Company agrees not to withhold its consent unreasonably if Franchisee satisfies the conditions applicable to an Event of Transfer or a Qualified Transfer. Company shall exercise reasonable business judgment in evaluating if Franchisee has satisfied all applicable conditions. Any attempted or purported transfer which fails to comply with the requirements of this Agreement shall be null and void and constitute a material default of this Agreement.

2. Company's consent to an Event of Transfer is not a representation of the fairness of the terms of any contract between Franchisee and a transferee, a guarantee of the Franchised Restaurant' or transferee's prospects for success, or a waiver of any claims that Company or Company's Affiliates may have against Franchisee or any Personal Guarantor.



D. Company's Right of First Refusal.

1. Except with respect to Qualified Transfers, if Franchisee, or the person to whom an offer is directed (the "Individual Transferor"), receives a bona fide written offer ("Third Party Offer") to purchase or otherwise acquire an interest which will result in an Event of Transfer, Franchisee or the Individual Transferor, shall, within 5 days after receiving the Third Party Offer and before accepting it, apply to Company in writing for Company's consent to the proposed transfer. Additionally, the following conditions shall apply:

a. Franchisee, or the Individual Transferor, shall attach to its application for consent to complete the proposed Event of Transfer a complete copy of the Third Party Offer together with (i) information relating to the transferee's experience and qualifications; (ii) a copy of the transferee's current financial statement, and (iii) any other information material to the Third Party Offer, transferee, proposed Event of Transfer or that Company reasonably requests.

b. Company or its nominee shall have the right, exercisable by written notice ("Notice of Exercise") given to Franchisee or the Individual Transferor, within 30 days following receipt of the Third Party Offer, all supporting information, and the application for consent, to notify Franchisee or the Individual Transferor that it will purchase or acquire the rights, assets, equity or interests proposed to be assigned on the same terms and conditions set forth in the Third Party Offer, except that Company may (i) substitute cash for any form of payment proposed in the offer discounted to present value based upon the rate of interest stated in the Third Party Offer, and (ii) deduct from the purchase price the amount of any commission or fee otherwise payable to any broker or agent in connection with the Third Party Offer and all amounts then due and owing from Franchisee to Company, Company's Affiliates, the Promotional Fund and any Regional Advertising Co-op to which Franchisee has been assigned under this Agreement or otherwise. If Company gives timely Notice of Exercise, the assets that Company purchases shall be free and clear of liens. If any asset is pledged as security for financing that is then unpaid, Company may further deduct from the purchase price the remaining amount payable under the terms of financing.

c. The closing shall take place at Company's headquarters at a mutually agreed upon date and time, but not later than 90 days following Company's receipt of the Third Party Offer, all supporting information, and the application for consent to transfer.

d. At the closing, Franchisee or the Individual Transferor shall deliver to Company the same documents, affidavits, warranties, indemnities and instruments as would have been delivered by Franchisee or the Individual Transferor to the transferee pursuant to the Third Party Offer. Additionally, Franchisee and the Individual Transferor shall deliver a general release, in form satisfactory to Company, of any and all claims against Company, Company's Affiliates and their respective officers, directors, shareholders, employees and agents.

e. All costs, fees, document taxes and other expenses incurred in connection with the transfer shall be allocated between Franchisee and Company in accordance with the terms of the Third Party Offer, and any costs not allocated shall be paid by Franchisee or the Individual Transferor.

E. Conditions of Assignment to Third Party.

1. If Company does not exercise its right of first refusal, Franchisee may not complete the Event of Transfer without Company's prior written consent. An Event of Transfer or attempt to complete an Event of Transfer that takes place in violation of this provision is a material breach of this Agreement. The requirements of this Section do not apply to a Qualified Transfer. As a condition to Company's consent to an Event of Transfer, the following conditions must be satisfied:

a. The proposed transferee must submit a completed franchise application to Company and meet Company's then-current qualifications for new AABC franchisees, including qualifications pertaining to financial condition, credit rating, experience, moral character and reputation. Company's evaluation of the proposed transferee's financial condition shall take into account the amount the proposed transferee is obligated to pay to Franchisee to consummate the Event of Transfer.

b. As of the date consent is requested and through the date of closing of the proposed transfer and assignment, Franchisee must not be in default under this Agreement, the Lease, or any other agreements with Company, and must be current with all monetary obligations owed to third parties, including, without limitation, Company's Affiliates.

c. The proposed transferee shall execute appropriate documentation agreeing to assume all of Franchisee's obligations under this Agreement arising on or after the closing date of the Event of Transfer.

d. Franchisee shall pay Company a transfer fee of \$10,000 in full when Franchisee requests written consent to the proposed Event of Transfer.

(1) If Franchisee owns and proposes to transfer more than one franchise simultaneously, as part of the same Event of Transfer transaction, to the same proposed transferee, Franchisee shall pay a separate transfer fee for each of the separate franchises being transferred and comply with any additional transfer conditions set forth in the applicable Franchise Agreements.

(2) Once Franchisee pays the transfer fee, it is fully-earned and non-refundable except if Company determines that the proposed transferee does not meet Company's then-current qualifications for new ABC franchisees and refuses to consent to the proposed Event of Transfer, in which case Company may retain up to \$1,500 of the transfer fee (or of each transfer fee paid, if more than one franchise would be transferred as part of the same transaction).

(3) If the Event of Transfer involves a Public or Private Offering, the transfer fee shall be an amount not to exceed \$20,000 equal to Company's actual costs to review Franchisee's offering memorandum, registration statement or comparable documents. Franchisee understands and agrees that in reviewing Franchisee's offering memorandum, registration statement or comparable documents, Company does not certify that the statements in Franchisee's offering memorandum, registration statement or comparable documents are true, correct or not misleading or that Franchisee's offering memorandum, registration statement or comparable documents comply with Applicable Law. Instead, Company's review is for the purpose of verifying the accuracy of Franchisee's statements about Company, ABC Restaurants, and the ABC System.

- e. Franchisee must simultaneously transfer its rights under the Lease and all other contracts whose continuation is necessary for operation of the Franchised Restaurant to the same proposed transferee and satisfy any separate conditions to obtain any third party consents required to accomplish the transfers, including, without limitation, the consent of the landlord of the Approved Location.
- f. Franchisee must execute and deliver a general release, in form satisfactory to Company, of any and all claims against Company, Company's Affiliates and their respective officers, directors, shareholders, employees and agents.
- g. The proposed transferee must execute all other documents and agreements required by Company to consummate the transfer of this Agreement. If the proposed transferee is a Business Entity, each person who at the time of the transfer, or later, owns or acquires, either legally or beneficially, 15% or more of the equity or voting interests of the proposed transferee must execute Company's then-current form of Personal Guaranty unless the then-current Franchise Agreement sets a lower percentage ownership threshold in which case the percentage in the then-current Franchise Agreement shall control.
- h. Franchisee's right to receive the sales proceeds from the proposed transferee shall be subordinate to the proposed transferee's and Franchisee's duties owed to Company and Company's Affiliates under, or pursuant to, this Agreement or any other agreement as of the effective date of the Event of Transfer. All contracts by and between Franchisee and the proposed transferee shall expressly include a subordination provision permitting payment of the sales proceeds to Franchisee only after any outstanding obligations that the proposed transferee owes to Company and Company's Affiliates are fully satisfied.
- i. Until the proposed transferee satisfies minimum training requirements, Franchisee shall remain responsible for day-to-day management of the Franchised Restaurant. At a minimum: (i) the proposed transferee or its Primary Owner must complete the next available Owner Orientation module (or equivalent); and (ii) at least one management-level employee who has not previously done so must qualify as a Certified Manager and complete the next available Certified Manager training module (or equivalent) of Company's then-current Initial Training Program. Company shall schedule training to start reasonably promptly following the closing date. Franchisee shall remain responsible for operation and management of the Franchised Restaurant during the period following the closing date until the proposed transferee qualifies at least one person as a Certified Manager. The proposed transferee shall be solely responsible for all personal expenses that it and its employees incur in connection with such training, including transportation, lodging, food, salary and other personal charges.
- j. Company may condition consent on Franchisee completing before the closing date specific improvements and repairs to the Approved Location in order to conform the Approved Location to Company's then-current appearance and design standards and equipment specifications.
- k. Neither Company's exercise of its right of first refusal, its consent to an Event of Transfer, nor Franchisee's consummation of a transfer shall operate to release Franchisee of those obligations that expressly, or by their nature, survive the Effective Date of Termination or Expiration of this Agreement, including, without limitation, the provisions regarding non-disclosure of Confidential Information.

2. Franchisee may only complete the Event of Transfer to the proposed transferee on the terms identified in the Third Party Offer or as otherwise stated in Franchisee's application for consent. If there is any material change in the terms of the Third Party Offer, Company has a right of first refusal to accept the new terms subject to the conditions stated in this Section.

3. If Company consents to the transfer to a third party, the transfer must close within 60 days from the date the Third Party Offer is first submitted to Company unless Franchisee requests in writing, and Company agrees to grant, an extension of time to close the transfer, which consent Company agrees not to unreasonably withhold. If Company refuses to grant the extension of time, Franchisee must again offer Company the opportunity to exercise its right of first refusal subject to the conditions stated in this Section.

F. Business Entity Franchisee.

1. If Franchisee is a Business Entity, Franchisee shall furnish to Company, upon execution of this Agreement or at such other time as transfer to the Business Entity is permitted, a copy of its articles of incorporation, by-laws, operating agreement, partnership agreement or other governing agreement, and a list of all persons owning an interest in the equity or voting interests of the Business Entity. Additionally, Franchisee shall promptly provide Company with a copy of any amendments to, or changes in, the documents or other information during the Term.

2. Franchisee shall maintain stop transfer instructions against the transfer on its records of any equity or ownership interests. Each certificate representing an ownership interest in Franchisee shall bear a legend, in the form stated in the Confidential Manual, that it is held, and further assignment or transfer thereof is, subject to all restrictions imposed upon transfer set forth in this Agreement.

3. Franchisee's Primary Owner shall deliver a certificate to Company annually, when Franchisee's annual financial statements are delivered, which lists all owners of record and all beneficial owners of any interest in the equity or voting interests of Franchisee and identifies all transfers of equity or voting interests in Franchisee which have occurred during the period covered by the annual financial statement.

A provision like this prevents a Developer from splintering its development holdings and multiplying the number of franchisees operating in the development territory. See discussion in Guides – Section 19.2 and Section 21.7.

G. Additional Terms and Conditions When Franchisee or Franchisee's Affiliate is a Party to an Area Development Agreement. Except with Company's prior written consent, Company will not approve an Event of Transfer of this Agreement unless Franchisee also proposes to transfer to the same proposed transferee all of Franchisee's right, title and interest in and to all Franchise Agreements then in effect by and between Company and Franchisee or Franchisee's Affiliate.

H. Qualified Transfers. Before completing a Qualified Transfer, Franchisee must do all of the following: (i) provide Company with written notice of its intent to complete a Qualified Transfer; (ii) when the Qualified Transfer is to a newly-formed Business Entity, deliver the documents which this Agreement requires be delivered by a Business Entity that is the Franchisee; (iii) pay a transfer

fee of \$1,500 per Qualified Transfer; and (iv) execute and deliver a general release, in form satisfactory to Company, of any and all claims against Company, Company's Affiliates and their respective officers, directors, shareholders, employees and agents. The Qualified Transfer shall not be effective unless and until Franchisee satisfies conditions (i)-(iv). Company shall not have a right of first refusal with respect to a Qualified Transfer, nor shall Company's prior written consent to a Qualified Transfer be necessary if Franchisee satisfies the conditions stated in this Section.

I. Death or Incapacity.

1. Subject to the provisions of this Section, if an Event of Transfer occurs due to the death or Incapacity of a Franchisee that is a natural person, or, if Franchisee is a Business Entity, any person owning enough equity or voting interests of the Business Entity to result in a Change of Control, the spouse, heirs, executor or personal representative of the deceased or incapacitated person, or the Franchisee's remaining shareholders, members, partners or owners, as appropriate to the circumstance (collectively referred to as the "Successor") shall have 180 days from the date of death to (i) qualify themselves; or (ii) complete the sale or assignment of the interest to a qualified, approved third party. In either (i) or (ii), the Successor must satisfy all of the conditions and obtains Company's consent to complete the Event of Transfer. At the end of the 180-day period, if the Successor has not obtained Company's consent to complete the Event of Transfer, Company may, at its election, terminate this Agreement.

2. Immediately following the date of death or Incapacity, if the Successor is unable to demonstrate to Company's reasonable satisfaction that the Successor has the financial ability and business skills to operate the Franchised Restaurant in accordance with the requirements of this Agreement during the interim period until the Successor is able to obtain Company's consent to complete the Event of Transfer, Company shall have the absolute right to occupy the Approved Location and assume day-to-day management of the Franchised Restaurant for the account of Franchisee. In addition to receiving the fees due to Company under this Agreement, Franchisee agrees that in exchange for Company's management services, Company shall be entitled to receive a reasonable management fee in the then-current amount published in the Confidential Manual and be reimbursed for all of its direct costs and expenses in rendering management services. This Agreement shall otherwise continue in full force and effect during the period of Company's day-to-day management. The Successor's failure or refusal to cooperate with Company's right to turn management of the Franchised Restaurant over to Company during the interim period if required by this Section shall constitute a material breach of this Agreement.

3. The parties recognize that Company's right to manage the Franchised Restaurant is primarily intended to facilitate an orderly transition of ownership with minimal disruption to the Franchised Restaurant's continuous operation. Company shall manage the Franchised Restaurant only until the Successor obtains Company's consent to the Event of Transfer, but in no event shall Company be required to manage the Franchised Restaurant for longer than 90 days. By mutual agreement of Company and the Successor, the period of Company's management may be extended for longer than 90 days, but in no event shall it extend beyond one year from the date of death or Incapacity. If the Successor cannot obtain Company's consent to a proposed transferee by the end of one year, Company may terminate this Agreement.

4. During the time that Company manages the Franchised Restaurant, Company shall periodi-

cally discuss the status of the Franchised Restaurant's operations and financial results with the Successor and provide suitable current information about the Franchised Restaurant's performance as the Successor may reasonably require.

## **XXI. Relationship Of Parties: Indemnification: Security Interest**

A. Independent Contractor. This Agreement does not create a fiduciary relationship between the parties, nor does it make either party a general or special agent, joint venturer, partner or employee of the other for any purpose. With respect to all matters, the Franchisee relationship to Company is as an independent contractor. Franchisee understands and agrees that it is the independent owner of the Franchised Restaurant and in sole control of all aspects of its operation, and shall conduct its business using its own judgment and sole discretion, subject only to the provisions of this Agreement. Franchisee shall conspicuously identify itself in all advertising and all dealings with customers, suppliers and other third parties as the owner of the Franchised Restaurant operating under a license from Company.

B. Indemnification by Franchisee.

1. Franchisee shall indemnify and hold Company, Company's Affiliates and their respective officers, directors, shareholders, employees, agents, successors and assigns, harmless from and against any and all costs, expenses, losses, liabilities, damages, causes of action, claims and demands whatsoever, arising from or relating to the Franchised Restaurant or Franchisee's occupancy of the Approved Location, whether or not arising from bodily injury, personal injury or property damage, infringement (other than Third Party Claims within the scope of Company's agreement to indemnify Franchisee as set forth in his Agreement), or any other violation of the rights of others, or in any other way, subject to the provisions of this Agreement.

2. Company shall have the right to retain its own counsel to defend any third party claim asserted against it which is covered by this indemnification agreement.

3. Franchisee's indemnification and defense obligations shall survive the expiration, termination or assignment of this Agreement for any reason.

4. Franchisee's indemnification obligations shall extend, without limitation, to (i) all claims for actual, consequential and punitive damages; (ii) claims for lost profits; (iii) costs of investigation; (iv) costs and expenses incurred in defending any claim within the scope of Franchisee's indemnification including, without limitation attorneys and other professional fees, court costs, and travel and living expenses necessitated by the need or desire to appear before (or witness the proceed-

The franchisor and franchisee are independent parties and neither one may bind the other to take on liability or debt for the other. The franchisor is not liable for the franchisee's operating expenses. If there are third party claims and liabilities arising from the franchisee's operation, the franchisee's indemnification agreement allows the franchisor to recover from the franchisee any sums that the franchisor ends up paying to the third party (which may be a government entity for back taxes or a customer injured at the franchise premises). Third party claims are often brought against the franchisor by government agencies, customers and even the franchisee's employees. Sometimes plaintiffs are confused that the franchised business is independently owned by the franchisee. Also many plaintiffs assume the franchisor has "deeper pockets." The franchisor's litigation costs would be included in its claim for indemnity from the franchisee.

ings of) courts or tribunals (including arbitration tribunals), or government or quasi-governmental entities (including those incurred by Company's attorneys, experts and advisors; (v) costs and expenses for any recalls, refunds, compensation or public notices; (vi) claims based on alleged "vicarious," "principal/agent," "joint employer," or other legal theories as a result of Company's status as franchisor; and (vii) costs and expenses that Company or any of the indemnified parties incur as a result of any litigation or insolvency proceedings involving Franchisee (whether or not Franchisee is a party in the proceeding).

5. The scope of Franchisee's indemnification obligations shall apply regardless of whether a claim brought against Company, Company's Affiliates or any of the indemnified individuals is reduced to final judgment or results in settlement. The indemnified parties shall have the right to retain their own counsel to defend any third party claim which is covered by this indemnification agreement. The scope of Franchisee's indemnification obligations shall not be limited by decisions that an indemnified party makes in connection with their defense.

6. If a final judgment results in a finding that an indemnified party's liability is due to the indemnified party's gross negligence, willful misconduct or criminal acts, any costs or expenses paid or incurred by Franchisee pursuant to Franchisee's indemnification obligation shall promptly be reimbursed in full by the indemnified party to Franchisee except to the extent that the final judgment finds Franchisee jointly liable, in which event Franchisee's indemnification obligation will extend to any finding of Franchisee's comparative or contributory negligence.

7. Franchisee shall give Company written notice of any claim, matter, inquiry or investigation that could be the basis for a claim for indemnification promptly after Franchisee has actual knowledge or is deemed to have constructive knowledge of the claim, matter, inquiry or investigation. Franchisee shall fully cooperate with Company in connection with Company's handling of the claim, matter, inquiry or investigation. Company shall have no duty to seek recovery from third parties to mitigate its losses or reduce Franchisee's liability under its indemnification obligation.

C. Security Interest. To secure Franchisee's performance under this Agreement, Franchisee hereby grants to Company a security interest in and to all of Franchisee's tangible and intangible property used to operate the Franchised Restaurant. Company shall record appropriate financing statements to protect and perfect Company's rights as a secured party under Applicable Law. Except with Company's prior written consent, which Company shall not unreasonably withhold, it shall be a breach of this Agreement for Franchisee to grant another person a security interest in Franchisee's tangible or intangible assets of the Franchised Restaurant even if subordinate to Company's security interest. Company agrees to subordinate Company's own security interest if requested by a lender providing financing to Franchisee on commercially reasonable terms in connection with the purchase of the franchise.

See discussion in Guides – Section 20.4.

## XXII. Personal Guaranty

A. Scope. If Franchisee is a Business Entity, each person who is or becomes a Personal Guarantor shall furnish any financial information reasonably required by Company and execute Company's Personal Guaranty in the form attached as Exhibit B.

B. Default. An event of default under this Agreement shall occur if any Personal Guarantor fails or refuses to deliver to Company, within 10 days after Company's written request: (i) evidence of the due execution of the Personal Guaranty, and (ii) current financial statements of guarantor as may from time to time be requested by Company.

See discussion in Guides – Section 22.12.

### XXIII. Dispute Resolution

A. Agreement to Mediate Disputes. Except as otherwise provided in subparagraph B of this Section, neither party to this Agreement shall bring an action or proceeding to enforce or interpret any provision of this Agreement, or seeking any legal remedy based upon the relationship created by this Agreement or an alleged breach of this Agreement, until the dispute has been submitted to mediation conducted in accordance with the procedures stated in this Agreement.

1. The mediation shall be conducted pursuant to the rules of the National Franchise Mediation Program, a dispute resolution program for franchising administered under the auspices of the CPR Institute for Dispute Resolution ("the Mediation Service"). Either party may initiate the mediation (the "Initiating Party") by notifying the Mediation Service in writing, with a copy to the other party (the "Responding Party"). The notice shall describe with specificity the nature of the dispute and the Initiating Party's claim for relief. Thereupon, both parties will be obligated to engage in the mediation, which shall be conducted in accordance with the Mediation Service's then-current rules, except to the extent the rules conflict with this Agreement, in which case this Agreement shall control.

2. The mediator must be either a practicing attorney with experience in business format franchising or a retired judge, with no past or present affiliation or conflict with any party to the mediation. The parties agree that mediator and Mediation Service's employees shall be disqualified as a witness, expert, consultant or attorney in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation.

3. The fees and expenses of the Mediation Service, including, without limitation, the mediator's fee and expenses, shall be shared equally by the parties. Each party shall bear its own attorney's fees and other costs incurred in connection with the mediation irrespective of the outcome of the mediation or the mediator's evaluation of each party's case.

4. The mediation conference shall commence within 30 days after selection of the mediator. Regardless of whether Company or Franchisee is the Initiating Party, the mediation shall be conducted at Company's headquarters at the time, unless the parties otherwise required by applicable law.

5. The parties shall participate in good faith in the entire mediation, including the mediation conference, with the intention of resolving the dispute, if at all possible. The parties shall each send at least one representative to the mediation conference who has authority to enter into a binding contract on that party's behalf and on behalf of all principals of that party who are required by the terms of the parties' settlement to be personally bound by it. The parties recognize and agree, however, that the mediator's recommendations and decision shall not be binding on the parties.



6. The mediation conference shall continue until conclusion, which is deemed to occur when: (i) a written settlement is reached, (ii) the mediator concludes, after a minimum of 8 hours of mediation as required by subsection 8, and informs the parties in writing, that further efforts would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Neither party may withdraw before the conclusion of the mediation conference.

7. The mediation proceeding will be treated as a compromise settlement negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation proceeding by any party or their agents, experts, counsel, employees or representatives, and by the mediator and Mediation Service's employees, are confidential. Such offers, promises, conduct and statements may not be disclosed to any third party and are privileged and inadmissible for any purpose, including impeachment, under applicable federal and state laws or rules of evidence; provided however, that evidence otherwise discoverable or admissible shall not be rendered not discoverable or inadmissible as a result of its use in the mediation. If a party informs the mediator that information is conveyed in confidence by the party to the mediator, the mediator will not disclose the information.

8. If one party breaches this Agreement by refusing to participate in the mediation or not complying with the requirements for conducting the mediation, the non-breaching party may immediately file suit and take such other action to enforce its rights as permitted by law and the breaching party shall be obligated to pay: (i) the mediator's fees and costs; (ii) the non-breaching party's reasonable attorneys' fees and costs incurred in connection with the mediation, and (iii) to the extent permitted by law, the non-breaching party's reasonable attorneys' fees and costs incurred in any suit arising out of the same dispute, regardless of whether the non-breaching party is the prevailing party. Additionally, in connection with (iii), the breaching party shall forfeit any right to recover its attorneys' fees and costs should it prevail in the suit. The parties agree that the foregoing conditions are necessary in order to encourage meaningful mediation as a means for efficiently resolving any disputes that may arise.

#### B. Exceptions to Duty to Mediate Disputes.

1. The obligation to mediate shall not apply to any disputes, controversies or claims (i) where the monetary relief sought is under \$10,000, (ii) in which Company seeks to enforce its rights under any Addendum to Lease, or (iii) any claim by either party seeking interim relief, including, without limitation, requests for temporary restraining orders, preliminary injunctions, writs of attachment, appointment of a receiver, for claim and delivery, or any other orders which a court may issue when deemed necessary in its discretion to preserve the status quo or prevent irreparable injury, including the claim of either party for injunctive relief to preserve the status quo pending the completion of a mediation proceeding. The party awarded interim or injunctive relief shall not be required to post bond.

2. Additionally, notwithstanding a party's duty to mediate disputes under this Agreement, a party may file an application before any court of competent jurisdiction seeking Provisional Remedies whether or not the mediation has already commenced. An application for Provisional Remedies shall neither waive nor excuse a party's duty to mediate under this Agreement. However, once a party files an application for Provisional Remedies, the time period for mediation set forth in this Agreement shall be tolled pending the court's ruling on the application for

Provisional Remedies. The party that is awarded Provisional Remedies shall not be required to post bond or comparable security.

C. Judicial Relief.

1. The parties agree that (i) all disputes arising out of or relating to this Agreement which are not resolved by negotiation or mediation, and (ii) all claims which this Agreement expressly excludes from mediation, shall be brought exclusively in the Superior Court of California located closest to Company's headquarters at the time or in the United States District Court located closest to Company's headquarters. As of the date of this Agreement, the parties acknowledge that the Superior Court of the County of Los Angeles, and the United States District Court of the Central District of California are, respectively, the state and federal courts that are located closest to Company's headquarters; however, the parties further acknowledge that Company may relocate its headquarters in its sole discretion at any time without notice to the undersigned party. The parties agree to submit to the jurisdiction of the courts mutually selected by them pursuant to this Section and mutually acknowledge that selecting a forum in which to resolve disputes arising between them is important to promote stability in their relationship.

2. To the fullest extent that it may effectively do so under Applicable Law, Franchisee waives the defense of an inconvenient forum to the maintenance of an action in the courts identified in this Section and agrees not to commence any action of any kind against Company, Company's Affiliates and their respective officers, directors, shareholders, LLC managers and members, employees and agents or property arising out of or relating to this Agreement except in the courts identified in this Section.

D. Expedited Discovery. In connection with any application for Provisional Remedies, each party may conduct discovery on an expedited basis.

E. Waiver of jury trial. Company and franchisee each hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either company or franchisee on any matter whatsoever arising out of, or in any way connected with, this agreement, the relationship of the parties, the use of the abc system, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, regulation, emergency or otherwise, now or hereafter in effect, to the fullest extent permitted under applicable law.

F. Choice of Law. Except as otherwise provided in this Agreement with respect to the possible application of Local Laws, the parties agree that California law shall govern the construction, interpretation, validity and enforcement of this Agreement and shall be applied in any mediation or judicial proceeding to resolve all disputes between them, except to the extent the subject matter of the dispute arises exclusively under federal law, in which event the federal law shall govern.

G. Limitations Period. To the extent permitted by Applicable Law, any legal action of any kind arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any of its parts is invalid, illegal or otherwise voidable or void, must be commenced by no later than one year from the date of the act, event, occurrence or transaction which constitutes or gives rise to the alleged violation or liability; provided, however, the appli-

cable limitations period shall be tolled during the course of any mediation which is initiated before the last day of the limitations period with the tolling beginning on the date that the Responding Party receives the Initiating Party's demand for mediation and continuing until the date that the mediation is either concluded, or suspended due to a party's failure or refusal to participate in the mediation in violation of this Agreement.

H. Punitive or Exemplary Damages. Company and Franchisee, on behalf of themselves and their respective Affiliates, directors, officers, shareholders, members, managers, guarantors employees and agents, as applicable, each hereby waive to the fullest extent permitted by law, any right to, or claim for, punitive or exemplary damages against the other and agree that, in the event of a dispute between them, each is limited to recovering only the actual damages proven to have been sustained by it.

I. Attorneys' Fees. Except as expressly provided in this Agreement, in any action or proceeding brought to enforce any provision of this Agreement or arising out of or in connection with the relationship of the parties hereunder, the prevailing party shall be entitled to recover against the other its reasonable attorneys' fees and court costs in addition to any other relief awarded by the court. As used in this Agreement, the "prevailing party" is the party who recovers greater relief in the action.

J. Waiver of Collateral Estoppel. The parties agree they should each be able to settle, mediate, litigate or compromise disputes in which they may be, or become, involved with third parties without having the dispute affect their rights and obligations to each other under this Agreement. Company and Franchisee therefore each agree that a decision of an arbitrator or judge in any proceeding or action in which either Company or Franchisee, but not both of them, is a party shall not prevent the party to the proceeding or action from making the same or similar arguments, or taking the same or similar positions, in any proceeding or action between Company and Franchisee. Company and Franchisee therefore waive the right to assert that principles of collateral estoppel prevent either of them from raising any claim or defense in an action or proceeding between them even if they lost a similar claim or defense in another action or proceeding with a third party.

This section aids the integration clause and provides additional evidence that the franchisee is not entering into the contract relying on any promises not written in the contract.

K. Waiver of Class Action Relief. Company and Franchisee agree that any mediation or litigation initiated or brought by either party against the other will be conducted on an individual, not on a class-wide, basis.

#### **XXIV. Representations Of Franchisee.**

Franchisee understands and agrees and represents to Company, to induce Company to enter into this Agreement, that:

A. Acceptance of Conditions. Franchisee has read this Agreement and Company's Franchise Disclosure Document and understands and accepts the terms, conditions and covenants contained in this Agreement as being reasonably necessary to maintain Company's standards of service and quality and to protect and preserve Company's rights in the ABC System and the goodwill of the ABC Licensed Marks.

B. Independent Investigation. Franchisee has conducted an independent investigation of the business contemplated by this Agreement. Franchisee recognizes that the ABC System may evolve and change over time and that Company may impose change to the ABC System that Company believes, in its sole discretion, will benefit ABC Restaurants generally and strengthen consumer awareness of, and confidence in, the ABC Licensed Marks. Franchisee is aware that Company cannot predict the nature of future changes to the ABC System or the amount of Franchisee's future investment to adopt future changes

C. No Representations: Status of Franchisee.

1. By executing this Agreement, Franchisee represents and warrants that no person acting on Company's behalf has made any representations or promises to Franchisee that are not contained in this Agreement, including, without limitation, representations or promises about actual or potential sales, earnings, gross profits or net profits that Franchisee can expect to earn. No representations have been made by Company, Company's Affiliates or their respective officers, directors, shareholders, employees or agents that are contrary to statements made in the Franchise Disclosure Document previously received by Franchisee or to the terms contained in this Agreement.

2. The person executing this Agreement as, or on behalf of, Franchisee, and each Personal Guarantor is a United States citizen or a lawful resident alien of the United States.

3. If Franchisee is a Business Entity, Franchisee understands that it is a material obligation of this Agreement that it remain duly organized and in good standing for as long as this Agreement is in effect and it owns the franchise rights.

4. All financial and other information provided to Company in connection with Franchisee's application is true and correct and no material information or fact has been omitted which is necessary in order to make the information disclosed not misleading.

D. Success of Franchised Restaurant. Franchisee understands and agrees that owning the Franchised Restaurant involves business risks and the success of the Franchised Restaurant will depend primarily on Franchisee's investment of time, capital and personnel, the business abilities and experience of Franchisee's management, Franchisee's local marketing efforts, the desirability of the Approved Location in Franchisee's local market, local demographic factors, and other factors beyond Company's or Franchisee's control including, without limitation, climate and weather conditions, local competition, consumer preferences, inflation, labor costs, prevailing economic conditions and similar types of market conditions, which may change over time and are difficult to anticipate. Franchisee is not entering into this Agreement based upon any express or implied guaranty or assurance that the Franchised Restaurant at the Approved Location will be successful or profitable.

E. Anti-Terrorism Representations. Franchisee represents that none of Franchisee's assets are currently subject to being blocked under, and Franchisee is not otherwise in violation of Applicable Law including, without limitation, Anti-Terrorism Laws. Additionally, Franchisee agrees to comply with and assist Company to the fullest extent possible in Company's efforts to comply with Anti-Terrorism Laws. Any violation of, or "blocking" of assets under, any Anti-Terrorism Laws will con-

stitute a breach of this Agreement and grounds for immediate termination without an opportunity to cure. Any violation of, or “blocking” of assets under, any Anti-Terrorism Laws shall constitute a material breach of this Agreement and grounds for immediate termination without an opportunity to cure.

See discussion in Guides – Section 22.13.

## **XXV. Miscellaneous**

### **A. Notices.**

1. All communications required or permitted to be given to either party hereunder shall be in writing and shall be deemed duly given if property addressed on the earlier of (i) the date when delivered by hand; (ii) the date when delivered by fax or e-mail if confirmation of transmission is received or can be established by the sender; (iii) one business day after delivery to a reputable national overnight delivery service; or (iv) 5 days after being placed in the United States Mail and sent by certified or registered mail, postage prepaid, return receipt requested. A “business day” means weekdays only, excluding Saturdays, Sundays and holidays. Notices shall be directed to the address shown in Exhibit C for the party and its representative. Either party may change its address for receiving notices by giving appropriate written notice to the other. All communications required or permitted to be given by a party in writing may be given electronically to the party’s designated e-mail address in Exhibit C or as subsequently changed by appropriate written notice.

2. All payments and reports required to be delivered to Company shall be directed to Company at the above address or to an electronic address or account otherwise designated by Company. Notwithstanding the parties’ agreement regarding when notices shall be deemed to be given, any required payment or report not actually received by Company on the date it is due shall be deemed delinquent.

**B. Time of the Essence.** Time is of the essence of this Agreement with respect to each and every provision of this Agreement in which time is a factor.

**C. Waiver.** Any waiver granted by Company to Franchisee excusing or reducing any obligation or restriction imposed under this Agreement shall be in writing and shall be effective upon delivery of such writing by Company to Franchisee or upon such other effective date as specified in the writing, and only to the extent specifically allowed in such writing. No waiver granted by Company, and no action taken by Company, with respect to any third party shall limit Company’s right to take action of any kind, or not to take action, with respect to Franchisee. Any waiver granted by Company to Franchisee shall be without prejudice to any other rights Company may have. The rights and remedies granted to Company are cumulative. No delay on the part of Company in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Company of any right or remedy shall preclude Company from fully exercising such right or remedy or any other right or remedy. Company’s acceptance of any payments made by Franchisee after a breach of this Agreement shall not be, nor be construed as, a waiver by Company of any breach by Franchisee of any term, covenant or condition of this Agreement.

**D. Section Headings: Language.** The Section headings used in this Agreement are inserted

for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Agreement. The language used in this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against Company or Franchisee. The term "Franchisee" as used herein is applicable to one or more persons or Business Entities if the interest of Franchisee is owned by more than one, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two or more persons are at any time the Franchisee hereunder, whether or not as partners or joint venturers, their obligations and liabilities to Company shall be joint and several. Nothing in this Agreement is intended, nor shall it be deemed, to confer any rights or remedies upon any person or Business Entity not a party hereto.

E. Binding on Successors. The covenants, agreements, terms and conditions contained in this Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs and personal representatives of the parties hereto.

F. Validity; Conformity With Applicable Law. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under Applicable Law, but if any provision of this Agreement shall be invalid or prohibited under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. If the provisions of this Agreement provide for periods of notice less than those required by Applicable Law, or provide for termination, cancellation, non-renewal or the like other than in accordance with Applicable Law, such provisions shall be deemed to be automatically amended to conform them to the provisions of Applicable Law. If any provision of this Agreement is deemed unenforceable by virtue of its scope in terms of geographic area, business activity prohibited or length of time, but could be enforceable by reducing any or all thereof, the provision may be modified by a mediator or court so that it may be enforced to the fullest extent permissible under the choice of law adopted by this Agreement or other Applicable Law.

G. Amendments. No amendment, change, modification or variance to or from the terms and conditions set forth in this Agreement shall be binding on any party unless it is set forth in writing and duly executed by Company and Franchisee.

H. Withholding of Consent; Company's Business Judgment.

1. Except where this Agreement expressly requires Company to exercise its reasonable business judgment in deciding to grant or deny approval of any action or request by Franchisee, Company has the absolute right to refuse any request by Franchisee or to withhold its approval of any action by Franchisee in Company's sole discretion. Further, whenever the prior consent or approval of Company is required by this Agreement, Company's consent or approval must be evidenced by a writing signed by Company's duly authorized representative unless this Agreement expressly states otherwise.

2. The parties recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Agreement describe the right of Company to take (or refrain from taking) certain actions in its sole discretion and other actions in the exercise of its reasonable business judgment. Where this Agreement expressly requires that Company make a decision based upon Company's

reasonable business judgment, Company is required to evaluate the overall best interests of all ABC Restaurants and Company's own business interests. If Company makes a decision based upon its reasonable business judgment, neither a mediator nor a judge shall substitute his or her judgment for the judgment so exercised by Company. The fact that a mediator or judge might reach a different decision than the one made by Company is not a basis for finding that Company made its decision without the exercise of reasonable business judgment. Company's duty to exercise reasonable business judgment in making certain decision does not restrict or limit Company's right under this Agreement to make other decisions based entirely on Company's sole discretion as permitted by this Agreement. Company's sole discretion means that Company may consider any set of facts or circumstances that it deems relevant in rendering a decision.

This is the "integration clause." State franchise regulators require the last sentence. See discussion of the integration clause in the Guides – Section 22.13.

I. Complete Agreement. This Agreement, including all exhibits attached hereto, and all agreements or documents which by the provisions of this Agreement are expressly incorporated herein or made a part hereof, sets forth the entire agreement between the parties, fully superseding any and all prior agreements or understandings between them pertaining to the subject matter hereof. However, nothing in this Agreement or any related agreement is intended to disclaim the Company's representations made in the Franchise Disclosure Document.

J. Covenant and Condition. Each provision of this Agreement performable by Franchisee shall be construed to be both a covenant and a condition.

K. Consent of Spouse. If Franchisee enters into this Agreement in their individual capacity, Franchisee's spouse shall execute a Consent of Spouse in the form of Exhibit D. If Franchisee is a Business Entity, the spouse of each Personal Guarantor shall execute a Consent of Spouse in the form of Exhibit D.

L. Submission of Agreement. The submission of this Agreement to Franchisee does not constitute an offer to Franchisee, and this Agreement shall become effective only upon execution by Company and Franchisee.

M. Further Assurances. Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform the terms, provisions and conditions of this Agreement.

N. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

**[CONTINUES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have executed this Agreement as of its Effective Date.

Company: \_\_\_\_\_

ABC Franchise Co., LLC

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

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

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

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

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

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

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



# EXHIBIT A

## Approved Location And Protected Area

The street address of the Approved Location is as follows:

-----

The Protected Area consists of the geographic area which is described below and/or shown in the map attached to this Exhibit A:

-----

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

Company: \_\_\_\_\_

ABC Franchise Co., LLC

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

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

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

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

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

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

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

## EXHIBIT B Personal

### Guaranty

THIS GUARANTY AGREEMENT (“Agreement”) is made as of \_\_\_\_\_,  
by \_\_\_\_\_, an individual (“Guarantor”) in favor of ABC Franchise Co., LLC, a  
California corporation (the “Company”), subject to the following recitals:

### Recitals

- A. Guarantor’s entity, \_\_\_\_\_ (“Debtor”) has applied to purchase the right to develop one or more ABC Restaurants on the terms of the contracts attached to Company’s Franchise Disclosure Document (“FDD”) that the parties have agreed to enter into in connection with the award of franchise and/or area development rights to Debtor as the Contracts may be modified by mutual agreement of Company and Debtor (collectively referred to as the “Contracts”).
- B. Debtor is a Business Entity other than a partnership duly organized under the laws of the State of \_\_\_\_\_.
- C. When a franchisee or applicant seeking to purchase franchise or area development rights is a Business Entity other than a partnership, Company requires that each person owning 25% or more of the equity or voting interests of the Business Entity execute a copy of this Agreement, agreeing to personally guaranty the Business Entity’s obligations under each one of the Contracts for the benefit of Company.
- D. Guarantor represents that he/she owns 25% or more of the equity or voting interests of Debtor.

NOW, THEREFORE, in order to induce Company to enter into one or more of the Contracts with Debtor, Guarantor covenants and agrees with Company as follows:

Section 1. Guaranty. Guarantor hereby unconditionally and irrevocably guarantees to Company and Company’s Affiliates the full and punctual payment and performance of all present and future amounts, liabilities and obligations of Debtor to Company, Company’s Affiliates, or to any successor or transferee thereof under each of the Contracts entered into by and between Debtor and Company. Guarantor’s agreement shall apply regardless of whether the amounts, liabilities or obligations are liquidated or unliquidated, now exist or arise after the date of this Agreement, or consist of principal, interest, delinquency charges, costs, attorneys’ fees or other kinds of fees or obligations under the Contracts as they may be amended by Debtor and Company from time to time (collectively, the “Indebtedness”).

- a. Payments made on the Indebtedness will not discharge or diminish the obligations and

liability of Guarantor under this Agreement for any remaining and succeeding Indebtedness.

b. The guarantee provided for in this Agreement is an absolute, unconditional, continuing guarantee of payment and is in no way conditioned upon or limited by: (i) any attempt to collect from Debtor; (ii) any attempt to collect from, or the exercise of any rights and remedies against, any person other than Debtor who may at any time now or hereafter be primarily or secondarily liable for any or all of the Indebtedness, including, without limitation, any other maker, endorser, surety, or guarantor of all or a portion of the Indebtedness; or (iii) any resort or recourse to or against any security or collateral now or hereafter pledged, assigned, or granted to Company under the provisions of any instrument or agreement or otherwise assigned or conveyed to it.

c. If Debtor fails to pay any of the Indebtedness, when and as the same shall become due and payable (whether by acceleration, declaration, extension or otherwise), Guarantor shall on demand pay the same to Company in immediately available funds, in lawful money of the United States of America, at its address specified in this Agreement.

Section 2. Solidary Obligation. Guarantor hereby binds and obligates Guarantor and Guarantor's heirs, successors and assigns in solido with Debtor for the full and punctual payment and performance of all of the Indebtedness precisely as if the same had been contracted and were due and owing by Guarantor personally.

Section 3. Obligations Absolute. The obligations and liabilities of Guarantor under this Agreement (i) are primary obligations of Guarantor, (ii) are continuing, absolute, and unconditional, (iii) shall not be subject to any counterclaim, recoupment, set-off, reduction, or defense based upon any claim that Guarantor may have against Debtor, (iv) are independent of any other guaranty or guaranties at any time in effect with respect to all or any part of the Indebtedness, and (v) may be enforced regardless of the existence of another guaranty or guaranties.

a. The obligations and liabilities of Guarantor under this Agreement shall not be affected, impaired, lessened, modified, waived or released by the invalidity or unenforceability of the Indebtedness or any ancillary or related document, or by the bankruptcy, reorganization, dissolution, liquidation or similar proceedings affecting Debtor or the sale or other disposition of all or substantially all of the assets of Debtor.

b. Guarantor hereby consents that at any time and from time to time, Company may, without in any manner affecting, impairing, lessening, modifying, waiving or releasing Guarantor's obligations or liabilities under this Agreement, do any one or more of the following, all without notice to, or further consent of, Guarantor:

(1) renew, extend or otherwise change the time or terms for payment of the principal of, or interest on, any of the Indebtedness or any renewals or extensions thereof;

(2) extend or change the time or terms for performance by Debtor of any other obligations, covenants or agreements;

(3) amend, compromise, release, terminate, waive, surrender, or otherwise deal with: (i) any or all of the provisions of the Indebtedness, (ii) any or all of the obligations and liabilities of

Debtor or Guarantor, or (iii) any or all property or other security given at any time as collateral by Guarantor or Debtor;

(4) sell, assign, collect, substitute, exchange or release any or all property or other security now or hereafter serving as collateral for any or all of the Indebtedness;

(5) receive additional property or other security as collateral for any or all of the Indebtedness;

(6) fail or delay to enforce, assert or exercise any right, power, privilege or remedy conferred upon Company under the provisions of any Indebtedness or under Applicable Law;

(7) grant consents or indulgences or take action or omit to take action under, or in respect of, the Indebtedness; and

(8) apply any payment received from Debtor or from any source, other than Guarantor, to the Indebtedness in whatever order and manner Company may elect, and any payment received, Guarantor for or on account of this Agreement may be applied by Company to any of the Indebtedness in whatever order and manner Company may elect.

Section 4. Waiver by Guarantor. Guarantor unconditionally waives, to the fullest extent permitted by Applicable Law (i) notice of acceptance of and reliance on this Agreement or of the creation of the Indebtedness; (ii) presentment, demand, dishonor, protest, notice of non-payment and notice of dishonor of the Indebtedness; (iii) notice of transfer or assignment of the Indebtedness and this Agreement; and (iv) all notices required by statute or otherwise to preserve any rights against Guarantor hereunder, including, without limitation, any demand, proof, or notice of non-payment of any of the Indebtedness by Debtor and notice of any failure or default on the part of Debtor to perform or comply with any term of the Indebtedness.

Section 5. Subrogation. Until such time as the Indebtedness has been paid and performed in full and the provisions of this Agreement are no longer in effect, Guarantor shall not exercise any right to subrogation, reimbursement or contribution against Debtor nor any right to subrogation, reimbursement or indemnity against any property or other security serving at any time as collateral for any or all of the Indebtedness, all of which rights of subrogation, reimbursement, contribution and indemnity Guarantor subordinates to the full and punctual payment and performance of the Indebtedness.

Section 6. Subordination. Should Guarantor for any reason advance or lend monies to Debtor, whether or not the funds are used by Debtor to reduce the Indebtedness, Guarantor hereby agrees that any and all rights that Guarantor may have or acquire to collect from, or be reimbursed by, Debtor shall be subordinate to the rights of Company to collect and enforce the payment and performance of the Indebtedness, until such time as the Indebtedness has been fully paid and performed and the provisions of this Agreement are no longer in effect.

Section 7. Remedies. Upon Debtor's failure to pay or perform any of the Indebtedness when due (whether by acceleration or otherwise), Company, subject to the dispute resolution provisions of this Agreement, may institute a judicial proceeding for the collection of the sums or the

performance of the Indebtedness so due and unpaid or unperformed, and may prosecute the proceeding to judgment for final decree, and may enforce the same against Guarantor and collect the monies adjudged or decreed to be payable in the manner provided by law out of the property of Guarantor, wherever situated. In the event of Debtor's failure, Company shall have the right to proceed first and directly against Guarantor without proceeding against Debtor or any other person, without exhausting any other remedies which it may have and without resorting to any other security held by Company. Debtor's alleged reason or excuse for failing to pay or perform any of the Indebtedness when due shall not limit or restrict Company's enforcement of its rights arising under this Agreement.

Section 8. Enforcement Expenses. Guarantor agrees to indemnify and hold Company harmless against any loss, liability, or expense, including their reasonable attorneys' fees, accounting fees and other costs and disbursements that may result from Debtor's failure to pay or perform any of the Indebtedness when and as due and payable or that may be incurred in enforcing any obligation of Debtor or Guarantor.

Section 9. Notices. All communications required or permitted to be given to either party hereunder shall be in writing and shall be deemed duly given on the earlier of (a) the date when delivered by hand; (b) one business day after delivery to a reputable national overnight delivery service; or (c) 4 business days after being placed in the United States Mail and sent by certified or registered mail, postage prepaid, return receipt requested. Notices shall be addressed in the manner shown on Exhibit A, provided either party may change its address for receiving notices by appropriate written notice to the other.

Section 10. Amendment. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally or in any manner other than by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

Section 11. Waivers. No course of dealing on the part of Company, its officers, employees, consultants or agents, nor any failure or delay by Company with respect to exercising any of rights, powers or privileges under this Agreement shall operate as a waiver thereof.

Section 12. Cumulative Rights. The rights and remedies of Company under this Agreement, the Indebtedness and any ancillary or related document shall be cumulative, and the exercise or partial exercise of any Company's rights or remedies shall not preclude the exercise of any other right or remedy which Company may have under applicable law.

Section 13. Construction. All titles or headings to articles, sections, subsections or other divisions of this Agreement are only for the convenience of the parties and shall not be construed to have any effect or meaning with respect to interpreting the content of such articles, sections, subsections or other divisions, such other content being controlling as to the intent and agreement of the parties to this Agreement. Unless specifically defined in this Agreement, all capitalized terms in this Agreement shall have the same meaning assigned to them in the Franchise Agreement to be entered into by and between Debtor and Company. Words used in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words used in the singular shall also apply to the words when used in the plural and vice versa.

Section 14. Dispute Resolution. The parties adopt and incorporate by reference as part of this Agreement the Dispute Resolution provisions set forth in Exhibit B.

Section 15. Successors and Assigns. All covenants and agreements by or on behalf of Guarantor in this Agreement shall bind Guarantor's heirs, successors and assigns and shall inure to the benefit of Company and its successors and assigns. This Agreement is for the benefit of Company and for any other person or persons as may from time to time become or be the holders of any of the Indebtedness, and this Agreement shall be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, any holder of the Indebtedness shall have all of the rights of such granted to Company under this Agreement upon the transfer of the Indebtedness to the holder.

[Signature page immediately follows.]

IN WITNESS WHEREOF, Guarantor has caused this Agreement to be duly executed as of the date first written above.

Guarantor:

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

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

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

Company executes this Agreement to acknowledge its agreement to be bound by the dispute resolution provisions stated in Exhibit B.

Company: ABC Franchise Co., LLC

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

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

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

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

# EXHIBIT A

All of the following provisions are incorporated by reference into the attached documents:

Notices

Debtor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Guarantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Company: ABC Franchise Co., LLC

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



## EXHIBIT B

### Dispute Resolution

1. AGREEMENT TO MEDIATE DISPUTES. Except as otherwise provided in this Agreement, neither party to this Agreement shall bring an action or proceeding to enforce or interpret any provision of this Agreement, or seeking any legal remedy based upon the relationship created by this Agreement or an alleged breach of this Agreement, until the dispute has been submitted to mediation conducted in accordance with the procedures stated in this Agreement.
  - (a) The mediation shall be conducted pursuant to the rules of the National Franchise Mediation Program, a dispute resolution program for franchising administered under the auspices of the CPR Institute for Dispute Resolution (“the Mediation Service”). Either party may initiate the mediation (the “Initiating Party”) by notifying the Mediation Service in writing, with a copy to the other party (the “Responding Party”). The notice shall describe with specificity the nature of the dispute and the Initiating Party’s claim for relief. Thereupon, both parties will be obligated to engage in the mediation, which shall be conducted in accordance with the Mediation Service’s then-current rules, except to the extent the rules conflict with this Agreement, in which case this Agreement shall control.
  - (b) The mediator must be either a practicing attorney with experience in business format franchising or a retired judge, with no past or present affiliation or conflict with any party to the mediation. The parties agree that mediator and Mediation Service’s employees shall be disqualified as a witness, expert, consultant or attorney in any pending or subsequent proceeding relating to the dispute which is the subject of the mediation.
  - (c) The fees and expenses of the Mediation Service, including, without limitation, the mediator’s fee and expenses, shall be shared equally by the parties. Each party shall bear its own attorneys’ fees and other costs incurred in connection with the mediation irrespective of the outcome of the mediation or the mediator’s evaluation of each party’s case.
  - (d) The mediation conference shall commence within 30 days after selection of the mediator. Regardless of whether Company or Guarantor is the Initiating Party, the mediation shall be conducted at Company’s headquarters at the time, unless otherwise required by Applicable Law.
  - (e) The parties shall participate in good faith in the entire mediation, including the mediation conference, with the intention of resolving the dispute, if at all possible. The parties shall each send at least one representative to the mediation conference who has authority to enter into a binding contract on that party’s behalf and on behalf of all principals of that party who are required by the terms of the parties’ settlement to be personally bound by it. The parties recognize and agree, however, that the mediator’s recommendations and decision shall not be binding on the parties.
  - (f) The mediation conference shall continue until conclusion, which is deemed to occur when:
    - (i) a written settlement is reached, (ii) the mediator concludes, after a minimum of 8 hours of mediation as required by subsection (h), and informs the parties in writing, that further efforts

would not be useful, or (iii) the parties agree in writing that an impasse has been reached. Neither party may withdraw before the conclusion of the mediation conference.

(g) The mediation proceeding will be treated as a compromise settlement negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation proceeding by any party or their agents, experts, counsel, employees or representatives, and by the mediator and Mediation Service's employees, are confidential. Such offers, promises, conduct and statements may not be disclosed to any third party and are privileged and inadmissible for any purpose, including impeachment, under applicable federal and state laws or rules of evidence; provided however, that evidence otherwise discoverable or admissible shall not be rendered not discoverable or inadmissible as a result of its use in the mediation. If a party informs the mediator that information is conveyed in confidence by the party to the mediator, the mediator will not disclose the information.

(h) If one party breaches this Agreement by refusing to participate in the mediation or not complying with the requirements for conducting the mediation, the non-breaching party may immediately file suit and take such other action to enforce its rights as permitted by law and the breaching party shall be obligated to pay: (i) the mediator's fees and costs, (ii) the non-breaching party's reasonable attorneys' fees and costs incurred in connection with the mediation, and (iii) to the extent permitted by law, the non-breaching party's reasonable attorneys' fees and costs incurred in any suit arising out of the same dispute, regardless of whether the non-breaching party is the prevailing party. Additionally, in connection with (iii), the breaching party shall forfeit any right to recover its attorneys' fees and costs should it prevail in the suit. The parties agree that the foregoing conditions are necessary in order to encourage meaningful mediation as a means for efficiently resolving any disputes that may arise.

## 2. EXCEPTIONS TO DUTY TO MEDIATE DISPUTES.

(a) The obligation to mediate shall not apply to any disputes, controversies or claims (i) where the monetary relief sought is under \$10,000, (ii) in which Company seeks to enforce its rights under any Addendum to Lease, or (iii) any claim by either party seeking interim relief, including, without limitation, requests for temporary restraining orders, preliminary injunctions, writs of attachment, appointment of a receiver, for claim and delivery, or any other orders which a court may issue when deemed necessary in its discretion to preserve the status quo or prevent irreparable injury, including the claim of either party for injunctive relief to preserve the status quo pending the completion of a mediation proceeding. The party awarded interim or injunctive relief shall not be required to post bond.

(b) Additionally, notwithstanding a party's duty to mediate disputes under this Agreement, a party may file an application before any court of competent jurisdiction seeking Provisional Remedies, whether or not the mediation has already commenced. An application for Provisional Remedies shall neither waive nor excuse a party's duty to mediate under this Agreement. However, once a party files an application for Provisional Remedies, the time period for mediation set forth in this Agreement shall be tolled pending the court's ruling on the application for Provisional Remedies. The party that is awarded Provisional Remedies shall not be required to post bond or comparable security

3. JUDICIAL RELIEF.

(a) The parties agree that (i) all disputes arising out of or relating to this Agreement which are not resolved by negotiation or mediation, and (ii) all claims which this Agreement expressly excludes from mediation, shall be brought exclusively in the Superior Court of California located closest to Company's headquarters at the time or in the United States District Court located closest to Company's headquarters. As of the date of this Agreement, the parties acknowledge that the Superior Court of the County of Los Angeles and the United States District Court of the Central District of California are, respectively, the state and federal courts that are located closest to Company's headquarters; however, the parties further acknowledge that Company may relocate its headquarters in its sole discretion at any time without notice to the undersigned party. The parties agree to submit to the jurisdiction of the courts mutually selected by them pursuant to this Section and mutually acknowledge that selecting a forum in which to resolve disputes arising between them is important to promote stability in their relationship.

(b) To the fullest extent that it may effectively do so under Applicable Law, Guarantor waives the defense of an inconvenient forum to the maintenance of an action in the courts identified in this Section and agrees not to commence any action of any kind against Company, Company's Affiliates and their respective officers, directors, shareholders, LLC managers and members, employees and agents or property arising out of or relating to this Agreement except in the courts identified in this Section.

(c) In any proceeding alleging breach of this Agreement, each party shall have the right to engage in deposition and document discovery. In connection with any application for Provisional Remedies, each party may conduct discovery on an expedited basis.

4. EXPEDITED DISCOVERY. In connection with any application for Provisional Remedies, each party may conduct discovery on an expedited basis.

5. WAIVER OF JURY TRIAL. COMPANY AND GUARANTOR EACH HEREBY WAIVE THEIR RESPECTIVE RIGHT TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER COMPANY OR GUARANTOR, ON ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES, THE USE OF THE ABC SYSTEM, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

6. CHOICE OF LAW. Except as otherwise provided in this Agreement with respect to the possible application of Local Laws, the parties agree that California law shall govern the construction, interpretation, validity and enforcement of this Agreement and shall be applied in any mediation or judicial proceeding to resolve all disputes between them, except to the extent the subject matter of the dispute arises exclusively under federal law, in which event the federal law shall govern.

7. LIMITATIONS PERIOD. To the extent permitted by Applicable Law, any legal action of any kind arising out of or relating to this Agreement or its breach, including without limitation, any claim that this Agreement or any of its parts is invalid, illegal or otherwise voidable or void,

must be commenced by no later than one year from the date of the act, event, occurrence or transaction which constitutes or gives rise to the alleged violation or liability; provided, however, the applicable limitations period shall be tolled during the course of any mediation which is initiated before the last day of the limitations period with the tolling beginning on the date that the Responding Party receives the Initiating Party's demand for mediation and continuing until the date that the mediation is either concluded, or suspended due to a party's failure or refusal to participate in the mediation in violation of this Release.

8. PUNITIVE OR EXEMPLARY DAMAGES. Company and Guarantor, on behalf of themselves and their respective Affiliates, directors, officers, shareholders, members, managers, guarantors, employees and agents, as applicable, each hereby waive to the fullest extent permitted by law, any right to, or claim for, punitive or exemplary damages against the other and agree that, in the event of a dispute between them, each is limited to recovering only the actual damages proven to have been sustained by it.

9. ATTORNEYS' FEES. Except as expressly provided in this Agreement, in any action or proceeding brought to enforce any provision of this Agreement or arising out of or in connection with the relationship of the parties hereunder, the prevailing party shall be entitled to recover against the other its reasonable attorneys' fees and court costs in addition to any other relief awarded by the court. As used in this Agreement, the "prevailing party" is the party who recovers greater relief in the action.

10. WAIVER OF COLLATERAL ESTOPPEL. The parties agree they should each be able to settle, mediate, litigate or compromise disputes in which they may be, or become, involved with third parties without having the dispute affect their rights and obligations to each other under this Agreement. Company and Guarantor therefore each agree that a decision of an arbitrator or judge in any proceeding or action in which either Company or Guarantor, but not both of them, is a party shall not prevent the party to the proceeding or action from making the same or similar arguments, or taking the same or similar positions, in any proceeding or action between Company and Guarantor. Company and Guarantor therefore waive the right to assert that principles of collateral estoppel prevent either of them from raising any claim or defense in an action or proceeding between them even if they lost a similar claim or defense in another action or proceeding with a third party.

11. WAIVER OF CLASS ACTION RELIEF. Company and Guarantor agree that any mediation or litigation initiated or brought by either party against the other will be conducted on an individual, not on a class-wide, basis.

# EXHIBIT C

## Addresses For Notice

To: Company	To: Franchisee
With A Copy To:	With A Copy To:

# EXHIBIT D

## Spousal Consent

The undersigned is the spouse of \_\_\_\_\_,

The party identified as "Franchisee" in that certain Franchise Agreement dated \_\_\_\_\_ ("Franchise Agreement") by and between ABC Franchise Co., LLC ("Company") and Franchisee.

\_\_\_\_\_, who is a Personal Guarantor and has entered into a Personal Guaranty of the obligations of \_\_\_\_\_, the Franchisee in that certain Franchise Agreement dated \_\_\_\_\_ ("Franchise Agreement") by and between ABC Franchise Co., LLC ("Company") and Franchisee.

The Franchise Agreement and the Personal Guaranty are together referred to as the "Franchise Contract."

I hereby given my consent to my spouse's execution of the Franchise Contract and agree that the actions and the obligations undertaken by my spouse under the Franchise Contract shall be binding the marital community and any interest I may have in any rights awarded to my spouse.

I declare that I have had the opportunity to fully and carefully read the Franchise Contract and to seek the advice of independent counsel with respect to the Franchise Contract and this Consent.

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

Signature                      of                      Spouse:

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

## EXHIBIT E

### Collateral Assignment Of Telephone Numbers, Addresses, Listings And Assumed Or Fictitious Business Name

This Collateral Assignment of Telephone Numbers, Addresses, Listings and Assumed or Fictitious Business Name (“Assignment”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) in accordance with the terms of that certain Franchise Agreement (“Franchise Agreement”) between and the person(s) or entity identified on the signature block of this Agreement as “Franchisee” and ABC Franchise Co., LLC, a California limited liability, the entity identified on the signature block of this Agreement as “Company.” This Assignment is being executed concurrently with the Franchise Agreement (“Franchise Agreement”) under which Company granted Franchisee the right and license to use the ABC System in connection with the operation of one ABC Restaurants at the Approved Location subject to the terms and conditions of the Franchise Agreement. The Effective Date of this Assignment is the same as the Effective Date of the Franchise Agreement.

FOR VALUE RECEIVED, Franchisee hereby irrevocably and unconditionally assigns and transfers to Company all of Franchisee’s right, title, and interest in and to those certain telephone numbers, addresses, domain names, locators, directories, listings, and assumed or fictitious business names (collectively, the “Numbers, Addresses, Listings and Names”) Franchisee has used or is using in connection with the operation of the Franchised Restaurant on the effective date of termination or expiration of the Franchise Agreement.

This Assignment may not be revoked without the prior written consent of Company. The parties agree that this Assignment is for collateral purposes only and does not impose on Company any liability or obligation of any kind to Franchisee or any third party arising from or in connection with the operation of the Franchised Restaurant or Franchisee’s acts or omissions. Company’s execution of this Assignment does not create or impose any express or implied obligations upon Company pertaining to the Numbers, Addresses, Listings and Names used by Franchisee on or before the effective date of termination or expiration of the Franchise Agreement. Furthermore, nothing in this Assignment is intended to, or shall, modify Franchisee’s indemnity agreement in the Franchise Agreement.

Upon termination or expiration of the Franchise Agreement (without renewal or extension) and in accordance with the requirements of the Franchise Agreement, Franchisee shall immediately cease using the Numbers, Addresses, Listings and Names and 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 and transfer of Franchisee’s interest in the Numbers, Addresses, Listings and Names to Company pursuant to the terms of this Assignment. If Franchisee fails to do so, Franchisee agrees that this Assignment gives Company the absolute and unconditional authority to direct the Provider Companies on Franchisee’s behalf to effectuate the assignment and transfer of the Numbers, Addresses, Listings and Names to Company upon termination or expiration of the Franchise Agreement. The parties agree that the Provider Companies may accept Company’s written notice,

the Franchise Agreement or this Assignment as conclusive proof of Company's exclusive rights in and to the Numbers, Addresses, Listings, and Names as of the effective date of termination or expiration of the Franchise Agreement. The parties further agree that, if the Provider Companies require that the parties execute the Provider Companies' own assignment forms or other transfer documents following termination or expiration of the Franchise Agreement, Company's execution of those forms or documentation on behalf of Franchisee shall effectuate Franchisee's consent and agreement to the assignment.

Franchisee hereby appoints Company as Franchisee's true and lawful attorney-in-fact to direct the Provider Companies to assign the Numbers, Addresses, Listings, and Names to Company, and to execute such documents and take such actions as may be necessary to effectuate the assignment.

The parties agree that at any time after the date of this Assignment they will perform all additional acts and execute and deliver any documents as may be necessary to assist in or accomplish the purpose of this Assignment described herein upon termination or expiration of the Franchise Agreement.

IN WITNESS WHEREOF, the parties have signed this Assignment as of the Effective Date.

Company: \_\_\_\_\_

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

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

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

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

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

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

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



## EXHIBIT F

ADDENDUM (“Addendum”) TO LEASE DATED \_\_\_\_\_ (“Lease”)

BY AND BETWEEN \_\_\_\_\_ (“Landlord”) and

\_\_\_\_\_ (“Tenant or Franchisee”)

RE: RIGHTS OF ABC FRANCHISE CO., LLC (“Company”)

1. WHEREAS, Company and Tenant are parties to a certain Franchise Agreement dated \_\_\_\_\_ (the “Franchise Agreement”), pursuant to which Company has granted Franchisee a franchise and license to use the ABC System and the ABC Licensed Marks in operating an ABC Restaurant on the terms and conditions stated in the Franchise Agreement; and
2. WHEREAS, Company has approved Franchisee’s request to locate its ABC Restaurant in certain premises (“Premises”) owned by Landlord which is the subject of the Lease attached hereto as Schedule A (“Lease”) on the condition that all of the conditions and agreements set forth in this Addendum are made a part of the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- A. **Assignment of Lease.** Franchisee irrevocably assigns and transfers to Company all of Franchisee’s right, title, and interest in and to the Lease and all options contained therein. This assignment may not be revoked without the prior written consent of Company. The parties acknowledge that, until Company accepts the assignment made by Franchisee, Company has no obligations, liabilities, or responsibilities under the Lease of any kind, including, without limitation, as a guarantor or indemnitor of Tenant’s obligations to Landlord. Company’s signature below does not create or impose any obligations on Company.
- B. **Use of Property.** The Premises shall be used solely for the operation of an ABC Restaurant. Company may enter the Premises at any time to inspect Franchisee’s operations and engage in all activities expressly permitted by the Franchise Agreement.
- C. **Default in Franchise Agreement.** Franchisee’s default under the Franchise Agreement for any reason shall constitute an event of default under the Lease, which can only be cured if the Franchise Agreement default is timely cured by Franchisee.
- D. **Notices to Company.** Landlord shall serve Company with a copy of any notice of default, breach or termination of Lease at the same time it serves Franchisee with such notice.
- E. **Incorporation by Reference.** Landlord and Franchisee expressly incorporate the terms of this Addendum in, and make it part of, the Lease.

F. Default by Franchisee. Landlord agrees not to terminate the Lease based on Franchisee’s breach or default until it has given Company written notice identifying the breach or default and at least ten (10) days to cure the breach or default. If Company chooses not to cure the breach or default, Landlord may terminate the Lease in the manner provided in the Lease, but shall have no remedy against Company.

G. Acceptance of Assignment by Company. Company may accept the assignment of the Lease at any time before the Lease expires if: (a) Company terminates the Franchise Agreement for any reason, or (b) Franchisee loses the right to occupy the Premises for any reason other than expiration of the Lease or condemnation or destruction of the Premises on the terms stated in the Lease. To accept the assignment, Company must give written notice to Landlord and Franchisee. If Company accepts the assignment, at Company’s election, from and after the date of acceptance: (i) Company shall have all of the rights of Franchisee under the Lease and Franchisee shall be deemed to be a sublessee of Company on the terms and conditions contained in this Lease; (ii) Company shall have the right to assign or sublet all of any part of its interest in the Lease or in the Premises to another ABC Restaurant franchisee without Landlord’s prior consent; and (iii) Company shall be liable to perform only the obligations of Franchisee under the Lease arising from and after the date of Company’s acceptance of the assignment and shall have no liability for obligations arising before Company’s acceptance of the assignment.

H. Landlord’s Agreements. In addition to agreements stated elsewhere in this Addendum, for the benefit of Company, Landlord agrees not to (a) accept Franchisee’s voluntary surrender of the Lease without prior notice to Company, or (b) amend the Lease without Company’s prior written consent.

I. Communications. Any notices required in this Addendum must be in writing and will be deemed given when actually delivered by personal delivery or 4 days after being sent by certified or registered mail, return receipt requested, if addressed as follows:

Company: ABC Franchise Co., LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change its address for receiving notices by appropriate written notice to the other.

J. Miscellaneous. Any waiver excusing or reducing any obligation imposed by this Addendum shall be in writing and executed by the party who is charged with making the waiver and shall be effective only to the extent specifically allowed in such writing. The language used in this Addendum shall in all cases be construed simply according to its fair meaning and not strictly for or against any party. Nothing in this Addendum is intended, nor shall it be deemed, to confer any rights or remedies upon any person or entity not a party hereto. This Addendum shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs, and personal representatives of the parties hereto. This Addendum sets forth the entire agreement with regard to the rights of Company, fully superseding any and all prior agreements or understandings between the parties pertaining to the subject matter of this Addendum. This Addendum may only be amended by written agreement duly executed by each party. Any capitalized term which is not expressly defined in this Addendum shall have the same meaning assigned to the term in the Franchise Agreement.

K. WAIVER OF JURY TRIAL. LANDLORD, TENANT AND COMPANY HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM, OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING AND/OR HEARING BROUGHT BY EITHER LANDLORD, TENANT OR COMPANY ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ADDENDUM, THE RELATIONSHIP OF LANDLORD, TENANT AND COMPANY, THE USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OR INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, REGULATION, EMERGENCY OR OTHERWISE NOW OR HEREAFTER IN EFFECT.

L. Further Assurances. Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform the terms, provisions and conditions of this Addendum.

IN WITNESS WHEREOF, this Addendum is made and entered into by the undersigned parties as of \_\_\_\_\_, \_\_\_\_\_.

COMPANY: ABC Franchise Co., LLC

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

LANDLORD: \_\_\_\_\_

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

FRANCHISEE: \_\_\_\_\_

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

SCHEDULE A

[Attach copy of proposed Lease]

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JETRO

Area Development Agreement

March 30, 2015

## Table of Contents

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I.	Definitions.....	214
II.	Development Rights And Obligations.....	215
III.	Development Obligations.....	219
IV.	ABC System.....	221
V.	Full Time And Attention.....	221
VI.	Default And Termination Of Development Agreement	221
VII.	Event Of Transfer.....	223
VIII.	Relationship Of Parties; Indemnification.....	225
IX.	Personal Guaranty.....	226
X.	Dispute Resolution.....	227
XI.	Representations By Developer.....	227
XII.	Miscellaneous.....	228

## List Of Exhibits

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EXHIBIT 1	.....	Term Sheet: Development Territory, Development Quota, and Development Deadlines
EXHIBIT 2	.....	Franchise Agreement
EXHIBIT 3	.....	Spousal Consent

# ABC Franchise Co., LLC Area Development Agreement

THIS AREA DEVELOPMENT AGREEMENT (“Development Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (“Effective Date”) by and between ABC FRANCHISE CO., LLC, a California limited liability company (“Company”) and \_\_\_\_\_ (“Developer”).

## Recitals

- A. Company owns a license to operate, and grant sublicenses to third parties to operate, casual dining restaurants in the United States featuring fresh and healthy Asian-inspired noodle and rice bowl selections with high quality ingredients, sauces and curries and serving complimentary side dishes, beer and wine and fountain drinks that do business under the trade name ASIAN BOWN CAFE and operate in accordance with Company’s comprehensive business methods. In this Agreement, each restaurant is referred to as “ABC Restaurant” and collectively as “ABC Restaurants.”
- B. Company grants to persons who are able to meet Company’s qualifications and are willing to undertake the necessary investment and effort the right to develop and operate a mutually agreed-upon number of ABC Restaurants within a designated geographic area subject to complying with specified opening date deadlines and other conditions.
- C. Developer represents that it (i) has the expertise, financial resources, local marketing knowledge and know-how to open and operate multiple ABC Restaurants at the same time in the market area identified in this Development Agreement as the “Development Territory,” and (ii) is willing to invest the necessary capital, time and skill to meet the development commitments in this Development Agreement subject to the terms and conditions in this Development Agreement.

NOW, THEREFORE, the parties agree as follows:

### I. Definitions

If a capitalized term is not defined in this Development Agreement, it shall have the same meaning assigned in the Franchise Agreement and the parties hereby incorporate the applicable definitions in the Franchise Agreement by reference. For purposes of incorporating Franchise Agreement definitions as part of this Development Agreement, any references in the Franchise Agreement to “Franchisee” shall, in this Development Agreement, mean Developer. In addition, the parties adopt the following definitions for purposes of this Development Agreement:

The definitions section defines all capitalized terms that are used in a special way throughout the contract. It is efficient to place all definitions in one place rather than scatter them throughout the contract where they are first used. It also makes it easier for a franchisee to understand the contract.

The parties will negotiate the provisions covered by Exhibit 1 before they sign the Area Development Agreement so that Exhibit 1 is completed when they sign the Area Development Agreement, not afterwards.

- A. “Approved Location” means any one of the particular business premises in the Development Territory approved by Company in writing for Developer’s operation of a Franchised Restaurant under a Franchise Agreement.
- B. “Development Deadline” is each specific date shown on Exhibit 1 by which Developer must open an ABC Restaurant in the Development Quota.
- C. “Development Quota” is the minimum number of ABC Restaurants that must be open for business by each Development Deadline shown on Exhibit 1.
- D. “Development Term” is the period beginning on Effective Date of this Development Agreement and expiring on (i) the last Development Deadline shown on Exhibit 1; or (ii) the date that the last ABC Restaurant in the Development Quota actually opens for business to the public, whichever first occurs, unless this Development Agreement is sooner terminated in accordance with its terms.
- E. “Development Territory” is the geographic area identified on Exhibit 1 excluding all Captive Venues in the Development Territory that exist now or come into existence after the Effective Date.
- F. “Effective Date” is the date appearing on page 1 and is the first day of the Development Term.
- G. “Franchise Agreement” means the form of Franchise Agreement attached as Exhibit 2.
- H. “Opening Date” is the date on which a Franchised Restaurant actually opens for business to the public.

## II. Development Rights And Obligations

See discussion in the Guides – Section 19.2 and Section 21.

- A. Grant of Rights.
  - 1. Subject to the terms and conditions of this Development Agreement including, without limitation, Company’s reserved rights, Company hereby grants to Developer, and Developer hereby accepts, the exclusive right to develop ABC Restaurants in the Development Territory. As a result, subject to Company’s reserved rights and provided Developer is not in default under this Development Agreement, Company agrees not to directly or indirectly operate, or grant any other person the right to operate, an ABC Restaurant in the Development Territory during the Development Term.
  - 2. Concurrently upon execution of this Development Agreement, the parties shall sign the Franchise Agreement for the first ABC Restaurant in the Development Quota.
  - 3. Subject to the provisions of this Development Agreement, Company shall offer Developer a license for each additional ABC Restaurant in the Development Quota after Company issues a Site Approval Notice for a new site that Developer proposes for an ABC Restaurant pursuant to the site approval procedures described in the Franchise Agreement. The offer shall be made by presenting Developer with a Franchise Agreement promptly following issuance of the Site

Approval Notice, and Developer shall signify its acceptance of the offer by executing the Franchise Agreement within the time required by this Development Agreement.

4. In conjunction with Developer's request for approval of a new site for another ABC Restaurant in the Development Quota, Company may require that Developer and each Personal Guarantor provide Company with current financial statements, budgets and other information to demonstrate to Company's reasonable satisfaction that Developer has access to sufficient capital to complete the development and opening of the proposed new ABC Restaurant without undue risk of impairment to Developer's ability to continue to support the operations of the other ABC Restaurants, if any, that are then open or under development. Company may choose to disapprove a proposed site and not offer Developer a license for an additional ABC Restaurant if, based on the financial and other information supplied by Developer, Company determines that Developer does not have access to sufficient capital to complete the development, opening and operation of the proposed new ABC Restaurant without undue risk of impairment to Developer's ability to continue to fulfill its obligations with respect to ABC Restaurants, if any, that are then open or under development.

5. The parties agree that once the Development Term expires or this Development Agreement is terminated, whichever occurs first, Company shall have the complete and unrestricted right to open, or award franchise licenses to third parties to open, ABC Restaurants anywhere in the Development Territory outside of the Protected Area that Company has assigned to any Franchised Restaurant opened by Developer that is then-operating or in any stage of development where the Approved Location of the Franchised Restaurant has already been approved and a Protected Area has already been designated by Company.

B. Limited Grant.

1. Company grants Developer no rights other than the rights expressly stated in this Development Agreement.

2. Nothing in this Development Agreement gives Developer the right to sublicense the use of the ABC Licensed Marks or ABC System to others.

3. Nothing in this Development Agreement gives Developer the right to object to Company's grant of franchises to others for locations outside of the Development Territory.

4. Nothing in this Development Agreement gives Developer an interest in Company or the right to participate in Company's business activities, investment or corporate opportunities.

C. Development Fee.

1. Upon execution of this Development Agreement, Developer shall pay to Company a development fee equal to the sum of \$39,500 for the first ABC Restaurant in the Development Quota and \$30,000 for each additional ABC Restaurant in the Development Quota (the aggregate sum is the "Development Fee").

See discussion in the Guides – 21.4. Also, this Section explains that the same form of unit Franchise Agreement will be signed by the parties and is attached as an exhibit to the Area Development Agreement.



2. Developer acknowledges that \$39,500 represents 100% of the Initial Franchise Fee currently being charged by Company as of the date of this Development Agreement for a single unit franchise pursuant to the terms of the Franchise Agreement. Each time Developer obtains site approval to develop another ABC Restaurant in the Development Quota, (i) the parties shall execute a copy of the Franchise Agreement attached as Exhibit 2 for the new ABC Restaurant; Company shall credit \$15,000 of the Development Fee to the Initial Franchise Fee payable under the new Franchise Agreement; and Developer shall pay Company the sum of \$15,000, which represents the balance of the \$30,000 Initial Franchise Fee due and payable under the Franchise Agreement for each additional franchise owned and operated by the same franchisee after the first single unit franchise. The credit process shall continue in this manner until the total amount of credits applied by Company towards the Initial Franchise Fee payable under each new Franchise Agreement that the parties execute for an ABC Restaurant in the Development Quota equals the Development Fee.

3. The Development Fee shall be fully earned when paid regardless of the number of ABC Restaurants that Developer in fact opens or the length of time each ABC Restaurant continues in operation.

4. If Developer does not fully satisfy the Development Quota for whatever reason or this Development Agreement otherwise terminates based upon Developer's default before expiration of the Development Term, Developer shall have no right to recover from Company, directly or indirectly, any portion of the unused Development Fee, it being agreed that the execution of this Development Agreement by Company and Company's agreement to forego other development opportunities in the Development Territory while this Development Agreement is in effect is adequate consideration for Developer's payment of the Development Fee, which is fully earned by Company upon the parties' execution of this Development Agreement and is not refundable under any condition.

D. Development Rights Following Expiration or Termination. After the Development Term expires or this Development Agreement is terminated, whichever occurs first, Company shall have the complete and unrestricted right to open, and award licenses to third parties to open, ABC Restaurants anywhere in the Development Territory as long as the new ABC Restaurants are located outside of the Protected Area that Company has assigned to a Franchised Restaurant that is then-operating or under construction (and, in the case of Franchised Restaurants under construction, the Approved Location of the Franchised Restaurant must already be approved and a Protected Area must be assigned to the Franchised Restaurant before expiration or termination of this Development Agreement). Other than allowing Developer to relocate an ABC Restaurant under the conditions in the Franchise Agreement, after the Development Term expires or this Development Agreement is terminated, whichever occurs first, Company shall have no obligation to offer Developer any further development or licensing rights or approve Developer's request to replace an ABC Restaurant that Developer permanently closes for any reason.

E. Development Territory.

See discussion in the Guides – 21.1.

1. Subject to the provisions of this Development Agreement, Company agrees not to open or operate, or grant others, including, without limitation, Company's Affiliates or unrelated persons, the right to open or operate, an ABC Restaurant identi-

fied by the ABC Licensed Marks anywhere in the Development Territory shown or described on Exhibit 1 excluding any Captive Venue that now, or in the future, is in the Development Territory.

2. The designation of a Development Territory does not give Developer the right to object to Company's award of franchises to others for locations outside the Development Territory regardless of how close the other ABC Restaurant may be located to the boundaries of the Development Territory.

3. Developer understands and agrees that the significance of designating a Development Territory is solely to indicate the geographic area within which Company will not open or operate, or grant others the right to open or operate, an ABC Restaurant subject to the exclusions and reserved rights set forth in this Section. The designation of a Development Territory does not give Developer the exclusive right to (i) sell authorized goods or services to persons who reside or work in the Development Territory, (ii) use the ABC Licensed Marks in the Development Territory; or (iii) market or advertise its ABC Restaurants in media that circulates, broadcasts or otherwise is directed to or accessible by persons in the Development Territory.

4. The designation of a Development Territory is not a guaranty that Franchised Restaurants operating in the Development Territory will achieve a minimum level of Gross Sales or be successful or profitable.

F. Company's Reserved Rights. Company reserves to itself and its Affiliates all rights that it does not award to Developer. Developer understands that its right to develop ABC Restaurants in the Development Territory is subject to Company's reserved rights described in this Section. Without limiting the scope of Company's reserved rights, Company, on behalf of itself, Company's Affiliates and its or their other franchisees or licensees, may directly or indirectly, engage in any of the following activities in or outside of the Development Territory without prior notice or compensation to, or consent of, Developer:

1. Use or authorize others to use all, or parts, of the ABC System and exploit the ABC Licensed Marks in any manner, method or channel of distribution. Company's reserved rights include, without limitation, the right to engage in any type of retail or wholesale channel of distribution in or outside the Development Territory whether the channel now exists or is developed in the future including the right to engage in Wholesale Sales. This includes, without limitation, offering or selling any items that are now, or in the future, identified as Designated Goods/Services through any retail or wholesale channel of distribution, including, without limitation, from (i) an Internet site, mail order catalogue, direct mail advertising; or (ii) any type of grocery, specialty, supermarkets and other type of food service businesses or other retail stores of any kind.

2. Open and operate any other type of restaurant or food service business in the Development Territory as long as the restaurant or food service business (i) operates under a name dissimilar to the ABC Licensed Marks, and (ii) does not predominately feature "Bowl" style menu items.

3. Acquire restaurant properties in the Development Territory as part of, and contemporaneous with, the acquisition of a chain of at least 3 or more restaurants regardless of their location (whether within or outside of the Development Territory) if, at the time of the acquisi-

tion, all restaurants in the chain do business under a trade name other than the ABC Licensed Marks. Following the acquisition, Company may convert any or all of the restaurant properties in the Development Territory to an ABC Restaurant or permit any of Company's Affiliates, the then-current owner of the restaurant, or any other third party to operate the restaurant properties in the Development Territory as an ABC Restaurant under a franchise license from Company. Company is not obligated to offer Developer the right to operate the former chain locations in the Development Territory as an ABC Restaurant under a franchise license from Company.

4. Operate or license others to operate an ABC Restaurant in a Captive Venue in the Development Territory.
5. Purchase or be purchased by, or merge or combine with, competing businesses wherever located.

### III. Development Obligations

See discussion in the Guides – 21.5.

#### A. Development Quota; Development Deadline.

1. Developer agrees to open the number of ABC Restaurants in the Development Quota by each Development Deadline shown on Exhibit 1. If Developer does not satisfy a Development Quota by the applicable Development Deadline, Company may terminate this Development Agreement.
2. Developer is solely responsible for planning its development activities to allow sufficient time to complete the entire site approval, document execution and build-out process in order to open each ABC Restaurants in the Development Quota by no later than each Development Deadline shown on Exhibit 1.

B. Selection of Approved Location. Each ABC Restaurant shall be located in the Development Territory at an Approved Location with Developer obtaining Company's approval of the proposed site pursuant to the site selection procedures in the Franchise Agreement attached as Exhibit 2, and the parties incorporate those procedures into this Development Agreement by this reference. Unless Company's Site Approval Notice approves the location of an ABC Restaurant in a Captive Venue, Company will assign the Approved Location a Protected Area in accordance with the procedures and conditions in the Franchise Agreement attached as Exhibit 2. Developer understands and agrees that Company is not obligated to assign a Protected Area to an ABC Restaurant in a Captive Venue.

C. Lease and Addendum to Lease. Developer must deliver to Company a true and correct copy of the fully executed Lease and Addendum to Lease for the Approved Location immediately after Developer and the landlord execute them. The Addendum to Lease must be in the form required by Company.

#### D. Execution of Franchise Agreement.

1. Following receipt of the fully executed Lease and Addendum to Lease for the Approved Location, Company will promptly send Developer a copy of the Franchise Agreement for execution which will identify the street address of the Approved Location and describe the Protected

Area that Company will assign to the Franchised Restaurant if the Approved Location is not in a Captive Venue. Developer shall have 15 days after receiving the Franchise Agreement in which to deliver a properly executed Franchise Agreement together with payment in full of the balance of the Initial Franchise Fee for the particular Franchised Restaurant as provided in this Development Agreement. The Effective Date of the Franchise Agreement shall be the date that the Franchise Agreement is counter-signed by Company. Developer's failure to execute and deliver the Franchise Agreement within 15 days after Company delivers them to Developer for execution shall be deemed a material breach of the Development Agreement and grounds for its termination.

2. Developer may not begin construction and build-out of the Approved Location before executing the Franchise Agreement.

3. Once the parties execute a Franchise Agreement for an approved site, the parties' relationship and mutual rights and obligations as to the construction, development, ownership and operation of ABC Restaurant at that site shall be exclusively governed by the Franchise Agreement.

4. The Franchise Agreement Term shall begin on the Effective Date of the Franchise Agreement and expire 10 years after the Opening Date of the ABC Restaurant, unless the Franchise Agreement is sooner terminated or renewed in accordance with the requirements in the Franchise Agreement.

#### E. Closures.

1. If an ABC Restaurant closes for any reason after having been opened for a period long enough, or under circumstances, for Company reasonably to believe the closure is permanent, and as a result of the closure Developer falls below the Development Quota applicable at the time of the closure, Developer shall have 30 days after the closure to present Company with a business plan for reopening a replacement restaurant. Company shall have 30 days from the date of receipt of Developer's business plan in which to approve or disapprove it. If written approval is not received by the end of 30 days, Company shall be deemed to have rejected the business plan and the parties shall thereafter, for the next 30 days, negotiate in good faith to determine if there is any basis for mutually agreeing to a business plan allowing Developer to open a replacement restaurant.

2. If the parties mutually agree to a business plan, they shall memorialize their agreement in writing and Developer shall thereafter have 12 months from the date that Company's gives written approval of Developer's business plan in which to open a replacement restaurant in the Development Area at a location approved by Company pursuant to the site approval procedures in this Development Agreement. A closure will not extend any remaining Development Deadlines or reduce the Development Quota stated in this Development Agreement.

3. During the period of closure until the substitute ABC Restaurant commences operating, Company may require Developer, upon reasonable notice, to pay to Company the weekly Royalty Fees, Promotional Fees, and Co-op Advertising Fees, if any, for the closed ABC Restaurant, on or before the date that they are required to be paid under the Franchise Agreement equal to the average amount paid by Developer during the 6 months immediately preceding the date that operations cease or the shorter period that Developer has been in business.

4. If an event of Force Majeure materially threatens or prevents Developer from meeting a Development Quota by the applicable Development Deadline, Company shall extend the remaining Development Deadlines for an amount of time that Company believes is reasonable under the circumstances. Alternatively, in Company's discretion, Company may reduce the aggregate Development Quota.

#### **IV. ABC System**

Developer acknowledges that this Development Agreement does not constitute a franchise and does not grant Developer any right to use the ABC Licensed Marks or the ABC System, and that Developer's right to use the ABC Licensed Marks and ABC System is derived solely from each Franchise Agreement which may be entered into pursuant to this Development Agreement.

The Area Development Agreement grants the right to become a multi-unit franchisee. The actual franchise license, however, is awarded by the Franchise Agreement. The Franchise Agreement contains the trademark license, i.e., the right to use the brand in connection with operation of the franchised business.

#### **V. Full Time And Attention**

Developer shall devote sufficient time and attention and shall additionally devote its best efforts to the development obligations created by this Development Agreement.

#### **VI. Default And Termination Of Development Agreement**

##### **A. Events Resulting in Termination By Company.**

See discussion in the Guides regarding the consequences of not meeting the development obligations – 21.7.

1. Company may terminate this Development Agreement, in its discretion and election, effective immediately upon Company's delivery of written notice of termination to Developer based upon the occurrence of any of the following events which shall be specified in Company's written notice, and Developer shall have no opportunity to cure a termination based on any of the following events:

a. Should Developer fail to satisfy any Development Quota by the applicable Development Deadline.

b. Should Developer fail or refuse to pay, on or before the date payment is due, the balance of the Initial Franchise Fee that is payable when Developer executes a Franchise Agreement and should the default continue for a period of 10 days after written notice of default is given by Company to Developer.

c. Should Franchisee make any general arrangement or assignment for the benefit of creditors or become a debtor as that term is defined in 11 U.S.C. § 1101 or any successor statute, unless, in the case where a petition is filed against Franchisee, Franchisee obtains an order dismissing the proceeding within 60 days after the petition is filed; or should a trustee or receiver be appointed to take possession of all, or substantially all, of the assets of the Franchised Restaurant, unless possession of the assets is restored to Franchisee within 60 days following the appointment; or should all, or substantially all, of the assets of the Franchised Restaurant or the franchise rights be subject to an order of attachment, execution or other judicial seizure, unless the order or

seizure is discharged within 60 days following issuance;

d. Should Developer, or any duly authorized representative of Developer, make a material misrepresentation or omission in obtaining the development rights granted by this Development Agreement, or should Developer, or any officer, director, owner, managing member, or general partner of Developer, be convicted of or plead no contest to a felony charge or engage in any conduct or practice that, in Company's reasonable opinion, reflects unfavorably upon or is detrimental or harmful to the good name, goodwill or reputation of Company or to the business, reputation or goodwill of the ABC System or the ABC Licensed Marks.

e. Should Company terminate any Franchise Agreement between Developer and Company in accordance with its provisions based on a material breach of the Franchise Agreement by Developer even if, after the termination, the number of operating ABC Restaurants in the Development Territory remains equal to or greater than the Development Quota at that time.

f. Should Developer fail to comply with the conditions governing the transfer of rights under this Development Agreement in connection with an Event of Transfer.

g. If Developer is a Business Entity, should an order be made or resolution passed for the winding-up or the liquidation of Developer or should Developer adopt or take any action for its dissolution or liquidation;

h. Should Developer fail to comply with Applicable Law within ten (10) days after being notified of non-compliance;

i. Should Developer violate any covenant in the Franchise Agreement pertaining to use of Confidential Information.

j. Should Developer materially misuse or make an unauthorized use of any of the components of the ABC System or commit any other act which does, or can reasonably be expected, in the exercise of Company's reasonable business judgment to impair the goodwill or reputation associated with any aspect of the ABC System.

k. After curing any default under this Development Agreement, should Developer engage in the same noncompliance, whether or not the subsequent default is timely corrected after notice is delivered to Developer, or, alternatively, if on 3 or more occasions within any 24 consecutive months during the Development Term, should Developer fail to comply with one or more requirements of this Development Agreement whether or not each separate default (which need not be the same act of noncompliance) is timely corrected after notice is delivered to Developer.

l. Should Developer fail to comply with any other provision of this Development Agreement and not correct the default within 30 days after Company gives Developer written notice of the default specifying the action that Developer must take to cure the default.

B. Effect of Termination or Expiration of Agreement.

1. Upon termination or expiration of this Development Agreement, each Franchise

Agreement then in effect by and between Developer and Company pertaining to an ABC Restaurant owned by Developer shall remain in full force and effect, unless, in the case of termination, the grounds upon which termination of this Development Agreement is predicated also constitute grounds permitting Company to terminate the Franchise Agreement and Company has duly terminated the Franchise Agreement in accordance with its terms.

2. Upon either (i) the termination of this Development Agreement before the last day of the Development Term, or (ii) the expiration of the Development Term, Developer shall have no further right to develop additional ABC Restaurants in the Development Territory, nor shall Developer have any right to prevent Company, or others, from owning and operating, or granting licenses to others to own and operate, ABC Restaurants in the Development Territory outside of the Protected Area identified in any Franchise Agreement that remains in effect between Company and Developer.

3. In the event of a breach or a threatened or attempted breach of any of the provisions of this Development Agreement, Company shall be entitled to exercise all remedies available under Applicable Law in addition to the remedies set forth in this Development Agreement, including, without limitation, to Provisional Remedies without the requirement that Company post bond or comparable security.

4. In any proceeding in which the validity of termination of this Development Agreement is at issue, Company shall not be limited to the reasons set forth in any notice of termination or default given to Developer;

5. Developer shall immediately cease using and return to Company any and all documents and confidential or proprietary materials provided to Developer pursuant to this Development Agreement, and shall retain no copy or record of any of the foregoing unless use of the materials is expressly authorized by the Franchise Agreement. Continued use by Developer of any copyrighted material shall constitute willful copyright infringement and unfair competition by Developer; and

6. Developer shall execute and deliver a general release, in form satisfactory to Company, of any and all claims against Company and its officers, directors, shareholders, employees and agents.

## VII. Event Of Transfer

See discussion in the Guides – Section 21.7.

### A. Assignment or Delegation of Duties by Company.

1. Developer acknowledges that Company maintains a staff to manage and operate the ABC System and that staff members can change from time to time. Developer represents that it has not signed this Development Agreement in reliance on any shareholder, director, officer, or employee remaining with Company in that capacity. Company is free to transfer and assign all of its rights under this Development Agreement to any person or Business Entity without prior notice to, or consent of, Developer if the assignee agrees in writing to assume Company's obligations under this Development Agreement. Upon the assignment and assumption, Company shall have no further obligation to Developer.

2. In addition to Company's right to assign this Development Agreement, Company has the absolute right to delegate performance of any portion or all of its obligations under this Development Agreement to any third-party designee of its own choosing, whether the designee is Company's Affiliate, agent or independent contractor. In the event of a delegation of duties, the third-party designee shall perform the delegated functions in compliance with this Development Agreement. When Company delegates its duties to a third party (in contrast to when Company transfers and assigns all of its rights under this Development Agreement to a third party that assumes Company's obligations), Company shall remain responsible for the performance of the third-party to whom Company's duties are delegated.

B. Assignment by Developer.

1. Developer may not complete, or attempt to complete, an Event of Transfer of this Development Agreement that purports to subdivide the Development Territory or sublicense or assign part of Developer's right, title and interest under the Development Agreement and not Developer's entire right, title and interest.

2. Developer understands and agrees that the franchise rights awarded by this Development Agreement are personal and are awarded in reliance upon, among other considerations, the individual or collective character, skill, aptitude, attitude, experience, business ability and financial condition and capacity of Developer and, if Developer is a Business Entity, that of its officers, directors, owners, LLC managing members, trustees, partners and Personal Guarantors.

3. The parties hereby incorporate by reference the definitions, terms and conditions in the Franchise Agreement that apply to an Event of Transfer with respect to Developer's desire to complete an Event of Transfer of or under this Development Agreement with the understanding that references in the Franchise Agreement to "Franchisee" shall mean Developer. The parties agree to be bound by the definitions, procedures, terms and conditions with respect to any Event of Transfer that Developer wishes to complete or attempts to complete including, without limitation, the provisions pertaining to Company's right of first refusal and the additional conditions that apply to an Event of Transfer under the following circumstances: (i) Developer's assignment of its rights under this Development Agreement to a third party; (ii) an Event of Transfer of this Development Agreement to a Business Entity; (iii) Qualified Transfers; and (iv) an Event of Transfer arising due to death or Incapacity.

4. If Company approves an Event of Transfer of this Development Agreement, the proposed transferee must assume Developer's obligations under this Development Agreement for a period equal to the remaining Development Term and pay a transfer fee of \$10,000.

5. Additionally, the parties agree that Company may condition its approval of an Event of Transfer of or under this Development Agreement to Developer selling, and the proposed buyer agreeing to purchase, the assets of at least one of Developer's ABC Restaurants in the Development Territory and satisfying the separate conditions applicable to an Event of Transfer under the Franchise Agreement for that ABC Restaurant.



## VIII. Relationship Of Parties; Indemnification

A. Independent Contractor. This Development Agreement does not create a fiduciary relationship between the parties, nor does it make either party a general or special agent, joint venturer, partner or employee of the other for any purpose. With respect to all matters, the Developer relationship to Company is as an independent contractor. Developer acknowledges that it is the independent owner of the rights granted by this Development Agreement and shall conduct its business using its own judgment and discretion, subject only to the provisions of this Development Agreement. Developer shall conspicuously identify itself in all advertising and all dealings with guests, suppliers and other third parties as the owner of the Franchised Restaurant operating under a license from Company.

This section accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

B. Indemnification by Developer.

1. Developer shall indemnify and hold Company, Company's Affiliates and their respective officers, directors, shareholders, employees, agents, successors and assigns, harmless from and against any and all costs, expenses, losses, fines, penalties, liabilities, damages, causes of action, claims and demands whatsoever, arising from or relating to Developer's activities conducted pursuant to this Development Agreement, whether or not arising from bodily injury, personal injury or property damage, infringement (other than Third Party Claims within the scope of Company's agreement to indemnify Developer as set forth in his Agreement), or any other violation of the rights of others, or in any other way, subject to the provisions of this Development Agreement.
2. Company shall have the right to retain its own counsel to defend any third party claim asserted against it which is covered by this indemnification agreement.
3. Developer's indemnification and defense obligations shall survive the expiration, termination or assignment of this Development Agreement for any reason.
4. Developer's indemnification obligations shall extend, without limitation, to (i) all claims for actual, consequential and punitive damages; (ii) claims for lost profits; (iii) costs of investigation; (iv) costs and expenses incurred in defending any claim within the scope of Developer's indemnification including, without limitation attorneys and other professional fees, court costs, and travel and living expenses necessitated by the need or desire to appear before (or witness the proceedings of) courts or tribunals (including arbitration tribunals), or government or quasi-governmental entities (including those incurred by Company's attorneys, experts and advisors; (v) costs and expenses for any recalls, refunds, compensation or public notices; (vi) claims based on alleged "vicarious," "principal/agent," "joint employer," or other legal theories as a result of Company's status as franchisor; and (vii) costs and expenses that Company or any of the indemnified parties incur as a result of any litigation or insolvency proceedings involving Developer (whether or not Developer is a party in the proceeding).
5. The scope of Developer's indemnification obligations shall apply regardless of whether a claim brought against Company, Company's Affiliates or any of the indemnified individuals is reduced to final judgment or results in settlement. The indemnified parties shall have the right to retain their own counsel to defend any third party claim which is covered by this indemnification

agreement. The scope of Developer's indemnification obligations shall not be limited by decisions that an indemnified party makes in connection with their defense.

6. If a final judgment results in a finding that an indemnified party's liability is due to the indemnified party's gross negligence, willful misconduct or criminal acts, any costs or expenses paid or incurred by Developer pursuant to Developer's indemnification obligation shall promptly be reimbursed in full by the indemnified party to Developer except to the extent that the final judgment finds Developer jointly liable, in which event Developer's indemnification obligation will extend to any finding of Developer's comparative or contributory negligence.

7. Developer shall give Company written notice of any claim, matter, inquiry or investigation that could be the basis for a claim for indemnification promptly after Developer has actual knowledge or is deemed to have constructive knowledge of the claim, matter, inquiry or investigation. Developer shall fully cooperate with Company in connection with Company's handling of the claim, matter, inquiry or investigation. Company shall have no duty to seek recovery from third parties to mitigate its losses or reduce Developer's liability under its indemnification obligation.

8. Developer's indemnification obligations shall survive the expiration, termination or assignment of this Development Agreement for any reason.

C. Security Interest. To secure Developer's performance under this Development Agreement, Developer hereby grants to Company a security interest in and to Developer's contract rights under this Development Agreement Company shall record appropriate financing statements to protect and perfect Company's rights as a secured party under Applicable Law. Except with Company's prior written consent, which Company shall not unreasonably withhold, it shall be a breach of this Development Agreement for Developer to grant another person a security interest in Developer's contract rights as a Developer even if subordinate to Company's security interest. Company agrees to subordinate Company's own security interest if requested by a lender providing financing to Developer on commercially reasonable terms in connection with the purchase of the franchise.

## **IX. Personal Guaranty**

A. Scope. If Developer is a Business Entity, each person who is or becomes a Personal Guarantor anytime during the Development Term shall furnish any financial information reasonably required by Company and execute Company's form of personal guaranty attached to the Franchise Agreement.

B. Default. An event of default under this Development Agreement shall occur if any guarantor fails or refuses to deliver to Company, within 10 days after Company's written request: (i) evidence of the due execution of the Personal Guaranty, and (ii) current financial statements of guarantor as may from time to time be requested by Company.

This section accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

## X. Dispute Resolution

The parties hereby incorporate by reference the dispute resolution procedures in the Franchise Agreement with the understanding that references in the Franchise Agreement to “Franchisee” shall mean Developer. The parties agree to be bound by those dispute resolution procedures, terms and conditions with respect to any dispute that may arise between them out of or pertaining to this Development Agreement, the relationship created by this Development Agreement or an alleged breach of this Development Agreement.

This section accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

## XI. Representations By Developer

Developer understands and agrees and represents to Company, to induce Company to enter into this Development Agreement, that:

This section accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

A. Acceptance of Conditions. Developer has read this Development Agreement and Company’s Franchise Disclosure Document and understands and accepts the terms, conditions and covenants contained in this Development Agreement as being reasonably necessary to maintain Company’s standards of service and quality and to protect and preserve Company’s rights in the ABC System and the goodwill of the ABC Licensed Marks.

B. Independent Investigation. Developer has conducted an independent investigation of the business contemplated by this Development Agreement. Developer recognizes that the ABC System may evolve and change over time and that Company may impose change to the ABC System that Company believes, in its sole discretion, will benefit ABC Restaurants as a chain generally and strengthen consumer awareness of, and confidence in, the ABC Licensed Marks. Developer is aware that Company cannot predict the nature of future changes to the ABC System or the amount of Developer’s future investment to adopt future changes

C. No Representations; Status of Developer. By executing this Development Agreement, Developer represents and warrants that:

1. No person acting on Company’s behalf has made any representations or promises to Developer that are not contained in this Development Agreement, including, without limitation, representations or promises about actual or potential sales, earnings, gross profits or net profits that Developer can expect to earn. No representations have been made by Company, Company’s Affiliates or their respective officers, directors, shareholders, employees or agents that are contrary to statements made in the Franchise Disclosure Document previously received by Developer or to the terms contained in this Development Agreement.

2. Neither the assets of each person executing this Development Agreement as, or on behalf of, Developer, nor the assets of each Personal Guarantor are currently subject to being blocked under any Anti-Terrorism Laws. Furthermore, Developer is not otherwise in violation of Applicable Law including, without limitation, Anti-Terrorism Laws. Additionally, Developer agrees to comply with and assist Company to the fullest extent possible in Company’s efforts to comply with Anti-Terrorism Laws. Any violation of, or “blocking” of assets under, any Anti-Terrorism Laws shall con-

stitute a material breach of this Development Agreement and grounds for immediate termination without an opportunity to cure.

3. If Developer is a Business Entity, Developer understands that it is a material obligation of this Development Agreement that it remains duly organized and in good standing for as long as this Development Agreement is in effect and it owns the franchise rights.

4. All financial and other information provided to Company in connection with Developer's application is true and correct and no material information or fact has been omitted which is necessary in order to make the information disclosed not misleading.

## **XII. Miscellaneous**

### **A. Notices.**

1. All communications required or permitted to be given to either party hereunder shall be in writing and shall be deemed duly given if properly addressed on the earlier of (i) the date when delivered by hand; (ii) the date when delivered by e-mail if confirmation of transmission is received or can be established by the sender; (iii) one business day after delivery to a reputable national overnight delivery service; or (iv) 5 days after being placed in the United States Mail and sent by certified or registered mail, postage prepaid, return receipt requested. A "business day" means weekdays only, excluding Saturdays, Sundays and holidays. Notices shall be directed to the address shown in the Franchise Agreement's Exhibit C for the party and its representative. Either party may change its address for receiving notices by giving appropriate written notice to the other. All communications required or permitted to be given by a party in writing may be given electronically to the party's designated e-mail address in the Franchise Agreement's Exhibit C or as subsequently changed by appropriate written notice.

2. All payments required to be delivered to Company shall be directed to Company at the above address or to an electronic address or account otherwise designated by Company. Notwithstanding the parties' agreement regarding when notices shall be deemed to be given, any required payment or report not actually received by Company on the date it is due shall be deemed delinquent.

B. Time of the Essence. Time is of the essence of this Development Agreement with respect to each and every provision of this Development Agreement in which time is a factor.

C. Waiver. Any waiver granted by Company to Developer excusing or reducing any obligation or restriction imposed under this Development Agreement shall be in writing and shall be effective upon delivery of such writing by Company to Developer or upon such other effective date as specified in the writing, and only to the extent specifically allowed in such writing. No waiver granted by Company, and no action taken by Company, with respect to any third party shall limit Company's right to take action of any kind, or not to take action, with respect to Developer. Any waiver granted by Company to Developer shall be without prejudice to any other rights Company may have. The rights and remedies granted to Company are cumulative. No delay on the part of Company in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by Company of any right or remedy shall preclude Company from fully exercis-

This section accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

ing such right or remedy or any other right or remedy. Company's acceptance of any payments made by Developer after a breach of this Development Agreement shall not be, nor be construed as, a waiver by Company of any breach by Developer of any term, covenant or condition of this Development Agreement.

D. Section Headings: Language. The Section headings used in this Development Agreement are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants or conditions of this Development Agreement. The language used in this Development Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against Company or Developer. The term "Franchisee" as used herein is applicable to one or more persons or Business Entities if the interest of Developer is owned by more than one, and the singular usage includes the plural and the masculine and neuter usages include the other and the feminine. If two or more persons are at any time the Developer hereunder, whether or not as partners or joint venturers, their obligations and liabilities to Company shall be joint and several. Nothing in this Development Agreement is intended, nor shall it be deemed, to confer any rights or remedies upon any person or Business Entity not a party hereto.

E. Binding on Successors. The covenants, agreements, terms and conditions contained in this Development Agreement shall be binding upon, and shall inure to the benefit of, the successors, assigns, heirs and personal representatives of the parties hereto.

F. Validity; Conformity With Applicable Law. Wherever possible, each provision of this Development Agreement shall be interpreted in such manner as to be valid under Applicable Law, but if any provision of this Development Agreement shall be invalid or prohibited under Applicable Law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Development Agreement. If the provisions of this Development Agreement provide for periods of notice less than those required by Applicable Law, or provide for termination, cancellation, non-renewal or the like other than in accordance with Applicable Law, such provisions shall be deemed to be automatically amended to conform them to the provisions of Applicable Law. If any provision of this Development Agreement is deemed unenforceable by virtue of its scope in terms of geographic area, business activity prohibited or length of time, but could be enforceable by reducing any or all thereof, the provision may be modified by a mediator or court so that it may be enforced to the fullest extent permissible under the choice of law adopted by this Development Agreement or other Applicable Law.

G. Amendments. No amendment, change, modification or variance to or from the terms and conditions set forth in this Development Agreement shall be binding on any party unless it is set forth in writing and duly executed by Company and Developer.

H. Withholding of Consent; Company's Business Judgment.

1. Except where this Development Agreement expressly requires Company to exercise its reasonable business judgment in deciding to grant or deny approval of any action or request by Developer, Company has the absolute right to refuse any request by Developer or to withhold its approval of any action by Developer in Company's sole discretion. Further, whenever the prior

consent or approval of Company is required by this Development Agreement, Company's consent or approval must be evidenced by a writing signed by Company's duly authorized representative unless this Development Agreement expressly states otherwise.

2. The parties recognize, and any mediator or judge is affirmatively advised, that certain provisions of this Development Agreement describe the right of Company to take (or refrain from taking) certain actions in its sole discretion and other actions in the exercise of its reasonable business judgment. Where this Development Agreement expressly requires that Company make a decision based upon Company's reasonable business judgment, Company is required to evaluate the overall best interests of all ABC Restaurants as a chain and Company's own business interests. If Company makes a decision based upon its reasonable business judgment, neither a mediator nor a judge shall substitute his or her judgment for the judgment so exercised by Company. The fact that a mediator or judge might reach a different decision than the one made by Company is not a basis for finding that Company made its decision without the exercise of reasonable business judgment. Company's duty to exercise reasonable business judgment in making certain decision does not restrict or limit Company's right under this Development Agreement to make other decisions based entirely on Company's sole discretion as permitted by this Development Agreement. Company's sole discretion means that Company may consider any set of facts or circumstances that it deems relevant in rendering a decision.

I. Complete Agreement. This Development Agreement, including all exhibits attached hereto, and all agreements or documents which by the provisions of this Development Agreement are expressly incorporated herein or made a part hereof, sets forth the entire agreement between the parties, fully superseding any and all prior agreements or understandings between them pertaining to the subject matter hereof. However, nothing in this Development Agreement or any related agreement is intended to disclaim the Company's representations made in the Franchise Disclosure Document.

This section is the "integration clause" and accomplishes the same objective as the section in the Franchise Agreement with the same title. See commentary in the Franchise Agreement.

J. Force Majeure.

1. Neither party is responsible for any failure to perform its obligations under this Development Agreement if its performance is prevented or delayed due to an event of Force Majeure. Upon completion of the event of Force Majeure, the party whose performance is affected must as soon as reasonably practicable recommence the performance of its obligations under this Development Agreement. Furthermore, the party whose performance is prevented or delayed shall use its reasonable efforts to mitigate the effect of the event of Force Majeure on its performance.

2. An event of Force Majeure does not relieve a party or a Personal Guarantor from liability for an obligation that arose before the onset of the event of Force Majeure, nor does an event of Force Majeure affect the obligation to pay money in a timely manner for an obligation that arose before the onset of the event of Force Majeure.

3. When an event of Force Majeure occurs before the expiration of the Development

Term, Developer may apply to Company for a reasonable extension of time in which to perform its remaining duties under this Development Agreement. Company agrees to extend the Development Term and each of the then-remaining Development Deadlines for a reasonable period of time that is equivalent to the period of Force Majeure during which Developer has been prevented from performing its duties. Company shall notify Developer of the new expiration date of the Development Term and each remaining Development Deadline in writing and the writing shall operate as an amendment of this Development Agreement.

K. **Covenant and Condition.** Each provision of this Development Agreement performable by Developer shall be construed to be both a covenant and a condition.

L. **Consent of Spouse.** If Developer enters into this Development Agreement in their individual capacity, Developer’s spouse shall execute a Consent of Spouse in the form of Exhibit 3. If Developer is a Business Entity, the spouse of each Personal Guarantor shall execute a Consent of Spouse in the form of Exhibit 3.

M. **Submission of Agreement.** The submission of this Development Agreement to Developer does not constitute an offer to Developer, and this Development Agreement shall become effective only upon execution by Company and Developer.

N. **Further Assurances.** Each party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform the terms, provisions and conditions of this Development Agreement.

O. **Survival.** All obligations in this Development Agreement that expressly, or by their nature, survive the expiration or termination of this Development Agreement shall continue in full force and effect after expiration or termination.

P. **Counterparts.** This Development Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Development Agreement as of its Effective Date.

Company:

Developer:

ABC FRANCHISE CO., LLC

\_\_\_\_\_

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

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

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

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

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

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

# EXHIBIT 1

## Term Sheet: Development Territory, Development Quota, And Development Deadlines

### 1. DEVELOPMENT TERRITORY.

The Development Territory consists of the geographic area which is described below and/or shown in the map attached to this Exhibit 1:

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### 2. DEVELOPMENT QUOTA AND DEVELOPMENT DEADLINES.

By each Development Deadline in Column A, Developer shall (i) open no fewer than the number of Franchised Restaurants in the Development Quota shown in Column B; and (ii) have in operation no fewer than the number of Franchised Restaurants shown in Column C.

A. Development Deadline:	B. Development Quota:  Number of Franchised Restaurants That Must Be Open and Operating	C. Aggregate Development Quota  Aggregate Number of Franchised Restaurants That Must be Open and Operating as of each Development Deadline in Column A



## EXHIBIT 2

### Franchise Agreement

[ATTACH COPY OF FRANCHISE AGREEMENT WITH ALL EXHIBITS]



**《Disclaimer of Liability》**

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