

## FRANCHISE DISCLOSURE DOCUMENT



FiiZ Drinks Franchise, LLC  
a Utah limited liability company  
155 North 400 West  
Salt Lake City, UT 84103  
(801) 646-6498  
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We offer third parties the right to own and operate a specialty Shop (each, a “Shop” or “Business”) that features a wide array of sodas and other carbonated/non-carbonated beverages, as well as any baked goods, other food menu items and retail merchandise we designate or approve (collectively, the “Approved Products”), all while operating under our then-current proprietary marks and trade dress (the “Proprietary Marks”) and system of operations that has been developed with respect to the establishment and operation of a Business (the “System”).

The total estimated initial investment to open and commence operations of a single franchised Business (each, a “Franchised Business”) is between \$232,000 to \$497,000. This includes \$73,000 to \$113,000 that must be paid to the franchisor or affiliate prior to opening.

The total estimated initial investment associated with developing multiple Franchised Businesses pursuant to a form of multi-unit development agreement with us (or “Development Agreement”) will depend on the number of franchises you are awarded the right to develop within a defined geographical area (the “Development Area”). By way of example, the estimated initial investment to develop a total of three (3) Franchised Businesses is between \$282,000 to \$547,000, which is comprised of: (i) a \$90,000 development fee paid to us upon execution of your Development Agreement; and (ii) the estimated initial investment associated with opening and commencing operations of the initial Franchised Business you commit to develop within your Development Area.

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 regarding 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 Bridger Musgrave at [bridger.musgrave@thestenagroup.com](mailto:bridger.musgrave@thestenagroup.com) or (801) 646-6498.

The terms of your contract will govern your franchise relationship. Don’t rely on this disclosure document alone to understand your contract. Read your entire contract carefully. Show your contract and this document to an advisor, like an attorney or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “*A Consumer’s Guide to Buying a Franchise*,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC’s home page at

[www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

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

Issuance Date: May 5, 2023.

## HOW TO USE THIS FRANCHISE DISCLOSURE DOCUMENT

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

| QUESTION                                                                                 | WHERE TO FIND INFORMATION                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>How much can I earn?</b>                                                              | Item 19 may give you information about outlet sales, costs, profits, and losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information on Item 20 or Exhibit D. |
| <b>How much will I need to invest?</b>                                                   | Items 5 and 6 list fees you will be paying to the franchisor or at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers you must use.                                                                    |
| <b>Does the franchisor have the financial ability to provide support to my business?</b> | Item 21 or Exhibit C includes financial statements. Review these statements carefully.                                                                                                                                                                      |
| <b>Is the franchise system stable, growing, or shrinking?</b>                            | Item 20 summarizes the recent history of the number of company-owned and franchised outlets.                                                                                                                                                                |
| <b>Will my business be the only FiiZ Drinks® business in my area?</b>                    | Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.                                                                                                               |
| <b>Does the franchisor have a troubled legal history?</b>                                | Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings.                                                                                                                        |
| <b>What's it like to be a FiiZ Drinks® franchisee?</b>                                   | Item 20 or Exhibit D lists current and former franchisees. You can contact them to ask about their experiences.                                                                                                                                             |
| <b>What else should I know?</b>                                                          | These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the Table of Contents.                                                     |

## WHAT YOU NEED TO KNOW ABOUT FRANCHISING *GENERALLY*

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

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

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

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

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

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

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

## SOME STATES REQUIRE REGISTRATION

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

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

## SPECIAL RISKS TO CONSIDER ABOUT *THIS* FRANCHISE

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

1. **Out-of-State Dispute Resolution.** This franchise agreement requires you to resolve disputes with the franchisor by mediation, arbitration, and/or litigation only in Utah. Out-of-state mediation, arbitration, or litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate, arbitrate, or litigate with the franchisor in Utah than in your own state.
2. **Spousal Liability.** Your spouse must sign a document that makes your spouse liable for all financial obligations under the franchise agreement, even if your spouse has no ownership interest in the franchise. This guarantee will place both your and your spouse's marital and personal assets (perhaps including your house) at risk if your franchise fails. If you are an entity, then each of your owners and, at our option, their respective spouses must sign such a document.

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

## TABLE OF CONTENTS

| Item No.                                                                             | Page No. |
|--------------------------------------------------------------------------------------|----------|
| 1. The Franchisor and any Parents, Predecessors, and Affiliates.....                 | 1        |
| 2. Business Experience .....                                                         | 3        |
| 3. Litigation.....                                                                   | 3        |
| 4. Bankruptcy.....                                                                   | 3        |
| 5. Initial Fees.....                                                                 | 3        |
| 6. Other Fees .....                                                                  | 4        |
| 7. Estimated Initial Investment .....                                                | 10       |
| 8. Restrictions on Sources of Products and Services .....                            | 14       |
| 9. Franchisee's Obligations.....                                                     | 18       |
| 10. Financing .....                                                                  | 19       |
| 11. Franchisor's Assistance, Advertising, Computer Systems, and Training.....        | 20       |
| 12. Territory .....                                                                  | 31       |
| 13. Trademarks .....                                                                 | 34       |
| 14. Patents, Copyrights and Proprietary Information .....                            | 35       |
| 15. Obligation to Participate in the Actual Operation of the Franchise Business..... | 36       |
| 16. Restrictions on What the Franchisee May Sell .....                               | 37       |
| 17. Renewal, Termination, Transfer and Dispute Resolution.....                       | 38       |
| 18. Public Figures .....                                                             | 44       |
| 19. Financial Performance Representations.....                                       | 44       |
| 20. Outlets and Franchisee Information.....                                          | 48       |

| Item No.                       | Page No. |
|--------------------------------|----------|
| 21. Financial Statements ..... | 52       |
| 22. Contracts .....            | 52       |
| 23. Receipts.....              | 52       |

## EXHIBITS

- A. Franchise Agreement and Exhibits
- B. Development Agreement
- C. Franchisee Questionnaire
- D. Financial Statements
- E. List of Franchisees; List of Former Franchisee(s)
- F. List of Agents for Service of Process
- G. List of State Agencies Responsible for Franchise Disclosure and Registration Law
- H. Table of Contents for Operations Manual
- I. Sample Release Agreement.
- J. State Effective Dates
- K. Receipts

# FRANCHISE DISCLOSURE DOCUMENT

## ITEM 1

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

#### The Franchisor

The name of the franchisor is FiiZ Drinks Franchise, LLC. In this disclosure document FiiZ Drinks Franchise, LLC is referred to as “we” or “us” or “our” or “Franchisor”; “you” or “yours” means the person or persons, individually and collectively, who buys the franchise from us and includes the owners of a franchise that is a corporation, partnership or other entity. If you are a corporation, partnership or other entity, your owners must sign an agreement that all provisions of the franchise agreement will also apply to your owners and (at our option) their respective spouses, each of which must personally guarantee and be personally bound by your obligations under the franchise agreement.

Our limited liability company was organized on August 30, 2017 in the State of Utah. Our principal place of business is 132 South State Street, Salt Lake City, UT 84111. Our agents for service of process in various states are disclosed in Exhibit “E.”

We commenced offering franchises for the right to independently own and operate a Franchised Business of the type described in this Disclosure Document in July 2017. We do not have any other business activities and we do not do business under any than (a) our legal name, and (b) our then-current proprietary marks.

We have not directly operated a System Business of the type to be offered in this Disclosure Document. With that said, some of our managers and affiliates have owned and/or operated a System Business (either in the past or as of the Issue Date). As of the Issue Date, we have not offered for sale or sold franchises in any other line of business.

#### Parents, Predecessors and Affiliates

Our parent, FiiZ Drinks Holdings, LLC, a Utah limited liability company, was organized on August 30, 2017 in the State of Utah. Its principal place of business is 155 North 400 West, #580, Salt Lake City, Utah 84103.. As of the Issue Date, we plan and expect that our parent will be converted or otherwise be formed as a corporation under the laws of Delaware at some point in 2023, namely FiiZ Drinks Holdings, Inc., which will have the same address as our current parent.

FiiZ Acquisition, LLC, a Utah limited liability company, was organized on June 21, 2022 in the State of Utah. Its principal place of business is 155 North 400 West, Suite 580, Salt Lake City, Utah 84111. FiiZ Acquisition, LLC acquired FiiZ Drinks Holdings, LLC in June 2022.

Our affiliate and predecessor, SiiP Drinks, LLC, is a Utah limited liability company organized on December 4, 2013 in the State of Utah. Its principal place of business is 155 North 400 West, #580, Salt Lake City, Utah 84103. SiiP Drinks, LLC also sold 22 franchises using a similar concept from 2013 to 2017. This entity is no longer active.

Except as provided above in this Item, we have no other parents, predecessors or affiliates that require disclosure in this Item.

## Franchise Offered

The franchise authorizes you to engage in our complete system which includes teaching methods, standards, merchandising, marketing, décor, recipes, menus, and sale of products and services, specifications, and procedures under our then-current proprietary marks and trade dress we designate that, as of the Issue Date, includes certain registered marks such as FIIZ DRINKS® (collectively, the “Proprietary Marks”).

Our System of business operations is comprised of various information and components, including without limitation, our proprietary and confidential operations manual and other manuals (collectively, the “Manuals”), training materials and other confidential business information, certain operating procedures, marketing concepts, and specifications for working in a retail sales business selling specialty drinks and baked goods and services as appropriate. As a System franchisee, you must and may only use our authorized recipes, menu items, décor, marks, and other trade dress we designate or otherwise approve in writing.

You will be required to purchase specific materials, supplies and equipment and to strictly follow our standards, methods, policies and procedures in the operation of your franchise business, which are more particularly described in our franchise agreement attached as Exhibit “A” to this disclosure document.

Your Franchised Business must be developed and operated at and from a premises that is approved by us (the “Premises”). Typically, we expect that a Franchised Business will operated from a Premises that is between 1,000 and 1,500 square feet in size, and which will allow for the Premises to have a “drive thru” from which to offer and provide the Approved Products (*i.e.*, end-cap location or stand-alone location).

## General Description of Market and Competition

You will compete with our other franchisees and/or affiliate-owned stores, as well as other specialty soda shops, coffee shops and bakeries, gas stations and fast-food Shops and similar type businesses. These include national and regional chains, as well as local operations. The relevant market is developed and competitive. Your ability to succeed with this franchise will in part be determined by your ability to compete with these other Shop establishments. The Approved Products that a Franchised Business is authorized to offer/sell to customers are not generally seasonal in nature.

## Laws and Regulations

We are not aware of any federal regulations that are specific to the operation of a casual dining Shop. Based on the experience of our System franchisees and our other System Shops, there may be state and local jurisdictions have enacted laws, rules, regulations, and ordinances that may apply to the operation of your Shop, including those that (a) establish general standards, specifications, and requirements for the construction, design, and maintenance of the Shop Premises; (b) regulate matters affecting the health, safety, and welfare of your customers, such as general health and sanitation requirements for Shops; employee practices concerning the storage, handling, cooking, and preparation of food; restrictions on smoking; availability of and requirements for public accommodations, including restrooms; (c) set standards pertaining to employee health and safety; (d) set standards and requirements for fire safety and general emergency preparedness; (e) regulate the proper use, storage, and disposal of waste, insecticides, and other hazardous materials; (f) govern labor practices for your employees; (g) federal and state menu labeling laws; and (h) regulations governing the application of the Affordable Care Act. The Americans with Disabilities Act (“ADA”) also may apply to the operation of your Shop.

You should investigate whether there are regulations and requirements that may apply to the geographic area in which you are interested in locating your franchise and should consider both the effect and cost of

compliance. You may employ salaried help and/or independent contractors and will be required to observe general employment laws and regulations. If necessary in your geographic area you may be required to obtain a catering license if we approve you to offer catering services within your Designated Territory.

## **ITEM 2 BUSINESS EXPERIENCE**

### **Chad Harris – President and Chief Operating Officer**

Mr. Harris joined our team in October 2022. He has also served as a Franchise Business Coach for Denny's Corporation, located in Spartanburg, South Carolina, from May 2017 to October 2022. Prior to that, Mr. Harris was the Regional Director of Operations for Yogurtland, LLC, located in Irvine, California, from 2015 to 2017.

### **Bridger Musgrave – VP of Franchise Development**

Mr. Musgrave has served as our VP of Franchise Development since joining our company in 2022. He has also been an owner and member of System locations in North Ogden, Utah and West Valley City, Utah since 2015. He is also a franchise specialist for our affiliate, Siip Drinks, LLC, since January of 2020. Mr. Musgrave also is an owner and member of Elevate Business Consultants, Inc., located in Salt Lake City, Utah, since 2019.

## **ITEM 3 LITIGATION**

No litigation is required to be disclosed in this Item.

## **ITEM 4 BANKRUPTCY**

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

## **ITEM 5 INITIAL FEES**

### **Franchise Agreement**

#### ***Initial Franchise Fee***

You must pay us an initial franchise fee amounting to \$40,000 immediately upon execution of your Franchise Agreement with us (the "Initial Franchise Fee"), which is deemed fully earned and non-refundable upon payment.

### *Other Pre-Opening Amounts*

In addition to the Initial Franchise Fee noted above, you must or may be required to pay us or our affiliate Approved Supplier the following amounts prior to the opening of your Franchised Business:

| Description                                            | Amount (or Range)            | Party to Whom Paid                         |
|--------------------------------------------------------|------------------------------|--------------------------------------------|
| Initial Brand Package – business cards, uniforms, etc. | Approximately \$3,000        | Currently, our affiliate Approved Supplier |
| Operational Equipment Package                          | Between \$30,000 to \$70,000 | Approved Supplier (currently us)           |

### Multi-Unit Development Agreement: Development Fee

If we award you the right to develop multiple franchises pursuant to a Development Agreement with us, then you must pay us a development fee upon execution of that will vary based on the number of franchises you commit to develop (your “Development Fee”). As of the Issue Date, the Development Fee is calculated as the sum of the following: (i) \$40,000 for the first franchise you are granted the right to develop within your Development Area; (ii) \$30,000 for the second franchise you are granted the right to develop; and (iii) \$20,000 for the third and each additional franchise you are granted the right to develop. The Development Fee is deemed fully earned and non-refundable upon payment.

### Other Relevant Disclosures

We expect and intend to impose the pre-opening fees disclosed above uniformly on our new System franchisees and, if applicable, developer(s).

## **ITEM 6 OTHER FEES**

| TYPE OF FEE                    | AMOUNT                                                                                                                                      | DUE DATE                                                                                                                                                                                        | REMARKS                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|--------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Royalty Fee(s) <sup>1, 2</sup> | 8% of the Net Sales <sup>1</sup> generated by the Franchised Business over the preceding reporting period (your “Royalty” or “Royalty Fee”) | Currently, payable on Wednesday of each calendar week based on the operations of the Franchised Business over the preceding business week starting Monday and ending Sunday (a “Business Week”) | Your Royalty Fee obligations will commence immediately once you open and commence operating your Franchised Business.<br><br>We require Royalties and other fees to be paid in accordance with our current electronic funds transfer or automatic withdrawal program as modified from time to time.<br><br>Please see the Notes immediately following this Chart for additional information, including the definition of “Net Sales” for purposes of this Disclosure Document. |

| TYPE OF FEE                                                       | AMOUNT                                                                                                                              | DUE DATE                                                                                                       | REMARKS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Contribution to Brand Development Fund (or “Fund”) <sup>1,3</sup> | Currently, your required contribution to the Fund amounts to 1% of the Net Sales <sup>1</sup> generated by your Franchised Business | Payable in the same manner and within the time frame as your Royalty Fee.                                      | <p>We recently established a brand development fund (or “Fund”) in February 2023 and will administer the same as disclosed more fully in Item 11 of this Disclosure Document.</p> <p>We reserve the right to increase your Fund Contribution upon 60 days’ prior written notice via the Manuals or otherwise in an amount equal to up to 2% of the Net Sales generated by your Franchised Business.</p>                                                                                                                                                                                                                                                          |
| Local Marketing Requirement or (“LMR”) <sup>1</sup>               | Currently, 1% of the Net Sales generated by your Franchised Business over the preceding calendar month of operations                | As arranged on invoiced based on the Net Sales you generated over the preceding calendar month of operations   | <p>You must expend a minimum amount on the local marketing, advertising and promotion of your Franchised Business within your Designated Territory. Your LMR obligations will commence at the start of the first calendar month following the month in which your Franchised Business opens and commences operations.</p> <p>We must approve all advertising materials prior to use/publication and we may require you to provide us with monthly reports detailing your local advertising expenditures. We may require that any portion of your LMR be expended on services/materials that must be acquired from one (1) or more of our Approved Suppliers.</p> |
| Technology Fee                                                    | We expect our current Technology Fee to be up to \$300/month.                                                                       | Collected in weekly installments. Payable in the same manner and within the time frame as the royalty payment. | <p>We charge you an on-going Technology Fee to help cover the costs and expenses associated with developing, implementing, licensing or otherwise using and integrating the technology we determine appropriate to provide as part of the System or otherwise in connection with your Franchised Business.</p> <p>We reserve the right to increase or otherwise modify this Administrative Fee upon 30 days’ prior written notice to you via the Manuals or otherwise.</p>                                                                                                                                                                                       |

| TYPE OF FEE                                                          | AMOUNT                                                                                                                                                                                                                                                                                                                                                         | DUE DATE                                                                      | REMARKS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Required Software Fee(s); Corresponding Merchant Processing Services | <p>Currently, our Required Software involves the following licensing fees:</p> <p>\$399/month for software to provide point-of-sale (POS) and certain other functions; and</p> <p>Around \$40/month for cloud-based accounting software.</p>                                                                                                                   | As invoiced or otherwise arranged with the provider of such Required Software | <p>You must use the specific software we designate and require for use in connection with your Franchised Business (collectively, the “Required Software”), and we may require that any Required Software be licensed or acquired from our then-current Approved Supplier.</p> <p>The fees are subject to modification by the current Approved Supplier of such Required Software upon 30 days’ prior written notice to you via the Manual(s) or otherwise.</p> <p>Please note that if you wish to use our current Approved Supplier for merchant processing services, then you will be required to a pre-transaction fee amounting to 0.21% of the transaction amount, plus \$0.05.</p>                                                              |
| Additional Training (for existing or replacement personnel)          | <p>Currently, our Training Fee(s) are:</p> <ul style="list-style-type: none"> <li>- \$2,500 per trainee that attends our typical Initial Training Program; and</li> <li>- \$250/day for any other training, plus travel, food and lodging expenses of our trainer personnel if such training is being provided on-site at your Franchised Business.</li> </ul> | In advance                                                                    | <p>This fee is paid in connection with additional training/instruction that we may provide on an ongoing basis in connection with the opening, overall operation and development of your Franchised Business.</p> <p>We reserve the right to charge this fee in connection with (a) re-training or replacement training with regards to the portions of the initial training that are designed for the franchise owner and/or Designated Manager, (b) any training we require you to complete to cure a default under your Franchise Agreement with us (“Remedial Training”), (c) training you request we provide (other than the kind of day-to-day assistance described below), or (d) training we provide on-site at your Franchised Business.</p> |
| Renewal Fee                                                          | \$3,000                                                                                                                                                                                                                                                                                                                                                        | Prior to us approving your renewal request                                    | Renewal is available to you only if you meet each of the requirements for renewal described in the franchise agreement at the time your renewal election must be made.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

| TYPE OF FEE                          | AMOUNT                                                                                                                                                                                                                                                                                                                             | DUE DATE                                                                  | REMARKS                                                                                                                                                                                                                                                              |
|--------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Transfer Fee                         | \$10,000 per Franchised Business or undeveloped franchise right being assigned, subject to certain exceptions                                                                                                                                                                                                                      | Prior to or at time of approved transfer                                  | Fee is inapplicable except to prospective purchasers. Fee is earned when the transfer is approved and paid at closing.<br><br>There are other conditions that you and the proposed transferee must meet in order for us to approve any proposed transfer/assignment. |
| Late Charges                         | We currently reserve the right to charge: (i) \$50 per day for each late payment; and (ii) \$50 for each late report – in addition to interest on past due amounts that will be the greater of (a) 18% per annum, or (b) the highest commercial rate permitted by the laws of the state where your Franchised Business is located. | Payable with royalty or reports or on demand.                             | Charges and interest begin to accrue after the due date of any royalty, fee, report or other required payment. We can adjust these fees at any time in the Manuals.                                                                                                  |
| Unauthorized Event or Operations Fee | Currently \$500 per day                                                                                                                                                                                                                                                                                                            | Payable upon demand                                                       | Payable if you operate outside of your store location without prior written permission.                                                                                                                                                                              |
| Testing or Supplier Approval Fee     | Reimbursement or the actual costs and expenses we incur                                                                                                                                                                                                                                                                            | Before we approve suppliers and in advance of testing or review analysis. | Payable if you want to have unapproved suppliers or products tested or reviewed for our approval (see Item 8).                                                                                                                                                       |
| Fees on Default and Indemnity        | Attorney's fees, costs, interests and audit costs.                                                                                                                                                                                                                                                                                 | On demand, as incurred.                                                   | Paid in addition to other payments to us.                                                                                                                                                                                                                            |
| Audit Charge <sup>4</sup>            | Cost of audit                                                                                                                                                                                                                                                                                                                      | On billing                                                                | Payable only if an audit shows an understatement of 2% or more of net sales or records are unavailable.                                                                                                                                                              |
| Interest <sup>5</sup>                | 18% or highest amount permitted under applicable commercial law                                                                                                                                                                                                                                                                    | As incurred                                                               | Payable only amounts that are past due and owing under your Franchise Agreement with us.                                                                                                                                                                             |

| TYPE OF FEE                                             | AMOUNT                                                                                                                                                                                                                                  | DUE DATE                            | REMARKS                                                                                                                                                                                                                                                       |
|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Management Fee(s)                                       | Our then-current fee; currently the fee is \$500 per day, per representative, or our then-current rate, plus food, travel and lodging for our representative(s) and other expenses which may be incurred by us to perform such services | As invoiced                         | This amount will only be charged if we exercise our step-in rights to manage/operate the Franchised Business, as provided for in your Franchise Agreement.                                                                                                    |
| System non-compliance fines and charges                 | Amount to be specified in the operations manual. Currently, these fees range between \$50 and \$500 per infraction.                                                                                                                     | As incurred                         | For certain defaults in your compliance with our operations manual. To be paid in accordance with our electronic funds transfer or automatic withdraw program. Payable upon demand if you fail to correct deficiencies discovered in review of your business. |
| Consumer Complaint Resolution Fee <sup>2</sup>          | \$50 per incident, plus our costs.                                                                                                                                                                                                      | When we receive customer complaint. | If you do not resolve a customer complaint and we are required to assist them, you must reimburse us for any of our costs to respond to and compensate complaints from your customers.                                                                        |
| Post-Termination: Compliance-Related Costs and Expenses | Varies                                                                                                                                                                                                                                  | As Incurred                         | You will be responsible to pay us any post-termination expenses, including without limitation, attorney's fees and costs to enforce your post-term obligations.                                                                                               |

### **Explanatory Notes to Item 6 Chart Above**

Generally. All fees and expenses described in this Item 6 are non-refundable and, unless otherwise indicated, are imposed uniformly by, and are payable to, us. All flat fees described in this Item 6 are subject to adjustment due to inflation. Unless we have noted differently, we may increase these amounts based upon changes in market conditions, our cost of providing services and future policy changes, but we have no present plans to increase any fees. During our last fiscal year, all fees were uniformly applied to all franchisees.

1. **“Net Sales” Definition.** For purposes of this Disclosure Document and your Franchise Agreement, the term “Net Sales” means the total revenue that you derive from operation of your Franchised Business, including, but not limited to, all revenue generated from the sale and provision of any and all Approved Products and Approved Services sold at or from your Franchised Business, as well as all proceeds from any business interruption insurance related to the non-operation of your Franchised Business. The term “Net Sales” does not include (a) tips received by employees of the Franchised Business, (b) any sales and equivalent taxes that are collected by Franchisee for or on behalf of any governmental taxing authority and paid thereto, or (c) the value of any allowance issued or granted to any client of the Franchised Business that you credit in good faith in full or partial satisfaction of the price of the Approved Products or Services offered in connection with the Franchised Business, provided such allowance or refund is authorized in accordance with our then-current System standards and policies.

You will be required to comply with our then-current System policies, practices and procedures with respect to any sales of System gift cards and when such sales will constitute “Net Sales” under your Franchise Agreement (which may or may not occur at a given time depending on our policy).

2. **Collection Interval; Reporting Obligations.** As of the Issue Date, we expect that our Approved Supplier for the payment processing services and POS-related software will collect the Net Sales of each Franchised Business and deduct the Royalty Fee and other recurring fees owed to Franchisor as of that date before remitting the balance of those funds to the EFT Account associated with that Franchised Business. With that said, we reserve the right to change the interval at which we collect your Royalty Fee, Fund Contribution and other recurring fees payable to us or our affiliates under the Franchise Agreement upon written notice to you. For example, we may collect these recurring fees on a monthly rather than weekly basis. Regardless, you are required to provide us with a weekly report detailing your Net Sales, calculated Royalty Fee any calculated Fund Contribution and any other key performance indicators we reasonably designate with regards to the operations of the Franchised Business (the “Net Sales Report”).
3. **Fund Contributions.** If we have established and maintain a brand development fund (or “Fund”), then you will be required to contribute to that Fund in the amount we designate in writing (consistent with the limitations described in the Chart above). The Fund may be used for (among other things) any activities or efforts designed to promote, advertise, market or otherwise develop the System, Proprietary Marks, System locations, Approved Products and/or our brand generally. This may include the following activities: product and technology development; signage; creation, production and distribution of marketing, advertising, public relations and other materials in any medium, including the internet; social media; administration expenses; brand/image campaigns; media; national, regional and other marketing programs; activities to promote current and/or future Shops; agency and consulting services; research; and any expenses approved by us and associated with your Shop. We have sole discretion over all matters relating to the Fund.
4. **Right to Inspect/Audit.** We have the right to inspect your books and other financial information associated with your Franchised Business during the term of the Franchise Agreement. If we conduct an audit and it reveals that you have underreported your Net Sales by two percent (2%) or more, then we may require you to (a) pay the costs we incur in connection with conducting the audit of your Franchised Business (including any fees paid to auditors and/or attorneys), and/or (b) provide us with annual audited financial statements regarding the operation of your Franchised Business.
5. **Interest on Late Payments.** Interest begins to accrue on the due date of any payment that has not been timely received or is not paid in full.

**ITEM 7**  
**ESTIMATED INITIAL INVESTMENT**

**A. Single Franchise Agreement**

**YOUR ESTIMATED INITIAL INVESTMENT**

| <b>TYPE OF EXPENDITURE</b>                                                                                               | <b>Low-End Estimated Amount</b> | <b>High-End Estimated Amount</b> | <b>METHOD OF PAYMENT</b> | <b>WHEN DUE</b>                  | <b>TO WHOM PAYMENT IS TO BE MADE</b>                     |
|--------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|--------------------------|----------------------------------|----------------------------------------------------------|
| Initial Franchise Fee <sup>1</sup>                                                                                       | \$40,000                        | \$40,000                         | Lump Sum                 | Upon signing Franchise Agreement | Us                                                       |
| Costs and Expenses Associated with Initial Training Program Taking Place at our Corporate Training Location <sup>2</sup> | \$2,500                         | \$10,000                         | As Arranged              | During Training                  | Third-Party Providers (e.g., Airlines, Hotels and Shops) |
| Security Deposit under Lease for Premises <sup>3</sup>                                                                   | \$5,000                         | \$15,000                         | As Arranged              | As Agreed under Lease            | Third-Party Landlord                                     |
| Leasehold Improvements <sup>4</sup>                                                                                      | \$100,000                       | \$250,000                        | As Arranged              | As Agreed                        | Third-Party Contractors and Other Providers              |
| Utilities – Deposit <sup>5</sup>                                                                                         | \$500                           | \$1,500                          | As Arranged              | As Incurred                      | Third-Party Utility Provider(s)                          |
| Operational Equipment Package <sup>6</sup>                                                                               | \$30,000                        | \$70,000                         | As Incurred or Leased    | Before Opening                   | Approved Supplier (currently us)                         |
| Computer System – Hardware and Initial Required Software Costs (Pre-Opening) <sup>7</sup>                                | \$3,000                         | \$7,000                          | As Arranged              | As Agreed                        | Approved Supplier(s) and Other Third-Party Suppliers     |
| Signage – Exterior and Interior <sup>8</sup>                                                                             | \$10,000                        | \$20,000                         | As Incurred              | Before Opening                   | Approved Supplier(s)                                     |
| Initial Inventory (Package) <sup>9</sup>                                                                                 | \$9,000                         | \$18,000                         | Lump Sum                 | Before Opening                   | Approved Supplier(s) and/or Third-Party Suppliers        |
| Initial Marketing Spend <sup>10</sup>                                                                                    | \$10,000                        | \$10,000                         | As Incurred              | As Incurred                      | Us, Vendors and Suppliers                                |
| Business Licenses and/or Permits                                                                                         | \$500                           | \$1,500                          | As Arranged              | As Agreed                        | Third-Party Agencies                                     |

| TYPE OF EXPENDITURE                                    | Low-End Estimated Amount | High-End Estimated Amount | METHOD OF PAYMENT | WHEN DUE    | TO WHOM PAYMENT IS TO BE MADE                                                                        |
|--------------------------------------------------------|--------------------------|---------------------------|-------------------|-------------|------------------------------------------------------------------------------------------------------|
| Professional Fees                                      | \$1,000                  | \$2,500                   | As Arranged       | As Agreed   | Third-Party Professionals (Lawyer, Accountant)                                                       |
| Insurance Premiums <sup>11</sup>                       | \$500                    | \$1,500                   | As arranged       | As agreed   | Third-Party Provider                                                                                 |
| Additional Funds - 3 Months <sup>12</sup>              | \$20,000                 | \$50,000                  | As Incurred       | As Incurred | Franchised Business personnel; Landlord; Approved Suppliers; Various Third-Party Suppliers; us; etc. |
| <b>TOTAL ESTIMATED INITIAL INVESTMENT<sup>13</sup></b> | <b>\$232,000</b>         | <b>\$497,000</b>          |                   |             |                                                                                                      |

#### Explanatory Notes to Chart 7(A) Above

- 1. Initial Franchise Fee.** The franchise fee is due immediately upon execution of your Franchise Agreement and is deemed fully earned and non-refundable upon payment, as set forth more fully in Item 5.
- 2. Training-Related Expenses.** You are responsible to pay all travel, living, and other associated training expenses for yourself and your employees during training, directly to the supplier (hotels, airlines, Shops, rental car companies, etc.). You are also responsible to pay all travel, living, and other associated training expenses for our representative(s) during training if we travel to your location.
- 3. Lease – Security Deposit.** You must purchase or lease a suitable location to serve as the Premises of your Franchised Business. As of our Issue Date, our standard franchise offering expects and assumes that your Premises will have, or must be capable of having, a drive-through window.
- 4. Leasehold Improvements.** Costs of commercial property or leases and improvements vary widely based on location, terms of the lease, the total area of your space as well as construction and material costs. Your landlord may provide you with a tenant improvement allowance as part of your lease. You should review these costs with a local contractor, commercial real estate agent and other professionals. Your space will vary depending on your needs, but we estimate you will need between 1,000 and 1,500 square feet. Your improvements may include set up for a kitchen and sufficient backroom storage, countertop installation and other general construction and buildout, all of which must be completed in accordance with our System standards and/or specifications.
- 5. Utilities – Deposit.** This estimate is designed to cover any initial deposit you might be required to pay in connection with the utilities, including electric, gas, water and sewer, prior to the contemplated opening of your Franchised Business.
- 6. Operational Equipment Package.** This estimate includes the cost of the operational equipment necessary to store, prepare and offer/sell the menu items and other Approved Products at your Premises. Included in this estimate are the cost of small-wares equipment, ice machine, refrigerators, freezers,

racks, packages, soda machine and certain other operational equipment related to the Approved Products.

7. **Computer System and Related Items.** Please see Items 6 and 11 for further information regarding the Computer System components/hardware and our current Required Software.
8. **Signage.** At least one exterior sign displaying the trademark, one external menu board, and two interior digital televisions are required. These signs may be made locally. All purchase agreements or leases must be negotiated with your suppliers.
9. **Initial Inventory.** This estimate includes product inventory, food, beverages, soft goods, such as napkins, boxes, sacks, cups, and other paper goods, uniforms, and other items required to operate a System business. The costs will vary depending upon your inventory levels. The range in cost depends upon the size and location of your Franchised Business, as well as estimated initial business volume.
10. **Initial Marketing Spend.** Marketing is essential to the successful operation of your Franchised Business. This range provides an estimate of the costs associated with the Initial Marketing Spend that you will be required to expend in connection with the initial launch of your Franchised Business prior to and around the time you open your franchise, as detailed more fully in Item 11 of this Disclosure Document.
11. **Insurance Premiums.** This estimate is designed to cover the estimated costs you might determine to expend on acquiring the minimum insurance coverage(s) you must have in place in order to open and operate your Franchised Business prior to opening, including any pre-paid insurance coverage payments.
12. **Additional Funds – 3 Months.** This estimates other initial start-up expenses that you may incur. You also need to budget for salaries and labor. Employee compensation is between you and your employee and may vary widely. Therefore, this compensation cannot be accurately estimated. In addition, you need to include an amount payable to you.
13. **Total Estimated Initial Investment.** These figures are estimates for the development of one franchise unit and we cannot guarantee that you will not have additional expenses starting your franchise business. Your costs will depend on factors such as: how well you follow our method and procedures; your management skill; experience and business acumen; local economic conditions; the local market for our services; the prevailing wage rate; competition; and the sales level reached during the initial period. You should review these figures carefully with a business advisor before making any decision to purchase the franchise. We do not offer direct or indirect financing for any item. We relied on the experience of our principals to compile these estimates.

**B. Multiple Franchises Under Development Agreement (3-Pack as Example)**

**YOUR ESTIMATED INITIAL INVESTMENT<sup>1</sup>**

| Type of Expenditure                                                 | Amount                        | Method of Payment                                                                                                                                                                                                                                                                                                              | When Due                              | To Whom Payment Is to be Made |
|---------------------------------------------------------------------|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-------------------------------|
| Development Fee <sup>2</sup>                                        | \$90,000                      | Lump Sum                                                                                                                                                                                                                                                                                                                       | Upon signing of Development Agreement | Franchisor                    |
| Initial Investment to Open Initial Franchised Business <sup>3</sup> | \$192,000 to \$457,000        | See Chart 7(A) above in this Item                                                                                                                                                                                                                                                                                              |                                       |                               |
| <b>TOTAL<sup>4</sup></b>                                            | <b>\$282,000 to \$547,000</b> | This is the total estimated initial investment to enter into a Development Agreement for the right to develop a total of three (3) Franchised Businesses, as well as the costs to open and commence operating your initial Franchised Business for the first three months (as described more fully in Chart A of this Item 7). |                                       |                               |

**Explanatory Notes to Chart 7(B) Above**

1. **Generally.** All fees and payments are non-refundable, unless otherwise stated or permitted by the payee. This Chart details the estimated initial investment associated with executing a Development Agreement for the right to own and operate three Franchised Businesses, as well as the initial investment to open your first Franchised Business under your Development Schedule.
2. **Development Fee.** The Development Fee is non-refundable. The Development Fee is described in greater detail in Item 5 of this Disclosure Document, and this Development Fee is for the right to open and operate a total of three Franchised Businesses (provided you comply with your development obligations under the Development Agreement). Your Development Fee will be calculated as follows: (i) \$40,000 for the first franchise you are awarded the right to develop; (ii) \$30,000 for the second franchise you are awarded the right to develop; and (iii) \$20,000 for the third and each additional franchise you are awarded the right to develop.
3. **Estimated Initial Investment to Open Initial Franchised Business.** This figure represents the total estimated initial investment required to open the initial Franchised Business you agreed to open and operate under the Development Agreement. You will be required to enter into our then-current form of franchise agreement for initial Franchised Business you must open within the Development Area at the same time you execute your Development Agreement. The range includes all the items outlined in Chart 7(A) of this Item, except for the Initial Franchise Fee (because you are not required to pay any Initial Franchise Fee for those Franchised Businesses you open under the Development Agreement).

## ITEM 8

### RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

You must operate all aspects of your Franchised Business in strict conformance with the methods, standards and specifications of our System. Our methods, standards, and specifications will be communicated to you in writing through our confidential Manuals and other proprietary guidelines and writings that we prepare for your use in connection with the Franchised Business and System. We may change our System standards and specifications from time to time, as we deem appropriate or necessary in our sole discretion, and you will be solely responsible for costs associated with complying with any modifications to the System.

#### Approved Products and Services

You may only market, offer, sell and provide the Approved Products, as well as any services we authorize, from or through your Franchised Business in a manner that meets our System standards and specifications. We will provide you with a list of our then-current Approved Products, along with their corresponding proprietary recipes and standards and specifications for storage/preparation/presentation, as part of the Manuals or otherwise in writing prior to the opening of your Franchised Business. We may update or modify this list in writing at any time.

If you wish to offer any product or service in your Shop other than our Approved Products, or use any item in connection with your Shop that does not meet our System standards and specifications, then you must obtain our prior written approval as described more fully in this Item.

Our franchisees guarantee the satisfaction of our customers. Therefore, if a customer complains about the food or another aspect of their dining experience, we have established certain procedures you are required to follow to resolve the concern, which could result in not charging the customer for the services provided or providing discounts for future services.

#### Approved Suppliers

We have the right to require you to purchase any items or services necessary to operate your Franchised Business from a supplier that we approve or designate (each, an “Approved Supplier”), which may include us or our Affiliate(s). We will provide you with a list of our Approved Suppliers in writing as part of the Manuals or otherwise in writing, and we may update or modify this list as we deem appropriate.

As of the Issue Date, we are the sole Approved Supplier for certain of the technology and administrative services you will need to operate your Shop. We reserve the right to require you to purchase additional supplies, inventory, equipment and products not described here from us or our affiliates in the future.

We also have approved suppliers for the following items you must purchase in connection with your Shop as of the Issue Date of this Disclosure Document: (i) certain furniture, fixtures, equipment and supplies you must purchase to buildout and/or operate your Shop; (ii) site selection and other real estate services (recommended but not necessarily required); (iii) credit card and merchant processing services, including (a) gift/loyalty cards and related programs and processing services and (b) other credit card processing services; (iv) the POS hardware and software (including updated technology we introduce in the future), and other items, software and technology we designate for use in connection with the System; (iv) signage and décor items for your Shop; (v) inventory items and paper goods; (vi) sodas, flavorings and other beverage inventory; (vii) food products; (viii) branded items and merchandise; (ix) marketing materials and services, including business cards, flyers, coupons, banners, flags and similar promotional items; (x) project

management and related services associated with the buildout and design of your Shop and (xi) merchant processing services.

You are required to purchase and maintain in good working order a laptop or desktop computer with standard productivity software and access to the internet for use in the back office in connection with all work not conducted via the POS System. You are not required to purchase this office computer from an approved supplier. Since you accept credit cards as a method of payment at your Franchise, you must comply with payment card infrastructure (“PCI”) industry and government requirements. PCI security standards are technical and operational requirements designed to protect cardholder data. The standards apply to all organizations that store, process or transmit cardholder data and cover technical and operational payment system components involving cardholder data. Notwithstanding the credit card processing requirement, we do not represent, nor certify to you or your customers that the credit card processing service approved or provided by us or an affiliate is compliant, whether or not certified as compliant, with the PCI Data Security Standards.

We are currently the Approved Supplier for the following: (i) any technology services we determine to provide as part of your then-current Technology Fee; (ii) your Initial Inventory Package and Operational Equipment Package disclosed more fully in Item 5 of this Disclosure Document.

Except as disclosed in this Item, neither we, any affiliate nor our owners are currently Approved Suppliers or have an office that owns an interest in any third-party Approved Supplier. However, we reserve the right to do so in the future.

We do not provide franchisees with any material benefits based upon a franchisee’s use of approved suppliers, but you must use such suppliers if you want to comply with your obligations under your Franchise Agreement with us.

#### Method of Approving Suppliers or Non-Approved Products

We may, but are not obligated to, grant your request to: (i) offer any products or services in connection with your Shop that are not Approved Products and Services; or (ii) purchase any item or service we require you to purchase from an Approved Supplier from an alternative supplier.

If you wish to undertake either of these actions, you must request and obtain our approval in writing before: (i) using or offering the non-approved product or service in connection with your Franchised Business; or (ii) purchasing from a non-approved supplier. You must pay our then-current supplier or non-approved product evaluation fee when submitting your request. If you make such a proposal, we reserve the right to charge you the greater of (a) the costs/expenses we incur in evaluating/testing your proposal, and (b) \$1,000 per proposal. We may ask you to submit samples or information so that we can make an informed decision whether the goods, equipment, supplies or 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 product at issue, but also the supplier’s production and delivery capability, overall business reputation and financial condition. We may provide any alternate supplier you propose with a copy of our then-current specifications for any product(s) you wish the supplier to supply, provided the supplier enters into a confidentiality and non-disclosure agreement in the form we specify. We may also inspect a proposed supplier’s facilities and test its products, and request that you reimburse our actual costs associated with the testing/inspection.

We will notify you in writing within 90 days after we receive all necessary information and/or complete our inspection or testing to advise you if we approve or disapprove the proposed item and/or supplier. If you do not receive a notification from us within that 90-day period, the supplier is deemed disapproved.

The criteria we use in approving or rejecting new suppliers is proprietary, but we may (but are not required to) make it available to you upon request. Each supplier that we approve of must comply with our usual and customary requirements regarding insurance, indemnification and non-disclosure. If we approve any supplier, we will not guarantee your performance of any supply contract with that supplier under any circumstances. We may re-inspect and/or revoke our approval of a supplier or item at any time and for any reason to protect the best interests and goodwill of our System and Proprietary Marks. The revocation of a previously-approved product or alternative supplier is effective immediately when you receive written notice from us of revocation and, following receipt of our notice, you may not place any new orders for the revoked product, or with the revoked supplier.

#### Right to Derive Revenue

We and our affiliates may derive revenue from the sale of products, supplies, services and equipment to you by us, our affiliates and our other Approved Suppliers.

For our last fiscal year ending December 31, 2022, we generated a total of \$249,568 on account of the System franchisees' required purchases, or 14.4% of our total revenue of \$1,738,969 over our past fiscal year.

Except as disclosed above, our neither we nor our affiliates generated revenue on account of our System franchisees' required purchases or leases in the fiscal year ended December 31, 2022.

#### Required Purchase Percent of Revenue.

The products or services we require you to purchase or lease from an Approved Supplier, or purchase or lease in accordance with our standards and specifications, are referred to collectively as your "Required Purchases." We estimate that your Required Purchases will account for approximately 65% to 85% of your total costs incurred in establishing your Franchised Business, and approximately 35% to 75% of your ongoing costs to operate the Franchised Business after the initial start-up phase. Please be advised that these ranges for "Required Purchases" includes the lease for your approved Premises given that it must meet our then-current site selection criteria and specifications.

#### Purchasing or Distribution Cooperatives.

We may, when appropriate, negotiate purchase arrangements, including price terms, with designated and Approved Suppliers on behalf of the System. We may establish strategic alliances or preferred vendor programs with suppliers that are willing to supply some products, equipment, or services to some or all of the System Shops in our System. If we do establish those types of alliances or programs, we may: (i) limit the number of approved suppliers with whom you may deal; (ii) designate sources that you must use for some or all products, equipment and services; and (iii) refuse to approve proposals from franchisees to add new suppliers if we believe that approval would not be in the best interests of the System.

We and/or our Affiliates may receive payments or other compensation from Approved Suppliers or any other suppliers on account of these suppliers' dealings with us, you, or other Franchised Businesses in the System, such as rebates, commissions or other forms of compensation. We may use any amounts that we receive from suppliers for any purpose that we deem appropriate. We and/or our affiliates may negotiate supply contracts with our suppliers under which we are able to purchase products, equipment, supplies, services and other items at a price that will benefit us and our franchisees.

We do not currently have any purchasing or distributing cooperatives, but we reserve the right to create such cooperatives in the future.

#### Insurance (Minimum Requirements)

In addition, you are required at your own expense to keep in full force, by advance payment(s), during the entire term of the franchise the following minimum insurance policies, which minimums may be adjusted periodically:

(a) Liability Insurance.

(1) General liability insurance insuring against all liability resulting from damage, injury, or death occurring to all persons or property in or about the franchise business premises (including products liability insurance), the liability under such insurance to be not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate or leasehold minimum, whichever is greater (combined single limit for personal injury, including bodily injury or death, and property damage); and

(2) If in the future we provide delivery services, commercial automobile insurance will be required for any delivery vehicles.

(b) Property Insurance. Casualty insurance for all of your goods, fixtures, furniture, equipment, inventory and other personal property located at the Premises providing insurance to the extent of 100% of the full replacement cost against loss or damage from fire and other risks normally insured against in extended risk coverage.

(c) Business Interruption Insurance. Insurance to recover lost income in the event the franchise business is unable to operate for a period of time covering at least 75% of your annual revenue or the actual loss sustained.

(d) You must also maintain and keep in force all worker's compensation and employment insurance on your employees that is required under all federal and state laws.

These policies will insure both you and us and our officers and directors and nominees as additional insureds against any liability which may accrue by reason of your ownership, maintenance or operation of the franchise business wherever it may be located. These policies will stipulate that we will receive a 30-day written notice of cancellation, modification or termination. Original or duplicate copies of all insurance policies, certificates of insurance, or other proof of insurance acceptable to us must be furnished to us together with proof of payment within 30 days of issuance. These insurance coverage requirements are only minimums. You need to make an independent determination as to whether increased amounts or additional types of insurance are appropriate.

If you fail to obtain insurance and keep the same in full force and effect, we may obtain this insurance at our discretion and you will pay us the premium costs upon our demand. Failure to obtain and maintain the required insurance constitutes a material breach of the franchise agreement entitling us to terminate the agreement. You must also procure and pay for all other insurance required by state or federal law. We may periodically increase the amounts of coverage required and/or require different or additional coverage. We do not derive revenue as a result of your purchase of insurance.

**ITEM 9**  
**FRANCHISEE'S OBLIGATIONS**

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

|    | <b>Obligation</b>                                       | <b>Section in Franchise Agreement</b>                                 | <b>Section in Development Agreement</b>              | <b>Disclosure Document Item</b> |
|----|---------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------|---------------------------------|
| a. | Site selection and acquisition/lease                    | Section 4.1                                                           | Section 1 and Exhibit A                              | Item 11                         |
| b. | Pre-opening purchases/leases                            | Paragraphs 6.1.3, 6.1.9, 6.1.12 and 6.1.13 of the franchise agreement | Nothing Additional (see Franchise Agreements signed) | Item 8                          |
| c. | Site development and other pre-opening requirements     | Section 4.2 of the franchise agreement                                | Sections 1, 5 and Exhibit A                          | Items 7 and 11                  |
| d. | Initial and ongoing training                            | Paragraph 6.1.4 and section 7.4 of the franchise agreement            | Nothing Additional (see Franchise Agreements signed) | Item 11                         |
| e. | Opening                                                 | Section 4.3 and paragraph 7.1.3 of the franchise agreement            | Nothing Additional (see Franchise Agreements signed) | Item 11                         |
| f. | Fees                                                    | Article V of the franchise agreement                                  | Section 2                                            | Items 5 and 6                   |
| g. | Compliance with standards and policies/operating manual | Section 6.2 and article IX of the franchise agreement                 | Nothing Additional (see Franchise Agreements signed) | Items 8 and 11                  |
| h. | Trademarks and proprietary information                  | Article III of the franchise agreement                                | Nothing Additional (see Franchise Agreements signed) | Items 13 and 14                 |
| i. | Restrictions on products/services offered               | Article VIII of the franchise agreement                               | Nothing Additional (see Franchise Agreements signed) | Item 8                          |
| j. | Warranty and customer service requirements              | Paragraph 6.1.2 and section 7.3 of the franchise agreement            | Nothing Additional (see Franchise Agreementssigned)  | Item 11                         |
| k. | Territorial development and sales quotas                | Not Applicable                                                        | Section 1 and Exhibit A of the Development Agreement | Item 12                         |
| l. | Ongoing product/service purchases                       | Article VIII of the franchise agreement                               | Nothing Additional (see Franchise Agreements signed) | Item 8                          |

|    | <b>Obligation</b>                                   | <b>Section in Franchise Agreement</b>                                 | <b>Section in Development Agreement</b>                             | <b>Disclosure Document Item</b> |
|----|-----------------------------------------------------|-----------------------------------------------------------------------|---------------------------------------------------------------------|---------------------------------|
| m. | Maintenance, appearance and remodeling requirements | Paragraph 6.1.8 of the franchise agreement                            | Nothing Additional (see Franchise Agreements signed)                | Item 11                         |
| n. | Insurance                                           | Paragraph 6.1.10 of the franchise agreement                           | Nothing Additional (see Franchise Agreements signed)                | Item 8                          |
| o. | Advertising                                         | Article X of the franchise agreement                                  | Nothing Additional (see Franchise Agreements signed)                | Items 6 and 11                  |
| p. | Indemnification                                     | Section 15.2 of the franchise agreement                               | Nothing Additional (see Franchise Agreements signed)                | Item 6                          |
| q. | Owner's participation/management/staffing           | Paragraphs 6.1.6 and 6.1.7 of the franchise agreement                 | Nothing Additional (see Franchise Agreements signed)                | Items 11 and 15                 |
| r. | Records and reports                                 | Sections 5.4 and 5.5 of the franchise agreement                       | Nothing Additional (see Franchise Agreements signed)                | Item 6                          |
| s. | Inspections and audits                              | Sections 5.5, 7.5 and paragraph, 6.2.2(iv) of the franchise agreement | Nothing Additional (see Franchise Agreementssigned)                 | Items 6 and 11                  |
| t. | Transfer                                            | Article XIV of the franchise agreement                                | Section 8                                                           | Item 17                         |
| u. | Renewal                                             | Section 2.2 of the franchise agreement                                | Nothing Additional (see Franchise Agreements signed)                | Item 17                         |
| v. | Post-termination obligations                        | Section 12.1 of the franchise agreement                               | Section 9                                                           | Item 17                         |
| w. | Non-competition covenants                           | Article XVI of the franchise agreement                                | Section 9 (in addition to covenants in Franchise Agreements signed) | Items 14, 15 and 17             |
| x. | Dispute resolution                                  | Article XVII of the franchise agreement                               | Sections 11 through 19                                              | Item 17                         |

## ITEM 10 FINANCING

As of the Issue Date, we do not offer direct or indirect financing, and we do not guarantee your notes, leases or other obligations.

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

**A.     Pre-Opening Assistance**

**Except as disclosed below, we need not provide any assistance to you.**

1.       If you have entered into a Development Agreement, we will discuss and agree upon your Development Area under your Development Agreement when it is executed. (Development Agreement, Section 1 of Data Sheet);

2.       We will not typically provide site selection guidelines and assistance in connection with selecting the Premises for each of your Shop(s). However, we will review, and subsequently approve/reject, any proposed lease or purchase agreement for each location that you propose as a Premises for any Franchised Business. (Franchise Agreement, Sections 2(B) and 5(F));

3.       Once you secure a Premises that we approve for a Shop, we will define your Designated Territory for that Shop and include its boundaries in a Data Sheet attached as Exhibit A to your Franchise Agreement. (Franchise Agreement, Section 2(D));

4.       We may provide on-site assistance and training at your Premises (the "On-Site Assistance"). We may also decide, at our reasonable discretion, that you require more than the standard seven (7) to fourteen (14) days of On-Site Assistance. If we provide such additional On-Site Assistance, you will be required to pay the salary and expenses of our representatives for each additional day of On-Site Assistance. (Franchise Agreement, Section 5(B)).

5.       We will provide you with a list of our Approved Products and Services and Approved Suppliers (to the extent we have designated them), either as part of the Manuals or otherwise in writing. (Franchise Agreement, Section 5(E));

6.       We will review and approve your signage, the proposed layout and design of your Premises (which must be prepared by our Approved Supplier unless we agree otherwise in writing), as well the equipment, furniture and fixtures used in connection with your Franchised Business, as we deem appropriate and advisable in our discretion. (Franchise Agreement, Section 6(F));

7.       We will assist in managing the process and designating the appropriate furniture, fixtures, and equipment ("FF&E") for your Shop based on the specific requirements of your Premises. You will be responsible for ordering the FF&E we designate. You will be responsible for the cost of such items. Subject to the requirements of the Approved Suppliers, you may be required to pay 50% of the cost upon ordering and the balance upon delivery of the FF&E. (Franchise Agreement, Section 6.)

**B.     Initial Training Program**

1. We will provide our initial training program comprised of: (i) certain "Classroom Training" that you and your management will have remote access to and must view and/or otherwise complete online via video instruction or other learning management system we designate to (a) monitor/track participation and progress, and/or (b) test competency levels, if and as we determine appropriate (collectively, the "Remote Training"); (ii) additional "Classroom

- Training” and hands-on training that we will provide to you and your initial management at our corporate training location (or headquarters), which are currently located in Utah, over a period that typically lasts between five (5) and six (6) days (which we refer to as our “Corporate Training”); and (iii) on-site training, assistance and support that you, your management, your initial Applicable Provider(s) and other Shop personnel that will be involved in the initial operations of the Shop (the “Initial Trainee Team”) must participate and complete to our satisfaction (the “Initial On-Site Training”), which we expect will typically last between one (1) and three (3) days before or around the time of Franchised Business has its contemplated soft opening.
2. Certain portions of the Classroom Training hours (as detailed in the Chart below) may involve instruction provided by video or other digital technology while at our designated corporate training location.
  3. We may condition your ability to attend our Corporate Training and/or us providing you with any Initial On-Site Training on you: (i) expending the required amounts on the marketing and pre-opening sales activities we designate or otherwise approve in connection with your initial marketing plan, your lead generation efforts and the Initial Training Team’s participation in the Initial On-Site Training that will be provided at your Premises; (ii) undertaking all steps to establish and provide us with access to your EFT Account consistent with your Franchise Agreement, including providing Franchisor and/or its designee with a signed and completed copy of the authorization form attached to your Franchise Agreement as an Exhibit, as well as any other authorizations and approvals necessary for us or our designee to access such EFT Account; (iii) demonstrating that you have obtained all required insurance coverages as set forth in this Agreement and the Operations Manual; and (iv) providing us with completed and signed copies of all agreements and contracts that are attached as Exhibits to your Franchise Agreement, to the extent such documents have not been signed or need to be updated or completed at that time (collectively, the “On-Site Training Pre-Conditions”).
  4. If you have appointed a manager to run the day-to-day operations of the Franchised Business (the “Designated Manager”), then this Designated Manager must participate in and complete all components of the initial training program that we designate. With that said, we may permit or require that you, your Designated Manager and/or other Shop personnel to attend all or certain components of the Remote Training and/or Initial On-Site Training that are designed to cover the areas of instruction that are more specific to the roles and corresponding responsibilities you have identified for these individuals.
  5. You are also solely responsible for all costs and expenses you (and your personnel) incur in connection with completing the appropriate Remote Training, Corporate Training and Initial On-Site Training, including personnel and other trainee wages.
  6. In the event we determine that you and your Initial Trainee Team need more than five (5) days of Initial On-Site Training based on our representatives’ reports and/or your team’s competency testing results, we may require that: (i) you and your Initial Trainee Team participate in and complete additional Initial On-Site Training beyond those five (5) days; and (ii) you cover or reimburse the costs that we incur in connection with our representatives providing such additional on-site instruction and assistance, including additional travel, lodging and meals over that additional time period (to the extent beyond 5 days).

7. We currently have a set training schedule, but we expect and intend to provide Corporate Training on an as-needed basis once each franchisee has completed any introductory Remote Training and otherwise complied with the Pre-Training Conditions, and (c) Initial On-Site Training on an as-needed basis to each franchisee and its Initial Trainee Team after the franchisee at issue has completed the Corporate Training and otherwise demonstrated that all other pre-opening requirements under that franchisee's Franchise Agreement have been satisfied. We expect to provide the Initial On-Site Training around the time of your contemplated soft opening or in the week preceding the same.
8. Instructional materials, including components of the Manuals, will be provided to you and used as necessary as you proceed through the Initial Training Program. The initial training program is subject to change without notice to reflect updates in the materials, methods and Manuals, as well as changes in personnel. The subjects taught and the time periods allocated for each subject may vary based on the experience of the people being trained.
9. We will not typically provide any Initial On-Site Training until you demonstrate to us that you have secured Certificate of Occupancy with respect to your Premises and have otherwise undertaken all steps and actions necessary to otherwise open your franchised Shop to the public.
10. We typically require that you and your management and other required trainees complete Initial On-Site Training when it is being provided around the opening of your franchised Shop. Failure to complete all required initial training to our satisfaction prior may result in default and, if not cured, termination of the Franchise Agreement.
11. As of the Issue Date, our Initial Training Program will typically be supervised by our Director of Training, Laura Timmerman, who has five (5) years of experience with (a) us and/or our brand, and (b) the topics of instruction detailed in the Chart below. We reserve the right to appoint and substitute other individuals to assist in providing training, but all of our training personnel will typically have at least one (1) year in the subject matters that they teach. We will provide you with access with one (1) copy of our proprietary instructional materials prior to or upon your attendance at our Initial Training Program, which may include our Manuals and certain other instructional materials that we develop.
12. Once we provide you and your Initial Training Team (your initial management and other Shop personnel responsible for Management Services) with On-Site Training at your Premises, you or your Designated Manager will be solely responsible for training all subsequent personnel that works at your Franchised Business.

b. The breakdown of our Initial Training Program are set forth in the Chart below:

**TRAINING PROGRAM**

| <b>Subject</b>              | <b>Hours of Classroom Training</b> | <b>Hours of On The Job Training</b> | <b>Location</b>                                                                |
|-----------------------------|------------------------------------|-------------------------------------|--------------------------------------------------------------------------------|
| Orientation to FiiZ Drinks® | 1                                  | 0                                   | Our corporate training location (currently in Utah) and/or via remote training |

| <b>Subject</b>                               | <b>Hours of Classroom Training</b> | <b>Hours of On The Job Training</b> | <b>Location</b>                                            |
|----------------------------------------------|------------------------------------|-------------------------------------|------------------------------------------------------------|
| Objectives of FiiZ Drinks®                   | 1                                  | 0                                   | Our corporate training location and/or via remote training |
| Tours/Vendor Introduction                    | 1                                  | 0                                   | Our corporate training location and/or via remote training |
| POS, Software, and Menu Board                | 2                                  | 0                                   | Our corporate training location and/or via remote training |
| Shift time at Corporate location             | 0                                  | 28                                  | Our corporate training location and/or via remote training |
| Certification Testing, Graduation & Send-off | 1                                  | 0                                   | Our corporate training location and/or via remote training |
| Leadership/Culture and Financial Training    | 10                                 | 0                                   | Our corporate training location and/or via remote training |
| On-Site Training                             | 0                                  | 8 to 24                             | Your Franchised Business                                   |
| <b>TOTALS</b>                                | 16                                 | 52 to 76                            |                                                            |

### **C. Operations Manual**

We will loan you one copy of our confidential and proprietary Manuals. You must operate your Shop in accordance with the Manuals and all applicable laws and regulations. You must keep the Manuals confidential and current, and you may not copy any part of the Manuals. You are required to keep a copy of the Manuals at your Premises, and if there is a dispute relating to the contents of the Manuals, then the master copy (which we maintain at our corporate headquarters) will control. Most of the Operations Manual content is available and provided electronically, rather than in paper format. The Operations Manuals currently contain a total of approximately 33 pages, and the table of contents is set forth in Exhibit F. (Franchise Agreement, Section 8)

We reserve the right to disclose updates to the Manuals in writing in any manner, including electronic means such as e-mail, our website and any intranet or extranet that we establish in connection with the System. We may periodically amend, update or replace the contents of the Manuals. Beginning on the 30th day (or any longer time we specify) after our delivery of written notice, you will comply with each amended, updated or replaced provision. Revisions to the Manuals will be based on what we, in our sole discretion, deem is in the best interests of the System, including promoting quality, enhancing good will, increasing efficiency, decreasing administrative burdens, or improving our and our franchisees' profitability. (Franchise Agreement, Section 8).

### **D. Site Selection**

You must assume all costs, liabilities, expenses and responsibility for: (i) locating, obtaining and developing a Premises for your Shop; and (ii) constructing, equipping, remodeling and/or building out the Premises for use as a Shop, all in accordance with our System standards and specifications. We may provide you with our current written site selection guidelines, to the extent such guidelines are in place, and any other site selection counseling and assistance we believe is advisable. Our guidelines for site selection may require

that you conduct, at your expense, an evaluation of the demographics of the market area for the location. We may then use these factors in determining the suitability of your proposed site for the Premises of your Franchised Business. We do not typically own the premises and/or lease it to you, but we reserve the right to do so. In deciding whether to approve a site, we may also consider, among other things: (i) demographic characteristics, traffic patterns, allowed design and building, parking, visibility, allowed signage, and the predominant character of the neighborhood surrounding the proposed site; (ii) competition from other businesses selling similar products and services within the area and the proximity of the site to these businesses, as well as the nature of all other businesses in proximity to the site; (iii) zoning restrictions, soil and environmental issues, and other commercial characteristics; and (iv) the size, appearance, and other physical characteristics of the proposed site. We must also have the opportunity to review any lease or purchase agreement for a proposed Premises before you enter into such an agreement. We may condition our approval of any site you propose on a number of conditions, including: (i) providing a written representation from the landlord of the Premises that you will have the right to operate the Franchised Business throughout the term of your Franchise Agreement; and (ii) executing our current form of Lease Addendum in a form substantially similar to that attached to the Franchise Agreement as Exhibit C. (Franchise Agreement, Sections 5(F), 6(A) and Exhibit C).

We will use reasonable efforts to approve or reject any proposed location (and corresponding lease/purchase agreement) within thirty (30) days of the date you provide us with all requested materials. If we determine that an on-site evaluation is necessary, then you must: (i) submit to us in the form we specify a description of the site prior to our representative conducting its on-site evaluation, including evidence that the site satisfies our site selection guidelines and any other information and materials that we may reasonably require, including a letter of intent or other evidence that confirms your favorable prospects for obtaining the site; and (ii) reimburse us for the expenses incurred in connection with such an evaluation. If we do not provide our specific approval of a proposed location within this 30-day period, the proposed location will be deemed rejected.

You must secure a Premises within six (6) months of the date you enter into your Franchise Agreement with us. Our approval only means that the site meets our minimum requirements for a Shop. If you are unable to find a suitable site within the timeline detailed below, your Franchise Agreement will be subject to termination. (Franchise Agreement, Sections 6(A) and 15).

#### **E. Typical Length of Time to Open Your Business**

The typical length of time we estimate between your signing of the Franchise Agreement or Development Agreement (or first paying us money) and opening your Shop is between nine (9) and 12 months. You must open your Shop no later than 12 months after you sign the Franchise Agreement. If you fail to open with the required time period, your Franchise Agreement will be subject to termination. (Franchise Agreement, Section 6(D)).

If you have entered into a Development Agreement to open and operate multiple Franchised Businesses, your Development Agreement will include a Development Schedule containing a deadline by which you must have each of your Franchised Businesses open and operating. Your Development Schedule may depend on the number of Franchised Businesses you are granted the right to open and operate. (Development Agreement, Section 6).

If you fail to open any franchised Shop within the appropriate time period outlined in the Development Agreement, we may terminate your Development Agreement. You will not have any further development rights within the Development Area upon termination of your Development Agreement, except to continue

operating the Shop(s) that were already open and operating as of the termination date. We must approve of the Premises you choose for each Shop you are required to open under the Development Agreement.

## **F. Post-Opening Obligations**

1. We may require you and, if applicable, your Designated Manager to attend annual additional/refresher courses, as we deem necessary in our sole discretion (“Additional Training”). We may require that you pay our then-current Training Fee, which is currently \$250/day per trainer for this kind of training, for any Additional Training you and your employees attend. You will also be solely responsible for all expenses incurred in attending Additional Training. (Franchise Agreement, Section 5(D)).

2. We may provide you with continuing consultation and advice, as we deem necessary in our sole discretion, regarding the management and operation of the Franchised Business. We may provide this assistance by telephone, facsimile, or intranet communication, as we deem advisable and subject to the availability of our personnel. (Franchise Agreement, Section 5(H)).

3. We will approve or deny any advertising/marketing materials you wish to use in connection with your Franchised Business as described more fully below in this Item 11 under the heading “Advertising and Marketing.” (Franchise Agreement, Section 5(I)).

4. We will approve or disapprove your requests to: (i) purchase and/or offer non-approved products or services in connection with the Franchised Business; and (ii) make Required Purchases from suppliers other than our then-current Approved Suppliers. (Franchise Agreement, Section 5).

5. We will schedule and hold an annual conference, as we deem advisable in our sole discretion, to discuss the current state of the System, improvements to the System, hold discussion forums for System franchisees and recognize certain franchisees. In the event we schedule a conference, we may require you to attend for up to five (5) days each year. You will be responsible for the costs and expenses you incur in connection with any annual conference/convention (lodging, travel, meals, etc.), but we will not charge you an attendance/registration fee. If you do not attend a scheduled required event, you will be charged 1% percent of your annual revenue for the balance of the calendar year. (Franchise Agreement, Section 5(Q)).

6. We will display the contact information of your Franchised Business on the website that we or our designee maintains to advertise and promote our brand, our Proprietary Marks and other Shop locations, provided you are in compliance with the terms of your Franchise Agreement. We will also have the right to discontinue operation of the Website at any time without notice to you. We may require that you maintain and utilize a specific e-mail account in connection with the Shop. You may not establish or operate a website, web page, domain name, Internet address, blog, forum or email address that in any way concerns, discusses or alludes to us, the System or your Shop without our written consent. The Proprietary Marks may not be used as part of, in conjunction with, to establish, or to operate any domain names, Internet addresses, blogs, forums or Networking Media Sites, unless specifically approved by us. You may not post, and must take such steps as necessary to ensure that your employees do not post, any information to a Networking Media Site relating to us, the System, the Proprietary Marks, or the Shop that (a) does not comply with our social networking guidelines described in the Operating Manuals, (b) is derogatory, disparaging, or critical of us, the System, or the Proprietary Marks, (c) is offensive, inflammatory or indecent, or (d) harms the goodwill and/or public image of the System and/or the Proprietary Marks. You

may not establish or permit or aid anyone else to establish any links to any website or any other electronic or computer generated advertising or communication arrangement which we may create. Subject to the terms of the Franchise Agreement and Operations Manual, we may make available to you a sub-page on the Website that will be located at a sub-domain of the Website to be specified by us (the “Subpage”). You will be permitted to upload content onto the Subpage solely to promote, and provide customers information related to your Shop. You may only upload content onto the Subpage in accordance with terms of the Franchise Agreement and any guidelines, directives or specifications (collectively, “Subpage Standards”) issued by us. The Subpage may not contain content which references any other Shops other than your Shop. You may not upload, publish, display, or otherwise include or use any content on the Subpage without receiving our approval. Once we approve the initial content of the Subpage, you must submit any changes to us before you make any changes. We may, at any time, cease to make the Subpage available to you or the public. We may also design the Website for taking delivery orders from customers and routing that to you. We will be solely responsible for the development of all online ordering. Upon the termination or expiration of the Franchise Agreement for any reason or a default under the Franchise Agreement for any reason, you may not upload, content, onto, or otherwise use, the Subpage shall immediately cease and we may cease to make the Subpage available to you. Please see below in this Item 11 under the heading “Advertising and Marketing” for further information. (Franchise Agreement, Section 5(J)).

7. We also may maintain one or more social media sites (e.g., [www.twitter.com](http://www.twitter.com); [www.facebook.com](http://www.facebook.com), or such other social media sites). You may not establish or maintain any social media sites utilizing any usernames, or otherwise associating with the Proprietary Marks, without our advance written consent. We may designate from time to time regional or territory-specific usernames/handles to be maintained by you. You must adhere to the social media policies established from time to time by us and you will require all of your employees to adhere to the social media policy as well

8. We may administer and maintain a System-wide brand development and marketing fund (the “Fund”) for the benefit of the System, as we deem necessary in our sole discretion. (Franchise Agreement, Section 5(M)).

9. We may conduct, as we deem advisable in our sole discretion, inspections of the premises and audits of the Franchised Business and your operations generally to ensure compliance with our System standards and specifications as well as to consult in the development and growth of your Franchised Business. We may also prepare written reports outlining any recommended or required changes or improvements in the operations of your franchised Shop, as we deem appropriate in our sole discretion, and detail any deficiencies that become evident as a result of any inspection or audit. If any inspection reveals any deficiencies, you will be responsible for our costs in conducting such inspection. (Franchise Agreement, Section 5(L)).

10. We may supplement, revise or otherwise modify the Manuals, as we deem necessary or prudent in our sole discretion, which may, among other things, provide new operations concepts and ideas. We may provide you with these updates through various mediums, including mail, e-mail and our System-wide intranet. (Franchise Agreement, Section 2(G)).

11. If we deem appropriate, establish and maintain a Mystery Shops Program and/or Quality Assurance/Food Audits Program, as we deem appropriate in our discretion. (Franchise Agreement, Section 5(L)).

12. We may: (i) research new recipes, ingredients, equipment, products, services and methods of doing business and provide you with information we have developed as a result of this research, as we deem appropriate in our sole discretion; and (ii) create and develop additional products and services to be

offered or provided as Approved Products and Approved Services at or from a Shop, including proprietary products and services sold under the marks we designate. (Franchise Agreement, Section 2(G) and 5(K)).

## **G. Advertising and Marketing**

### *Advertising Generally*

All advertising and promotion materials that you use in connection with your Shop must be approved by us and conform to the standards and requirements that we specify. We may make available to you from time to time, at your expense, certain promotional materials, including newspaper mats, coupons, merchandising materials, point-of-purchase materials, special promotions, and similar advertising and promotional materials. You must also participate in certain promotions and advertising programs that we establish as an integral part of our System, provided these activities do not contravene regulations and laws of appropriate governmental authorities. (Franchise Agreement, Section 9(A)).

If you wish to use any advertising or promotional materials other than those that we have previously approved or designated within the preceding 12 months, then you must submit the materials you wish to use to us for our prior written approval at least ten (10) days prior to publication. We will use commercially reasonable efforts to notify you of our approval or disapproval of your proposed materials within 30 days of the date we receive the materials from you. If you do not receive our written approval during that time period, however, the proposed materials are deemed disapproved and you may not use such materials. Once approved, you may use the proposed materials unless we: (i) prescribe a different time period for use; or (ii) require you to discontinue using the previously approved materials in writing. We may require you to discontinue the use of any advertising or marketing material, including materials we previously approved, at any time. (Franchise Agreement, Section 9(B)). Except as otherwise provided in this Item, we are not required to spend any amount on advertising in your Designated Territory.

Failure to follow our instructions regarding pre-approval of advertising materials will result in fines. These fines will be as follows: 1st infraction: \$250, 2nd infraction: \$500 and third infraction: \$1,000. Imposition of these fines will in no way waive our right to consider your use of unapproved advertising as a default-triggering event. (Franchise Agreement, Section 15).

### *Initial Marketing Spend (Franchise Agreement, Section 9(C))*

You are required to spend at least \$10,000 on the initial marketing (“Initial Marketing Spend”). We may require that you pay this amount to us and, with your input, we will spend it on marketing activities for you. These expenditures will occur approximately 30 to 60 days prior to opening and continuing through the soft opening of your Franchised Business. We may require that you expend all or any portion of the LAR on materials/services that are purchased from our Approved Supplier.

### *Local Marketing Requirement (Franchise Agreement, Section 9(D))*

In addition to the Initial Marketing Spend, you will be required to expend such amounts as we may designate from time to time for advertising and marketing the Franchised Business within the Designated Territory (the “Local Marketing Requirement”). Currently, you are required to spend one percent (1%) of monthly Net Sales of the Franchised Business on Local Marketing Requirement. We may require that you expend any portion of your Local Marketing Requirement on services and/or materials that you acquire and

purchase from one (1) or more of our Approved Suppliers. We must approve all advertising, marketing and/or other promotional materials you wish to use in connection with your Franchised Business that (a) are not designated by us in our then-current Manuals, or (b) have not otherwise been approved by us in the 12-month period preceding the contemplated use of such materials/content. We reserve the right to increase your LMR to an amount equal to two percent (2%) of the Gross Sales generated by your Franchised Business upon 30 days' prior written notice.

We may request that you provide us with invoices and/or other evidence sufficient to demonstrate you are expending the appropriate LMR in connection with your Franchised Business upon 30 day's prior written notice, and your failure to (a) provide such evidence, and/or (b) expend the minimum LMR, in a given month shall constitute a material default under your Franchise Agreement that you will be afforded a 30-day period to cure as detailed more fully in your Franchise Agreement.

*Brand Development Fund (Franchise Agreement, Section 9(E))*

We currently administer a brand development fund (the "Fund") for the benefit of the entire System. We use the Fund to meet certain costs related to maintaining, administering, directing, conducting and preparing advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which we believe will enhance the image of the System. Your current Fund Contribution will be 1% of the Net Sales generated by your Franchised Business. The Fund is supported by a fee not to exceed three percent (3%) of the Net Sales generated by your Franchised Business. As of the Issue Date, we expect and intend that you will make a Fund Contribution amounting to 1% of the Net Sales generated by your Franchised Business.

Currently, affiliate-owned Shops contribute to the Fund in the same amount and manner as franchised Shops. Other System franchisees' respective Fund contributions may be calculated at a different rate or on a different basis and, under limited circumstances, certain franchisees may not be required to pay Fund fees.

We have full discretion to settle or forgive any accrued and unpaid Fund contributions owed by a franchisee. With any advertising funds paid, we have sole discretion as to how and where the money is spent to promote, enhance, or further the growth of the system, including, without limitation, promotional marketing, public relationships, and advertising expenses, hiring marketing, public relations and advertising agencies and internal personnel to assist in developing the brand name and average unit volumes, expenses associated with listings in telephone books, subsidies of premiere/marquis Shops designed to garner media attention and promote the brand name, travel expenses in connection with promotions and marketing meetings, training, development of Proprietary Marks and trademarked materials, production of circulars, media, advertisements, coupons, and promotional materials (including point of purchase materials), market research, developing training tools designed to assist System franchisees, the cost of developing and maintaining an Internet website and other digital marketing tools, developing and deploying mystery shopper programs and for any other use we determine. Additionally, we can use the Fund to pay for expenses incurred in developing and maintaining non-franchise sales portion of our corporate website. We are not required to spend any advertising funds in your specific area or territory. Materials provided by the Fund to all Franchisees may include video and audio tapes, mats, posters, banners, and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies, you must pay duplication costs.

We may occasionally provide for placement of advertising on behalf of the entire franchise system, including Franchisees. However, most placement is on a local basis, typically by local advertising agencies hired by individual Franchisees or advertising cooperatives. While we have not yet done so, we have the right in the future to use advertising fees paid by our Franchisees to place advertising in national media

(including broadcast, print or other media). Advertising funds are used to promote the products sold by Franchisees. A brief statement regarding the availability of information regarding the purchase of a franchise may be included in advertising and other items produced using the Fund; provided that we will not use Fund funds principally to sell franchises.

Currently, Fund Contributions are payable to us. We have the right to establish in the future a non-profit corporation or other business entity to collect Fund advertising contributions from our Franchisees. The Fund is administered by our accounting and marketing personnel under our direction. We may have the Fund borrow from us or other lenders to cover any Fund deficits. We may have the fund invest any surplus for the Fund's future use. You will be able to obtain an accounting annually upon written request to our Chief Executive Officer at our principal place of business 120 days after our latest fiscal year end. We claim no power to require that advertising cooperatives be formed, changed, dissolved or merged. (Franchise Agreement - Section 9.)

We will not be required to spend any of your Fund Contributions in the Designated Territory you are granted under your Franchise Agreement, and we will provide you with an unaudited accounting of the Fund within 120 days after our fiscal year end (upon your written request). We are not required to have the Fund audited, but we may do so and use the Fund Contributions to pay for such an audit. If we do not spend all Fund Contributions in a given year, any excess funds will rollover into the Fund for use during the following year. We will have the right to modify or discontinue the Fund (if established), as we deem appropriate in our sole discretion.

Because we did not establish our Fund and begin collecting Fund Contributions until 2023, please be advised that we neither collected nor expended any Fund Contributions in the fiscal year ending December 31, 2022.

*Regional Cooperatives (Franchise Agreement, Section 9(H))*

We reserve the right to establish regional cooperatives that are comprised of a geographical market area that contain two (2) or more Shops (whether a Franchised Business or Affiliate-owned) (each a "Cooperative"). If we assign your Shop to a Cooperative we establish, you must work with the other Shop owners in your Cooperative and us to develop and implement regional advertising campaigns designed to benefit all the Shops within the geographical boundaries of the Cooperative. We have not established any Cooperatives as of the Issue Date of this Disclosure Document, and have not contemplated how much a Franchised Business might be required to contribute to such a Cooperative. We will have the right to establish, modify, merge and dissolve Cooperative as we deem appropriate. Any amounts you expend on Cooperatives will be credited towards your Local Advertising Requirement.

*Franchise Advisory Council (Franchise Agreement, Section 9(F))*

While we are not required to do so, we have established and currently maintain a Franchise Advisory Council ("FAC") that has five (5) members in 2023. The FAC will provide advice to us on various matters, including advertising. The FAC will serve in an advisory capacity only and will have no operational or decision-making power. Four of the members are elected by franchisees and one member is appointed by our CEO. We have the power to change or dissolve it at any time. Only owners of franchises can serve as members of the FAC. Managers cannot be elected to the FAC. (Franchise Agreement, Section 9(F))

## **H. Computer / Point of Sale System**

We require the use of a point-of-sale system (“POS”) designated by us, and estimate the cost to be between \$3,000 to \$7,000, and we may require that you acquire and/or license any hardware or Required Software associated with the Computer System from one (1) or more of our then-current Approved Suppliers.

We require the use of a point-of-sale system (“POS”) designated by us, and estimate the cost to be between \$3,000 to \$7,000, and we may require that you acquire and/or license any hardware or Required Software associated with the Computer System from one (1) or more of our then-current Approved Suppliers. You must have the POS system components and other computer hardware that meets our specifications. We will have independent access to the information and data collected or generated by the POS and other Computer System component. There are no contractual limits on our rights to do so. We may require updates and upgrades to your computer hardware, software and POS system during the term of the franchise agreement. The maintenance, repair and upgrade of your hardware and software is at your expense. We require updates and upgrades to your hardware, software and POS System as it becomes available, at your expense. There are no contractual limitations to the frequency and cost of the obligation to upgrade and maintain the POS or computer system.

We do not have any specific ongoing maintenance and/or support contract requirements. With that said, we estimate that you will expend between \$500 and \$1,500 per year on annual update and maintenance to the Computer System hardware, including any upgrades. This does not include any of the Required Software license fees or any Technology Fee we determine to charge in the future.

If not part of the POS system, at your cost and expense, you must investigate and ensure that you comply with all payment card industry (“PCI”) and data security standard (“DSS”) standards, regulations, and requirements. You must meet the requirements of, and comply with enhancements and changes to, the PCI and DSS and maintain PCI compliance with the current version of the PCI and DSS. You are responsible to use all required tools, systems, and vendors to complete ongoing PCI requirements including quarterly external security scans and annual self-assessment questionnaires. You are solely responsible for all costs relating to PCI compliance and data security issues, such as security threats, breaches, and malware. It is your responsibility to alert us, not later than 24-hours following a suspected or confirmed data security breach, so that appropriate action can be taken to protect customer data and notify relevant parties. You are not permitted to collect, store, transfer, etc. any unnecessary customer information.

You are required to purchase a security system to protect your Franchised Business and provide us with notice once it has been installed, unless we agree otherwise in writing. We estimate the cost of such system to be between \$1,500 and \$2,500. We may require you to install a compliance monitoring system in your location at reference points designated by us. This compliance monitoring system is not a security system but is a management tool and we are not required to monitor your franchise business. Both you and we will have the right to online access to the compliance monitoring system. By installing the compliance monitoring system, you and your employees are waiving any rights to privacy. You agree to require all your employees to sign a waiver of their right to privacy with respect to the use of any such compliance monitoring system. At this time there is not an estimated cost for a compliance monitoring system.

## **ITEM 12 TERRITORY**

### **Approved Premises; Relocation of a Franchised Business**

You may and must operate your Franchised Business from the Premises that you propose, we approve and you subsequently secure. Unless you have secured and we have approved your Premises at the time you enter into a Franchise Agreement with us with respect to a given Franchised Business, we will mutually agree upon and designate a geographical area wherein you may search for, locate and secure such Premises (your “Site Selection Area”). Your Site Selection Area will be designated in the Data Sheet attached to your Franchise Agreement at the time the parties execute the same.

You may not relocate the site of your Franchised Business without our express written permission. Should you attempt to relocate your Franchised Business without such permission the new location will be treated as an entirely new franchise sale subject to new initial franchise fees as provided in the Franchise Agreement and to such other provisions as would apply to a new franchise sale. If your landlord terminates your right to possession of your Premises before the term of your Franchise Agreement expires, then you and we must determine a new location within 60 days.

### **Designated Territory Awarded under Franchise Agreement**

Once you secure a Premises that we approve for the site of your Franchised Businesses, you will be awarded a geographical area around that Premises. Once we award your Designated Territory, which we will designate in the Data Sheet to your Franchise Agreement, we will not open or locate, or license any third party the right to open or locate, another Shop that utilizes the Proprietary Marks and System from a physical location within that Designated Territory for so long as you are not in default of your Franchise Agreement, subject to our reserved rights set forth in this Item below

Typically, your Designated Territory will be a radius around your Shop premises but we may base your Designated Territory on an area around your Premises that contains a certain population. If your Designated Territory is not based on the population and other demographics of the region wherein your Shop is located, then your radius will typically be between a radius of one (1) to three (3) miles around that premises, unless your approved Premises is located in (a) a city or other urban area, or (b) other densely-populated business district. If that is the case, your Designated Territory will typically be anywhere from 2 blocks to 1 mile around your Premises.

Upon termination or expiration of your Franchise Agreement, you will no longer have any rights within the Designated Territory. We may also terminate your territorial rights within your Designated Territory in lieu of terminating your Franchise Agreement if your Franchise Agreement is subject to termination. Otherwise, the territorial rights granted within your Designated Territory under a Franchise Agreement are not contingent upon achieving a certain sales volume, market penetration, or any other contingency and cannot be altered.

The size of your Designated Territory may vary from other System franchisees based on the location and demographics surrounding your Premises. The factors that we consider in determining the size of your Designated Territory include current and projected market demand, demographics and population based on our research and experience, median household income, presence of other businesses, location of competitors, traffic patterns, access and visibility, location of other Shops, our future development and other market conditions.

The boundaries of your Designated Territory may be described in terms of zip codes, streets, landmarks (both natural and man-made) or county lines, or otherwise delineated on a map attached to the Data Sheet. The sources we use to determine the population within your Designated Territory will be publicly available population information (such as data published by the U.S. Census Bureau or other governmental agencies and commercial sources).

Your Designated Territory is protected only to the extent that no one may locate another Shop utilizing our then-current Proprietary Marks and System from a physical location within the boundaries of your Designated Territory. With that said, we and our affiliates do reserve the right to open and operate, or license a third party the right to open or operate, another Shop within your Designated Territory if it is located at a Non-traditional Site (as described more fully below in this Item). For this reason, we must disclose the following under applicable pre-sale disclosure laws:

You will not receive an exclusive Designated Territory. You may face competition from other franchises, from outlets that we own, or from other channels of distribution or competitive brands that we control.

#### Development Area Awarded under Development Agreement

When you sign your Development Agreement, you will receive a Development Area that is mutually agreed upon by the parties, and you will maintain certain territorial rights within this Development Area until the earlier of (i) the date you have executed a franchise agreement for each Shop you were granted the right to open under your Development Agreement, (ii) the date your Development Agreement is terminated for breach or failure to meet your development obligation, or (iii) the date your Development Agreement would otherwise naturally expire. During the term of the Development Agreement, we will not operate, nor allow any other party to operate, a Shop using the Proprietary Marks and System, from a physical location in your Development Area (except at Non-traditional Sites as described in this Item). Your Development Area under the Development Agreement will most likely be larger than the Designated Territory granted in connection with a typical Franchise Agreement (but that may not always be the case).

You will lose your territorial rights within the Development Area you are granted under your Development Agreement if your Development Agreement is terminated on the grounds set forth in your agreement. Otherwise, you will not lose your territorial rights until the expiration of your Development Agreement (as described in the paragraph above).

Your Development Agreement does not grant to you a license to (a) operate a franchised Shop, or (b) utilize our Proprietary Marks, both of which may only be granted through a franchise agreement with us. The Development Agreement simply grants to you the right to develop of a certain number of Shops within your Development Area in accordance with the agreed-upon development schedule.

Your Development Area is protected only to the extent that we will not grant development rights to another franchisee within the boundaries of your Development Area. We and our affiliates reserve the right, however, to open and operate, or license a third party the right to open or operate, another Shop within your Development Area if it is located at a Non-traditional Site (as described more fully below in this Item and in Item 1). For this reason, we must disclose the following under applicable pre-sale disclosure laws:

You will not receive an exclusive Development Area. You may face competition from other franchises, from outlets that we own, or from other channels of distribution or competitive brands that we control.

### Permitted and Restricted Sales and Advertising Activities

All Shops may sell their products and services to any customer that visits the Shop location, regardless of whether that customer resides within the Designated Territory granted in connection with that Shop.

Each Franchised Business, however, is to be operated solely as a retail Shop business, and you agree not to: (i) offer or sell any items through any alternative channels of distribution, including e-commerce, telemarketing, mail order catalogs, computer and/or Internet marketing or any other system (in other words, in any fashion other than selling to the patrons visiting your Shop, unless we authorize a specific off-site event that your Shop may service); or (ii) to sell any product at a lower price to persons who do not dine in your Shop than you charge at the time in connection with regular dine-in customers (to the extent this is enforceable under applicable laws).

### Reserved Rights under both Franchise Agreement and Development Agreement

We and our affiliates reserve the right to open and operate, as well as license third parties the right to open and operate, any Shop or other location that utilizes the Proprietary Marks and System at non-traditional locations such as hospitals, malls, mobile food trucks/carts, institutions (such as hospitals and schools), airports, casinos, parks (including theme parks), military installations, sports arenas and/or other captive venues (collectively, the “Non-traditional Sites”), within or outside the Designated Territory or, if applicable, Development Area. If we develop any Non-traditional Sites in your Designated Territory (and/or any Development Area), you will not be entitled to any compensation.

We and our affiliates also reserve the right to: (i) open and operate, or license third parties the right to open and operate, Shops or other locations utilizing the Proprietary Marks and System from any location outside of your Designated Territory or, if appropriate, Development Area; (ii) market, offer and sell products that are similar to the menu items offered and sold by a Shop under a primary mark that is different than the Proprietary Marks, regardless of location; (iii) manufacture, offer, sell and distribute soda, baked goods and other menu items in any alternative channel of distribution, within or outside the Designated Territory or Development Area (including the Internet and other e-commerce channels, wholesale stores, grocery stores, mail order, catalog sales, etc.); (iv) to acquire, merge with, or otherwise affiliate with, and after that own and operate, and franchise or license others to own and operate, any business of any kind, including, without limitation, any business that offers products or services the same as or similar to those offered by the Shop (but under different marks), within or outside your Designated Territory or Development Area; (v) otherwise offer and sell our flavor mixes to other retail chains, provided such chains are operated under mark(s) that are different than the Proprietary Marks, regardless of location; and (vi) use the Proprietary Marks and System, and license others to use the Proprietary Marks and System, to engage in any other activities not expressly prohibited in your Franchise Agreement and, if appropriate, Development Agreement.

The Franchise Agreement does not grant you any right to engage in any of the activities outlined in the preceding paragraph, or to share in any of the proceeds received by us, our affiliates or any third party from these activities, unless we otherwise agree in writing. Further, we have no obligation to provide you any compensation for soliciting or accepting orders inside your Designated Territory. We have the exclusive right to negotiate and enter into agreements or approve forms of agreements to operate Shops at Non-Traditional Sites, either directly or through our affiliates, licensees, or designees, and you will not be entitled to any compensation as a result of our operation of Shops at Non-Traditional Sites.

### Other Relevant Disclosures

Except as described in Item 1 of this Disclosure Document, neither we nor our affiliates sell similar goods or services to the Approved Products and Approved Services offered by Franchised Businesses under our Proprietary Marks or a different mark or brand. We reserve the right to do so in the future.

Neither the Franchise Agreement nor the Development Agreement provide you with any right or option to open and operate additional Franchised Businesses (other than as specifically provided for in your Development Agreement if you are granted multi-unit development rights). Regardless, each Franchised Business you are granted the right to open and operate must be governed by its own specific form of Franchise Agreement.

Neither your Development Agreement nor your Franchise Agreement grants to you any option, right of first refusal, or similar rights to acquire additional franchises within the Development Area or Territory (as applicable) or otherwise – other than the franchise(s) specifically identified in such agreements. You may purchase additional franchises from us on our then-current terms, provided you meet our then-current criteria for a new franchisee and/or multi-unit owner. Besides the rights listed here, you have no other rights of first refusal or option rights on additional territory.

### **ITEM 13 TRADEMARKS**

We grant you limited rights to use our then-current Proprietary Marks in connection with the operation of your Franchised Business from the Premises only. You will not at any time acquire any rights in the Proprietary Marks, and nothing in the Development Agreement grants or licenses any rights to use such Proprietary Marks.

As of the Issue Date, the following Proprietary Marks are licensed and used to primarily identify the Franchised Business and which are registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

| <b>Registration Number</b> | <b>Proprietary Mark</b>                                                             | <b>Registration Date</b> |
|----------------------------|-------------------------------------------------------------------------------------|--------------------------|
| 5,479,819                  | FIIZ DRINKS®                                                                        | May 29, 2018             |
| 5,180,304                  |  | April 11, 2017           |

You must use only our then-current Proprietary Marks in strict compliance with our Manuals and our System directives. You must modify or discontinue the use of a trademark at your cost if we modify or discontinue it. You are prohibited from using any trademark as part of your corporate name, any you may

not use any Proprietary Mark (or variation thereof) as part of any Franchisee entity name, assumed name, d/b/a or state trademark that is filed on registered with any governmental authority without our prior written consent.

You may only use the trademarks with the letters “TM” or “SM” or “®” as appropriate. You are prohibited from using any trademark in the sale of any unauthorized product or service or in any manner not expressly authorized in writing by us. You are required to adhere fully and strictly to all security procedures required by us for maintaining the secrecy of proprietary information.

As of the Issue Date, we are not aware of any effective determinations by the USPTO, Trademark Trial and Appeal Board, the trademark administrator of any state or any court or pending interference, opposition or cancellation proceeding, or pending material litigation involving the trademarks. There are no agreements currently in effect which significantly limit our rights to use or license the use of the trademarks. As of the Issue Date, we are not aware of any superior rights in or infringing uses of the trademarks that could materially affect your use of the trademarks in your territory.

You are obligated to immediately notify us when you learn about an infringement of or challenge to your use of our trademarks. We will have the discretion to take the action we deem appropriate. We are not obligated to protect any rights which you have to use the trademarks, or to protect you against claims of infringement or unfair competition. You are given the right to protect yourself, at your sole cost, from any of these claims if we elect not to prosecute the claim of infringement or unfair competition; however, we have the right to control any administrative proceedings or litigation involving the trademarks, and you will proceed in strict coordination and oversight by us. You may not act contrary to our rights in the marks. We are not required to defend or indemnify you for expenses or damages if you are party to an administrative or judicial proceeding involving the licensed trademark.

You may not contest, directly or indirectly, our right and interest in our trademarks, names or marks, trade secrets, methods, and procedures which are part of our business and agree to execute documents and assurances necessary to effectuate these provisions. Any goodwill associated with the trademarks or system belongs exclusively to us.

#### **ITEM 14**

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

You do not receive the right to use an item covered by a patent and we do not have any pending patent applications with the United States Patent and Trademark Office.

We have not registered an operations manual with the United States Copyright Office, but we claim a copyright and consider all recipes and other information provided to you about the franchise to be proprietary, and we, or our parent or affiliate, claim protected trade secrets and copyrights in our franchise system and our recipes and other mixes used in the system.

You may use our proprietary information but only in connection with the system. As mentioned above, portions of our System may constitute a trade secret or otherwise be confidential and proprietary to us. You must also promptly tell us when you learn about unauthorized use of any proprietary information. We are not obligated to take any action but will respond to this information as we believe appropriate. If applicable, we have the right to control any administrative proceedings or litigation. We are not required to defend or indemnify you for any damages from a proceeding based on copyright. You must modify or discontinue the use of any copyright, at your cost, if we modify or discontinue it, in our reasonable discretion.

With regards to our proprietary information, the franchise agreement also provides that you will: (a) strictly follow all confidential security procedures required by us, (b) disclose this information to your employees only as needed to market our products and services; (c) not use this information in any other business; (d) exercise the highest degree of diligence to maintain this information as confidential; and (e) promptly notify us if you learn of any unauthorized use of our trade name, trade secrets or proprietary information. Your use of our proprietary information is limited to the uses required or allowed by us.

We claim other copyrights in sales literature and marketing materials which we, or our franchisees develop for our use and for use by our franchisees, and your use of these materials will be limited to the uses required or allowed by us.

There are presently no superior rights in or infringing uses of the copyrights or patents that could materially affect your use of the copyrights or patents in your territory.

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

We encourage but do not require you to personally supervise the Shop, and prefer to select Franchisees who favor and appear committed to a “hands on” and well-informed approach to the business. We strongly recommend that you devote a substantial amount of time to your Shop, whether or not you engage a Designated Manager.

Franchisees who do not devote their full time and efforts to the establishment and operation of their Shops may have lower Net Sales, higher operating costs and lesser name recognition in their areas than those franchisees who do devote their full efforts to the business. Examples of the types of functions which you might perform include supervisions of employees, inventory checks, review of sales and food costs, bookkeeping and all reasonable efforts to ensure smooth and efficient operations. The Shop must be directly supervised and managed by a person, identified to us who has undergone our training program. Based on his/her/their experience, we may choose to waive this requirement in our sole discretion. If you are not willing to be the full-time operator of your business, then you will be required to engage a manager and have them complete our training program (the “Designated Manager”). The Designated Manager is not required to hold equity interest in the franchisee entity.

Any and all Designated Manager(s) must sign our prescribed form of Confidentiality and Non-Competition Agreement. If and when an Designated Manager leaves his/her/their employment at your Franchised Business, you must recruit a new Designated Manager within thirty (30) days and submit the replacement’s qualifications to us for our review and approval (which may be conditioned on completion of all Management Criteria) before substituting a new Designated Manager at any of your locations (unless you resume taking over the day-to-day operations of the Franchised Business on a full-time basis).

Your Shop must, at all times, be managed and staffed with at least one (1) individual who has successfully completed our Initial Training Program. In the event that you operate more than one (2) System Shop, you must have a properly trained Designated Manager at each Shop you own and operate.

In addition to the Franchise Agreement, both you and your spouse will be required to sign guarantees of performance in which you will guarantee the performance of your Shop’s obligations to us. The only restriction we place on the manager of your business is that the manager must execute a confidentiality and non-competition agreement similar to the one you will execute if you purchase a franchise from us.

We expect that you will keep your Shop open and operating during those hours where the majority of our franchised Shops are open or as otherwise recommended in our Operations Manual, but as an independent contractor you may deviate from our recommended hours if (a) there are local regulations or landlord restrictions that affect your ability to actively operate your Shop, or (b) you otherwise provide us with notice in writing of your hours of operation and an explanation regarding any material deviation from our recommended hours of operation.

Each of your principal owners and their spouse must sign the franchise agreement, in the form of Exhibit B, as either the franchisee or the guarantor. In either event, by signing the franchise agreement each franchisee owner and their respective spouse(s), as applicable, agree to perform, and guarantees, all of the franchisee's obligation to us and our affiliates (including the obligations under this Agreement) and agrees to be bound by the restrictive covenants, the confidentiality provisions and certain other provisions contained in the Franchise Agreement.

You may not use any Mark as part of any corporate name or with modifying words, terms, designs, or symbols except for those licensed by us. You may not use any Trademark in connection with any business or activity, other than the business conducted by you according to Franchise Agreements entered into between you and us, or in any other manner not explicitly authorized in writing by us.

You will be solely responsible for all employment-related decisions associated with your Franchised Business personnel, including hiring, firing, scheduling and compensation. Nothing in the Franchise Agreement or Development Agreement is intended, or may be construed to, establish or create any kind of employer-employee or joint employer relationship between (a) us, and (b) you and your personnel.

## **ITEM 16**

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

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

You will prepare and present all menu items in accordance with our standards and specifications, using the ingredients and preparation techniques we prescribe. We have the right to require you to offer and sell additional goods or services as we may designate. There are no limits on our right to do so. You are not allowed to solicit customers outside of your Marketing Area without our prior written approval. You will at all times maintain sufficient levels of inventory to adequately satisfy consumer demand. You must stop using offering disapproved products or services immediately upon notice that such services or products have been discontinued. You must offer and sell all private label food and beverage items which we may now or in the future designate for sale by System franchisees, including prepackaged or frozen food and beverage items, and related merchandise. We reserve the right to charge you a fine up to \$1,000 per occurrence if you sell or offer disapproved products or services. If the law prohibits the use or sale of any product or service, use must cease immediately.

Your grant of a Franchised Business does not include: (i) any right to offer any services via e-commerce except through a website designated by us; (ii) any right to establish an independent website or to establish a URL incorporating the Proprietary Marks or any variation thereof; or (iii) any right to distribute, market, or implement our services in any channel of distribution not specifically identified in the Franchise Agreement.

Any off-site catering must be done in accordance with procedures we establish and must not be provided in a shopping center or mall where we or another franchise operate a Shop. Although there are no restrictions on the retail customers or trade area you may serve from your Shop, as a practical matter, you will be limited to serving customers who choose to visit the Shop.

You will be obligated to offer and sell those new products and to participate in all local, regional and promotional program initiatives and campaigns adopted by us in which we require you to participate. We have the right to designate which of our franchisees may, or will be required to, participate in new product or service tests, new or modified product or service offerings and other programs and initiatives that we may, from time to time, develop. If we designate you for participation in any such program, initiative or campaign, you must participate when and as required by us. There are no limits on rights to require you to offer and sell those new products or to participate in those programs, initiatives and campaigns.

## **ITEM 17**

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

#### **THE FRANCHISE RELATIONSHIP<sup>1</sup>**

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

|    | <b>Provision</b>                 | <b>Section in Franchise or other Agreement</b> | <b>Summary</b>                                                                                                                                                                                    |
|----|----------------------------------|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. | Length of the franchise term     | Section 3(A)                                   | Initial term of 5 years.                                                                                                                                                                          |
| b. | Renewal or extension of the term | Section 3(B)                                   | If you are in good standing at the end of the initial or applicable renewal term, you can enter into a new renewal franchise agreement for up to 2 additional, consecutive terms of 5 years each. |

|    | <b>Provision</b>                                    | <b>Section in Franchise or other Agreement</b> | <b>Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|----|-----------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| c. | Requirements for franchisee to renew or extend      | Section 3(B)                                   | Franchisee must not be in material default at the time of renewal request or renewal date; Franchisee must not have received 3 or more notices of default in the 12-month period preceding the renewal request or renewal date; Franchisee must execute our then-current form of franchise agreement for the renewal term; Franchisee must pay us our then-current Renewal Fee and provide us (and our related parties) with a general release; Franchisee must attend and complete and refresher/renewal training that we have for the System at the time of renewal; and Franchisee must agree to reimage/remodel/refurbish the Franchised Business and/or Premises as necessary to meet our then-current System standards and specifications for a newly-opened franchised Shop. |
| d. | Termination by franchisee                           | Not Applicable                                 | Our franchise agreement does not contain a specific provision detailing Franchisee's right to terminate the Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| e. | Termination by franchisor without cause             | Note Applicable                                | We do not have the right to terminate without cause under the Franchise Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| f. | Termination by franchisor with cause                | Section 15                                     | We can terminate the franchise agreement if you are in default of your Franchise Agreement and, in certain cases, do not cure within the prescribed cure period detailed in the Agreement (as described more fully below).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| g. | "Cause" defined – curable defaults                  | Section 15(C)                                  | You have 24 hours to cure health code violations, 15 days to cure monetary, reporting and unauthorized re-sale defaults, and 30 days to cure certain other material defaults of the franchise agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| h. | "Cause" defined - non-curable defaults              | Sections 15(A)-(B)                             | Non-curable defaults: conviction of a felony, fraud, repeated defaults even if cured, threat of harm or harm to the public, abandonment, trademark misuse, and other defaults listed in the Franchise Agreement.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| i. | Franchisee's obligations on termination/non-renewal | Section 16                                     | Obligations include complete de-identification, payment of amounts due, and compliance with the non-competition agreement (see also (r) below).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

|    | <b>Provision</b>                                                                    | <b>Section in Franchise or other Agreement</b> | <b>Summary</b>                                                                                                                                                                                                                                                                                                                                                                                  |
|----|-------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| j. | Assignment of contract by franchisor                                                | Section 13(G)                                  | There are no restrictions on our right to assign, including merging with, acquisition by, or sale to a competing company.                                                                                                                                                                                                                                                                       |
| k. | “Transfer” by franchisee - defined                                                  | Section 13(C)                                  | Includes assignment and transfer of contracts, security interests and ownership change.                                                                                                                                                                                                                                                                                                         |
| l. | Franchisor approval of transfer by franchisee                                       | Sections 13(A)-(E)                             | We must approve all transfers, and you must comply with certain conditions in order for us to consider such approval.                                                                                                                                                                                                                                                                           |
| m. | Conditions for franchisor approval of transfer                                      | Section 13(E)                                  | You are not in default, all fees are current, new franchisee qualifies, transfer and training fees are paid, purchase agreement is approved, training arranged, new transferee signs the then-current franchise agreement, and a release is signed by you (see state specific addenda).                                                                                                         |
| n. | Franchisor’s right of first refusal to acquire franchisee’s business                | Section 13(D)                                  | We can match any offer for your franchise business within 30 days of written notice to us of the offer.                                                                                                                                                                                                                                                                                         |
| o. | Franchisor’s option to purchase franchisee’s business                               | Section 16(H)                                  | Upon termination or expiration of your Agreement for any reason, we have the right to acquire the operating assets of your Franchised Business at a price equal to the then-current net depreciated book value of such assets, within the 30-day period following such termination/expiration.                                                                                                  |
| p. | Death or disability of franchisee                                                   | Section 13(B)                                  | Personal representative approved and manager trained or franchise must be assigned to approved buyer within 90 days of death or disability/within a reasonable time. We have the right to operate your franchise business until a new franchisee is appointed. You will be charged a per day/per representative fee, plus our costs, for us to manage your franchise business during this time. |
| q. | Non-competition covenants during the term of the franchise                          | Section 14(A)                                  | No involvement in competing business anywhere without our written consent.                                                                                                                                                                                                                                                                                                                      |
| r. | Non-competition covenants after the franchise is terminated, transferred or expires | Section 14(B)                                  | No competing business for 2 years within your former territory or within 10 miles of (a) your Designated Territory, or (B) any other System Shop.                                                                                                                                                                                                                                               |

|    | <b>Provision</b>                               | <b>Section in Franchise or other Agreement</b> | <b>Summary</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
|----|------------------------------------------------|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| s. | Modification of the agreement                  | Section 23(A)                                  | Modifications must be made in writing and signed by both parties, but policies and procedures are subject to change by us.                                                                                                                                                                                                                                                                                                 |
| t. | Integration / merger clause                    | Section 23(A)                                  | Only the terms of the franchise agreement are binding (subject to state law). All representations and promises outside the disclosure document and franchise agreement may not be enforceable. Our integration/merger clause does not disclaim the representations in this disclosure document.                                                                                                                            |
| u. | Dispute resolution by arbitration or mediation | Sections 21(B)-(C)                             | <p>All disputes must, at our option, be submitted to mediation that will be conducted at Franchisor's then-current headquarters or other nearby location Franchisor agrees to.</p> <p>Prior to even Franchisor exercising its right to mediate, the parties must first try to resolve the matter directly and internally with one another using the Internal Dispute Resolution procedure set forth in this Agreement.</p> |
| v. | Choice of forum                                | Section 21(E)                                  | State or, if applicable, federal court closest to (or encompassing) the Franchisor's headquarters in Salt Lake City, Utah (subject to state law).                                                                                                                                                                                                                                                                          |
| w. | Choice of Law                                  | Section 21(A)                                  | Utah law, without reference to its state's conflicts of laws – subject to the Lanham Act with regards to trademark-related disputes/actions (subject to state law).                                                                                                                                                                                                                                                        |

**B. Development Agreement**

|   | <b>Provision</b>      | <b>Section in Development Agreement</b> | <b>Summary</b>                                                                                                                                                                                                                                                                                                  |
|---|-----------------------|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a | Term of the Franchise | Section 6.1, Exhibit A                  | The Development Agreement will commence on the date it is fully executed and end on the earlier of (a) the last day of the calendar month that the final Franchised Business is required to be opened and operating under the Development Schedule or (b) the day that the final Franchised Business is opened. |

|   |                                                  |                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---|--------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| b | Renewal or extension of the term                 | Not Applicable | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| c | Requirements for franchisee to renew or extend   | Not Applicable | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| d | Termination by franchisee                        | Not Applicable | Not Applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| e | Termination by franchisor without cause          | Not Applicable | Not Applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| f | Termination by franchisor with “cause”           | Section 6.2    | <p>We may terminate your Development Agreement with cause.</p> <p>If we determine to terminate your Development Agreement for cause (along with any future development rights that have not been exercised thereunder), such termination will not be grounds (in and of itself) for Franchisor to terminate any existing Franchise Agreements that have been entered into with Franchisor and that govern any Franchised Business that Developer has already opened and commenced operating as of the termination of the Development Agreement, unless the grounds for terminating the Development Agreement is also an independent grounds for terminating such Franchise Agreement(s).</p>                                                                                                                                                                                                                           |
| g | “Cause” defined – curable defaults               | Section 6.2    | You will be provided notice and 30 days to cure any default caused by your failure to meet your development obligations under the Development Schedule for any single Development Period.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| h | “Cause” defined - defaults which cannot be cured | Section 6.2    | Your Development Agreement can be terminated by us, without an opportunity to cure, if: (i) you cease to actively engage in development activities in the Development Area or otherwise abandon your development business for three (3) consecutive months, or any shorter period that indicates an intent by you to discontinue development of the Franchised Businesses within the Development Area; (ii) you become insolvent or are adjudicated bankrupt, or if any action is taken by you, or by others against you, under any insolvency, bankruptcy or reorganization act, or if you make an assignment for the benefit of creditors or receiver is appointed by you; and (iii) any Franchise Agreement that is entered into in order to fulfill your development obligations under the Development Agreement is terminated or subject to termination by us, pursuant to the terms of that Franchise Agreement. |

|   |                                                                         |                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---|-------------------------------------------------------------------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| i | Franchisee's obligations on termination/non-renewal                     | Not Applicable     | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| j | Assignment of contract by franchisor                                    | Section 8          | We have the right to assign our rights under the Development Agreement.                                                                                                                                                                                                                                                                                                                                                                            |
| k | "Transfer" by franchisee – defined                                      | Section 8          | Any transfer in you (if you are an entity) or your rights/obligations under the Development Agreement.                                                                                                                                                                                                                                                                                                                                             |
| l | Franchisor approval of transfer by franchisee                           | Section 8          | You may not transfer any rights or obligations under the Development Agreement without our prior written consent.                                                                                                                                                                                                                                                                                                                                  |
| m | Conditions for franchisor approval of transfer                          | Not Applicable     | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| n | Franchisor's right of first refusal to acquire franchisee's business    | Not Applicable     | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| o | Franchisor's option to purchase franchisee's business                   | Not Applicable     | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| p | Death or disability of franchisee                                       | Not Applicable     | Not Applicable                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| q | Non-competition covenants during the term of the franchise              | Not Applicable     | Nothing additional. Please see non-competition covenants set forth in your Franchise Agreement(s) entered into under the Development Agreement.                                                                                                                                                                                                                                                                                                    |
| r | Non- competition covenants after the franchise is terminated or expires | Section 6.3        | For a period of two (2) years after the termination/expiration/transfer of your Franchise Agreement, neither you, your principals, guarantors, owners, Designated Managers, nor any immediate family member of you, your principals, guarantors, owners, Designated Managers, may own, operate or otherwise be involved with a Competing Business within the Development Area and/or 10-mile radius around the perimeter of that Development Area. |
| s | Modification of the agreement                                           | Section 28         | Your Development Agreement may not be modified, except by a writing signed by both parties.                                                                                                                                                                                                                                                                                                                                                        |
| t | Integration/merger clause                                               | Section 28         | Only the terms of the Development Agreement (and ancillary agreements) and this Disclosure Document are binding (subject to state law). Any representations or promises outside of the Disclosure Document and this Agreement may not be enforceable. Nothing in this Agreement or any related agreement is intended to disclaim the representations made in this Disclosure Document.                                                             |
| u | Dispute resolution by arbitration or mediation                          | Sections 12 and 13 | You must first submit all dispute and controversies arising under the Development Agreement to our management and make every effort to resolve the dispute internally.                                                                                                                                                                                                                                                                             |

|   |                 |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|---|-----------------|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                 |            | At our option, all claims or disputes arising out of the Development Agreement must be submitted to non-binding mediation, which will take place, at our option, in (a) Salt Lake City, Utah, or (b) our then-current corporate headquarters. You must notify us of any potential disputes and we will provide you with notice as to whether we wish to mediate the matter or not. If the matter is mediated, the parties will split the mediator's fees and bear all of their other respective costs of the mediation (subject to state law). |
| v | Choice of forum | Section 16 | All claims and causes of action arising out of the Development Agreement must be brought in the state or, if appropriate, federal court of general jurisdiction that is closest to Salt Lake City, Utah or the city and state where we have notified you in writing we have established our then-current corporate headquarters (subject to applicable state law).                                                                                                                                                                             |
| w | Choice of law   | Section 11 | The Development Agreement is governed by the laws of the state of Utah, without reference to this state's conflict of laws principles (subject to state law).                                                                                                                                                                                                                                                                                                                                                                                  |

## ITEM 18 PUBLIC FIGURES

We do not use any public figure to promote our franchise.

## ITEM 19 FINANCIAL PERFORMANCE REPRESENTATIONS

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

## BACKGROUND

This Item discloses historical revenue and other performance information that was reported to us by the owner of the Businesses that were open throughout the entirety of (a) the 2022 calendar year, and (b) first calendar quarter of 2023 ("Q1 2023").

In Part I of this Item, we disclose the historical Net Sales generated – as well as the cost of goods (COGs), labor, occupancy and other operating costs/expenses incurred – by each of the two (2) affiliate-owned Businesses that were open and operating through 2022 and Q1 2023. In Part I, we exclude the historical performance of one (1) affiliate-owned Shop that was open over the time period above because it is operated from a non-traditional site and/or is seasonal in nature.

In Part II of this Item, we disclose the average and median Net Sales generated amongst the one (1) Affiliate Shop and 33 Franchised Businesses that (a) operate utilizing a drive-through as we require as part of our standard franchise offering disclosed in this Disclosure Document, and (b) were open and operating throughout the entirety of the 2022 calendar year over that year of operations, along with the high and low Net Sales reported amongst this group.

Part II excludes (a) 11 Franchised Businesses that opened at some point in 2022 because they were not open throughout the entirety of the Part II measurement period, (b) one (1) Franchised Business that was terminated during the 2022 calendar year, and (c) a total of 4 Franchised Businesses that were operated over this time period but without drive-through capabilities.

We have not independently audited or otherwise verified the accuracy of the figures reported to us in this Item.

**Only the outlet(s) below have sold this much. There is no assurance that your Franchised Business will sell this much or otherwise perform as disclosed in this Item.**

***[THE REST OF THIS PAGE HAS BEEN LEFT INTENTIONALLY BLANK  
SIGNATURES ON THE FOLLOWING PAGE]***

**Part I: Net Sales Generated, and Other KPIs Incurred by, each Affiliate Business over the Measurement Period**

|                                                                                                     | <b>Affiliate Business No. 1</b> | <b>Affiliate Business No. 2</b> |
|-----------------------------------------------------------------------------------------------------|---------------------------------|---------------------------------|
| <b>Net Sales</b>                                                                                    | <b>\$1,132,971</b>              | <b>\$563,606</b>                |
| Cost of Goods (COGs)                                                                                | \$458,683                       | \$181,082                       |
| Labor                                                                                               | \$256,729                       | \$129,535                       |
| Occupancy-Related Costs                                                                             | \$49,327                        | \$42,924                        |
| <b>Other Disclosed Operating Costs and Expenses</b>                                                 |                                 |                                 |
| Advertising and Marketing                                                                           | \$8,809                         | \$5,360                         |
| Cleaning/Janitorial                                                                                 | \$1,226                         | \$34,834                        |
| Linen(s)                                                                                            | \$3,913                         | \$2,828                         |
| Operational Supplies                                                                                | \$24,334                        | \$8,699                         |
| Printing                                                                                            | \$1,761                         | \$458                           |
| Small-wares                                                                                         | \$5,188                         | Not Reported                    |
| Telephone and Internet                                                                              | \$1,648                         | \$1,989                         |
| Bank Service Charges                                                                                | \$647                           | \$297                           |
| Computer Expenses                                                                                   | \$6,470                         | \$6,025                         |
| Credit Card Processing Fees                                                                         | \$47,103                        | \$23,553                        |
| Licenses and Permits                                                                                | \$650                           | \$18                            |
| Payroll Processing Expenses                                                                         | \$2,164                         | \$2,209                         |
| Payroll Taxes                                                                                       | \$49,327                        | \$12,588                        |
| Worker's Comp.                                                                                      | \$2,863                         | \$2,400                         |
| Other Utilities                                                                                     | NR                              | \$2,967                         |
| Other Office Expense                                                                                | NR                              | \$435                           |
| <b>Net Sales Less COGs, Labor, Occupancy and Other Disclosed Operating Costs and Expenses Above</b> | <b>\$212,129</b>                | <b>\$105,406</b>                |
| <b>Estimated Fees</b>                                                                               |                                 |                                 |
| <i>Estimated Royalty Fee(s)</i>                                                                     | \$67,978                        | \$33,816.36                     |
| <i>Estimated Fund Contribution(s)</i>                                                               | \$11,330                        | \$5,636.06                      |

**Part II: Net Sales Generated Amongst System Businesses with Drive-through over the 2022  
Calendar Year**

| <b># of System Shops in Subset</b> | <b>Average Net Sales; Number of Businesses that Met or Exceeded Average</b> | <b>Median Net Sales</b> | <b>High Sales Reported</b> | <b>Low Sales Reported</b> |
|------------------------------------|-----------------------------------------------------------------------------|-------------------------|----------------------------|---------------------------|
| 34<br>(including 1 affiliate)      | \$788,434;<br>16 (or 47%)                                                   | \$764,175               | \$1,581,095                | \$248,761                 |
| 33<br>(franchised only)            | \$775,272;<br>15 (or 45%)                                                   | \$741,805               | \$1,581,095                | \$248,761                 |

**Explanatory Notes to the Item 19 Charts Above**

1. *Net Sales.* For each System Business disclosed in the Chart above, the term “Net Sales” means all revenue that Shop generated from all business conducted at or from its location including amounts received from the sale and delivery of food items, services, products, merchandise, and tangible property of any nature whatsoever, including proceeds from business interruption insurance, whether in cash or for credit, and whether collected or uncollected, over the defined measurement period. The term “Net Sales” does not include the amount of any applicable sales tax imposed by any federal, state, municipal or other governmental authority if such taxes are stated separately when the customer is charged and the Shop pays such amounts as and when due to the appropriate taxing authority. Also, excluded from Net Sales are: (i) the amounts of any documented refunds, chargebacks, credits and allowances given to customers in good faith pursuant to our standard procedures for issuing such refunds; and (ii) any tips paid to personnel of the System Business that is not collected by Franchisee and is paid directly to that personnel.

For purposes of this Item, the term “Net Sales” also excludes any revenue generated from the sale of System gift cards. The definition of Net Sales may be modified in the future to recognize all or certain of the revenue generated by a System franchise that sells a gift card to a patron, as we deem appropriate and provide written notice of to our System franchisees via the Manual(s) or otherwise.

2. *Average/Median (Part II).* In Part II of this Item, we calculated the: (i) average by taking the cumulative Net Sales generated amongst all the System Businesses detailed in the Part II Chart, and dividing the figure by the total number of Businesses comprise the subset (either 33 or 34 total Shops); and (ii) the median for each subset by (a) ordering the reported Net Sales from smallest to largest for the applicable reporting period, and (b) selecting the middle Net Sales value reported amongst the subset at issue (either the middle value if an odd number of Shops in subset, or the mean between the two (2) middle reported Net Sales amounts if there is an even number of Shops).

**GENERAL NOTES TO THIS ITEM 19**

1. The expense figures presented for the Affiliate-Owned Shops exclude a number of items, particularly start-up costs and living expenses, which you may incur in connection with the establishment of a new Franchised Business. There are also other costs and other expenses not identified in this Item 19. The operating costs and expense figures in Part I of this Item also exclude finance charges, interest expense, interest income, depreciation, repairs and maintenance, amortization and other income or expenses will

vary substantially from business to business, depending on the amount and kind of financing you obtain to establish your Shop.

2. You should consult with your tax advisor regarding depreciation and amortization schedules and the period over which the assets of your franchised Shop may be amortized or depreciated, as well as the effect, if any, of recent or proposed tax legislation.
3. Your Gross Revenues, profits, and expenses may vary substantially as compared to the Affiliate-Owned Shops because you will be operating a start-up enterprise, while the Affiliate-Owned Shops have been operating for several years. Therefore, we recommend that you make your own independent investigation to determine whether or not the franchise may be profitable to you. You should use the above information only as a reference in conducting your analysis and preparing your own projected income statements and cash flow statements. We suggest strongly that you consult your financial advisor or personal accountant concerning the preparation of your financial projections, including any applicable taxes that you may incur in operating a Shop. Reviewing this limited amount of information cannot substitute for thorough research on your part and careful evaluation of this franchise opportunity with professional and legal advisors.

Except as provided in this Item, we do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting our President, Chad Harris at [chad@fiizdrinks.com](mailto:chad@fiizdrinks.com) and (801) 651-8435, the Federal Trade Commission, and the appropriate state regulatory agencies.

## ITEM 20 OUTLETS AND FRANCHISEE INFORMATION

**Table No. 1**  
**Systemwide Outlet Summary**  
**For Years 2020 to 2022**

| Outlet Type             | Year | Outlets at the Start of the Year | Outlets at the End of the Year | Net Change |
|-------------------------|------|----------------------------------|--------------------------------|------------|
| Franchised <sup>1</sup> | 2020 | 29                               | 30                             | +1         |
|                         | 2021 | 30                               | 39                             | +9         |
|                         | 2022 | 39                               | 49                             | +10        |
| Company Owned           | 2020 | 2                                | 2                              | 0          |
|                         | 2021 | 2                                | 3                              | +1         |
|                         | 2022 | 3                                | 3                              | 0          |
| Total Outlets           | 2020 | 31                               | 32                             | +1         |

|  |      |    |    |     |
|--|------|----|----|-----|
|  | 2021 | 32 | 42 | +10 |
|  | 2022 | 42 | 52 | +10 |

**Table No. 2**  
**Transfers of Outlets from Franchisees to New Owners**  
**(other than the Franchisor)**  
**For Years 2020 to 2022**

|       | Year | Number of Transfers |
|-------|------|---------------------|
| Utah  | 2020 | 3                   |
|       | 2021 | 0                   |
|       | 2022 | 6                   |
| Total | 2020 | 3                   |
|       | 2021 | 0                   |
|       | 2022 | 6                   |

**Table No. 3**  
**Status of Franchised Outlets**  
**For Years 2020 to 2022**

| State    | Year | Outlets at Start of Year | Outlets Opened | Terminations | Non-Renewals | Reacquired by Franchisor | Ceased Operations Other Reasons | Outlets at End of the Year |
|----------|------|--------------------------|----------------|--------------|--------------|--------------------------|---------------------------------|----------------------------|
| Arizona  | 2020 | 0                        | 0              | 0            | 0            | 0                        | 0                               | 0                          |
|          | 2021 | 0                        | 0              | 0            | 0            | 0                        | 0                               | 0                          |
|          | 2022 | 0                        | 1              | 0            | 0            | 0                        | 0                               | 1                          |
| Colorado | 2020 | 0                        | 0              | 0            | 0            | 0                        | 0                               | 0                          |
|          | 2021 | 0                        | 1              | 0            | 0            | 0                        | 0                               | 1                          |
|          | 2022 | 1                        | 1              | 1            | 0            | 0                        | 0                               | 1                          |
| Idaho    | 2020 | 1                        | 0              | 0            | 0            | 0                        | 0                               | 1                          |
|          | 2021 | 1                        | 0              | 0            | 0            | 0                        | 0                               | 1                          |

| State         | Year        | Outlets<br>at Start<br>of Year | Outlets<br>Opened | Terminations | Non-<br>Renewals | Reacquired<br>by<br>Franchisor | Ceased<br>Operations<br>Other<br>Reasons | Outlets<br>at End<br>of the<br>Year |
|---------------|-------------|--------------------------------|-------------------|--------------|------------------|--------------------------------|------------------------------------------|-------------------------------------|
|               | 2022        | 1                              | 2                 | 0            | 0                | 0                              | 0                                        | 3                                   |
| Nevada        | 2020        | 2                              | 0                 | 0            | 0                | 0                              | 0                                        | 2                                   |
|               | 2021        | 2                              | 0                 | 0            | 0                | 0                              | 0                                        | 2                                   |
|               | 2022        | 2                              | 1                 | 0            | 0                | 0                              | 0                                        | 3                                   |
| Texas         | 2020        | 1                              | 0                 | 0            | 0                | 0                              | 1                                        | 0                                   |
|               | 2021        | 0                              | 1                 | 0            | 0                | 0                              | 0                                        | 1                                   |
|               | 2022        | 1                              | 2                 | 0            | 0                | 0                              | 0                                        | 3                                   |
| Wyoming       | 2020        | 0                              | 0                 | 0            | 0                | 0                              | 0                                        | 0                                   |
|               | 2021        | 0                              | 0                 | 0            | 0                | 0                              | 0                                        | 0                                   |
|               | 2022        | 0                              | 1                 | 0            | 0                | 0                              | 0                                        | 1                                   |
| Utah          | 2020        | 25                             | 4                 | 0            | 0                | 0                              | 2                                        | 27                                  |
|               | 2021        | 27                             | 7                 | 0            | 0                | 0                              | 0                                        | 34                                  |
|               | 2022        | 34                             | 3                 | 0            | 0                | 0                              | 0                                        | 37                                  |
| <b>Totals</b> | <b>2020</b> | <b>29</b>                      | <b>4</b>          | <b>0</b>     | <b>0</b>         | <b>0</b>                       | <b>3</b>                                 | <b>30</b>                           |
|               | <b>2021</b> | <b>30</b>                      | <b>9</b>          | <b>0</b>     | <b>0</b>         | <b>0</b>                       | <b>0</b>                                 | <b>39</b>                           |
|               | <b>2022</b> | <b>39</b>                      | <b>11</b>         | <b>1</b>     | <b>0</b>         | <b>0</b>                       | <b>0</b>                                 | <b>49</b>                           |

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For Years 2020 to 2022**

|               | Year        | Outlets at Start of Year | Outlets Opened | Outlets Reacquired From Franchisee | Outlets Closed | Outlets Sold to Franchisee | Outlets at End of the Year |
|---------------|-------------|--------------------------|----------------|------------------------------------|----------------|----------------------------|----------------------------|
| Utah          | 2020        | 2                        | 0              | 0                                  | 0              | 0                          | 2                          |
|               | 2021        | 2                        | 1              | 0                                  | 0              | 0                          | 3                          |
|               | 2022        | 3                        | 0              | 0                                  | 0              | 0                          | 3                          |
| <b>Totals</b> | <b>2020</b> | <b>2</b>                 | <b>0</b>       | <b>0</b>                           | <b>0</b>       | <b>0</b>                   | <b>2</b>                   |
|               | <b>2021</b> | <b>2</b>                 | <b>1</b>       | <b>0</b>                           | <b>0</b>       | <b>0</b>                   | <b>3</b>                   |
|               | <b>2022</b> | <b>3</b>                 | <b>0</b>       | <b>0</b>                           | <b>0</b>       | <b>0</b>                   | <b>3</b>                   |

**Table No. 5**  
**Projected Openings as of December 31, 2022**

| State          | Franchise Agreements Signed But Outlet Not Opened | Projected New Franchised Outlet In The Next Fiscal Year | Projected New Company-Owned Outlet In the Next Fiscal Year |
|----------------|---------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------|
| Arkansas       | 0                                                 | 2                                                       | 0                                                          |
| Florida        | 0                                                 | 2                                                       | 0                                                          |
| Idaho          | 0                                                 | 2                                                       | 0                                                          |
| Mississippi    | 0                                                 | 2                                                       | 0                                                          |
| North Carolina | 0                                                 | 1                                                       | 0                                                          |
| South Carolina | 0                                                 | 1                                                       | 0                                                          |
| Texas          | 0                                                 | 2                                                       | 0                                                          |
| Utah           | 0                                                 | 5                                                       | 0                                                          |
| <b>Total</b>   | <b>0</b>                                          | <b>17</b>                                               | <b>0</b>                                                   |

Exhibit D to this Disclosure Document contains a list of (1) our current franchisees as of 12/31/2022, as well as (2) any franchisees who have had an outlet terminated, cancelled, not renewed or otherwise voluntarily or involuntarily ceased to do business under a franchise agreement during the most recently completed fiscal year ending 12/31/2022 or who have not communicated with us within 10 weeks of the application date.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system. One (1) or more System franchisees have signed confidentiality clauses during the last three (3) fiscal years which would limit their ability to speak openly with you about their experience with us.

As of the Issue Date, we do not know of any trademark specific franchisee organization associated with our system which is required to be disclosed in this item.

## **ITEM 21 FINANCIAL STATEMENTS**

Our fiscal year ends on December 31 of each year. Attached as Exhibit “C” is our audited financial statement for years ending December 31, 2022, 2021 and 2020.

## **ITEM 22 CONTRACTS**

We have attached the following contracts:

Exhibit A: Franchise Agreement (and exhibits);  
Exhibit B: Franchisee Questionnaire  
Exhibit H: Sample Release Agreement (not signed at execution)  
Exhibit I: Development Agreement (and exhibits)

## **ITEM 23 RECEIPTS**

The last two (2) pages of this disclosure document contain a receipt, in duplicate. The receipt is a detachable acknowledgement that you have received this franchise disclosure document. Both receipts should be signed and dated, and one copy should be returned to us. Please sign and date the receipts and return one copy to us and keep the other for your records. You may return the signed and dated receipt either by mailing it to us or by emailing a copy of the signed and dated receipt to us at [chad@fiizdrinks.com](mailto:chad@fiizdrinks.com).

**EXHIBIT A TO THE FDD**  
**FRANCHISE AGREEMENT**

**FIIZ DRINKS FRANCHISE, LLC**

**FRANCHISE AGREEMENT**



## TABLE OF CONTENTS

| <u>Section</u>                                                      | <u>Page</u> |
|---------------------------------------------------------------------|-------------|
| RECITATIONS.....                                                    | 1           |
| 1. ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE .....         | 2           |
| 2. GRANT OF FRANCHISE .....                                         | 3           |
| 3. TERM AND RENEWAL.....                                            | 5           |
| 4. FEES AND PAYMENTS .....                                          | 6           |
| 5. DUTIES OF FRANCHISOR.....                                        | 10          |
| 6. DUTIES OF FRANCHISEE.....                                        | 13          |
| 7. PROPRIETARY MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS.....    | 19          |
| 8. OPERATIONS MANUALS AND CONFIDENTIAL/PROPRIETARY INFORMATION..... | 23          |
| 9. ADVERTISING .....                                                | 25          |
| 10. ACCOUNTING AND RECORDS.....                                     | 28          |
| 11. INSURANCE AND INDEMNIFICATION.....                              | 30          |
| 12. INDEPENDENT CONTRACTOR.....                                     | 31          |
| 13. TRANSFER AND ASSIGNMENT .....                                   | 32          |
| 14. COVENANTS.....                                                  | 36          |
| 15. DEFAULT AND TERMINATION .....                                   | 38          |
| 16. POST-TERM OBLIGATIONS .....                                     | 41          |
| 17. TAXES AND INDEBTEDNESS .....                                    | 42          |
| 18. WRITTEN APPROVALS; WAIVERS; FORMS OF AGREEMENT; AMENDMENT.....  | 42          |
| 19. ENFORCEMENT .....                                               | 43          |
| 20. NOTICES .....                                                   | 44          |
| 21. GOVERNING LAW AND DISPUTE RESOLUTION.....                       | 44          |
| 22. SEVERABILITY AND CONSTRUCTION.....                              | 47          |
| 23. ACKNOWLEDGMENTS .....                                           | 48          |

**Exhibit A: Data Sheet**

**Exhibit B: Form of Personal Guaranty**

**Exhibit C: Form of Landlord Consent and Agreement**

**Exhibit D: EFT Withdrawal Authorization Form**

**Exhibit E: Form of Confidentiality and Non-Competition Agreement (for use by Franchisee for Management Personnel of the Franchised Business and Officers/Directors of the Franchisee)**

**Exhibit F: Conditional Assignment of Telephone/Facsimile Numbers and Domain Names**

**FIIZ DRINKS FRANCHISE, LLC**  
**FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the “Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between: (i) FiiZ Drinks Franchise, LLC, a Utah limited liability company with its principal place of business at 155 North 400 West #580, Salt Lake City, Utah 84103 (the “Franchisor”); and (ii) \_\_\_\_\_, a (resident of) (corporation organized in) (limited liability company organized in) \_\_\_\_\_ with a business address at \_\_\_\_\_ (the “Franchisee”).

**RECITATIONS**

A. Franchisor and its affiliate/principals, as a result of the expenditure of time, skill, effort, and money, have developed and own a unique system (the “System”) related to the development and operation of a specialty restaurant business that features and offer (i) a wide array of made-to-order and customized sodas and other carbonated/non-carbonated beverages, along with certain baked goods, and (ii) any other menu items or retail merchandise that Franchisor designated or otherwise authorizes (collectively, the “Approved Products”), all while utilizing Franchisor’s then-current proprietary marks utilizing the System and proprietary marks (each, a “Shop” or “Restaurant”).

B. Franchisor’s System is comprised of various proprietary and, in some cases, distinguishing elements, including without limitation: proprietary methodology and procedures for the establishment and operation of a Restaurant; site selection guidance and criteria; specifications for the design, layout and construction of the interior of the Restaurant; standards and specifications for the furniture, fixtures and equipment located within a Restaurant; established relationships with approved or designated suppliers for certain products and services; and standards and specifications for advertising, bookkeeping, sales and other aspects of operating a Restaurant. The parties agree and acknowledge that Franchisor may change, improve, further develop, or otherwise modify the System from time to time as it deems appropriate in its discretion. Franchisee hereby acknowledges and agrees that: (i) while the System and Franchisor’s related materials contain information that, in isolated form, could be construed as being in the public domain, they also contain significant proprietary and confidential information which makes the System unique as a whole; and (ii) the combined methods, information, procedures, and theories that make up the total System or are contained in the relevant manuals that are proprietary and confidential.

C. The System and Restaurants are identified by its then-current proprietary marks, which includes the primary mark FIIZ DRINKS®, as well as certain other trade names, trademarks, service marks and trade dress that Franchisor designates for use in connection with each Restaurant (collectively, the “Proprietary Marks”), all of which Franchisor may modify, update, supplement or substitute in the future as Franchisor deems appropriate. The parties agree and acknowledge that Franchisor has established substantial goodwill and business value in its Proprietary Marks, expertise, and System.

D. Franchisor is in the business of granting qualified parties a franchise for the right to independently own and operate a single Restaurant utilizing the Proprietary Marks and System at a location that Franchisor approves in writing.

E. Franchisee recognizes the benefits derived from being identified with Franchisor, appreciates and acknowledges the distinctive and valuable significance to the public of the System and the Proprietary Marks, and understands and acknowledges the importance of Franchisor’s high and uniform standards of quality, appearance, and service to the value of the System.

F. Franchisee desires to acquire a non-exclusive franchise for the right to operate a single Restaurant from an approved location and has submitted an application to obtain such a franchise from Franchisor.

G. Franchisor is willing to grant Franchisee the right to operate a Restaurant based on the representations contained in the franchise application and subject to the terms and conditions set forth in this Agreement.

### **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

**1. PREAMBLES, ACKNOWLEDGEMENTS AND REPRESENTATIONS OF FRANCHISEE.** Franchisee, on behalf of itself and its principals, hereby agrees and acknowledges the following:

- A. The business venture contemplated by this Agreement involves business risks. Franchisee's success will be largely dependent upon Franchisee's ability as an independent businessperson.
- B. Franchisee has received, read, and does understand this Agreement and any attachments.
- C. Franchisee understands and agrees that the restaurant industry is highly competitive with constantly changing market conditions.
- D. Franchisee has raised any questions or concerns it had with respect to this Agreement and the franchise offering to Franchisor prior to entering into this Agreement. Any written inquiries made to Franchisor by Franchisee pertaining to the nature of this franchise were answered in writing to Franchisee's satisfaction.
- E. Franchisee has consulted with Franchisee's own advisors with respect to the legal, financial, and other aspects of this Agreement, the business franchised hereby, and the prospects for such business. Franchisee either has consulted with such advisors or has deliberately declined to do so.
- F. Any and all applications, financial statements, and representations submitted to Franchisor by Franchisee, whether oral or in writing, were complete and accurate when submitted and are complete and accurate as of the date of execution of this Agreement unless the same has been otherwise amended in writing. Franchisee states that he/she is not (a) presently involved in any business activity that could be considered competitive in nature, unless heretofore disclosed to Franchisor in writing, or (b) violating any existing contractual obligations by entering into this agreement.
- G. Franchisee will not and shall not contest, directly or indirectly, Franchisor's ownership, title, right, or interest in its names or Proprietary Marks, trade secrets, methods, procedures, know-how, or advertising techniques which are part of Franchisor's business, or contest Franchisor's sole right to register, use, or license others to use such names or Proprietary Marks, trade secrets, methods, procedures, or techniques.

- H. Franchisee represents and warrants that Franchisee is not a party to or subject to any order or decree of any court or government agency which would limit or interfere in any way with the performance by Franchisee of the obligations under this Agreement and that Franchisee is not a party, and has not within the last ten (10) years been a party, to any litigation, bankruptcy, or legal proceedings other than those heretofore disclosed to Franchisor in writing.
- I. Franchisee agrees and acknowledges that it is solely responsible for ensuring that it: (i) timely secures a premises that Franchisor approves for the Franchised Business (the “Premises”), as well as conducting all due diligence associated with building out the Franchised Business from that Premises (prior to securing the same); (ii) acquires and maintains all business licenses, permits and approvals, including those that are specifically required to offer and provide restaurant services and Ancillary Products (that Franchisee becomes eligible to provide once Franchisee has demonstrated to Franchisor that Franchisee is capable of providing the services under this Agreement without complaint or other issues), that are necessary to operate the Franchised Business at the Premises (defined below) and within the Designated Territory (defined below); and (iii) otherwise opens and operates the Franchised Business in full compliance with all federal, state and local laws and regulations where the Franchisee is located.
- J. Franchisee agrees and acknowledges that: (i) Franchisor may enter into franchise agreements with other franchisees that may contain provisions, conditions, and obligations that differ from those contained in this Agreement, including without limitation, franchise agreements for the operation of a Restaurant; and (ii) the existence of different forms of agreement and the fact that Franchisor and other franchisees may have different rights and obligations does not affect the parties’ duty to comply with the terms of this Agreement.

## 2. **GRANT OF FRANCHISE**

- A. **Grant of Franchise.** Franchisor hereby grants Franchisee, subject to the terms, conditions, and obligations of this Agreement, a non-exclusive right and license to use the Proprietary Marks and receive the other benefits of the System in connection with the establishment and operation of a single Restaurant (the “Franchised Business”).
- B. **Approved Premises; Site Selection Area.**
  - 1. **Approved Premises.** Franchisee must and may only operate the Franchised Business from a premises that (a) Franchisee proposes to Franchisor as described more fully in this Agreement, and (b) Franchisor approves in writing (the “Premises”).
  - 2. **Site Selection Area.** If the parties have not agreed on a Premises as of the date this Agreement is executed, Franchisor will designate a general marketing area (the “Site Selection Area”) on the data sheet attached to this Agreement as Exhibit A (the “Data Sheet”) wherein Franchisee must locate and secure the Premises as detailed more fully in Section 6(A) of this Agreement. Franchisee acknowledges and agrees that: (i) it does not have any territorial rights within the Site Selection Area; (ii) Franchisor may permit other new franchisees to search for the location of their franchised Restaurant within the same Site Selection Area that is assigned to Franchisee under this Agreement if Franchisor determines in its discretion that the Site Selection Area is large enough to contain additional franchises; and (iii) potential locations for each franchised

Restaurant, and resulting Designated Territories (as defined below), within the Site Selection Area will be reviewed and rejected/granted on a first-to-propose basis.

- C. **Relocation of Premises.** Once the Franchisor approves the Premises of the Franchised Business, the location will be set forth in the Data Sheet. Franchisee may only use the Premises to operate the Franchised Business. Franchisee may not relocate the Franchised Business to any location other than the Premises without Franchisor's prior written consent, which Franchisor will not unreasonably withhold, provided: (i) Franchisee secures an alternate location for the Franchised Business within the Designated Territory (as defined below) that meets Franchisor's then-current site selection criteria for the premises of a Restaurant; and (ii) Franchisee pays Franchisor its then-current relocation fee (if any) or, in the alternative, reimburses Franchisor for the costs and expenses incurred with evaluating the relocation request (regardless of whether or not Franchisor approves of such request).
- D. **Designated Territory.** Once Franchisee has secured an approved Premises, Franchisor will designate a geographical area surrounding the Premises wherein Franchisee will be afforded certain territorial rights (the "Designated Territory"). The exact boundaries of the Designated Territory awarded, on determined by Franchisor, will be set forth by Franchisor in the Data Sheet to this Agreement or otherwise in a separately signed addendum to this Agreement. Once Franchisee is assigned a Designated Territory, Franchisor will not open or operate, or license any third party the right to open or operate, another Restaurant utilizing the System and Proprietary Marks, from a physical location within that Designated Territory for so long as Franchisee is in compliance with this Agreement. Franchisee acknowledges that it does not have any other territorial rights within or outside the Designated Territory, except as specifically provided in this Section.
- E. **Rights Not Granted.** Franchisee acknowledges and agrees that this Agreement does not afford Franchisee any rights or options to open any additional Restaurants and that Franchisee does not have any right to sub-license or sub-franchise any of the rights granted hereunder. Franchisee may not use the Proprietary Marks or System for any purpose other than promoting and operating the Franchised Business at the Premises. Franchisor will have sole discretion as to whether it decides to grant Franchisee the right to open any additional Restaurants, each of which will be governed by a separate form of Franchisor's then-current franchise agreement.
- F. **Reservation of Rights.** Notwithstanding anything contained in this Agreement, Franchisor and its affiliates hereby reserve the exclusive right to: (i) open and operate, and license third parties the right to open or operate, other Restaurants utilizing the Proprietary Marks and System outside the Designated Territory; (ii) market, offer and sell the Approved Products offered by the Franchised Business and other Restaurants through alternate channels of distribution, including without limitation, via the Internet and other e-commerce channels, grocery stores, direct mail or wholesale, at any location; (iii) acquire, or be acquired by, any company, including a company operating one or more businesses offering products or services offered by a Restaurant, located within or outside your Designated Territory, and subsequently operate (or license a third party the right to operate) these locations; (iv) open and operate, or license third parties the right to open or operate, businesses that offer products and services similar to the Franchised Business under marks other than the Proprietary Marks at any location; (v) open and operate, or license third parties the right to open or operate Restaurants in non-traditional sites, including, but not limited to, sports and entertainment stadiums, arenas, entertainment complexes, malls,

other shopping outlets, food courts, and train stations and airports, both within and outside of Franchisee's Designated Territory, with determination of what constitutes a non-traditional site subject to Franchisor's sole discretion; and (v) use, and license others the right to use, the Proprietary Marks and System to engage in any other activity not expressly prohibited by this Agreement.

- G. **Modification of System.** Franchisor reserves the right to supplement, revise or otherwise modify the System or any aspect/component thereof, and Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and make such reasonable expenditures as may be necessary to comply with any change that Franchisor makes to the System. Any change or modification that Franchisor makes to the System will not materially alter Franchisee's fundamental rights under this Agreement. Moreover, Franchisor will provide Franchisee with a reasonable amount of time to comply with any change or modification to the System once Franchisee has been notified of such change/modification in writing (via the Operations Manual or otherwise).
- H. **Catering or other Off-Premises Services.** In the event Franchisor establishes a System-wide program for the provision of catering or other services by System franchisees that can be provided off-Premises, then Franchisor may grant Franchisee the right to provide such catering services within the Designated Territory, provided: (i) Franchisee completes any additional training that Franchisor establishes in connection with the provision of such catering services; (ii) Franchisee demonstrates that it has a vehicle that (a) bears Franchisor's Proprietary Marks in the manner Franchisor prescribes, and (b) is otherwise adequately insured as part of the Franchised Business operations and meets any other reasonably-imposed standards for vehicles used in connection with such catering services; and (iii) Franchisee is otherwise in material compliance with the terms of this Agreement at the time Franchisee requests the right to provide such catering services.

### 3. **TERM AND RENEWAL**

- A. **Term.** Unless previously terminated pursuant to this Agreement, the term of this Agreement shall be for a period of five (5) years ("Initial Term") commencing as of the Effective Date set forth in the Data Sheet attached hereto as Exhibit A.
- B. **Renewal.** Franchisee may submit a request to renew this Agreement for up to two (2) additional, consecutive terms of five (5) years each, and must provide each request to renew no less than six (6) months and no more than twelve (12) months prior to the end of the then-current term. Failure to provide such notice to Franchisor will be deemed an indication that Franchisee does not wish to renew the franchise relationship. Franchisor shall not unreasonably withhold its approval of such requests for renewal, provided Franchisee complies with the following conditions:
1. Franchisee must not have: (i) any uncured material defaults under this Agreement (including any monetary defaults) or any other agreement between Franchisee and Franchisor or the landlord of the Premises, either at time of Franchisee's renewal request or at the time of renewal; and (ii) received more than three (3) separate, written notices of material default from Franchisor with respect to this Agreement in the 12-month period preceding the renewal request date or renewal date.
  2. Franchisee must execute Franchisor's then-current form of franchise agreement, which may contain materially different terms and conditions from those contained

in this Agreement, within thirty (30) days of the date Franchisee is provided with Franchisor's then-current form of franchise agreement.

3. Franchisee pays Franchisor a renewal fee amounting to \$3,000 (the "Renewal Fee"), at least ninety (90) days prior to the expiration of the then-current term, with the understanding that Franchisee will not be required to pay an additional Initial Franchise Fee (as defined in Section 4) upon renewal.
4. Franchisee and/or the Designated Manager (as defined in this Agreement and as applicable) attends any training refresher course prescribed by Franchisor at least thirty (30) days before the expiration of the then-current term of this Agreement, and pays Franchisor's then-current refresher training tuition fee for each attending trainee. Franchisee will also be responsible for all expenses incurred in connection with attending this refresher training.
5. Franchisee executes a general release under seal, in a form satisfactory to Franchisor, of any and all claims it may have against Franchisor and its officers, directors, shareholders, and employees in their corporate and individual capacities, including without limitation, all claims arising out of or related to (a) this Agreement, or (b) any federal, state, or local law, rule, or ordinance.
6. Franchisee must have participated in and supported the training procedures, purchasing, marketing, advertising, promotional, and other operational and training programs recommended or provided by Franchisor to the satisfaction of Franchisor.
7. Franchisee or transferee agrees, at its sole cost and expense, to re-image, renovate, refurbish, and modernize the Premises and Franchised Business within the time frame required by Franchisor, including the design, equipment, signs, interior and exterior décor items, displays, inventory assortment and depth, fixtures, furnishings, trade dress, color scheme, presentation of trademarks and service marks, supplies, and other products and materials, as necessary to meet Franchisor's then-current System standards, specifications, and design criteria for a newly-open franchised System Restaurant.

#### 4. **FEES AND PAYMENTS**

- A. **Fees.** In consideration of the rights and license granted herein, Franchisee shall pay the following amounts:
  1. *Initial Franchise Fee.* Upon execution of this Agreement, Franchisee must pay Franchisor an initial franchise fee amounting to \$40,000 (the "Initial Franchise Fee"). The parties acknowledge and agree that the Initial Franchise Fee will be deemed fully earned and non-refundable under any circumstances upon payment.
  2. *Royalty Fee.* On or before the Tuesday of each week the Franchised Business is open and operating (and/or required to be open and operating under this Agreement), Franchisee must pay Franchisor an ongoing royalty fee amounting to eight percent (8%) of the Net Sales (as defined in Section 4(D)) generated by the Franchised Business in the preceding week (the "Royalty Fee") beginning Monday

when the Franchised Business opens and ending Sunday when the Franchised Business closes (the “Business Week”).

3. *Contribution to Brand Development Fund.* Franchisor has established a System-wide marketing fund (the “Fund”), and Franchisee is required to make a weekly (or other interval Franchisor prescribes) contribution to this Fund on or before Friday of each week in an amount equal to up to two percent (2%) of the Net Sales (as defined in this Section 4(D)) generated by the Franchised Business in the preceding reporting period of operations.
4. *Technology Fee.* Franchisor may charge Franchisee an on-going technology fee to pay for certain aspects of Franchisee’s computer system and/or software (“Technology Fee”). Franchisor may designate and/or change the amount, scope, or manner of payment of the Technology Fee, including the party to whom payment is made, at any time providing reasonable notice to Franchisee. The Technology Fee will be in addition to any ongoing license/subscription fees that Franchisee must pay in connection with any third-party software to be used in connection with the point-of-sale system at the Restaurant (collectively, the “Required Software”).
5. *Other Amounts Due in Connection with the Franchised Business.* All other training/tuition fees, evaluation fees, as well as all amounts necessary to purchase marketing materials, inventory or other supplies from Franchisor, its affiliates or any third-party Approved Supplier must be paid on an ongoing basis as and when such amounts are due, as described more fully in this Agreement.

B. **Method of Payment.** With the exception of the Initial Franchise Fee, Franchisee shall pay all fees and other amounts due to Franchisor and/or its affiliates under this Agreement through an electronic funds transfer program (the “EFT Program”), under which Franchisor automatically deducts all payments owed to Franchisor under this Agreement, or any other agreement between Franchisee and Franchisor or its affiliates, from the bank account Franchisee provides to Franchisor for use in connection with EFT Program (the “EFT Account”). Franchisee shall immediately deposit all revenues from operation of the Franchised Business into this bank account immediately upon receipt, including cash, checks, and credit card receipts. At least ten (10) days prior to opening the Franchised Business, Franchisee shall provide Franchisor with: (i) Franchisee’s bank name, address and account number; and (ii) a voided check from such bank account. Contemporaneous with the execution of this Agreement, Franchisee shall sign and provide to Franchisor and Franchisee’s bank, all documents, including Franchisor’s form of EFT Authorization Form attached as Exhibit D to this Agreement, necessary to effectuate the EFT Program and Franchisor’s ability to withdraw funds from such bank account via electronic funds transfer. Franchisee shall immediately notify Franchisor of any change in Franchisee’s banking relationship, including any change to the EFT Account.

C. **Access to Computer System.** Franchisor may, without notice to Franchisee, have the right to independently and remotely access and view Franchisee’s computer system used in connection with the Franchised Business (the “Computer System”) via the Internet, other electronic means or by visiting the Restaurant, in order to obtain Net Sales, tenant occupancy rates and other available information that Franchisor reasonably requests about the Franchised Business. Franchisee hereby consents to Franchisor using and disclosing to third parties (including, without limitation, prospective franchisees, financial institutions,

legal and financial advisors), for any purpose or as may be required by law, any financial or other information contained in or resulting from information, data, materials, statements and reports received by Franchisor or disclosed to Franchisor in accordance with this Agreement. Franchisee must obtain and use the Computer System hardware, software and other components that Franchisor prescribed for use in connection with the Franchised Business, and utilize and participate in any intranet/extranet that Franchisor establishes in connection with the System.

- D. **Net Sales.** “Net Sales” means the total revenue generated by Franchisee’s Restaurant, including all revenue generated from the sale and provision of any and all Approved Products and Approved Services offered at Franchisee’s Restaurant, as well as all proceeds from any business interruption insurance related to the non-operation of your Franchised Business. “Net Sales” does not include (a) tips received by employees of the Franchised Business, (b) any sales and equivalent taxes that are collected by Franchisee for or on behalf of any governmental taxing authority and paid thereto, or (c) the value of any allowance issued or granted to any client of the Franchised Business that is credited in good faith by Franchisee in full or partial satisfaction of the price of the Approved Products or Services offered in connection with the Franchised Business. All of some portion of the Net Sales generated from the sale of System gift cards sold at or from the Premises may or may not be accounted for when calculating the Net Sales of the Franchised Business, consistent with our then-current System policies, procedures and practices regarding such gift cards.
- E. **Net Sales Reports.** On or before Monday of each week, Franchisee must send Franchisor a signed Net Sales report (a “Net Sales Report”) detailing the following information: (i) Net Sales of the Franchised Business from the preceding Business Week; (ii) Franchisee’s calculated Royalty Fee and Fund Contribution (if appropriate) based on the Net Sales from the preceding Business Week; and (iii) any other information Franchisor may require for that reporting period. Franchisor may, as it deems necessary in its sole discretion, change the form and content of the Net Sales Reports from time to time. The parties agree and acknowledge that Franchisor may modify the interval at which it collects Franchisee’s Royalty Fee, Fund Contribution and other recurring fees under this Agreement upon written notice (i.e., Franchisor may provide Franchisee with notice that it will be collecting these fees on a monthly rather than weekly basis). In such event, Franchisee’s reporting obligations may also be modified by Franchisor accordingly.
- F. **Late Payments.** If any payment due under this Agreement is not received by Franchisor by the scheduled date due, Franchisee shall be in default under this Agreement. If any payment is overdue, Franchisee shall pay interest to the Franchisor, in addition to the overdue amount, at a rate of the lesser of one and one-half percent (1.5%) per month or the highest commercial contract rate allowed by law, beginning from the date of non-payment or underpayment, until paid. Entitlement to collect such interest shall be in addition to any and all other remedies Franchisor may have. Franchisee agrees to pay One Hundred Dollars (\$100.00) for each check given or electronic transfer made to Franchisor that is dishonored, fails to process, or is returned.
- G. **Taxes Owed by Franchisee.** No payments to be made to Franchisor by Franchisee, whether for royalties, advertising, merchandise, special programs, or otherwise, may be reduced on account of the imposition by any federal, state, or local authority of any tax, charge, or assessment, or by any claim Franchisee may have against Franchisor. All taxes, charges, or assessments shall be paid by Franchisee to the taxing authorities when due, in addition to the amounts due to Franchisor.

- H. **Net Sales Report Late Fee.** In the event Franchisee fails to provide to Franchisor any financial report, Net Sales Report or other report which Franchisee is obligated by this Agreement to provide to Franchisor when such report is due, Franchisee will be charged a late fee for each such report equal to One Hundred and Fifty Dollars (\$150.00) per day for the first ten (10) days of delinquency, which then rises to Two Hundred and Fifty Dollars (\$250.00) after ten (10) days until such time as the reports are received, regardless of the date when mailed. The imposition of late reporting fees shall be in addition to, and not in lieu of, any other remedy available to Franchisor for failure to report.
- I. **Security Interest.** Franchisee hereby grants to Franchisor a security interest in all of Franchisee's interests in the real estate where the franchise is located (if Franchisee purchases its Premises), as well as all improvements to that real estate. Franchisee further grants to Franchisor a security interest in all furniture, furnishings, equipment, fixtures, inventory, and supplies located at or used in connection with the Franchised Business, whether now or hereafter leased or acquired, together with all attachments, accessions, accessories, additions, substitutions, and replacements therefore, as well as all cash and non-cash proceeds derived from insurance, the disposition of any such collateral to secure payment and performance of all debts, liabilities, and obligations of any kind of Franchisee to Franchisor under this Agreement, whenever and however incurred, any promissory note given by Franchisee to Franchisor, or any other agreement between them. Franchisee hereby authorizes Franchisor to file and record all financing statements, financing statement amendments, continuation financing statements, fixture filings, and other documents necessary or desirable to evidence, perfect, and continue the priority of the security interests granted herein. Franchisee agrees and understands that it must promptly execute and deliver any such documents to Franchisor upon request.
1. Notwithstanding anything contained in Section 4(I) of the Franchise Agreement to the contrary, Franchisee does not grant Franchisor any security interest in any real property associated with the Franchised Business if such real property is being leased by the Franchisee.
  2. The parties agree that Franchisor will not execute on any security interest granted to Franchisor under Section 4(I) of the Franchise Agreement unless Franchisee fails to cure a material default under the Franchise Agreement within the applicable time period for cure after Franchisor has provided Franchisee with proper notice of such default(s).
- J. **Inability to Operate Franchised Business.** If Franchisee is unable to operate the Franchised Business due to damage or loss to the Premises caused or created by a casualty, act of God, condemnation, or other condition over which Franchisee has no control, then Franchisor will waive the Royalty Fee due under this Agreement for a period of time that Franchisor reasonably determines is necessary for the Franchised Business to repair the damage/loss to the Premises and resume operations (or relocate the Franchised Business to a different approved location within the Designated Territory), with said waiver period not to exceed ninety (90) days commencing from the date Franchisee gives Franchisor notice of the damage or loss.
- K. **Compliance with Gift Card Redemption Policies.** Franchisee agrees and acknowledges that Franchisor has set forth policies and guidelines regarding Franchisee's redemption of gift cards at the Franchised Business that were purchased at a System Restaurant other than

the Franchised Business (and vice versa), along with directives and guidelines for how any compensation will be allocated amongst the Franchised Business and the other System Restaurant(s) at issue. Franchisee agrees and acknowledges that such policies and guidelines may affect Franchisee's payment obligations under this Agreement, whether to Franchisor and/or to a different Restaurant location, but agrees to strictly comply with such directives, policies and guidelines as set forth and updated by Franchisor in the Manuals or otherwise in writing.

## 5. **DUTIES OF FRANCHISOR**

- A. **Initial Training Program.** Franchisor shall offer and make available an initial training program (the "Initial Training Program") for Franchisee and other management personnel Franchisee designates, provided the parties attend at the same time. One of the trainees must be Franchisee (or one of Franchisee's principals responsible for the Franchised Business if Franchisee is an entity) and, if applicable, one (1) of the other attendees must be Franchisee's designated manager that will be responsible for the day to day management of the Franchised Business (the "Designated Manager"). The Initial Training Program will be conducted at Franchisor's corporate headquarters or other facility that Franchisor designates, subject to the schedules and availability of Franchisor's training personnel. Franchisor will provide the Initial Training Program to additional owners of Franchisee or managers of the Franchised Business (subject to the availability of Franchisor's staff), provided Franchisee pays Franchisor its then-current additional training fee for each individual that attends in addition to the first two (2) individuals (as well as any expenses incurred). Franchisor reserves the right to charge Franchisee its then-current Training Fee for any such training provided (as set forth in the Manuals or otherwise in writing).
- B. **On-Site Assistance and/or Training.** As Franchisor deems appropriate in its discretion, Franchisor may provide on-site assistance and training at the Premises prior to the opening of the Franchised Business (the "On-Site Assistance Training"). Franchisor may determine, in its reasonable discretion, that Franchisee requires more than ten (10) days of On-Site Assistance Training if Franchisee or Franchisee's personnel are not able to demonstrate that they adequately understand and can follow the System standards and specification for operation as conveyed by Franchisor in the Initial Training Program and the first ten (10) days of On-Site Assistance Training. In the event Franchisor or its personnel provides more than ten (10) days of On-Site Assistance Training, Franchisee will be responsible for the costs and expenses incurred by Franchisor and its personnel in connection with providing such additional training.
- C. **Replacement Personnel Training.** Franchisor will also provide the Initial Training Program to any replacement personnel or those who attend but fail to complete the program as well, provided Franchisee pays Franchisor's then-current additional training fee (as well as any expenses incurred).
- D. **Additional and Refresher Training.** Franchisor may, as it deems appropriate in its discretion, develop additional and refresher training courses, and require Franchisee and its management to attend such courses. Franchisor will require Franchisee and its designated attendees to pay an additional then-current training fee (the "Training Fee") for this kind of training, as well as being solely responsible for all expenses incurred in connection any required management and/or personnel attending such training. Franchisor will not require Franchisee and its management to attend more than five (5) days of additional/refresher training each year.

- E. **Manuals.** Franchisor will loan Franchisee one (1) copy of its proprietary and confidential operations manual prior to the opening of the Franchised Business, as well as any other instructional manuals as Franchisor deems appropriate (collectively, the “Manuals”). Franchisor will also loan Franchisee a list of: (i) all furniture, fixtures, equipment, inventory, supplies and other items that Franchisee is required to purchase or lease in connection with the establishment and ongoing operation of the Franchised Business (collectively, the “Required Items”); (ii) a list of all suppliers from which Franchisee must purchase or lease any Required Items, which may be Franchisor or its affiliates (collectively, the “Approved Suppliers”); and (iii) a list of the Approved Products and Services that Franchisee is authorized to offer, sell or provide at and from the Franchised Business, including membership programs and services. The foregoing lists may be provided as part of the Manuals or otherwise in writing prior to opening, and Franchisor has the right to revise, supplement or otherwise modify these lists and the Manuals at any time upon written notice to you. Franchisor may also establish and maintain a System website portal that affords access to System owners and Franchisor only (each, a “System Site”)(, wherein Franchisor may post content that will automatically become part of, and constitute a supplement to, the Manuals, all of which Franchisee must strictly comply with promptly after such content is posted or otherwise listed as part of the manuals on such website portal.
- F. **Site Selection Assistance.** Franchisor will provide Franchisee with site selection assistance and guidance with regards to Franchisee’s selection of a Premises for the Franchised Business, including Franchisor’s then-current site selection criteria, as it deems appropriate in its sole discretion. Franchisor may require that Franchisee use an Approved Supplier for site selection assistance. Franchisor will also review and approve of any location the Franchisee proposes for the Franchised Business. Franchisor must approve of Franchisee’s proposed location, as well as the lease for the Premises (the “Lease”) or purchase agreement for the location, prior to Franchisee entering into any such agreement for that location to serve as the Premises of the Franchised Business. Franchisor may condition its approval of any Lease for the proposed Premises on the landlord’s execution of Franchisor’s form of Consent and Agreement of Landlord attached to this Agreement at Exhibit C. Franchisor will use reasonable efforts to review and approve of any proposed Premises location and corresponding Lease within thirty (30) days of receiving all reasonably requested information from Franchisee.
- G. **Initial Marketing Spend Assistance.** Franchisor may assist Franchisee, as it deems appropriate in its discretion, in developing and conducting the Initial Marketing Spend Program (as defined and described more fully in Section 9 of this Agreement), which program shall be conducted at Franchisee’s expense.
- H. **Opening Assistance/Continuing Assistance.** Franchisor may, as it deems appropriate and advisable in its sole discretion, provide opening assistance and continuing advisory assistance in the operation of the Franchised Business. Franchisor’s determination not to provide any particular service, whether initial or continuing, shall not excuse Franchisee from any of its obligations under this Agreement.
- I. **Review of Advertising Materials.** Franchisor will review and approve/reject any advertising or marketing materials proposed by Franchisee in connection with the Franchised Business as described more fully in Section 9 of this Agreement.

- J. **Website.** For so long as Franchisor has an active website containing content designed to promote the System brand, System and Proprietary Marks (collectively, the “Website”), Franchisor will list the contact information of the Franchised Business on this Website, provided Franchisee is not in material default under this Agreement. Franchisor may also provide Franchisee with one or more email address(es), as it deems appropriate in its discretion, which Franchisee must use only in connection with the Franchised Business.
- K. **Private Label Products.** Franchisor may directly, or indirectly through Franchisor’s affiliates or designated vendors, develop and provide Franchisee with private label products or other merchandise bearing the Proprietary Marks to be sold at the Franchised Business. Franchisee may be required to purchase these items from Franchisor or any other Approved Supplier Franchisor designates.
- L. **Inspections of the Franchised Business and Premises.** Franchisor will, as it deems appropriate in its sole discretion, conduct inspections and/or audits of the Franchised Business and Premises to ensure that Franchisee is operating its Franchised Business in compliance with the terms of this Agreement, the Manuals and the System standards and specifications. Such inspections may include inspections of the Premises, taking photographs and/or videotape of the Restaurant’s common area, taking samples of any Approved Products for sale at the Restaurant, interviewing and surveying Franchisee’s personnel and customers, inspecting any and all books and records, and conducting mystery shop services. Franchisor is not responsible for ensuring that the Franchised Business is being operated in compliance with all applicable laws and regulations.
- a. Franchisor may establish a mystery shops program (“Mystery Shops Program”) whereby a third-party vendor will patronize the Franchised Business and grade its experience based on criteria established by Franchisor or the third-party vendor. If established, Franchisee shall pay for the costs of the surveys conducted under the Mystery Shops Program to either Franchisor or a third-party vendor.
- b. Franchisor may also conduct quarterly service evaluations of the Franchised Business. Franchisee shall comply with any changes requested by Franchisor based on the quarterly evaluations.
- M. **Administration of Fund.** Franchisor will administer the Fund as it deems advisable to the System in its sole discretion as described more fully in Section 9 of this Agreement.
- N. **No Assumption of Liability.** Franchisor shall not, by virtue of any approvals or advice provided to the Franchisee under this Agreement, including site selection or other approval provided under this Section 5, assume any responsibility or liability to Franchisee or to any third party to which it would not otherwise be responsible or liable. Franchisee acknowledges that any assistance (including site selection and project oversight) provided by Franchisor or its nominee in relation to the selection or development of the Premises is only for the purpose of determining compliance with System standards and does not constitute a representation, warranty, or guarantee, express, implied or collateral, regarding the choice and location of the Premises, that the development of the Premises is free of error, nor that the Franchised Business is likely to achieve any level of volume, profit or success.

- O. **Delegation of Duties.** Franchisee acknowledges and agrees that any designee, employee, or agent of Franchisor may perform any duty or obligation imposed on Franchisor by the Agreement, as Franchisor may direct.
- P. **Annual Conference.** Franchisor may establish and conduct an annual conference for all System Restaurant owners and operators, and may require Franchisee to attend this conference for no more than five (5) days each year. Franchisee will be solely responsible for all expenses incurred in attending the annual conference (including any employee wages).
- Q. **Pre-Opening Obligations Acknowledgement.** If Franchisee believes Franchisor has failed to provide adequate pre-opening services as provided in this Agreement, Franchisee shall notify Franchisor in writing within ninety (90) days following the opening of the Franchised Business. Absent such notice to Franchisor, Franchisee acknowledges, agrees and grants that Franchisor complied with all of its pre-opening and opening obligations set forth in this Agreement.

## 6. **DUTIES OF FRANCHISEE**

- A. **Secure a Premises.** Franchisee must secure a Premises within the Designated Territory within six (6) months of executing this Agreement, unless Franchisor agrees to an extension of time in writing. If Franchisor has designated an Approved Supplier for site selection assistance, then Franchisor may require that Franchisee use this Approved Supplier. If Franchisee is entering into a Lease for the proposed Premises, the form of Lease must be approved by Franchisor and Franchisee must ensure that the Lease contains the following terms as a condition to Franchisor's approval thereof:
1. The leased Premises will only be used as a System Restaurant offering only the Approved Products and Services that Franchisor designates;
  2. Franchisor has the right to enter the Premises to make any modifications necessary to protect Franchisor's Proprietary Marks;
  3. Upon Franchisor's request, the landlord shall supply Franchisor with a current copy of the Lease;
  4. The landlord will notify Franchisor in writing of and upon the failure of Franchisee to cure any default by Franchisee under the Lease, and provide Franchisor with an opportunity to cure the default on behalf of Franchisee within a reasonable period of time;
  5. Franchisor will have the option, but not the obligation, to assume or renew the Lease and the occupancy of the business premises, including the right to sublease to another party operating a System Restaurant, for all or any part of the remaining term of the Lease only if: (i) the Franchise Agreement or Lease is terminated for cause; (ii) Franchisee is in default under the Lease and, if applicable, fails to cure within the time period provided for in the Lease; (iii) Franchisee is in material default of the Franchise Agreement and fails to cure said default(s) within the applicable time period (if any) thereunder; or (iv) either the Franchise Agreement or Lease expires (and Franchisee does not renew in accordance with the respective

terms of those agreements). Franchisor will not have the right to assume any Lease in the event Franchisee is relocating the Franchised Business from the Premises governed by the Lease in accordance with the terms of this Agreement. In the event Franchisor assumes the Lease under this Section, Franchisor will not be obligated to pay to the landlord past due rent, common area maintenance, and/or other charges attributable to more than one (1) month. The landlord shall give Franchisor thirty (30) days upon termination of Franchisee's rights under the Lease to exercise this option, which Franchisor must do in writing; and

6. The Lease may not be materially amended, assigned, or terminated without Franchisor's prior written approval.

- B. **Access to Franchisor for Inspection of Premises.** Upon the surrender of the Premises, Franchisee must conduct a physical inventory so that there is an accurate accounting of inventory, fixtures, furniture, supplies and equipment on hand, and shall provide a signed copy of this physical inventory to Franchisor as of the date of surrender of the Premises. Franchisor shall have the right to enter the Premises at its convenience and conduct said physical inventory on its own.
- C. **Compliance with Lease.** Franchisee must comply with both the Lease and any additional leasehold covenants and regulations of the building in which the Premises is located. In the event the landlord of the Premises terminates the Lease due to Franchisee's default thereunder, this termination will also constitute a material breach of this Agreement by Franchisee. In the event Franchisor provides appropriate notice as described in Section 6(A) above and assumes control of the Premises and the operation of the former Franchised Business upon the termination or expiration of the Lease, the future operation of that Restaurant by Franchisor shall not be as an agent of Franchisee and Franchisor shall not be required to account to Franchisee as a result thereof.
- D. **Construction and Build-Out.** Franchisee must complete all construction and build-out of the Premises in a manner consistent with Franchisor's System standards, specifications and any agreed-upon plans and open the Franchised Business to the public no later than twelve (12) months after the date this Agreement is executed. Franchisor may recommend that Franchisee use an Approved Supplier for construction management services. Franchisor must provide its prior written consent before Franchisee may open the Franchised Business, and Franchisor reserves the right to inspect the construction and/or build-out of the Franchised Business at any reasonable time prior to the opening date. Should Franchisee fail to open the Franchised Business for operation within the prescribed period (or, if applicable, within any extended period of time Franchisor approves in writing), this Agreement will be deemed terminated upon written notice from Franchisor to Franchisee without the necessity of further action or documentation by either party.
  1. Notwithstanding anything contained in this Section, Franchisor will provide Franchisee with a reasonable extension of time not to exceed thirty (30) days to complete the build-out/construction of the Franchised Business and open to the public, provided: (i) Franchisee has already executed a lease for, or otherwise obtained, a Premises that Franchisor approves; and (ii) Franchisee notifies Franchisor of its need for such an extension no less than thirty (30) days prior to expiration of the twelve (12) month timeline to open and commence operations described herein.

2. The parties further agree and acknowledge that if Franchisee is opening and operating the Franchised Business pursuant to its development obligations under a multi-unit development agreement with Franchisor (an “ADA”), then that ADA will control the timeline for opening and operating the Franchised Business in the event there is an inconsistency between the ADA and this Agreement. Franchisee must open and commence operations of the Franchised Business within the time period prescribed in the development schedule set forth in the ADA (even if Franchisor does not require Franchisee to execute this Agreement until Franchisee has secured an approved Premises for the Franchised Business).
- E. **Required Licenses and Permits.** Prior to opening, Franchisee must obtain and maintain (throughout the term of this Agreement) all required licenses, permits and approvals to establish, open and operate the Franchised Business at the Premises in the Designated Territory, including all required licenses and permits related to operation of a restaurant or establishment offering food and the other Approved Products and Services provided at the Franchised Business.
- F. **Approved Products and Services.** Franchisee must only offer and sell only the Approved Products and Services at the Franchised Business. Franchisee may not offer or provide any other products/services and must not deviate from Franchisor’s System standards and specification related to the manner in which the Approved Products and Services are offered and sold, unless Franchisor provides its prior written consent. Franchisor has the right to add additional, delete or otherwise modify certain of the Approved Products and Services from time to time in the Manuals and otherwise in writing, as it deems appropriate in its sole discretion. In the event of a dispute between Franchisee and Franchisor concerning Franchisee’s right to carry any particular product or to offer any specific service, Franchisee will immediately remove the disputed products from inventory, remove the disputed service from those services offered at the Premises, or, if the same are not already in inventory or such services not yet being offered, will defer offering for sale such products and services pending resolution of the dispute.
- G. **Other Devices Prohibited at Premises.** Franchisee is specifically prohibited from installing, displaying, or maintaining any vending machines, gaming machines, automatic teller machines, internet kiosks, public telephones (or payphones), or any other electrical or mechanical device in the Restaurant other than those Franchisor prescribes or approves.
- H. **Fixtures, Furniture, Signs and Inventory.** Franchisee must maintain at all times during the term of this Agreement and any renewals hereof, at Franchisee’s expense, the Premises and all fixtures, furnishings, signs, and inventory therein as necessary to comply with Franchisor’s standards and specifications as prescribed in the Manuals or otherwise in writing. Franchisee must also make such additions, alterations, repairs, and replacements to the foregoing as Franchisor requires. Franchisor will not require Franchisee to make material renovations or refurbishments to the Premises of the Franchised Business more than once every five (5) years, unless such renovation/refurbishment is in connection with a renewal or transfer of this Agreement. The parties agree and acknowledge, however, that the limitation set forth in the preceding sentence will not apply to any request to modify the Proprietary Marks as provided for in this Agreement. In addition, we reserve the right to require you to purchase and install a vehicle wrap approved by us for the vehicle to be used in connection with the catering services.

- I. **Compliance with Applicable Laws.** Franchisee will adapt, at the Franchisee's expense, the specifications to Your Franchise Business Premises in accordance with local, state, and federal laws, rules, and ordinances, including zoning laws. Franchisee is solely responsible for ensuring compliance with the Americans with Disabilities Act, the Patriot Act, OSHA, environmental laws, worker's compensation laws, the Affordable Care Act and all other applicable laws, ordinances and regulations or ruling of every nature whatsoever which in any way regulate or affect the operation of your Franchise Business. Franchisee agrees to obtain all required permits and licenses for the operation of your Franchise Business. Franchisee agrees to indemnify and hold us harmless from any such violation or non-compliance. Franchisor have not made, and Franchisee has not relied on any representation that no licenses, or only certain license, etc., are necessary in connection with the operation of your Franchise Business. Franchisee agrees to not engage in any activity or practice which results, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof. Franchisee must also comply with federal, state, and local health and consumer protection laws and regulations governing the food service industry and concerning food preparation, handling, storage, truth in menu laws concerning menu item names and product labeling, nutritional claims, and local labor regulation, including minimum age and minimum wage laws. Franchisee further agrees that it will be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Franchised Business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. At no time will Franchisee or Franchisee's employees be deemed to be employees of Franchisor or Franchisor's affiliates.
- J. **Required Items.** Franchisee must: (i) purchase any and all Required Items that Franchisor designates for use in connection with the Franchised Business, including without limitation, all products, supplies, inventory, fixtures, Computer System, parts, and materials required for the operation of the Franchised Business; (ii) ensure that all Required Items meet Franchisor's standards and specifications; and (iii) purchase all items Franchisor specifies from the Approved Supplier(s) that Franchise designates, which may include Franchisor or its affiliate(s). Franchisee agrees and acknowledges that Franchisor and/or its affiliates may derive revenue from the offer and sale of Required Items.
- K. **Alternative Supplier Approval.** If Franchisee wishes to purchase any unapproved item, including inventory, and/or acquire approved items from an unapproved supplier, Franchisee must provide Franchisor the name, address and telephone number of the proposed supplier, a description of the item Franchisee wishes to purchase, and the purchase price of the item, to the extent known. Franchisee must then follow Franchisor's then-current procedure for evaluating and approving such request and pay Franchisor's then-current product/supplier evaluation fee (the "Evaluation Fee"). At Franchisor's request, Franchisee must also provide Franchisor, for testing purposes, a sample of the item Franchisee wishes to purchase. If Franchisor incurs any costs in connection with testing a particular product or evaluating an unapproved supplier at Franchisee's request, Franchisee must reimburse Franchisor for Franchisor's reasonable testing costs, regardless of whether Franchisor subsequently approves the item or supplier. Franchisor will use commercially reasonable efforts to notify Franchisee in writing whether or not Franchisee's request is approved or denied within one hundred and twenty (120) days of: (i) Franchisor's receipt of all supporting information from Franchisee regarding Franchisee's request under this Section; and (ii) if applicable, Franchisor's completion of any inspection or testing associated with Franchisee's request. If Franchisor does not provide written approval

within this time period, then Franchisee's request will be deemed denied. Franchisor may, but is not obligated to, provide Franchisee's proposed supplier with its specifications for the item that Franchisee wishes the third-party to supply, provided that third-party executes Franchisor's prescribed form of non-disclosure agreement. Each supplier that Franchisor approves must comply with Franchisor's usual and customary requirements regarding insurance, indemnification and non-disclosure. If Franchisor approves any supplier, Franchisee may enter into supply contracts with such third party, but under no circumstances will Franchisor guarantee Franchisee's performance of any supply contract. Franchisor may re-inspect and revoke Franchisor's approval of particular products or suppliers when Franchisor determines, in Franchisor's sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee must cease purchasing products from such supplier. Nothing in this Section shall be construed to require Franchisor to approve any particular supplier. Franchisor may base Franchisor's approval of any such proposed item or supplier on considerations relating not only directly to the item or supplier itself, but also indirectly to the uniformity, efficiency, and quality of operation Franchisor deems necessary or desirable in Franchisor's System as a whole. Franchisor has the right to receive payments from suppliers on account of their dealings with Franchisee and other franchisees and to use all amounts Franchisor receives without restriction (unless instructed otherwise by the supplier) for any purposes Franchisor deems appropriate.

- L. **Computer Issues.** Franchisee acknowledges and agrees that Franchisee is solely responsible for protecting itself from computer viruses, bugs, power disruptions, communication line disruptions, internet access failures, internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders.
- M. **Promotional Materials Display.** Franchisee must openly and prominently display franchise promotional materials provided or designated by Franchisor and participate in any ongoing System-wide sales, specials or other promotions that Franchisor designates.
- N. **Initial Training Program.** Franchisee and each of its management personnel must attend and successfully complete the Initial Training Program at least sixty (60) days prior to opening the Franchised Business, and pay Franchisor the appropriate additional training fees for any additional person(s) that attend the program other than the first two (2) individuals. Franchisee must also cover all costs associated with personnel of Franchisee attending the Initial Training Program. Franchisee must also complete any additional or refresher training the Franchisor is permitted to require Franchisee to attend each year, and Franchisee must attend Franchisor's annual conference if conducted.
- O. **Training of Employees.** Franchisee or at least one (1) of Franchisee's personnel that has successfully completed the Initial Training Program must conduct training classes for, and properly train, all of Franchisee's employees on sales, advertising, maintenance of the Premises, the POS and computer system, as well as any other information that is relevant to each employee's role with the Franchised Business, including Franchisor's standards and specifications for operating the Franchised Business, as Franchisor may set forth in the Manuals or otherwise in writing. Further, at least one person that has completed the Initial Training Program must manage the Franchised Business at all times.
- P. **Hours of Operation.** Franchisee shall keep the Franchised Business open and in normal operation for such minimum hours and days as Franchisor may prescribe in the Manuals or otherwise in writing, and must ensure that the Franchised Business is sufficiently staffed.

- Q. **Image.** Franchisee shall maintain the image of the Franchised Business at all times in accordance with Franchisor's standards and specifications, including: (i) ensuring that the Premises is maintained in a clean and orderly manner; and (ii) ensuring that all equipment, furniture and fixtures remain in good, clean condition and is properly displayed. Franchisor may require Franchisee to refurbish, renovate and/or otherwise substantively modify the interior of the Franchised Business, including the furniture, fixtures and equipment used at the Premises, no more than once every ten (10) years (unless the change is required in connection with a renewal or transfer of this Agreement) so that the Premises and Franchised Business conform with Franchisor's then-current System standards and specifications for a new franchised System Restaurant.
- R. **Customer Information – Loyalty and/or Other POS Data.** Franchisee must maintain all customer information associated with any customer loyalty or other promotional programs or otherwise in connection with the data input into any Required Software (the "Customer Information"), all of which will be solely owned by Franchisor and deemed "Confidential Information" hereunder.
- S. **Promotional/Maximum Prices; Pricing Guidelines.** To the extent permitted under applicable law, Franchisee must follow Franchisor's general pricing guidelines, including any promotional or maximum prices set by Franchisor for a particular Approved Product or Service. As an independent contractor, however, Franchisee may exercise flexibility in meeting competition, offering specials, and adapting to local market conditions. Franchisor may request information from Franchisee that has been used to substantiate any reduction in pricing to meet market conditions.
- T. **Operation of Franchised Business and Customer Service.** Franchisee will be responsible for the day-to-day operation of the business. Franchisee shall manage and operate the Franchised Business in an ethical and honorable manner, and must ensure that all those working at the Franchised Business provide courteous and professional services to customers and always keep its customers' interests in mind while protecting the goodwill of the Proprietary Marks, System and the Franchised Business. Franchisee must handle all customer complaints and requests for returns and adjustments in a manner consistent with Franchisor's standards and specifications, and in a manner that will not detract from the name and goodwill enjoyed by Franchisor. Franchisee must consider and act promptly with respect to handling of customer complaints, and implement complaint response procedures that Franchisor outlines in the Manuals or otherwise in writing.
- U. **Access to Restaurant.** To determine whether Franchisee is complying with this Agreement, Manuals and the System, Franchisor and its designated agents or representatives may at all times and without prior written notice to Franchisee: (i) inspect the Premises; (ii) observe and monitor the operation of the Franchised Business for consecutive or intermittent periods as Franchisor deems necessary; (iii) interview personnel and customers of the Franchised Business; and (iv) inspect, audit and/or copy any books, records, and agreements relating to the operation of the Franchised Business, including all financial information. Franchisee agrees to cooperate with Franchisor fully in connection with these undertakings by Franchisor (if taken). If Franchisor exercises any of these rights, Franchisor will not interfere unreasonably with the operation of the Franchised Business.

- V. **Personal Participation by Franchisee.** Franchisee must personally participate in the direct management operation of the Franchised Business on a full-time basis, unless Franchisee engages a Designated Manager that Franchisor approves in writing to manage the day-to-day operations of the Franchised Business when Franchisee is not present. If Franchisee designates a manager at any time, that manager must successfully complete the Initial Training Program prior to assuming any management responsibilities in connection with the Franchised Business. Regardless, Franchisee is solely responsible for all aspects of the operation of the Franchised Business and ensuring that all the terms, conditions, and requirements contained in this Agreement and in the Manuals are met and kept.
- W. **Credit Cards.** Franchisee must accept credit cards at the Premises to facilitate sales, including Visa, MasterCard, American Express, Discover, and any other major credit cards designated by Franchisor.
- X. **Payments to Franchisor.** Franchisee agrees to promptly pay Franchisor all payment and contributions that are due to Franchisor, its affiliates or any Approved Supplier.
- Y. **Employment Decisions.** Franchisee agrees to be solely responsible for all employment decisions and to comply with all state, federal, and local hiring laws and functions of the Franchised Business, including without limitation, those related to hiring, firing, training, wage and hour requirements, compensation, promotion, record-keeping, supervision, and discipline of employees, paid or unpaid, full or part-time. Franchisee's employees must be competent, conscientious, and properly trained.

## 7. **PROPRIETARY MARKS AND OTHER INTELLECTUAL PROPERTY RIGHTS**

- A. **Ownership of Proprietary Marks.** Franchisee acknowledges the exclusive ownership and/or right to use the Proprietary Marks by Franchisor, and Franchisee agrees that during the term of this Agreement and after its expiration or termination Franchisee will not directly or indirectly contest or aid in contesting the validity of the Proprietary Marks or the ownership or rights of the Proprietary Marks by Franchisor. Furthermore, Franchisee intends and hereby concedes that any commercial use Franchisee may make of the Proprietary Marks shall contribute and inure to the commercial use and benefit of Franchisor, which Franchisor may claim to strengthen and further secure ownership of the Proprietary Marks.
- B. **Permitted Use.** It is understood and agreed that the use by Franchisee of Franchisor's Proprietary Marks applies only in connection with the operation of the Franchised Business at the Premises, and includes only such Proprietary Marks as are now designated, or which may hereafter be designated in the Manuals or otherwise in writing as part of the System (which might or might not be all of the Proprietary Marks pertaining to the System owned by the Franchisor), and does not include any other mark, name, or indicia of origin of Franchisor now existing or which may hereafter be adopted or acquired by Franchisor.
- C. **Use of Proprietary Marks in Advertising and Signage.** To develop and maintain high, uniform standards of quality and service and thereby protect Franchisor's reputation and goodwill, as well as that of the System, Franchisee agrees to:
  - 1. Operate and advertise the Franchised Business only under the Proprietary Marks authorized by Franchisor as specified in this Agreement or the Manuals;

2. Maintain and display signage and advertising bearing the Proprietary Marks that reflects the current commercial image of the System and, upon notice from Franchisor, to immediately discard and cease use of Proprietary Marks or other imagery that has become obsolete and no longer authorized by Franchisor.
  3. Upon Franchisor's request, Franchisee hereby covenants and agrees that it will affix in a conspicuous location in or upon the Premises, a sign containing the following notice: "This business is owned and operated independently by (*name of franchisee*) who is an authorized licensed user of the trademark under a license agreement with FiiZ Drinks Franchise, LLC."
- D. **Proprietary Marks are Sole Property of Franchisor.** Franchisee acknowledges that the Proprietary Marks, System, Manual, and all other information and items delivered to Franchisee by Franchisor pursuant to this Agreement or in furtherance of the System, including without limitation, video and audio tapes or disks, information communicated by electronic means, and intellectual property, are the sole and exclusive property of Franchisor, and Franchisee's right to use the same are contingent upon Franchisee's continued full and timely performance under this Agreement. Franchisee acknowledges it acquires no rights, interests, or claims to any of said property, except for Franchisee's rights to use the same under this Agreement for the term hereof and strictly in the manner prescribed. Franchisee agrees that it will not, during the term of this Agreement or any time thereafter, contest or challenge the sole and exclusive proprietary rights of Franchisor (and, if appropriate, Franchisor's affiliates) to the Proprietary Marks, System, Manuals, special recipes, ingredients, menu items, and other information, intellectual property, and items delivered or provided or to which Franchisee obtains access under this Agreement, nor shall Franchisee claim any proprietary interest in such property. Franchisee agrees that it will not adopt, display, attempt to register or otherwise use any names, marks, insignias, or symbols in any business that are or may be confusingly similar to the Proprietary Marks licensed under this Agreement.
- E. **Legal Action Involving Proprietary Marks.** Furthermore, Franchisee agrees to cooperate with and assist Franchisor in connection with any legal action brought by or against either of them regarding the protection and preservation of the Proprietary Marks, System, or the Manuals, special recipes, ingredients, menu items, and other information and intellectual property delivered to Franchisee or used by Franchisee under this Agreement.
- H. **No Representations/Warranties.** The parties agree and acknowledge that, except as provided in this Agreement, Franchisor does not make any representations or warranties regarding the Proprietary Marks or System.
- I. **Modification or Substitution of Marks by Franchisor.** If in Franchisor's reasonable determination, the use of Proprietary Marks in connection with the System will infringe or potentially infringe upon the rights of any third party, weakens or impairs Franchisor's rights in the Proprietary Marks, or it otherwise becomes advisable at any time in Franchisor's sole discretion for Franchisor to modify, discontinue, or to use one (1) or more additional or substitute trade or service Proprietary Marks then upon notice from Franchisor, Franchisee will terminate or modify, within a reasonable time, such use in the manner prescribed by Franchisor. If Franchisor changes the Proprietary Marks in any manner, Franchisor will not reimburse Franchisee for any out-of-pocket expenses that Franchisee incurs to implement such modifications or substitutions. Franchisor is not obligated to reimburse Franchisee for any loss of goodwill or revenue associated with any

modified or discontinued Proprietary Mark or good offered, nor is Franchisor responsible for reimbursing Franchisee for any other costs or damages

- J. **Modification or Substitution of Proprietary Marks by Franchisee.** Franchisee agrees not to make any changes or amendments whatsoever in or to the use of the Proprietary Marks unless directed by Franchisor in writing.
- K. **Cease Use of Marks on Termination/Non-Renewal.** Upon termination or expiration and non-renewal of this Agreement, Franchisee agrees to immediately cease use, in any manner whatsoever, of any of the Proprietary Marks or any other Proprietary Marks or trade names that may be confusingly similar to the Proprietary Marks.
- L. **Disconnection of Telephone Number upon Termination/Renewal.** Franchisee acknowledges that there will be substantial confusion among the public if, after the termination or expiration and non-renewal of this Agreement, Franchisee continues to use advertisements and/or the telephone number listed in the telephone directory or URL containing any Proprietary Mark, or any name/.mark similar to it. Thus, effective upon the termination or expiration and non-renewal of this Agreement, Franchisee agrees to direct the telephone company servicing Franchisee, per Franchisor's request, to disconnect the telephone number used in connection with the Franchised Business or transfer such number to Franchisor or to any person or location of Franchisor's choosing. If Franchisee fails to take these steps, Franchisee shall be deemed to have hereby irrevocably appointed Franchisor as Franchisee's attorney-in-fact for purposes of directing and accomplishing such transfer. Franchisee understands and agrees that, notwithstanding any billing arrangements with any telephone company or yellow pages directory company, Franchisor will be deemed for purposes hereof to be the subscriber of such telephone numbers, with full authority to instruct the applicable telephone or yellow pages directory company as to the use and disposition of telephone listings and numbers. Franchisee hereby agrees to release, indemnify, and hold such companies harmless from any damages or loss as a result of following Franchisor's instructions.
- M. **Non-Exclusive Use of Proprietary Marks.** Franchisee understands and agrees that its right to use the Proprietary Marks is non-exclusive, that Franchisor in its sole discretion has the right to grant licenses to others to use the Proprietary Marks and obtain the benefits of the System in addition to the licenses and rights granted to Franchisee under this Agreement, and that Franchisor may develop and license other trademarks or service marks in conjunction with systems other than the System on any terms and conditions as Franchisor may deem advisable where Franchisee will have no right or interest in any such other trademarks, licenses, or systems.
- N. **Acknowledgements.** With respect to Franchisee's use of the Proprietary Marks pursuant to this Agreement, Franchisee acknowledges and agrees that:
1. Franchisee shall not use the Proprietary Marks as part of Franchisee's corporate or any other business name, domain name, e-mail address or any social media or social networking profile/page;
  2. Franchisee shall not hold out or otherwise use the Proprietary Marks to perform any activity or incur any obligation or indebtedness in such a manner as might in any way make Franchisor liable thereof without Franchisor's prior written consent; and

3. Franchisee shall execute any documents and provide such other assistance deemed necessary by Franchisor or its counsel to obtain protection for Proprietary Marks or to maintain the continued validity of such Proprietary Marks.
- O. **No Unauthorized Use.** Franchisee acknowledges that the use of the Proprietary Marks outside the scope of this license without Franchisor's prior written consent is an infringement of Franchisor's exclusive right to use the Proprietary Marks and, during the term of this Agreement and after the expiration or termination hereof, Franchisee covenants not to directly or indirectly commit an act of infringement, contest or aid in contesting the validity or ownership of Franchisor's Proprietary Marks, or take any other action in derogation thereof.
- P. **Notification of Infringement.** Franchisee shall notify Franchisor within three (3) calendar days of any suspected infringement of, or challenge to, the validity of the ownership of, or Franchisor's right to use, the Proprietary Marks licensed hereunder. Franchisee will not communicate with any persons other than Franchisor or Franchisor's legal counsel in connection with any such infringement, challenge, or claim. Franchisee acknowledges that Franchisor has the right to control any administrative proceeding or litigation involving the Proprietary Marks. In the event Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee agrees to execute any and all documents and to do such acts and things as may be necessary in the opinion of counsel for Franchisor to carry out such defense or prosecution.
- Q. **Indemnification Regarding Marks.** Franchisor will indemnify and defend Franchisee against any third-party claim brought against Franchisee that arises solely out of Franchisee's authorized use of the Proprietary Marks licensed under this Agreement in connection with the Franchised Business, provided: (i) such use is in full compliance with Franchisor's standards and specifications; and (ii) Franchisee notifies Franchisor in writing of this third-party claim within three (3) calendar days of receiving notice or otherwise learning of the claim. Franchisor will have complete control over the defense and, if appropriate, settlement negotiations and resolution regarding the claims described in this Section, including the right to select legal counsel Franchisor deems appropriate. Franchisee must fully cooperate with Franchisor in connection with Franchisor's defense or settlement of any third-party claim that Franchisor determines to take control of under this Section 7. Notwithstanding anything in this Section to the contrary, Franchisor's liability under this Section shall be limited to no more than the Initial Franchise Fee paid under this Agreement.
- R. **Other Obligations of Franchisee.** In addition to all other obligations of Franchisee with respect to the Proprietary Marks licensed herein, Franchisee agrees:
1. To feature and use the Proprietary Marks solely in the manner prescribed by Franchisor and not use the Proprietary Marks on the internet except as approved in writing by Franchisor; and
  2. To observe all such requirements with respect to service mark, trademark and copyright notices, fictitious name registrations, and the display of the legal name or other identification of Franchisee as Franchisor may direct in writing from time to time.

## 8. OPERATIONS MANUALS AND CONFIDENTIAL INFORMATION

- A. **Compliance with Manuals.** In order to protect the reputation and goodwill of Franchisor and the System, and to maintain uniform standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct the Franchised Business in strict accordance with Franchisor's Manuals.
- B. **Control of the Franchised Business.** Franchisee acknowledges the Manuals provided by Franchisor to Franchisee is intended to protect Franchisor's standards, systems, names, and marks and is not intended to control day-to-day operation of Franchisee's business. Franchisee further acknowledges and agrees that the Franchised Business will be under the control of the Franchisee at all times.
- C. **Confidential Information Generally.** In connection with the operation of the Franchised Business, Franchisee will from time to time become acquainted with, work with, and even generate certain information, procedures, techniques, data, special recipes, ingredients, menu items, and materials that are and, by this Agreement, will become proprietary to Franchisor. Franchisee and all persons signing this Agreement agree to keep confidential any of Franchisor's trade secrets or proprietary information as defined below and will not use such for its or their own purpose or supply or divulge same to any person, firm, association, or corporation except as reasonably necessary to operate the Franchised Business.
- D. **Scope of Confidential Information.** The confidentiality requirements set forth in the preceding paragraph will remain in full force and effect during the term of this Agreement and in perpetuity after its termination or expiration and non-renewal. Franchisor's trade secrets and proprietary/confidential information include the following:
1. The Manuals, as well as information related to the following: (i) site-selection criteria for Restaurants; (ii) methods, techniques and trade secrets for use in connection with the System for the establishment and operation of a Restaurant; (iii) marketing research and promotional, marketing and advertising programs for the Franchised Business and Restaurants generally; (iv) knowledge of specification for and suppliers of, and methods of ordering, certain products, fixtures, furnishings, equipment and inventory used at the Franchised Business and Restaurants generally; (v) knowledge of the operating results and financial performance of any Restaurant utilizing the System; (vi) customer communication and loyalty programs, along with data used or generated in connection with those programs; (vii) Franchisor's other instructional manuals, as well as any training materials and information Franchisor has developed for use in connection with the System; (viii) information regarding the development of the Proprietary Marks; (ix) information generated by, or used or developed in, the operation of the Franchised Business, including customer names, addresses, telephone numbers and any other information contained in the Franchised Business's computer system; and (x) the design, build-out and any construction/remodeling plans for the interior and exterior of the Franchised Business and Restaurants generally;
  2. The special recipes, ingredients, menu items, storage systems, preparation, cooking, presentation, techniques and methodology associated with the Approved Products; and

3. Any other information that may be imparted to Franchisee from time to time and designated by Franchisor as confidential (collectively, the “Confidential Information”).
- E. **Confidential Information as Property of Franchisor.** Franchisee acknowledges and agrees that the Confidential Information and any business goodwill of the Franchise are Franchisor’s sole and exclusive property and that Franchisee will preserve the confidentiality thereof. Upon the termination or expiration and non-renewal of this Agreement, all items, records, documentation, and recordings incorporating any Confidential Information will be immediately turned over by Franchisee, at Franchisee’s sole expense, to Franchisor or to Franchisor’s authorized representative.
- F. **Information Not Proprietary.** Excepted from Confidential Information for purposes of non-disclosure to any third parties by Franchisee and/or its Restricted Persons (as hereinafter defined) is information that:
1. Becomes publicly known through no wrongful act of Franchisee or Restricted Persons; or
  2. Is known by Franchisee or Restricted Persons without any confidential restriction at the time of the receipt of such information from Franchisor or becomes rightfully known to them without confidential restriction from a source other than Franchisor.
- G. **Non-Disclosure Obligations.** Franchisee shall at all times, before and after the term of this Agreement, treat the Confidential Information as confidential and shall use all reasonable efforts to keep such information secret and confidential. The Manuals must remain at the Premises and be kept in a secure location, under lock and key, except when it is being studied by Franchisee or Franchisee’s employees. Franchisee shall not, at any time without Franchisor’s prior written consent, copy, scan, duplicate, record, distribute, disseminate, or otherwise make the Manuals available to any unauthorized person or entity, in whole or in part.
- H. **Prevention of Unauthorized Use or Disclosure.** Franchisee shall adopt and implement all reasonable procedures as Franchisor may prescribe from time to time to prevent the unauthorized use or disclosure of any of the Confidential Information. Franchisee must ensure and require that all of its officers, agents, directors, shareholders, trustees, beneficiaries, partners, employees, spouses of employees, and independent contractors who may obtain or who are likely to obtain knowledge concerning the Confidential Information (collectively, “Restricted Persons”) execute Franchisor’s prescribed form of confidentiality agreement that will be in substantially the same form attached to this Agreement as Exhibit E (the “Confidentiality and Non-Competition Agreement”). Franchisee must obtain a signed copy of the Confidentiality and Non-Competition Agreement from any such person prior to, or at the same time of, that person undertaking its role and/or employment or association with Franchisee or the Franchised Business. Franchisee’s spouse or significant other shall also be bound by the same requirement and shall sign the same Confidentiality and Non-Competition Agreement. Franchisee must provide Franchisor with a copy of each signed Confidentiality and Non-Competition Agreement within ten (10) days of Franchisor’s request.

- I. **Proprietary Manuals.** Franchisor will loan one, or otherwise provide access to, one (1) copy of the Manuals to Franchisee. The Manuals shall at all times remain the sole property of Franchisor and must be returned to Franchisor upon termination or expiration and non-renewal of this Agreement.
- J. **Modification of Manuals.** In order for Franchisee to benefit from new knowledge, information, methods, and technology adopted and used by Franchisor in the operation of the System, Franchisor may from time to time revise the Manuals, and Franchisee agrees to adhere to and abide by all such revisions (at its expense). Franchisee agrees at all times to keep its copy of the Manuals current and up-to-date. In the event of any dispute as to the contents of Franchisee's Manual, the terms of the master copy of the Manuals maintained by Franchisor at its home office shall be controlling. Out-of-date pages must be returned to Franchisor immediately upon replacement. Franchisor may provide any supplements, updates or revisions to the Manuals via the Internet, email, the System-wide intranet/extranet or any other electronic or traditional mediums it deems appropriate.

## 9. **ADVERTISING**

- A. **Advertising and Sales Promotion Programs.** Franchisor may from time to time develop and create advertising and sales promotion programs designed to promote and enhance the collective success of all or some of the Restaurants operating under the System. Franchisee must participate in all such advertising and sales promotion programs in accordance with the terms and conditions established by Franchisor for each program. In all aspects of these programs, including without limitation, the type/quantity/timing/placement and choice of media, and market areas and advertising agencies, the System standards and specifications established by Franchisor shall be final and binding upon Franchisee. Franchisor may also request that Franchisee purchase and/or make copies (at Franchisee's expense) and subsequently use certain other advertising or promotional materials that Franchisor designates for use in connection with the Franchised Business.
- B. **Approval for all Advertising/Promotional Materials.** All advertising and promotion by Franchisee in any medium must be conducted in a professional manner and shall conform to Franchisor's standards and requirements as set forth in the Manuals or otherwise. Franchisee shall obtain Franchisor's approval of all advertising and promotional plans and materials prior to use if such plans and materials have not been prepared by Franchisor or previously approved by Franchisor during the twelve (12) months prior to their proposed use. Franchisee must submit unapproved plans and materials to Franchisor, and Franchisor will have thirty (30) days to notify Franchisee of its approval or disapproval of such materials. If Franchisor does not provide its specific approval of the proposed materials within this thirty (30) day period, the proposed materials will be deemed rejected. Any plans and materials that Franchisee submits to Franchisor for its review will become Franchisor's property and there will be no restriction on Franchisor's use or dissemination of such materials. Franchisor may revoke its approval of any previously-approved advertising materials upon notice to Franchisee. Franchisor reserves the right to require Franchisee to include certain language on all advertising to be used locally by Franchisee or to be used by a Cooperative, including, but not limited to, the phrase "Franchises Available" and references to Franchisor's telephone number and/or website.

- C. **Initial Marketing Spend.** Franchisee must spend a minimum of \$10,000 to promote and advertise the grand opening of the Franchised Business within the Designated Territory, which must be expended during the time period beginning approximately 30 to 60 days prior to the opening of the Franchised Business through the opening of the Franchised Business (the “Initial Marketing Spend”). If Franchisor collects any portion of the Initial Marketing Spend, it will only do so in order to pay its out-of-pocket costs to implement the Initial Marketing Spend campaign on Franchisee’s behalf.
- D. **Local Marketing Requirement.** In addition to the Initial Marketing Spend, Franchisee must expend a minimum amount on the local marketing, advertising and promotion of your Franchised Business within your Designated Territory that amounts to one percent (1%) of Net Sales each month the Franchised Business is open and operating on advertising and marketing the Franchised Business within the Designated Territory (the “Local Marketing Requirement” or “LMR”).
1. Upon Franchisor’s request, Franchisee must provide Franchisor with itemized reports documenting proof of its monthly expenditures for local advertising and marketing in a form Franchisor may require. Franchisor reserves the right to increase the minimum local marketing requirement if determined by Franchisor, in our sole discretion, that to do so will be in the best interest of the System.
  2. Franchisee must ensure that: (i) the Franchised Business has a dedicated phone line for use in connection with the Franchised Business only (and no other business, including any other System franchise); (ii) the Franchised Business is listed in the appropriate Internet-based directories that Franchisor designates.
  3. Franchisee may not advertise and promote the Franchised Business outside of the Designated Territory, unless (a) the geographic area wherein Franchisee wishes to advertise is contiguous to the Designated Territory and that area has not been granted to any other System location or System franchisee/developer, or (b) Franchisor otherwise provides its prior written consent in writing.
  4. Franchisee agrees and acknowledges that it may be required to expend any portion of its monthly LMR on materials or services that are acquired from and/or provided by one (1) or more Approved Suppliers.
- E. **Brand Development Fund.** Franchisor has established a brand development Fund designed to promote, market, advertise and/or otherwise develop the System, Proprietary Marks and brand generally. Franchisee is required to contribute to this Fund on a weekly basis in an amount equal to up to two percent (2%) of the Net Sales of the Franchised Business as described in Section 4. All payments by Franchisee to the Fund are non-refundable upon payment, and Franchisor will account separately for all sums paid to the Fund. The Fund will be maintained and administered by Franchisor or Franchisor’s designee as follows:
1. Franchisor will use Fund and all contributions to it and any earnings on it, exclusively for preparing, directing, conducting, placing, and administering advertising, marketing, public relations, and/or promotional programs and materials, and any other activities, that Franchisor believes would enhance the image of the System, Proprietary Marks, and Approved Products or Services.

2. Franchisor is not obligated to spend monies from the Fund in any particular Franchisee's market in proportion to the payments to the Fund made by the Franchisee in that market. Franchisor does not represent that it will spend any particular amount of advertising funds locally, regionally, or nationally.
  3. The Fund may be used to meet any and all costs of maintaining, administering, directing, and preparing advertising. This includes, among other things, direct mail advertising, marketing surveys and other public relations activities, developing and maintaining the Franchisor's Website, employing advertising and public relations agencies, purchasing promotional items, and providing other marketing materials and services to the Restaurants operating under the System. These costs may include the proportionate salary share of Franchisor's employees that devote time and render services for advertising and promotion or the administration of the Fund, including administrative costs, salaries, and overhead expenses related to administering the Fund and its programs. No part of the Fund shall be used by Franchisor to defray any of its general operating expenses, other than those reasonably allocable to the advertising described in this Section or other activities reasonably related to the administration or direction of the Fund.
  4. Franchisor shall administratively segregate all contributions to the Fund on its books and records. All such payments to the Fund may be deposited in Franchisor's general operating account, may be commingled with Franchisor's general operating funds, and may be deemed an asset of Franchisor, subject to Franchisor's obligation to expend the monies in the Fund in accordance with the terms hereof. Franchisor may, in its sole discretion, elect to accumulate monies in the Fund for such periods of time, as it deems necessary or appropriate, with no obligation to expend all monies received in any fiscal year during that fiscal year. In the event Franchisor's expenditures for the Fund in a given fiscal year (of Franchisor) exceeds the total amount contributed to the Fund during such fiscal year, Franchisor shall have the right to be reimbursed to the extent of such excess contributions from any amounts subsequently contributed to the Fund or to use such excess as a credit against its future contributions. The parties do not intend that the Fund be deemed a trust.
  5. Franchisor shall, on an annual basis, account for the operation of the Fund and prepare an unaudited financial statement evidencing such accounting, which will be available to Franchisee upon its written request at least ninety (90) days after the Franchisor's fiscal year end for the past fiscal year. Franchisor will not be required to provide an audit with respect to the Fund, and Franchisor may dissolve the Fund at any time after it is established.
- F. **Advertising Council.** Franchisor may establish, if and when it deems appropriate in its sole discretion, a council to provide advice and guidance regarding the administration of the Fund and various other advertising/marketing matters (an "Advertising Council"). If Franchisor establishes an Advertising Council, it may serve in only an advisory capacity and may consist of franchisees, personnel from Franchisor's affiliate-owned Restaurants, or other management/employees that Franchisor designates. If an Advertising Council is established, the membership of such Advertising Council, along with the policies and procedures by which it operates, will be determined by Franchisor. The recommendations of the Advertising Council shall not be binding on Franchisor.

- G. **Website.** Franchisor agrees that it will establish an interior page on its corporate website to display the Premises and contact information associated with the Franchised Business for so long as (i) the Franchised Business is open and actively operating, and (ii) this Agreement is not subject to termination. Franchisee may not establish any separate website or other Internet presence in connection with the Franchised Business, System or Proprietary Marks without Franchisor's prior written consent. If approved to establish a separate website, Franchisee shall comply with Franchisor's policies, standards and specifications with respect to the creation, maintenance and content of any such website. Franchisee specifically acknowledges and agrees that any website owned or maintained by or for the benefit of Franchisee shall be deemed "advertising" under this Agreement, and will be subject to (among other things) Franchisor's approval as described in this Section 9. Franchisee may not promote or otherwise list its Franchised Business, or the Proprietary Marks or System, on any social media or networking site, including without limitation, Facebook, LinkedIn, Instagram, Pinterest, Twitter or YouTube, without Franchisor's prior written consent. Franchisor shall have the right to modify the provisions of this Section relating to Franchisee's use of separate websites and social media, as Franchisor determines necessary or appropriate.
- H. **Cooperatives.** Franchisor may establish regional advertising cooperatives that are comprised of multiple Restaurant owners located within a geographical region that Franchisor designates (each, a "Cooperative"). If Franchisor establishes a Cooperative and designates Franchisee as a member thereof, Franchisee may be required to contribute to the Cooperative in an amount not to exceed Franchisee's Local Marketing Requirement each month. All amounts paid to a Cooperative will be credited towards Franchisee's Local Marketing Requirement. Franchisor shall have the right to specify the governing rules, terms and operating procedures of any Cooperative.

## 10. **ACCOUNTING AND RECORDS**

- A. **Maintenance of Records.** Franchisee must, in a manner satisfactory to Franchisor and in accordance with generally accepted accounting principles, maintain original, full, and complete register tapes, computer files, back-up files, other records, accounts, books, data, licenses, contracts, and product vendor invoices which shall accurately reflect all particulars relating to the Franchised Business, as well as other statistical and financial information and records Franchisor may require. All of this information must be kept for at least three (3) years, even if this Agreement is no longer in effect. Upon Franchisor's request, Franchisee must furnish Franchisor with copies of any or all product or equipment supply invoices reflecting purchases by or on behalf of the Franchised Business. In addition, Franchisee shall compile and provide to Franchisor any statistical or financial information regarding the operation of the Franchised Business, the products and services sold by it, or data of a similar nature, including without limitation, any financial data that Franchisor believes that it needs to compile or disclose in connection with the sale of franchises or that Franchisor may elect to disclose in connection with the sale of franchises. All data provided to the Franchisor under this Section 10 shall belong to Franchisor and may be used and published by Franchisor in connection with the System (including in Franchisor's disclosure documents).
- B. **Examination and Audit of Records.** Franchisor and its designated agents shall have the right to examine and audit Franchisee's records, accounts, books, computer files, and data at all reasonable times to ensure that Franchisee is complying with the terms of this Agreement. If such audit discloses that Franchisee has underreported the Net Sales of the

Franchised Business or any amount due to Franchisor by two percent (2%) or more in any given reporting period (weekly, monthly or otherwise), then Franchisee must: (i) reimburse Franchisor any costs/expenses incurred in connection with conducting the inspection and audit; and (ii) pay any amount due and owing Franchisor as a result of Franchisee's underreporting, along with any accrued interest on said amounts.

- C. **Computer System for Records.** Franchisee shall record all transactions and Net Sales of the Franchised Business on a Computer System that is approved by Franchisor, which must contain software that allows Franchisee to record accumulated sales without turning back, resetting or erasing such sales. Franchisor will, at all times and without notice to Franchisee, have the right to independently and remotely access and view Franchisee's Computer System as described in Section 4 of this Agreement.
- D. **Computer System Files and Passwords.** Franchisee will not install or load any computer software on the hard disks of the Computer System used in connection with the Franchised Business without Franchisor's prior written consent. All computer and file passwords associated with the Computer System must be supplied as a list to Franchisor by Franchisee, along with any modifications or changes to that list. The passwords to access the Computer System located at the Premises or used by the Franchised Business, as well as all computer files and records related to the Franchised Business, are the exclusive property of Franchisor and Franchisee must provide Franchisor with these files and information upon the termination or expiration of this Agreement.
- E. **Computer System Security and Compliance.**
1. **Data Security Standards.** Franchisee must ensure compliance with all payment card industry ("PCI") and data security standard ("DSS") standards, regulations, and requirements. Franchisee must meet the requirements of, and comply with enhanced and changes to, the PCI and DSS and maintain PIC compliance with the current version of the PCI and DSS. Franchisee is responsible to use all required tools, systems, and vendors to complete ongoing PCI requirements, including all required Computer System components and Required Software. Franchisee, along with any third-party software providers, will be responsible for all costs relating to PCI compliance and data security issues, including security threats, breaches, and malware. It is the responsibility of the Franchisee to alert Franchisor, not later than 24-hours following a suspected or confirmed data security breach in connection with any customer information or otherwise related to Franchised Business operations, so that appropriate action can be taken to protect customer data and notify relevant parties. Franchisee is not permitted to collect, store, transfer, etc. any unnecessary customer information.
  2. **Security System.** Franchisee must install a security system in the Premises as specified in the Manuals. Franchisee is solely responsible for monitoring, maintenance, and upgrades to this systems. Franchisor must be afforded electronic and independent access to such security system upon written notice in the Manuals or otherwise, but Franchisor has no obligation or responsibly to monitor the system for security reasons. By installing the security and monitoring system, Franchisee and its personnel may be waiving certain privacy rights, and Franchisee agrees to have such personnel sign a waiver with regards to such privacy rights. Franchisee agrees to indemnify and hold Franchisor harmless from and against any claim arising out of or related to this Section as part of Franchisee's overall indemnification obligations under Section 11.

3. **Compliance Monitoring.** Franchisee may be required to install a compliance monitoring system as specified in the Manuals at the Premises at reference points designated by Franchisor. This compliance monitoring system is not a security system but is a management tool and Franchisor is not required to monitor your Franchise Business. Both Franchisee and Franchisor will have the right to online access to any such compliance monitoring system.
- F. **Current Contracts, Listings and Projects.** At any time and upon request of Franchisor, Franchisee shall provide Franchisor with a copy or summary listing, at Franchisor's discretion, of all current contracts, listings, agreements, and projects that Franchisee is involved in or working with.
- G. **Tax Returns.** Upon Franchisor's request, Franchisee shall furnish the Franchisor with a copy of each of its reports, returns of sales, use and gross receipt taxes, and complete copies of any state or federal income tax returns covering the operation of the Franchised Business, all of which Franchisee shall certify as true and correct.
- H. **Required Reports.** Franchisee must provide Franchisor with the following reports and information, all of which must be certified as true and correct by Franchisee and in the form and manner prescribed by Franchisor: (i) a signed Net Sales Report as described more fully in Section 4 of this Agreement on or before Monday of each week; (ii) on or before the twentieth (20<sup>th</sup>) of each month, an unaudited profit and loss statement for the Franchised Business for the preceding calendar month; (iii) within sixty (60) days of each calendar quarter, an unaudited balance sheet reflecting the financial position of the Franchised Business as of the end of that calendar quarter; (iv) within sixty (60) days of Franchisor's request, a financial statement that details the total assets and liabilities of the Franchised Business (and, if appropriate Franchisee and personal guarantors under this Agreement); (v) within ninety (90) days after the close of each fiscal year of Franchisee, financial statements which shall include a statement of income and retained earnings, a statement of changes in financial position, and a balance sheet of the Franchised Business, all as of the end of such fiscal year; and (vi) any other financial information or performance metrics of the Franchised Business that Franchisor may reasonably request.
- I. **Change to Ownership of Franchisee.** In addition to the foregoing statements, Franchisee must provide Franchisor with written reports regarding any authorized change to: (i) the listing of all owners and other holders of any type of interest (legal or beneficial) in Franchisee or the Franchised Business; and (ii) Franchisee's partners, officers, directors, as well as any of the Designated Managers that manage the day-to-day operations of the Franchised Business. Franchisee will notify Franchisor in writing within ten (10) days after any such change, unless Franchisor is required to first notify Franchisor and obtain its approval prior to making any such change.

## 11. **INSURANCE AND INDEMNIFICATION**

- A. **Required Insurance.** Franchisee shall, at its own expense and no later than the earlier of (a) the date on which Franchisee uses any of the Proprietary Marks, or (b) the date Franchisee begins building out the Premises, procure and maintain in full force and effect throughout the term of this Agreement the types of insurance enumerated in the Manuals or otherwise in writing (whether the Franchised Business is open or not). This insurance shall be in such amounts Franchisor or the lessor of the Premises designates from time to time. In addition to any other insurance that may be required by applicable law, or by lender

or lessor, Franchisee shall procure all insurance coverages in the minimum coverage amounts as set forth in the Manual(s) or otherwise in writing by Franchisor. Franchisee must buy insurance only from a company rated “A” or better by A.M. Best & Company, Inc. (or similar criteria as Franchisor periodically specifies), unless Franchisor designates specific carriers from which Franchisee must purchase coverage (in which case Franchisee may only purchase from the designated carrier(s)). Franchisor may periodically increase the amounts of coverage required under these insurance policies and/or require different or additional insurance coverage to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, changing economic conditions, or other relevant changes in circumstances. All insurance policies Franchisee purchases must name Franchisor and any affiliate Franchisor designate as additional insureds, and provide for thirty (30) days’ prior written notice to Franchisor of a policy’s material modification or cancellation. The cost of Franchisee’s premiums will depend on the insurance carrier’s charges, terms of payment, and Franchisee’s insurance and payment histories. Franchisee shall make timely delivery of certificates of all required insurance to Franchisor, each of which shall contain a statement by the insurer that the policy will not be cancelled or materially altered without at least thirty (30) days’ prior written notice to Franchisor. The procurement and maintenance of such insurance shall not relieve Franchisee of any liability to Franchisor under any indemnity requirement of this Agreement. Franchisee must at all times during the entire Term of this Agreement and at their own expense keep in full force, by advance payment(s), the minimum insurance policies set forth in the initial Manual(s) that Franchisor provides to Franchisee and/or as set forth in any subsequent writing within 30 days of the date Franchisee received such writing.

- B. **Failure to Procure and Maintain Insurance.** If Franchisee fails for any reason to procure and maintain the required insurance coverage, Franchisor has the right and authority (without having any obligation to do so) to immediately procure such insurance coverage, in which case Franchisee must: (i) reimburse Franchisor for the costs incurred to obtain the required insurance (including any premium amounts paid); and (ii) pay Franchisor its then-current administrative fee, as may be reasonably charged by Franchisor as consideration for securing the required insurance on Franchisee’s behalf.
- C. **Indemnification.** Franchisee, as a material part of the consideration to be rendered to Franchisor, agrees to indemnify, defend and hold Franchisor, as well as Franchisor’s directors, officers, principals/owners, managers, shareholders, affiliates, subsidiaries, employees, servants, agents, successors and assignees (collectively, the “Indemnitees”), harmless from and against any and all losses, damage, claims, demands, liabilities and causes of actions of every kind or character and nature, as well as costs and expenses incident thereto (including reasonable attorneys’ fees and court costs), that are brought against any of the Indemnitees (collectively, the “Claims”) that arise out of or are otherwise related to Franchisee’s ownership, construction, management, or operation of the Franchised Business in any manner. Notwithstanding the foregoing, at Franchisor’s option, Franchisor may choose to engage counsel and defend against any such Claim and may require immediate reimbursement from the Franchisee of all expenses and fees incurred in connection with such defense.

## 12. **INDEPENDENT CONTRACTOR**

- A. **No Fiduciary Relationship.** In all dealings with third parties, including without limitation, employees, suppliers, and customers, Franchisee shall disclose in an appropriate manner acceptable to Franchisor that it is an independent entity licensed by Franchisor. Nothing in

this Agreement is intended by the parties hereto either to create a fiduciary relationship between them or to constitute the Franchisee an agent, legal representative, subsidiary, joint venture, partner, employee, or servant of Franchisor for any purpose whatsoever.

- B. **Independent Contractor Relationship.** It is understood and agreed that Franchisee is an independent contractor and is in no way authorized to make any contract, agreement, warranty, or representation or to create any obligation on behalf of Franchisor. Upon Franchisor's request, Franchisee must display a sign in its Franchised Business displaying the following phrase (or something similar): "This Restaurant is independently owned and operated pursuant to a license agreement." Neither this Agreement nor Franchisor's course of conduct is intended, nor may anything in this Agreement (nor Franchisor's course of conduct) be construed to state or imply that Franchisor is the employer of Franchisee's employees and/or independent contractor.

### 13. **TRANSFER AND ASSIGNMENT**

- A. **Franchisee Right to Transfer.** Franchisee's rights under this Agreement are personal, and Franchisee shall not sell, transfer, assign or encumber Franchisee's interest in this Agreement or the Franchised Business (or undertake any of the actions identified in Section 13(C) of this Agreement) without Franchisor's prior written consent. Any sale, transfer, assignment or encumbrance made without Franchisor's prior written consent shall be voidable at Franchisor's option and shall subject this Agreement to termination as specified herein.

B. **Death or Disability.**

1. In the event of Franchisee's death, disability or incapacitation (or the death, disability or incapacitation of Franchisee's principals/owners/guarantors), Franchisee's legal representative, or Franchisee's partner's or guarantor's respective legal representative, as applicable, will have the right to continue the operation of the Franchised Business as "Franchisee" under this Agreement if: (i) within ninety (90) days from the date of death, disability or incapacity (the "90 Day Period"), such person has obtained Franchisor's prior written approval and has executed Franchisor's then-current franchise agreement for the unexpired term of the franchise, or has furnished a personal guaranty of any partnership, corporate or limited liability company Franchisee's obligations to Franchisor and Franchisor's affiliates; and (ii) such person successfully completes Franchisor's training program (which Franchisor will provide at Franchisor's then-current tuition rate). Such assignment by operation of law will not be deemed in violation of this Agreement, provided such heirs or legatees accept the conditions imposed by the Franchise Agreement and are acceptable to Franchisor.
2. Franchisor is under no obligation to operate the Franchised Business, or incur any obligation on behalf of any incapacitated franchisee, during or after the 90 Day Period. If necessary, Franchisee (or Franchisee's legal representative, as applicable) shall appoint a previously approved acting interim manager to operate the Franchised Business during the 90 Day Period. In the event of Franchisee's death, disability, absence or otherwise, Franchisor may (but is not required to) operate the Franchised Business on Franchisee's behalf and at Franchisee's expense for such period of time (and under such terms and conditions) as Franchisor determines, including paying out the assets and/or revenues of the

Franchised Business to cover any or all past, current and/or future obligations of the Franchised Business (including any amounts owed to Franchisor and/or any affiliate) in such priorities as Franchisor determines in Franchisor's sole discretion. Franchisor may pay itself a reasonable amount to reimburse Franchisor for Franchisor's management services and other costs. Franchisor may obtain approval of a court or arbitrator for any such arrangements, the attorney's fees and other costs incurred in connection with obtaining such approval to be charged against the assets and/or revenues of the Franchised Business. Franchisee (and/or Franchisee's estate) will indemnify Franchisor against any costs and/or liabilities incurred by it in connection with, or related in any way to, the operation (or otherwise) of the Franchised Business.

3. Franchisor will not collect any transfer fee if there is a transfer under this Section 13(B) to an immediate family member of the Franchisee that Franchisor approves pursuant to Section 13(E).

- C. **Ownership.** In addition to those acts described in Section 13(A), a transfer or assignment requiring Franchisor's prior written consent shall be deemed to occur: (i) if Franchisee is a corporation, upon any assignment, sale, pledge or transfer of any fractional portion of Franchisee's voting stock or any increase in the number of outstanding shares of Franchisee's voting stock which results in a change of ownership, (ii) if Franchisee is a partnership, upon the assignment, sale, pledge or transfer of any fractional partnership ownership interest; or (iii) if Franchisee is a limited liability company, upon the assignment, sale, pledge or transfer or any interest in the limited liability company. Any new partner, shareholder, or member or manager owning having an ownership interest in the surviving entity after the proposed transfer will be required to personally guarantee Franchisee's obligations under this Agreement. A transfer pursuant to (i) and (iii) above shall not be subject to Franchisor's right of first refusal as set forth in Section 13(D).
- D. **Right of First Refusal.** If Franchisee proposes to transfer either this Agreement or all, or substantially all, of the assets used in connection with the Franchised Business or any interest in Franchisee's lease to any third party (other than a corporation or limited liability company as set forth in Section 13(C) hereof or in the event of Franchisee's death/disability as set forth in Section 13(B)), Franchisee shall first offer to sell such interest to Franchisor on the same terms and conditions as offered by such third party. Franchisee shall obtain from the third party and provide Franchisor a statement in writing, signed by the third party and Franchisee, of the terms of the offer ("Letter of Intent"). If Franchisor elects not to accept the offer within a thirty (30) day period, Franchisee shall have a period not to exceed sixty (60) days to complete the transfer described in the Letter of Intent subject to the conditions for approval set forth in Section 13(E) of this Agreement. Franchisee shall effect no other sale or transfer as contemplated under the Letter of Intent without first complying with this Section. Any material change in the terms of the offer will be deemed a new proposal subject to Franchisor's right of first refusal. So long as Franchisee has obtained Franchisor's prior written consent, which shall not be unreasonably withheld, a transfer to an existing partner or shareholder, or a transfer as a result of the death, disability or incapacitation of a shareholder or partner, in accordance with the provisions set forth below, is not subject to Franchisor's first right of refusal.
- E. **Conditions for Approval.** Franchisor may condition Franchisor's approval of any proposed sale or transfer of the Franchised Business or of Franchisee's interest in this

Agreement or any other acts of transfer described in Section 13(C) upon satisfaction of the following occurrences:

1. All of Franchisee's accrued monetary obligations to Franchisor, Franchisor's affiliates, and Franchisor's designated/approved suppliers and vendors, are satisfied;
2. Franchisee must cure all existing defaults under this Agreement, or any other agreement between Franchisee and Franchisor, Franchisor's affiliates, Franchisor's designated/approved suppliers and vendors, within the period permitted for cure and have substantially complied with such agreements during their respective terms;
3. Franchisee and Franchisee's principals (if Franchisee is a partnership, corporation or limited liability company), and the transferee (if it has had any previous relationship with Franchisor or Franchisor's affiliates), must execute a general release under seal, in a form satisfactory to Franchisor, of any and all claims against Franchisor and Franchisor's affiliates and officers, directors, shareholders and employees, in their corporate and individual capacities;
4. Franchisee or transferee shall provide Franchisor a copy of the executed purchase agreement relating to the proposed transfer with all supporting documents and schedules, including transferee's assumption and agreement to faithfully perform all of Franchisee's obligations under this Agreement;
5. The transferee shall demonstrate to Franchisor's satisfaction that he or she meets Franchisor's educational, managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to conduct the business to be transferred; and has adequate financial resources and capital to meet the performance obligations under this Agreement; however, transferee shall not be in the same business as Franchisor either as licensor, franchisor, independent operator or licensee of any other business or chain which is similar in nature or in competition with Franchisor, except that the transferee may be an existing franchisee of ours;
6. The transferee shall execute Franchisor's then-current franchise agreement (which may contain materially different terms than this Agreement) for the remaining balance of Franchisee's term under this Agreement, assuming all of Franchisee's obligations under this Agreement, with transferee's term commencing on the date the transferee executes the then-current franchise agreement;
7. Franchisee or transferee shall pay Franchisor a transfer fee amounting to \$10,000 (the "Transfer Fee"). The transfer fee is non-refundable and is only payable at the time of the approved Transfer;
8. The transferee shall satisfactorily complete Franchisor's Initial Training Program at the transferee's expense within the time frame Franchisor sets forth, with transferee also responsible for all costs and expenses associated with attending the initial training program;

9. Franchisee (and Franchisee's principals/guarantors if Franchisee is a partnership, corporation or limited liability company) must comply with the post-termination provisions of this Agreement;
10. The transferee must demonstrate that it has obtained or maintained, within the time limits set by Franchisor, all permits and licenses required for the continued operation of the Franchised Business;
11. To the extent required by the terms of any leases or other agreements, the lessors or other parties must have consented to the proposed transfer;
12. The transfer must be made in compliance with any laws that apply to the transfer, including state and federal laws governing the offer and sale of franchises;
13. The purchase price and terms of the proposed transfer must not be so burdensome to the prospective transferee as to impair or materially threaten its future operation of the Franchised Business and performance under its franchise agreement;
14. Franchisor shall have the right to disclose to any prospective transferee such revenue reports and other financial information concerning Franchisee and Franchised Business as Franchisee has supplied Franchisor hereunder.

Franchisor will not unreasonably withhold its consent to a proposed transfer or assignment requested by Franchisee, provided the foregoing conditions are met. Franchisor's approval of a transfer shall not operate as a release of any liability of the transferring party nor shall such approval constitute a waiver of any claims Franchisor may have against the transferring party. Furthermore, Franchisor agrees that Franchisee will not be required to pay any transfer fee in the event: (i) Franchisee wishes to transfer its rights under the Franchise Agreement to a newly-established legal business entity that is wholly owned by Franchisee and established solely for purposes of operating the Franchised Business under the Franchise Agreement; or (ii) Franchisee is required to encumber certain assets of the Franchised Business (or subordinate Franchisor's security interest thereto) in order to receive SBA or other traditional bank financing, provided Franchisor otherwise approves of the transfer.

- F. **Transfer from an Individual Franchisee to Business Entity.** If Franchisee is an individual and desires to assign its rights under this Agreement to a corporation or limited liability company, and if all of the following conditions are met, Franchisor will consent to the transfer without assessing the transfer fee or training tuition fees set forth in Section 13(E)(7)-(8), and such assignment will not be subject to Franchisor's right of first refusal in Section 13(D): (i) the corporation or limited liability company is newly organized and its activities are confined to operating the Franchised Business; (ii) Franchisee is, and at all times remains, the owner of 51% or more of the outstanding shares of the corporation or a controlling interest in the limited liability company; (iii) the corporation or limited liability company agrees in writing to assume all of Franchisee's obligations hereunder; and (iv) all stockholders of the corporation, or members and managers of the limited liability company, as applicable, personally guarantee prompt payment and performance by the corporation or limited liability company of all its obligations to Franchisor and Franchisor's affiliates, under this Agreement and any other agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and execute the Personal Guaranty attached to this Agreement as Exhibit B.

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

#### 14. **COVENANTS**

Franchisee acknowledges that, as a participant in Franchisor's System, Franchisee will receive proprietary and confidential information and materials, trade secrets, and the unique methods, procedures and techniques that Franchisor has developed. As such, Franchisee agrees to the covenants in this Section to protect Franchisor, the System, Proprietary Marks and Franchisor's other franchisees.

- A. **During the Term of this Agreement.** During the term of this Agreement, neither Franchisee, its principals, owners, guarantors or Designated Manager(s), nor any immediate family of Franchisee, its principals, owners, guarantors or Designated Manager(s), may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with: (i) any other restaurant or business that is a fast-food, quick-casual or other eating establishment offering to the public specialty drinks, bake goods, and other Approved Products offered by System Restaurants (each, a "Competing Business"); or (ii) offers or grants licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business. For purposes of this Agreement, a Competing Business does not include the following: any business operated by Franchisee under a Franchise Agreement with Franchisor; or any business operated by a publicly-traded entity in which Franchisee owns less than two percent (2%) legal or beneficial interest;
2. Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor's affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or
3. Divert, or attempt to divert, any prospective customer to a Competing Business in any manner.

- B. **After the Term of this Agreement.**

1. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement, regardless of the cause, neither Franchisee, its principals, owners and guarantors, nor any member of the immediate family of Franchisee, its principals, owners or guarantors, may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation, be involved with any business that competes in whole or in part with Franchisor by offering or granting licenses or franchises, or establishing joint ventures, for the ownership or operation of a Competing Business. The geographic scope of the covenant contained in this Section is any location where Franchisor can demonstrate it has offered or sold franchises as of the date this Agreement is terminated or expires.

2. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of this Agreement or assignment of this Agreement by Franchisee, regardless of the cause, neither Franchisee, its principals, owners and guarantors, nor any immediate family member of Franchisee, its principals, owners or guarantors, may, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:
  - a. Own, maintain, engage in, be employed as an officer, director, or principal of, lend money to, extend credit to, or otherwise have any interest in or involvement with any other Competing Business: (i) within the Designated Territory; or (ii) within a 10- mile radius of (a) the perimeter of the Designated Territory, or (b) any other Restaurant (whether franchised or company-owned) that is open or under development as of the date this Agreement is terminated or expires (or as of the date Franchisee assigns this Agreement); or
  - b. Solicit business from customers of Franchisee's former Franchised Business or contact any of Franchisor's suppliers or vendors for any competitive business purpose.
- C. **Intent and Enforcement.** It is the parties' intent that the provisions of this Section 14 be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein shall not render any other part unenforceable. In the event of the actual or threatened breach of this Section 14 by Franchisee, any of Franchisee's principals, or any member of the immediate family of Franchisee or Franchisee's principals, Franchisor shall be entitled to an injunction restraining such person from any such actual or threatened breach. Franchisee acknowledges that the covenants contained herein are necessary to protect the goodwill of the Franchised Business, other System franchisees, and the System. Franchisee further acknowledges that covenants contained in this Section 14 are necessary to protect Franchisor's procedures and know-how transmitted during the term of this Agreement. Franchisee agrees that in the event of the actual or threatened breach of this Section 14, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. Franchisee acknowledges and agrees on Franchisee's own behalf and on behalf of the persons who are liable under this Section 14 that each has previously worked or been gainfully employed in other careers and that the provisions of this Section 14 in no way prevent any such person from earning a living. Franchisee further acknowledges and agrees that the time limitation set forth above with regards to any post-term covenant in this Section 14 shall be tolled during any time period where Franchisee and/or its principals are in violation of Section 14(B) in any manner.
- D. **Confidentiality and Non-Competition Agreement.** Franchisee must ensure that all management personnel of the Franchised Business, as well as any officers and directors of Franchisee, execute Franchisor's then-current form of Confidentiality and Non-Competition Agreement (which will be in substantially the same form as the document attached to this Agreement as Exhibit E). Franchisee must furnish Franchisor a copy of each executed agreement.
- E. **No Defense.** Franchisee hereby agrees that the existence of any claim Franchisee may have against Franchisor, whether or not arising from this Agreement, shall not constitute a

defense to Franchisor's enforcement of the covenants contained in this Section 14. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) that Franchisor incurs in connection with the enforcement of this Section 14.

## 15. **DEFAULT AND TERMINATION**

Franchisor may terminate this Agreement as described in this Section, and Franchisee agrees and acknowledges that the defaults, or failure to cure such defaults within the appropriate time period prescribed below (if any), shall constitute "good cause" and "reasonable cause" for termination under any state franchise laws or regulations that might apply to the operation of the Franchised Business.

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

1. The Franchisee becomes insolvent or makes a general assignment for the benefit of creditors, unless otherwise prohibited by law;
2. A petition in bankruptcy is filed by Franchisee or such a petition is filed against and consented to by Franchisee and not dismissed within thirty (30) days;
3. A bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian in connection with the Franchisee or Franchised Business (or assets of the Franchised Business) is filed and consented to by Franchisee;
4. A receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed;
5. A final judgment in excess of Ten Thousand Dollars (\$10,000.00) against Franchisee remains unsatisfied or of record for sixty (60) days or longer (unless a bond is filed or other steps are taken to effectively stay enforcement of such judgment in the relevant jurisdiction), except that Franchisor may provide Franchisee with additional time to satisfy the judgment if Franchisee demonstrates that it is using commercially reasonable efforts to resolve the issues related to the judgment; or
6. Franchisee attempts to sell, transfer, encumber or otherwise dispose of any interest in Franchisee, this Agreement or the Franchised Business in violation of Section 13 hereof.

B. **Termination upon Notice.** Franchisor has the right to terminate this Agreement upon notice to Franchisee without providing Franchisee any opportunity to cure with respect to any of the following breaches or defaults:

1. If Franchisee or Franchisee's owners/principals commit any fraud or misrepresentation in the establishment or operation of the Franchised Business, including without limitation, any misrepresentation made in Franchisee's franchise application;
2. If Franchisee and any other required attendees fail to attend and complete the Initial Training Program within the time period prescribed in this Agreement;

3. If Franchisee receives from Franchisor three (3) or more notices to cure the same or similar defaults or violations set forth in Section 15(C) of this Agreement during any twelve (12) month period, whether or not these breaches were timely cured;
4. If Franchisee or Franchisee's owners/principals violate any of the in-term covenant not to compete or any of the other restrictive covenants set forth in Section 14 of this Agreement;
5. If Franchisee misuses the Proprietary Marks or Confidential Information in any manner, or otherwise violates any provision of this Agreement related to the use of the Proprietary Marks, Confidential Information and any other confidential materials provided by Franchisor (including those provisions related to non-disclosure of the Manuals and other confidential materials that Franchisor loans to Franchisee);
6. If Franchisee misuses any proprietary software that Franchisor designates for use in connection with the Franchised Business;
7. If Franchisee or any of Franchisee's principals default on any other agreement with Franchisor or any affiliate or Approved Supplier of Franchisor, and such default is not cured within the prescribed time period set forth in that other agreement;
8. If Franchisee defaults under the lease for the Premises and does not cure within the prescribed period of time thereunder, or if Franchisee otherwise loses its right to possess and control the Premises to operate the Franchised Business at any time during the term of this Agreement (except in cases of *force majeure* and cases where Franchisor has previously approved Franchisee's relocation request and Franchisee timely relocates);
9. If Franchisee fails to open and commence operations of the Franchised Business within the time period prescribed in Section 6 of this Agreement;
10. If Franchisee fails to cure any of the following violations under this Agreement within ten (10) days of being notified by Franchisor: (i) failure to offer only those Approved Products and Services that Franchisor authorizes at the Franchised Business; (ii) any purchase of any non-approved item or service for use in connection with the Franchised Business; or (iii) failure to purchase any Required Item that Franchisor designates as necessary for the establishment or operation of the Franchised Business from the appropriate Approved Supplier(s) that Franchisor designates;
11. If Franchisee voluntarily or otherwise abandons the Franchised Business. For purposes of this Agreement, the term "abandon" means: (i) failure to actively operate the Franchised Business for more than two (2) business days without Franchisor's prior written consent; or (ii) any other conduct on the part of Franchisee or its principals that Franchisor determines indicates a desire or intent to discontinue operating the Franchised Business in accordance with this Agreement or the Manuals;

12. If Franchisee fails to provide Franchisor with access to Franchisee's POS system, Computer System or registers located at the Franchised Business as required under this Agreement, and fails to remedy this default within three (3) business days of being notified by Franchisor;
13. If Franchisee fails to pay Franchisor, its affiliates or any of its Approved Suppliers any amount that is due and owing Franchisor within ten (10) days of the date that Franchisor (or other party owed the money) notifies Franchisee of the outstanding amount that is due and owed;
14. If Franchisee fails, for a period of fifteen (15) days after notification of non-compliance by appropriate authority, to comply with any law or regulation applicable to the operation of the Franchised Business;
15. If Franchisee fails, for a period of ten (10) days after notification of non-compliance, to obtain any other licenses, certificates, permits or approvals necessary to operate the Franchised Business at the Premises;
16. If Franchisee, any person controlling, controlled by, or under common control with the Franchisee, any principal officer or employee of Franchisee, or any person owning an interest in Franchise is convicted of a felony or any other crime or offense (even if not a crime) that is reasonably likely in the sole opinion of Franchisor to adversely affect the System, any System unit, the Proprietary Marks, or the goodwill associated therewith;
17. If Franchisee takes for Franchisee's own personal use any assets or property of the Franchised Business, including inventory, employee taxes, FICA, insurance or benefits;
18. If there are insufficient funds in Franchisee's EFT Account to cover a check or EFT payment due to Franchisor or its affiliates under this Agreement three (3) or more times within any twelve (12) month period; and/or
19. If Franchisee commits repeated violations of any health, zoning, sanitation, or other regulatory law, standard, or practice; operates the business in a manner that presents a health or safety hazard to its employees or customers; or if Franchisee loses its approval from any city, state, or other regulatory agency to operate a business that provides restaurant services or offers food.

C. **Termination upon Notice and 30 Days' Cure.** Except for those defaults set forth in Sections 15(A)-(B) of this Agreement, Franchisor may terminate this Agreement upon notice to Franchisee in the event Franchisee: (i) breaches or violates any other covenant, obligation, term, condition, warranty, or certification under this Agreement, including Franchisee's failure to comply with any of Franchisor's other System standards and specifications in the operation of the Franchised Business as set forth in the Manuals; and (ii) fails to cure such breach or violation within thirty (30) days of the date Franchisee is provided with notice thereof by Franchisor.

D. **Step-In Rights.** In addition to Franchisor's right to terminate this Agreement, and not in lieu of such right or any other rights hereunder, if this Agreement is subject to termination due to Franchisee's failure to cure any default within the applicable time period (if any),

then Franchisor has the right, but not the obligations, to enter the Premises and exercise complete authority with respect to the operation of the Franchised Business until such time that Franchisor determines, in its reasonable discretion, that the default(s) at issue have been cured and that Franchisee is otherwise in compliance with the terms of this Agreement. In the event Franchisor exercises these “step-in rights,” Franchisee must reimburse Franchisor for all reasonable costs and overhead that Franchisor incurs in connection with its operation of the Franchised Business, including without limitation, costs of personnel supervising and staffing the Franchised Business and any travel, lodging and meal expenses. Additionally, Franchisor will be entitled to a management fee amounting to \$500 per day during the period in which Franchisor has exercised its step-in rights. If Franchisor undertakes to operate the Franchised Business pursuant to this Section, Franchisee must indemnify, defend and hold Franchisor (and its representatives and employees) harmless from and against any Claims that may arise out of Franchisor’s operation of the Franchised Business.

## 16. **POST-TERM OBLIGATIONS**

Upon the expiration or termination of this Agreement, Franchisee shall immediately:

- A. **Cease Operation of Franchised Business and Affiliation with Franchisor.** Cease to be a franchise owner of Franchised Business under this Agreement and cease to operate the former Franchised Business under the System. Franchisee shall not thereafter directly or indirectly represent to the public that the former Franchised Business is or was operated or in any way connected with the System or hold itself out as a present or former franchise owner of Franchise at or with respect to the Premises;
- B. **Return Manuals and Confidential Information.** Return to Franchisor the Manuals and all trade secrets, Confidential Information (including customer lists and information) and other confidential materials, equipment, software and property owned by Franchisor and all copies thereof. Franchisee shall retain no copy or record of any of the foregoing; provided, however, that Franchisee may retain its copy of this Agreement, any correspondence between the parties, and any other document which Franchisee reasonably needs for compliance with any applicable provision of law;
- C. **Assignment of Customer Contracts, Telephone/Facsimile Numbers and Domain Names.** Take such action as may that Franchisor designates to: (i) provide and assign to Franchisor the then-current and up-to-date customer list and any membership contracts to Franchisor; and (ii) transfer, disconnect, forward, or assign all telephone/facsimile numbers and domain names used in connection with the Franchised Business, as well as any white and yellow page telephone references, advertisements, and all trade and similar name registrations and business licenses to Franchisor or its designee and cancel any interest which Franchisee may have in the same (as Franchisor directs in its sole discretion). Franchisee agrees to execute all documents necessary to comply with the obligations of this Section, including the form Conditional Assignment of Telephone/Facsimile Numbers and Domain Names attached to this Agreement as Exhibit F;
- D. **Cease using Proprietary Marks.** Cease to use in advertising or in any manner whatsoever any methods, procedures, or techniques associated with the System in which Franchisor has a proprietary right, title, or interest; cease to use the Proprietary Marks and any other

marks and indicia of operation associated with the System; and remove all trade dress, physical characteristics, color combinations, and other indications of operation under the System from the Premises. Without limiting the generality of the foregoing, Franchisee agrees that, in the event of any termination or expiration and non-renewal of this Agreement, it will remove all signage bearing the Proprietary Marks, deliver the fascia for such signs to Franchisor upon Franchisor's request, and remove any items that are characteristic of the System "trade dress" from the Premises. Franchisee agrees that Franchisor or a designated agent may enter upon the Premises at any time to make such changes at Franchisee's sole risk and expense and without liability for trespass. Upon Franchisor's request, Franchisee must provide all materials bearing the Proprietary Marks to Franchisor upon expiration or termination of this Agreement for any reason, without cost to Franchisor;

- E. **Compliance with Post-Term Covenants.** Comply with the post-term covenants not to compete and other restrictive covenants set forth in Section 14 of this Agreement;
- F. **Written Evidence of Compliance.** Provide Franchisor with written evidence that they have complied with the post-term obligations, within thirty (30) days' notice of termination or scheduled expiration of the franchise; and
- G. **Payment of Outstanding Amount.** Pay Franchisor all amounts owed to Franchisor under the terms of this Agreement.
- H. **Option to Purchase Operating Assets.** Franchisor shall have the option, but not the obligation, within thirty (30) days after the date of termination, expiration, and non-renewal of this Agreement to purchase any and all of Franchisee's assets from the Franchised Business at a purchase price equal to net depreciated book value. If Franchisor elects this option, Franchisor will deliver written notice to Franchisee. Franchisor will have the right to inspect equipment at any time during this thirty (30) day period. If Franchisor elects to purchase equipment as part of the asset purchase, Franchisor will be entitled to, and Franchisee must provide, all customary warranties and representations as to compliance with law, the maintenance, function, and condition of the equipment and Franchisee's good title to the equipment (including, but not limited to, that Franchisee owns the equipment free and clear of any liens and encumbrances).

## 17. **TAXES AND INDEBTEDNESS**

- A. **Taxes.** Franchisee must promptly pay when due any and all federal, state, and local taxes, including without limitation, unemployment, workers' compensation, and sales taxes which are levied or assessed with respect to any services or products furnished, used, or licensed pursuant to this Agreement and all accounts or other indebtedness of every kind incurred by Franchisee in the operation of the Franchised Business.
- B. **Debts and Obligations.** Franchisee hereby expressly covenants and agrees to accept full and sole responsibility for any and all debts and obligations incurred in the operation of the Franchised Business.

## 18. **WRITTEN APPROVALS; WAIVERS; FORMS OF AGREEMENT; AMENDMENT**

- A. **Franchisor's Approval.** Whenever this Agreement requires or Franchisee desires to obtain Franchisor's approval, Franchisee shall make a timely written request. Unless a

different period is specified in this Agreement, Franchisor shall respond with its approval or disapproval within fifteen (15) days of receipt of such request. If Franchisor has not specifically approved a request within such fifteen (15) day period, such failure to respond shall be deemed as a disapproval of any such request.

- B. **No Waiver.** No failure of Franchisor to exercise any power reserved to it by this Agreement and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Franchisor's right to demand exact compliance with any of the terms herein. No waiver or approval by Franchisor of any particular breach or default by Franchisee; no delay, forbearance, or omission by Franchisor to act or give notice of default or to exercise any power or right arising by reason of such default hereunder; and no acceptance by Franchisor of any payments due hereunder shall be considered a waiver or approval by Franchisor of any preceding or subsequent breach or default by Franchisee of any term, covenant, or condition of this Agreement.
- C. **Terms of Other Franchise Agreements.** No warranty or representation is made by the Franchisor that all System franchise agreements heretofore or hereafter issued by Franchisor do or will contain terms substantially similar to those contained in this Agreement. Further, Franchisee recognizes and agrees that Franchisor may, in its reasonable business judgment due to local business conditions or otherwise, waive or modify comparable provisions of other franchise agreements heretofore or hereafter granted to other System franchise owners in a non-uniform manner.
- D. **Modification of System and Manuals.** Except as provided in Section 22 and Franchisor's right to unilaterally modify the System and Manuals, no amendment, change, or variance from this Agreement shall be binding upon either Franchisor or Franchisee unless set forth in writing and signed by both parties.
- E. **No Disclaimers of Franchise Disclosure Document.** Nothing in this Agreement or in any related agreement is intended to disclaim the representations we made in the franchise disclosure document.

## 19. **ENFORCEMENT**

- A. **Full Access to Premises for Inspection.** In order to ensure compliance with this Agreement and enable Franchisor to carry out its obligation under this Agreement, Franchisee agrees that Franchisor and its designated agents shall be permitted, with or without notice, full and complete access during business hours to inspect the Premises and all records thereof, including but not limited to, records relating to Franchisee's customers, suppliers, employees, and agents. Franchisee shall cooperate fully with the Franchisor and its designated agents requesting such access.
- B. **Injunctive Relief.** The Franchisor or its designee shall be entitled to obtain without bond, declarations, temporary and permanent injunctions, and orders of specific performance in order to enforce the provisions of this Agreement relating to Franchisee's use of the Proprietary Marks, the obligations of Franchisee upon termination or expiration of this Agreement, and assignment of the franchise and ownership interests in Franchisee or in order to prohibit any act or omission by Franchisee or its employees which constitutes a violation of any applicable law or regulation, which is dishonest or misleading to prospective or current customers of businesses operated under the System, which

constitutes a danger to other franchise owners, employees, customers, or the public or which may impair the goodwill associated with the Proprietary Marks.

- C. **No Withholding of Payments.** Franchisee agrees and acknowledges that it may not withhold payments or amounts of any kind due to Franchisor on the premise of alleged nonperformance by Franchisor of any of its obligations hereunder.
- D. **Costs and Attorneys' Fees.** If Franchisee is in breach or default of any monetary or non-monetary obligation under this Agreement or any related agreement between Franchisee and Franchisor and/or Franchisor's affiliates, and Franchisor engages an attorney to enforce Franchisor's rights (whether or not formal judicial proceedings are initiated), Franchisee must reimburse Franchisor for all costs/expenses incurred in connection with enforcing its rights under this Agreement including all reasonable attorneys' fees, court costs and litigation expenses. If Franchisee institutes any legal action to interpret or enforce the terms of this Agreement, and Franchisee's claim in such action is denied or the action is dismissed, Franchisor is entitled to recover Franchisor's reasonable attorneys' fees, and all other reasonable costs and expenses incurred in defending against same, and to have such an amount awarded as part of the judgment in the proceeding.

## 20. **NOTICES**

Any notice required to be given hereunder shall be in writing and shall be either mailed by certified mail, return receipt requested, or delivered by a recognized courier service, receipt acknowledged. Notices must be provided to each party at the respective addresses set forth below:

To Franchisor: FiiZ Drinks Franchise, LLC  
Attn: General Counsel  
155 North 400, West #580  
Salt Lake City, Utah 84103

With a copy to: Fisher Zucker, LLC  
Attn: William R. Graefe, Esq.  
21 South 21<sup>st</sup> Street  
Philadelphia, PA 19103

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

Any notice complying with the provisions hereof will be deemed delivered at the earlier of: (i) three (3) days after mailing; or (ii) the actual date of delivery or receipt (as evidenced by the courier). Each party shall have the right to designate any other address for such notices by providing the other party(ies) with written notice thereof at the addresses above, and in such event, all notices to be mailed after receipt of such notice shall be sent to such other address.

## 21. **GOVERNING LAW AND DISPUTE RESOLUTION**

- A. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to this state's conflict of laws principles.
- B. **Internal Dispute Resolution.** Franchisee must first bring any claim or dispute between Franchisee and Franchisor to Franchisor's management, after providing notice as set forth

in Section 21(G) of this Agreement, and make every effort to resolve the dispute internally. Franchisee must exhaust this internal dispute resolution procedure before Franchisee may bring Franchisee's dispute before a third party. This agreement to first attempt resolution of disputes internally shall survive termination or expiration of this Agreement.

- C. **Mediation.** At Franchisor's option, all claims or disputes between Franchisee and Franchisor (or its affiliates) arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisee and Franchisor (or its affiliates), or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 21(B) above, will be submitted first to mediation to take place in Salt Lake City, Utah under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Franchisee must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify Franchisee as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Franchisee may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor. Each party will bear its own cost of mediation and Franchisor and Franchisee will share mediator fees equally. This agreement to mediate will survive any termination or expiration of this Agreement. The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 21(C) if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected intellectual property rights in the Proprietary Marks, the System, or in any Confidential Information or other confidential information; (ii) any of the restrictive covenants contained in this Agreement; and (iii) any of Franchisee's payment obligations under this Agreement.
- D. **Injunctive Relief.** Franchisee acknowledges and agrees that irreparable harm could be caused to Franchisor by Franchisee's violation of certain provisions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in any court of competent jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to: (i) Franchisee's use of the Proprietary Marks and Confidential Information (including any proprietary software used in connection with the Franchised Business); (ii) the in-term covenant not to compete, as well as any other violations of the restrictive covenants set forth in this Agreement; (iii) Franchisee's obligations on termination or expiration of this Agreement; (iv) disputes and controversies based on or arising under the Lanham Act, or otherwise involving the Proprietary Marks, as now or hereafter amended; (v) disputes and controversies involving enforcement of the Franchisor's rights with respect to confidentiality under this Agreement; and (vi) to prohibit any act or omission by Franchisee or its employees that constitutes a violation of applicable law, threatens Franchisor's franchise system or threatens other franchisees of Franchisor. Franchisee's only remedy if such an injunction is entered will be the dissolution

of the injunction, if appropriate, and Franchisee waives all damage claims if the injunction is wrongfully issued.

- E. **Venue.** Subject to Sections 21(C) and 21(D) of this Agreement, the parties agree that any actions arising out of or related to this Agreement must be initiated and litigated to conclusion exclusively in the state court of general jurisdiction in the courts of record of the State of Utah even though it may be otherwise possible to obtain jurisdiction elsewhere, and we both agree that Salt Lake City, Utah will be the exclusive venue for any litigation between us. Each party waives any objection they may have to the personal jurisdiction of or venue in the courts of Utah or, if appropriate, the United States District Court for the District of Utah (unless settled by the parties after such action is initiated). Franchisee acknowledges that this Agreement has been entered into in the State of Utah, and that Franchisee is to receive valuable and continuing services emanating from Franchisor's headquarters in Utah, including but not limited to training, assistance, support and the development of the System. In recognition of such services and their origin, Franchisee hereby irrevocably consents to the personal jurisdiction of the state and federal courts of Utah as set forth in this Section.
- F. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of the provisions of this Agreement, including the dispute resolution provisions set forth in this Section 21, each having authority to specifically enforce the right to mediate/arbitrate claims asserted against such person(s) by Franchisee.
- G. **Notice Requirement.** As a condition precedent to commencing an action for damages or for violation or breach of this Agreement, Franchisee must notify Franchisor within thirty (30) days after the occurrence of the violation or breach, and failure to timely give such notice shall preclude any claim for damages.
- H. **No Withholding of Payments.** Franchisee shall not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of Franchisor's alleged nonperformance or as an offset against any amount Franchisor or any of Franchisor's affiliates allegedly may owe Franchisee under this Agreement or any related agreements.
- I. **Limitation of Actions.** Franchisee further agrees that no cause of action arising out of or under this Agreement may be maintained by Franchisee against Franchisor unless brought before the expiration of one (1) year after the act, transaction or occurrence upon which such action is based or the expiration of one year after the Franchisee becomes aware of facts or circumstances reasonably indicating that Franchisee may have a claim against Franchisor hereunder, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense, or set-off. Franchisee hereby waives the right to obtain any remedy based on alleged fraud, misrepresentation, or deceit by Franchisor, including, without limitation, rescission of this Agreement, in any mediation, judicial, or other adjudicatory proceeding arising hereunder, except upon a ground expressly provided in this Agreement, or pursuant to any right expressly granted by any applicable statute expressly regulating the sale of franchises, or any regulation or rules promulgated thereunder.
- J. **Waiver of Punitive Damages.** Franchisee hereby waives to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) against Franchisor

arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that Franchisee's recovery is limited to actual damages. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages. Nothing in this Section or any other provision of this Agreement shall be construed to prevent Franchisor from claiming and obtaining expectation or consequential damages, including lost future royalties for the balance of the term of this Agreement if it is terminated due to Franchisee's default, which the parties agree and acknowledge Franchisor may claim under this Agreement.

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

## **22. SEVERABILITY AND CONSTRUCTION**

- A. Should any provision of this Agreement for any reason be held invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement shall in no way be affected and shall remain valid and enforceable for all purposes, both parties hereto declaring that they would have executed this Agreement without inclusion of such provision. In the event such total or partial invalidity or unenforceability of any provision of this Agreement exists only with respect to the laws of a particular jurisdiction, this paragraph shall operate upon such provision only to the extent that the laws of such jurisdiction are applicable to such provision. Each party agrees to execute and deliver to the other any further documents which may be reasonably required to make fully the provisions hereof. Franchisee understands and acknowledges that Franchisor shall have the right in its sole discretion on a temporary or permanent basis, to reduce the scope of any covenant or provision of this Agreement binding upon Franchisee without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it will comply forthwith with any covenant as so modified, which shall be fully enforceable.
- B. 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 the same instrument.

- C. The table of contents, headings, and captions contained herein are for the purposes of convenience and reference only and are not to be construed as a part of this Agreement. All terms and words used herein shall be construed to include the number and gender as the context of this Agreement may require. The parties agree that each Section of this Agreement shall be construed independently of any other Section or provision of this Agreement.

## 23. **ACKNOWLEDGMENTS**

- A. Franchisee acknowledges that it received a complete copy of this Agreement for a period not less than fourteen (14) calendar days, during which time conducted an independent investigation of the business licensed hereunder to the extent of Franchisee's desire to do so. Franchisee recognizes and acknowledges that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of the Franchisee as an independent businessperson. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, that Franchisee will be successful in this venture or that the business will attain any level of sales volume, profits, or success. Franchisee acknowledges that this Agreement, the franchise disclosure document ("FDD"), and the exhibits hereto constitutes the entire Agreement of the parties. This Agreement terminates and supersedes any prior agreement between the parties concerning the same subject matter.
- B. Franchisee agrees and acknowledges that fulfillment of any and all of Franchisor's obligations written in this Agreement or based on any oral communications which may be ruled to be binding in a court of law shall be Franchisor's sole responsibility and none of Franchisor's agents, representatives, nor any individuals associated with Franchisor's franchise company shall be personally liable to Franchisee for any reason. This is an important part of this Agreement. Franchisee agrees that nothing that Franchisee believes Franchisee has been told by Franchisor or Franchisor's representatives shall be binding unless it is written in this Agreement. This is an important part of this Agreement. Do not sign this Agreement if there is any question concerning its contents or any representations made.

***[The remainder of this page is left intentionally blank.  
Signatures to appear on the following page]***

**IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal on the date first written above.**

**FRANCHISOR:**

**FIIZ DRINKS FRANCHISE, LLC**

By: \_\_\_\_\_  
Chad Harris, President

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

**FRANCHISEE:**

\_\_\_\_\_

**IF AN INDIVIDUAL:**

By: \_\_\_\_\_  
[NAME], [TITLE]

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

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

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

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

**IF A PARTNERSHIP, CORPORATION, OR  
OTHER ENTITY:**

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

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

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

**EXHIBIT A TO THE FRANCHISE AGREEMENT**  
**DATA SHEET AND STATEMENT OF OWNERSHIP**

1. EFFECTIVE DATE: \_\_\_\_\_

2. SITE SELECTION AREA

Pursuant to Section 2(B) of the Franchise Agreement, Franchisee must locate and secure a Premises for the Franchised Business within the following Site Selection Area:

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3. PREMISES

Pursuant to Section 2(C) of the Franchise Agreement, the Franchised Business shall be located at the following approved Premises:

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4. DESIGNATED TERRITORY

Pursuant to Section 2(D) of the Franchise Agreement, Franchisee's Designated Territory will be defined as follows (if identified on a map, please attach map and reference attachment below):

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5. Franchisee Contact Person. The following individual is a shareholder, member, or partner of Franchisee and is the principal person to be contacted on all matters relating to the Franchised Business:

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

Daytime Telephone No.: \_\_\_\_\_

Evening Telephone No.: \_\_\_\_\_

Cellular Telephone No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

6. Statement of Ownership. If Franchisee is a corporation, limited liability company, partnership or other business entity, the undersigned agree and acknowledge that the following is a complete list of all of the shareholders, members, or partners of Franchisee and the percentage interest of each individual:

| <u>Name</u> | <u>Position/Title</u> | <u>Interest (%)</u> |
|-------------|-----------------------|---------------------|
| _____       | _____                 | _____               |
| _____       | _____                 | _____               |
| _____       | _____                 | _____               |
| _____       | _____                 | _____               |

**THE PARTIES SIGNING THIS DATA SHEET BELOW AGREE AND ACKNOWLEDGE THAT THIS DATA SHEET, BY ITSELF, DOES NOT CONSTITUTE A FRANCHISE AGREEMENT OR OTHERWISE CONFER ANY FRANCHISE RIGHTS UPON FRANCHISEE. THIS DATA SHEET PROVIDES CERTAIN DEAL-SPECIFIC INFORMATION IN CONNECTION WITH THE FRANCHISE THAT IS GOVERNED BY THE FRANCHISE AGREEMENT TO WHICH THIS DATA SHEET IS AN EXHIBIT.**

**THE PARTIES AGREE AND ACKNOWLEDGE THAT THE FOREGOING FRANCHISE AGREEMENT MUST BE EXECUTED PRIOR TO OR CONTEMPORANEOUS WITH THIS DATA SHEET FOR ANY RIGHTS TO BE CONFERRED.**

IN WITNESS WHEREOF, the undersigned has duly executed this Exhibit to the Franchise Agreement on this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**FRANCHISEE**

\_\_\_\_\_

By: \_\_\_\_\_  
[NAME], [TITLE]

**FRANCHISOR**

**FIIZ DRINKS FRANCHISE, LLC**

By: \_\_\_\_\_  
Chad Harris, President

## **EXHIBIT B TO THE FRANCHISE AGREEMENT**

### **PERSONAL GUARANTY**

NOTE: IF FRANCHISEE IS A CORPORATION, LIMITED LIABILITY COMPANY OR OTHER BUSINESS ENTITY, THEN EACH INDIVIDUAL/ENTITY WITH AN OWNERSHIP INTEREST IN FRANCHISEE (PRINCIPALS/MEMBERS/SHAREHOLDERS/MANAGERS/PARTNERS/ETC.) AND THEIR RESPECTIVE SPOUSES MUST EXECUTE THIS FORM OF PERSONAL GUARANTY. IF FRANCHISEE IS AN INDIVIDUAL AND FRANCHISEE'S SPOUSE HAS NOT SIGNED THE FRANCHISE AGREEMENT DIRECTLY, THEN FRANCHISEE'S SPOUSE MUST EXECUTE THIS FORM OF PERSONAL GUARANTY.

### **ARTICLE I PERSONAL GUARANTY**

The undersigned persons (individually and collectively "you") hereby represent to FiiZ Drinks Franchise, LLC, a Utah limited liability company (the "Franchisor") that you are all the owners/principals/members/shareholders/managers/partners, as applicable, of the business entity named \_\_\_\_\_ (the "Franchisee"), as well as their respective spouses, as of the date this Personal Guaranty (the "Personal Guaranty" or "Guaranty") is executed.

In consideration of the grant by Franchisor to the Franchisee as herein provided, each you hereby agree, in consideration of benefits received and to be received by each of you, jointly and severally, and for yourselves, your heirs, legal representatives and assigns, to be firmly bound by all of the terms, provisions and conditions of the franchise agreement entered into between Franchisee and Franchisor (the "Franchise Agreement"), as well as any other agreement between Franchisee and Franchisor and/or its affiliates, and do hereby unconditionally guarantee the full and timely performance by Franchisee of each and every obligation of Franchisee under the aforesaid Franchise Agreement or other agreement between Franchisor and Franchisee, including, without limitation: (i) any indebtedness of Franchisee arising under or by virtue of the aforesaid Franchise Agreement; (ii) the prohibition of any change in the percentage of Franchisee owned, directly or indirectly, by any person, without first obtaining the written consent of Franchisor prior to said proposed transfer as set forth in the Franchise Agreement; (iii) those obligations related to confidentiality, non-disclosure and indemnification; and (iv) the in-term and post-term covenants against competition, as well as all other restrictive covenants set forth in the Franchise Agreement.

### **ARTICLE II CONFIDENTIALITY**

During the initial and any renewal terms of the Franchise Agreement and this Guaranty, you will receive information, which Franchisor considers to be Confidential Information, trade secrets and/or confidential information, including without limitation: (i) site-selection criteria for a restaurant business operated utilizing Franchisor's proprietary marks (the "Proprietary Marks") and System (as defined below) (each, a "Restaurant"); (ii) methods, techniques and trade secrets for use in connection with the proprietary business operating system that Franchisor and its affiliates have developed (the "System") for the establishment and operation of a franchised Restaurant (hereafter, a "Franchised Business"); (iii) marketing research and promotional, marketing and advertising programs for the Franchised Business; (iv) knowledge of specification for and suppliers of, and methods of ordering, certain products, fixtures, furnishings, equipment and inventory used at the Franchised Business; (v) knowledge of the operating results and financial performance of other Restaurants; (vi) customer communication and retention programs, along with data used or generated in connection with those programs; (vii) Franchisor's proprietary Manuals and other instructional manuals, as well as any training materials and information Franchisor has developed for

use in connection with the System; (viii) information regarding the development of Franchisor's proprietary marks (the "Proprietary Marks"); (ix) information generated by, or used or developed in, the Restaurant's operation, including customer names, addresses, telephone numbers and related information and any other information contained in the Franchised Business's computer system; (x) the design, build-out and any construction/remodeling plans for the interior and exterior of the Franchised Business; (xi) Franchisor's proprietary Operations Manual and other instructional manuals, as well as any training materials and information Franchisor has developed for use in connection with the System; and (xii) any other proprietary information or confidential information that is provided to Franchisee by Franchisor during the term of the Franchise Agreement (collectively, "Confidential Information"). You shall not, during the term of this Agreement or anytime thereafter, communicate, divulge, or use for the benefit of any other person, partnership, association, corporation, or limited liability company any Confidential Information and trade secrets, including, without limitation: Franchisor's copyrighted materials; price marketing mixes related to the offer and sale of restaurant products and other Approved Services and Products (as defined in the Franchise Agreement); standards and specifications for providing the Approved Services and Products and other merchandise or services offered or authorized for sale by System franchisees; methods, special recipes, ingredients, menu item preparation, and other techniques and know-how concerning the operation of the Franchised Business, which may be communicated to you or of which you may become apprised by virtue of your role as a guarantor of the Franchisee's obligations under the Franchise Agreement. You also acknowledge and agree that the following also constitutes "Confidential Information" under this Section: (i) former, current and prospective customer information, including customer names and addresses, contracts/agreements (collectively "Customer Lists"), and (ii) sources and pricing matrices of any approved or designated suppliers; and (iii) any and all information, knowledge, know-how, techniques, and other data, which Franchisor designates as confidential.

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

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

**1. During the Term of the Franchise Agreement and this Guaranty.** During the term of the Franchise Agreement and this Personal Guaranty, each of the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

1.1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with any restaurant or business that offering to the public specialty drinks, bake goods, and/or other Approved Products offered by System Restaurants (each, a "Competing Business"); or (ii) offers or grants licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business; provided, however, that this Section does not apply to your operation of a System franchise pursuant to a valid franchise agreement with Franchisor, or your ownership of less than two percent (2%) of the interests in a publicly traded company.

1.2. Employ or seek to employ any person who is at that time employed by Franchisor, Franchisor's affiliates or any other System franchisee, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat; or

1.3. Divert or attempt to divert business or customers of any Franchisee-owned Franchised Businesses to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System.

## **2. After the Term of This Agreement.**

2.1. For a period of two (2) years after the expiration and nonrenewal, transfer or termination of the Franchise Agreement, regardless of the cause, the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation enter into any business competing in whole or in part with Franchisor in offering or granting franchises or licenses, or establishing joint ventures, for the ownership or operation of a Competing Business. The scope of the non-compete described in this Section shall be the geographical area where Franchisor can demonstrate that it has offered and sold franchises as of the date the Franchise Agreement is terminated or expires (or, if applicable, as of the date Franchisee assigns/transfers the Franchise Agreement).

2.2. For a period of two (2) years after the expiration, transfer or termination of the Franchise Agreement, regardless of the cause, the undersigned may not, directly or indirectly, for themselves or through, on behalf of, or in conjunction with any other person, partnership or corporation:

2.2.1. Own, maintain, engage in, be employed or serve as an officer, director, or principal of, lease space to, lend money or extend credit to, or have any other interest in or involvement with, any Competing Business that is located within a 10-mile radius of: (i) the perimeter of the Designated Territory granted under the Franchise Agreement; or (ii) any other Restaurant that exists as of the date the Franchise Agreement is terminated or expires (or, if applicable, as of the date Franchisee assigns/transfers the Franchise Agreement);

2.2.2. Contact any of Franchisor's suppliers or vendors for any competitive business purpose; or

2.2.3. Solicit any of Franchisor's employees, or the employees of Franchisor's affiliates, or any other System franchisee to discontinue employment.

3. **Intent and Enforcement.** It is the parties' intent that the provisions of this Article III be judicially enforced to the fullest extent permissible under applicable law. Accordingly, the parties agree that any reduction in scope or modification of any part of the noncompetition provisions contained herein shall not render any other part unenforceable. In the event of the actual or threatened breach of this Article III by you, any of your principals, or any members of their immediate family, Franchisor shall be entitled to an injunction restraining such person from any such actual or threatened breach. You agree that in the event of the actual or threatened breach of this Article III, Franchisor's harm will be irreparable and that Franchisor has no adequate remedy at law to prevent such harm. You acknowledge and agree that each of you has previously worked or been gainfully employed in other careers and that the provisions of this Article III in no way prevents you from earning a living. You further acknowledge and agree that the time limitation of this Article III shall be tolled during any default under this Guaranty.

## **ARTICLE IV DISPUTE RESOLUTION**

1. **Acknowledgment.** You acknowledge that this Guaranty is not a franchise agreement and does not confer upon you any rights to use the Franchisor's proprietary marks or its system.

2. **Governing Law.** This Guaranty shall be deemed to have been made in and governed by the laws of the State of Utah, without reference to that state's conflicts of laws provisions.

3. **Internal Dispute Resolution.** You must first bring any claim or dispute arising out of or relating to the Franchise Agreement or this Personal Guaranty to Franchisor's Chief Executive Officer and/or President. You agree to exhaust this internal dispute resolution procedure before bringing any dispute before a third party. This agreement to engage in internal dispute resolution first shall survive the termination or expiration of this Agreement.

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

4.1. *Excepted Claims.* The parties agree that mediation shall not be required with respect to any claim or dispute involving: (i) any of your payment obligations that are past due; (ii) the actual or threatened disclosure or misuse of Franchisor's Confidential Information; (iii) the actual or threatened violation of Franchisor's rights in, or misuse of, the Proprietary Marks, System or other trade secrets; (iv) any of the restrictive covenants contained in the Franchise Agreement or this Guaranty; or (v) any claims arising out of or related to fraud or misrepresentation by you, or your insolvency (collectively, the "Excepted Claims").

5. **Jurisdiction and Venue.** Subject to the other dispute resolution provisions in this Personal Guaranty, the parties agree that any action at law or in equity instituted against either party to this Agreement must be commenced and litigated to conclusion (unless settled) exclusively in any court of competent jurisdiction located in Salt Lake City, Utah or, if appropriate, the United States District Court for the District of Utah. The undersigned hereby irrevocably consent to the jurisdiction of these courts.

6. **Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third-party beneficiaries of this Agreement and the mediation and other dispute resolution provisions contained herein, each having authority to specifically enforce the right to mediate and litigate claims asserted against such person(s) by you.

7. **Right to Injunctive Relief.** Nothing contained in this Guaranty shall prevent Franchisor from applying to or obtaining from any court having jurisdiction a writ of attachment, temporary injunction, preliminary injunction and/or other emergency relief available to safeguard and protect Franchisor's interest prior to the filing of any mediation or arbitration proceeding, or pending the trial or handing down of a decision

or award pursuant to any mediation or arbitration proceeding conducted hereunder. If injunctive relief is granted, your only remedy will be the court's dissolution of the injunctive relief. If the injunctive relief was wrongfully issued, you expressly waive all claims for damages you incurred as a result of the wrongful issuance.

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

9. **Limitation of Action.** You further agree that no cause of action arising out of or under this Guaranty may be maintained by you unless brought before the expiration of one year after the act, transaction or occurrence upon which such action is based or the expiration of one year after you become aware of facts or circumstances reasonably indicating that you may have a claim against us, whichever occurs sooner, and that any action not brought within this period shall be barred as a claim, counterclaim, defense or set-off.

10. **Punitive Damages.** You hereby waive to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special or consequential damages (including, without limitation, lost profits) which you may have against us, arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, that your recovery shall be limited to actual damages. If any other term of this Guaranty is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions shall continue in full force and effect, including, without limitation, the waiver of any right to claim any consequential damages.

11. **Costs and Attorneys' Fees.** Whether or not formal legal proceedings are initiated, in the event Franchisor incurs any legal fees or other costs associated with enforcing the terms of this Guaranty or the Franchise Agreement against you, then Franchisor will be entitled to recover from you all costs and expenses, including reasonable attorneys' fees, incurred in enforcing the terms of this Guaranty or the Franchise Agreement.

12. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Guaranty shall not be a waiver of our right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by us respecting any breach or default shall not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Guaranty shall be cumulative. Your election to exercise any remedy available by law or contract shall not be deemed a waiver or preclude exercise of any other remedy.

13. **No Personal Liability.** You agree that fulfillment of any and all of Franchisor's obligations written in the Franchise Agreement or this Guaranty, or based on any oral communications which may be ruled to be binding in a court of law, shall be Franchisor's sole responsibility and none of our owners, officers, agents, representatives, nor any individuals associated with Franchisor shall be personally liable to you for any reason. This is an important part of this Guaranty. You agree that nothing that you believe you have been told

by us or our representatives shall be binding unless it is written in the Franchise Agreement or this Guaranty. Do not sign this Agreement if there is any question concerning its contents or any representations made.

14. **Severability.** The parties agree that if any provisions of this Guaranty may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision shall have the meaning, which renders it valid and enforceable. The language of all provisions of this Guaranty shall be construed according to fair meaning and not strictly construed against either party. The provisions of this Guaranty are severable, and this Guaranty shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable. If any material provision of this Guaranty shall be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Guaranty.

15. **Construction of Language.** Any term defined in the Franchise Agreement which is not defined in this Guaranty will be ascribed the meaning given to it in the Franchise Agreement. The language of this Guaranty will be construed according to its fair meaning, and not strictly for or against either party. All words in this Guaranty refer to whatever number or gender the context requires. If more than one party or person is referred to as you, their obligations and liabilities must be joint and several. Headings are for reference purposes and do not control interpretation.

16. **Successors.** References to “Franchisor” or “the undersigned,” or “you” include the respective parties' heirs, successors, assigns or transferees.

**IN WITNESS WHEREOF, the parties hereto have executed and delivered this Guaranty on the date stated on the first page hereof.**

**PERSONAL GUARANTORS**

\_\_\_\_\_  
[Insert Name of Guarantor]

\_\_\_\_\_  
[Insert Name of Spouse]

\_\_\_\_\_  
[Insert Name of Guarantor]

\_\_\_\_\_  
[Insert Name of Spouse]

\_\_\_\_\_  
[Insert Name of Guarantor]

\_\_\_\_\_  
[Insert Name of Spouse]

\_\_\_\_\_  
[Insert Name of Guarantor]

\_\_\_\_\_  
[Insert Name of Spouse]

**EXHIBIT C TO THE FRANCHISE AGREEMENT**

**CONSENT AND AGREEMENT OF LANDLORD FORM AND**  
**COLLATERAL ASSIGNMENT OF LEASE FORM**

### **CONSENT AND AGREEMENT OF LANDLORD**

The undersigned Landlord hereby:

- A. Agrees that the leased Premises will only be used in connection with the operation of Franchisee's Fiiz Drinks® Restaurant franchised business;
- B. Agrees that Franchisor has the right to enter the Premises to (a) make any modifications necessary to protect Franchisor's Proprietary Marks, or (b) otherwise exercise or enforce Franchisor's rights under the Franchise Agreement;
- C. Agrees to allow Franchisee, upon written request from Franchisor, to provide Franchisor with a current copy of the lease;
- D. Agrees to notify Franchisor in writing of and upon the failure of Franchisee to cure any default by Franchisee under the Lease, and also provide Franchisor with the right to cure said default under the Lease within thirty (30) days of being notified (but Franchisor is under no obligation to do so);
- E. Agrees that Franchisor will have the option, but not the obligation, to assume or renew the lease and the occupancy of the business Premises, including the right to sublease to another Franchisee, for all or any part of the remaining term of the lease, upon Franchisee's default or termination hereunder or upon Franchisee's default or termination or expiration of the Franchise Agreement, and in connection with said assumption Franchisor will not be obligated to pay to the landlord past due rent, common area maintenance, and other charges attributable to more than one (1) month. The landlord shall give Franchisor thirty (30) days, upon termination of Franchisee's rights under the lease, to exercise this option; and
- F. Agrees that the lease may not be materially amended, assigned, or sublet without Franchisor's prior written approval.

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

LANDLORD  
CORPORATE SIGNATURE:

a/an \_\_\_\_\_ corporation

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

\_\_\_\_\_  
Notary Public

## COLLATERAL ASSIGNMENT OF LEASE

**FOR VALUE RECEIVED**, the undersigned (“Assignor”) hereby assigns and transfers to FiiZ Drinks Franchise, LLC (“Assignee”), all of Assignor's right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as Schedule 1 (the “Lease”) respecting premises commonly known as \_\_\_\_\_ (the “Premises”).

This Assignment is for collateral purposes only and except as specified herein, Assignee has no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless: (i) Assignee provides express, written notice to both Assignor and the landlord of the Premises under the Lease that Assignee is assuming all of Assignor’s rights, title and interest under the Lease pursuant to this assignment; and (ii) Assignee takes possession of the Premises demised by the Lease pursuant to the terms hereof, and assumes the obligations of Assignor thereunder.

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

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

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it must elect and exercise all options to extend the term of or renew the Lease not less than 120 days prior to the last day that the option must be exercised, unless Assignee otherwise agrees in writing. If Assignee does not otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Assignor for the purpose of effecting such extension or renewal.

**ASSIGNOR:**

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

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

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

## EXHIBIT D TO THE FRANCHISE AGREEMENT

### EFT AUTHORIZATION FORM

Bank Name: \_\_\_\_\_  
ABA# : \_\_\_\_\_  
Acct. No.: \_\_\_\_\_  
Acct. Name: \_\_\_\_\_

Effective as of the date of the signature below, **[Franchisee Name]** (the “Franchisee”) hereby authorizes FiiZ Drinks Franchise, LLC (the “Company”) or its designee to withdraw funds from the above-referenced bank account, electronically or otherwise, to cover the following payments that are due and owing Company or its affiliates under the franchise agreement dated \_\_\_\_\_ (the “Franchise Agreement”) for the franchised business located at: \_\_\_\_\_ (the “Franchised Business”): (i) all Royalty Fees; (ii) Fund Contributions (if a Fund is established); (iii) (iii) any amounts due and owing the Company or its affiliates in connection with marketing materials or other supplies or inventory that is provided by Company or its affiliates; and (iv) all other fees and amounts due and owing to Company or its affiliates under the Franchise Agreement. Franchisee acknowledges each of the fees described above may be collected by the Company (or its designee) as set forth in the Franchise Agreement.

The parties further agree that all capitalized terms not specifically defined herein will be afforded the definition they are given in the Franchise Agreement.

Such withdrawals shall occur on a weekly basis, or on such other schedule as Company shall specify in writing. This authorization shall remain in full force and effect until terminated in writing by Company. **[Franchisee Name]** shall provide Company, in conjunction with this authorization, a voided check from the above-referenced account.

#### **AGREED:**

#### **FRANCHISEE**

**[INSERT FRANCHISEE NAME]**

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

Name (Print): \_\_\_\_\_

Its: \_\_\_\_\_

#### **FRANCHISOR APPROVAL**

**FIIZ DRINKS FRANCHISE, LLC**

By: \_\_\_\_\_  
Chad Harris, President

**Please attach a voided blank check, for purposes of setting up Bank and Transit Numbers.**

## EXHIBIT E TO THE FRANCHISE AGREEMENT

### CONFIDENTIALITY AND RESTRICTIVE COVENANT AGREEMENT

*(for trained employees, officers, directors, general partners, members, Designated Managers and any other management personnel of Franchisee)*

In consideration of my being a [INSERT TITLE/ROLE WITH FRANCHISEE] of \_\_\_\_\_ (the “Franchisee”), and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, I (the undersigned) hereby acknowledge and agree that Franchisee has acquired the right from FiiZ Drinks Franchise, LLC (the “Company”) to: (i) establish and operate a FiiZ Drinks® Restaurant franchised business (the “Franchised Business”); and (ii) use in the operation of the Franchised Business the Company’s trade names, trademarks and service marks (collectively, the “Proprietary Marks”) and the Company’s unique and distinctive format and system relating to the establishment and operation of FiiZ Drinks® Restaurant businesses (the “System”), as they may be changed, improved and further developed from time to time in the Company’s sole discretion, only at the following authorized and approved location: \_\_\_\_\_ (the “Premises”).

1. The Company possesses certain proprietary and confidential information relating to the operation of the Franchised Business and System generally, including without limitation: Company’s proprietary and confidential Operations Manual and other manuals providing guidelines, standards and specifications related to the establishment and operation of the Franchised Business (collectively, the “Manual”); Franchisor’s proprietary training materials and programs, as well as proprietary marketing methods and other instructional materials, trade secrets; information related to any other proprietary methodology or aspects of the System or the establishment and continued operation of the Franchised Business; financial information; any and all customer lists, contracts and other customer information obtained through the operation of the Franchised Business and other FiiZ Drinks® Restaurant businesses; any information related to any type of proprietary software that may be developed and/or used in the operation of with the Franchised Business; and any techniques, special recipes, ingredients, menu item preparation, methods, and know-how related to the operation of FiiZ Drinks® Restaurant business or otherwise used in connection with the System, which includes certain trade secrets, copyrighted materials, methods and other techniques and know-how (collectively, the “Confidential Information”).

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

3. As [INSERT TITLE WITH RESPECT TO FRANCHISEE] of the Franchisee, the Company and Franchisee will disclose the Confidential Information to me in furnishing to me the training program and subsequent ongoing training, the Manual, and other general assistance during the term of this Agreement.

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

5. The Confidential Information is proprietary, involves trade secrets of the Company, and is disclosed to me solely on the condition that I agree, and I do hereby agree, that I shall hold in strict confidence all Confidential Information and all other information designated by the Company as confidential. Unless the Company otherwise agrees in writing, I will disclose and/or use the Confidential Information only in connection with my duties as [INSERT TITLE] of the Franchisee, and will continue not to disclose any such information even after I cease to be in that position and will not use any such

information even after I cease to be in that position unless I can demonstrate that such information has become generally known or easily accessible other than by the breach of an obligation of Franchisee under the Franchise Agreement.

6. Except as otherwise approved in writing by the Company, I shall not, while in my position with the Franchisee, for myself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or limited liability company, own, maintain, engage in, be employed by, or have any interest in: (i) any other restaurant or business that (a) is offering to the public specialty drinks, bake goods, and/or other Approved Products offered by System Restaurants, or (b) otherwise generates twenty percent (20%) or more of its revenue from the combined sale the of specialty drinks, bake goods, and/or other Approved Products and/or other Approved Products offered by System Restaurants (each, a “Competing Business”); or (ii) offers or grants licenses or franchises, or establishes joint ventures, for the ownership or operation of a Competing Business. I also agree that I will not undertake any action to divert business from the Franchised Business to any Competing Business, or solicit any of the former customers or employees of Franchisee for any competitive business purpose.

6.1 *Post-Term Restrictive Covenant for Designated Manager of Franchised Business or Manager/Officers/Directors of Franchisee.* In the event I am a manager of the Franchised Business, or an officer/director/manager/partner of Franchisee that has not already executed a Personal Guaranty agreeing to be bound by the terms of the Franchise Agreement, then I further agree that I will not be involved in a Competing Business of any kind for a period of two (2) years after the expiration or termination of my employment with Franchisee for any reason: (i) at or within a five (5) mile radius of the Premises; or (ii) within a ten (10) mile radius of any other System Restaurant that exists at the time my employment with Franchisee ceases. During the two (2) year period described in this Section, I also agree that I will not: (a) be involved in the franchising or licensing of any Competing Business at any location within the United States where the Company can demonstrate it has offered or sold franchises as of the date my employment ceases with Franchisee; (b) undertake any action to divert business from the Franchised Business to any Competing Business; or (c) solicit any of the former customers or employees of Franchisee for any competitive business purpose.

7. I agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which the Company is a party, I expressly agree to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

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

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

10. This Agreement shall be construed under the laws of Utah. The only way this Agreement can be changed is in writing signed by both the Franchisee and me.

**IN WITNESS WHEREOF, this Agreement is made and entered into by the undersigned parties as of the Effective Date.**

**UNDERSIGNED**

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

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

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

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

**ACKNOWLEDGED BY FRANCHISEE**

[FRANCHISEE NAME]

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

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

## EXHIBIT F TO THE FRANCHISE AGREEMENT

### CONDITIONAL ASSIGNMENT OF TELEPHONE NUMBERS AND DOMAIN NAMES

1. \_\_\_\_\_, doing business as a FIZZ DRINKS (the “Assignor”), in exchange for valuable consideration provided by FiiZ Drinks Franchise, LLC (the “Assignee”), receipt of which is hereby acknowledged hereby conditionally assigns to Assignee all telephone numbers, facsimile numbers, domain names, as well as any listings associated therewith, utilized by Assignor in the operation of its system franchised business located at \_\_\_\_\_ (collectively, the “Assigned Property”). The Assigned Property includes the following:

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

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

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

#### **ASSIGNOR**

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

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

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

#### **ASSIGNEE**

#### **FIIZ DRINKS FRANCHISE, LLC**

By: \_\_\_\_\_  
Chad Harris, President

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

**EXHIBIT B TO THE FDD**

**STATEMENT OF PROSPECTIVE FRANCHISEE**

*[Reserved for Once Franchisor's 2023 FDD is Effective for Use  
In 1 or More of the States Requiring Such State-Specific Addenda]*

**EXHIBIT C TO THE FDD**  
**FINANCIAL STATEMENTS**

# **FiiZ Drinks Franchise, LLC**

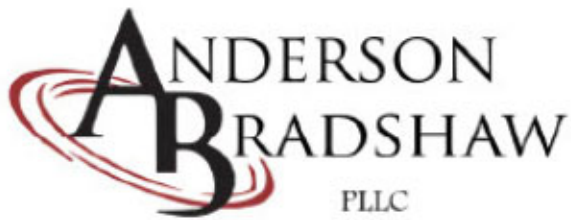
**Financial Statements  
December 31, 2022 and 2021**



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# Table of Contents

|                                              |   |
|----------------------------------------------|---|
| Independent Auditor's Report                 | 1 |
| Financial Statements                         |   |
| Balance Sheets                               | 3 |
| Statements of Operations and Members' Equity | 4 |
| Statements of Cash Flows                     | 5 |
| Notes to Fiancial Statements                 | 6 |



CERTIFIED PUBLIC ACCOUNTANTS

## Independent Auditor's Report

To the Members  
FiiZ Drinks Franchise, LLC

### Opinion

We have audited the accompanying financial statements of FiiZ Drinks Franchise, LLC (a Utah Limited Liability Company), which comprise the balance sheet as December 31, 2022 and 2021, and the related statements of operations, members' equity, and cash flows for the years then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of FiiZ Drinks Franchise, LLC as of December 31, 2022 and 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of FiiZ Drinks Franchise, LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about FiiZ Drinks Franchise, LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of FiiZ Drinks Franchise, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about FiiZ Drinks Franchise, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Anderson Bradshaw PLLC*

Anderson Bradshaw PLLC  
Salt Lake City, Utah  
**March 31, 2023**

**FiiZ Drinks Franchise, LLC****Balance Sheets****December 31, 2022 and 2021**

---

**Assets**

| Current Assets                                   | 2022                | 2021              |
|--------------------------------------------------|---------------------|-------------------|
| Cash and cash equivalents                        | \$ 508,273          | \$ 195,858        |
| Accounts receivable, net                         | 256,821             | 158,657           |
| Prepaid Expenses                                 | 4,882               | -                 |
| Deferred contract acquisition costs - current    | 188,373             | 285,171           |
| Total current assets                             | 958,349             | 639,686           |
| Noncurrent Assets                                |                     |                   |
| Property and Equipment, net                      | 25,153              | 31,078            |
| Deferred contract acquisition costs - noncurrent | 24,324              | 13,581            |
| Total Assets                                     | <u>\$ 1,007,826</u> | <u>\$ 684,345</u> |

**Liabilities and Members' Equity**

|                                       |                     |                   |
|---------------------------------------|---------------------|-------------------|
| Current Liabilities                   |                     |                   |
| Accounts payable and accrued expenses | \$ 111,788          | \$ 16,921         |
| Franchisee deposits                   | 240,500             | 318,000           |
| Deferred franchise fee - current      | 13,042              | 9,083             |
| Gift Card Liability                   | 330,782             | -                 |
| Total current liabilities             | 696,112             | 344,004           |
| Noncurrent Liabilities                |                     |                   |
| Deferred franchise fees - noncurrent  | 28,625              | 21,334            |
| Total Liabilities                     | 724,737             | 365,338           |
| Commitments and Contingencies         |                     |                   |
| Members' Equity                       | 283,089             | 319,007           |
| Total liabilities and members' Equity | <u>\$ 1,007,826</u> | <u>\$ 684,345</u> |

The accompanying notes are an integral part of these financial statements

**FiiZ Drinks Franchise, LLC**  
**Statements of Operations and Members' Equity**  
**Years Ended December 31, 2022 and 2021**

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|                                              | <u>2022</u>       | <u>2021</u>         |
|----------------------------------------------|-------------------|---------------------|
| Revenue                                      |                   |                     |
| Royalties                                    | \$ 1,308,719      | \$ 1,097,352        |
| Franchise Fees                               | 211,750           | 79,125              |
| Transfer Fees                                | 45,000            | -                   |
| Deposit Forfeitures                          | 173,500           | -                   |
| Total Revenue                                | <u>1,738,969</u>  | <u>1,176,477</u>    |
| Franchising Costs                            | <u>9,380</u>      | <u>26,000</u>       |
| Gross Profit                                 | <u>1,729,589</u>  | <u>1,150,477</u>    |
| Operating Expenses                           |                   |                     |
| Employee Compensation                        | 246,365           | 46,869              |
| Other selling, general and<br>administrative | 846,114           | 287,379             |
| Depreciation                                 | <u>8,958</u>      | <u>8,861</u>        |
| Total Operating Expense                      | <u>1,101,437</u>  | <u>343,109</u>      |
| Income from operations                       | <u>628,152</u>    | <u>807,368</u>      |
| Other Income                                 |                   |                     |
| Other Income                                 | <u>226,666</u>    | <u>194,785</u>      |
| Net income                                   | <u>854,818</u>    | <u>1,002,153</u>    |
| Other comprehensive income                   | -                 | -                   |
| Total comprehensive income                   | <u>\$ 854,818</u> | <u>\$ 1,002,153</u> |
| Members' Equity-Beginning of Period          | 319,007           | 207,966             |
| Contributions by Members                     | 100,154           | -                   |
| Distributions to Members                     | <u>(990,890)</u>  | <u>(891,112)</u>    |
| Members' Equity-End of Period                | <u>\$ 283,089</u> | <u>\$ 319,007</u>   |

The accompanying notes are an integral part of these financial statements

**FiiZ Drinks Franchise, LLC**  
**Statements of Cash Flows**  
**Years Ended December 31, 2022 and 2021**

|                                                                                      | <u>2022</u>              | <u>2021</u>              |
|--------------------------------------------------------------------------------------|--------------------------|--------------------------|
| Cash flows from operating activities:                                                |                          |                          |
| Net income (loss)                                                                    | \$ 854,818               | \$ 1,002,153             |
| Adjustments to reconcile net income to<br>net cash provided by operating activities: |                          |                          |
| Depreciation expense                                                                 | 8,958                    | 8,861                    |
| Change in operating assets and liabilities:                                          |                          |                          |
| Accounts receivable                                                                  | (98,164)                 | (125,776)                |
| Prepays                                                                              | (4,882)                  | -                        |
| Deferred contract acquisition costs                                                  | 86,056                   | (187,177)                |
| Accounts payable and accrued expenses                                                | 94,867                   | (35,979)                 |
| Franchisee deposits                                                                  | (77,500)                 | 208,500                  |
| Gift Card Liability                                                                  | 330,782                  | -                        |
| Deferred franchise fees                                                              | 11,250                   | 8,375                    |
| Net Cash from Operating Activities                                                   | <u>1,206,185</u>         | <u>878,957</u>           |
| Cash Flows from Investing Activities:                                                |                          |                          |
| Purchase of property and equipment                                                   | (3,033)                  | -                        |
| Net Cash from (used for) Investing Activities                                        | <u>(3,033)</u>           | <u>-</u>                 |
| Cash Flows from Financing Activities:                                                |                          |                          |
| Contributions by Members                                                             | 100,154                  | -                        |
| Distribution to members                                                              | (990,890)                | (891,112)                |
| Net Cash from (used for) Financing Activities                                        | <u>(890,736)</u>         | <u>(891,112)</u>         |
| Net Change in Cash and Cash Equivalents                                              | 312,416                  | (12,155)                 |
| Cash and Cash Equivalents, Beginning of Year                                         | 195,858                  | 208,013                  |
| Cash and Cash Equivalents, End of Year                                               | <u><u>\$ 508,274</u></u> | <u><u>\$ 195,858</u></u> |
| Supplemental Disclosure                                                              |                          |                          |
| Cash payments for                                                                    |                          |                          |
| Interest                                                                             | <u><u>\$ -</u></u>       | <u><u>\$ -</u></u>       |
| Income taxes                                                                         | <u><u>\$ -</u></u>       | <u><u>\$ -</u></u>       |

The accompanying notes are an integral part of these financial statements

# FiiZ Drinks Franchise, LLC

## Notes to the Financial Statements

### December 31, 2022 and 2021

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#### 1. Description of the Business

FiiZ Drinks Franchise LLC (Company or Franchisor) was formed to develop and engage in all phases of the business of franchising and marketing of specialty sodas and baked goods. The Company has franchised locations throughout the United States ("U.S"). The Company is structured as an LLC in the state of Utah, and has been since August of 2017, with its headquarters located in Salt Lake City Utah.

#### 2. Summary of Significant Accounting Policies

##### Use of Estimates in Preparing Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("US GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of sales and expenses during the reporting period. Actual results could differ from those estimates.

##### Cash and Cash Equivalents

Cash consists of deposits in financial institutions. Cash equivalents consist of highly liquid investments in money market securities that are highly liquid with an original maturity of 90 days or less. The fair value of cash equivalents approximated their carrying value as of December 31, 2022 and December 31, 2021.

##### Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded at the invoiced amounts when an unconditional right to cash exists. Accounts receivable do not bear interest. Accounts outstanding longer than the contractual payment terms are considered past due. Accounts are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when cash is received. During 2022 and 2021, the Company specifically identified uncollectible accounts of \$0 and \$79,093, respectively, which were written off to bad debt expense and reported as part of other selling, general and administrative expenses on the accompanying statements of operations and members' equity. Receivables outstanding as of December 31, 2022 and 2021 mostly comprised of rebates from suppliers and accrued franchise fees and royalties from franchisees, there were no specifically identified receivables deemed to have significant collection risk in addition to those already written off to bad debt, the Company did not record an allowance for doubtful accounts as of December 31, 2022 and 2021. The following table summarizes accounts receivable for the years ended December 31, 2022 and 2021:

|                                           | 2022              | 2021              |
|-------------------------------------------|-------------------|-------------------|
| Accounts and receivable                   | 252,743           | 158,657           |
| Accounts and receivable - related parties | 4,078             | -                 |
| Less allowance for bad debt               | -                 | -                 |
|                                           | <u>\$ 256,821</u> | <u>\$ 158,657</u> |

# **FiiZ Drinks Franchise, LLC**

## **Notes to the Financial Statements**

### **December 31, 2022 and 2021**

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#### Property and Equipment

Property and equipment are stated at historical cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of property and equipment. Costs of major improvements that extend the useful life of the property and equipment have been capitalized, while costs of normal repairs and maintenance are expensed as incurred. The estimated useful life of each asset category is summarized as follows:

|                        | <u>Estimated Useful Life</u>                      |
|------------------------|---------------------------------------------------|
| Office equipment       | 3 years                                           |
| Vehicles               | 5 years                                           |
| Office furniture       | 7 years                                           |
| Leasehold improvements | Shorter of remaining lease term or estimated life |

When property and equipment is retired or otherwise disposed of, the net book value of the asset is removed from the respective accounts and any gain or loss is included in the results of operations.

#### Advertising Expense

Advertising costs are expensed as incurred. The Company recorded advertising expense of \$35,654 and \$5,151 for the years ended December 31, 2022 and 2021, respectively, and are included in other selling, general and administrative expenses in the statements of operations.

#### Income Taxes

The Company is structured as an LLC as such the company is treated as a flow through entity and no taxes are paid at the company level.

#### Revenue Recognition - ASC 606

The Company derives substantially all revenue from 1) Franchise Royalties, and 2) Franchise Fees. The Company adopted the provisions of Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*, (referred to collectively as "ASC 606") effective January 1, 2020 using the modified retrospective method. Following the adoption of ASC 606, the Company recognizes revenue when control of these services are transferred to customers in an amount that reflects consideration to which the Company expects to be entitled in exchange for those services, net of tax. Revenue recognition is determined from the following steps:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations within the contract;
- Recognition of revenue when, or as, performance obligations are satisfied.

The Company recognizes revenue as follows:

The Company recognizes revenues from both franchise royalties and franchise fees. Franchise royalty rates are determined by each franchisee's signed franchise disclosure documents. These rates may vary; however, all franchise royalty fees are a product of gross sales times the agreed upon rate. The amount calculated is then recognized and collected on a weekly basis.

# **FiiZ Drinks Franchise, LLC**

## **Notes to the Financial Statements**

### **December 31, 2022 and 2021**

---

Franchise fee revenue is recognized in accordance with the Company's revenue recognition policy that include: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years.

#### Deferred Contract Acquisition Costs

In connection with the adoption of ASC 606, the Company capitalizes incremental costs of obtaining a contract, provided the Company expects to recover those costs. The capitalized amounts mainly consist of sales commissions paid to the Company's sales team.

These costs are recorded as deferred contract acquisition costs on the balance sheet. Sales commissions for sales personnel who sell franchises are deferred and amortized on a basis that includes: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to the sale of intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years.

#### Gift Card Liabilities

As of October 1, 2022 the Company started accruing gift card liabilities at the franchisor level. This has been done by pooling the cash related to gift card sales at the franchisor level and then subsequently redistributing cash to the individual stores as the gift cards are redeemed at franchisee locations. The location where a gift card is redeemed will collect the associated cash and recognize the appropriate revenue.

In accordance with ASC 606 FiiZ Drinks Franchise LLC bases their breakage (unredeemed gift cards) policy on historical redemption patterns, based on reasonable estimations for which gift card redemptions are remote. For FiiZ Drinks Franchise LLC, breakage is recognized on the remaining gift card balance once the issuance date of the gift card is more than 12 months old. Based on both national data and FiiZ data, the possibility of amounts being redeemed after 12 months is remote.

### **3. Revenue**

Pursuant to ASC 606, the Company determines revenue recognition by: (1) identifying the contract, or contracts, with our customer; (2) identifying the performance obligations in the contract; (3) determining the transaction price; (4) allocating the transaction price to performance obligations in the contract; and (5) recognizing revenue when, or as, we satisfy performance obligations by transferring the promised goods or services.

Revenues are primarily derived from the selling of franchises and the collection of royalty fees; which is based on the percentage agreed upon with each individual franchisee times monthly franchisee revenue. Other revenues include training, technology, and other administrative income.

Franchise fee revenue is recognized in accordance with the Company's revenue recognition policy that include: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years. During the years ended December 31, 2022 and 2021, in accordance with ASC 606,

**FiiZ Drinks Franchise, LLC**  
**Notes to the Financial Statements**  
**December 31, 2022 and 2021**

---

the Company recorded a total of \$211,750 and \$79,125 respectively as income related to the amortization of deferred franchise fees.

In addition to the revenue recognized for the amortization of franchise fees related to opened stores, revenue related to deposit forfeitures were recognized in 2022 for a total of \$173,500. This amount represents the dollar value of the deposits that were determined to have a remote likelihood of moving forward to opening a store as of December 31, 2022. Based on the contracts signed related to each of these deposits it was agreed on that the monies deposited were nonrefundable, and that they would be surrendered if no action was taken toward opening a store.

The Company charges a fee for each Franchisee location that is sold to a new owner. For the year ended 2022 the Company recognized transfer fee income of \$45,000.

Revenue from royalty fees is recognized monthly as earned. Revenue from other performance obligations such as training, marketing, etc., are billed separately from the franchise fee and are recognized as revenue when the obligation is satisfied. During the years ended December 31, 2022 and 2021, the Company recorded a total of \$1,308,719 and \$1,097,352 respectively as income related to royalties.

As of December 31, 2022, the Company had approximately 49 individual franchise outlets in operation of which 3 were Company owned.

**4. Property and Equipment**

Property and equipment as of December 31, 2022 and 2021 is as follows:

|                               | 2022             | 2021             |
|-------------------------------|------------------|------------------|
| Furniture and equipment       | 7,822            | 4,789            |
| Vehicles                      | 40,885           | 40,885           |
|                               | 48,707           | 45,674           |
| Less accumulated depreciation | (23,554)         | (14,596)         |
|                               | <u>\$ 25,153</u> | <u>\$ 31,078</u> |

For the years ended December 31, 2022 and 2021, depreciation expense was \$8,958 and \$8,861; respectively.

**5. Deferred Franchise Fees and Contract Acquisition Costs**

The following table summarizes the deferred franchise fees for the years ended December 31, 2022 and 2021:

|                                      | 2022             | 2021             |
|--------------------------------------|------------------|------------------|
| Deferred franchise fees              | 41,667           | 30,417           |
| Less current portion                 | 13,042           | 9,083            |
| Deferred franchise fees - noncurrent | <u>\$ 28,625</u> | <u>\$ 21,334</u> |

# **FiiZ Drinks Franchise, LLC**

## **Notes to the Financial Statements**

### **December 31, 2022 and 2021**

---

During the years ended December 31, 2022 and 2021, in accordance with ASC 606, the Company recorded a total of \$211,750 and \$79,125 respectively as income related to the amortization of deferred franchise fees.

The following table summarizes the activity of deferred contract acquisition costs for the years ended December 31, 2022 and 2021:

|                                                  | 2022             | 2021             |
|--------------------------------------------------|------------------|------------------|
| Deferred contract acquisition costs              | 212,697          | 298,752          |
| Less current portion                             | 188,373          | 285,171          |
| Deferred contract acquisition costs - noncurrent | <u>\$ 24,324</u> | <u>\$ 13,581</u> |

During the years ended December 31, 2022 and 2021, in accordance with ASC 606, the Company recorded a total of \$352,805 and \$61,323 respectively as expense related to amortization for deferred sales commissions.

#### **6. Gift Card Liability**

The Company's gross gift card liability was \$578,232 as of December 31, 2022. This amount was offset by a contra gift card liability of \$247,450 that relates to the acceptance of gift card liabilities that were accrued between January 1, 2022, and October 1, 2022 for which no cash was collected. The net gift card liability as reported in the accompanying balance sheet for December 31, 2022, was \$330,782.

#### **7. Related Party Transactions**

During the year ended December 31, 2022, the Company had limited transactions with related parties. These transactions were conducted in the normal course of business. The Company's related parties include its subsidiaries and key management personnel. The transactions with related parties were as follows:

Shared service fees to Stena Enterprises, an investor of the Company, totaled \$66,250 during the year ended December 31, 2022.

Related party receivables totaled \$4,078 and are included in total accounts receivable on the accompanying balance sheet as of December 31, 2022. These receivables relate to the Company paying for products or services on behalf of the related party and then requesting a reimbursement from the related entity.

Related party payables totaled \$75,235 as of December 31, 2022. A portion, \$66,250, relates to the above shared service fees that had not yet been paid for as of December 31, 2022, and \$8,985 relates to amounts due to related parties for services performed for the Company.

#### **8. Subsequent Events**

The Company evaluated the effects of all subsequent events from January 1, 2023 through March 31, 2023 (the date the financial statements were available for issuance) and did not note any items that would materially affect the financial statements or require additional disclosure.

# **FiiZ Drinks Franchise, LLC**

**Financial Statements  
December 31, 2021 and 2020**



# **FiiZ Drinks Franchise, LLC**

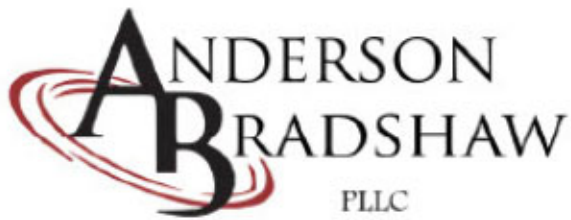
## **Index**

**December 31, 2021 and 2020**

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# **Table of Contents**

|                                                                   |   |
|-------------------------------------------------------------------|---|
| Independent Auditor's Report for the year ended December 31, 2021 | 1 |
| Independent Auditor's Report for the year ended December 31, 2020 | 3 |
| Financial Statements                                              |   |
| Balance Sheets                                                    | 5 |
| Statements of Operations and Members' Equity                      | 6 |
| Statements of Cash Flows                                          | 7 |
| Notes to Financial Statements                                     | 8 |



CERTIFIED PUBLIC ACCOUNTANTS

## Independent Auditor's Report

To the Members  
FiiZ Drinks Franchise, LLC

### Opinion

We have audited the accompanying financial statements of FiiZ Drinks Franchise, LLC (a Utah Limited Liability Company), which comprise the balance sheet as December 31, 2021, and the related statements of operations, members' equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of FiiZ Drinks Franchise, LLC as of December 31, 2021, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of FiiZ Drinks Franchise, LLC and to meet our other ethical responsibilities in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Emphasis of Matter

As discussed in Note 6 to the financial statements, the 2020 financial statements have been restated to correct misstatements. Our opinion is not modified with respect to this matter.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about FiiZ Drinks Franchise, LLC's ability to continue as a going concern within one year after the date that the financial statements are available to be issued.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements, including omissions, are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of FiiZ Drinks Franchise, LLC's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about FiiZ Drinks Franchise, LLC's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

*Anderson Bradshaw PLLC*

Anderson Bradshaw PLLC  
Salt Lake City, Utah  
**August 31, 2022**



**Joseph B Glass & Associates**  
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### **Independent Auditor's Report**

The Members  
FiiZ Drinks Franchise LLC  
Farmington, Utah

### **Report on the Financial Statements**

We have audited the accompanying financial statements of FiiZ Drinks Franchise LLC, which comprise the balance sheet as of December 31, 2020, and the related statements of operations and members' equity, and cash-flows for the year then ended and the related notes to the financial statements.

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

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

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

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

**Emphasis of Matter**

As discussed in Note 6 to the financial statements, the 2020 financial statements have been restated to correct certain misstatements. Our opinion is not modified with respect to this matter.

**Opinion**

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

*Joseph B Glass & Associates*

Joseph B Glass & Associates

Blanding, Utah

September 2, 2022

**FiiZ Drinks Franchise, LLC**  
**Balance Sheets**  
**December 31, 2021 and 2020**

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|                                                  | 2021              | 2020<br>Restated  |
|--------------------------------------------------|-------------------|-------------------|
| Assets                                           |                   |                   |
| Current Assets                                   |                   |                   |
| Cash and cash equivalents                        | \$ 195,858        | \$ 208,013        |
| Accounts receivable, net                         | 158,657           | 32,881            |
| Deferred contract acquisition costs - current    | 285,171           | 108,240           |
| Total current assets                             | 639,686           | 349,134           |
| Noncurrent Assets                                |                   |                   |
| Property and equipment, net                      | 31,078            | 39,939            |
| Deferred contract acquisition costs - noncurrent | 13,581            | 3,335             |
| Total asset                                      | <u>\$ 684,345</u> | <u>\$ 392,408</u> |
| Liabilities and Members' Equity                  |                   |                   |
| Current Liabilities                              |                   |                   |
| Accounts payable and accrued expenses            | 16,921            | 52,900            |
| Franchisee deposits                              | 318,000           | 109,500           |
| Deferred franchise fees - current                | 9,083             | 7,750             |
| Total current liabilities                        | 344,004           | 170,150           |
| Noncurrent Liabilities                           |                   |                   |
| Deferred franchise fees - noncurrent             | 21,334            | 14,292            |
| Total liabilities                                | 365,338           | 184,442           |
| Commitments and Contingencies                    |                   |                   |
| Members' Equity                                  | 319,007           | 207,966           |
| Total liabilities and members' equity            | <u>\$ 684,345</u> | <u>\$ 392,408</u> |

The accompanying notes are an integral part of these financial statements

**FiiZ Drinks Franchise, LLC**  
**Statements of Operations and Members' Equity**  
**Years Ended December 31, 2021 and 2020**

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|                                                    | 2021         | 2020<br>Restated |
|----------------------------------------------------|--------------|------------------|
| Revenue:                                           |              |                  |
| Royalties                                          | \$ 1,097,352 | \$ 916,121       |
| Franchise fees                                     | 79,125       | 43,625           |
| Total revenue                                      | 1,176,477    | 959,746          |
| Franchising costs                                  | 26,000       | 25,000           |
| Gross profit                                       | 1,150,477    | 934,746          |
| Operating Expenses:                                |              |                  |
| Employee compensation                              | 46,869       | 90,498           |
| Other selling, general and administrative expenses | 287,379      | 185,404          |
| Depreciation expense                               | 8,861        | 4,773            |
| Total operating expenses                           | 343,109      | 280,675          |
| Income from operations                             | 807,368      | 654,071          |
| Other Income (Expense):                            |              |                  |
| Interest expense                                   | -            | (862)            |
| Other income                                       | 194,785      | 91,568           |
| Net income                                         | 1,002,153    | 744,777          |
| Other comprehensive income                         | -            | -                |
| Total comprehensive income                         | \$ 1,002,153 | \$ 744,777       |
| Members' Equity- Beginning of Period               | 207,966      | 176,872          |
| Restatement Adjustment                             | -            | (14,305)         |
| Cumulative Effect of Change in Accounting Method   | -            | (20,982)         |
| Distributions to Members                           | (891,112)    | (678,396)        |
| Members' Equity- End of Period                     | \$ 319,007   | \$ 207,966       |

The accompanying notes are an integral part of these financial statements

**FiiZ Drinks Franchise, LLC**  
**Statements of Cash Flows**  
**Years Ended December 31, 2021 and 2020**

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|                                                                                      | 2021         | 2020<br>Restated |
|--------------------------------------------------------------------------------------|--------------|------------------|
| Cash flows from operating activities:                                                |              |                  |
| Net income (loss)                                                                    | \$ 1,002,153 | \$ 744,777       |
| Adjustments to reconcile net income to<br>net cash provided by operating activities: |              |                  |
| Depreciation expense                                                                 | 8,861        | 4,773            |
| Change in operating assets and liabilities:                                          |              |                  |
| Accounts receivable                                                                  | (125,776)    | (23,186)         |
| Deferred contract acquisition costs                                                  | (187,177)    | (111,575)        |
| Accounts payable and accrued expenses                                                | (35,979)     | 28,685           |
| Franchisee deposits                                                                  | 208,500      | 109,500          |
| Deferred franchise fees                                                              | 8,375        | 22,042           |
| Net Cash from Operating Activities                                                   | 878,957      | 775,016          |
| Net Cash from (used for) Investing Activities                                        | -            | -                |
| Cash Flows from Financing Activities:                                                |              |                  |
| Distribution to members                                                              | (891,112)    | (678,396)        |
| Net Cash from (used for) Financing Activities                                        | (891,112)    | (678,396)        |
| Net Change in Cash and Cash Equivalents                                              | (12,155)     | 96,620           |
| Cash and Cash Equivalents, Beginning of Year                                         | 208,013      | 111,393          |
| Cash and Cash Equivalents, End of Year                                               | \$ 195,858   | \$ 208,013       |
| Supplemental Disclosure                                                              |              |                  |
| Cash payments for                                                                    |              |                  |
| Interest                                                                             | \$ -         | \$ -             |
| Income taxes                                                                         | \$ -         | \$ -             |

The accompanying notes are an integral part of these financial statements

# FiiZ Drinks Franchise, LLC

## Notes to the Financial Statements

### December 31, 2021 and 2020

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#### 1. Description of the Business

FiiZ Drinks Franchise LLC (Company) was formed to develop and engage in all phases of the business of franchising and marketing of specialty sodas and baked goods. The Company has franchised locations throughout the Western United States ("U.S"). The Company is structured as an LLC in the state of Utah, and has been since August of 2017, with its headquarters located in Farmington Utah.

#### 2. Summary of Significant Accounting Policies

##### Use of Estimates in Preparing Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("US GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amount of sales and expenses during the reporting period. Actual results could differ from those estimates.

##### Cash and Cash Equivalents

Cash consists of deposits in financial institutions. Cash equivalents consist of highly liquid investments in money market securities that are highly liquid with an original maturity of 90 days or less. The fair value of cash equivalents approximated their carrying value as of December 31, 2021 and December 31, 2020.

##### Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable are recorded at the invoiced amounts when an unconditional right to cash exists. Accounts receivable do not bear interest. Accounts outstanding longer than the contractual payment terms are considered past due. Accounts are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when cash is received. During 2021 and 2020, the Company specifically identified uncollectible accounts of \$79,093 and \$10,276, respectively, which were written off to bad debt expense and reported as part of other selling, general and administrative expenses on the accompanying statements of operations and members' equity. Receivables outstanding as of December 31, 2021 and 2020 mostly comprised of rebates from suppliers and past due franchise fees from franchisees, there were no specifically identified receivables deemed to have significant collection risk in addition to those already written off to bad debt, the Company did not record an allowance for doubtful accounts as of December 31, 2021 and 2020. The following table summarizes accounts receivable for the years ended December 31, 2021 and 2020:

|                             | 2021              | 2020             |
|-----------------------------|-------------------|------------------|
| Accounts and receivable     | \$ 158,657        | \$ 32,881        |
| Less allowance for bad debt | -                 | -                |
|                             | <u>\$ 158,657</u> | <u>\$ 32,881</u> |

# **FiiZ Drinks Franchise, LLC**

## **Notes to the Financial Statements**

### **December 31, 2021 and 2020**

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#### Property and Equipment

Property and equipment are stated at historical cost less accumulated depreciation and amortization. Depreciation is computed using the straight-line method over the estimated useful lives of property and equipment. Costs of major improvements that extend the useful life of the property and equipment have been capitalized, while costs of normal repairs and maintenance are expensed as incurred. The estimated useful life of each asset category is summarized as follows:

|                        | <u>Estimated Useful Life</u>                      |
|------------------------|---------------------------------------------------|
| Office equipment       | 3 years                                           |
| Vehicles               | 5 years                                           |
| Office furniture       | 7 years                                           |
| Leasehold improvements | Shorter of remaining lease term or estimated life |

When property and equipment is retired or otherwise disposed of, the net book value of the asset is removed from the respective accounts and any gain or loss is included in the results of operations.

#### Advertising Expense

Advertising costs are expensed as incurred. The Company recorded advertising expense of \$5,151 and \$41,208 for the years ended December 31, 2021 and 2020, respectively, and are included in other selling, general and administrative expenses in the statements of operations.

#### Income Taxes

The Company is structured as an LLC as such the company is treated as a flow through entity and no taxes are paid at the company level.

#### Revenue Recognition - ASC 606

The Company derives substantially all revenue from 1) Franchise Royalties, and 2) Franchise Fees. The Company adopted the provisions of Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers*, (referred to collectively as "ASC 606") effective January 1, 2020 using the modified retrospective method. Following the adoption of ASC 606, the Company recognizes revenue when control of these services are transferred to customers in an amount that reflects consideration to which the Company expects to be entitled in exchange for those services, net of tax. Revenue recognition is determined from the following steps:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations within the contract;
- Recognition of revenue when, or as, performance obligations are satisfied.

The Company recognizes revenue as follows:

The Company recognizes revenues from both franchise royalties and franchise fees. Franchise royalty rates are determined by each franchisee's signed franchise disclosure documents. These rates may vary; however, all franchise royalty fees are a product of gross sales times the agreed upon rate. The amount calculated is then recognized and collected on a weekly basis.

# **FiiZ Drinks Franchise, LLC**

## **Notes to the Financial Statements**

### **December 31, 2021 and 2020**

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Franchise fee revenue is recognized in accordance with the Company's revenue recognition policy that include: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years.

#### Deferred Contract Acquisition Costs

In connection with the adoption of ASC 606, the Company capitalizes incremental costs of obtaining a contract, provided the Company expects to recover those costs. The capitalized amounts mainly consist of sales commissions paid to the Company's sales team.

These costs are recorded as deferred contract acquisition costs on the balance sheet. Sales commissions for sales personnel who sell franchises are deferred and amortized on a basis that includes: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to the sale of intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years.

### **3. Revenue**

Effective January 1, 2020 the Company adopted the revenue recognition provisions of the Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) statement 606 (Standard). As provided for under the Standard, the Company recognized the cumulative effect of implementing the standard as a reduction of retained earnings as of January 1, 2020 in the amount of \$20,982. The Company elected to apply the guidance of the Standard to all uncompleted contracts as of January 1, 2020. The offset to the increase in retained earnings was and decrease in deferred franchise fee liability of \$23,667 and deferred contract acquisition costs assets of \$2,685 on January 1, 2020.

Pursuant to the Standard, the Company determines revenue recognition by: (1) identifying the contract, or contracts, with our customer; (2) identifying the performance obligations in the contract; (3) determining the transaction price; (4) allocating the transaction price to performance obligations in the contract; and (5) recognizing revenue when, or as, we satisfy performance obligations by transferring the promised goods or services.

Revenues are primarily derived from the selling of franchises and the collection of royalty fees; which is based on the percentage agreed upon with each individual franchisee times monthly franchisee revenue. Other revenues include training, technology, and other administrative income.

Franchise fee revenue is recognized in accordance with the Company's revenue recognition policy that include: 1) a cliff recognition as a store opens, this relates to pre-open performance obligations that are satisfied as the store opens; and 2) straight line, the remaining portion related to intellectual property is recognized over the period of benefit stated in the franchise disclosure document, which is five years. During the years ended December 31, 2021 and 2020, in accordance with ASC 606, the Company recorded a total of \$79,125 and \$43,625 respectively as income related to the amortization of deferred franchise fees.

Revenue from royalty fees is recognized monthly as earned. Revenue from other performance obligations such as training, marketing, etc., are billed separately from the franchise fee and are recognized as revenue when the obligation is satisfied. During the years ended December 31, 2021

**FiiZ Drinks Franchise, LLC**  
**Notes to the Financial Statements**  
**December 31, 2021 and 2020**

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and 2020, the Company recorded a total of \$1,097,352 and \$916,121 respectively as income related to royalties.

As of December 31, 2021, the Company had approximately 39 individual franchise outlets in operation of which 3 were Company owned.

**4. Property and Equipment**

Property and equipment as of December 31, 2021 and 2020 is as follows:

|                               | 2021             | 2020             |
|-------------------------------|------------------|------------------|
| Furniture and equipment       | \$ 4,789         | \$ 4,789         |
| Vehicles                      | 40,885           | 40,885           |
|                               | 45,674           | 45,674           |
| Less accumulated depreciation | (14,596)         | (5,735)          |
|                               | <u>\$ 31,078</u> | <u>\$ 39,939</u> |

For the years ended December 31, 2021 and 2020, depreciation expense was \$8,861 and \$4,773, respectively.

**5. Deferred Franchise Fees and Contract Acquisition Costs**

The following table summarizes the deferred franchise fees for the years ended December 31, 2021 and 2020:

|                                      | 2021             | 2020             |
|--------------------------------------|------------------|------------------|
| Deferred franchise fees              | \$ 30,417        | \$ 22,042        |
| Less current portion                 | 9,083            | 7,750            |
| Deferred franchise fees - noncurrent | <u>\$ 21,334</u> | <u>\$ 14,292</u> |

During the years ended December 31, 2021 and 2020, in accordance with ASC 606, the Company recorded a total of \$79,125 and \$43,625 respectively as income related to the amortization of deferred franchise fees.

The following table summarizes the activity of deferred contract acquisition costs for the years ended December 31, 2021 and 2020:

|                                                  | 2021             | 2020            |
|--------------------------------------------------|------------------|-----------------|
| Deferred contract acquisition costs              | \$ 298,752       | \$ 111,575      |
| Less current portion                             | 285,171          | 108,240         |
| Deferred contract acquisition costs - noncurrent | <u>\$ 13,581</u> | <u>\$ 3,335</u> |

During the years ended December 31, 2021 and 2020, in accordance with ASC 606, the Company recorded a total of \$61,323 and \$15,694 respectively as expense related to amortization for deferred sales commissions.

**FiiZ Drinks Franchise, LLC**  
**Notes to the Financial Statements**  
**December 31, 2021 and 2020**

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**6. Restated 2020 Financials**

The accompanying financial statements as of December 31, 2020 and for the year then ended have been restated to correct identified reporting errors. The restatement includes corrections related to cash, vehicles and associated depreciation, and debt (current and long-term), due to these items not being the property or obligation of the company. In addition, corrections were needed to properly report franchise fee revenue and the related costs to acquire contracts under ASC 606. In addition, Management reevaluated the recognition period of the Company's franchise fee revenues under ASC 606.

Analysis of the restated balance sheet as of December 31, 2020 is as follows:

|                                                  | As<br>Previously<br>Reported | Change in<br>Accounting<br>Method | Other              | As<br>Restated    |
|--------------------------------------------------|------------------------------|-----------------------------------|--------------------|-------------------|
| Cash and cash equivalents                        | \$ 265,495                   |                                   | \$ (57,482)        | \$ 208,013        |
| Accounts receivable, net                         | 41,635                       |                                   | (8,754)            | 32,881            |
| Property and equipment, net                      | 153,972                      |                                   | (114,033)          | 39,939            |
| Deferred contract acquisition costs - current    | -                            | 725                               | 107,515            | 108,240           |
| Deferred contract acquisition costs - noncurrent | -                            | 1,960                             | 1,375              | 3,335             |
| Total Assets                                     | <u>\$ 461,102</u>            | <u>\$ 2,685</u>                   | <u>\$ (71,379)</u> | <u>\$ 392,408</u> |
| Current portion long-term debt                   | \$ 26,536                    |                                   | \$ (26,536)        | \$ -              |
| Accounts payable and accrued expenses            | 52,900                       |                                   |                    | 52,900            |
| Franchisee deposits                              | 118,500                      |                                   | (9,000)            | 109,500           |
| Deferred franchisee fees - current               | 30,500                       | (22,417)                          | (333)              | 7,750             |
| Long-term debt - noncurrent                      | 59,190                       |                                   | (59,190)           | -                 |
| Deferred franchisee fees - noncurrent            | 66,058                       |                                   | (51,766)           | 14,292            |
| Total Liabilities                                | <u>353,684</u>               | <u>(22,417)</u>                   | <u>(146,825)</u>   | <u>184,442</u>    |
| Members' equity                                  | 107,418                      | 25,102                            | 75,446             | 207,966           |
| Total Liabilities and Members' Equity            | <u>\$ 461,102</u>            | <u>\$ 2,685</u>                   | <u>\$ (71,379)</u> | <u>\$ 392,408</u> |

The changes related to cash, vehicles and its associated depreciation, current and long-term debt, were restated due to them not being the property or obligation of the company. The remaining portion of the restatement of the balance sheet for 2021 relate to a reevaluation of 606. Management reevaluated the treatment of the franchise fee and its recognition period. In addition, the capitalization of the cost to acquire a contract had been previously absent from the financials and was subsequently added in the restatement.

**FiiZ Drinks Franchise, LLC**  
**Notes to the Financial Statements**  
**December 31, 2021 and 2020**

Analysis of the restated statements of operations and members' equity for the year ended December 31, 2020 is as follows:

|                                                  | As<br>Previously<br>Reported | Change in<br>Accounting<br>Method | Other     | As<br>Restated |
|--------------------------------------------------|------------------------------|-----------------------------------|-----------|----------------|
| Franchise fees                                   | \$ 34,125                    |                                   | \$ 9,500  | \$ 43,625      |
| Royalties                                        | 916,121                      |                                   |           | 916,121        |
| Other income                                     | 120,481                      |                                   | (120,481) | -              |
| Total Income                                     | 1,070,727                    | -                                 | (110,981) | 959,746        |
| Franchising costs                                | 53,913                       |                                   | (28,913)  | 25,000         |
| Gross profit                                     | 1,016,814                    | -                                 | (82,068)  | 934,746        |
| Operating Expenses                               | 360,441                      |                                   | (79,766)  | 280,675        |
| Operating Income                                 | 656,373                      | -                                 | (2,302)   | 654,071        |
| Interest expense                                 | (3,193)                      |                                   | 2,331     | (862)          |
| Other income                                     | 40                           |                                   | 91,528    | 91,568         |
| Net Income                                       | \$ 653,220                   | \$ -                              | \$ 91,557 | \$ 744,777     |
| Members' equity beginning of year                | \$ 176,872                   |                                   |           | \$ 176,872     |
| Restatement adjustment                           | -                            | (31,599)                          | 17,294    | (14,305)       |
| Cumulative effect of change in accounting method | (77,683)                     | 56,701                            |           | (20,982)       |
| Distributions to members                         | (644,991)                    |                                   | (33,405)  | (678,396)      |
| Members' equity end of year                      | \$ 107,418                   | \$ 25,102                         | \$ 75,446 | \$ 207,966     |

Due to the reevaluation of franchise fees the recognized revenue associated with it went up as recognition has been moved forward as performance obligations are satisfied. Other income was moved below operating income as the associated income was never related to the core nature or mission of the business, in addition, the associated costs were taken from cost of goods sold and matched with its associated revenue. General and administrative expenses went down due to the capitalization of the cost to acquire a contract that was capitalized due to management's reevaluation of 606.

Analysis of the restated statement of cash flows for the year ended December 31, 2020 is as follows:

|                                                  | As<br>Previously<br>Reported | Change in<br>Accounting<br>Method | Other       | As<br>Restated |
|--------------------------------------------------|------------------------------|-----------------------------------|-------------|----------------|
| Cash provided by (used for) operating activities | \$ 824,694                   |                                   | \$ (49,678) | \$ 775,016     |
| Cash used for financing activities               | (670,592)                    |                                   | (7,804)     | (678,396)      |
| Net increase in cash and cash equivalents        | \$ 154,102                   |                                   | \$ (57,482) | \$ 96,620      |

No effect on taxes directly related to the business given that the entity is an LLC and is taxed as a flow through entity

**FiiZ Drinks Franchise, LLC**  
**Notes to the Financial Statements**  
**December 31, 2021 and 2020**

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**7. Subsequent Events**

The Company evaluated the effects of all subsequent events from January 1, 2022, through August 31, 2022 (the date the financial statements were available for issuance) and, except as disclosed in this note, did not note any items that would materially affect the financial statements or require additional disclosure.

Stena Group Acquisition

On June 22, 2022, the majority ownership and control of the Company was acquired by The Stena Group. This transaction should have no effect on current operations of the company or its franchisees.

# EXHIBIT D TO THE FDD

## SCHEDULE/LIST(S) OF FRANCHISEES

### List of Active and Operating Franchised Shops as of 12/31/2022

| FRANCHISEES WITH OPEN FRANCHISED BUSINESS AS OF DECEMBER 31, 2022 |                                                     |                                                           |              |             |
|-------------------------------------------------------------------|-----------------------------------------------------|-----------------------------------------------------------|--------------|-------------|
| Franchise                                                         | Franchise Owner                                     | Address                                                   | Phone Number | Year Opened |
| <b>COLORADO</b>                                                   |                                                     |                                                           |              |             |
| Northgate                                                         | Russ Ford                                           | 15 Spectrum Loop, Suite 100<br>Colorado Springs, CO 80921 | 719-413-8794 | 2021        |
| <b>IDAHO</b>                                                      |                                                     |                                                           |              |             |
| Boise                                                             | Jesse and Brittney Stronks                          | 601 N Cole Rd<br>Boise, ID 83704                          | 208-406-8630 | 2018        |
| <b>NEVADA</b>                                                     |                                                     |                                                           |              |             |
| Henderson                                                         | Jodi and Mike Leishman                              | 2654 W Horizon Ridge Pkwy<br>#B17<br>Henderson, NV 89052  | 702-906-2422 | 2017        |
| Elko                                                              | Melodie Draper                                      | 1028 Idaho St<br>Elko, NV 89801                           | 775-748-9804 | 2018        |
| <b>TEXAS</b>                                                      |                                                     |                                                           |              |             |
| Spring                                                            | Troy Felt                                           | 9702 Spring Cypress, Suite 118<br>Spring, TX 77375        | 281-203-8362 | 2021        |
| <b>UTAH</b>                                                       |                                                     |                                                           |              |             |
| American Fork                                                     | Kyle and Bailey Smith                               | 499 S 500 E, Suite E<br>American Fork, UT 84003           | 435-239-8777 | 2019        |
| Brigham City                                                      | Rob Lindsey                                         | 894 W 1150 S<br>Brigham City, UT 84302                    | 435-239-8777 | 2015        |
| Ephraim City                                                      | BreAnna Nixon                                       | 28 East 450 North<br>Ephraim, UT 84627                    | 435-283-3222 | 2021        |
| Herriman                                                          | Jana Jensen                                         | 13308 S 5600 W<br>Herriman, UT 84096                      | 801-432-7188 | 2020        |
| Highland                                                          | Matt and Alison Quenneville Joe and Catherine Pavia | 5517 W 11000 N<br>Highland, UT 84003                      | 801-763-0483 | 2018        |
| Hurricane                                                         | Andre and Jared Jenkins                             | 540 W State St<br>Hurricane, UT 84737                     | 435-216-8452 | 2017        |
| Kaysville                                                         | James and Joel Morgan                               | 315 N Main Street<br>Kaysville, UT 84037                  | 801-546-5355 | 2014        |
| Kaysville – West                                                  | James and Joel Morgan                               | 1346 West 200 North<br>Kaysville, UT 84037                | 801-546-5355 | 2019        |
| Lagoon – Campground*                                              | Lagoon Amusement Park                               | 375 N Lagoon Drive<br>Farmington, UT 84025                | 801-451-8000 | 2021        |

| FRANCHISEES WITH OPEN FRANCHISED BUSINESS AS OF DECEMBER 31, 2022 |                                                                   |                                                             |              |             |
|-------------------------------------------------------------------|-------------------------------------------------------------------|-------------------------------------------------------------|--------------|-------------|
| Franchise                                                         | Franchise Owner                                                   | Address                                                     | Phone Number | Year Opened |
| Lagoon – Pioneer Village*                                         | Lagoon Amusement Park                                             | 375 N Lagoon Drive<br>Farmington, UT 84025                  | 801-451-8000 | 2021        |
| Layton                                                            | Tom Griffith                                                      | 2631 N Hillfield Rd<br>Layton, UT 84041                     | 801-820-6009 | 2015        |
| Layton Hills Mall                                                 | Walter and Nicole Taylor                                          | 1201 N Hillfield Rd<br>Layton, UT 84041                     | 385-248-0408 | 2018        |
| Mapleton                                                          | Troy Felt                                                         | 790 North 1600 West<br>Mapleton, UT 94664                   | 801-515-6277 | 2018        |
| Murray                                                            | Shane Branz                                                       | 5055 S State St<br>Murray, UT 84107                         | 801-263-7989 | 2019        |
| North Ogden                                                       | Taylor Zampedri, Garrett Frost, and Steven Prisbrey               | 2592 N 400 E<br>North Ogden, UT 84414                       | 801-737-3054 | 2016        |
| North Salt Lake                                                   | James Ferguson                                                    | 761 N Redwood Rd #140<br>North Salt Lake, UT 84054          | 801-298-1800 | 2020        |
| Ogden – 12 <sup>th</sup> Street                                   | Taylor Zampedri, Garrett Frost, and Steven Prisbrey               | 1077 W 12th Street Unit 1<br>Marriott-Slaterville, UT 84404 | 801-675-5234 | 2021        |
| Ogden Junction                                                    | Rachael and Justin Tyler                                          | 2356 Kielse Ave<br>Ogden, UT 84401                          | 801-922-5255 | 2016        |
| Orem                                                              | Troy Felt                                                         | 1120 West Shop Street<br>Orem, UT 84057                     | 801-709-5470 | 2017        |
| Richfield                                                         | D. Scott Hyatt                                                    | 1186 South 100 West Unit #2<br>Richfield, UT 84701          | 435-201-4512 | 2021        |
| Roy                                                               | Taylor Zampedri, Garrett Frost, and Steven Prisbrey               | 4860 S 1900 W<br>Roy, UT 84067                              | 801-825-7632 | 2015        |
| Salem                                                             | Colette Johnson, Janae Briggs, Natalie Hutchinson, and Tara Davis | 623 N SR 198<br>Salem, UT 84653                             | 801-504-6138 | 2020        |
| Sandy                                                             | Dane Nelson and Mike Wright                                       | 7910 S 1300 E<br>Sandy, UT 84094                            | 385-557-4993 |             |

| FRANCHISEES WITH OPEN FRANCHISED BUSINESS AS OF DECEMBER 31, 2022 |                                                         |                                                           |              |             |
|-------------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------|--------------|-------------|
| Franchise                                                         | Franchise Owner                                         | Address                                                   | Phone Number | Year Opened |
| Saratoga Springs                                                  | Matt Quenneville and Joe Pavia                          | 191 Crossroads Blvd Suite E<br>Saratoga Springs, UT 84045 | 801-331-8044 | 2021        |
| South Jordan                                                      | Justin and Kristina Hansen and Kevin and Tammy Klingler | 10384 South Redwood Rd<br>South Jordan, UT 84095          | 801-666-7360 | 2015        |
| South Ogden                                                       | Taylor Zampedri, Garrett Frost, and Steven Prisbrey     | 6029 Fashion Point Dr<br>South Ogden, UT 84403            | 801-479-7695 | 2016        |
| Spanish Fork                                                      | Troy and Carrie Felt                                    | 1362 E Shop St<br>Spanish Fork, UT 84660                  | 801-709-6208 | 2017        |
| St. George                                                        | Andrea and Jared Jenkins                                | 2339 S River Rd<br>St George, UT 84790                    | 435-656-4349 | 2016        |
| Stansbury Park                                                    | Daniel and Laura Timmerman                              | 6777 North Highway 36 #400<br>Stansbury Park, UT 84074    | 435-248-2336 | 2018        |
| Syracuse                                                          | Judy and James Ferguson                                 | 1642 S 2000 W<br>Syracuse, UT 84075                       | 801-825-2946 | 2014        |
| Taylorsville                                                      | Tom Griffith                                            | 2530 W 4700 S<br>Taylorsville, UT 84129                   | 801-964-7298 | 2016        |
| West Haven                                                        | Rachael Tyler                                           | 1970 W 2550 S Suite 105<br>West Haven, UT 84401           | 385-238-4907 | 2021        |
| West Jordan                                                       | Judy and James Ferguson                                 | 7724 S 5600 W Suite 101<br>West Jordan, UT 84081          | 385-274-4946 | 2017        |
| West Valley                                                       | Kelly and Aaron Nieves                                  | 2935 S Glen Eagle Dr<br>West Valley, UT 84128             | 801-998-8745 | 2017        |
| 51-West Haven Midland, UT                                         | Brad Coleman<br>Todd Coleman                            | 4671 S Midland Dr<br>West Haven Midland<br>Utah           | 8015892100   | 2022        |
| 52-Cedar City, UT                                                 | Daxon Homes<br>David Holmes                             | 392 N Cross Hollow Rd.<br>Cedar City, Utah                | 4356915800   | 2022        |
| League City, TX                                                   | Rachel Jones                                            | 241 S Egret Bay Blvd<br>League City, Texas 77573          | 5173882534   | 2022        |
| Mesa, AZ                                                          | Lisa Hogg<br>Jeff Hogg<br>Brandt Workman                | 52 S Mesa Dr A<br>Mesa AZ 85210                           | 8016288772   | 2022        |

| FRANCHISEES WITH OPEN FRANCHISED BUSINESS AS OF DECEMBER 31, 2022 |                                |                                                                   |                |             |
|-------------------------------------------------------------------|--------------------------------|-------------------------------------------------------------------|----------------|-------------|
| Franchise                                                         | Franchise Owner                | Address                                                           | Phone Number   | Year Opened |
| Chubbuck, ID                                                      | Greg Lindsey                   | 150 Bullock St, Pocatello ID<br>83202<br>Chubbuck<br>Idaho<br>USA | 2283244333     | 2022        |
| Elko Mountain City, NV                                            | Melody Draper                  | 2560 Mountain City Hwy<br>Elko Mountain City, NV                  | 7753402051     | 2022        |
| Clinton, UT                                                       | Jordan Olsen                   | 2212 W 1800 N<br>Clinton, UT 84015                                | 8014581589     | 2022        |
| Evanston, WY                                                      | Tanner Walsh                   | 101 2nd street Evanston WY<br>82930<br>Evanston<br>Wyoming<br>USA | 8017391596     | 2022        |
| Jordan Ranch, TX                                                  | Heather Nelson<br>Tyler Nelson | 2340 Texas Heritage Parkway,<br>Katy, TX                          | 2819147490     | 2022        |
| Star, ID (ADA)                                                    | Brittney Stronks               | 9759 W State St. Suite 100<br>Star, Idaho                         | (208) 447-8466 | 2022        |

*\*This System Shop is independently owned by Lagoon Amusement Park pursuant to a license agreement to operate such business at and/or within a non-traditional captive venue (amusement park).*

**Franchisees with Signed Franchise Agreement as of 12/31/2023 for Franchised Shop Not Yet Open as of 12/31/2023**

We did not have any System franchisees with a signed franchise agreement for a Franchised Business that was not yet open as of December 31, 2023.

**Former Franchisees that Left System in Past Fiscal Year**

| Former Franchisee   | Last Known Contact Information (Email or Phone) | Reason for Exit from Franchise SystemBrid |
|---------------------|-------------------------------------------------|-------------------------------------------|
| Shane Brantz        | 8015849403                                      | Transfer                                  |
| Joel Morgan         | 3853194899                                      | Transfer (2)                              |
| Dane and Mike Write | 8016738424                                      | Transfer                                  |
| Laura Timmerman     | 8015484427                                      | Transfer                                  |
| Scott Hyatt         | 8015183898                                      | Transfer                                  |
| Russell Ford        | 7194825761                                      | Termination                               |

## **EXHIBIT E TO THE FDD**

### **LIST OF AGENTS FOR SERVICE OF PROCESS**

California: Commissioner of Business Oversight  
Department of Business Oversight  
1515 K Street, Suite 200  
Sacramento, CA 98514  
(916) 445-7205  
Toll free at 1-866-275-2677

Georgia: Secretary of State of Georgia  
Corporations Division  
2 Martin Luther King, Jr. Dr., SE  
Suite 315, West Tower  
Atlanta, Georgia 30334

Hawaii: Commissioner of Securities  
Department of Commerce  
and Consumer Affairs  
Business Registration Division  
Securities Compliance Branch  
335 Merchant Street, Room 203  
Honolulu, HI 96813  
(808) 586-2722

Illinois: Chief, Franchise Division  
Office of Attorney General  
500 South Second Street  
Springfield, IL 62706  
(217) 782-4465

Indiana: Indiana Secretary of State  
201 State House  
Indianapolis, IN 46204

Maryland: Maryland Securities Commissioner  
Division of Securities  
Office of Attorney General  
200 St. Paul Place  
Baltimore, MD 21202-2020  
(410) 576-6360

Michigan: Antitrust and Franchise business  
Michigan Department of the  
Attorney General's Office  
Franchise Administrator  
Consumer Protection Division  
6546 Mercantile Way  
Lansing, MI 48910  
(517) 373-7117

Minnesota: Commissioner of Commerce  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, MN 55101  
(612) 296-6328

New York: New York Department of State  
Once Commerce Plaza,  
99 Washington Avenue, 6<sup>th</sup> Floor  
Albany, NY 12231-0001  
(518) 473-2492

North Dakota: North Dakota Securities Department  
600 East Boulevard Avenue  
State Capital Fifth Floor Dept 414  
Bismarck, ND 58505-0510  
(701) 328-4712

Oregon: Director of Insurance & Finance  
Business Service Division of Finance  
and Corporate Securities Labor  
and Industries Building  
Salem, OR 97310  
(503) 378-4387

Rhode Island: Chief Securities Examiner  
of Business Regulation  
Department of Business Regulation  
Securities Division  
1511 Pontiac Avenue  
John O. Pastore Complex – Building 69-1  
Cranston, RI 02920  
(401) 462-9527

South Dakota: Department of Labor & Regulation  
Division of Securities  
124 South Euclid Avenue, Suite 104  
Pierre, SD 57501-3185  
(605) 773-4823

Virginia: Clerk of the State Corporation Commission  
1300 East Main Street, 1<sup>st</sup> Floor  
Richmond, VA 23219

Washington: Director of Financial Institutions  
150 Israel Road SW  
Tumwater, WA 98501  
(360) 902-8760

Wisconsin: Wisconsin Commissioner of Securities  
Franchise Investment Division  
Fourth Floor  
101 East Wilson Street  
Madison, WI 53702

## EXHIBIT F TO THE FDD

### LIST OF STATE AGENCIES RESPONSIBLE FOR FRANCHISE DISCLOSURE/REGISTRATION LAWS

#### California

Department of Business Oversight

##### Sacramento

1515 K Street, Suite 200  
Sacramento, California 95814-4052  
(916) 445-7205  
Toll free at 1-866-275-2677

##### San Diego

1350 Front Street, Room 2034  
San Diego, California 92101-3697  
(619) 525-4233  
Toll free at 1-866-275-2677

##### San Francisco

One Sansome Street, Ste. 600  
San Francisco, California 94104  
(415) 972-8559  
Toll free at 1-866-275-2677

##### Los Angeles

320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, California 90013-2344  
(213) 576-7500  
Toll free at 1-866-275-2677

#### Connecticut

Securities and Business Investment Division  
Connecticut Department of Banking  
260 Constitution Plaza  
Hartford, Connecticut 06103-1800  
(860) 240-8233

#### Florida

Department of Agriculture and Consumer  
Services

Division of Consumer Services

P.O. Box 6700

Tallahassee, Florida 32314-6700

(805) 488-2221

Fax: (805) 410-3804

#### Georgia

Secretary of State of Georgia

Corporations Division

2 Martin Luther King, Jr. Dr., SE

Suite 315, West Tower

Atlanta, Georgia 30334

#### Hawaii

Department of Commerce and Consumer Affairs

Business Registration Division

Commissioner of Securities

P.O. Box 40

Honolulu, Hawaii 96810

(808) 586-2744

#### Illinois

Franchise Bureau

Office of Attorney General

500 South Second Street

Springfield, Illinois 62706

(217) 782-4436

#### Indiana

Franchise Section

Indiana Securities Division

Secretary of State

Room E-111

302 West Washington Street

Indianapolis, Indiana 46204

(317) 232-6681

### Iowa

Iowa Securities Bureau  
340 Maple  
Des Moines, Iowa 50319-0066  
(515) 287-4441

### Maryland

Office of the Attorney General,  
Division of Securities  
200 St. Paul Place  
Baltimore, Maryland 21202-2020  
(410) 576-6360

### Michigan

Michigan Attorney General's Office  
Consumer Protection Division  
Attn: Franchise Section  
525 West Ottawa Street  
Williams Building, 6<sup>th</sup> Floor  
Lansing, Michigan 48933  
(517) 373-7117

### Minnesota

Franchise Examiner  
Minnesota Department of Commerce  
Market Assurance Division  
85 7<sup>th</sup> Place East, Suite 500  
St. Paul, Minnesota 55101-2198  
(651) 296-6328

### Nebraska

Department of Banking and Finance  
Bureau of Securities/Financial Institutions  
Division  
1526 K Street, Suite 300  
Lincoln, NE 68508-2732  
(402) 471-3445

### New York

Office of the New York State Attorney General  
Investor Protection Bureau  
Franchise Section  
120 Broadway, 23<sup>rd</sup> Floor  
New York, New York 10271-0332  
Phone: (212) 416-8236  
Fax: (212) 416-6042

### North Dakota

Franchise Examiner  
North Dakota Securities Department  
600 East Boulevard Avenue  
State Capitol Fifth Floor, Dpt 414  
Bismarck, North Dakota 58505-0510  
(701) 328-4712

### Oregon

Department of Consumer and Business Services  
Division of Finance and Corporate Securities  
Labor and Industries Building  
Salem, Oregon 97310  
(503) 378-4140  
Fax: (503) 947-7862

### Rhode Island

Department of Business Regulation  
Securities Division  
1511 Pontiac Avenue  
John O. Pastore Complex-69-1  
Cranston, Rhode Island 02920-4407  
(401) 462-9527

### South Dakota

Department of Labor & Regulation  
Division of Securities  
124 S. Euclid, Suite 104  
Pierre, South Dakota 57501-3185  
(605) 773-4823  
Fax: (605) 773-5953

### Texas

Statutory Document Section  
Secretary of State  
P.O. Box 12887  
Austin, Texas 78711  
*Street Address:*  
1719 Brazos  
Austin, Texas 78701  
(512) 475-1769

### Utah

Division of Consumer Protection  
Utah Department of Commerce  
160 East Three Hundred South  
SM Box 146704  
Salt Lake City, Utah 84114-6704  
(801) 530-6601  
Fax: (801) 530-6001

### Virginia

State Corporation Commission  
Division of Securities and Retail Franchising  
1300 East Main Street, 9<sup>th</sup> Floor  
Richmond, Virginia 23219  
(804) 371-9051

### Washington

Department of Financial Institutions  
Securities Division  
P.O. Box 9033  
Olympia, Washington 98507-9033  
(360) 902-8760

### Wisconsin

Division of Securities  
Department of Financial Institutions  
P.O. Box 1768  
Madison, Wisconsin 53701  
(608) 266-2801

### Federal Trade Commission

Division of Marketing Practices  
Bureau of Consumer Protection  
Pennsylvania Avenue at 6<sup>th</sup> Street, NW  
Washington, D.C. 20580  
(202) 326-3128

**EXHIBIT G TO THE FDD**

**TABLE OF CONTENTS - OPERATIONS MANUAL**



## TABLE OF CONTENTS

|                                     |            |
|-------------------------------------|------------|
| Guided Checklist.....               | PAGE 1-2   |
| INTRANET& STORE ACCOUNTS.....       | PAGE 3     |
| CRISP.....                          | PAGE 4-5   |
| SYSCO.....                          | PAGE 6-8   |
| SYRUPS.....                         | PAGE 9-11  |
| COKE.....                           | PAGE 12    |
| APPLIANCES.....                     | PAGE 13    |
| GEHLS/J&J.....                      | PAGE 14-15 |
| ISLAND OASIS.....                   | PAGE 16    |
| Farmer Bros.....                    | PAGE 17    |
| TRU FRU.....                        | PAGE 18    |
| OVENS/AMAZON.....                   | PAGE 19-22 |
| Candy.....                          | PAGE 23    |
| GORDON/MISC.....                    | PAGE 24    |
| DIGITAL LOBBY MENU.....             | PAGE 25    |
| UNIFORMS.....                       | PAGE 26    |
| CASH.....                           | PAGE 27    |
| EMPLOYEES.....                      | PAGE 28-29 |
| USING POS/GOOGLE BUSINESS ACCT..... | PAGE 30    |
| COMPLIANCE.....                     | PAGE 31    |
| VENDOR CHECKLIST.....               | PAGE 32    |
| CONTACTS.....                       | PAGE 33    |

**EXHIBIT H TO THE FDD**  
**RELEASE AGREEMENT**

**FIIZ DRINKS FRANCHISE, LLC**  
**RELEASE AGREEMENT**

This Release Agreement ("Agreement") by and between **FiiZ DRINKS FRANCHISE, LLC** a **Utah limited liability company** (herein "Franchisor") and \_\_\_\_\_, LLC/INC., a \_\_\_\_\_ **limited liability company/corporation** ("Franchisee"), and \_\_\_\_\_, \_\_\_\_\_ (jointly and severally herein "Personal Guarantors"). The above will collectively at times be referred to as "Parties" and individually as "Party." Capitalized terms used herein will have the meanings set forth in the Franchise Agreement, unless defined otherwise herein.

**RECITALS**

WHEREAS, Franchisee entered into a FiiZ Drinks® franchise agreement dated effective as of \_\_\_\_\_, 20\_\_ with Franchisor (the "Franchise Agreement") which was personally guaranteed by the Personal Guarantors; and

WHEREAS, the Franchise Agreement has been terminated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

NOW THEREFORE, In consideration of the premises and other provisions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Franchisor, Franchisee, and Personal Guarantors hereby agree as follows:

1. Franchisee and Personal Guarantors hereby, fully and irrevocably, release, acquit and forever discharge Franchisor and its successors, representatives, affiliates, directors, officers, members, managers, employees, shareholders, representatives, and agents and each of them, individually and collectively, of and from any and all claims, demands, obligations, causes of action, suits or liabilities of any kind and nature, whatsoever, whether known or unknown, suspected or unsuspected, and in whatever legal theory or form which Franchisee and Personal Guarantors have or claim to have, or at any time heretofore, had or claimed to have had, or which may hereafter accrue or arise, against Franchisor, its successors, affiliates, directors, officers, shareholders, employees and agents, and each of them, by reason of, or in any way connected with the Franchise Agreement, the relationship described therein and any business transaction, agreement or occurrence, act or omission relating thereto prior to the date hereof. Franchisee and Personal Guarantors further waive any and all state law provisions limiting the effect of a general release.

2. Franchisee and Personal Guarantor(s) hereby covenant not to initiate, prosecute, encourage, assist, or (except as required by law) participate in any civil, criminal, or administrative proceeding or investigation in any court agency, or other forum, either affirmatively or by way of cross-claim, defense, or counterclaim against any person or entity released under Section 1 above with respect to any claim released under Section 1.

**These releases are intended to waive, release and discharge all claims, other than those expressly reserved herein, with the express waiver of any statute, legal doctrine or other similar limitation upon the effect of general releases. In particular, the parties waive the benefit of any applicable statutory provision such as by illustration, California Civil Code Section 1542, which states:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

**The parties, with the advice of their respective counsel, waive the benefit of both statute and other legal doctrine or principle of similar effect in any jurisdiction.**

3. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for, an injunction against any action, suit or other proceeding which may be instituted, prosecuted or maintained in breach of this Agreement.

4. Nothing in this Agreement releases Personal Guarantor(s) or Franchisee from their obligations under the non-competition clauses of the Franchise Agreement or their Non-Competition Agreements signed with Franchisor.

5. Miscellaneous.

5.1 Cooperation. Franchisee and Personal Guarantors will make, execute and deliver to Franchisor, promptly upon request and without additional consideration, any document or instrument necessary to carry out and effectuate the purposes of this Agreement.

5.2 Choice of Law and Jurisdiction. This Agreement will be construed in accordance with and all disputes hereunder will be governed by the laws of the State of Utah without giving effect to its conflicts of law provisions. Franchisee, Personal Guarantor(s), and Franchisor hereby irrevocably consent to the exercise of general personal jurisdiction in the courts of record of the State of Utah even though it may be otherwise possible to obtain jurisdiction elsewhere, and we both agree that Salt Lake City, Utah will be the exclusive venue for any litigation between us. Each party waives any objection they may have to the personal jurisdiction of or venue in the state and federal courts of Utah.

5.3 Arbitration. In the event any controversy or dispute arises between the Parties hereto in connection with, arising from or with respect to the provisions hereof, the relationship of the Parties hereto, or the validity of this Agreement or any provision hereof, such dispute or controversy will, on the request of any Party hereto be submitted for arbitration to the American Arbitration Association in accordance with its commercial arbitration rules. All arbitration hearings will be conducted in Salt Lake City, Utah, and the laws of the State of Utah will govern without giving effect to its conflicts of law provisions. The arbitrator will have the power and jurisdiction to decide such controversy or dispute solely in accordance with the express provisions of this Agreement. The prevailing Party in any arbitration suit or action to enforce this

Agreement, will be entitled to recover the administrative costs of the arbitration proceeding and the fee for the arbitrator. The Parties agree that any claim hereunder will result in an award not more than 120 days from the date of the statement of claim filed with the American Arbitration Association, unless otherwise waived by the Parties. The award and findings of the arbitrators will be conclusive and binding upon all Parties hereto and the judgment upon the award may be entered in any Court of competent jurisdiction.

5.4 Amending this Agreement. This Agreement may be amended, modified or changed only by a written instrument signed by duly authorized representatives of both Parties.

5.5 Company Authority. The persons signing below warrant that they are authorized to enter into this Agreement on behalf of their respective principals identified below and that by their signatures they bind such principals to this Agreement.

5.6 Binding Agreement. This Agreement and all its terms, conditions and stipulations will be binding upon and will inure to the benefit of the Parties hereto and their respective legal representatives, heirs, successors and permitted assigns.

5.7 Confidentiality. Both Parties agree to maintain this agreement, the terms hereof, and any and all information obtained or provided by either Party in order to initiate a contractual relationship, in the strictest of confidence.

5.8 Counterparts. This Agreement, and those contemplated herein, may be executed in counterparts, including by means of telefaxed, emailed pdf or other electronically delivered signature page, each of which will be deemed an original, but all of which together will constitute one and the same document; notwithstanding, in due course, all original documentation will be forwarded to Franchisor and each party will be provided with a fully executed Agreement.

5.9 Entire Agreement. This Agreement contains the entire agreement and only understanding between the Parties with respect to the subject matter hereof and supersedes all previous negotiations, agreements and understandings between the Parties and affiliates of the parties, in connection with the subject matter covered herein, whether oral or written, and any warranty, representation, promise or condition in connection therewith not incorporated herein will not be binding upon either Party. The Parties hereby agree that all prior agreements between the Parties are hereby terminated with no continuing duties or obligations on the part of the other Party.

5.10 Headings and Gender. Words in the masculine gender include the feminine and neuter. Use of the singular includes the appropriate plural numbers. The paragraph headings and title of this Agreement are not part of this Agreement, having been inserted for convenience of reference only, and will have no effect upon the construction or interpretation of this Agreement.

5.11 Enforceability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, not be effective to the extent of such prohibition, but such prohibition will not invalidate the remaining provisions hereof or affect the validity or enforceability of such provisions in any other jurisdiction.

6. This Agreement will be effective when signed by all of the Parties in the appropriate places indicated below. The date of this Agreement will be deemed to be the date on which the last signature is obtained.

7. Each of the Parties acknowledge that they have carefully read the foregoing Agreement and know and understand the contents of this Agreement, have been represented by counsel or had the opportunity to be represented by counsel, and sign this Agreement as their own free act, fully intending to be legally bound thereby.

**[Signatures on Next Page]**

FORM

**IN WITNESS WHEREOF**, and by their signatures below, the Parties hereto acknowledge that they have read, understand and agree to all of the terms and provisions of this Agreement. This Agreement will be effective when signed by all of the parties in the appropriate places indicated below. The date of this Agreement will be deemed to be the date on which the last signature is obtained.

FRANCHISOR:  
**FiiZ DRINKS FRANCHISE, LLC**  
a Utah limited liability company

FRANCHISEE:  
\_\_\_\_\_, Inc/LLC  
(entity name)

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

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

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

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

**PERSONAL GUARANTORS:**

By: \_\_\_\_\_  
(print name) \_\_\_\_\_, personally

By: \_\_\_\_\_  
(print name) \_\_\_\_\_, personally

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

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

By: \_\_\_\_\_  
(print name) \_\_\_\_\_, personally

By: \_\_\_\_\_  
(print name) \_\_\_\_\_, personally

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

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

**EXHIBIT I TO THE FDD**  
**DEVELOPMENT AGREEMENT**

## **DEVELOPMENT AGREEMENT**

This Development Agreement (“Agreement”) entered into on \_\_\_\_\_ (the “Effective Date”), between: (i) FiiZ Drinks Franchise, LLC a limited liability company with a business address at 155 North 400 West, Salt Lake City, Utah 84103 (the “Franchisor”); and (ii) \_\_\_\_\_, a (resident of) (corporation organized in) (limited liability company organized in) \_\_\_\_\_ with a business address at \_\_\_\_\_ (the “Developer”).

### **BACKGROUND**

A. Franchisor and its affiliate/principals, as a result of the expenditure of time, skill, effort, and money, have developed a unique system (the “System”) for establishment and ongoing operation of a eating establishment (each, a “Shop” or “Restaurant”) featuring (a) a wide array of made-to-order sodas and other carbonated/non-carbonated beverages, and (b) any other menu items and/or retail merchandise that the Franchisor designates or authorizes (collectively, the “Approved Products”), while utilizing the Franchisor’s then-current System and proprietary marks (collectively, the “Proprietary Marks”) and the aforementioned System.

B. Franchisor’s System is comprised of various proprietary and, in some cases, distinguishing elements, including without limitation, the following: proprietary recipes associated with each menu items and Approved Products, along with established supply chain resources for certain ingredients used to make certain Approved Products; methodologies, processes and procedures associated with the establishment and ongoing operation of a Restaurant; site selection guidance and criteria; specifications for the design, layout and construction of a Restaurant; standards and specifications for the furniture, fixtures and equipment located within a Restaurant; established relationships with approved or designated suppliers for certain products and services, including without; and various standards and specifications for advertising, bookkeeping, sales and other aspects of operating a Restaurant. The parties agree and acknowledge that Franchisor may change, improve, further develop, or otherwise modify the System from time to time as it deems appropriate in its discretion. Franchisee hereby acknowledges and agrees that: (i) while the System and Franchisor’s related materials contain information that, in isolated form, could be construed as being in the public domain, they also contain significant proprietary and confidential information which makes the System unique as a whole; and (ii) the combined methods, information, procedures, and theories that make up the total System or are contained in the relevant manuals that are proprietary and confidential.

C. The System and Restaurants are identified by Franchisor’s Proprietary Marks, including its current primary mark FIIZ DRINKS®, any of which Franchisor may modify, update, supplement or substitute in the future as Franchisor deems appropriate. The parties agree and acknowledge that Franchisor has established substantial goodwill and business value in its Proprietary Marks, expertise, and System.

D. Franchisor grants qualified third parties the right to develop a certain number of Restaurants within a defined geographical area (the “Development Area”), in accordance with the terms of this Agreement to which Developer must be strictly adhere, with each Restaurant within the Development Area being opened and operating utilizing the Proprietary Marks and System pursuant to the terms and conditions set forth in a separate form of Franchisor’s then-current form of franchise agreement (each, a “Franchise Agreement”).

E. Developer recognizes the benefits of receiving the right to operate a Restaurant utilizing the System and desires to: (i) become a multi-unit operator subject to the terms of this Agreement; and (ii) receive the benefits provided by Franchisor under this Agreement.

F. Developer has applied for the right to open and operate a certain number of Restaurants within the Development Area as set forth in this Agreement (each, a “Franchised Business”), and Franchisor has approved such application in reliance on Developer’s representations made therein.

G. Developer hereby acknowledges that adherence to the terms of this Agreement, including Franchisor’s operations manual and other System standards and specifications, are essential to the operation of all Restaurants and the System as a whole.

**NOW, THEREFORE**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## **AGREEMENT**

### **1. Development Area.**

1.1 Subject to the terms and conditions set forth herein, Franchisor grants Developer the right, and Developer undertakes the obligation, to develop and establish \_\_\_\_\_ Franchised Businesses within the Development Area defined in the Data Sheet attached hereto as Exhibit A (the “Data Sheet”), provided Developer opens and commences operations of such Franchised Businesses in strict accordance with the mandatory development schedule also set forth in the Data Sheet (the “Development Schedule”) and otherwise subject to the terms and conditions set forth herein.

1.2 Except as provided in Section 7 and otherwise herein, during the term of this Agreement Franchisor will not open or operate, or license any third party the right to open or operate, any Restaurant utilizing the Proprietary Marks and System within the Development Area.

2. **Development Fee;** Developer shall pay Franchisor the development fee set forth in Section 3 of the Data Sheet (the “Development Fee”) as consideration for the rights associated with developing the foregoing Franchised Businesses within the Development Area, with the parties agreeing and acknowledging that this Development Fee is deemed fully earned upon payment and is not refundable under any circumstances.

3. **Initial Franchise Agreement.** Contemporaneous with the execution of this Agreement, Developer must enter into Franchisor’s current form of Franchise Agreement for the Initial Franchised Business that Developer is required to open within the Development Area (the “Initial FA”). In the event Developer is a business entity of any kind, then Developer’s principals/owners, as well as their respective spouses (at Franchisor’s option), must each execute the form of Personal Guaranty attached to (a) Initial FA, and (b) the forms of franchise agreement described in Section 4 below.

4. **Additional Franchise Agreements.** Developer agrees and acknowledges that it must: (i) enter into Franchisor’s then-current form of Franchise Agreement for each Additional Franchised Business that Developer is required to open under this Agreement; and (ii) enter into the form of Franchise Agreement for a given Additional Franchised Business on or before the earlier of (a) the date Developer enters into a lease for the approved Premises of that Additional Franchised Business, or (b) at least 90 days prior to the date Developer is required to open and commence operations of that Additional Franchised Business under the Development Schedule.

5. **Development Obligations.** Developer must ensure that, at a minimum, Developer: (i) opens and commences operations of the number of new Franchised Businesses during each of the development periods defined in the Development Schedule (each, a “Development Period”); and (ii) has the minimum cumulative number of Franchised Businesses open and operating at the expiration of each such Development

Period. The parties agree and acknowledge that time is of the essence with respect to the foregoing development obligations, and that Developer's failure to comply with the Development Schedule in any manner with respect to any Development Period is grounds for immediate termination of this Agreement if not timely cured as set forth in Section 6.2 of this Agreement (and any future development rights granted hereunder).

## **6. Term and Termination; Geographic Scope of Post-Term Non-Compete.**

6.1 This Agreement will commence as of the date it is fully executed and, unless earlier terminated by Franchisor, will expire on the earlier of: (i) the last day of the calendar month that the final Franchised Business is required to be opened and operating under the Development Schedule; or (ii) the date Developer actually opens the last Franchised Business that Developer is granted the right to open under this Agreement. Upon expiration or termination of this Agreement for any reason, Developer will not have any rights within the Development Area other than the territorial rights granted in connection with any "Designated Territory" associated with a Franchised Business that Developer has opened and commenced operating as of the date this Agreement is terminated or expires (as such rights are granted by Franchisor under the respective Franchise Agreement(s) into which Developer has entered for such Franchised Business(es)).

6.2 Franchisor will have the right, at its option, to terminate this Agreement and all rights granted to Developer hereunder, without affording Developer any opportunity to cure such default, effective upon written notice to Developer, upon the occurrence of any of the following events: (i) if Developer ceases to actively engage in development activities in the Development Area or otherwise abandons its development business for three (3) consecutive months, or any shorter period that indicates an objective intent by Developer to discontinue development of the Franchised Businesses within the Development Area; (ii) if Developer becomes insolvent or is adjudicated bankrupt, or if any action is taken by Developer, or by others against the Developer, under any insolvency, bankruptcy or reorganization act, or if Developer makes an assignment for the benefit of creditors or a receiver is appointed by the Developer; (iii) if Developer fails to meet its development obligations under the Development Schedule for any single Development Period, and fails to cure such default within 30 days of receiving notice thereof; or (iv) if any Franchise Agreement that is entered into in order to fulfill Developer's development obligations under this Agreement is terminated or subject to termination by Franchisor, pursuant to the terms of that Franchise Agreement.

6.3 In the event this Agreement is terminated prior to its natural expiration for any reason, the parties agree and acknowledge that the geographic scope of the post-term non-compete described in Section 14(B) of the Initial FA shall also include (a) the Development Area, and (b) a 10-mile radius around the perimeter of the Development Area.

7. **Reservation of Rights.** Except as provided in Section 1 of this Agreement, the parties agree and acknowledge that the rights granted in this Agreement are non-exclusive and that Franchisor and its affiliates reserve all other rights not expressly granted to Developer herein.

8. **Sale or Assignment.** Developer's rights under this Agreement are personal and Developer may not sell, transfer, or assign any right granted herein without Franchisor's prior written consent, which may be withheld in its sole discretion. Notwithstanding, if Developer is an individual or a partnership, Developer has the right to assign its rights under this Agreement to a corporation or limited liability company that is wholly owned by Developer according to the same terms and conditions as provided in Developer's initial Franchise Agreement. Franchisor has the right to assign this Agreement in whole or in part in its sole discretion.

9. **Acknowledgment.** Developer acknowledges that this Agreement is not a Franchise Agreement and does not confer upon Developer any rights to use the Franchisor's Proprietary Marks or System.

10. **Notices.** All notices, requests and reports to be given under this Agreement are to be in writing, and delivered either by hand, overnight mail via recognized courier such as UPS or FedEx, or certified mail, return receipt requested, prepaid, to the addresses set forth above (which may be changed by written notice).

11. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without reference to this state's conflict of laws principles.

12. **Internal Dispute Resolution.** Developer must first bring any claim or dispute between Developer and Franchisor to Franchisor's management, after providing Franchisor with notice of and a reasonable opportunity to cure an alleged breach hereunder. Developer must exhaust this internal dispute resolution procedure before bringing a dispute before a third party. This agreement to first attempt resolution of disputes internally will survive termination or expiration of this Agreement.

13. **Mediation.** At Franchisor's option, all claims or disputes between Franchisor and Developer or its affiliates arising out of, or in any way relating to, this Agreement or any other agreement by and between Franchisor and Developer or its affiliates, or any of the parties' respective rights and obligations arising from such agreement, which are not first resolved through the internal dispute resolution procedure set forth in Section 12 above, must be submitted first to non-binding mediation, to be conducted at Franchisor's then-current headquarters (or other location that Franchisor approves in writing) under the auspices of the American Arbitration Association ("AAA"), in accordance with AAA's Commercial Mediation Rules then in effect. Before commencing any legal action against Franchisor or its affiliates with respect to any such claim or dispute, Developer must submit a notice to Franchisor, which specifies, in detail, the precise nature and grounds of such claim or dispute. Franchisor will have a period of thirty (30) days following receipt of such notice within which to notify Developer as to whether Franchisor or its affiliates elects to exercise its option to submit such claim or dispute to mediation. Developer may not commence any action against Franchisor or its affiliates with respect to any such claim or dispute in any court unless Franchisor fails to exercise its option to submit such claim or dispute to mediation, or such mediation proceedings have been terminated either: (i) as the result of a written declaration of the mediator(s) that further mediation efforts are not worthwhile; or (ii) as a result of a written declaration by Franchisor. Franchisor's rights to mediation, as set forth herein, may be specifically enforced by Franchisor.

13.1 The parties will not be required to first attempt to mediate a controversy, dispute, or claim through mediation as set forth in this Section 14 if such controversy, dispute, or claim concerns an allegation that a party has violated (or threatens to violate, or poses an imminent risk of violating): (i) any federally protected intellectual property rights in the Proprietary Marks, the System, or in any confidential/proprietary information of Franchisor (as such information is defined more fully in the Franchise Agreements); (ii) any of the restrictive covenants contained in this Agreement or any other Franchise Agreements executed in connection with the Franchised Businesses opened within the Development Area; and (iii) any of Developer's payment obligations under this Agreement or any such Franchise Agreement.

13.2 This agreement to mediate will survive any termination or expiration of this Agreement. The parties agree that there will be no class action mediation and that any mediation proceeding involving Franchisor and Developer or its principals that arises out of or relates to this Agreement in any manner must be mediated in a proceeding that does not involve any other third party, including any other franchisee or licensee of Franchisor's franchise system.

14. **Injunctive Relief.** Developer acknowledges and agrees that irreparable harm could be caused to Franchisor by Developer's violation of certain provisions of this Agreement and, as such, in addition to any other relief available at law or equity, Franchisor shall be entitled to obtain in any court of competent

jurisdiction, without bond, restraining orders or temporary or permanent injunctions in order to enforce, among other items, the provisions of this Agreement relating to: (i) Developer's use of the Proprietary Marks and Franchisor's confidential information; (ii) Developer's covenant not to compete, as well as any other violations of the restrictive covenants set forth in this Agreement or any Franchise Agreement with Franchisor; (iii) Developer's obligations on termination or expiration of this Agreement; (iv) disputes and controversies based on or arising under the Lanham Act, or otherwise involving the Proprietary Marks, as now or hereafter amended; (v) disputes and controversies involving enforcement of the Franchisor's rights with respect to confidentiality under this Agreement; and (vi) prohibiting any act or omission by Developer or its employees that constitutes a violation of applicable law, threatens Franchisor's franchise system or threatens other franchisees of Franchisor. Developer's only remedy if such an injunction is entered will be the dissolution of the injunction, if appropriate, and Developer waives all damage claims if the injunction is wrongfully issued.

**15. Jurisdiction and Venue.** Subject to Sections 12 through 14 of this Agreement, the parties agree that any actions arising out of or related to this Agreement must be initiated and litigated to conclusion exclusively in the state court of general jurisdiction closest to Salt Lake City, Utah or, if appropriate, the United States District Court for the District of Utah (unless settled by the parties after such action is initiated). Developer acknowledges that Franchisor may bring an action in any other court of competent jurisdiction to seek and obtain injunctive relief as set forth in Section 15 above. Developer hereby irrevocably consents to the personal jurisdiction of the state and federal courts described in this Section.

**16. Third Party Beneficiaries.** Franchisor's officers, directors, shareholders, agents and/or employees are express third party beneficiaries of this Agreement and the dispute resolution procedures contained herein, including without limitation, the right to specifically utilize and exhaust the mediation procedure with respect to any and all claims asserted against such person(s) by Developer or its principals.

**17. JURY TRIAL WAIVER.** THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER AT LAW OR EQUITY, REGARDLESS OF WHICH PARTY BRINGS SUIT. THIS WAIVER WILL APPLY TO ANY MATTER WHATSOEVER BETWEEN THE PARTIES HERETO WHICH ARISES OUT OF OR IS RELATED IN ANY WAY TO THIS AGREEMENT, THE PERFORMANCE OF EITHER PARTY, AND/OR DEVELOPER'S PURCHASE FROM FRANCHISOR OF THE DEVELOPMENT RIGHTS DESCRIBED HEREIN.

**18. WAIVER OF CLASS ACTIONS.** THE PARTIES AGREE THAT ALL PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR THE SALE OF THE FRANCHISED BUSINESS, WILL BE CONDUCTED ON AN INDIVIDUAL, NOT A CLASS-WIDE BASIS, AND THAT ANY PROCEEDING BETWEEN DEVELOPER, DEVELOPER'S GUARANTORS AND FRANCHISOR OR ITS AFFILIATES/OFFICERS/EMPLOYEES MAY NOT BE CONSOLIDATED WITH ANY OTHER PROCEEDING BETWEEN FRANCHISOR AND ANY OTHER THIRD PARTY.

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

**20. Attorneys' Fees.** If either party institutes any judicial or other proceeding to enforce any monetary or nonmonetary obligation or interpret the terms of this Agreement and Franchisor prevails in the

action or proceeding, Developer will be liable to Franchisor for all costs, including reasonable attorneys' fees and court costs, incurred in connection with such proceeding.

21. **Nonwaiver.** Franchisor's failure to insist upon strict compliance with any provision of this Agreement will not be a waiver of Franchisor's right to do so, any law, custom, usage or rule to the contrary notwithstanding. Delay or omission by Franchisor respecting any breach or default will not affect Franchisor's rights respecting any subsequent breaches or defaults. All rights and remedies granted in this Agreement will be cumulative. Franchisor's election to exercise any remedy available by law or contract will not be deemed a waiver or preclude exercise of any other remedy.

22. **Severability.** The parties agree that if any provisions of this Agreement may be construed in two ways, one of which would render the provision illegal or otherwise voidable or unenforceable and the other which would render it valid and enforceable, such provision will have the meaning, which renders it valid and enforceable. The provisions of this Agreement are severable, and this Agreement will be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein, and partially valid and enforceable provisions will be enforced to the extent that they are valid and enforceable. If any material provision of this Agreement will be stricken or declared invalid, the parties agree to negotiate mutually acceptable substitute provisions. In the event that the parties are unable to agree upon such provisions, Franchisor reserves the right to terminate this Agreement.

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

24. **Successors.** References to "Franchisor" or "Developer" include the respective parties' successors, assigns or transferees, subject to the limitations of Section 8 of this Agreement.

25. **Additional Documentation.** Developer must, from time to time, subsequent to the date first set forth above, at Franchisor's request and without further consideration, execute and deliver such other documentation or agreements and take such other action as Franchisor may reasonably require in order to effectuate the transactions contemplated in this Agreement. In the event that Developer fails to comply with the provisions of this Section, Developer hereby appoints Franchisor as Developer's attorney-in-fact to execute any and all documents on Developer's behalf, as reasonably necessary to effectuate the transactions contemplated herein.

26. **No Right to Offset.** Developer may not withhold all or any part of any payment to Franchisor or any of its affiliates on the grounds of the alleged nonperformance of Franchisor or any of its affiliates or as an offset against any amount Franchisor or any of its affiliates may owe or allegedly owe Developer under this Agreement or any related agreements.

27. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning Developer's development rights within the Development Area; no promises, inducements or representations (other than those in the Franchise Disclosure Document) not contained in this Agreement have been made, nor will any be of any force or effect, or binding on the parties. Modifications of this Agreement must be in writing and signed by both parties. Franchisor reserves the right to change Franchisor's policies, procedures, standards, specifications or manuals at Franchisor's discretion. In the event of a conflict between this Agreement and any Franchise Agreement(s), the terms, conditions and intent of this Agreement will control. Nothing in this Agreement, or any related agreement, is intended to disclaim any of the representations Franchisor made to Developer in the Franchise Disclosure Document that Franchisor provided to Developer.

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

**FIIZ DRINKS FRANCHISE, LLC**

By: \_\_\_\_\_  
Chad Harris, President

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

**DEVELOPER:**

\_\_\_\_\_

**IF AN INDIVIDUAL:**

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

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

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

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

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

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

**IF LLC, CORPORATION, OR OTHER ENTITY:**

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

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

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

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

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

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

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

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

## EXHIBIT A to DEVELOPMENT AGREEMENT

### DATA SHEET

1. **Development Area.** The Development Area, as referred to in Section 1 of the Development Agreement, is described below (or an attached map) by geographic boundaries and will consist of the following area or areas:

---

2. **Development Schedule.** The Development Schedule referred to in Section 5 of the Development Agreement is as follows:

| Expiration of Development Period<br>(each, a "Development Period") | # of New Franchised Businesses<br>Opened Within Development<br>Period | Cumulative # of Franchised<br>Businesses that Must Be<br>Open and Operating |
|--------------------------------------------------------------------|-----------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Months from Effective Date                                         | 1                                                                     | 1                                                                           |
| Months from Effective Date                                         | 1                                                                     | 2                                                                           |
| Months from Effective Date                                         | 1                                                                     | 3                                                                           |
| Months from Effective Date                                         |                                                                       |                                                                             |
| Months from Effective Date                                         |                                                                       |                                                                             |

3. **Development Fee.** The Development Fee that is due and payable to Franchisor immediately upon execution of this Agreement shall be \$ \_\_\_\_\_.

### FIIZ DRINKS FRANCHISE, LLC

By: \_\_\_\_\_  
Chad Harris, President

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

### DEVELOPER

\_\_\_\_\_

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

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

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

## EXHIBIT J TO THE FDD

### STATE EFFECTIVE DATES

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration:

California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.

This Franchise Disclosure Document is effective and may be used in the following states, where the Franchise Disclosure Document is filed, registered, or exempt from registration, as of the Effective Dates stated below:

| STATE        | EFFECTIVE DATE |
|--------------|----------------|
| California   | N/A            |
| Hawaii       | N/A            |
| Illinois     | N/A            |
| Indiana      | N/A            |
| Maryland     | N/A            |
| Michigan     | N/A            |
| Minnesota    | N/A            |
| New York     | N/A            |
| North Dakota | N/A            |
| Rhode Island | N/A            |
| South Dakota | N/A            |
| Virginia     | N/A            |
| Washington   | N/A            |
| Wisconsin    | N/A            |

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**RECEIPT**  
(Franchisee's Copy)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If FiiZ Drinks Franchise, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If FiiZ Drinks Franchise, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state administrator listed in Exhibit "F."

The franchisor, FiiZ Drinks Franchise, LLC, is located at 155 North 400 West, #580, Salt Lake City, Utah 84103. Its telephone number is (801) 651-8435.

Our franchise sellers:

Chad Harris: 155 North 400 West, #580, Salt Lake City, Utah 84103; (801) 651-8435; and  
Bridger Musgrave: 155 North 400 West, #580, Salt Lake City, Utah 84103; (801) 645-6498

The issuance date: May 5, 2023.

I received a disclosure document dated May 5, 2023 that included the following Exhibits:

- |    |                                       |    |                           |
|----|---------------------------------------|----|---------------------------|
| A. | Franchise Agreement and its Exhibits  | G. | TOC for Operations Manual |
| B. | Franchisee Questionnaire              | H. | Sample Release Agreement  |
| C. | Financial Statements                  | I. | Development Agreement     |
| D. | Schedule of Franchisees               | J. | State Effective Dates     |
| E. | List of Agents for Service of Process | K. | Receipts                  |
| F. | List of State Agencies                |    |                           |

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Title (if Signing for Company)

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

Two copies of this receipt have been placed at the end of the disclosure document. Please sign and date the receipt and return one copy to us and keep the other for your records. You may return the signed receipt either by signing, dating, and mailing it to FiiZ Drinks Franchise, LLC at 155 North 400 West, #580, Salt Lake City, Utah 84103, or by emailing a copy to [chad@fiizdrinks.com](mailto:chad@fiizdrinks.com).

**RECEIPT**  
(Franchisor's Copy)

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| F. | List of State Agencies                |    |                           |

Date: \_\_\_\_\_  
(Do not leave blank)

\_\_\_\_\_  
Signature of Prospective Franchisee

\_\_\_\_\_  
Title (if Signing for Company)

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

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