**FRANCHISE DISCLOSURE DOCUMENT**

Frios Franchising Company, LLC
a Delaware limited liability company
1201 West I-65 Service Road North, Mobile, Alabama 36618
Tel: (251) 307-1170
franchising@friospops.com
www.friospops.com

The franchise that we offer is for Frios gourmet pops, a mobile ice cream truck serving Frios gourmet pops within a designated territory. Frios gourmet pops franchisees may also operate mobile carts within their designated territory and distribute Frios gourmet pops to businesses for retail sale to customers located within their designated territory.

The total investment necessary to begin operation of a Frios gourmet pops business under a franchise agreement is $40,925 to $71,775. This includes between $21,400 to $22,500 that must be paid to the franchisor or its affiliates.

The total investment necessary to begin operation of a Frios gourmet pops business under a Multi-Unit Development Agreement is $55,925 to $86,775. This includes $21,400 to $22,500 that must be paid to the franchisor or its affiliates, along with a $15,000 development fee for each additional Frios gourmet pops business you agree to open.

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, Us or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive Your disclosure document in another format that is more convenient to You. To discuss the availability of disclosures in different formats, contact Patti Rother, 1201 W. I-65 Service Road North, Mobile, Alabama 36618 (telephone (251) 307-1170 or email franchising@friospops.com).

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

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

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

Issuance Date: May 31, 2023

## How to Use This Franchise Disclosure Document

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

| QUESTION | WHERE TO FIND INFORMATION |
|---|---|
| **How much can I earn?** | Item 19 may give You information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 and Exhibit E. |
| **How much will I need to invest?** | Items 5 and 6 list fees You will be paying to the franchisor and at the franchisor's direction. Item 7 lists the initial investment to open. Item 8 describes the suppliers You must use. |
| **Does the franchisor have the financial ability to provide support to my business?** | Item 21 or Exhibit D includes financial statements. Review these statements carefully. |
| **Is the franchise system stable, growing or shrinking?** | Item 20 summarizes the recent history of the number of company-owned and franchised outlets. |
| **Will my business be the only Frios Business in my area?** | Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with You. |
| **Does the franchisor have a troubled legal history?** | Items 3 and 4 tell You whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings. |
| **What's it like to be a Frios Business franchisee?** | Item 20 or Exhibit E lists current or former franchisees. You can contact them to ask about their experiences. |
| **What else should I know?** | 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 Your franchise is 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 A.

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

## Special Risks to Consider About *This* Franchise

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

1. **Out-of-State Dispute Resolution**. The franchise agreement requires You to resolve disputes with the franchisor by mediation, arbitration and/or litigation only in Alabama. 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 Alabama than in Your own state.

2. **Mandatory Minimum Payments**. You must make mandatory minimum royalty payments and advertising contributions regardless of your sales levels. Your inability to make these payments may result in termination of your franchise and loss of your investment.

3. **Supplier Control**. You must purchase all or nearly all of the inventory & supplies necessary to operate your business from Franchisor, its affiliates, or from suppliers that Franchisor designates at prices that the Franchisor or they set. These prices may be higher than prices you could obtain elsewhere for the same or similar goods. This may reduce the anticipated profit of your franchised business.

4. **Financial Condition**. The Franchisor's financial condition as reflected in its financial statement (see Item 21) calls into question the Franchisor's financial ability to provide services and support to you.

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

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

**(THE FOLLOWING APPLY TO TRANSACTIONS GOVERNED BY THE MICHIGAN FRANCHISE INVESTMENT LAW ONLY)**

**The state of Michigan prohibits certain unfair provisions that are sometimes in franchise documents. If any of the following provisions are in these franchise documents, the provisions are void and cannot be enforced against You:**

(a) A prohibition on the right of a franchisee to join an association of franchisees.

(b) A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protection provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.

(c) A provision that permits a franchisor to terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.

(d) A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than five years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least six months advance notice of franchisor's intent not to renew the franchise.

(e) A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

(f) A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.

(g) A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is a competitor of the franchisor or sub-franchisor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

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

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

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

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

Any questions regarding this notice should be directed to:

State of Michigan Department of Attorney General
G. Mennen Williams Building, 7th Floor
525 W. Ottawa Street
P.O. Box 30755
Lansing, Michigan 48909
Telephone Number: (517) 335-7632

**FRANCHISE DISCLOSURE DOCUMENT**
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## ITEM 1
## THE FRANCHISOR, AND ANY PARENT, PREDECESSORS, AND AFFILIATES

The franchisor is Frios Franchising Company, LLC. For ease of reference in this disclosure document ("Disclosure Document"), Frios Franchising Company, LLC is referred to as "Franchisor," "We," "Us," or "Our." The person or entity who buys the franchise is referred to as "Franchisee," "You," or "Your." If You are a corporation, limited liability company, partnership or other legal entity, "You", "Your" and "Franchisee" also means Your shareholders, members, partners, and other owners of that entity.

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

We are a Delaware limited liability company formed on December 19, 2018. We previously operated under the name FGP Franchising, LLC. We changed Our name to Frios Franchising Company, LLC on January 1, 2022. We do business under the name "Frios Gourmet Pops." We do not do business under any other name. Our principal business address is 1201 W. I-65 Service Road North, Mobile, Alabama 36618. We have not engaged in any other line of business and have not offered franchises in any other line of business. We began offering franchises on December 21, 2018.

Our agents for service of process in Alabama and Delaware is Cliff Kennedy. The agents for service of process for other states are listed in Exhibit A.

We have one predecessor, FRIOS GOURMET POPS, LLC, an Alabama limited liability company ("FGP"). Our predecessor's address is 103 Windsor Lane, Rainbow City, Alabama 35906.

We have one parent company, FGP Holding, LLC ("Holding"), a Delaware limited liability company formed on November 30, 2018. Holding's principal address is 1201 W. I-65 Service Road North, Mobile, Alabama 36618.

On December 21, 2018, Holding acquired the operating assets of FGP, Frios Manufacturing, LLC, Frios Franchising, LLC, and Frios Corporate Retail, LLC pursuant to the terms of an Asset Purchase Agreement. In March 2019, Holding (a) assigned to Us all of the existing Franchise Agreements for the Frios Business franchises; and (b) granted Us a license, with the right to sublicense, the Marks, System and other intellectual property for the System.

We have two affiliates. FGP Manufacturing, LLC ("Manufacturing") is a Delaware limited liability company formed on December 19, 2018. Manufacturing's principal address is 1201 W. I-65 Service Road North, Mobile, Alabama 36618. Manufacturing does not franchise in this or any other business. Manufacturing produces all of the Frios Pops sold to Our franchisees.

Our second affiliate, Gulf Coast Treats, LLC, ("Treats") is an Alabama limited liability company formed on April 25, 2018. Treats principal address is 1 Oakway Drive, Mobile, Alabama 36608. Treats operates a business similar to the business described in this FDD. Treats does not franchise in this or any other business.

We do not have any other parents, predecessors or other affiliates.

### The Franchise Offered

We offer and sell franchises for the operation of a Frios gourmet pops business (each a "Franchised Business" or "Frios Business") that features the sale of Frios gourmet pops from our Frios branded ice cream truck (each referred to as our "Sweet Ride ice cream truck"). Each Frios Business must operate at least one Sweet Ride ice cream truck within their designated territory. Optionally and, in addition to their

Sweet Ride ice cream truck, franchisees may also operate Frios branded carts within their designated territory. Frios Businesses may also sell Frios gourmet pops on a wholesale basis to businesses for retail sale to customers located within their designated territory.

Frios Businesses operate using certain business processes, technologies, trade secrets, contracts, client lists, knowledge, know-how, methods of using trade names, service marks, trademarks (the "Marks"), logos, emblems, trade dress and other intellectual property; distinctive signage; standards and specifications for services, products, supplies, appearance, operations and management control; training and assistance; purchasing programs; and advertising, marketing, promotional and sales programs; all of which may be developed or changed, discontinued, improved, modified and further developed by Us from time to time (the "System"). You must operate your Frios Business according to Our System which we may change, improve, and further develop.

You will operate the Frios Business according to Our standard franchise agreement attached as Exhibit B ("Franchise Agreement") and Our standards communicated to You via Our confidential operations manuals and other written directives in Our discretion (collectively, Our "Manual").

Subject to availability and our discretion, we may also offer qualified candidates the opportunity to develop additional Frios Businesses within a designated geographic area ("Development Territory"). You will be required to sign the multi-unit development agreement ("MUDA") attached as Exhibit C at the time You sign the Franchise Agreement for Your first Frios Business. You will be required to open a minimum of two Frios Businesses in Your Development Territory within a specified period of time ("Development Schedule"). Under the MUDA you sign and upon establishing each additional Frios Business, you may be required to sign a then-current Franchise Agreement which may differ from the current Franchise Agreement included with this Franchise Disclosure Document.

**Market and Competition**

The frozen dessert industry is highly competitive. Our concept is targeted to the general public. Your customers will be principally individuals who patronize the event or location where Your Sweet Ride Ice Cream Truck (s) or cart(s) are located. Fluctuations in the taste and habits of the public, local and national economic conditions, population density, labor and energy costs, gasoline prices, fluctuating interest and insurance rates, inflation, and general traffic conditions affect this industry and are generally difficult to predict. Your competition will include mobile food businesses, fast casual restaurants, ice cream shops, kiosks, and retail stores in the territory which You operate that serve frozen desserts including gourmet popsicles. There are companies that offer similar products which may have more resources and a larger advertising budget than Us. You may also encounter competition from Us or Our other franchisees. The products sold in Your Frios Business may be seasonal, depending on the location of Your Designated Territory.

**Applicable Regulations**

The U.S. Food and Drug Administration, the U.S. Department of Agriculture and state and local health departments administer and enforce regulations, that govern food preparation and service and sanitary conditions. State and local agencies may inspect Your Sweet Ride Ice Cream Truck (s) and cart(s) to ensure that You comply with these laws and regulations.

If You purchase rights to operate a Frios Business, Your business will be subject to laws, regulations and ordinances that are applicable to businesses generally. You must obtain and maintain any permits, licenses, and certifications necessary for the operation of the Frios Business. As Our franchisee, Your Frios Business will be subject to employment regulations concerning wage rates, mandated employee benefits, employment taxes, worker safety, unemployment compensation, workers' compensation, disabled

employees and discrimination in employment practices. You must operate Your Frios Business in full compliance with all applicable laws, including, but not limited to, data privacy laws and regulations, government regulations relating to occupational hazards, health, EEOC, OSHA, discrimination, employment, sexual harassment, workers' compensation and unemployment insurance. You must comply with all provisions of the USA Patriot Act and Executive Order 13224.

There may be other laws applicable to Your Frios Business. It is solely Your responsibility to comply with all applicable laws and regulations, and to obtain and keep in force all necessary licenses and permits required by public authorities. You should consider the cost and time required to comply with these laws and regulations when evaluating Your purchase of a Frios Business. Additionally, before purchasing the franchise, We strongly urge You to hire an attorney to review local, state, and federal laws that may affect Your operations or impact Your operating costs.

## ITEM 2
## BUSINESS EXPERIENCE

**CHIEF EXECUTIVE OFFICER: CLIFFORD L. "CLIFF" KENNEDY III**

Mr. Kennedy serves as Our Chief Executive Officer since January 2021. He is also the CEO of Holding, Manufacturing and Treats in Mobile, Alabama. Previously, he served as Our President from December 2018 through November 30, 2021. From August 2005 through December 2018, Mr. Kennedy was the Sales Director for Gulf Supply Co., Inc. in Mobile, Alabama.

**DIRECTOR OF FRANCHISE SUPPORT & DEVELOPMENT: ALISON GROOM**

Ms. Groom serves as our Director of Franchise Support & Development since January 2023. Previously she served as a Sales Manager for Adooring Designs in Grapevine, Texas from September 2021 until January 2023. From October 2019 until September 2021 Ms. Groom served as our Director of Franchise Development. From January 2012 until January 2019, Ms. Groom was a Sales and Design Specialist for Adooring Designs in Grapevine, Texas.

**CHIEF FINANCIAL OFFICER: MATHEW COOK**

Mr. Cook serves as Our Director of Accounting since May 2021 in Mobile, Alabama. Previously he served as Accounting Manager for Argo Systems LLC in Mobile, Alabama from October 2020 until May 2021. He was the Accounting Supervisor for Inchacape Shipping in Mobile, Alabama from May 2019 until October 2020 and an Accountant for Pilot Catastrophe Services from September 2016 until April 2019 in Mobile, Alabama.

**CHIEF MARKETING OFFICER: JENNIFER ROGERS**

Ms. Rogers serves as our Chief Executive officer since March 2023. Previously, she served as the Vice President of Marketing for Snapology from March 2022 through March 2023. From November 2021 through April 2022, Mr. Rogers was the Director of Sales and Marketing of Pittsburgh CLO. From October 2018 through November 2021, Mr. Rogers was the Director of Marketing for Snapology. From Mary 2013 through October 2018, Mr. Rogers was the Marketing Manager and Special Projects Manager for The Frick Pittsburg. All of Ms. Rogers rolls have been based out of Pittsburgh, Pennsylvania.

## ITEM 3
## LITIGATION

No litigation information 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

**Initial Franchise Fee**

For a single franchise with one Sweet Ride Ice Cream Truck, unlimited carts and the right to sell on a wholesale basis in the Designated Territory, You must pay Us a $20,500 initial franchise fee ("Initial Franchise Fee") at the time the Franchise Agreement is executed. The Initial Franchise Fee is uniformly imposed and is considered fully earned and nonrefundable upon payment, except in 2020 we discounted our initial franchise fee by 10% for qualified United States military veterans.

**Development Fee**

We may offer certain prospective franchisees the right to develop a minimum of two Frios Businesses within a specified Development Territory in accordance with the Development Schedule. You secure these rights by signing the MUDA with Us at the time You sign the Franchise Agreement for Your first Frios Business ("Initial Franchise Agreement"). If You sign the MUDA, You must pay the Initial Franchise Fee for the first Frios Business in accordance with the Initial Franchise Agreement and You must pay the development fee in the amount of $15,000 for the second Frios Business and $15,000 each additional Frios Business You agree to open under the MUDA ("Development Fee"). You will pay the total Development Fee when You sign the MUDA. The Development Fee is fully earned by Us upon execution of the MUDA and is not refundable under any circumstances even if You fail to develop any additional Frios Businesses under Your MUDA. You will sign a separate Franchise Agreement, in the then-current form being offered by Us, for each Frios Business You develop under the MUDA. In Our last fiscal year, We did not collect any Development Fees.

**Initial Product Inventory**

You must purchase your initial inventory of Frios gourmet pops from us or our affiliate. We estimate that the cost of your initial inventory of Frios gourmet pops will range between $900 and $2,000. This fee is fully earned by us upon payment and is non-refundable.

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## ITEM 6
## OTHER FEES

| Fee | Amount | Due Date | Notes |
|---|---|---|---|
| Royalty Fee[1] | $400 per month. | Due on the 12th of each month. | We reserve the right to increase the Royalty Fee by up to 10% in any given calendar year. (See, Franchise Agreement ("FA") Secs. 1 and 3.2). Your monthly Royalty fee obligations will commence on the first month following the signing of your Franchise Agreement. |
| Advertising Fund Contribution[2] | $125 per month. | Due on the 12th of each month. | You will begin paying the Advertising Fund Contribution the first month after the Effective Date of the Franchise Agreement. We reserve the right to increase the Advertising Fund Contribution up to $200 per month or reduce or discontinue the Advertising Fund Contribution in Our discretion (See, FA Sec. 3.3). |
| Local Advertising Contribution[3] | $1,500. | Annually | Payable if a Local Advertising is established and We require You to participate (See Item 11). We do not currently have any Local Advertising Contributions established. |
| Inventory and Supplies[4] | The then current fees for Frios Pops and supplies. | As invoiced. | Payable to Us, Our affiliate or designated supplier. |
| Transfer Fee[5] | $5,000. | At the time of transfer. | Payable if You transfer Your Frios Business. Transfers are subject to Our approval (See, FA Sec. 18.2.). |
| Audit Fee[6] | Amount and costs incurred by Us to audit Your Frios Business plus the amount of underpayment and interest. | Cost of the inspection within 10 days of invoice. Underpayment and interest, immediately. | Due if the audit or any other inspection reveals that any payments to Us have been underpaid by 3% or more. You will reimburse Us for all costs and expenses connected with the inspection (including, without limitation, travel expenses and reasonable accounting and attorneys' fees)(See FA Sec. 12.7). |
| Correction of Deficiency or Unsatisfactory Conditions | Cost of any inspection We conduct of Your Frios Business plus the cost to correct any deficiency or unsatisfactory condition. | Per invoice. | If You fail to correct deficiency, We may do so on Your behalf and at Your expense. |

| Fee | Amount | Due Date | Notes |
|---|---|---|---|
| Interest[7] | The lesser of 1.5% per month or the highest commercial contract interest rate allowed by law. | On demand. | Due on all overdue amounts (See FA Sec. 3.9.1). |
| Late Fee | The then current late fee for late or non-submittal of required reports or required payments. Our current late fee is $25. | As assessed. | |
| Insufficient Fund Fee | $100 per occurrence. | As incurred. | Due each time a check You write to Us is dishonored, credit card payment is denied, or if You have insufficient funds for an EFT payment. |
| Indemnification and Costs and Attorneys' Fees[8] | Actual costs. | As incurred. | You must reimburse Us if We are held liable for claims from Your operation of the Frios Business, or a sale or transfer of the Frios Business (See, FA Sec. 21.3). |
| Cost of Enforcement[9] | All of Our costs, including actual costs for attorneys' fees. | Upon demand. | You must reimburse Us for all costs and attorney fees if We are the prevailing party in litigation with You (See FA Secs. 22.4). |
| Insurance | Will vary based on insurance rates and quotes in Your Designated Territory. | When billed. | If You fail to obtain insurance, We may obtain insurance for You, and You must reimburse Us. You will pay a 10% administrative fee for Our expenses in obtaining the required insurance (See FA Sec. 15.5). |
| Successor Franchise Fee | $5,000 | Upon receipt of Our invoice at or near the time of renewal. | Payable only if, after the expiration of Your Franchise Agreement, You meet all requirements, as determined by Us, and are approved by Us to enter into a Successor Franchise Agreement for Your Frios Business (See FA Sec. 3.11). |
| Additional Training Fee | Our then-current per diem rate or $500 per person per day whichever is greater (plus hotel, air fare, and other expenses incurred by Our trainer if ongoing training is in Your Designated Territory). | Per Our invoice. | This fee will be assessed for training newly hired personnel; for refresher training courses; for special assistance or training You need or request to be conducted at Your Designated Territory (See FA Sec.3.12.) We may also charge the Additional Training Fee to transferees. |

| Fee | Amount | Due Date | Notes |
|---|---|---|---|
| Franchisee Convention Fee | Our then current fee for one person to attend Our Annual Franchisee Convention or $500 if you do not attend. | As incurred. | We hold an annual Frios franchise convention that is held in November. |
| Email Address Fee | Our then current fee. Currently, $60 | Annually | You will receive the first two emails friospops.com email address at no cost. You will pay the Email Address Fee for each additional email address You request. (See FA Sec. 3.16) |
| Non-Compliance Fee | $100 per violation. If violation is not corrected within 30 days, an additional $300 and $50 per day thereafter. | As incurred. | This fee is assessed if You receive written notice from Us that You are out of compliance with the terms of Our Franchise Agreement (See FA Sec. 3.6). |
| Liquidated Damages | Amount equal to the average Royalty Fees for the last 12 months (or shorter period, if the Frios Business has been in operation less than 12 months), multiplied by: 36 or the number of months remaining in the Term, whichever is less. | On demand. | We may require You to pay Us this amount in the event You terminate the Franchise Agreement without cause, or We terminate the Franchise Agreement for cause (See FA Sec. 17.3). |
| Management Fee | The payment of all remaining royalty payments that remain on the territory agreement | Payable only upon the death or permanent disability of You or Your Operating Principal or Your abandonment of Your Frios Business. | This amount is in addition to the Royalty Fee and Advertising Fund Contribution, if any. |
| Fee for Unapproved Products or Unapproved Suppliers[11] | $250 per day. | Upon demand. | Payable for each day unauthorized products are offered or sold in Your Frios Business or products are acquired from unauthorized suppliers or vendors and sold or offered to be sold in Your Frios Business (See FA Sec. 3.9.5). |

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NOTES

Except where otherwise noted, all fees and costs payable to Us, Our Affiliates or Our designees are non-refundable. We have the right to increase any fees due from You, as well as any charges for products, materials, and services provided to You, based on Our reasonable judgment, from time to time. Fees paid to vendors or other suppliers may or may not be refundable depending on the vendors and suppliers. We reserve the right to change the time and manner of payment at any time upon written notice to You. We reserve the right to require You to pay fees and other amounts due to Us via EFT, automatic withdrawal program or other similar means, as described in the Franchise Agreement and/or Manual. If payments are required in this method, You must comply with Our procedures and perform all acts and deliver and execute all documents, including authorization (Attachment 4 to the Franchise Agreement) for direct debits from Your Frios Business bank operating account, which may be necessary to assist in or accomplish payment by this method. Under this procedure You shall authorize Us to initiate debit entries and/or credit correction entries to a designated checking or savings account for payments of fees and other amounts payable to Us and any interest that may be owed. You shall make the funds available to Us for withdrawal by EFT no later than the payment due date. If You sign the MUDA, for the second and each subsequent Franchise Agreement You sign for the Frios Business, You will pay the fees at the rate specified in Our then-current form of Franchise Agreement.

(1) Royalty Fee: The Royalty Fee obligation begins the first full month of Your Start of Business.

(2) Advertising Fund Contribution: The purpose of the Advertising Fund is to promote expansion and increase brand awareness. The Advertising Fund Contribution will be deposited into the Advertising Fund administered by Us.

(3) Local Advertising Contribution : We reserve the right to establish local advertising cooperatives composed of all franchised Frios Businesses in a designated area. If We establish a Local Advertising Cooperative, in addition to the Advertising Fund Contribution, You will pay the Local Advertising Cooperative Fee. There are currently no Local Advertising Cooperatives established as of the date of this Disclosure Document.

(4) Inventory and Supplies: You must reimburse Us, Our Affiliate or designated third parties for all fees, costs, expenses, taxes and charges for products, Frios Pops, services, supplies, equipment, goods, materials or inventory furnished to You by Us, Our Affiliate(s) or any designated supplier, including taxing authorities, governmental agencies, vendors, contractors and insurance carriers.

(5) Transfer Fee: The term "transfer" includes the sale of the assets of Your Frios Business; the sale, assignment, or conveyance of Your stock, membership interest, membership units, or partnership units of Your franchise to any third party; the placement of Your assets, stock, membership interest, partnership units, or membership units of Your Frios Business into a business trust; or a transfer for convenience to any entity which You own any percentage of equity or shares. No Transfer Fee will be required if You assign Your Franchise Agreement to a business entity in which You own the majority of the entity's equity. You will also be responsible for paying any broker fees or referral fees, if any, required to be paid to a third party.

(6) Audit Fee: The total amount of the audit fees that You pay Us will vary depending on the cost of the audit itself (for which You will be entirely liable), and whether You have any unpaid Royalty Fees, Advertising Fund Contributions, Local Advertising Cooperative Contributions for which You may be penalized in accordance with the Franchise Agreement.

(7) Interest: Interest and late charges begin to accrue on all amounts not received within five days after the due date without notice to You. In addition to any interest and late charges, You must also pay any damages, expenses, collection costs, and/or reasonable attorneys' fees We may incur when You do not make the required payments, provided no interest charged shall exceed the maximum legal rate of any local, national, or international authority having jurisdiction over Your Frios Business activities.

(8) Indemnification: You must protect, defend, indemnify, and hold Us harmless against any claims, lawsuits, or losses arising out of Your operation of the Frios Business, lease of the Sweet Ride Ice Cream Truck or a sale or transfer of the Frios Business brought by third parties, any default under the Franchise Agreement or for costs associated with defending claims that You used Our Marks in an unauthorized manner. You must pay for all damages, legal fees, enforcement or collection costs, and/or any other costs assessed against Us in any proceeding related to Your Frios Business to the extent permitted by law, provided that no indemnification fee shall exceed the actual total costs assessed against Us .

(9) Cost of Enforcement: Cost of enforcing the Franchise Agreement will be levied against You if We prevail against You in any dispute arising out of the Franchise Agreement or if We terminate Your Franchise Agreement. However, the total amount of any such fees will vary depending on the value of legal fees, expert witness fees, accountant fees, costs to Us or Our employees in complying or addressing the dispute, and any travel expenses that We deem necessary to resolve the dispute.

(10) Testing of Products or Approval of New Suppliers: You will be required to obtain Our written approval for most of the product, vendors, and/or suppliers of products, that You will use in the operation of Your Frios Business, and You will be charged an assessment fee for the examination of any product, vendor, or supplier submitted to Us for approval. This fee is currently Our out-of-pocket costs for any single product, vendor, or supplier You wish to offer, use, and/or substitute in Your operation of the Frios Business. We may waive these fees at Our sole and absolute discretion if the equipment, products, vendors and/or suppliers You select meet Our requirements and are added to Our approved list of equipment, products, vendors and/or suppliers for all franchise locations. We will make every effort to process Our evaluation within three months of Your request.

(11) Fee for Unapproved Products or Suppliers: Uniformity of products and services offered by all Frios Business is of utmost importance to Us, Our franchisees, and the System. If You offer to sell or do sell products or services which are not authorized or are not prepared in accordance with the Manual, You agree We will be damaged by Your non-compliance. These damages will be calculated at the rate of $250 per day for each day unauthorized products or services are offered or sold and will be in addition to any other rights and remedies We may have against You. We have the right to collect these amounts in addition to all of Our other rights for non-compliance provided for under the Franchise Agreement. You and We will agree that these amounts are reasonable, constitute liquidated damages and are not a penalty.

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## ITEM 7
## ESTIMATED INITIAL INVESTMENT

### YOUR ESTIMATED INITIAL INVESTMENT

| Type of Expenditure | Amount | | Method of Payment | When Due | To Whom Payment is to Be Made |
|---|---|---|---|---|---|
| | Low Range | High Range | | | |
| Initial Franchise Fee[1] | $20,500 | $20,500 | Single payment | Upon signing Your Franchise Agreement | Us |
| Sweet Ride Ice Cream Truck and Installed Equipment[2] | $5,000 | $15,000 | As arranged | Before opening | Approved vendors |
| Sweet Ride Ice Cream Truck Delivery Fee | $0 | $1,200 | As arranged | As arranged | Approved vendors |
| POS System Equipment[3] | $300 | $1,200 | As arranged | Before opening | Approved vendor |
| Permits and Licenses[4] | $200 | $500 | As incurred | Before opening | Government agencies |
| Insurance (12 Months)[5] | $1,000 | $2,000 | As incurred | As incurred | Insurance carriers |
| Initial Marketing (Three Months)[6] | $375 | $375 | As incurred | As incurred | Vendors |
| Opening Inventory and Supplies | 2,500 | 7,000 | As incurred | As incurred | This fee is associated with options available to purchase from us or our affiliates. |
| Professional Fees[6] | $250 | $2,500 | As incurred | As incurred | Your accountant, attorney and other professionals |
| Training Expenses[7] | $800 | $1,500 | As incurred | During training | Vendors, hotels, airfare, etc. |
| Additional Funds[8] (Three months) | $10,000 | $20,000 | As incurred | As incurred | Employees, vendors, suppliers |
| **Estimated Initial Investment[9]** | **$40,925** | **$71,775** | | | |

NOTES

All expenditures paid to Us, or Our Affiliates are nonrefundable under any circumstances once paid. Fees paid to vendors, suppliers, or other third parties may or may not be refundable depending on their policies or Your arrangements with them. We do not offer financing directly or indirectly for any part of the initial investment. The availability and terms of financing depend on many factors, including the availability of financing generally, Your creditworthiness and collateral and lending policies of financial institutions from which You request a loan. All estimates in this ITEM 7 are based on a new Frios Business.

(1) Initial Franchise Fee; Additional Sweet Ride Ice Cream Truck Fee: If You are a Transferee, You will pay a Transfer Fee in the amount of $5,000 in lieu of the Initial Franchise Fee. You are a transferee if

You purchase a Frios Business from a pre-existing franchisee operating a Frios Business. The Initial Franchise Fee is described in greater detail in Item 5.

(2) Sweet Ride Ice Cream Truck and Installed Equipment/Customization: You must purchase and/or lease the Sweet Ride Ice Cream Truck and customize the Sweet Ride Ice Cream Truck with a branded vehicle wrap and equipment within six months of the Effective Date of the Franchise Agreement. The cost of the Sweet Ride Ice Cream Truck and equipment will vary according to local market conditions, the supplier You purchase the Sweet Ride Ice Cream Truck from, the type of Sweet Ride Ice Cream Truck You purchase, whether You purchase a new or used Sweet Ride Ice Cream Truck , whether You purchase or lease the Sweet Ride Ice Cream Truck , the time of year and other factors. We recommend You consult a local vehicle sales or lease professional to determine Your actual cost. The low end of this estimate assumes that You will finance the entire purchase price of the Sweet Ride Ice Cream Truck. The high end of the estimated range assumes that You will purchase the Sweet Ride Ice Cream Truck. If You elect to purchase a used vehicle or vehicle that is not Our standard Sweet Ride Ice Cream Truck (subject to Our approval) You may incur an additional $20,000 to $30,000 in expenses to retrofit the vehicle. There may be delays in obtaining a Sweet Ride Ice Cream Truck.

(3) POS Equipment: This does not include any license fees to the designated supplier for use of the POS Equipment. You will negotiate the license fee directly with the designated supplier. The POS Equipment fee may be more if You elect more equipment for use in multiple Sweet Ride Ice Cream Truck s and Carts.

(4) Permits and Licenses: You must obtain all necessary permits and licenses required by applicable law before You begin operation of Your Frios Business, including but not limited to, a general business license, if applicable in Your state and Designated Territory. You will also need to obtain department of transportation registrations as applicable in Your state and Designated Territory. You must consult Your attorney regarding requirements in Your state and Designated Territory.

(5) Insurance: You must obtain certain insurance, as We determine necessary.

(6) Professional Fees: We strongly recommend that You hire Your own attorney to help You evaluate this franchise offering, to identify the laws and regulations that may apply to Your Frios Business, to help You set up a business entity, to review and negotiate Your Sweet Ride Ice Cream Truck lease or purchase, and for whatever other purpose You deem appropriate.

(7) Training Expenses: You will be responsible for all travel and living expenses to pick up Your Sweet Ride Ice Cream Truck and to attend the in-person portion of the Initial Training Program (which takes place at the time You pick up Your Sweet Ride Ice Cream Truck ). The costs will vary depending on the distance, if any, traveled, the number of individuals You have attend the training, choice of accommodations, travel arrangements, and other similar factors.

(8) Additional Funds: This estimate represents Our estimate of the amount needed to cover Your expenses for the initial three-month start-up phase of Your Frios Business (other than the items identified separately in the above table). They include estimates for Your out-of-pocket expenses, like payroll taxes and expenses, and other fees collected by Us (excluding Royalty Fee and Advertising Fund Contributions, Carts, coolers for use with wholesale accounts, repairs and maintenance, advertising and marketing expenses, bank charges, state taxes, depreciation/amortization and other miscellaneous items. This range does not include an estimate of Your or other employee salaries. If You intend to draw a salary (or if You wish to employ a Manager) during the initial phase of business, You should modify these estimates accordingly. These fees also assume that none of Your expenses are offset by any sales generated during the start-up phase. You must bear any deviation or escalation in costs from the estimates that We have given.

(9) Total: We relied on Our experience and Our Affiliate's experience in operating a Frios Business. You should review these figures with a business advisor before making any decision to purchase a franchise.

**YOUR ESTIMATED INITIAL INVESTMENT**
**MULTI UNIT DEVELOPMENT AGREEMENT**

| Type of Expenditure | Amount | | Method of Payment | When Due | To Whom Payment is to Be Made |
|---|---|---|---|---|---|
| | Low | High | | | |
| Development Fee for Additional Frios Businesses[1] | $15,000 | $15,000 | Lump sum | When You sign the MUDA | Us |
| Estimated Initial Investment for your First Frios Business[2] | $40,925 | $71,775 | As indicated in Item 7 chart above | As indicated in item 7 chart above | As indicated in Item 7 chart above |
| Total[3] | $55,925 | $86,775 | | | |

Notes:

(1) Development Fee: The MUDA is for the purchase of a minimum of two Frios Businesses. If You sign a MUDA, You will pay Us the non-refundable Initial Franchise Fee for the first Frios Business and a nonrefundable Development Fee based on the number of additional Frios Businesses You agree to open. This chart reflects the requirement to purchase a minimum of two Frios Businesses under the MUDA. Your Development Fee will be higher if You elect, subject to Our approval, to open more than two Frios Businesses.

(2) Initial Investment for First Frios Business: If You sign the MUDA, You will incur the expenses listed in the preceding Item 7 chart for the first Frios Business, including the Initial Franchise Fee.

(3) Total: The Total includes the Development Fee You must pay at the time You enter into the MUDA as well as the Initial Franchise Fee and estimated range of fees You will incur to open and operate Your first Frios Business. Except for your first Frios Business, this estimate does not include the estimated initial investment that you will incur each and every time you open a Frios Business as may be authorized under your Multi-Unit Development Agreement and pursuant to the terms of each respective Frios gourmet pops franchise agreement.

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

**Approved Services and Products/Specifications**

You must establish and operate Your Frios Business in compliance with Your Franchise Agreement and Our confidential Manual that We loan to You. To ensure that the highest degree of quality and service is maintained, You must conform to Our specifications (including for Your Sweet Ride Ice Cream Truck ), standards, methods and Systems and You must purchase all goods, services, supplies, Frios Pops, products, branded materials, equipment, software, POS Equipment, inventory and supplies (collectively, "Goods, Supplies and Services") from vendors that We approve and who demonstrate, to Our continuing satisfaction, the ability to meet Our then-current standards. We will provide a written list of approved suppliers for Our Goods, Supplies and Services, and will notify You of any additions to or deletions from this list.

We will provide You with Our Manual and various supplemental bulletins and notices that will contain the specifications, standards, and restrictions on Your purchases of Goods, Supplies and Services, including Your Sweet Ride Ice Cream Truck . We determine Our uniformity and quality standards and specifications, in Our sole discretion. We may modify Our written standards and specifications, and You must comply with any modifications.

You must use the System and the Marks in strict compliance with the standards, procedures, specifications and requirements as set forth in the Franchise Agreement, in Our Manual, and as otherwise designated in writing by Us.

**Alternate Supplies, Suppliers and Equipment**

We do permit You to contract with alternative suppliers if approved by Us and they meet Our criteria. If You want to purchase certain Goods, Supplies and Services that are subject to Our approved supplier requirements from a supplier who has not been previously approved by Us, then You must, request approval from Us in writing. We must approve such supplier prior to You making any purchase from such supplier. You must send Us representative samples or specifications of that supplier's Goods, Supplies and Services and certain other information about the supplier's business, including but not limited to, providing confirmation that the supplier is financially sound and carries adequate liability insurance. We will also have the right to inspect the supplier's facilities and otherwise evaluate the proposed supplier and its Goods, Supplies and Services. You must pay the cost of all inspections and evaluations, including the actual cost of any testing. We will make every effort to notify You within 30 days if We approve or disapprove of an alternative supplier. If We revoke approval for a supplier, We will provide written notice to You. Our criteria for approving suppliers is not available to franchisees.

We will notify You if and when We no longer approve a previously approved supplier, product, or equipment. A supplier must continually adhere to Our standards and specifications to maintain its approval. We reserve the right to condition Our approval of any proposed product or equipment on such terms We decide at Our discretion, including Your execution of a general release in Our favor, Your agreement to obtain additional related insurance and to attend additional training, and Your agreement to a test period.

**Ownership in Required Suppliers**

Except for Our officer's ownership interest in Us and Manufacturing, neither We nor Our officers have any ownership interest in any other approved supplier.

**Required Purchases**

The following are Our current specific obligations for purchases:

**Frios Pops**

You must purchase Frios Pops from Our Affiliate, Manufacturing.

**Marketing and Promotional Materials; Items Bearing Our Marks**.

You must purchase from Our designated suppliers all marketing, advertising, and promotional materials, including uniforms, signage, advertisement templates, t-shirts, hats and any other promotional items or business marketing tools We use, or might use, as a part of the System. Any items, including all merchandise and any promotional items, which bear or include Our Marks, must be purchased from Us or Our designated suppliers to ensure brand consistency within the System.

**Sweet Ride Ice Cream Truck Equipment/Customization**

You will be required to have Our designated supplier customize Your Sweet Ride Ice Cream Truck . The cost to customize Your Sweet Ride Ice Cream Truck is currently approximately $50,000 , however, the cost may be higher depending on the brand and size of the Sweet Ride Ice Cream Truck You select.

**Branded Carts**

You will have the option to purchase a Cart for the additional cost between $2,000 - $5 ,000 each Cart depending on when You purchase the Cart and the size of the Cart.

**Computer Hardware and Software Requirements**

You will be required to purchase our approved point-of-sale system, software program and customer display. The POS system estimated cost is between $300 and $1,200. You will also pay a license fee to Our designated supplier at the rates You negotiate with the designated supplier.

**Insurance**

You must maintain insurance that We determine is necessary or appropriate for liabilities caused by or occurring in connection with the development and operation of the Frios Business, which must include the following minimum coverages:

- Commercial general liability insurance, including Us , and any entity in which We have an interest and any entity affiliated with Us and each of Our members, managers, shareholders, directors, officers, partners, employees, servants and agents as additional insureds protecting against any and all claims for personal, bodily and/or property injury occurring in or about the Frios Business and protecting against assumed or contractual liability under the Franchise Agreement with respect to the Frios Business and Your operations, including personal and advertising liability as well as products and completed operations coverage, with such policy to be placed with minimum limits of $2,000,000 combined single limit per occurrence; $2,000,000 general aggregate per location; and $400,000 for damage to leased property;

- Property Liability coverage covering all perils to personal property contained within and outside the Sweet Ride Ice Cream Truck. The amounts may vary based on coverage needed but must cover

Your business property and a minimum of $250,000 or the amount of the cost of Your average inventory and Sweet Ride Ice Cream Truck value;

- If You have employees, Workers' Compensation Coverage and such other insurance as may be required by statute or rule of the state or locality in which the Frios Business is located and Employer's Liability coverage in the amount of $1,000,000 per person, $1,000,000 in the aggregate and $1,000,000 for occupational disease;

- Business automobile liability insurance, uninsured motorist, covering the Sweet Ride Ice Cream Truck owned or operated by or on behalf of You, with limits of liability not less than $1,000,000 combined single limit for both bodily injury and property damage; and

- Any insurance coverage that is required by the Manual or federal, state, or municipal law.

We have the right to establish and modify the minimum coverages required and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards, or other relevant changes in circumstances. All such insurance policies must name Us as additional insured, include any endorsements We may require and include a waiver of subrogation in favor of Us and Our affiliates, and each company's officers, directors, shareholders, partners, members, agents, representatives, independent contractors, servants, and employees.

If You fail to purchase and maintain any required insurance coverage or furnish satisfactory evidence of coverage to Us , in addition to Our other remedies (including without limitation declaring You in default of the Franchise Agreement), We may, but are not obligated to, purchase the insurance coverage for You. If We do purchase insurance on Your behalf, You must pay Us on Our demand the amount of any premiums and reasonable expenses We incur in obtaining the insurance. The failure to maintain insurance coverage at any time is a material default under the Franchise Agreement.

**Revenue from Required Purchases**

We do not currently but may derive revenue or other material consideration from required purchases or leases by You. During Our fiscal year ending December 31, 2022, We did not derive any revenue as a result of franchisee purchases. Our Affiliate, Manufacturing derived $1,391,703.97 from required purchases from franchisees. We estimate that Your required purchases and leases will range from 60% to 75% of Your total initial investment (not including the initial franchise fee) and from 80% to 90% of Your ongoing purchases and leases in the operation of the Frios Business.

**Supplier Payments to Us**

Designated suppliers, including suppliers that We own and/or control, may make payments to Us from franchisee purchases. In the last fiscal year, We did not yet receive any supplier rebates but anticipate supplier rebates in the future. We may retain such rebates for Our own benefit.

**Purchasing or Distribution Cooperatives**

At this time, We do not have any purchasing or distribution cooperatives. We anticipate that We will negotiate purchase arrangements with suppliers for the benefit of Our franchisees.

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**Purchase Arrangements**

We may in the future negotiate purchase arrangements with suppliers, including price terms, for the benefit of Our franchisees. As of the date of this Disclosure Document, there are no such purchase or supply agreements in effect.

**Promotions/Loyalty Programs**

You are required to participate in all promotional campaigns, prize contests, advertising, sales, special offers and other promotional programs, national, regional or local in nature approved and required by Us. Any promotions and discount programs for Your Frios Business must be approved by Us and meet Our standards set out in the Manuals.

**Material Benefits**

We do not provide material benefits to You (for example, renewal or granting additional franchises) based on your purchase of particular goods, supplies and services or use of particular suppliers.

## ITEM 9
## FRANCHISEE'S OBLIGATIONS

**This table lists Your principal obligations under the Franchise Agreement, MUDA 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.**

| Franchisee Obligations | Section In Franchise Agreement | Disclosure Document Item |
|---|---|---|
| a. Site selection and acquisition/lease | Not Applicable | Not Applicable |
| b. Pre-opening purchases/leases | 5, 13, and 15 | 7, 8, 11 |
| c. Site development and other pre-opening requirements | 2, 3, 5, 8, and 10 | 11 |
| d. Initial and ongoing training | 8 | 11 |
| e. Opening | 4, 5, 11, and 13 | 11 |
| f. Fees | 3, 4, 8, 10, 11, 12, 13, 15, 18, 21, 22, and 23; Section 4 of the MUDA | 5, 6, 7, 8, 11 |
| g. Compliance with standards and policies/Manual | 6, 7, 9, 10, and 13; Section 5, 6.4, and 10.5 of the MUDA | 8, 11, 14, 16 |
| h. Trademarks and proprietary information | 6, 7, and 9; Section 6.5 of MUDA | 13, 14 |
| i. Restrictions on products/ services offered | 6 and 13 | 8, 16 |

| Franchisee Obligations | Section In Franchise Agreement | Disclosure Document Item |
|---|---|---|
| j. Warranty and customer service requirements | 13 | 16 |
| k. Territorial development and sales quotas | 2 and Section 6.4 of the MUDA | 12 |
| l. Ongoing product/service purchases | 13 | 8, 11 |
| m. Maintenance, appearance & remodeling requirements | 3, 10, and 13 | 6 |
| n. Insurance | 15 | 6, 7, 8 |
| o. Advertising | 11 | 6, 7, 8, 11 |
| p. Indemnification | 21; Section 13 of the MUDA | 6 |
| q. Owner's participation/ management/staffing | 8 and 13 | 15 |
| r. Records and reports | 12 | 11 |
| s. Inspections and Audits | 6 and 12 | 6, 11, 13 |
| t. Transfer | 18 and 19; Sections 7 and 9 of the MUDA | 6, 17 |
| u. Renewal | 4; Section 3 of the MUDA | 17 |
| v. Post-termination obligations | 17 | 17 |
| w. Non-competition covenants | 7, 9, 17 | 17 |
| x. Dispute resolution | 23 and Sections 14 of MUDA | 17 |
| y. Personal Guaranty | Attachment 3 | 15 |

## ITEM 10
## FINANCING

Neither We nor any agent or Affiliates currently offer, directly or indirectly, any financing to You nor do We guarantee Your note, lease or obligations.

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

**Except as listed below, We are not required to provide You with any assistance.**

**Pre-Opening Assistance**

Before You open Your Frios Business, We, Our Affiliate or Our designee will:

1. Designate Your Designated Territory and Development Territory (if You sign the MUDA) (FA Sec. 14.2 and Attachment 1 and Attachment A to the MUDA).

2. Provide the Initial Training Program. This training does not include any professional licenses, certification, or other training You must possess and/or complete before You can operate the Frios Business. (FA Sec. 14.2).

3. Provide to You, on loan, access to an electronic copy of the Manual. Our Manual is confidential and will remain Our property during and after the term of the Franchise Agreement. A copy of the table of contents to the Brand Manual is attached to this Franchise Disclosure Document as Exhibit D (FA Sec. 9.1).

4. Provide You with Our criteria for Your Sweet Ride Ice Cream Truck . (FA Sec. 14.2(d)).

5. Provide You with access to Our current list of initial inventory for Goods, Supplies and Services required for Your Frios Business. (FA Sec 13.1).

6. Provide You with access to Our current list of designated and approved suppliers and/or specifications for the Goods, Supplies and Services required for Your Frios Business (FA Sec 13.1).

7. Provide You with access to Our marketing materials (FA Sec 134.2(g)).

8. Approve the Sweet Ride Ice Cream Truck and equipment and provide You with the in-person portion of the Initial Training Program. (FA Sec. 5.4).

9. Provide assistance and guidance in ordering Your initial inventory, equipment, signage and other required inventory items, equipment and supplies as We deem necessary and in Our sole discretion. (FA Sec. 14.4).

10. At the time You receive Your Sweet Ride Ice Cream Truck, provide guidance in setting up Your POS Equipment and system with the designated supplier (FA Section 14.4).

11. Provide guidance, strategy and advice for Your Frios Business during Our regular business hours via telephone, email or other means We determine. (FA Sec. 14.4)

**Continuing Obligations**

After You open Your Frios Business and during the operation of the Frios Business We, Our Affiliate or Our designee

1. Provide You with Frios Pops. You will pay the then current fee for Frios Pops (FA Sec 13.1).

2. Will provide You with periodic assistance in marketing, management, and assistance with key suppliers, and the operation of the Frios Business at the times and in the manner that We determine including by telephone, e-mail or video chat during Our regular business hours. (FA Sec. 14.4).

3. May provide additional training and ongoing training as We deem necessary in Our sole discretion at such places and times as We deem proper. (FA Sec. 8.5).

4. May conduct an annual conference, seminars, meetings, programs and training at times and in the manner that We determine. We reserve the right to charge an annual conference fee or additional training fee for the annual conference, seminars, meetings, programs and training. (FA Sec. 8.6.1).

5. Will review and approve or disapprove all marketing and promotional materials that You propose to use and may periodically provide general marketing recommendations and marketing materials (if any) at Your cost. (FA Sec. 11.1.4).

6. Will provide You with modifications to the Manual as they are made available to franchisees. (FA Sec. 9.2).

7. Will administer the Advertising Fund in the manner described in the Franchise Agreement. (FA Sec. 11.6).

8. May make periodic visits, which may be announced or unannounced, to the Frios Business for the purposes of determining compliance with the requirements of the Franchise Agreement, for conducting quality assurance audits which may include customer surveys, and for any other purpose connected with the System. (FA Sec. 12.7).

9. Will periodically provide updated information for designated suppliers, supplies, equipment, and inventory required to be used or sold in Your Frios Business. (FA Sec 13.1).

10. May provide You with a page on Our website or a sub-page, where We will have contact information on Your Frios Business (FA Sec.11.7.2).

11. You will exclusively determine the prices that you charge for the Approved Services and Products served and sold by your Frios Business. However, we may suggest pricing levels that we recommend.

Neither the Franchise Agreement, nor any other agreement, requires Us to provide any other assistance or services to You during the operation of the Frios Business.

**Advertising and Promotion**

**First Year Advertising.**

In addition to the other advertising requirements, You must spend a minimum of $1,500 during the first year of Your Frios Business operations on marketing and promoting Your Frios Business in the Designated Territory.

We may require that You provide to Us proof of Your advertising and sales promotion expenditures in the form, and with the detail, including copies of all advertising, marketing materials and receipts, as We request. All First Year Advertising is subject to Our prior approval as set forth below.

**Local Advertising After First Year**

You are required to spend $1,500 annually on local advertising, promotions, and public relations in Your Designated Territory ("**Local Advertising Requirement**"). We may require You to provide documentation of Your Local Advertising Requirement at any time. We reserve the right to require that You pay the Local Advertising Requirement to us or our designated approved marketing firm for marketing in Your Designated Territory. Your cost for (a) salaries, incentives or discounts offered to Your employees, and Your employees' expenses; (b) charitable, political, or other contributions or donations; and (c) the value of discounts given to consumers will not be included toward Your Local Advertising Requirement. The

Local Advertising Requirement is intended to be a minimum expenditure only. You may (and We encourage You to) spend additional funds for local marketing and promotion in Your Designated Territory.

You may create Your own advertising materials; however, all Your advertising must be in media of a type, format, and manner of communication that We approve and must be professional and dignified and conform to the standards and requirements We specify in the Manual. All copyrights in and to marketing, advertising and promotional materials You develop (or that are developed for You) will become Our sole property.

You may not use any advertising or promotional plans or materials until You receive Our written approval. We will approve or disapprove of Your advertising within 15 business days of the date We receive the advertising materials. If You do not receive written approval within 15 business days after We receive the materials, Your advertising and sale promotion materials will be deemed disapproved.

You will not use Our Marks in any advertising or promotional materials without the appropriate copyright, trademark, and service mark symbols ("©", "®", "TM" or "SM") as We direct. Additionally, You must promote and participate in different promotional programs that We designate in the Manual.

We may periodically make available to You certain marketing materials for Your use in local advertising and promotion, some of which must be purchased from Us or Our designated suppliers.

**Local Advertising Cooperative**

In addition to all other advertising requirements, We may from time to time, in Our sole discretion, establish local advertising cooperatives within certain areas (each a "Local Advertising Cooperative"). If We designate an area for the establishment of a Local Advertising Cooperative, the Frios Businesses located within that area will form the Local Advertising Cooperative for the purpose of administering advertising programs and developing, subject to Our approval, promotional materials for use by the members of the Local Advertising Cooperative. The Local Advertising Cooperative will operate according to written by-laws approved by Us and by the majority of the franchisees making up the Local Advertising Cooperative members, on the basis of one vote for each Frios Business within the Local Advertising Cooperative. In the event of a tie vote, We will cast the deciding vote.

We have the right to consent to any proposed change to the by-laws or other organizational structure of the Local Advertising Cooperative. All advertising and promotion materials used by the Local Advertising Cooperative or provided to its members must conform with Our standards. If Your Frios Business is within the area We establish for a Local Advertising Cooperative, You must become a member of that Local Advertising Cooperative and contribute to the Local Advertising Cooperative $1,500 each January. Any Local Advertising Cooperative fees will be applied against the amounts required for local advertising but will be in addition to the Advertising Fund Contribution. At Our request, You must furnish Us with copies of the documentation evidencing Your Local Advertising Cooperative contributions as We may request.

We may exclude any particular Frios Business (including locations owned by Us or Our Affiliates) from participation in a Local Advertising Cooperative, but all Frios Business required to be members of the Local Advertising Cooperative (including locations owned by Us or Our Affiliates) will contribute on the same basis. Further, We may provide the Local Advertising Cooperative with 90 days' notice of special promotions in which the Local Advertising Cooperative and its members will be required to participate. The cost of any such special promotion will count towards the amounts You are required to contribute to the Local Advertising Cooperative. If established, the Local Advertising Cooperative will prepare annual unaudited financial statements, which will be available for review by You upon request. We will have the power to require the Local Advertising Cooperative to be changed, dissolved, or merged.

**Advertising Fund**

You are required to contribute $125 per month ("Advertising Fund Contribution") to a System-wide marketing, advertising, and promotion fund ("Advertising Fund"). We may increase the Advertising Fund Contributions up to $200 per month and/or change the payment terms to the Advertising Fund Contributions by providing You with at least 30 days prior notice.

We will maintain and administer the Advertising Fund as follows:

1. We will control the creative concepts and the materials and media to be used, and We will determine the placement and allocation of advertisements. We may use print, television, radio, Internet, social media, or other media for advertisements and promotions. We do not guarantee that any particular franchisee will benefit directly or in proportion to their contribution from the placement of advertising by the Advertising Fund. We do not undertake any obligation to ensure that Advertising Fund expenditures in or affecting any geographic area are proportionate or equivalent to the contributions of franchisees operating in that geographic area or that any franchisee will benefit directly or in proportion to its contribution to the Advertising Fund from the development of advertising and marketing materials or the placement of advertising.

2. The contributions to the Advertising Fund may be used for, but not limited to, producing, maintaining, administering and directing advertising (including but not limited to the cost of preparing and conducting television, radio, Internet, magazine, direct mail and newspaper advertising campaigns) and public relations activities; media relations salaries, administrative costs, social media, collateral materials, field visits, Annual Conference, hosting an Internet web page of similar activities; employing advertising agencies to assist therein (including agency costs, commissions and similar expenses); providing promotional brochures; conducting market research; and providing other marketing materials to franchisees). Advertising may be placed in local, regional or national media of Our choice.

3. We will maintain Advertising Fund Contributions in a separate account from Our funds. We assume no other direct or indirect liability or obligation to collect amounts due to the Advertising Fund or to maintain, direct or administer the Advertising Fund. Currently, we do not use any percentage of the advertising fund to solicit new franchise sales.

4. We shall attempt to use all contributions in the fiscal year they are made; however, if less than all monies of the Advertising Fund are spent in the fiscal year in which they accrue, the money will remain in the Advertising Fund to be spent in subsequent years. The Advertising Fund We will use any interest or other earnings of the Advertising Fund before We use current contributions. We intend for the Advertising Fund to be perpetual, but We have the right to terminate it if necessary. We will not terminate the fund until all contributions and earnings have been used for advertising and promotional purposes or We have returned Your pro rata share.

5. The Advertising Fund will be administered by Us. We may be reimbursed from the Advertising Fund for reasonable administrative costs, salaries, and overhead expenses related to the administration and operation of the Advertising Fund and its programs, including conducting market research, preparing material, social media, and other programs as well as administration, collecting and accounting for Advertising Fund Contributions.

6. The Advertising Fund may borrow from Us or other lenders to cover deficits or invest any surplus for future use on any terms that We determine. We may reimburse ourselves or other lenders for such loans from the Advertising Fund. Any amounts that remain in the Advertising Fund at the end of each year accrue and We may apply them toward the next year's expenses. We also reserve the right to borrow

excess funds from the Advertising Fund periodically in Our discretion to support other efforts to develop the System.

7. We collected $450 in Advertising Fund Contributions in Our prior fiscal year. We did not spend any money from the Advertising Fund last year.

8. The Advertising Fund is not audited. At Your written request, We will provide unaudited financial statements from the Advertising Fund 120 days after Our fiscal year end. The Advertising Fund is not a trust, and We assume no fiduciary duty in administering the fund.

9. The Advertising Fund is not and will not be Our asset. Although the Advertising Fund is intended to be of perpetual duration, We maintain the right to terminate the Advertising Fund. The Advertising Fund will not be terminated, however, until all monies in the Advertising Fund have been expended for marketing purposes. If amounts are unspent in the Advertising Fund at fiscal year-end, those amounts are carried over by the Advertising Fund for expenditure in the following year. (FA Sec. 11.2).

**Internet Marketing**

You are restricted from establishing a presence on, or marketing on the Internet without Our written consent. All information posted on the Frios Gourmet Pops website, or any linked webpages must be approved by Us before they are posted. We retain the sole right to market on the Internet, including the use of websites, domain names, user accounts with Our Marks, social media accounts, uniform resource locators, keywords, linking, search engines (and search engine optimization techniques), banner ads, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. You may be requested to provide content for Our Internet marketing, and You must follow Our intranet and Internet usage rules, policies and requirements. We retain the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms and meta-tags, social media pages and in connection with linking, marketing, co-branding and other arrangements. We retain the sole right to approve any linking to, or other use of, the Frios Gourmet Pops website and domain. You are not permitted to use a domain name containing Frios Gourmet Pops in the URL without Our consent.

We will have the right, but not the obligation, to provide one or more references or webpage(s), to Our franchisees, as We may periodically designate, within Our Online Site. The term "Online Site" means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including, but not limited to, the Internet, webpages, microsites, social networking sites (e.g., Facebook, Twitter, LinkedIn, You Tube, Google Plus, Pinterest, Clubhouse, TikTok, Instagram, etc.), blogs, vlogs, applications to be installed on mobile devices (for example, iOS or Android apps), and other applications, etc. However, if We approve a separate Online Site for You (which We are not obligated to do), then each of the following provisions will apply: (1) You may neither establish nor use any Online Site without Our prior written approval; (2) before establishing any Online Site, You must submit to Us , for Our prior written approval, a sample of the proposed Online Site, including its domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including meta tags), in the form and manner We may require; (3) You must not use or modify an Online Site without Our prior written approval; (4) You must comply with the standards and specifications for Online Sites that We may periodically prescribe in the Manual or otherwise in writing; (5) if We require, You must establish hyperlinks to Our Online Site and other Online Sites; and (6) We may require You to make Us the sole administrator (or co-administrator) of any social networking pages that You maintain or that are maintained on Your behalf. (FA Sec. 11.4).

**Advertising Council**

Currently, We have not established an advertising council ("Advertising Council"), but We reserve the right to do so in the future. If We establish an Advertising Council, it will serve in an advisory capacity to Us with respect to certain advertising expenditures, including providing advice/guidance on how to administer the Advertising Fund. At Our discretion, the Advertising Council may be comprised of Our management representatives, employees, You and/or other franchisees in the System. We will have the right to modify or dissolve an Advertising Council (if created) at any time.

**Computer System**

You must purchase and use any hardware and software programs We designate. (FA Sec. 12.5). You are required to purchase the POS Equipment from Our designated supplier, which could be a Square stand or other similar company's card reader, software program and customer display (the "**POS System**"). You must meet Our current requirements concerning including: (a) the POS Systems, data, audio, telephone, voice messaging, retrieval, and transmission systems used in Your Sweet Ride Ice Cream Truck , between or among other franchised businesses, and between You and Us ; (b) physical, electronic, and other security systems and measures; (c) printers and other peripheral devices; (d) archival back-up systems; (e) internet access mode (such as the telecommunications connection) and speed; and (f) technology used to enhance and evaluate the customer experience (collectively, all of the above are referred to as the "Computer System").

The approximate cost of the Computer System, including the POS System is between $300 and $1,200. You will also negotiate the license fee directly with Our designated supplier for the use of the POS System. Neither We nor Our Affiliates or any third party have any obligation to provide ongoing maintenance, repairs, upgrades, or updates. We may also charge you our Email Fee if You elect more than two email address for your Frios Business. Our current fee is $60 per year.

You will also be required to use QuickBooks (or other accounting software designated by Us ) to manage Your Frios Business accounting and records. We will have unlimited access to the accounting software and Computer System for any legitimate reason in Our discretion or business purpose.

You must be able to access information that is available on the Internet and be able to send and receive email. We may periodically require You to upgrade and update the hardware and software used in connection with the Computer System. There are no contractual limitations on the frequency and cost of these upgrades and updates.

You must afford Us unimpeded independent access to Your Computer System and all business records in the manner, form, and at the times We may request. You must provide Us with all passwords to Your Computer System and business records. We will have the right at any time to retrieve and use this data and information from Your Computer System and Your business records in any manner We deem necessary or desirable. There are no contractual limitations on Our right to access this information stored on Your Computer System and Your business records. All databases (whether in print, electronic or other form), including all names, addresses, phone numbers, e-mail addresses, customer purchase records customer lists, and all other records contained in the Computer System and all other business records created and maintained by You are Our sole property.

**Emails and Telephone Numbers**

We reserve the right to approve Your email address or require You to use only an e-mail address that We provide for Your Frios Business. We have the right to require You to use one or more designated telephone

vendors. If We so require, You must use Our designated telephone vendors for the phone service to Your Frios Business. We may designate, and own, the telephone numbers for Your Frios Business.

**Typical Length of Time Before Operation**

Generally, You will begin operation of Your Frios Business within 30 to 90 days after You sign the Franchise Agreement. Factors that may delay Your opening include delivery time of Your Sweet Ride Ice Cream Truck , delivery of Carts, and delays in obtaining the necessary licenses and permits that You need to operate Your Frios Business. You must begin operations of the Frios Business within 90 days from the Effective Date of Your Franchise Agreement (which may include sales from Carts or wholesale accounts in Your Designated Territory). You may not open the Frios Business to the public until You have received Our prior written approval. (FA Sec. 5.4). We can terminate the Franchise Agreement if You fail to open Your Frios Business within 90 days of the Effective Date of Your Franchise Agreement and We do not provide You with an extension. (FA Sec. 16.2.1).

**Training**

Before opening Your Frios Business, You (or if You are an entity, Your Operating Principal) and Your Manager (if You will employ a Manager) must attend and successfully complete, to Our satisfaction, the initial training program ("Initial Training Program"). Our Initial Training Program includes up to one week of virtual, on-line sessions and up to two-days of in-person training at Our then current headquarters (Mobile, Alabama) or any other location We specify. The Initial Training will be conducted once a month or as needed.

You may have up to three people attend the Initial Training Program at no additional training fee. The Initial Training Program will include instruction on the topics selected by Us. The instructional materials for the Initial Training Program will include other written, electronic, or on-line materials We designate. You will pay all travel, living expenses and wages, if applicable, that You and Your attendees incur to attend the Initial Training Program.

The following chart summarizes Our current Initial Training Program. However, the Initial Training Program may be modified at Our discretion. The exact number and distribution of hours of classroom training may vary.

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## INITIAL TRAINING PROGRAM

| Subject | Hours of Virtual Classroom Training | Hours of In-Person Training | Location |
|---|---|---|---|
| Advertising and promotional strategies; Purchasing procedures; Inventory; Revenue streams; and Customer service | 10 | 0 | Virtual/On-line Training |
| Sweet Ride Ice Cream Truck Operations and Procedures | 0 | 20 | At Our headquarters or other location, We designate |
| Total | 10 | 20 | |

All training will be conducted under the supervision of Alison Groom, Matthew Cook, Kristen Loper, Jennifer Rogers, and Cliff Kennedy III.

Alison Groom has 11 years of sales experience along with two years' experience working for Frios in franchise support and development. Mrs. Groom also has four years of experience as a Frios franchisee. Matthew Cook has two years' experience training franchisees, and he has five years accounting experience in various industries. Mr. Cook leads training on QuickBooks, ordering, inventory production and shipping. Kirsten Loper has two years of experience operating a multi-unit Frios franchise. Mrs. Loper leads the in-person, Sweet Ride Ice Cream Truck training and event training. Jennifer Rogers has 20 years of marketing experience with five years in the franchise industry. Mrs. Rogers oversees your marketing and advertising training. Cliff Kennedy III has 17 years of sales experience in various industries and four years of experience in sales training for Frios franchisees. Mr. Kennedy oversees your give-back training, sales training, and large wholesale account training.

We may require that You or Your Operating Principal, Managers, and employees periodically attend additional courses, seminars, annual conferences and other training programs (collectively, "Additional Training"). We may charge You a fee for such Additional Training. Finally, We will determine the duration, curriculum, and location for any Additional Training. We strongly encourage You to attend these Additional Training sessions, and We reserve the right to require You to do so and to charge You a fee, regardless of Your attendance.

We may also require that You, Your Operating Principal, Manager or Your employees attend additional remedial training that We deem necessary. We may charge a fee for such remedial training. You will be responsible to implement a training program for Your employees in compliance with Our Manual.

### Operations Manual

You will operate Your Frios Business in compliance with those operational systems, procedures, policies, methods and requirements found in the Manual and in any supplemental bulletins and notices, revisions,

modifications or amendments which are all a part of the Manual. The Manual and all other manuals or written materials relating to Your Frios Business must be returned to Us upon termination or expiration of Your Franchise Agreement. We may modify the Manual, but the modifications will not substantially and materially alter Your status and rights under the Franchise Agreement.

We may notify You of changes to the Manual by any method, including but not limited to, e-mail, posting the modified Manual on an intranet or on Our website. But You are responsible for checking the intranet and/or Our website for changes to the Manual. You must ensure that Your copy of the Manual is kept current at all times. You will be required to abide by any such modifications, changes, additions, deletions and alterations to the Manual and You will be responsible for all costs and expenses that You may incur to comply. In addition, You may need to purchase updated equipment, products and supplies at Your own cost. If there is any dispute as to the contents of the Manual, the terms of the master copy maintained by Us, at Our principal office, will control.

The Table of Contents of the Manual, along with number of pages devoted to each section, is included as Exhibit D to this Disclosure Document. The Manual contains a total of 52 pages.

## ITEM 12
## TERRITORY

**Designated Territory**

You will operate Your Frios Business within a specific contiguous geographical area having up to 200,000 people ("Designated Territory"). Under the Franchise Agreement, You will have the right to own and operate a Sweet Ride Ice Cream Truck , unlimited Carts and unlimited wholesale accounts (on a non-exclusive basis) in Your Designated Territory.

You are prohibited from operating the Frios Business outside of Your Designated Territory, except that, Your office for Your Frios Business may be outside Your Designated Territory if it is located at Your home or you receive written permission to work an event outside of Your Designated Territory. You are prohibited from relocating the Frios Business out of the Designated Territory without Our prior written consent.

Your Designated Territory will be designated by certain zip codes, postal codes or counties We designate. Your Designated Territory may differ significantly from Designated Territories of other Franchisees, including without limitation, the geographic size, number of people, number of businesses and other demographics. Your Designated Territory will be described in Attachment 1 of the Franchise Agreement.

So long as the Franchise Agreement is in force and You are not in default under it or any other agreement with Us or any Affiliate of Ours, neither We nor Our Affiliates will own or operate or franchise or license others to own or operate a Frios Business within Your Designated Territory other than in a Non-Traditional Location and wholesale accounts. A "Non-Traditional Location" includes transportation facilities, sporting arenas, mall kiosks, entertainment facilities, military facilities, music venues, schools and amphitheaters. A Non-Traditional Location is not considered part of the Designated Territory.

**Development Territory Under the MUDA**

Under the MUDA, You are granted the right to develop and operate multiple Frios Businesses within the non-exclusive Development Territory per a Development Schedule set out in the MUDA. If You fail to meet any of Your obligations under the MUDA, including compliance with the Development Schedule, or breach any of Your Franchise Agreement(s), We may terminate Your right to develop, open and operate new Frios Businesses within the Development Territory. However, the termination of the right to develop

Your Development Territory will not terminate any rights granted under the Franchise Agreement(s) then in effect so long as You are in compliance with the terms of such Franchise Agreement(s). We may own, operate, franchise or license others to operate additional Frios Businesses anywhere, without restriction, including in Your Development Territory, except for any Exclusive Territories under Your Franchise Agreement(s) that then remain in effect.

Before You sign the MUDA, a description of the Development Territory will be included in the MUDA. The size of the Development Territory and the number of Frios Businesses You will develop within the Development Territory are determined by different factors, including the population of the Development Territory, market potential, demographics, economic conditions, business climate, competition, Your financial resources and other relevant factors. You must meet the Development Schedule in the MUDA or You will lose Your right to continue to develop Frios Businesses in the Development Territory. The MUDA does not grant any options, rights of first refusal or similar rights to You for the acquisition of additional development rights in Your Development Territory or contiguous areas.

**No Options; Rights of First Refusal**

The Franchise Agreement does not grant any options, rights of first refusal or similar rights to You for the acquisition of additional franchises within Your Designated Territory or contiguous areas.

**Reservation of Rights**

Your Designated Territory and Development Territory are not exclusive territories. You will not receive an exclusive territory. You may face competition from other franchisees, from outlets We own, or from other channels of distribution or competitive brands that We control. The following rights are reserved to Us or Our Affiliates:

(1) advertise and market the System within and outside the Designated Territory and Development Territory;

(2) develop Frios Businesses outside of Your Designated Territory or Development Territory (if You signed the MUDA);

(3) develop other frozen dessert business concepts under other brand names, even if the locations for the other frozen dessert business concepts are within Your Designated Territory or Development Territory (if You signed the MUDA);

(4) market, distribute and sell, on a wholesale or retail basis, Frios Pops, ancillary products and other goods under any of the Marks, by direct sale, wholesale, the Internet, mail order, other alternative distribution channels (including grocery stores, convenience stores, retail outlets) or by any other marketing or distribution method even if the sales are made to customers, distributors, wholesalers or retailers who are located in Your Designated Territory or Development Territory (if You signed the MUDA). We do not provide compensation to You for providing such items in Your Designated Territory or Development Territory (if You signed the MUDA) through alternative distribution channels;

(5) sell any products and services sold at Frios Businesses under any other names and marks, including through alternative channels of distribution;

(6) the right to develop, manufacture, and/or distribute any services or products that have been branded with the Marks. If we decide to develop and distribute products or conduct similar services within the Designated Territory, you will receive no compensation from us for such sales, unless agreed otherwise by the parties in writing.

(7) implement multi-area marketing programs which may allow Us or others to solicit or sell to customers anywhere. We reserve the right to issue mandatory policies to coordinate such multi-area marketing programs;

(7) operate Frios Businesses from Non-Traditional Locations anywhere; and

(8) to acquire businesses that are the same as or similar to the Frios Business and operate such businesses anywhere within or outside Your Designated Territory or Development Territory (if You signed the MUDA) and to be acquired by any third party which operates businesses that are the same as or similar to the Frios Business anywhere within or outside of the Designated Territory or Development Territory (if You signed the MUDA), so long as such businesses are operated under different marks.

Relocation

Your right to relocate your Designated Territory is not guaranteed and approval of a request by you to relocate your Designated Territory is completely at our discretion. We evaluate relocation requests on a case-by-case basis and consider factors such as operational history, the location of other Frios Business designated territories, our expansion plans, demographics and other factors that, at the time of a relocation request, are relevant to us.

Restrictions on Us from Soliciting or Accepting Orders in Your Territory

There are no restrictions on us from soliciting or accepting orders from customers inside your territory. We reserve the right to use other channels of distribution, such as the internet, catalog sales, telemarketing, or other direct marketing sales, to make sales within your territory using our principal trademarks or using trademarks different from the ones you will use under the Franchise Agreement. We do not pay any compensation to you for soliciting or accepting orders from inside your territory.

Soliciting by You Outside Your Territory

You are required to target and direct the marketing of your Frios Business to customers located within your territory. You may only offer and sell Approved Services and Products from your Frios Business located within your Designated Territory and only to retail customers for direct consumption. There are no restrictions from soliciting or accepting orders from consumer s outside your territory, including, whether the franchisee has the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales outside its territory.

## ITEM 13
## TRADEMARKS

The Franchise Agreement grants You the non-exclusive right to use the Marks in Your Frios Business. The Marks are owned by Our parent, Holding. We have the right to use and license to others to use the Marks pursuant to a Trademark License Agreement (the "License Agreement"). dated March 1, 2019, and a Trademark License Agreement dated April 29, 2021. The Trademark License Agreements have terms of 50 years with a right to renew for additional 50-year terms. Although the License Agreement may be terminated as a result of a breach of the License Agreement, in the event of any termination of the License Agreement, our franchisees will continue to maintain the right to use the Marks pursuant to the terms of their Franchise Agreement. Termination of the License Agreement does not terminate use of the Marks by

our authorized franchisees. We intend to renew the registrations below and file all appropriate affidavits for this mark at the times required by law.

The following chart lists the Marks that are registered with the United States Patent and Trademark Office (the "USPTO"):

| MARK | REGISTRATION NUMBER | REGISTRATION DATE | REGISTER |
|---|---|---|---|
| frios gourmet pops | 4,950,073 | May 3, 2016 | Principal Register |

FGP Holding, LLC has also filed the following marks for protection and is awaiting registration on the USPTO Principal Register:

| MARK | SERIAL NUMBER | FILING DATE | REGISTER |
|---|---|---|---|
| **FRIOS GOURMET POPS** | 90/682,525 | April 29, 2021 | Pending |
| THE BEST THINGS frios gourmet pops IN LIFE ARE FRIOS | 90/682,571 | April 29, 2021 | Pending |
| Happiness Hustlers | 97/191,396 | December 27, 2021 | Principal |

FGP Holding LLC does not have a federal registration for these Marks as of the date of this Disclosure Document. Therefore, these Marks do not have as many legal benefits and rights as a federally registered trademark. If Our right to use the trademarks is challenged, You may have to change to an alternative trademark mark, which may increase Your expenses.

There are no effective material determinations of the USPTO, the Trademark Trial and Appeals Board, the Trademark Administrator of any state or any court relating to these Marks. There are no known superior rights or infringing uses actually known go Us that could materially affect Your use of these Marks. There is pending litigation involving these Marks. Other than the License Agreements, there are no agreements which significantly limit Our right to use or license the use of these Marks in a manner material to the franchise System.

You do not receive any rights to the Marks other than the right to use them in the operation of Your Frios Business. You must follow Our rules when You use the Marks. You must use the Marks as the sole trade identification of the Frios Business. You cannot use any Marks or portion of any Marks as part of any business entity name. You may not use any Marks in connection with the sale of any unauthorized services or products, or in any other manner that We do not authorize in writing. You must obtain a fictitious or assumed name registration if required by Your state or local law. Any unauthorized use of the Marks by You is a breach of the Franchise Agreement and an infringement of Our rights in the Marks. You must not contest the validity or ownership of the Marks, including any Marks that We license to You after You sign the Franchise Agreement. You must not assist any other person in contesting the validity or ownership of the Marks.

You must immediately notify Us in writing when You learn about any claim of infringement, unfair competition, or similar claims about the Marks. You must not communicate with any person other than Us and Our counsel regarding any infringements, challenges or claims unless You are legally required to do so; however, You may communicate with Your own counsel at Your own expense. We are not required to take affirmative action when notified of these uses or claims. We have the sole right to control any administrative or judicial proceeding involving a trademark licensed by Us. The Franchise Agreement does not require Us to participate in Your defense or indemnify You for expenses or damages if You are a party to an administrative or judicial proceeding involving a trademark licensed by Us to You or if the proceeding is resolved unfavorable to You. You must take any actions that, in the opinion of Our counsel, may be advisable to protect and maintain Our interests in any proceeding or to otherwise protect and maintain Our interests in the Marks.

We reserve the right to substitute different Marks for use in identifying the System and the businesses operating as part of the System if Our currently owned Marks no longer can be used, or if We determine, exercising Our right to do so, that substitution of different Marks will be beneficial to the System. In such cases, You must implement and use such different Marks at Your cost and in the manner We require. If We require, You must modify or discontinue the use of any Mark and use other trademarks or service marks We designate. We have no obligation to reimburse You for modifying or discontinuing the use of a Mark or for substituting another trademark or service mark for a discontinued Mark. If We adopt and use new or modified Marks, You must add or replace equipment, supplies and fixtures, and You must make other modifications We designate as necessary to adapt Your franchised business for the new or modified Marks. We do not reimburse You for any loss of goodwill associated with a modified or discontinued Mark.

If We undertake the defense or prosecution of any litigation concerning the Marks, You must sign any documents and agree to do the things as may, in Our counsel's opinion, be necessary to carry out such defense or prosecution, such as becoming a nominal party to any legal action. Except to the extent that the litigation is the result of Your use of the Marks in a manner inconsistent with the terms of the Franchise Agreement, We agree to reimburse You for Your out-of-pocket costs in doing these things, except that You will bear the salary costs of Your employees, and We will bear the costs of any judgment or settlement. To the extent that the litigation is the result of Your use of the Marks in a manner inconsistent with the terms of the Franchise Agreement, You must reimburse Us for the cost of the litigation, including attorneys' fees, as well as the cost of any judgment or settlement.

You acknowledge and agree that certain associations between You and/or the Frios Business and/or the Marks and/or the System, on the one hand, and certain political, religious, cultural or other types of groups, organizations, causes, or activities, on the other, however well-intentioned and/or legal, may create an unwelcome, unfair, or unpopular association with, and/or an adverse effect on, Our reputation and/or the good will associated with the Marks. Accordingly, You agree that You will not, without Our prior written consent, take any actions that are, or which may be perceived by the public to be, taken in the name of, in connection or association with You, the Marks, the Frios Business, Us , and/or the System involving the

donation of any money, products, services, goods, or other items to, any charitable, political or religious organization, group, or activity.

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

No patents are material to the franchise. We claim common law copyright protection in the Manual, Our website, Our marketing materials, training manuals or videos, and other copyrightable items that are part of the System. While We claim copyrights in these and similar items, We have not registered these copyrights with the United States Register of Copyrights, but We reserve the right to register these copyrights in the future. You may use these items only as We specify while operating the Frios Business and You must stop using them if We direct You to do so. We know of no effective determinations of the U.S. Copyright Office or any court regarding any of Our copyrighted materials. Our right to use or license copyrighted items is not materially limited by any agreement or known infringing use.

We have developed certain trade secrets and other confidential information, including methods of business management, sales and promotion techniques, and know-how, knowledge of, and experience in, operating a Frios Gourmet Pops business. We will provide Our trade secrets and other confidential information to You during training, in the Manual and as a result of the assistance We furnish You during the term of the franchise. You may only use the trade secrets and other confidential information for the purpose of operating the Frios Business. You may only disclose trade secrets and/or other confidential information to employees who must have access to it to operate the Frios Business. You are responsible for enforcing the confidentiality provisions as to Your employees.

Certain individuals with access to trade secrets or other confidential information, including Your shareholders (and members of their immediate families and households), officers, directors, partners, members, if You are a corporation, limited liability company or other business entity, and Your managers, executives, employees, agents, representatives, and staff may be required to sign nondisclosure and non-competition agreements in a form the same as or similar to the Nondisclosure and Non-Competition Agreement attached as Attachment 2 to the Franchise Agreement. We will be a third-party beneficiary with the right to enforce those agreements.

All ideas, concepts, techniques or materials concerning the Frios Business and/or the System, whether or not protectable intellectual property and whether created by or for You or Your owners or employees, must be promptly disclosed to Us and will be deemed Our sole and exclusive property and a part of the System that We may choose to adopt and/or disclose to other franchisees, and You agree to assign to Us all right, title and interest in any intellectual property so developed without additional compensation to You. Likewise, We will disclose to You concepts and developments of other franchisees that We make part of the System. You must also assist Us in obtaining intellectual property rights in any concept or development if requested.

Your use of the Manual, trade secrets or other confidential information in an unauthorized manner is a default of the Franchise Agreement that may result in automatic termination of the Franchise Agreement. Further information about termination of the Franchise Agreement following a default is included in Item 17.

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

The Frios Business must at all times be supervised by You, or if You are a corporation, partnership or LLC, a designated Operating Principal. The Operating Principal must own at least 51% of the voting and

ownership interest in the franchisee entity. If You or the Operating Principal will not personally participate in the day-to-day operations of the Frios Business, You must designate a manager that meets Our qualifications and approval and who has satisfactorily completed Our Initial Training Program ("Manager"). Your Manager does not have to have an ownership interest in the franchisee entity.

You, Your Operating Principal or Your Manager devote his/her best efforts to the operation of Your Frios Business and not engage in any other business or activity, directly or indirectly, that requires substantial management responsibility or time commitments or otherwise conflicts with Your obligations under the Franchise Agreement. At all times during the operation of Your Frios Business, there must be at least one person who has completed Our Initial Training Program or is otherwise certified by Us to manage the Frios Business. You are required to carefully monitor and be responsible for the performance of anyone designated to manage the operation of Your Frios Business.

Each of Your owners, beneficial owners and You and Your beneficial owners' spouses must sign the personal guarantee attached to the Franchise Agreement as Attachment 3 personally guaranteeing and agreeing to perform certain obligations of the Franchisee under the Franchise Agreement. In addition, You, Your Manager, Operating Principal and each of Your officers, owners, directors, employees and immediate family members who become aware of Our confidential information and trade secrets must sign the Non-Competition and Non-Disclosure Agreement attached to the Franchise Agreement as Attachment 2 before such individual is permitted to attend any training or gain access to Our confidential information and/or trade secrets.

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

You must offer and sell the services and products We specify. You may not sell any services or products that We have not authorized, and You must discontinue offering any services or products that We may disapprove of. We may take action, including terminating Your Franchise Agreement if You purchase or sell unapproved products or make purchases from unapproved suppliers. We may periodically change required or authorized services or products. You will be required to add such equipment and make such alterations, at Your expense, as may be necessary to equip Your Frios Business for sale of such food products, beverages, goods and services as We may require. You may need to make an additional investment to do so. You are prohibited from using the Sweet Ride Ice Cream Truck , Carts or Our branded coolers for any purpose other than the operation of a Frios Business.

Periodically, We may allow certain services or products that are not otherwise authorized for general use as a part of the System to be offered locally or regionally based on factors, including test marketing, Your qualifications, and regional or local differences. There is no limit to Our right to modify the list of services offered by Your Frios Business or to approve or disapprove services or products.

We may require You, if permitted by applicable law, to participate in a gift card or other customer loyalty program in accordance with the provisions either set forth in the Manual or otherwise disclosed to You. In order to participate, You may be required to purchase additional equipment and pay any fees applicable to the use of that equipment. We have the right to determine how the amount of the gift cards or loyalty cards will be divided or otherwise accounted for, and We reserve the right to retain the amount of any unredeemed gift cards.

**ITEM 17**
**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**
**THE FRANCHISE RELATIONSHIP**

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

| PROVISION | SECTION IN FRANCHISE AGREEMENT | SUMMARY |
|---|---|---|
| a. Length of Franchise Term | Section 4.1 | The initial term is seven years. |
| b. Renewal or Extension of Term | Section 4.2 | You have the right to renew for an additional two terms of seven years each. |
| c. Requirements for Franchisee to Renew or Extend | Section 4.2 | You may renew the right to operate the Franchised Business if (a) You have, during the entire term of the Franchise Agreement, fully complied with all material provisions of the Franchise Agreement and the Manual; (b)You have, at your expense, made such capital expenditures and upgrades, including for any Sweet Ride Ice Cream Truck s, signage, and equipment as are necessary to maintain uniformity with any -required System modifications such that the Franchised Business reflects our then-current standards and specifications, as determined by Us; (c)You have satisfied all monetary obligations owed by you to us (or any Affiliate), and have timely met these obligations throughout the term of the Franchise Agreement; (d) You are not in default of any provision of the Franchise Agreement or any other agreement between us or between You and our Affiliates or suppliers, and vendors; (e) You have given written notice of your intent to operate a successor franchise to us not earlier than 12 months but no later than six months prior to the end of the initial term of the Franchise Agreement or any applicable successor term; (f) You have executed our then-current form of franchise agreement (and/or have executed other documents at our election that modify the Franchise Agreement to reflect the fact that the franchise agreement relates to the grant of a successor franchise), which franchise agreement shall supersede the Franchise Agreement in all respects, and the terms of which may differ from the terms of the Franchise Agreement by requiring, among other things, a different Royalty Fee or Advertising Fund Contribution; (g) You have complied with our then-current qualifications for a new franchisee and have agreed to comply with any training requirements; (h) You are in compliance with any lease terms applicable to Your Sweet Ride Ice Cream Truck (s); (i)You have |

| PROVISION | SECTION IN FRANCHISE AGREEMENT | SUMMARY |
|---|---|---|
| | | not been in default under the Franchise Agreement more than two times in any 12-month period or more than six times during the initial term (or the immediately preceding successor term, as the case may be) regardless of whether or not such default has been cured; (j) You have executed a general release, in a form the same as or similar to the General Release attached as Attachment 7, of any and all claims against us, any affiliate, and against our and their officers, directors, shareholders, managers, members, partners, owners, employees and agents (in their corporate and individual capacities), except to the extent prohibited by the laws of the state where the Franchised Business is located; (k) You have paid the Successor Franchise Fee; and (l) You have all licenses, insurance, registrations and approvals required by Us or applicable governing authority to operate the Franchised Business in the Designated Territory |
| d. Termination by You | Section 16.1 | You may not terminate the Franchise Agreement. |
| e. Termination by Franchisor without Cause | Not Applicable | Not Applicable |
| f. Termination by Franchisor with Cause | Sections 16.2 and 16.3 | We may terminate the Franchise Agreement only if You default. If We terminate the Franchise Agreement following a default, Your interest in the franchise will terminate. |
| g. "Cause" Defined – Curable Defaults | Section 16.3 | If a default arises from Your failure to comply with a mandatory specification in the Franchise Agreement or Manual, You can avoid termination of the Franchise Agreement if You cure the default within 30 days of receiving Our notice of default, except for the defaults that require cure in a shorter time and non-curable defaults. If a default arises from Your failure to maintain insurance, You can avoid termination of the Franchise Agreement if You cure the default within three days of receiving Our notice of Your failure to maintain insurance. If a default arises from Your failure to make payments due to Us , You can avoid termination of the Franchise Agreement if You cure the default within five days of receiving Our notice of default. If We terminate the Franchise Agreement resulting from a default, Your interest in the franchise will terminate. |
| h. "Cause" Defined – Non-Curable Defaults | Section 16.2 | We have the right to terminate the Franchise Agreement without giving You an opportunity to cure if You: fail to begin operations of the franchised business; fail to have Your Operating Principal satisfactorily complete training; fail to maintain all |

| PROVISION | SECTION IN FRANCHISE AGREEMENT | SUMMARY |
|---|---|---|
| | | required professional licenses, permits and certifications for more than five business days; made any material misrepresentation or omission in the application for the franchise; are convicted of or plead no contest to a felony or other crime or offense likely to affect the reputation of either party or the Frios Business; after notice to cure, fail to refrain from activities, behavior or conduct likely to adversely affect either party or the Frios Business; use the Manual, trade secrets or other confidential information in an unauthorized manner; if required, fail to have certain individuals sign nondisclosure and non-competition agreements or, if requested, fail to provide Us with copies of all signed nondisclosure and non-compete agreements; abandon the Frios Business for five or more consecutive days; surrender or transfer control of the Frios Business in an unauthorized manner; fail to maintain the Frios Business under the supervision of an Operating Principal following Your death or disability; submit reports on two or more separate occasions understating any amounts due by more than 3%; are insolvent or make a general assignment for the benefit of creditors; misuse or make unauthorized use of the Marks; breach the Franchise Agreement three or more times in a 12-month period; or (ii) four or more times during the initial term of this Agreement; violate health, safety or other laws or operate the Frios Business in a manner creating a health or safety hazard to customers, employees or the public; take any action reserved to Us; fail to comply with applicable law after notice; or default under any other agreement with Us (or an affiliate) so that We (or the affiliate) have the right to terminate the agreement. The termination of any Franchise Agreement is a default under the Multi-Unit Development Agreement. |
| i. Franchisee's Obligations on Termination/Non-Renewal | Sections 17.1, 17.2, 17.4, 17.5 | If the Franchise Agreement is terminated or not renewed, You must: stop operating the Frios Business; stop using any trade secrets, confidential information, the System and the Marks; cancel or assign to Us any assumed names; pay all sums owed to Us including damages and costs incurred in enforcing the Franchise Agreement; return the Operations Manual, trade secrets and all other confidential information; assign Your telephone, social media, email addresses and facsimile numbers to Us; comply with the covenants not to compete, de-identify Sweet Ride Ice Cream |

| PROVISION | SECTION IN FRANCHISE AGREEMENT | SUMMARY |
|---|---|---|
| | | Trucks and any other surviving provisions of the Franchise Agreement. |
| j. Assignment of Contract by Franchisor | Section 18.1 | There are no restrictions on Our right to assign Our interest in the Franchise Agreement. |
| k. "Transfer" by Franchisee – Definition | Section 18.2 | "Transfer" includes transfer of an interest in the franchise, You (if you are an entity), the Franchise Agreement or the Frios Business' assets. |
| l. Franchisor's Approval of Transfer by Franchisee | Section 18.2 | You may not transfer Your interest in any of the items listed in (k) above without Our prior written consent. |
| m. Conditions for Franchisor Approval of Transfer | Section 18.2 | We will consent to a transfer if: We have not exercised Our right of first refusal; all obligations owed to Us are paid; You and the transferee have signed a general release in a form the same as or similar to the General Release attached to the Franchise Agreement; the prospective transferee meets Our business and financial standards; the transferee and all persons owning any interest in the transferee sign the then current Franchise Agreement; You provide Us with a copy of all contracts and agreements related to the transfer; You or the transferee pay a the Transfer Fee; the transferee or the owners of transferee have agreed to be personally bound by all provisions of the Franchise Agreement; You have agreed to guarantee performance by the transferee, if requested by Us ; the transferee has obtained all necessary consents and approvals of third parties; You or all of Your equity owners have signed a non-competition agreement in a form the same as or similar to the Nondisclosure and Non-Competition attached to the Franchise Agreement; and the transferee has agreed that its Operating Principal will complete the initial training program before assuming management of the Frios Business, the transferee signs all documents required by Us for the transfer. |
| n. Franchisor's Right of First Refusal to Acquire Franchisee's Frios Business | Section 19 | We may match an offer for Your Frios Business or an ownership interest You propose to sell. |
| o. Franchisor's Option to Purchase Franchisee's Frios Business | Section 17.8 | Except as described in (n) above, We do not have the right to purchase Your Frios Business; however, during the 30-day period after the termination or expiration of the Franchise Agreement, We have the right to purchase any assets of the franchised business for book value. |
| p. Death or disability of Franchisee | Section 18.7 | After the death or incapacity of an owner of the franchise, his or her representative must transfer, subject to the terms of the Franchise Agreement, the individual's interest in the franchise within 180 days |

| PROVISION | SECTION IN FRANCHISE AGREEMENT | SUMMARY |
|---|---|---|
| | | of death or incapacity or We may terminate the Franchise Agreement. |
| q. Non-Competition Covenants During the Term of the Franchise | Section 7.4 | You may not have an interest in a Competing Business or engage in Competing Activity during the term of Your Franchise Agreement. We have the right to require You and certain identified individuals to execute a nondisclosure and non-competition agreement, in a form the same as or similar to the Nondisclosure and Non-Competition Agreement attached as Attachment 2. Upon Our request, You shall provide Us with copies of all nondisclosure and non-competition agreements signed pursuant to this Section. Such agreements shall remain on file at the Frios Business and are subject to audit or review as otherwise set forth herein. We shall be a third-party beneficiary with the right to enforce covenants contained in such agreements. |
| r. Non-Competition Covenants After the Franchise is Terminated or Expires | Section 7.6 | For two years after the termination or expiration of the Franchise Agreement, You and certain identified individuals may not have an interest in a Competing Business or engage in Competing Activities within (a) the Designated Territory; (b) within 50 miles of the outer boundaries of the Designated Territory; (c) within 50 miles of any other Franchised Business, or (d) within any development territory or designated territory granted by Us pursuant to a multi-unit development agreement, franchise agreement, license agreement or other territorial agreement. |
| s. Modification of the Agreement | Sections 9.2, 22.7, and 22.8 | The Franchise Agreement can be modified only by written agreement between You and Us. We may modify the Manual without Your consent if the modification does not materially alter Your fundamental rights. |
| t. Integration/Merger Clause | Section 22.7 | Only the terms of the Franchise Agreement are binding (subject to state law). Any representations or promises outside of the Disclosure Document, the Manual and/or Franchise Agreement may not be enforceable. |
| u. Dispute Resolution by Arbitration or Mediation | Section 23.9 | You must mediate and arbitrate claims against Us |
| v. Choice of Forum | Section 23.2 | Any litigation, mediation or arbitration must be pursued in Mobile County, Alabama (subject to applicable state law). |
| w. Choice of Law | Section 23.1 | Except as to claims governed by federal law, Alabama law applies (subject to applicable state law). |

## ITEM 18
## PUBLIC FIGURES

We do not use any public figures to promote Our franchise.

## ITEM 19
## FINANCIAL PERFORMANCE PRESENTATIONS

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 franchised business or under particular circumstances.

We do not make any financial performance 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 Cliff Kennedy, 1201 West I-65 Service Road North, Mobile Alabama, 36618, (251) 307-1170, the Federal Trade Commission and the appropriate state regulatory agencies.

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## ITEM 20
## OUTLETS AND FRANCHISEE INFORMATION

TABLE 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 | 2020 | 26 | 36 | +10 |
| | 2021 | 36 | 43 | +7 |
| | 2022 | 43 | 47 | +4 |
| Company-Owned | 2020 | 0 | 0 | 0 |
| | 2021 | 0 | 0 | 0 |
| | 2022 | 0 | 0 | 0 |
| **Total Outlets** | **2020** | **26** | **36** | **+10** |
| | **2021** | **36** | **43** | **+7** |
| | **2022** | **43** | **47** | **+4** |

TABLE 2
TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS
FOR YEARS 2020 TO 2022

| State | Year | Number of Transfers |
|---|---|---|
| Alabama | 2020 | 1 |
| | 2021 | 0 |
| | 2022 | 0 |
| Florida | 2020 | 1 |
| | 2021 | 0 |
| | 2022 | 0 |
| Georgia | 2020 | 0 |
| | 2021 | 1 |
| | 2022 | 0 |
| Texas | 2020 | 0 |
| | 2021 | 0 |
| | 2022 | 0 |
| **Total** | **2020** | **2** |
| | **2021** | **1** |
| | **2022** | 0 |

TABLE 3
STATUS OF FRANCHISED OUTLETS
FOR YEARS 2020 TO 2022

| State | Year | Outlets at the Start of Year | Outlets Opened | Terminations | Non-Renewals | Reacquired by Franchisor | Ceased Operations - Other Reasons | Outlets at End of the Year |
|---|---|---|---|---|---|---|---|---|
| Alabama | 2020 | 6 | 1 | 0 | 0 | 0 | 0 | 7 |
| | 2021 | 7 | 0 | 0 | 0 | 0 | 0 | 7 |
| | 2022 | 7 | 1 | 1 | 0 | 0 | 0 | 7 |
| 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 |
| Florida | 2020 | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| | 2021 | 2 | 2 | 0 | 0 | 0 | 0 | 4 |
| | 2022 | 4 | 3 | 1 | 0 | 0 | 0 | 6 |
| Georgia | 2020 | 3 | 1 | 0 | 0 | 0 | 0 | 4 |
| | 2021 | 4 | 0 | 0 | 0 | 0 | 0 | 4 |
| | 2022 | 4 | 0 | 0 | 0 | 0 | 0 | 4 |
| Louisiana | 2020 | 2 | 0 | 1 | 0 | 0 | 0 | 1 |
| | 2021 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| | 2022 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| Michigan | 2020 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| | 2022 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| North Carolina | 2020 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| | 2021 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| | 2022 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Ohio | 2020 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| | 2022 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Oklahoma | 2020 | 1 | 2 | 0 | 0 | 0 | 0 | 3 |
| | 2021 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| | 2022 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| Pennsylvania | 2020 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| South Carolina | 2020 | 1 | 1 | 0 | 0 | 0 | 0 | 2 |
| | 2021 | 2 | 1 | 0 | 0 | 0 | 0 | 3 |
| | 2022 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| Tennessee | 2020 | 3 | 1 | 1 | 0 | 0 | 0 | 3 |
| | 2021 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| | 2022 | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| Texas | 2020 | 7 | 6 | 0 | 0 | 0 | 0 | 13 |
| | 2021 | 13 | 1 | 0 | 0 | 0 | 0 | 14 |
| | 2021 | 14 | 4 | 4 | 0 | 0 | 0 | 14 |
| West Virginia | 2022 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| | 2022 | 1 | 0 | 0 | 0 | 0 | 0 | 1 |

| State | Year | Outlets at the Start of Year | Outlets Opened | Terminations | Non-Renewals | Reacquired by Franchisor | Ceased Operations - Other Reasons | Outlets at End of the Year |
|---|---|---|---|---|---|---|---|---|
| Wisconsin | 2020 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| **Totals** | **2020** | **26** | **12** | **2** | **0** | **0** | **0** | **36** |
| | **2021** | **36** | **7** | **0** | **0** | **0** | **0** | **43** |
| | **2022** | **43** | **11** | **7** | **0** | **0** | **0** | **47** |

TABLE 4
STATUS OF COMPANY-OWNED OUTLETS
FOR YEARS 2020 TO 2022*

| State | Year | Outlets at Start of Year | Outlets Opened | Outlets Reacquired from Franchisees | Outlets Closed | Outlets sold to Franchisees | Outlets at End of the year |
|---|---|---|---|---|---|---|---|
| Alabama | 2020 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2021 | 0 | 0 | 0 | 0 | 0 | 0 |
| | 2022 | 0 | 0 | 0 | 0 | 0 | 0 |
| **Total** | **2020** | **0** | **0** | **0** | **0** | **0** | **0** |
| | **2021** | **0** | **0** | **0** | **0** | **0** | **0** |
| | **2022** | **0** | **0** | **0** | **0** | **0** | **0** |

TABLE 5
PROJECTED OPENINGS AS OF DECEMBER 31, 2022

| State | Franchise Agreements Signed But Outlets Not Opened | Projected New Franchised Outlets in the Next Fiscal Year | Projected New Company-Owned Outlets in the Next Fiscal Year |
|---|---|---|---|
| Alabama | 0 | 1 | 0 |
| Arizona | 0 | 2 | 0 |
| Florida | 0 | 10 | 0 |
| Georgia | 0 | 4 | 0 |
| Kentucky | 0 | 0 | 0 |
| Missouri | 0 | 1 | 0 |
| North Carolina | 0 | 2 | 0 |
| Ohio | 0 | 1 | 0 |
| South Carolina | 0 | 1 | 0 |
| Tennessee | 0 | 2 | 0 |
| Texas | 0 | 6 | 0 |
| **Total** | **0** | **31** | **0** |

Exhibit F includes the list of the names of all current franchisees with contact information. Exhibit F also will contain a list of the names, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not

renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during Our most recently completed fiscal year or who have not communicated with Us within 10 weeks of the Issuance Date of this Disclosure Document. If You buy this franchise, Your contact information may be disclosed to other buyers when You leave the franchise system.

During the last three fiscal years, no current or former franchisees have signed confidentiality clauses that limit them from discussing with You their experiences as a franchisee in Our franchise system. There are no trademark-specific franchisee organizations associated with the franchise system being offered.

## ITEM 21
## FINANCIAL STATEMENTS

Attached as Exhibit E are our audited financial statements for the years ending December 31, 2022, December 31, 2021, and December 31, 2020. Additionally, included are our unaudited financial statements as of June 30, 2023.

## ITEM 22
## CONTRACTS

The following contracts are attached to this Disclosure Document:

Exhibit B -Franchise Agreement
- Attachment 1 – Franchise Fee and Territory
- Attachment 2 – Nondisclosure and Non-Competition Agreement
- Attachment 3 – Unlimited Guaranty and Assumption of Obligations
- Attachment 4 – ACH Payment Agreement
- Attachment 5 – Holders of Legal or Beneficial Interest in Franchisee; Officers; Directors
- Attachment 6 – State Addenda to the Franchise Agreement
- Attachment 7 – General Release
- Attachment 8 – Franchisee Disclosure Questionnaire
- Attachment 9 – Conditional Assignment of Telephone Listing, Social Media and Director Listing Agreement
- Attachment 10 – Additional Sweet Ride Ice Cream Truck Addendum

Exhibit C – Multi-Unit Development Agreement

## ITEM 23
## RECEIPTS

You will find two copies of a receipt in Exhibit I at the end of the Disclosure Document. One receipt must be signed, dated and delivered to Us. The other receipt should be retained for Your records.

[THIS DISCLOSURE ENDS HERE]

**EXHIBIT A TO THE DISCLOSURE DOCUMENT**

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

## LIST OF STATE ADMINISTRATORS/AGENTS FOR SERVICE OF PROCESS

Our registered agent in the State of Alabama and State of Delaware is Cliff Kennedy, 1 Oakway Drive, Mobile, Alabama 36608.

| STATE | STATE ADMINISTRATOR | AGENT FOR SERVICE OF PROCESS |
|---|---|---|
| **CALIFORNIA** | California Department of Financial Protection & Innovation<br>One Sansome Street, Suite 600<br>San Francisco, CA 94104<br>415-972-8559<br>1-866-275-2677 | Commissioner of the California Department of Financial Protection & Innovation<br>320 West 4th Street, Suite 750<br>Los Angeles 90013-2344<br>1-866-275-2677 |
| **CONNECTICUT** | Securities and Business Investment Division<br>Connecticut Department of Banking<br>260 Constitution Plaza<br>Hartford, CT 06103<br>860-240-8230 | Connecticut Banking Commissioner<br>Same Address |
| **FLORIDA** | Department of Agriculture & Consumer Services<br>Division of Consumer Services<br>Mayo Building, Second Floor<br>Tallahassee, FL 32399-0800<br>850-245-6000 | Same |
| **GEORGIA** | Office of Consumer Affairs<br>2 Martin Luther King Drive, S.E.<br>Plaza Level, East Tower<br>Atlanta, GA 30334<br>404-656-3790 | Same |
| **HAWAII** | State of Hawaii<br>Business Registration Division<br>Securities Compliance Branch<br>Dept. of Commerce and Consumer Affairs<br>335 Merchant Street, Room 205<br>Honolulu, HI 96813<br>808-586-2722 | Hawaii Commissioner of Securities<br>Same Address |
| **ILLINOIS** | Franchise Division<br>Office of the Attorney General<br>500 South Second Street<br>Springfield, IL 62706<br>217-782-4465 | Illinois Attorney General<br>Same Address |
| **INDIANA** | Securities Commissioner<br>Indiana Securities Division<br>302 West Washington Street, Room E 111<br>Indianapolis, IN 46204<br>317-232-6681 | Indiana Secretary of State<br>201 State House<br>200 West Washington Street<br>Indianapolis, IN 46204 |
| **IOWA** | Iowa Securities Bureau<br>Second Floor<br>Lucas State Office Building<br>Des Moines, IA 50319<br>515-281-4441 | Same |

| STATE | STATE ADMINISTRATOR | AGENT FOR SERVICE OF PROCESS |
|---|---|---|
| **KENTUCKY** | Kentucky Attorney General's Office<br>Consumer Protection Division<br>1024 Capitol Center Drive<br>Frankfort, KY 40602<br>502-696-5389 | Same |
| **LOUISIANA** | Department of Urban & Community Affairs<br>Consumer Protection Office<br>301 Main Street, 6th Floor<br>One America Place<br>Baton Rouge, LA 70801<br>504-342-7013 (gen. info.) 504-342-7900 | Same |
| **MAINE** | Department of Business Regulations<br>State House – Station 35<br>Augusta, ME 04333<br>207-298-3671 | Same |
| **MARYLAND** | Office of the Attorney General<br>Securities Division<br>200 St. Paul Place<br>Baltimore, MD 21202<br>410-576-6360 | Maryland Securities Commissioner<br>Same Address |
| **MICHIGAN** | Michigan Department of Attorney General<br>Consumer Protection Division<br>Antitrust and Franchise Unit<br>525 W. Ottawa Street<br>G. Mennen Williams Building, 1st Floor<br>Lansing, MI 48913<br>517-373-7117 | Michigan Department of Commerce<br>Corporations and Securities Bureau<br>Same Address |
| **MINNESOTA** | Minnesota Department of Commerce<br>85 7th Place East, Suite 280<br>St. Paul, MN 55101<br>651-539-1600 | Minnesota Commissioner of Commerce<br>Same Address |
| **NEBRASKA** | Department of Banking and Finance<br>1230 "O" Street, Suite 400<br>Lincoln, NE 68508<br>P.O. Box 95006<br>Lincoln, Nebraska 68509-5006<br>402-471-2171 | Same |
| **NEW HAMPSHIRE** | Attorney General<br>Consumer Protection and Antitrust Bureau<br>State House Annex<br>Concord, NH 03301<br>603-271-3641 | Same |
| **NEW YORK** | New York State Department of Law<br>Bureau of Investor Protection and Securities<br>28 Liberty Street, 21st Floor<br>New York, NY 10005<br>212-416-8222 | Secretary of State of New York<br>99 Washington Street<br>Albany, New York 12231 |
| **NORTH CAROLINA** | Secretary of State's Office/Securities Division<br>2 South Salisbury Street<br>Raleigh, NC 27601<br>919-733-3924 | Secretary of State<br>Secretary of State's Office<br>Same Address |

| STATE | STATE ADMINISTRATOR | AGENT FOR SERVICE OF PROCESS |
|---|---|---|
| **NORTH DAKOTA** | North Dakota Securities Department<br>600 East Boulevard Avenue<br>State Capitol, Fifth Floor<br>Bismarck, ND 58505-0510<br>701-328-4712; Fax: 701-328-0140 | North Dakota Securities Commissioner<br>Same Address |
| **OHIO** | Attorney General<br>Consumer Fraud & Crime Section<br>State Office Tower<br>30 East Broad Street, 15th Floor<br>Columbus, OH 43215<br>614-466-8831 or 800-282-0515 | Same |
| **OKLAHOMA** | Oklahoma Securities Commission<br>2915 Lincoln Blvd.<br>Oklahoma City, OK 73105<br>405-521-2451 | Same |
| **OREGON** | Department of Insurance and Finance<br>Corporate Securities Section<br>Labor and Industries Building<br>Salem, OR 96310<br>503-378-4387 | Director<br>Department of Insurance and Finance<br>Same Address |
| **RHODE ISLAND** | Rhode Island Department of Business Regulation<br>Securities Division<br>John O. Pastore Center – Building 69-1<br>1511 Pontiac Avenue<br>Cranston, RI 02920<br>401-222-3048 | Director, Rhode Island Department of Business Regulation<br>Same address |
| **SOUTH CAROLINA** | Secretary of State<br>P.O. Box 11350<br>Columbia, SC 29211<br>803-734-2166 | Same |
| **SOUTH DAKOTA** | South Dakota Department of Labor and Regulation<br>Division of Insurance<br>Securities Regulation<br>124 S. Euclid, Suite 104<br>Pierre, SD 57501<br>605-773-3563 | Director of the South Dakota Division of Insurance, Securities Regulation<br>Same Address |
| **TEXAS** | Secretary of State<br>Statutory Documents Section<br>P.O. Box 12887<br>Austin, TX 78711-2887<br>512-475-1769 | Same |
| **UTAH** | Utah Department of Commerce<br>Consumer Protection Division<br>160 East 300 South (P.O. Box 45804)<br>Salt Lake City, UT 84145-0804<br>TELE: 801-530-6601<br>FAX: 801-530-6001 | Same |

| STATE | STATE ADMINISTRATOR | AGENT FOR SERVICE OF PROCESS |
|---|---|---|
| **VIRGINIA** | State Corporation Commission<br>Division of Securities and Retail Franchising<br>Tyler Building, 9th Floor<br>1300 E. Main Street<br>Richmond, VA 23219<br>804-371-9733 | Clerk of the State Corporation Commission<br>Tyler Building, 1st Floor<br>1300 E. Main Street<br>Richmond, VA 23219<br>804-371-9051 |
| **WASHINGTON** | Department of Financial Institutions<br>Securities Division<br>150 Israel Rd S.W.<br>Tumwater, WA 98501<br>360-902-8762 | Director, Dept. of Financial Institutions<br>Securities Division<br>150 Israel Rd S.W.<br>Tumwater, WA 98501 |
| **WISCONSIN** | Wisconsin Dept. of Financial Institutions<br>Division of Securities<br>345 W. Washington Avenue, 4th Floor<br>Madison, WI 53703<br>608-266-8557 | Wisconsin Commissioner of Securities<br>Same Address |

**EXHIBIT B TO THE DISCLOSURE DOCUMENT**

**FRANCHISE AGREEMENT**

# FRIOS FRANCHISING COMPANY, LLC

# FRANCHISE AGREEMENT

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**FRIOS FRANCHISING COMPANY, LLC**

**FRANCHISE AGREEMENT**

This Franchise Agreement made and entered into as of the Effective Date that we have indicated on the signature page of this Agreement by and between:

- Frios Franchising Company, LLC., an Alabama limited liability, corporation having its principal place of business at 1201 W. I-65 Service Road North, Mobile, Alabama 36618 ("Franchisor," "we," "us," or "our"); and

- _____ ("Franchisee," "you," or 'your").

**RECITALS**

A. We have developed our own distinctive and proprietary systems for operating a business that sells a variety of frozen desserts ("Frios Pops") through branded and customized mobile unit(s) ("Approved Vehicles") and cart(s) under the mark "FRIOS GOURMET POPS®" and other proprietary marks (the "System").

B. The distinguishing characteristics of our System includes among other things: business processes, technologies, trade secrets, customer lists, knowledge, know-how, trade names, service marks, trademarks, logos, emblems, trade dress and other intellectual property; distinctive signage; standards, specifications and sources for services, products, supplies, appearance, operations and management control; safety standards; training and assistance; purchasing programs; and advertising, marketing, promotional and sales programs; all of which we may periodically change, discontinue, improve, modify and further develop at our option from time to time.

C. We identify the System by means of proprietary marks. The proprietary marks include the trademarks "Frios" and "Frios Gourmet Pops" and logos, emblems, and indicia of origin, as well as other trade names, service marks, and trademarks that we may periodically specify in writing for use in connection with the System (all of these are referred to as "Marks"). We continue to develop, use, and control the use of the Marks in order to identify for the public the source of services and products marketed under the Marks and under the System, and to represent the System's high standards of quality, appearance, and service.

D. We are in the business of developing and awarding franchise rights to third party franchisees, such as you, to develop and operate a business that sells Frios Pops, and other approved products and services from Approved Vehicle(s) and cart(s) under the Marks using the System in Designated Territories ("Franchised Business").

E. You have asked to obtain a franchise from us. By entering into this Agreement, you understand and acknowledge the importance of our high standards of quality, appearance, and service and the necessity of operating the Franchised Business under this Agreement in conformity with our standards and specifications and in accordance with the terms of this Agreement.

F. You acknowledge that you received our current Franchise Disclosure Document and its exhibits, including this Agreement (the "Disclosure Document") at least 14 calendar days before you signed this Agreement or made a payment to us in connection with the franchise sale.

G. By signing this Agreement, you acknowledge that you have carefully reviewed the Disclosure Document and had enough time, if you wanted, to consult with a lawyer, accountant or other professional advisor.

H. By signing this Agreement, you acknowledge that you had the opportunity to ask us and our employees, agents, or representatives all appropriate questions and those questions have been answered to your satisfaction. If you did not use a professional advisor, you represent you are satisfied relying on your own education, experience, and skill to evaluate the Disclosure Document and this Agreement.

I. By signing this Agreement, you represent to us that you have reached the age of majority, you have the legal capacity to enter into this Agreement and independently operate a Franchised Business, you are not violating any other agreement by entering into or performing under this Agreement, and you are not listed or "blocked" in connection with, and are not in violation of any anti-terrorism law, regulation, or executive order.

J. By signing this Agreement, you represent and acknowledge that no employee, agent or representative of ours made any oral, written or visual representation or projection to you of actual or potential sales, earnings or net or gross profits, costs involved in operating a Franchised Business, or the likelihood of success that is not in the Disclosure Document or that is contrary to, or different from, the information in the Disclosure Document.

K. By signing this Agreement, you understand the risks of owning a Franchised Business and you are able to accept such risks. You understand the success of your Franchised Business will depend primarily on your own efforts and abilities and those of your employees (if any). Other factors beyond our or your control will affect the Franchised Business's success including competition, demographic patterns, consumer trends, economic and market conditions, government policies, labor costs, lease terms and other factors which may be difficult to anticipate, assess or even identify.

In recognition of all of the details noted above, the parties have chosen to enter into this Agreement, taking into account all of the promises and commitments that they are each making to one another in this Agreement, and for other good and valuable consideration (the sufficiency and receipt of which they hereby acknowledge) and they agree as follows:

## 1. DEFINITIONS

While certain terms may be defined in the body of this Agreement, the following words and terms have the following meanings for your ease of reference:

"**Affiliate**" means any business entity or individual that controls, is controlled by, or is under common control with a specified entity;

"**Agreement**" means this agreement and Attachments hereto;

"**Competitive Business**" means any business that offers the same or similar services as the Franchised Business under any system, or any other business that sells frozen desserts including pops or a business that

offers the same products or services as or similar to or competitive with those offered or provided by the Franchised Businesses or in which Trade Secrets or other Confidential Information could be used to the disadvantage of us, any Affiliate or our other franchisees; provided, however, that the term "Competitive Business" shall not apply to (a) any business operated by you under a Franchise Agreement with us, or (b) any business operated by a publicly-held entity in which you own less than a 5% legal or beneficial interest;

"**Confidential Information**" means technical and non-technical information used in or related to the Franchised Business and not commonly known by or available to the public, including, without limitation, Trade Secrets, methods and products, customer or client services techniques and other techniques and methodologies not generally known to the industry or public, and any other information identified or labeled as confidential when delivered by us. Confidential Information shall not include, however, any information that: (a) is now or subsequently becomes generally available to the public through no fault of you; (b) you can demonstrate it was rightfully in your possession, without obligation of nondisclosure, prior to disclosure pursuant to this Agreement; (c) is independently developed without the use of any Confidential Information; or (d) is rightfully obtained from a third party who has the right, without obligation of nondisclosure, to transfer or disclose such information;

"**Damages**" mean all judgments, losses, injuries, awards, reparations, penalties, interest, punitive damages, lost profits, pecuniary compensation, court costs, attorneys' fees, mediation, arbitration or litigation out-of-pocket costs, settlement payments, deposition and pre-trial costs mileage, travel expenses, investigation fees, and all other amounts paid or incurred as a result of any claims.

"**Effective Date**" means the date on which we and you fully execute this Agreement, thereby commencing its effectiveness and term;

"**Fees**" will collectively mean and include the Initial Franchise Fee, the Royalty Fees, the Advertising Fund Contributions, administrative fees, and all other amounts then due and payable by you to the us pursuant to this Agreement or any other agreement or for any products or services purchased by the You from Us or any of Our Affiliates.

"**Franchise**" means the right granted to you by us to use the System and the Marks to operate a Franchised Business;

"**Franchised Business**" means the business that sells Frios Pops, and other approved products and services from Approved Vehicle(s) and cart(s) under the Marks using the System. The Franchised Business may also sell on for wholesale Frios Pops on a non-exclusive basis.

"**Franchisor Indemnities**" has the meaning given to such term in Section 21.3;

"**Gross Sales**" means all sales, revenues, charges and receipts received by you from your Franchised Business or attributed to your Franchised Business, whether from cash, check, credit or debit card, barter exchange, trade credit or other credit transactions, but exclusive of Sales Tax and any refunds made for your customers. As used herein, "Sales Tax" includes, but is not limited to, sales or use tax, goods and services tax, gross receipts tax, excise tax or other similar tax collected by you from your customers and paid to the appropriate taxing authority. Gross Sales include all insurance proceeds you receive for loss or interruption of business due to a casualty or similar event at your Franchised Business.

"**Incapacity**" means the inability of you, or any holder of a legal or beneficial interest in you, to operate or oversee the operation of the Franchised Business on a regular basis by reason of any continuing physical, mental or emotional condition, chemical dependency or other limitation;

"**Internet**" means any local or global interactive communications media that is now available, or that may become available, including sites and domain names on the World Wide Web and social media websites and applications;

"**Manual**" means the Frios Gourmet Pops Operations Manual, whether in paper or electronic form, and any other items as may be provided, added to, changed, modified or otherwise revised by us from time to time that contain or describe the standards, methods, procedures and specifications of the System, including other operations, administration and managers' manuals and all books, computer programs, password-protected portions of an Internet site, pamphlets, memoranda, letters, notices, documents and other publications, in any format, prepared by, or on behalf of, us;

"**Mark(s)**" means the mark "Frios Gourmet Pops®" and such other trade names, trademarks, service marks, trade dress, designs, graphics, logos, emblems, insignia, fascia, slogans, drawings and other commercial symbols as we may designate to be used in connection with the Franchised Business;

"**Non-Traditional Locations**" means transportation facilities, sporting arenas, educational facilities, mall kiosks, medical facilities, entertainment facilities, military facilities, music venues, schools and amphitheaters.

"**Operating Principal**" means the person you designate if you are an entity or partnership that must devote full time and best efforts to the development and operation of the Franchised Business and must have at least 5% ownership of the Franchised Business and full authority to bind you regarding all operational decisions about the Franchised Business;

"**Owner**" means any person or entity who owns (a) any shares of capital stock in the specified entity if such entity is a corporation, (b) any membership interests in the specified entity if such entity is a limited liability company, (c) any partnership interests in the specified entity if such entity is a partnership, (d) any limited or general partnership interests if the specified entity is a limited partnership, and (e) any other kind or type of Ownership Interest in the specified entity. References to "Franchisee," "assignee" (of the Franchisee), and "Transferee" which are applicable to (i) an individual or individuals will mean the Owner or Owners of an Ownership Interest in You and (ii) an entity will mean the entity that has an Ownership Interest in You.

"**Ownership Interests**" will mean (a) capital stock if You are a corporation, (b) membership interest if You are a limited liability company, (c) partnership interest if You are a partnership, (d) limited or general partnership interests if You are a limited partnership, and (e) all other types and means of ownership or other legal interest in You.

"**Start of Business**" means the earlier of (a) 90 days from the Effective Date of this Agreement; or (b) the month you order your 30th case of Frios Pops.

"**System**" means the uniform standards, methods, procedures and specifications developed by us and as may be added to, changed, modified, withdrawn or otherwise revised by us for the operation of a Franchised Business

"**Trade Secrets**" means information in any form (including, but not limited to, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, passwords, lists of actual or potential customers or suppliers) related to or used in the operation of a Franchised Business that is not commonly known by or available to the public and that information: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertained by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Other terms may be defined in the body of the Franchise Agreement.

## 2. GRANT OF FRANCHISE; APPROVED FRANCHISED BUSINESS

**2.1 Grant**. Upon the terms and conditions set out in this Agreement, we grant you the personal right to:

(a) operate one Franchised Business under the System and Marks in the Designated Territory described on Attachment 1; and

(b) use the Marks and the System only in connection with the Franchised Business (recognizing that we may periodically change, improve and further develop the Marks and the System); and

(c) sell, on a non-exclusive basis, Frios Pops on a wholesale basis in the Designated Territory.

**2.2 Sub-Franchising/Agents**.

2.2.1. *Restriction on Sublicensing*. Franchisee shall not franchise, subfranchise, license, or sublicense the use of the System or Marks to any person or entity.

2.2.2. *Restriction on Granting Rights to Third Parties*. Except as permitted in Section 18, Franchisee shall not grant any person or entity the right to perform any part of Franchisee's rights or obligations licensed hereunder.

**2.3 Designated Territory; Reservation of Rights; Performance Standards**.

2.3.1. *Designated Territory Defined*. Except as provided to the contrary in this Agreement, You will receive the nonexclusive designated territory defined in Attachment 1 attached hereto ("Designated Territory") to operate the Franchised Business. You shall be prohibited from operating the Franchised Business, conducting business or soliciting customers outside of the Designated Territory without our prior written consent.

2.3.2. *Your Rights*. Subject to the Reservation of Rights set out in Section 2.3.8, during the initial term and all renewal terms of this Agreement, and provided that you are in full compliance with this Agreement and all other agreements between you and us and our Affiliates, we shall not own or operate, or grant anyone else the right to own or operate, a Franchised Business within the Designated Territory. Notwithstanding anything herein to the contrary, You will not have any exclusive rights to sell Frios Pops on a wholesale basis in the Designated Territory.

2.3.5. *Designated Territory Size*. We reserve the right to grant each franchisee a Designated Territory on a case-by-case basis in order to account for the unique features of each geographic marketplace. Designated Territory shall not be altered even if there is a population increase or decrease. Certain locations, such as major metropolitan areas may have smaller territories due to the relative density of the populated areas.

2.3.6. *Activity Restricted to Your Designated Territory*. You may not operate Your Franchised Business outside your Designated Territory unless you obtain our prior written approval. If we grant You permission to operate Your Franchised Business outside your Designated Territory, You agree to cease all sales and service activities within 10 days of our notice to You and You will return all customer and prospect lists (including wholesale clients) to Us within 10 days of our notice. Except in conjunction with approved advertising promotions, you may not market or solicit business, including wholesale accounts, outside your Designated Territory without prior written authorization from us, including targeted ad and Internet marketing. You may not distribute postcards, letters, fliers, electronic notifications, and other marketing communications outside your Designated Territory. You may not make telemarketing calls to any person or business outside your Designated Territory.

2.3.7. *No Right of First Refusal*. Except for the Designated Territory granted in your Franchise Agreement, we do not grant you any rights of first refusal to obtain additional franchise rights. If you wish to develop additional Franchised Businesses, you must enter into a new Franchise Agreement and meet all our current requirements for franchisees.

2.3.8. *Your Compliance*. Your right to the Designated Territory is protected as long as you adhere to the terms of the Franchise Agreement. If you default on your obligations under the Franchise Agreement, as an alternative to termination, we may, at our sole and absolute discretion, unilaterally modify or completely eliminate any rights that you may have with respect to the Designated Territory, effective 10 days after delivery of written notice to you and your failure to cure the default if the default is curable under Sections 16.2 or 16.3.

2.3.9. *Reservation of Rights*. You understand and acknowledge that any rights not expressly granted to you with respect to your Designated Territory are reserved to us including, but not limited to, the following:

(a) the right to advertise and market the System within and outside your Designated Territory;

(b) the right to conduct any business outside your Designated Territory, including the Franchised Business;

(c) the right to establish, operate and license others to establish and operate businesses other than Franchised Businesses within and outside of the Designated Territory, including businesses that offer frozen desserts under different brand names;

(d) the right to sell or authorize others to sell the same or similar products as being sold at your Franchised Business to anyone from anywhere through any alternative or other channel of distribution (including, but not limited to, through grocery stores, convenience stores, any retail outlets, via the Internet, and other forms of electronic commerce), on any terms and conditions we deem appropriate, including on a wholesale or retail basis. We maintain this right whether or not

the Marks or System used, and regardless of whether we are acting inside or outside the Designated Territory;

(e) the right to offer and sell any products including products offered by the Franchised Business outside of the Designated Territory and through any means which may compete with your Franchised Business;

(f) the right to develop, manufacture, and/or distribute any services or products that have been branded with the Marks. If we decide to develop and distribute products or conduct similar services within the Designated Territory, you will receive no compensation from us for such sales, unless agreed otherwise by the parties in writing;

(g) the right to implement advertising cooperative programs and multi-area marketing programs which may allow us or others to offer services, equipment and/or products to anyone from that franchised or company owned outlet or allow us to solicit or sell to customers anywhere. We also reserve the right to issue mandatory policies to coordinate such advertising cooperative programs and multi-area marketing programs;

(h) the right to sell any products and services sold at Franchised Businesses under any other names and marks, including through alternative channels of distribution;

(i) the right to acquire, merge, affiliate with or engage in any transaction with other businesses (whether competitive or not), with businesses located anywhere, including arrangements in which we are acquired, and/or company-owned, franchised or other businesses (including your own Franchised Business) are converted to another format or we acquire a similar business which will be maintained under the System or otherwise. You will fully participate in any conversion subject to any person/entity merging with, or acquiring us or when we acquire, reimbursing you for reasonable costs directly related to the conversion; and

(j) the right to develop and operate Franchised Businesses from Non-Traditional Locations anywhere, including in the Designated Territory.

## 3.FEES

### 3.1 Franchise Fee.

You shall pay us the Initial Franchise Fee in the amount set out in Attachment 1 upon execution of this Agreement. You acknowledge and agree that the Initial Franchise Fee is fully earned by us when paid in consideration of the administrative and other expenses incurred by us in granting this franchise and for our lost or deferred opportunity to offer the rights of this franchise to others and is not refundable under any circumstances.

### 3.2 Royalty Fee.

3.2.1. *Royalty Fee Payment*. Beginning on the first month of your Start of Business and for the remainder of the initial term of this Agreement, you shall pay to us a continuing royalty fee of $400 per month ("Royalty Fee") for the right to use the System and the Marks. We reserve the right to increase the Royalty Fee by 10% in any given calendar year upon 30 days prior written notice.

3.2.2. *Royalty Fee Payment Date*. The Royalty Fee shall be paid by you on the 12th of the month beginning the first month of your Start of Business. The Royalty Fee shall be pro-rated if your Start of Business is in the middle of the month. We reserve the right to change the time and manner of payment at any time upon written notice to you.

**3.3 Advertising Fund Contribution**.

3.3.1. *Advertising Fund Contribution Payment*. Beginning the first month after the Effective Date and containing for the remainder of the initial term of this Agreement, and any Interim Period you shall pay to us the advertising fund contribution in the amount of $125 per month ("Advertising Fund Contribution"). The Advertising Fund Contribution will be deposited into the advertising fund ("Advertising Fund") which will be administered and controlled exclusively by the Franchisor.

3.3.2. *Advertising Fund Contribution Payment Date*. The Advertising Fund Contribution shall be paid by you on the 12th of the month beginning the first month after the Effective Date of this Agreement. We may elect to collect the Advertising Fee on another basis upon 30 days' prior written notice to the Franchisee specifying the payment period, payment date, which election may be rescinded at any time upon 30 days' prior written notice to you.

3.3.3. *Changes to the Advertising Fund Contribution*. We reserve the right to increase the Advertising Fund Contribution up to $200 per month or decrease or discontinue the amount of the Advertising Fund Contribution upon 30 days prior written notice to you.

**3.4 Transfer Fee**.

If the Franchised Business or this Agreement is Transferred to another person or entity, or if any of the Owners Transfer any Ownership Interest in you to a third party, then you will pay us a fee equal to $5,000 ("Transfer Fee"). The Transfer Fee will be paid at the time of the Transfer.

**3.5 Opening Inventory Fee**.

You will pay us or our Affiliate the then current fee for the initial order of Frios Pops plus shipping ("Opening Inventory Fee"). The Opening Inventory Fee is paid at the time you sign this Agreement.

**3.6 Correction of Deficiencies/Unsatisfactory Conditions**.

If You fail to correct any deficiencies in Your Franchised Business, You will reimburse Us for the actual cost incurred by us to correct such deficiencies, including but not limited to, travel and living expenses in accordance with our invoice.

**3.7 Taxes, Permits and Indebtedness**.

3.7.1. *Payment of Taxes*. You agree to promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind that you incur in the conduct of the Franchised Business. You agree to pay us an amount equal to any sales tax, gross receipts tax, or similar tax imposed on us with respect to any payments that you make to us as required under this Agreement within 30 days, unless the tax is credited against income tax that we otherwise pay to a state or federal authority. If any taxes,

fees, or assessments are imposed on Royalty Fee payments, for example, by reason of us acting as a franchisor or licensing the Marks under this Agreement, you shall reimburse us the amount those taxes, fees, or assessments within 30 days after receipt of our invoice.

3.7.2. *Payment of Vendors*. You agree to promptly pay when due all trade creditors and vendors (including any that are affiliated with us) that supply goods or services to you and/or your Franchised Business. Failure to pay vendors may result in termination of this Agreement.

3.7.3. *Tax Disputes*. If there is a bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Franchised Business, or any improvements thereon.

**3.8 Electronic Transfer of Funds Due to Franchisor**.

All Royalty Fees, Advertising Fund Contributions, and other amounts due to us shall be paid through a designated bank account. You must allow us to debit your account through the Automated Clearing House (ACH) system. From time to time, You will execute such documents as We may request to provide Your unconditional and irrevocable authority and direction to its bank or financial institution authorizing and directing Your bank or financial institution to pay Us or Our Affiliate through the ACH system the full amount of the Fees payable by You under this Agreement, and to charge to Your account. The ACH withdrawal authorizations will be in the form prescribed by Us. You shall make deposits to the designated bank account sufficient to cover amounts owed to us prior to the date such amounts are due. You shall not close your designated bank account without our written consent. It will be a default under this Agreement if You fail to maintain an account balance sufficient to pay the Fees or if You closes the account designated to pay the Fees without first designating a new account and notifying Us of the new account information. You will be responsible for all fees imposed by its bank or financial institution in connection with Your ACH payment of the Fees.

**3.9 Interest, Late Fee; Non-Compliance Fee and Insufficient Fund Fee**.

3.9.1. *Interest and Default Rate*. Royalty Fees, Advertising Fund Contributions, and any other amounts due to us or our Affiliates not received by us or our Affiliates within five days after the due date shall incur interest at the rate of 1.5% per month (or the highest rate allowed by the law of the state where you are located, whichever is lower) (the "Default Rate") from the date payment is due to the date payment is received by us. You shall pay us for all costs incurred by us in the collection of any unpaid and past due Royalty Fees, Advertising Fund Contributions or any other amounts due to us or our Affiliates, including reasonable accounting and legal fees.

3.9.2. *Late Fees*. In addition to the interest fee referenced in Section 3.9.1, you will pay us $25 per day late fee for each occurrence of a payment not received by us on or before its due date. This Section does not constitute an agreement by us to accept any payments after the due date or a commitment by us to extend credit to or otherwise finance you.

3.9.3. *Non-Compliance Fees*. In addition to the interest fee and late fees set out in Sections 3.9.1 and 3.9.2, you will pay us a $100 for the first violation of this Agreement; $300 if the violation is not corrected within 30 days; and $50 per day thereafter if the violation is not corrected. This

Section does not constitute an agreement by us to accept violations of this Agreement and does not constitute a waiver of our right to enforce this Agreement through default and/or termination.

3.9.4. *Insufficient Fund Fee*. In addition to the late fees, interest fees and non-compliance fees, you will pay us $100 per occurrence if any of your checks, credit card payments or ACH is dishonored or denied.

3.9.5. *Fee for Unapproved Products or Unapproved Suppliers*. In addition to the interest fee, late fees and non-compliance fees set out in Sections 3.9.1, 3.9.2 and 3.9.3, if You sell or offer to sell unauthorized products or services or use an unauthorized supplier or vendor for products or services, You will pay Us $250 per day for each unauthorized product or service offered or sold in Your Franchised Business and $250 per day for each product or service offered or sold in Your Franchised Business from unauthorized suppliers or vendors.

**3.10 Testing Fee**.

If You request to purchase new products, supplies, and services or to purchase products, supplies and services from new suppliers or vendors, You will pay Us the actual cost incurred by Us to test and inspect new products, supplies, services, suppliers and vendors, including but not limited to, travel and living expenses.

**3.11 Successor Franchise Fee**.

If You renew the right to operate the Franchised Business in accordance with Section 4.2, You will pay us the renewal fee in the amount of $3,500 ("Successor Franchise Fee") at or near the time of renewal.

**3.12 Additional Training Fee**.

If We provide additional training, additional assistance, new training or remedial training to You, You will pay us our then current per diem rate of training or $500 per person per day (whichever is greater). You are also responsible for any travel and living expenses incurred by Us to conduct such training.

**3.13 Franchisee Convention Fee**.

You will pay the then current Franchisee Convention Fee for You and any of Your additional participants to attend the Annual Franchisee Convention. You will also pay for all travel and living expenses incurred by Your attendees to attend the Annual Franchisee Convention.

**3.14 E-Mail Address Fee**.

You will receive one email address for Your Franchised Business at no cost. You will pay Us Our then-current fee each year for each additional friospops.com email address You request for use in Your Franchised Business.

**3.15 Application of Payments**.

Notwithstanding any designation by you, we shall have the right to apply any payments by you to any past due indebtedness to us or our Affiliates of whatever nature and without regard to when such indebtedness

arose and/or to the fees set out in Section 3.9 in any proportion or priority. Your obligation to pay us the Fees pursuant to the terms of this Agreement are absolute and unconditional and will remain in full force and effect for the entire initial term of this Agreement and any Interim Period.

**3.16 Off Set**.

You will not have the "right of offset," and as a consequence, You will timely pay all Fees due to the Us under this Agreement regardless of any Claims or allegations You may allege Us or Our Affiliates.

## 4. TERM AND RENEWAL

**4.1 Initial Term**.

The initial term of this Agreement starts on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, will expire seven years from the Effective Date.

**4.2 Successor Terms**.

You will have the right to renew your rights to operate the Franchised Business for two additional successor terms of seven years, so long as you have satisfied all of the conditions specified below before each such renewal:

(a) You have, during the entire term of this Agreement, fully complied with all material provisions of this Agreement and the Manual;

(b) You have at your expense, made such capital expenditures and upgrades, including for any Approved Vehicles, signage, and equipment as are necessary to maintain uniformity with any -required System modifications such that the Franchised Business reflects our then-current standards and specifications, as determined by Us;

(c) You have satisfied all monetary obligations owed by you to us (or any Affiliate), and have timely met these obligations throughout the term of this Agreement;

(d) You are not in default of any provision of this Agreement or any other agreement between us or between You and our Affiliates or suppliers, and vendors;

(e) You have given written notice of your intent to operate a successor franchise to us not earlier than 12 months but no later than six months prior to the end of the initial term of this Agreement or any applicable successor term;

(f) You have executed our then-current form of franchise agreement (and/or have executed other documents at our election that modify this Agreement to reflect the fact that the franchise agreement relates to the grant of a successor franchise), which franchise agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement by requiring, among other things, a different Royalty Fee or Advertising Fund Contribution;

(g) You have complied with our then-current qualifications for a new franchisee and have agreed to comply with any training requirements;

(h) You are in compliance with any lease terms applicable to Your Approved Vehicle(s);

(i) You have not been in default under this Agreement more than two times in any 12-month period or more than six times during the initial term (or the immediately preceding successor term, as the case may be) regardless of whether or not such default has been cured;

(j) You have executed a general release, in a form the same as or similar to the General Release attached as Attachment 7, of any and all claims against us, any affiliate, and against our and their officers, directors, shareholders, managers, members, partners, Owners, employees and agents (in their corporate and individual capacities), except to the extent prohibited by the laws of the state where the Franchised Business is located;

(k) You have paid the Successor Franchise Fee set out in Section 3.11; and

(l) You have all licenses, insurance, registrations and approvals required by Us or applicable governing authority to operate the Franchised Business in the Designated Territory.

**4.3 Interim Period**.

If You do not sign a successor franchise agreement prior to the expiration of the initial term of this Agreement or an immediate proceeding successor term and You continues to accept the benefits of this Agreement after the expiration of this Agreement, then at our option, this Agreement may be treated either as (a) expired as of the date of expiration with You then operating without a license to do so and in violation of our rights; or (b) continued on a month-to-month basis ("Interim Period") until one party provides the other with written notice of such party's intent to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period and the provisions of Section 17 will apply. In the latter case, all of Your obligations will remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on You upon expiration of this Agreement will be deemed to take effect upon termination of the Interim Period.

## 5. FRANCHISED BUSINESS

**5.1 Operation of Franchised Business**.

You are required to operate the Franchised Business within the Designated Territory from the Approved Vehicle as further described in Section 5.4. You may manage and administer the Franchised Business from your home and may maintain and store the books and records of the Franchised Business at Your home. You may, but are not required to, also (a) use Carts approved by us that meet our standards and specifications within the Designated Territory for You Franchised Business; and (b) sell on a wholesale basis Frios Pops in Your Designated Territory.

**5.2 Required Opening Date**.

You shall comply with all conditions set forth in Section 5.3 below and be prepared to open and continuously operate the Franchised Business within 90 days of the Effective Date ("Required Opening Date"). Time is of the essence. Notwithstanding the foregoing, (a) if You have entered into an agreement to purchase or lease an Approved Vehicle within 90 days of the Effective Date, (b) the Approved Vehicle will not be delivered and equipped within 90 days of the Effective Date through no fault of your own; and

(c) you provide us with written notice of the delay in delivering and equipping the Approved Vehicle no later than 60 days after the Effective Date, we may deem your Franchised Business open for business if you (x) have complied with the obligations set out in Sections 5.3(a) –(g); and (y) begin selling Frios Pops from Carts or on a wholesale basis in Your Designated Territory within 90 days of the Effective Date of this Agreement; provided that, You will be required to comply with Section 5.4. Notwithstanding anything herein to the contrary, if You acquire the Franchised Business from another franchisee or from Us, Your Required Opening Date will the date designated by Us.

**5.3 Opening**.

Before opening the Franchised Business and commencing business, you must:

(a) fulfill all of the obligations of Franchisee pursuant to the other provisions of this Section 5;

(b) furnish us with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as Franchisor may request;

(c) complete initial training to our satisfaction;

(d) possess all required state, county, city, and local professional licenses, permits and certifications;

(e) pay in full all amounts due to us, our affiliates and any third-party vendors;

(f) obtain our written permission and approval of an opening date; and

(g) purchase and outfit your Approved Vehicle as provided for in this Section 5.

**5.4 Approved Vehicle**.

(a) You must lease or purchase a vehicle that meets all of our standards and specifications ("Approved Vehicle") and equip the Approved Vehicle no later than six months of the Effective Date. You must obtain our approval of Your Approved Vehicle prior to purchasing or leasing the Approved Vehicle. This is a material term of this Agreement, and your failure to adhere to this term could result in termination. You may only use the Approved Vehicle for the Franchised Business and for no other purpose.

(b) Your Approved Vehicle must be wrapped with our Marks and outfitted with our required equipment in accordance with our standards and specifications from our designated supplier. Any changes or modifications to our standards and specifications for the Approved Vehicle, equipment and customization must be submitted to Us for our prior approval. Notwithstanding anything herein to the contrary, our approval of Your Approved Vehicle will not constitute a warranty or representation by us or any other party that the Approved Vehicle chosen by you will be a financial or operational success.

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## 6. MARKS

### 6.1 Ownership.

Your right to use the Marks is derived solely from this Agreement, is non-exclusive and is limited to the operation of the Franchised Business by you pursuant to, and in compliance with, this Agreement and all applicable standards, specifications and operating procedures prescribed from time to time by us. Any unauthorized use of the Marks by you is a breach of this Agreement and an infringement of our rights in and to the Marks. Your use of the Marks, and any goodwill created thereby, shall inure solely to our and/or our Affiliate's benefit. You shall not at any time acquire an ownership interest in the Marks by virtue of any use it may make of the Marks. This Agreement does not confer any goodwill, title or interest in the Marks to you. You shall not, at any time during the initial term of this Agreement, Interim Period (if any) or after the termination or expiration of this Agreement, contest the validity or ownership of any of the Marks or assist any other person in contesting the validity or ownership of any of the Marks. In the event that You acquire any such rights, title or interest in and to the Marks or good will, You agree to assign and do hereby assigns all such rights, title or interest to Us or our Affiliates (as the case may be).

### 6.2 Limitations on Use.

6.2.1. *Business Entity Name.* You shall not use any Mark or portion of any Mark as part of any business entity name.

6.2.2. *Unauthorized Service.* You will only use the Marks or any portion thereof in the operation of the Franchised Business and You shall not use any Mark (or any portion thereof) in connection with the sale of any unauthorized product or service or in any other manner not expressly authorized in writing by us.

6.2.3. *Fictitious Name.* You shall obtain such fictitious or assumed name registrations as may be required under applicable law to do business as a Franchised Business and shall immediately cancel the fictitious name upon termination or expiration of this Agreement.

6.2.4. *Trademark Registration.* You shall not register or seek to register as a trademark or service mark, either with the United States Patent and Trademark Office or any state or foreign country, any of the Marks or a trademark or service mark that is confusingly similar to any Mark licensed to you.

6.2.5. *Public Notification.* You shall include on your email signature, business cards, and other such identification, a prominent notice stating that the Franchised Business is an "Independently Owned and Operated Frios Gourmet Pops Franchise". You will not identify yourself in a manner that may mislead someone that you are an employee or agent of Ours

6.2.6. *Limited Permission to Use the Marks.* The permission to use the Marks granted to you under this Agreement does not constitute a warranty of the absence of any third-party senior or superior use claims in and to the Marks. We shall have no liability to you for any senior users that may claim rights to the Marks. You shall amend any business entity name at our request.

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**6.3 Notification of Infringements and Claims**.

You shall immediately notify us in writing of any infringement, claim of infringement, unfair competition, or challenge to its use of any of the Marks or claim by any person of any rights in any of the Marks. You shall not communicate with any person other than us and our counsel in connection with any such infringement, challenge, or claim. We are not required to take affirmative action when notified of these uses or claims. We have the sole right to control any administrative or judicial proceeding arising out of any infringement, challenge, or claim involving a trademark licensed by us. This Agreement does not require us to participate in your defense or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving a trademark licensed by us to you or if the proceeding is resolved unfavorable to you. You shall execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of us or our counsel, be necessary or advisable to protect and maintain our interests in any such litigation or other proceeding or to otherwise protect and maintain our interest in the Marks.

**6.4 Indemnification for Use of Marks**.

We are not required to participate in your defense or indemnify you for expenses or damages if you are a party to an administrative or judicial proceeding involving one of our Marks. At our option, we or our designee may defend and control the defense of any proceeding arising directly from your use of any Mark.

**6.5 Discontinuance of Use**.

If we deem it necessary for you to modify or discontinue use of any of the Marks, and/or use additional or substitute trade names, trademarks, service marks or other commercial symbols, you shall comply with our directions within10 business days after notice to you by us and subject to the limitations in Section 6.2. We shall not be required to reimburse you for your expenses in modifying or discontinuing the use of a Mark or any loss of goodwill associated with any modified or discontinued Mark or for any expenditures made by you to promote a modified or substitute Mark.

**6.6 Right to Inspect**.

To preserve the validity and integrity of the Marks and any copyrighted materials licensed hereunder, and to ensure that you are properly employing the Marks in the operation of the Franchised Business, we reserve the right to inspect the Franchised Business at any time without advanced notice.

**6.7 Franchisor's Sole Right to Domain Name**.

You shall not advertise on the Internet using, or establish, create or operate an Internet site or website using a domain name or uniform resource locator containing, the Marks or the words "Frios" or "Frios Gourmet Pops" or any variation thereof without our prior written approval. We are the sole owner of the right, title and interest in and to such domain names. We may grant you a sub-page on our website, friospops.com and/or friosfranchise.com, for purposes of providing the public with contact information for your Franchised Business and other content in our discretion.

**6.8 Cooperation**.

Upon Our request, you will cooperate fully, both before and after termination or expiration of this Agreement in confirming, perfecting, preserving, and enforcing our rights in the Marks, URLs containing

the Marks. This includes, but is not limited to, executing and delivering to you such documents as we reasonably request for any such purpose, including but not limited to, assignments, powers of attorney, and copies of commercial documents showing sale and advertising of services and products. You hereby irrevocably appoint Us as Your attorney-in-fact for the purpose of executing such documents.

**6.9 Harm Image Or Goodwill**.

You will safeguard and maintain the reputation and prestige of the Marks, and URLs containing the Marks. You will not do anything that would tarnish the image of or adversely affect or dilute the value, reputation or goodwill associated therewith nor counsel, procure or assist anyone else to do the same.

## 7.TRADE SECRETS AND OTHER CONFIDENTIAL INFORMATION

**7.1 Ownership**.

You acknowledge that Confidential Information and Trade Secrets are Our and/or Our Affiliate's unique and exclusive property and trade secrets. You further acknowledge that We and/or Our Affiliates have expended a great amount of effort and money in obtaining and developing the Confidential Information and Trade Secrets, that We and/or Our Affiliates have taken numerous precautions to guard the secrecy of the Confidential Information and Trade Secrets and that it would be very costly for competitors to acquire or duplicate the Confidential Information and Trade Secrets. You shall not acquire any interest in the Trade Secrets or other Confidential Information.

**7.2 Confidentiality of Trade Secrets and Other Confidential Information**.

You acknowledge that we are disclosing Trade Secrets and other Confidential Information to you during the training program, through the Manual, and as a result of guidance furnished to you during the initial term of this Agreement and any Interim Period. You acknowledge that the use or duplication of the Trade Secrets or other Confidential Information in any other business venture would constitute an unfair method of competition. You acknowledge that the Trade Secrets and other Confidential Information are proprietary and are disclosed to you solely on the condition that you (and all holders of a legal or beneficial interest in Franchisee and all officers, directors, executives, managers and members of the professional staff of Franchisee): (a) shall not use the Trade Secrets or other Confidential Information in any other business or capacity; (b) shall maintain the absolute confidentiality of the Trade Secrets and other Confidential Information during and after the term of this Agreement; (c) shall not make any unauthorized copies of any portion of the Trade Secrets or other Confidential Information disclosed in written or other tangible form; and (d) shall adopt and implement all reasonable procedures prescribed from time to time by us to prevent unauthorized use or disclosure of the Trade Secrets and other Confidential Information. You shall enforce this Section as to your employees, agents and representatives, shall adopt and implement all reasonable procedures prescribed by Us or our Affiliates to prevent the unauthorized disclosure or use of the Confidential Information and Trade Secrets and shall be liable to us for any unauthorized disclosure or use of Trade Secrets or other Confidential Information by any of them.

**7.3 Additional Developments**.

You will promptly disclose to Us any changes, improvements, enhancements, advertisements or other marketing materials, inventions, discoveries, creations, patents, copyrights, trademarks, and confidential information relating to the Franchised Business, Confidential Information, Trade Secrets or System which

You or any of Your Owners, officers, employees, agents, affiliates, Managers, or independent contractors have made or may make solely, jointly, or commonly with others ("Improvements").All Improvements whether or not protectable intellectual property and whether created by or for you or your officers, employees, agents, affiliates, Managers, or independent contractors h, shall be promptly disclosed to us and shall be deemed the sole and exclusive property of ours and/or our Affiliates and works made-for-hire, and no compensation shall be due to you or your owners or employees therefore, and you hereby agree to assign to us all right, title and interest in any intellectual property so developed. We have the right to incorporate such items into the System. To the extent any item does not qualify as a "work made-for-hire," you shall assign, and by this Agreement, do assign, ownership of that item, and all related rights to that item, to us and/or our Affiliates (as the case may be) and shall sign any assignment or other document as we request to assist us in obtaining or preserving intellectual property rights in the item. We shall disclose to you concepts and developments of other franchisees that are made part of the System. As we may reasonably request, you shall take all actions to assist our efforts to obtain or maintain intellectual property rights in any item or process related to the System, whether developed by us or not. You will execute such additional assignments or documentation to effectuate the assignment of these rights or as We deem necessary to enable Us or our Affiliates, at our or our Affiliates expense, to apply for, prosecute, and obtain copyrights, trademarks, patents, or other proprietary rights in the United States and in other countries. You hereby irrevocably appoint Us or our Affiliate (as the case may be) as Your attorney-in-fact for the purpose of executing such documents.

**7.4 Non-Compete**.

7.4.1. *Competitive Activity*. Competitive Activity means:

(a) diverting or attempting to divert any business or customer of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise, or doing or performing, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System;

(b) owning, maintaining, engaging in, being employed by, performing services for or serving as an officer, director, or principal of, lending money or extending credit to, leasing/subleasing space to, or having any interest in or involvement with a Competitive Business;

(c) calling on, soliciting, accepting business from, or taking away any customers or prospective customers of the Franchised Business or of us, our affiliates or other franchisees for the benefit of any person or entity outside the System. The term "Prospective Customer(s)" includes any person or entity that purchased gourmet pops from the Franchised Business, any wholesale accounts or customers, or any person or entity whose information was provided to the Franchised Business, at any time during the six-month period preceding the termination, expiration, non-renewal or transfer of the Agreement;

(d) calling on, soliciting, accepting business from, or taking away for the benefit of yourself or any other person or entity, any prospective customers or customers of the Franchised Business or of us or our affiliate, that you received any confidential or proprietary information about, regarding products similar to Frios Pops sold by the Franchised Business;

(e) contacting any of your suppliers or vendors for any purpose related to a Competitive Business; or

(f) solicit Our franchisees for any competitive purpose, or knowingly solicit or induce such franchisees to violate any confidentiality, non-competition or franchise agreement.

**7.5 In-Term Covenant**.

You acknowledge that we would be unable to protect the System, Trade Secrets and other Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information among franchisees if franchisees, owners, managers, key employees and members of their immediate families or households (with access to the Trade Secrets and Confidential Information) were permitted to hold a competitive interest in or perform services for any Competitive Business. Therefore, during the initial term of this Agreement and the Interim Period, neither You, nor any of the persons described in Section 7.7 will either directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity engage in any Competitive Activities anywhere other than as expressly authorized in writing by Us. You, and the persons identified in Section 7.7 acknowledge that a violation of this Section would constitute an unfair method of competition and would hinder Your ability to devote sufficient time to the Franchised Business.

**7.6 Post Term Covenant**.

For a period of 24 months after the (1) termination, transfer, assignment or expiration of this Agreement; or (2) entry of a final order by an arbitrator or a court of competent jurisdiction enforcing this covenant, You, and the persons identified in Section 7.7 will not engage in any Competitive Activity within:

(a) the Designated Territory;

(b) within 50 miles of the outer boundaries of the Designated Territory;

(c) within 50 miles of any other Franchised Business, or

(d) within any development territory or designated territory granted by Us pursuant to a multi-unit development agreement, franchise agreement, license agreement or other territorial agreement.

**7.7 Persons Subject to Restrictions**.

This Section 7 applies to (1)You; (2) any holder of a legal or beneficial interest in You (or any member of their immediate families or households who have access to the Confidential Information and/or Trade Secrets); (3) Your Operating Principal; (4) Your guarantors; (5) Managers; (6) Your officers, directors and executives; and (7) employees, agents and contractors who have access to the Confidential Information and/or Trade Secrets.

**7.8 Nondisclosure and Non-Competition Agreements with Certain Individuals**.

We have the right to require any of the persons identified in Section 7.7 to execute a nondisclosure and non-competition agreement, in a form the same as or similar to (with our prior written approval) the Nondisclosure and Non-Competition Agreement attached as Attachment 2, upon execution of this Agreement or prior to each such person's affiliation with You. Upon our request, you shall provide us with copies of all nondisclosure and non-competition agreements signed pursuant to this Section. Such

agreements shall remain on file at the office of your Franchised Business and are subject to audit or review as otherwise set forth herein. We and our Affiliates shall be a third-party beneficiary with the right to enforce covenants contained in such agreements. You will be responsible for enforcing such agreements and paying all legal fees, costs and expenses associated with such enforcement.

**7.9 Acknowledgements**.

(a) You acknowledge that the restrictive covenants contained in this Section are essential elements of this Agreement, and that without their inclusion we would not have entered into this Agreement. You acknowledge that each of the terms set forth herein, including the geographical limitations and restrictive covenants, are fair and reasonable and are reasonably required for our and our Affiliates protection and protection of the System and the Marks and you waive any right to challenge these restrictions as being overly broad, unreasonable or otherwise unenforceable.

(b) You will receive specialized training, marketing and advertising plans, business strategies, Confidential Information and Trade Secrets, from Us pertaining to the System and the operation of the Franchised Business;

(c) You and Your Franchised Business will, during the franchise relationship, become identified with the goodwill associated with the Marks;

(d) You and the persons identified in Section 7.7 will be able to earn a livelihood without violating the foregoing restrictions; and

(e) You and the persons identified in Section 7.7 entire knowledge of the operation of the Franchised Business, the System and the concepts and methods of promotion franchised hereunder is derived from Our and/or Our Affiliates Confidential Information and Trade Secrets.

**7.10 Injunctive Relief**.

You and the persons identified in Section 7.7 acknowledge that provisions of this Section 7 are necessary to protect Our, Our Affiliates and other franchisee's legitimate business interest including, without limitation, preventing the unauthorized dissemination of marketing, promotional, and other Confidential Information and Trade Secrets to competitors, protecting recipes, protecting the integrity of the System, preventing duplication of the System by unauthorized third parties, preventing damage to and/or loss of goodwill associated with the Marks and protecting Our and Our Affiliates intellectual property rights. You and the persons identified in Section 7.7 also agree that Damages alone cannot adequately compensate Us and Our Affiliates and franchisees if there is a breach of this Section 7, and that injunctive relief against You and the persons identified in Section 7.7 is essential for Our, Our Affiliates and franchisees protection. You and the persons identified in Section 7.7 agree therefore, that if We and/or Our Affiliates allege that You, or the persons identified in Section 7.7 breached this Section 7, then We and/or Our Affiliates will have the right to petition a court of competent jurisdiction for injunctive relief against You, and/or the persons identified in Section 7.7, in addition to all other remedies that may be available to Us or Our Affiliates. Neither We nor our Affiliates will not be required to post a bond or other security for any injunctive proceeding. If We and/or Our Affiliates are granted ex parte injunctive relief against You and/or

and the persons identified in Section 7.7 then You and/or those persons identified in Section 7.7 will have the right to petition the court for a hearing on the merits at the earliest time convenient to the court.

**7.11 Severability**.

We have attempted to limit the right to compete only to the extent necessary to protect Our and Our Affiliates legitimate business interests. The parties recognize, however, that reasonable people may differ in making such a determination. Consequently, the parties hereby agree that, if the scope or enforceability of the restrictive covenant in this Agreement is in any way disputed at any time, a court may modify and enforce the covenant to the extent that the court believes to be reasonable under the circumstances existing at the time. In addition, We reserve the right to reduce the scope of said provision without Your consent, at any time or times, effective immediately upon notice to You. Each of the foregoing covenants is to be construed as severable and independent and is intended to protect Us, Our Affiliates, and Our and/or Our Affiliates successors and assigns and may be enforced by any of them.

**7.12 Independent Obligation**.

The obligations set out in this Section 7 are independent of any of Our obligations under this Agreement.

## 8. TRAINING AND ASSISTANCE

**8.1 Initial Training Program**.

8.1.1. *Who Must Attend Training*. Before opening your Franchised Business, you (or if you are an entity, your Operating Principal) and your Manager (if you will employ a manager) must attend and successfully complete, to our satisfaction, the initial training program.

8.1.2. *Timing; Location*. The initial training program currently includes up to one week of virtual/online training and up to two days of in person training, as determined by us, at our headquarters or such other location we designate. You, or Your Operating Principal and Your Manager, if any, must satisfactorily complete the on-line/virtual portion of the initial training program within two weeks after the Effective Date of this Agreement. We will schedule the in-person portion of the initial training program once Your Approved Vehicle is ready for delivery.

8.1.3. *Number of Attendees at the Initial Training Program; Cost.* You may have up to three attendees at the initial training program at no additional cost. You will be responsible for travel, living expenses and wages if any incurred by you and your attendees to attend the initial training program.

**8.2 Failure to Complete Initial Training Program**.

You are required to complete the initial training program at the times specified in Section 8.1.2. If we determine that you are unable to satisfactorily complete the training program described above, we have the right to terminate this Agreement. If this Agreement is terminated pursuant to this Section 8.2, Franchisor shall have no obligation to return any of the Initial Franchise Fee or any other fees paid pursuant to this Agreement. If Franchisee is a business entity and the Operating Principal fails to complete the initial training program to our reasonable satisfaction, you may be permitted to select a substitute Operating Principal who must complete the initial training to our satisfaction. You will be required to pay us our then-

current Additional Training Fee set out in Section 3.12 (plus hotel, air fare and other expenses incurred by your attendee and our trainer, if any).

**8.3 Employee Training**.

You must implement and train your employees to our satisfaction before any employee is permitted to work for the Franchised Business. Your Manager, if any, must be approved by us as having satisfactorily completed training.

**8.4 Changes in Personnel After Start of Business**.

If you (or your Operating Principal) or your Manager cease active management or employment at the Franchised Business, then you agree to enroll a qualified replacement (who must be reasonably acceptable to us to serve in that capacity) in our training program within 30 days after the former individual ended his/her full-time employment and/or management responsibilities. The replacement must attend and successfully complete the initial training program, to our reasonable satisfaction, as soon as it is practical to do so (in all cases, the replacement shall successfully complete training within 120 days). You must pay our then-current Additional Training Fee set out in Section 3.12 (plus hotel, air fare and other expenses incurred by your attendee and our trainer, if any).

**8.5 Ongoing Training**.

We may require that you, your Operating Principal, Manager or your employees attend additional training and/or remedial training that we deem necessary. Whether the additional and/or remedial training is required by Us or requested by You, You will pay the then current Additional Training Fee as set out in Section 3.12 (plus hotel, air fare and other expenses incurred by your attendees and our trainer, if any).

**8.6 Conferences; Seminars**.

8.6.1. *Annual Franchise Convention*. We may, but are not required to conduct, an Annual Franchise Convention. You or Your Operating Principal, Manager, and such other persons as may be required by us, will attend any mandatory Annual Franchise Conventions. The topics covered, duration, date and location of all Annual Franchise Conventions held Us will be at our sole discretion. You will pay the Franchisee Convention Fee set out in Section 3.13 if any, established by Us for each person attending the Annual Franchise Convention. If attendance at the Annual Franchise Convention is mandatory, You will pay the Franchisee Convention Fee even if You fail to attend.

8.6.2. *Periodic Conferences; Seminars*. We may, but are not required to, conduct additional mandatory and voluntary conferences, additional training, seminars, meetings and other group sessions ("Periodic Conferences and Seminars"). We will not require You to attend in person more than two mandatory Periodic Conferences and Seminars in any given calendar year.

**8.7 Release and Indemnification**.

You and Your Owners hereby waive any right to sue for Damages or other relief, and release all known and unknown claims they may allegedly have against Us and/or any of Our Affiliates and employees, agents, officers and directors, arising out of the adequacy or accuracy of the information provided at or any activities occurring during any initial training program, additional training, Periodic Conferences and

Seminars and any Annual Franchise Convention (collectively referred to as "Training" in this provision), or any harm or injury any attendee or participant suffers during and as a result of his/her attendance at or participation in the Training. You and Your Owners agree to hold Us, Our Affiliates and employees, agents, officers and directors harmless for any Claims or Damages incurred by the You, Your Owners or any of affiliates, Managers, employees, agents, officers and directors arising out of, in any way connected with or as a result of attendance at or participation in the Training. You, Your Owners and all persons who attend and participate in the Training on Your behalf will sign the documentation required by Us or Our Affiliates as a condition to their attendance at, participation in, and successful completion of the Training.

## 9. OPERATIONS MANUAL

### 9.1 Loan by Franchisor.

While this Agreement is in effect, we shall lend to you one copy of the Manual or grant you access to an electronic copy of the Manual. Except in the case of a conflict with applicable laws or regulations, you shall conduct the Franchised Business in strict accordance with the provisions set forth in the Manual. The Manual may consist of one or more separate manuals and other materials as designated by us and may be in written or electronic form. The Manual shall, at all times, remain the sole property of Franchisor and shall promptly be returned to us upon expiration or termination of this Agreement.

### 9.2 Revisions.

We have the right to add to or otherwise modify the Manual from time to time to reflect changes in the specifications, standards, operating procedures and rules we prescribe. We may make such additions or modifications without prior notice to you. You shall immediately, upon notice, adopt any such changes and shall ensure that its copy of the Manual is up to date at all times. If a dispute as to the contents of the Manual arises, the terms of the master copy of the Manual maintained by us at our headquarters shall be controlling. You may be notified of such changes by any method, including but not limited to, e mail, posting the changes to an Intranet, mail, teleconference or facsimile.

### 9.3 Compliance.

In order to protect Us and the System and to maintain the standards of operation associated with the System, the Manual may contain mandatory and suggested specifications, standards and procedures for the operation of Your Franchised Business as well as information relative to Your other obligations hereunder. All such specifications, standards and operating procedures will be reasonable in Our Business Judgment and will not fundamentally alter Your status and rights under this Agreement. Specifications, standards, and procedures prescribed from time to time by Us in the Manual, or otherwise communicated to You in writing, will constitute provisions of this Agreement as if fully set forth herein You covenant and agree that You will at all times comply with the terms of the Manual.

### 9.4 Confidentiality.

The Manual contains Trade Secrets and other Confidential Information of ours, and its contents shall be kept confidential by you both during the term of this Agreement and subsequent to the expiration and non-renewal or termination of this Agreement. If the Manual is in paper form or stored on computer-readable media, you shall maintain the Manual in a secure manner at the office of the Franchised Business; if the Manual is in electronic form, you shall maintain the Manual in a password-protected file. You shall only grant authorized personnel, as defined in the Manual, access to the Manual or any key, combination, or

passwords needed for access to the Manual. You shall not disclose, duplicate, or otherwise use any portion of the Manual in an unauthorized manner.

**9.5 Ownership**.

You hereby acknowledge that the Manual is loaned to You and will at all times remain Our sole and exclusive property. You are prohibited from making copies of or otherwise disseminating the Manual. You will not use the Manual, or any information contained therein for any purpose other than the operation of Your Franchised Business. Upon expiration or termination of this Agreement for any reason whatsoever, You will forthwith return all copies of the Manual which You may have to Us.

## 10. FRANCHISE SYSTEM

**10.1 Uniformity**.

Except in the case of a conflict with applicable laws or regulations, you shall strictly comply, and shall cause the Franchised Business and its employees to strictly comply, with all requirements, specifications, standards, operating procedures and rules set forth in this Agreement, the Manual or other communications supplied to you by us. In case of a conflict between the Manual, this Agreement or other communications supplied to you on the one hand, and applicable laws or regulation, you shall request a variance and we shall grant an automatic variance for the purpose of compliance with such laws or regulations. You acknowledge the mandatory specifications, standards and operating procedures are not for the purpose of exercising control of over the day-to-day operation of the Franchised Business.

**10.2 Modification of System**.

You acknowledge and understand that, from time to time, we may introduce, as part of the System, other methods, products, equipment or technology which require certain System modifications including, without limitation, the adoption and use of modified or substitute Marks, new computer hardware and software, equipment or signs. You agree to make all required upgrades and modifications at Your expense as may be required by us.

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**10.3 Variance**.

We have the right to vary standards or specifications for any franchisee based upon that particular franchisee's qualifications, the peculiarities of the particular territory or circumstances, the demographics of the trade area, business potential, existing business practices or any other condition which we deem to be of importance to the successful operation of any particular Franchised Business. We shall not be required to disclose or grant to your alike or similar variance hereunder.

## 11. ADVERTISING AND PROMOTIONAL ACTIVITIES

**11.1 Local Advertising**.

11.1.1. *First Year Advertising*. During the first year 12 months of the initial term, You are required to spend a minimum of $3,000 on local advertising, promotions, and public relations in your Designated Territory in accordance with this Agreement and the Manual.

11.1.2. *Local Advertising Requirement.* Beginning the 13th month of the initial term and for the remainder of the initial term and any Interim Period, You are required to spend $1,500 each year on local advertising, promotions, and public relations in Designated Territory. We have the option to require that you pay all of the local advertising expenditures that we require to us or to our designated approved marketing firm. Every month, you shall participate in a variety of marketing and promotions such as door mailings, public relations, online or mobile advertisement, search engine optimization, or any other form of marketing approved by us in the Designated Territory.

11.1.3. *Local Advertising Expenditure Defined*. Only the direct costs of purchasing and producing marketing materials (such as camera-ready advertising and point of sale materials), marketing to referral partners, and your direct out-of-pocket expenses related to costs of marketing in your Designated Territory (postage, shipping, and photocopying costs) will apply toward your First Year Advertising and Local Advertising Requirements. Excluded costs include (a) salaries, incentives or discounts offered to your employees, and your employees' expenses; (b) charitable, political, or other contributions or donations; and (c) the value of discounts given to consumers.

11.1.4. *Franchisor's Control and Approval.* You will not conduct any advertising, promotion, marketing and/or sponsorship programs for Your Franchised Business, without Our prior written approval. For purposes of this Section 11.1.4, Your use of advertising, marketing and promotional materials provided to You by us will be deemed to have been approved by the Us, unless we notify you otherwise. You must submit all of Your marketing and advertising materials to Us for Our approval and may not use any marketing and advertising materials without Our prior written approval. We will approve or disapprove of Your marketing and advertising within 15 business days of the date we receive it. If we do not respond during the 15 business days, the marketing and advertising are deemed disapproved. If we approve the marketing and advertising materials prepared by You, we may use such marketing and advertising materials and make them available to other franchisees, licensees or Our Affiliates We do not warrant the success or effectiveness of any particular advertising/marketing program.

11.1.5. *Signage on Approved Vehicle.* You will not place any signs or other marketing or promotional materials on the Approved Vehicle (other than our approved signage, marketing and promotional materials) without our prior written consent.

11.1.6. *Local Advertising Criteria*. Certain criteria will apply to the local marketing that you conduct. All of your local marketing must be professional and dignified, must conform to our standards and requirements, and must be conducted in the media, type, and format that we have approved. You may not use any marketing, or promotional plans that we have not approved in writing. You must submit to us samples of all proposed plans and materials (unless, within the previous six months, we prepared or already approved the plans or materials.

11.1.7. *Materials Available for Purchase*. We may periodically make available to you for purchase marketing plans and promotional materials, merchandising materials, sales aids, point-of-purchase materials, special promotions, community relations programs, and similar marketing and promotional materials for use in local marketing. We may periodically make available to you certain marketing materials for your use in local advertising and promotion, some of which must be purchased.

11.1.8. *Additional Marketing Expenditure Encouraged*. You understand and acknowledge that the required contributions and expenditures are minimum requirements only, and that you may (and we encourage you to) spend additional funds for local advertising and promotion, which will focus on disseminating marketing directly related to your Franchised Business.

11.1.9. *Marketing Report*. Within 30 days of Our request, You will provide Us with an accurate accounting (in the form prescribed by Us) of Your expenditures for marketing, advertising and promotion on local advertising in Your Designated Territory. All expenditures for local marketing, advertising and promotion will be in addition to Your other marketing, advertising and promotion obligations under this Agreement.

**11.2 Rebates; Promotional Programs; Gift Cards**.

You acknowledge and agree that periodic marketing programs and promotions will, if and when we approve and adopt them, be an integral part of the System. Accordingly, you agree to honor and participate (at your expense) in marketing programs and promotions that we establish and/or that other franchisees sponsor, so long as they do not violate regulations and laws of appropriate governmental authorities.

**11.3 Considerations as to Charitable Efforts**.

You acknowledge and agree that certain associations between you and/or the Franchised Business and/or the Marks and/or the System, on the one hand, and certain political, religious, cultural or other types of groups, organizations, causes, or activities, on the other, however well-intentioned and/or legal, may create an unwelcome, unfair, or unpopular association with, and/or an adverse effect on, our reputation and/or the good will associated with the Marks. Accordingly, you agree that you will not, without our prior written consent, take any actions that are, or which may be perceived by the public to be, taken in the name of, in connection or association with you, the Marks, the Franchised Business, us, and/or the System involving the donation of any money, products, services, goods, or other items to, any charitable, political or religious organization, group, or activity.

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**11.4 Marketing Outside Your Designated Territory**.

You are prohibited from engaging in marketing, sales and promotional activities for Your Franchised Business outside the Designated Territory without Our prior written approval.

**11.5 Local Advertising Cooperative**.

When two or more Franchised Businesses, including Your Franchised Business, are opened in a market area designated by Us, We will have the right to require, in Our sole discretion, that Your Franchised Business (and the other Franchised Businesses in the market area) participate in a local advertising cooperative ("Local Advertising Cooperative") which will conduct and administer media advertising, promotion, marketing and public relations ("Production and Marketing") for the benefit of the Franchised Businesses located in the market area. At such time as We require that the You participate in a Local Advertising Cooperative for the Franchised Businesses in its market area, the Local Advertising Cooperative will be subject to the following terms and conditions:

11.5.1. *Member*. The Local Advertising Cooperative will consist of all franchisees owned Franchised Businesses in the market area. Each Franchised Business in the market area will be a "Member" of the Local Advertising Cooperative. Each Member will have one vote for each Franchised Business that such Member owns and operates in the market area on all matters to be voted upon at duly convened meetings.

11.5.2. *Meetings*. Each Member will be given five business days written notice of any proposed meeting. A quorum consisting of a majority of all Members of the Local Advertising Cooperative will be required to convene any meeting of the Local Advertising Cooperative. A majority vote by the Members present at a duly convened meeting will be required to pass any proposed resolutions or motions. All meetings will be conducted according to Robert's Rules of Order.

11.5.3. *Purpose*. The purpose of the Local Advertising Cooperative will be to conduct Production and Marketing for the benefit of all Franchised Businesses located in the market area.

11.5.4. *Approval of Production and Marketing Programs*. The Local Advertising Cooperative will not conduct any Production and Marketing program or campaign for the Franchised Businesses in the market area unless and until We have given the Local Advertising Cooperative prior written approval for all concepts, materials or media proposed for any such Production and Marketing program or campaign.

11.5.5. *Local Advertising Cooperative Fee*. On the first business day of January, each Member of the Local Advertising Cooperative will contribute to the Local Advertising Cooperative $1,500 ("Local Advertising Cooperative Fee"). The Local Advertising Cooperative Fee contributed by the Members will be used by the Local Advertising Cooperative for Production and Marketing programs and campaigns for the benefit of all Franchised Business in the market area. The cost of all Production and Marketing in the market area must be approved by a majority vote of all Members present at a duly convened meeting. If the cost of the Production and Marketing approved by the Members exceeds the amount of funds available to the Local Advertising Cooperative, then the Local Advertising Fee payable by the Franchisee and all other Members to the Local Advertising Cooperative pursuant to this Section may be increased by vote of a majority of the Members present at a duly convened meeting. You will contribute the amount of the Local Advertising Cooperative Fee agreed to by the Members to the Local Advertising Cooperative in

accordance with this provision. The Local Advertising Cooperative may elect to collect the Local Advertising Cooperative Fee on another basis upon majority vote of all Members present at a duly convened meeting.

11.5.6. *Reports*. The Local Advertising Cooperative will, within 20 days after the end of each calendar quarter, furnish to Us and its Members in the form prescribed by Us, a written summary of the Members' contributions to the Local Advertising Cooperative and an accurate accounting of the Local Advertising Cooperative's expenditures for approved Production and Marketing.

11.5.7. *Off Set.* The Local Advertising Cooperative Fee paid by You to the Local Advertising Cooperative will be applied to satisfy Your Local Advertising Requirement set forth in Section 11.1.2.

**11.6 Advertising Fund**.

11.6.1. *Advertising Fund Contribution*. During the initial term of this Agreement and any Interim Period, you will contribute the Advertising Fund Contribution set out in Section 3.3 to the System-wide marketing, advertising, and promotion fund (the "Advertising Fund").

11.6.2. *Purpose*. You understand and acknowledge that the Advertising Fund Contribution set out in Section 3.3 and the Advertising Fund is intended to maximize general public recognition and patronage of the System and the products and services offered by the Franchised Businesses, for the benefit of all of Our licensees and franchisees. We do not guarantee that advertising expenditures from the Advertising Fund will benefit You or any other franchisee or licensee directly or on a pro-rata basis. We undertake no obligation to ensure that the Advertising Fund expenditures in or affecting any geographic area are proportionate or equivalent to the contributions of franchisees or licensees operating in that geographic area.

11.6.3. *Use of the Advertising Fund*. We have the absolute and unilateral right to determine when, how and where the Advertising Fund Contributions and other payments deposited into the Advertising Fund will be spent. This includes (a) the production and placement of media advertising, media relations, creating and testing direct response literature, social media, direct mailings, brochures, collateral material, advertising and public relations expenditures; (b) salaries and administrative costs, insurance, overhead, travel expenses, agency costs and commissions and similar and other expenses incurred by the Advertising Fund related to its activities; (c) collection costs and legal expenses related to the Advertising Fund's activities; (d) development, modification and management of mobile apps, software, technology solutions and related integration tools and website development, modifications and management (including intranet websites); (e) surveys, market and customer research, product and supplier testing, demographic research, guest satisfaction programs and services, independent shopping, secret shopper and service evaluations; (f) Annual Franchisee Convention, Periodic Seminars and Conferences; (g) telemarketing, sponsorships, loyalty programs, gift card programs and incentive programs. In any fiscal year, an amount greater or less than the aggregate contribution of all franchisees and licensees to the Advertising Fund in that year may be spent. The Advertising Fund may borrow from Us or other lenders to cover deficits or invest any surplus for future use. Any amounts that remain in the Advertising Fund at the end of each year accrue and may be applied toward the next year's expenses.

11.6.4. *Administration*. We will administer the Advertising Fund. We will control the creative concepts and the materials and media to be used, and we will determine the placement and

allocation of advertisements. We may use print, television, radio, Internet, or other media for advertisements and promotions. We do not guarantee that any particular franchisee will benefit directly or in proportion to their contribution from the placement of advertising by the Advertising Fund. We do not have the Advertising Fund audited, so audited financial statements are not available. We will not be required to spend the Brand Fund Contribution in the same calendar year in which the payments were made. All interest accrued by the Brand Fund will be the property of the Brand Fund.

11.6.5. *Overhead.* We may use Advertising Fund Contributions for reasonable administrative costs and overhead related to the administration of the Advertising Fund and its programs, including salaries of our marketing professionals or contractors;

11.6.6. *Termination of Advertising Fund*. We intend for the fund to be perpetual, but we have the right to terminate it in Our determination. We will not terminate the Advertising Fund until all contributions and earnings have been used for advertising and promotional purposes or we have returned your *pro rata* share.

11.6.7. *Liability*. The Advertising Fund is not a trust, and we assume no fiduciary duty in administering the fund. The Advertising Fund is not our asset; and except for salaries of marketing personnel employed by Us, we do not receive compensation for providing goods or services to the Advertising Fund. We assume no direct or indirect liability or obligation to You for collecting amounts due to the Advertising Fund or any advertising account. We will not be liable for any act or omission with respect to the Advertising Fund, including but not limited to, maintaining, directing or administering the Advertising Fund or any other advertising account. No action taken by Us will diminish Your obligation to pay the Advertising Fund Contribution. You and We agree that the rights and obligations with respect to the Advertising Fund and all related matters are governed solely by this Agreement and neither this Agreement or the Advertising Fund creates a trust, fiduciary relationship, or similar arrangement.

**11.7 Internet Advertising; Social Media**.

11.7.1. *Restrictions on Internet*. You are restricted from establishing a presence on, or marketing on the Internet without our written consent. We have an Internet website at the uniform resource locators friospops.com and friosfranchise.com that provide information about the System and about the Franchised Business. We may provide you with a sub-page on our home page, where we will have contact information on your location. All information posted on our websites, or any linked webpages must be approved by us before they are posted. We retain the sole right to market on the Internet, including the use of websites, domain names, social media accounts, uniform resource locators, keywords, linking, search engines (and search engine optimization techniques), banner ads, meta-tags, marketing, auction sites, e-commerce and co-branding arrangements. You may be requested to provide content for our Internet marketing, and you must follow our intranet and Internet usage rules, policies and requirements. We retain the sole right to use the Marks on the Internet, including on websites, as domain names, directory addresses, search terms and meta-tags, social media pages and in connection with linking, marketing, co-branding and other arrangements. We retain the sole right to approve any linking to, or other use of, the Frios websites. You are not permitted to use a domain name containing "Frios", "Frios Gourmet Pops" or 'Frios Pops" in the URL. You are not permitted to engage the public on any social media site to promote your Franchised Business without our prior approval.

11.7.2. *Our Online Site*. We will have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Online Site. The term "Online Site" means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including, but not limited to, the Internet, World Wide Web, webpages, microsites, social networking sites (e.g., Facebook, Twitter, LinkedIn, You Tube, Google Plus, TikTok, Pinterest, Clubhouse, Instagram, etc.), blogs, vlogs, applications to be installed on mobile devices (for example, iOS or Android apps), and other applications, etc. However, if we approve a separate Online Site for you (which we are not obligated to do), then each of the following provisions will apply: (1) you may neither establish nor use any Online Site without our prior written approval; (2) before establishing any Online Site, you must submit to us, for our prior written approval, a sample of the proposed Online Site, including its domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including meta tags), in the form and manner we may require; (3) you must not use or modify an Online Site without our prior written approval; (4) you must comply with the standards and specifications for Online Sites that we may periodically prescribe in the Manual or otherwise in writing; (5) if we require, you must establish hyperlinks to our Online Site and other Online Sites; and (6) we may require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain or that are maintained on your behalf.

## 12. ACCOUNTING, RECORDS, AND REPORTING OBLIGATIONS

**12.1 Records**.

During the initial term of this Agreement and any Interim Period, you shall maintain full, complete, and accurate books, records and accounts. You shall utilize the accounting software QuickBooks (or other accounting software We approve) to manage your books. You shall retain during the initial term of this Agreement, any Interim Period and for three years thereafter, all books and records related to the Franchised Business including, without limitation, purchase orders, invoices, payroll records, sales tax records, state and federal tax returns, bank statements, cancelled checks, deposit receipts, cash receipts and disbursement journals, general ledgers, and any other financial records designated by us or required by law. By signing this Agreement, you grant us unlimited access to the accounting software and Computer System for any legitimate reason in our discretion or business purpose.

**12.2 Gross Sales Reports**.

You shall maintain an accurate record of Gross Sales and shall deliver to us electronically a signed and verified statement of Gross Sales ("Gross Sales Report") each month on or before the 5$^{th}$ day of the month for the prior month's Gross Sales via your QuickBooks or in a form approved by the Franchisor.

**12.3 Financial Statements**.

You shall supply to us on or before the 5th day of each month a balance sheet and income statement for the preceding month. You shall, at your expense, submit to us within 90 days after the end of each calendar year, an income statement, profit and loss statement, and balance sheet for the calendar year just ended. If required by us, such financial statements shall be reviewed or audited by a certified public accountant. You shall submit to us such other periodic financial reports in the manner and at the time specified in the Manual or otherwise requested by us in writing. At all times, We will have access to and may use the information contained in Your books, records and accounts for any purpose We deem appropriate, including, but not limited to, disseminating such information to potential franchisees (except that we will not disclose social

security number, birth date or home address information without Your consent, unless required or permitted by law).

**12.4 Income Tax Returns**.

Within 120 days after Your fiscal year end, You will furnish Us with signed copies of all pages of Your federal income tax returns pertaining to the Franchised Business for the fiscal year or any other period requested by Us. Subject to Section 12.8 below, We will maintain the confidentiality of the information provided by You pursuant to this provision.

**12.5 Other Reports.**

You shall submit to us copies of all state sales tax returns that are required to be filed with the appropriate governmental agency (personal and business) and such other records as we may reasonably request from time to time or as specified in the Manual. We shall have the right to release financial and operational information relating to the Franchised Business to our lenders or prospective lenders. You shall certify as true and correct all reports to be submitted pursuant to this Agreement.

**12.6 Computer Equipment; Required Software; Our Access; Telephone Numbers.**

12.6.1. *Computer System.* You must meet our current requirements concerning the Computer System, including: (a) point of sale (POS) systems, data, audio, video (including managed video security surveillance), telephone, voice messaging, retrieval, and transmission systems for use at Franchised Businesses, between or among other franchised businesses, and between and among the Franchised Business, and you, and us; (b) physical, electronic, and other security systems and measures; (c) printers and other peripheral devices; (d) archival back-up systems; (e) internet access mode (such as the telecommunications connection) and speed; and (f) technology used to enhance and evaluate the customer experience (collectively, all of the above are referred to as the "Computer System").

12.6.2. *Required Equipment and Software.* Franchisee shall purchase, install, and use computer equipment consisting of hardware and software in accordance with Franchisor's specifications. We may periodically require you to upgrade and update the hardware and software used in connection with the Computer System. There are no contractual limitations on the frequency and cost of these upgrades and updates. We reserve the right to approve your email address or require you to use only an e-mail address that we provide for your Franchised Business's business e-mails.

12.6.3. *Franchisor Access.* We shall have full access to all of your computer, data and systems and all related information by means of direct access, either in person or by telephone, modem, or Internet to permit us to verify your compliance with its obligations under this Agreement. You must afford us unimpeded independent access to your Computer System in the manner, form, and at the times we may request. We will have the right at any time to retrieve and use this data and information from your Computer System in any manner we deem necessary or desirable. We have the right to require you to use one or more designated telephone vendors. We may designate, and own, the telephone numbers for your Franchised Business. We have the right to review your business operations, in person, by mail, or electronically, and to inspect your operations and obtain your paper and electronic business records related to the Franchised Business and any other operations taking place through your Franchised Business. There are no contractual limitations on our right to access the information stored on your Computer System.

12.6.4. *Reservation of Rights.* We have the right to develop or have developed for us, or to designate: (a) computer software programs and accounting system software that you must use in connection with the Computer System ("Required Software"), which you must install; (b) updates, supplements, modifications, or enhancements to the Required Software, which you must install; (c) the tangible media upon which you must record data; and (d) the database file structure of your Computer System. We rely on suppliers to provide support for the hardware and software, and we may require that you enter into service contracts directly with the hardware and software suppliers and pay the suppliers directly for this support.

12.6.5. *Email and Internet.* You must be able to access information that is available on the Internet and be able to send and receive email.

**12.6.6.** *Client Lists.* You may not sell or use client lists or information for any purpose other than in connection with the operation of your Franchised Business.

**12.7 Right to Inspect**.

We have the right, during normal business hours without notice, to examine, copy, and audit your books, records, and tax returns. If the audit or any other inspection should reveal that any payments to us have been underpaid by 3% or more, then you shall immediately pay us the amount of the underpayment plus Interest and Late Fees as set out in Section 3.9, You shall, in addition, reimburse us for any and all costs and expenses connected with the inspection (including, without limitation, travel expenses and reasonable accounting and attorneys' fees). The foregoing remedies shall be in addition to any other remedies we may have.

**12.8 Disclosure**.

We will have the right to disclose in Our Franchise Disclosure Document as required by law, and in other documents and places as determined by Us, any information relating to the Franchised Business, including Your name, any address and/or telephone number(s), Gross Sales, expenses, results of operations and/or other information. Any disclosure by Us will be for reasonable business purposes, and Our rights under this provision will survive the Transfer, termination or expiration of this Agreement.

**12.9 Release of Records**.

At our request, you shall release or authorize and direct third party(s), including accounting and legal professionals, to release to us copies of all accounting and financial records arising from or relating to the operation of the Franchised Business including, but not limited to, records evidencing Gross Billings, sales, profits, losses, income, tax liabilities, tax payments, revenues, expenses, and any correspondence, notes, memoranda, audits, business records, or internal accounts within said third parties' possession, custody or control, and to continue to release such records to us on a monthly basis for the length of the unexpired term of this Agreement or until such time as we withdraw our request. You shall execute all documents necessary to facilitate the release of records referenced herein to us.

**12.10 Ownership of Records**.

You acknowledge and agree that all business records relating to Your Franchised Business, including but not limited to client lists, are the sole property of the Franchisor.

## 13. STANDARDS OF OPERATION

### 13.1 Authorized Services, Products and Suppliers.

13.1.1. *Designated Goods, Supplies and Services.* You acknowledge that the reputation and goodwill of the System is based in large part on offering high quality services and products to its customers. Accordingly, you will only sell the products and offer the services customary of a Franchised Business with the greatest diligence and care and comply with our specifications and quality standards. You shall not offer for sale, sell or provide through the Franchised Business or from the Franchised Business any products or services that we have not approved. Furthermore, you must offer for sale all products and services currently offered by us or which will be offered by us in the future.

13.1.2. *Suppliers.* You will purchase required goods, services, supplies, items, products, Approved Vehicles, Carts, coolers, marketing materials, uniforms, Frios Pops, branded materials, equipment, software, POS Equipment, inventory, supplies and equipment ("Goods, Supplies and Services") in accordance with our specifications from designated and approved suppliers. Notwithstanding anything contrary in this Agreement, we have the right to review from time to time Our approval of suppliers and our Goods, Supplies and Services.

13.1.3. *Alternate Suppliers, Goods, Supplies and Services*. If You desires to use different Goods, Supplies and Services or desires to purchase Goods, Supplies and Services from other suppliers You must first obtain Our approval in writing. Any suppliers proposed by You must conform to the Our standards and specifications and We must first determine that the supplier's business reputation, quality standards, delivery performance, credit rating, and other criteria meet Our standards and specifications. We may deny or revoke Our approval of any supplier at any time based upon the lack of any of the above items. If the You desire to purchase any required Goods, Supplies and Services from other suppliers which are not approved suppliers, then the You must, at your expense, submit samples, specifications, and product information requested by the Us, for review and testing to determine whether Goods, Supplies and Services comply with the Our standards and specifications. We will also have the right to inspect the facilities of the proposed supplier, and the You will reimburse Us for the costs and expenses incurred to conduct the inspection and testing. We will complete all testing and will notify the You of its determination within 30 days after We complete Our testing, inspection and evaluation process. If We do not notify You of Our determination within such 30 days, We will be deemed to have rejected Your request. Our written approval must be obtained before any previously unapproved f Goods, Supplies and Services are purchased, sold or used by the You.

13.1.4. *Variance Rights.* We have the right to designate certain products and services, not otherwise authorized for general use as part of the System, to be offered locally or regionally based upon such factors as we determine including, but not limited to, franchisee qualifications, test marketing and regional or local differences. We have the right to give its consent to one or more franchisees to provide certain products or services not authorized for general use as part of the System. Such consent will be based upon the factors set forth in Section 10.3 and shall not create any rights in you to provide the same products or services.

13.1.5. *Supplier Benefits.* We have the right to retain volume rebates, markups and other benefits from suppliers, including our affiliates, or in connection with the furnishing of suppliers. You shall have no entitlement to or interest in any such benefits.

13.1.6. *Revocation of Approvals*. We may revoke our approval of any Goods, Supplies and Services and any designated or approved suppliers at any time. You shall, at your own expense, promptly cease using, selling or providing any Goods, Supplies and Services or suppliers disapproved by us.

13.1.7. *The Sale of Unauthorized Products or Services*. In order to assure uniformity throughout the System, if You offer to sell or do sell products or services which are not authorized or purchase Goods Services and Supplies from unapproved suppliers, You agree that We will be damaged by the Your non-compliance. These damages will be at the rates set out in Sections 3.9.3 and 3.9.5 and will be in addition to any other rights or remedies We may have against You. We have the right to collect these amounts in addition to any and all of Our other rights for non-compliance provided for under this Agreement. You and We agree that these amounts are reasonable, constitute liquidated damages, and are not a penalty.

**13.2 Appearance and Condition of the Franchised Business**.

You shall maintain your Approved Vehicle, Carts, coolers, equipment and signage of the Franchised Business in a condition we approve and shall repair or replace the Approved Vehicle, Carts, coolers, equipment and signage as necessary, in our determination, to comply with our specifications and any applicable laws or regulations. The expense of such maintenance shall be borne by you and shall be in addition to any required System modifications, as described in Section 10.2. You will replace the Approved Vehicle, equipment, Carts, coolers and signage as they become work out in accordance with our standards.

**13.3 Ownership and Management**.

(a) The Franchised Business shall, at all times, be under the direct supervision of you or your "Operating Principal" (if you are an entity or partnership) who must devote full time and best efforts to the development and operation of the Franchised Business. Your Operating Principal must have and maintain at least 51% ownership of the Franchised Business and have full authority to bind you regarding all operational decisions about the Franchised Business. We must approve your Operating Principal, and you must designate a qualified replacement from among your owners if your Operating Principal can no longer fulfill his or her responsibilities under the Franchise Agreement. You must not engage in any business or other activities that will conflict with your obligations under this Agreement. You will recruit, hire, train, terminate, and supervise all employees, set pay rates, and pay all wages and related amounts, including any employment benefits, unemployment insurance, withholding taxes or other sums. We are not an employer, co-employer or joint employer with you of your management staff or other employees. You are solely responsible for all employment matters, decisions and relationships.

(b) If You are an entity, You will be dedicated solely to the operation of the Franchised Business and will not hold any interest in, operate, or manage any other businesses of any kind without Our prior written approval. At the time of execution of this Agreement, You will provide, and at any later time at Our request, You or Your Operating Principal will promptly provide Us with satisfactory proof of Your ownership. You will allow no changes in the ownership structure of Your Franchised Business without Our prior written consent.

(c) In all dealings with third parties including, without limitation, employees, suppliers, vendors, manufacturers, distributors, other franchisees and customers You will disclose in an appropriate manner acceptable to Us that You are an independent entity licensed by Us. Any

time You, Your Operating Principal, Manager or employees use their titles (e.g., president) it must be made clear that such person holds that position with Your entity and not with Us.

(d) You are prohibited from transferring, delegating, assigning or subcontracting Your obligations under this Agreement or the operation of Your Franchised Business to any third party or entity without Our prior approval.

**13.4 Guaranty.**

If You are a corporation, partnership, limited liability company, or other entity, or in the future become a corporation, partnership, limited liability company, or other entity, We will require Your officers, directors, shareholders, partners, members, managers, Owners, and Owner's spouses or domestic partners to sign the Unlimited Guaranty and Assumption of Obligations attached hereto as Attachment 3.

**13.5 Brand Standards**.

You agree to comply with all brand standards, as we may periodically modify them, as if they were part of this Agreement ("Brand Standards"). You will not offer, sell, or provide at or from the Franchised Business any goods or services not authorized in the Manual. Brand Standards may direct any aspect of the operation and maintenance of the Franchised Business, including any one or more of the following: advertising programs, maximum or minimum pricing, days and hours of operation, accepting credit and debit cards, social media, and any other aspect of operating the Franchised Business that we determine to be useful to preserve or enhance the efficient operation, image or goodwill of the Marks and our System.

**13.6 Refurbishment of the Franchised Business and/or Approved Vehicle**.

You shall correct any deficiencies in the Franchised Business and/or Approved Vehicle appearance or set-up and you must refurbish the Franchised Business and/or Approved Vehicle to current System standards upon our request. The obligations described in this Section are exclusive of the obligations described in Section 10.2.

**13.7 Contributions and Donations**.

In order to protect the Marks, you must obtain our prior written consent before making any contributions or donations of items, services or funds to any non-profit organization on behalf of your Franchised Business. We may withhold any such consent in its sole and absolute discretion.

**13.8 Licenses and Permits**.

You shall secure and maintain in force all required operational and professional licenses, permits and certificates necessary for the operation of the Franchised Business, including all zoning and local permits necessary to operate the Franchised Business at the Premises, and shall operate the Franchised Business in full compliance with all applicable laws, ordinances and regulations. We make no representation to you with regard to any legal requirements that you must satisfy or comply with in connection with the operation of the Franchised Business. You shall be solely responsible for investigating and complying with all such laws, ordinances and regulations with regard to the operation of the Franchised Business.

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**13.9 Notifications**.

(a) You shall notify us in writing of the commencement of any action, suit or proceeding involving you, your Owners, or the Franchised Business, and of the issuance of any order, writ, injunction, judgment, award or decree which may affect the operation or financial condition of the Franchised Business immediately but not more than three days after notice of such commencement or issuance. You shall deliver to us immediately but not more than three days after your receipt thereof, a copy of any inspection report, warning, certificate or rating by any governmental agency relating to any health or safety law, rule or regulation that reflects your failure to meet and maintain the highest applicable rating or your noncompliance or less than full compliance with any applicable law, rule or regulation, . investigations by a government entity or any complaint or notice from the state or federal department of financial services

(b) You agree to notify us in writing within three days occurrence of any accident or injury which may adversely affect the operation of the Franchised Business or your financial condition or give rise to liability or a claim against either party to this Agreement, or (c) the discovery of any facts that may give rise to a professional liability claim against either party to this Agreement.

**13.10 Compliance with Good Business Practices**.

You acknowledge that the quality of customer service, and every detail of appearance and demeanor of Franchisee and its employees, is material to this Agreement and the relationship created and licenses granted hereby. Accordingly, you shall endeavor to maintain high standards of quality and service in the operation of the Franchised Business, including operating in strict compliance with all applicable rules and regulations. You shall at all times give prompt, courteous and efficient service to customers of the Franchised Business. You shall in all dealings with its customers, vendors and the general public, adhere to the highest standards of honesty, fair dealing and ethical conduct. If we deem that you did not fairly handle a customer complaint or has operated outside of applicable rules and regulations, we have the right to intervene and satisfy the customer. We have the right to terminate this Agreement for a material violation of this Section that negatively impacts the goodwill of the Marks or System. You shall reimburse us for all costs and expenses incurred by us in servicing a customer of the Franchised Business or responding to negative publicity pursuant to this Section. You will at all times cooperate with Us, existing and prospective franchisees, and Our Affiliates in accomplishing the purpose of this Agreement.

**13.11 Compliance with Law**.

You agree to comply with all federal, state, and local laws, rules, and regulations, and to timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement, including, without limitation, licenses to do business, health certificates, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of any such laws are in conflict with the terms of this Agreement, the Manual, or our other instructions, you agree to: (a) comply with said laws; (b) immediately provide us with written notice describing the nature of the conflict; and (c) cooperate with us and our counsel in developing a way to comply with the terms of this Agreement, as well as applicable law, to the extent that it is possible to do so.

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**13.12 Attire**.

You shall abide by all dress code requirements stated in the Manual, including the requirement to wear uniforms, or upon our notification to you.

**13.13 Credit Cards**.

You shall, at your expense, lease or purchase the necessary equipment and/or software through approved vendors and shall have arrangements in place with Visa, MasterCard, American Express and such other credit card issuers as we may designate, from time to time, to enable the Franchised Business to accept such methods of payment from its customers. To the extent You store, process transmits or otherwise accesses or possess Sensitive Information, You agree that You will adhere to, and cause any service provider or third party-provided payment applications to adhere to cardholder data security standards according to the then-current Payment Card Industry Data Security Standards ("PCI DSS") throughout the Initial Term of this Agreement and an Interim Period.

**13.14 Data Security**.

You acknowledge You are responsible for the security of credit cardholder data, financial data, and personally identifiable information (collectively, "Sensitive Information") in Your possession or in the possession or control of any service provider or third party-provided payment application provider that You engage to perform under this Agreement. Upon request by Us, such subcontractors must be identified to Us in writing prior to sharing Sensitive Information with the subcontractor. You will encrypt all Sensitive Information that will be transmitted over networks or in storage, and all Sensitive Information at rest. These security measures will be reviewed at least annually.

**13.15 Best Efforts**.

You shall use your best efforts to promote and increase the customers and recognition of Frios Pops and other products and services offered through the Franchised Business. You shall require all of your employees, managers, officers, agents and representatives to make a good faith effort to enhance and improve the System and the sales of all services provided as part of the System

**13.16 Cooperation**.

You agree to cooperate with and communicate directly with Us. You agree to notify Us of any change of Your Franchised Business or personal address, telephone number, facsimile number or e-mail address within 10 days of any such change.

**13.17 Promotions**.

You will fully participate in all such promotional campaigns, prize contests, special offers and other programs, national, regional or local in nature (including the introduction of new products, services, or other marketing programs directed or approved by Us), which are prescribed from time to time by Us. You will be responsible for the costs of such participation.

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**13.18 Gift Cards; Loyalty Programs**.

You will not create or issue any gift certificates or gift cards and will only sell gift certificates or gift cards that have been issued by the Us or approved by Us. You will participate in all gift certificate and/or gift card administration programs as may be designated by Us from time to time. You will honor all coupons, gift certificates, gift cards and other programs or promotions as directed by the Us, even if You are not required by Us to actively offer or promote such programs or promotions within Your Designated Territory. You will fully participate in all customer loyalty or frequent customer programs approved by Us, even if You are not required by Us to actively promote such programs within Your Designated Territory. You acknowledge that a customer loyalty program and gift card program may include technology and system components or applications involving third-party vendors identified by Us, and You agree to timely execute and deliver such documents, contracts, or agreements as We may reasonably require to facilitate such programs. You will not issue coupons or discounts of any type for use at Your Franchised Business except as approved by Us in writing, which may be withheld in its sole and absolute discretion.

**13.19 Tax Laws**.

You will be responsible for and will timely pay all federal, state and local taxes imposed by law in connection with the operation of the Franchised Business, and will timely file all return, notices and other forms required to comply with all applicable tax laws. You will have no liability for any taxes which arise out of or result from Your Franchised Business, and You will indemnify Us for any such taxes that may be assessed or levied against Us which arise out of or result from the operation of Your Franchised Business.

**13.20 Third Party Agreements**.

You agree comply with all agreements and obligations with third parties concerning Your Franchised Business, including, without limitation, all suppliers and vendor agreements, including with Our Affiliates. Franchisee agrees to pay all obligations incurred in connection with Franchisee's Franchised Business on a timely basis.

## 14.FRANCHISOR'S ASSISTANCE

**14.1 Assistance**.

We will offer You initial and continuing services that We deem necessary or advisable in furthering Your Franchised Business and the System as a whole. Our failure to provide any particular service, either initial or continuing, will not excuse You from any of Your obligations under this Agreement.

**14.2 Initial Services**.

Currently, the initial services We, Our Affiliates or Our designee provide to You include the following:

(a) Designating Your Designated Territory set out in Attachment 1 hereto;

(b) Providing the initial training program, including inspecting Your Approved Vehicle and equipment at the time You attend the in-person portion of the initial training program as further described in Section 8.1;

(c) Providing access to an electronic copy of Our Manual as set out in Section 9.1;

(d) Providing You with Our criteria for Your Approved Vehicle;

(e) Providing You with Our current list of Goods, Supplies and Services and designated and approved suppliers as set out in Section 13.1,

(f) Providing You with the Opening Inventory. You will pay the Opening Inventory Fee set out in Section 3.5; and

(g) Providing You with access to Our marketing materials.

**14.3 Continuing Services**.

Currently, the initial services We, Our Affiliates or Our designee provide to You include the following:

(a) Providing You with Frios Pops in accordance with the terms and conditions set by Us or Our Affiliate. You will pay the then current fees for Frios Pops;

(b) May, but are not required to provide additional training and guidance. You will be required to pay Franchisor's then current fee for such additional training and guidance as further described in Section 3.12;

(c) Periodically, providing general marketing recommendations and marketing materials (if any) at Your cost. We will review and approve the local marketing for Your Franchised Business as further described in Section 11.1.4;

(d) Providing You with modifications to the Manual;

(e) Administer the Advertising Fund;

(f) May, but are not required to, make periodic visits to Your Franchised Business as further described in Section 14.5;

(g) Periodically providing updated information for designated and approved suppliers and Goods, Services and Supplies required to be used or sold in Your Franchised Business as further described in Section 13.1; and

(h) May provide You with a page on Our website or a sub-page as further described in Section 11.7.2.

**14.4 General Advice and Guidance**.

Prior to opening the Franchised Business, we will assist you in ordering your initial inventory, equipment, signage and other required inventory as we deem necessary. We will make a representative reasonably available to You during Our normal business hours as We determine is necessary to discuss Your Franchised Business.

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**14.5 Periodic Visits**.

We and our representative may, in our sole discretion, make periodic visits, which may be announced or unannounced, to the Franchised Business. During the visit, we may monitor and observe the conduct of the Franchisee, the Operating Principal, the Manager and the employees of the Franchised Business for the purposes of determining compliance with the requirements of this Agreement, for conducting quality assurance audits which may include customer surveys, and for any other purpose connected with the System. Such right shall also include, without limitation, the ability to confer with your employees and customers and to observe the manner in which Franchisee is rendering its services. You shall in all cases facilitate our exercise of its rights under this Section. Your and our representatives who visit, monitor or review the Franchised Business may prepare, for the benefit of both you and us, written reports detailing any successes, problems or concerns discovered during any such visit and outlining any required or suggested changes or improvements in the operations of the Franchised Business. You shall implement any required changes or improvements as required by us with time being of the essence.

**14.6 Performance of Services**.

14.6.1. *Notice*. If You believe We failed to adequately provide pre-opening and continuing services to You as provided in this Agreement, including Sections 14.1 and 14.2 You will notify Us in writing within 30 days following the completion of such services provided. Absent the timely provision of such notice to Us, You will be deemed to conclusively acknowledge that all pre-opening and opening services required to be provided by Us was sufficient and satisfactory.

14.6.2. *Level Of Service*. We are not obligated to perform services set forth in this Agreement to Your particular level of satisfaction, but as a function of Our experience, knowledge and Business Judgment. We do not represent or warrant that any other services will be provided to You, other than as set forth in this Agreement. To the extent any other services, or any specific level or quality of service is expected, You must obtain a commitment to provide such service or level of service in writing signed by Our authorized officer, otherwise We will not be obligated to provide any other services or specific level or quality of services.

## 15. INSURANCE

**15.1 Types and Amounts of Coverage**.

15.1.1. *Insurance Coverage Required*. Before starting any activities or operations under this Agreement, you agree to procure and maintain in full force and effect during the term of this Agreement, at your expense, at least the following insurance policy or policies in connection with the Franchised Business or other facilities on Premises:

(a) Commercial general liability insurance, including us, and any entity in which we have an interest and any entity affiliated with us and each of our members, managers, shareholders, directors, officers, partners, employees, servants and agents as additional insureds protecting against any and all claims for personal, bodily and/or property injury occurring in or about the Franchised Business and protecting against assumed or contractual liability under this Agreement with respect to the Franchised Business and your operations, including personal and advertising liability as well as products and completed operations coverage, with such policy to be placed with

minimum limits of $2,000,000 combined single limit per occurrence; $3,000,000 general aggregate per location; and $4300,000 for damage to leased property;

(b) Property Liability coverage covering all perils to personal property contained within and outside the Approved Vehicle. The amounts may vary based on coverage needed but must cover your business property and a minimum of $250,000 or the amount of the cost of your average inventory and Approved Vehicle value;

(c) If you have employees, Workers' Compensation Coverage and such other insurance as may be required by statute or rule of the state or locality in which the Franchised Business is located and Employer's Liability coverage in the amount of $1,000,000 per person, $1,000,000 in the aggregate and $1,000,000 for occupational disease;

(d) Business automobile liability insurance, covering the Approved Vehicle owned or operated by or on behalf of you, with limits of liability not less than $1,000,000 combined single limit for both bodily injury and property damage; and

(e) Any other insurance coverage that is required by the Manual or federal, state, or municipal law.

15.1.2. *Insurance Advice*. You shall seek advice from your professional and business advisors and a licensed insurance agent and procure such other types of coverage and amounts of coverage in accordance with the advice received and as required by law.

**15.2 Future Increases**.

We have the right to establish and modify the minimum coverages required and require different or additional kinds of insurance to reflect inflation, changes in standards of liability, higher damage awards, or other relevant changes in circumstances. In addition to naming us as additional insured, you must include any endorsements we may require (including an "alternate employer endorsement" under Employer's Liability policy even though we are not your employer) and include a waiver of subrogation in favor of us and our affiliates, and each of our and our affiliates' officers, directors, shareholders, partners, members, agents, attorneys, representatives, independent contractors, servants, and employees.

**15.3 Carrier Standards**.

The insurance policies you procure must be written by an insurance company or companies we have approved, having at all times a rating of at least "A" in the most recent Key Rating Guide published by the A.M. Best Company (or another rating that we reasonably designate if A.M. Best Company no longer publishes the Key Rating Guide) and licensed and admitted to do business in the state in which the Franchised Business is located, and must include, at a minimum (except that we may reasonably specify additional coverages and higher policy limits for all franchisees periodically in the Manual or otherwise in writing to reflect inflation, identification of new risks, changes in the law or standards of liability, higher damage awards and other relevant changes in circumstances).

**15.4 Evidence of Coverage**.

Your obligation to obtain and maintain the insurance policies shall not be limited in any way by reason of any insurance which may be maintained by us, nor shall your performance of this obligation relieve you of

liability under the indemnity provisions set forth in Section 21.3. Upon issuance of a policy and renewal of said policy, you shall provide to us, certificates of insurance showing compliance with the foregoing requirements immediately but no later than 15 days from your receipt of such certificates. Such certificates shall state that said policy or policies shall not be canceled or altered without at least 30 days' prior written notice to us and shall reflect proof of payment of premiums.

**15.5 Failure to Maintain Coverage**.

If you fail to purchase and maintain any required insurance coverage or furnish satisfactory evidence of coverage to us, in addition to our other remedies (including without limitation declaring you in default of this Agreement), we may, but are not obligated to, purchase the insurance coverage for you. If we do purchase insurance on your behalf, you must pay us on our demand the amount of any premiums and reasonable expenses we incur in obtaining the insurance. The failure to maintain insurance coverage at any time is a material default under the Franchise Agreement.

## 16.DEFAULT AND TERMINATION

**16.1 Termination by Franchisee**.

Under no circumstances may You terminate this Agreement.

**16.2 Immediate Termination by Franchisor**.

We have the right to immediately terminate this Agreement, or to exercise any other remedies in accordance with Section 16.4 without prior notice to You of the default and without an opportunity to cure the default unless precluded by applicable law or otherwise as stated in this Agreement if any of the following events occur:

(a) are convicted of or pleads no contest to a felony or other crime or offense that is likely to adversely affect Our, Our Affiliates, the System, You or the Franchised Businesses reputation or good will;

(b) fail to refrain from activities, behavior, or conduct likely to adversely affect the goodwill associated with the Marks or the System and You fail to correct such breach within five days of Our written notice;

(c) make any material misrepresentation or omission during the pre-sale process and/or in your application for the Franchised Business or otherwise to us in the course of entering into this Agreement

(d) You or Your Owners commit fraud or misrepresentation in the operation of the Franchised Business;

(e) You or Your guarantors become insolvent, meaning unable to pay bills as they become due in the ordinary course of business; a receiver of Your or Your guarantors property or any part thereof is appointed by a court; You or Your guarantors make a general assignment for the benefit of creditors; a final judgment remains unsatisfied of record for 30 days or longer (unless supersede as bond is filed); execution is levied against Your Franchised Business or property; a suit to foreclose any lien or mortgage against your Franchised Business, and/or the Approved

Vehicle, or equipment is instituted against You and is not dismissed within 30 days or is not in the process of being dismissed within 30 days;

(f) abandon, fail, or refuse to actively operate the Franchised Business for three or more consecutive days (unless the Franchised Business has not been operational for a purpose approved by Franchisor or due to seasonality as agreed to by Franchisor);

(g) fail or refuses to submit reports or other information or supporting records when due or to produce and permit Us to audit Your Franchised Business and fails to remedy such breach within 10 days after You become aware or reasonably should be aware of such breach,

(h) submit to us at any time during the initial term of this Agreement or any Interim Period any reports or other data, information or supporting records that understate any Gross Revenues, Royalty Fee, Advertising Fund Contributions or any other fees owed to us by more than 3% for any accounting period and you are unable to demonstrate that such understatements resulted from inadvertent error;

(i) breach this Agreement (i) three or more times in a 12-month period; or (ii) four or more times during the initial term of this Agreement or any Interim Period, without regard to whether the breaches were of a similar or different nature or whether the breaches were corrected within the prescribed cure period after receipt of written notice of the breaches;

(j) fails or refuses to maintain insurance required by Us in accordance with this Agreement and the Manual or refuses to adhere to the requirements set out in Section 15.1and does not remedy such breach within three days after You become aware or reasonably should have become aware of such breach;

(k) You fail to have the persons identified in Section 7.7 sign the Nondisclosure and Non-Competition Agreement, in a form that is the same as or similar to (as approved by Us) the form attached hereto as Attachment 2 or You fail to provide us with copies of such signed Nondisclosure and Non-Competition Agreement within five days of Our request,

(l) You or any of the persons identified in Section 7.7 engages in Competitive Activity or otherwise breach Section 7 of the Franchise Agreement or the Nondisclosure and Non-Competition Agreement;

(m) misuse or make an unauthorized use of any of the Marks, System, Confidential Information, Trade Secrets, Manual, or other proprietary materials provided by Us or Our Affiliates;

(n) challenging or attempting to register, patent, trademark or copyright any of the System, Marks, Confidential Information, Trade Secrets, Manual or other proprietary information provided to You by Us, Our Affiliates or on Our or Our Affiliates behalf;

(o) intentionally or negligently disclose to any unauthorized person the contents of or any part of the Manual, System, Confidential Information, Trade Secrets or other proprietary information provided to You by Us, Our Affiliates or on Our or Our Affiliates behalf;

(p) surrender or transfer control of the operation of the Franchised Business without our approval, make or attempt to make an unauthorized direct or indirect assignment or transfer of the Franchised Business, or its assets, or an Ownership Interest in Franchisee, or fails or refuses to assign the Franchised Business or the interest in the Franchised Business of a deceased or incapacitated Owner thereof as herein required;

(q) You create a sub-franchise of any kind under applicable law;

(r) violate any health, sanitation or safety law, ordinance or regulation, or operate the Franchised Business in a manner that presents a health or safety hazard to Your customers, employees, or the public and you fail to correct such breach within 24 hours after You become aware or reasonably should have become aware of such breach;

(s) the Franchisee has failed or refused to comply with any mandatory specification, standard, or operating procedure prescribed by the Franchisor relating to the cleanliness or sanitation of the Franchised Business, and the Franchisee fails to correct the breach within 24 hours after You become aware or reasonably should have become aware of such breach;

(t) commission of a default that is by its nature not curable;

(u) You lose possession of the Approved Vehicle or any lease or purchase agreement for the Approved Vehicle is terminated or canceled for non-payment;

(v) fail to maintain obtain all required professional licenses, permits and certifications required for the opening and operating of Your Franchised Business prior to Your opening Your Franchised Business and have not cured such Default within five business days after You become aware or reasonably should have become aware of such Default; and

(w) fail to maintain all required professional licenses, permits, and certifications for a period exceeding five business day and have not cured such Default within five business days after You become aware or reasonably should have become aware of such Default.

**16.3 Termination after Failure to Cure**.

Subject to Section 16.2, You will be deemed to be in default under this Agreement and We have the right to exercise Our remedies including termination of this Agreement and all rights granted under this Agreement if: (1) within 30 days after We send You written notification setting out the nature of the default ("Notice of Default"); (2) within any shorter period expressly set forth in the following clauses as to such Default; or (3) any longer cure period required by applicable law, You do not correct the Default to Our satisfaction for any of the following events (for the purposes of this Agreement, an alleged breach of this Agreement by the You will be deemed to be "corrected" if both You and We agree in writing that the alleged Default has been corrected):

(a) You have not purchased or leased an Approved Vehicle as set out in Section 5.4;

(b) You have not opened Your Franchised Business by the Required Opening Date in accordance with Section 5.2 and have not cured such Default within 15 days after We send You the Notice of Default;

(c) You or Your Operating Principal and Your Manager (if any) has not satisfactorily completed the Initial Training Program required under this Agreement and have not cured such Default within 15 days after We send You the Notice of Default;

(d) subject to Section 16.2 above, You breach any material provision, term or condition of this Agreement or the Manual or any other agreement that You, Your Affiliates, Owners or Operating Principal have with Us or Our Affiliates;

(e) subject to Section 16.2 above, You fail to obtain Our prior written approval or consent required by this Agreement;

(f) You fail to timely pay any Royalty Fee, Advertising Fund Contribution, amounts due for purchases from us or any of our Affiliates, or any other payments due to Us or any of Our Affiliates within five days after the due date of such amounts, together with Interest and Late Charges set out in Section 3.9;

(g) You fail to timely pay any of Your uncontested obligations or liabilities due and owing to the Local Advertising Cooperative, suppliers, banks, purveyors, vendors, suppliers, other creditors or to any federal, state or municipal government;

(h) any ACH, check, credit card or EFT issued by You is dishonored because of insufficient funds or closed bank accounts;

(i) You, Your Affiliate, or Your Owners breach any other agreement between such person or entity and Us or Our Affiliates and does not cure such default within the period set out in such other agreement;

(j) You, Your Affiliate(s) or Owner(s) commits any other act that constitutes good cause under applicable law or court decisions;

(k) fail to maintain the Franchised Business under the primary supervision of an approved Manager during the 180 days following the death or Incapacity of Franchisee or any holder of a legal or beneficial interest in Franchisee pursuant to Section 18.7;

(l) engage in any activity exclusively reserved to Franchisor;

(m) subject to Section 16.2 fail to comply with any applicable law or regulation within five days after being given notice of noncompliance; and

(n) operate the Franchised Business outside the Designated Territory without Our prior written approval and fail to cease such activity within five days of the Notice of Default;

**16.4 Our Right to Discontinue Services to You**.

If You are in Default of this Agreement, in addition to our termination rights, We or Our Affiliates will also have the right to (a) stop selling and/or providing any goods/services to You until You have cured all Defaults, (b) require designated suppliers to stop selling and/or providing any goods/services to You until You have cured all Defaults, (c) suspend performance of all or certain services and Our obligations to You (or the performance of our Affiliates and their obligations including supplying you with product); (d)

suspend Your right to use the System and Website; (e) modify or completely eliminate any rights you may have with respect to the Designated Territory; and/or (f) automatically and permanently transfer your customers to an existing Us, Our Affiliates, or other franchisees. No such action by Us will be a constructive termination of this Agreement, change in competitive circumstances or similarly characterized, and You agree that You will not be relieved of any obligations under this Agreement because of any such action.

**16.5 Other Remedies**.

Nothing in this Section 16 will preclude Us from seeking other remedies or damages under any state or federal law, common law, or under this Agreement against You including, but not limited to, attorneys' fees and injunctive relief. If this Agreement is terminated by Us pursuant to this Section 16, or if You breach this Agreement by a wrongful termination or a termination that is not in strict compliance with the terms and conditions of this Agreement, then We will be entitled to seek recovery of all damages that We have sustained and will sustain in the future as a result of You breach of this Agreement.

**16.6 Reinstatement and Extension**.

If provisions of this Agreement provide for periods of notice less than those required by applicable law, or provide for termination, cancellation or non-renewal other than in accordance with applicable law, we may reinstate or extend the term of this Agreement for the purpose of complying with applicable law by submitting a written notice to you without waiving any of our rights under this Agreement.

**16.7 Right of Franchisor to Operate Franchised Business**.

Following the delivery of a Notice of Default or termination, if necessary, in our discretion, we shall have the right, but not the obligation, to assume the operation of the Franchised Business until such time as you correct the default if applicable. We will charge our then-current management fee ("Management Fee") per representative per day for the period in which we elect to operate the Franchised Business payable at the same time as Royalty Fees, and we shall be entitled to reimbursement of any expenses we incur that are not paid out of the operating cash flow of the Franchised Business.

**16.8 Continuing Obligations**.

If this Agreement is terminated by You or because of a default by You, You will not be released or discharged from Your obligations, including payment of all Fees then due and other amounts which would have become due under this Agreement if You had continued the operation of the Franchised Business for the full initial term of this Agreement. Our remedies will include (but are not limited to) the right to collect the present value of these amounts and to receive the benefit of Our bargain with You, as well as to accelerate the balances of any promissory notes owed and to receive any other unpaid amounts owed to Us or any of Our Affiliates. You acknowledge and agree that it would be commercially unreasonable and damaging to the integrity of the System if a franchisee could default and then escape the financial consequences of its contractual commitment to meet payment obligations for the term of a franchise agreement. You will sign a general release in favor of the Us if We choose to waive Our rights to collect any amounts that would have become due if You had continued in business for the initial term of this Agreement.

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### 16.9 Franchisor's Right to Acquire the Franchised Business.

In addition to all of the other rights granted to Us in this Section 16, upon termination of this Agreement, We have the right to acquire all right, title and interest in the assets of Your Franchised Business, including any Approved Vehicles, Carts, coolers and other equipment. We must notify You of Our intention to acquire the Franchised Business at the time We send the final notice of termination and must comply with all other provisions related to the acquisition set forth in the Manual and/or this Agreement. In addition, the parties agree that the purchase price for the Franchised Business will be calculated in accordance with the terms and procedures set forth in the Manual.

### 16.10 Set Off.

You agree that You will not, on grounds of an alleged nonperformance by Us of any of Our obligations or any other reason, withhold payment of any amount due to Us whatsoever or set off amounts owed to Us under this Agreement against any monies owed to Us, which right of set off is hereby expressly waived by You. We will have the right to deduct from amounts payable to You by Us or an Affiliate any Fees or other payments owed to Us , an Affiliate or a third party. We will also have the right to apply the Fees and other payments made to Us by the You in such order as We may designate from time to time.

### 16.11 Cross Default.

If You, Your Operating Principal, Owner(s), Guarantor(s) or any partnership, joint venture, limited liability company, corporation or other entity in which You, Your Operating Principal, Owner(s) or Guarantor(s) have a controlling equity interest, are a franchisee pursuant to another franchise agreement with Us, then a Default under this Agreement will constitute a Default under such other franchise agreement and vice versa, with like remedies available to Us. Should such other franchise agreement cease to be valid, binding and in full force and effect because of a Default then We, may, at Our option terminate this Agreement and likewise should this Agreement cease to be valid binding and in full force and effect because of a Default, We, may at Our option terminate the other franchise agreement. In the event that there is more than one franchisee, or if the franchisee should consist of more than one legal entity, the franchisee's liability hereunder will be both joint and several.

## 17. RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION

### 17.1 Required Actions.

After any termination, expiration, transfer or cancellation of this Agreement for any reason whatsoever, You, Your Owners, Operating Principal and Guarantor(s) agree to:

(a) immediately cease to operate the Franchised Business, including all marketing activities;

(b) cease to use the Trade Secrets, Confidential Information, the System and the Marks, including, without limitation, all slogans, symbols, logos, advertising materials, stationery, signage, domain names, social media accounts, forms, and any other items which display or are associated with the Marks, or any portion thereof or confusingly similar thereto;

(c) assign all telephone listings, facsimile numbers, websites, domain names, URLs, and social media accounts for the Franchised Business to us. You shall notify the telephone

company and all listing agencies of the termination or expiration of your right to use any telephone numbers, facsimile numbers, websites, domain names, URLs and social media accounts associated with the Marks;

(d) take such action as may be necessary to cancel or assign to us, at our option, any assumed name or equivalent registration filed with state, city, or county authorities which contains the name "Frios Gourmet Pops" or any other Mark, and you shall furnish us with evidence satisfactory to us of compliance with this obligation within 30 days after termination or expiration of this Agreement;

(e) within five days' pay all sums owing to us and any of our affiliates. In the event of termination for any Default, such sums shall include, but not be limited to, all Damages, costs, and expenses, to enforce the terms of this Agreement as well as reasonable attorneys' fees, unpaid Fees, loss of future Royalty Fee payments incurred by Franchisor as a result of any early termination of this Agreement, and any other amounts due to Franchisor or any Affiliate;

(f) pay to us all costs and expenses, including reasonable attorneys' fees, incurred by us subsequent to the termination or expiration of the Franchised Business in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement;

(g) immediately return to us the Manual, Trade Secrets, Confidential Information, advertising materials, records, files, instructions, brochures, agreements, and any other materials relating to the operation of the Franchised Business (all of which are acknowledged to be our property);

(h) execute any legal document that may be necessary to effectuate the termination of this Agreement and shall furnish to us, within 30 days after the effective date of termination, written evidence satisfactory to us of your compliance with the foregoing obligations;

(i) comply with all applicable covenants that, by their nature, survive expiration or termination of this Agreement, including those pertaining to confidentiality, non-competition, and non-solicitation, in this Agreement;

(j) transfer any interests in existing customer contracts to us or our designee;

(k) execute the release in a form specified Us within five business days of Our providing such release to Franchisee;

(l) alter the Approved Vehicles, Carts and Coolers as provided in Section 17.4; and

(m) comply with all other applicable provisions of this Agreement.

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**17.2 Prohibited Activities**.

After any termination, expiration, transfer or cancellation of this Agreement for any reason whatsoever, You, Your Owners, Operating Principal and Guarantor(s) agree:

(a) not to directly or indirectly at any time or in any manner identify or do anything to indicate that they (except in resumes or applications in pursuit of employment) or any business are or were a current or former franchisee or are or were otherwise associated with Us or the System;

(b) not to use any of the System, Confidential Information, Trade Secrets, Manual, Website, Marks, Our or Our Affiliates proprietary materials or colorable imitation thereof or anything confusingly similar thereto;

(c) not use any indicia of Ours or of the Franchised Business in any manner for any purpose;

(d) not, at any time or in any manner, disparage or take any action detrimental or disruptive to Us, Our Affiliates, the Franchised Business, System, owners, officers, directors, members, or any other franchisee, licensee or Frios Pops, or their products or services; and

(e) not conduct or promote any business under any name or in any manner that might tend to give the general public the impression that You are continuing to operate as a Frios franchisee.

**17.3 Liquidated Damages**.

If this Agreement is terminated by us for cause, we shall be entitled, as stipulated liquidated damages and not as a penalty and solely to compensate us for lost Royalty Fees for the period after termination of this Agreement, to a sum equal to the average Royalty Fees earned (even if not paid) per month over the 12 month period preceding the date of termination (or, if the Franchised was not open throughout such 12 month period, then the average Royalty Fees earned per month for the period in which the Franchised Business was open), multiplied by 36 or the number of months remaining in the then-current term of this Agreement, whichever is less ("Liquidated Damages"). In the event a default of this Agreement by you caused the Royalty Fees earned to substantially decline during the period to be used to calculate average Royalty Fees earned, then we may use any other reasonable time period or method to calculate Liquidated Damages.

**17.4 Alteration of Approved Vehicles**.

If this Agreement expires or is terminated for any reason or if the Approved Vehicle(s), and/or Carts ever cease to be used for the Franchised Business, then within 30 days after the date of the expiration or termination of this Agreement or the date on which the Approved Vehicle(s), and/or Carts are no longer used for the Franchisee's Franchised Business (whichever is applicable), You will, at Your expense, alter, modify and change both the exterior and interior appearance of Approved Vehicle(s) and Carts so that they will be clearly distinguished from the standard appearance of a Frios Approved Vehicle(s) and Carts. At a minimum, such changes and modifications to the Approved Vehicle(s) and Carts will include, but not be limited to: (a) repainting, including removing any distinctive colors and designs from the interior and exterior of the Approved Vehicle(s) and Carts; (b) removing all equipment associated with the Franchised

Business and replacing them with other equipment items not of the general type and appearance customarily used in Franchised Businesses; (c) removing all signage; and (d) refraining from using any items which may be confusingly similar to those used in Franchised Businesses. You agree that We or a designated agent may inspect the Approved Vehicle(s) and Carts and enter upon the Approved Vehicle(s) at any time to make such changes at Your sole risk and expense and without liability for trespass.

**17.5 Telephone Listing**.

Upon termination or expiration of this Agreement, or if We acquire the Franchised Business pursuant to this Agreement, We will have the absolute right to notify the telephone company, social media companies, and all listing agencies of the termination or expiration of Your right to use all telephone numbers, facsimile numbers, domain names, URLS and social media accounts associated with the Franchised Business and any classified or other directory listings for the Franchised Business and to authorize the telephone company, social media companies and all listing agencies to transfer to Us or Our assignee all telephone numbers, social media accounts pertaining to the Franchised Business or containing the Marks and directory listings of Your Franchised Business. You hereby authorize Us to direct the telephone company, social media companies and all listing agencies to transfer Your telephone numbers, facsimile numbers, domain names, URLS and social media accounts associated with the Franchised Business and any classified or other and directory listings for the Franchised Business to Us or to an assignee of Ours if this Agreement expires or is terminated or if We acquire Your Franchised Business. The telephone company, social media company and all listing agencies may accept this Agreement as evidence of Our exclusive rights to such telephone numbers, facsimile numbers, domain names, URLS and social media accounts associated with the Franchised Business and any classified or other and directory listings for the Franchised Business and this Agreement will constitute the authority from You for the telephone company, social media company, and listing agency to transfer all such telephone numbers, facsimile numbers, domain names, URLS and social media accounts associated with the Franchised Business and any classified or other and directory listings for the Franchised Business to Us. This Agreement will constitute a release of the telephone company, social media companies and listing agencies by the You from any and all claims and damages that the You may at any time have the right to allege against them in connection with this Section. You will execute the Conditional Assignment of Telephone Listing, Social Media and Director Listing Agreement attached as Attachment 9 and such other documents as We may require for completing the transfer s contemplated herein.

**17.6 Continuation of Obligations**.

The indemnities and covenants contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration, termination or Transfer of this Agreement.

**17.7 Unfair Competition**.

If you operate any other business, you shall not use any reproduction, counterfeit, copy or colorable imitation of the Marks, either in connection with such other business or the promotion thereof, that is likely to cause confusion, mistake or deception, or that is likely to dilute our rights in the Marks. You shall not utilize any designation of origin, description or representation that falsely suggests or represents an association or connection with us. This Section is not intended as an approval of your right to operate other businesses and in no way is it intended to contradict Sections 7 or 17. You shall make such modifications or alterations to the Franchised Business (including changing telephone and facsimile numbers) immediately upon termination or expiration of this Agreement as may be necessary to prevent any

association between us or the System and any business subsequently operated by you or others at the Franchised Business. You shall make such specific additional changes to the Franchised Business as we may reasonably request for that purpose including, without limitation, removal of all physical and structural features identifying or distinctive to the System. If you fail or refuse to comply with the requirements of this Section, we have the right to enter upon the Franchised Business for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense you shall pay upon demand.

**17.8 Franchisor's Option to Purchase Certain Business Assets**.

We have the right (but not the obligation), for a period of 30 days after termination or expiration of this Agreement, to purchase any or all assets of the Franchised Business including Approved Vehicles, Carts, coolers, supplies and other inventory or equipment at depreciated value of the assets or your cost (whichever is less), less any sums of money owed by you to us and less any sums of money necessary to upgrade and renovate the Approved Vehicle, Carts and coolers to meet our then-current standards for a Franchised Business and less any sums necessary to acquire clear title to any lease, purchase or sublease interest. In the event that we are unable to agree on the value of said items, an independent appraiser shall be appointed by us to determine the value of said items. The determination of said appraiser shall be final and binding upon the parties. You shall pay the costs and expenses associated with the appointment of an independent appraiser.

**17.9 Survival of Certain Provisions**.

All obligations of you and us, which expressly or by their nature survive the expiration or termination of this Agreement, shall continue in full force and effect subsequent to and notwithstanding their expiration or termination and until satisfied or by their nature expire.

## 18. TRANSFERABILITY OF INTEREST

**18.1 Transfer by Franchisor**.

This Agreement and all rights and duties hereunder are fully transferable in whole or in part by us and such rights will inure to the benefit of any person or entity to whom transferred. Nothing contained in this Agreement shall require us to remain in the frozen dessert or gourmet pops business or to offer the same products or services, whether or not bearing our Marks, in the event that we exercise our rights under this Agreement to assign our rights in this Agreement. Upon consummation of the assignment or Transfer, You hereby release and hold Us harmless from any and all future liability under any of the terms, conditions and covenants, express or implied, contained in this Agreement which will have been assigned. You agree to look solely to the assignee for performance of Our obligations hereunder.

**18.2 Transfer by Franchisee**.

Your rights and duties as set forth in this Agreement, and the franchise herein granted, are personal to you (or your Owners), and we have entered into this Agreement in reliance upon your personal or collective skill and financial ability. Accordingly, neither you nor any holder of a legal or beneficial interest in You may sell, assign, convey, give away, pledge, mortgage, sublicense or otherwise transfer, whether by operation of law or otherwise, any interest in this Agreement, the Franchised Business granted hereby, the assets of the Franchised Business or any part or all of the Ownership Interest in you without our prior written approval. The term "Transfer" means any voluntary or involuntary, direct or indirect, assignment,

sale, gift conveyance, transfer, or other disposition of an interest including without limitation: (a) any of the assets of your Franchised Business; (b) the conveyance of your stock, membership interest, membership units, or partnership units or other Ownership Interest of Your franchise entity; (c) merger or consolidation; (d) in bankruptcy or otherwise by operation of law or by court order; (e) any change of control or management of the Your Franchised Business; (f) the placement of your assets, stock, membership interest, partnership units, or membership units of your Franchised Business into a business trust; or (g) a transfer for convenience to any entity which you own any percentage of equity or shares. Any purported Transfer without such approval shall be null and void and shall constitute a material breach of this Agreement. If you are in compliance with this Agreement, our consent to such Transfer shall be conditioned upon the satisfaction of the following requirements:

(a) all obligations owed Us, our subsidiaries, our Affiliates, suppliers, and all other outstanding obligations relating to the Franchised Business, are fully paid and satisfied;

(b) the Transferee(s), its Owners or affiliates are a party to any agreement with Us or Our Affiliates, they must be in full compliance with any such agreement;

(c) You (and any transferring Owners, and guarantors if You are a business entity) have executed a general release, in a form the same as or similar to the General Release attached as Attachment 7, of any and all claims against Us and Our Affiliates, including their officers, directors, shareholders, managers, members, partners, Owners, employees and agents (in their corporate and individual capacities), including, without limitation, claims arising under federal, state or local laws, rules or ordinances, and any other matters incident to the termination of this Agreement or to the transfer of your interest herein or to the transfer of your ownership of all or any part of the Franchised Business; provided, however, that if a general release is prohibited, you shall give the maximum release allowed by law;

(d) the prospective transferee has satisfied us that it meets our management, business and financial standards, and otherwise possesses the character and capabilities, including business reputation and credit rating, as we may require to demonstrate ability to conduct the Franchised Business; transferee's Owners are of legal age and otherwise satisfy Our then current criteria and standards for franchisees, including the prohibition of engaging in any Competitive Activity;

(e) transferee and its Owners pass Our application and background check;

(f) the transferee and, if we require, all persons owning any interest in the transferee, have executed the then-current franchise agreement for new franchisees, which may be substantially different from this Agreement, including different Royalty Fee and Advertising Fund Contribution rates and other material provisions, and the franchise agreement then executed shall be for the term specified in such agreement;

(g) the transferee has executed the agreements required by Us to document the Transfer, including a general release, in a form the same as or similar to the General Release attached as Attachment 7, of any and all claims against us and our officers, directors, shareholders, managers, members, partners, owners, employees and agents (in their corporate and individual capacities), with respect to any representations regarding the System or the Franchised Business or any other matter that may have been made to the transferee by You;

(h) you have provided us with a complete copy of all contracts and agreements and related documentation between You and the prospective transferee relating to the intended sale or transfer of the Franchised Business. We will have the right, but not the obligation, to approve the material terms and conditions of such Transfer, including, without limitation, determining that the price and terms of payment are not so burdensome as to adversely affect the future operations of the Franchised Business in the Designated Territory by the Transferee in compliance with Our then current Franchise Agreement;

(i) you have paid to us the Transfer Fee set out in Section 3.4;

(j) the transferee, or all holders of a legal or beneficial interest in the transferee, has signed the Unlimited Guaranty and Assumption of Obligations in the form required by Us;

(k) the transferee has obtained all necessary consents and approvals by third parties and all applicable federal, state and local laws, rules, ordinances and requirements applicable to the transfer have been complied with or satisfied;

(l) the transferee and all persons required by Us have signed the Non-compete and Confidentiality Agreement;

(m) the transferee, its Operating Principal and Manager, if any shall complete, to our satisfaction, a training program in substance similar to the initial training described in Section 8.1 prior to assuming the management of the day-to-day operation of the Franchised Business;

(n) the transferee has purchased or otherwise assumed the lease of the Approved Vehicle(s) for a term consistent with the initial term of the Franchise Agreement between transferee and Us; and

(o) if the transferee was introduced to You via a franchise broker or referral source, during, You must also pay any applicable referral fees charged by the broker or other referral source

**18.3 Transfer to a Controlled Entity**.

18.3.1. *Controlled Entity*. If you wish to transfer this Agreement or any interest herein to a corporation, limited liability company or other legal entity which shall be entirely owned by you ("Controlled Entity"), which Controlled Entity is being formed for Your financial planning, tax or other convenience, our consent to such transfer shall be conditioned upon the satisfaction of the following requirements:

(a) the Controlled Entity is newly organized, and its charter or articles of formation provides that its activities are confined exclusively to the operation of the Franchised Business;

(b) You or all holders of a legal or beneficial interest in You own all of the equity and voting power of the outstanding stock or other capital interest in the Controlled Entity;

(c) all of Your obligations to Us or any of Our Affiliates are fully paid and satisfied;

(d) the Controlled Entity has entered into a written agreement with us expressly assuming the obligations of this Agreement and all other agreements relating to the operation of

the Franchised Business. If the consent of any other party to any such other agreement is required, you have obtained such written consent and provided the same to us prior to consent by us;

(e) all holders of a legal or beneficial interest in the Controlled Entity have entered into an agreement with us jointly and severally guaranteeing the full payment of the Controlled Entity's obligations to us and the performance by the Controlled Entity of all the obligations of this Agreement;

(f) each stock certificate or other ownership interest certificate of the Controlled Entity has conspicuously endorsed upon the face thereof a statement in a form satisfactory to us that it is held subject to, and that further assignment or transfer thereof is subject to, all restrictions imposed upon transfers and assignments by this Agreement; and

(g) copies of the Controlled Entity's articles of incorporation or organization, bylaws, operating agreement, federal tax identification number, and other governing regulations or documents, including resolutions of the board of directors authorizing entry into this Agreement, have been promptly furnished to us. Any amendment to any such documents shall also be furnished to us immediately upon adoption.

18.3.2. *Term of Transferred Franchise.* The term of the transferred franchise to a Controlled Entity shall be the unexpired term of this Agreement, including all renewal rights, subject to any and all conditions applicable to such renewal rights.

**18.4 No Waiver.**

18.4.1. We consent to a transfer of any interest in this Agreement, or of any ownership interest in the Franchised Business, shall not constitute a waiver of any claims we may have against the transferor or the transferee, nor shall it be deemed a waiver of our right to demand compliance with the terms of this Agreement.

**18.5 Franchisor's Disclosure to Transferee**.

We have the right, without liability of any kind or nature whatsoever to you, to make available for inspection by any intended transferee of the Franchised Business all or any part of our records relating to this Agreement, the Franchised Business or to the history of the relationship of the parties hereto. You hereby specifically consent to such disclosure by us and shall release and hold us harmless from and against any claim, loss or injury resulting from an inspection of our records relating to the Franchised Business by an intended transferee identified by you.

**18.6 For-Sale Advertising**.

You shall not, without our prior written consent, place in, on or upon the area of the Franchised Business, or in any communication media, any form of advertising relating to the sale of the Franchised Business, or the rights granted hereunder.

**18.7 Transfer by Death or Incapacity**.

Upon the death or incapacity of Franchisee (if Franchisee is an individual) or any holder of a legal or beneficial interest in Franchisee (if Franchisee is a business entity), the appropriate representative of such

person (whether administrator, personal representative or trustee) shall, within a reasonable time not exceeding 180 days following such event, transfer such individual's interest in the Franchised Business or in Franchisee to a third party approved by Franchisor. Such transfers, including transfers by will or inheritance, shall be subject to the conditions for assignments and transfers contained in this Agreement. During such 180 day period, the Franchised Business must remain at all times under the primary management of an operator who otherwise meets our management qualifications. Following such a death or incapacity of such person, if necessary, in our discretion, we shall have the right, but not the obligation, to assume operation of the Franchised Business until the deceased or incapacitated Owner's interest is transferred to a third party approved by us. We shall be given access to the Franchised Business, even if located within our principal residence, and shall not be held liable for trespass or any related tort. We may charge a management fee as stated in Section 16.7 for the period in which we operate the Franchised Business, and we shall be entitled to reimbursement of any expenses we incur that are not paid out of the operating cash flow of the Franchised Business.

**18.8 Prohibition on Transfer to Competitor**.

You will not Transfer to any person or entity that owns, operates, franchises, develops, consults with, manages, is involved in, or controls any Competitive Business. If the Franchisor refuses to permit a Transfer under this Section, then Your only remedy will be to have an arbitrator determine whether the proposed transferee owns or operates a Competitive Business. You acknowledge and agree that You will be solely responsible for all costs and fees charged by such arbitrator.

**18.9 Acknowledgement of Restrictions**.

Any Transfer permitted by this Section 18 will not be effective until We receive a completely executed copy of all Transfer documents and We consent to the Transfer in writing. Any attempted Transfer made without complying with the requirements of this Section 18 will be void.

## 19. RIGHT OF FIRST REFUSAL

**19.1 Submission of Offer**.

If you, or any of your Owners, proposes to sell or otherwise Transfer (including a transfer by death or incapacity pursuant to Section 18.7) the Franchised Business (or any of its assets outside of the normal course of business), any Ownership Interest in You, or any ownership interest in the Franchised Business granted hereunder, you shall obtain and deliver a bona fide, executed written offer or proposal to purchase, along with all pertinent documents including any contract or due diligence materials, to us, except with regards to a sale or transfer to a family member. The offer must apply only to an approved sale of the assets or interests listed above and may not include any of Your or Your Owners other property or rights.

**19.2 Our Right to Purchase**.

We shall, for 30 days from the date of delivery of all such documents, have the right, exercisable by written notice to you, to purchase the offered assets or interest for the price and on the same terms and conditions contained in such offer communicated to you. We have the right to substitute cash for the fair market value of any form of payment proposed in such offer. Our credit shall be deemed at least equal to the credit of any proposed buyer. After providing notice to you of our intent to exercise this right of first refusal, we shall have up to 60 days to close the purchase. We shall be entitled to receive from you all customary

representations and warranties given by you as the seller of the assets or such ownership interest or, at our election, such representations and warranties contained in the proposal.

**19.3 Non-Exercise of Right of First Refusal**.

If we do not exercise Our right of first refusal within 30 days from the date of delivery of all such documents, the offer or proposal may be accepted by you, subject to our approval of the Transfer as required by Section 18.2. Should the sale fail to close within 120 days after the offer is delivered to us, our right of first refusal shall renew and be implemented in accordance with this Section.

**19.4 Sales or Transfers to Family Excepted**.

If you propose to sell or otherwise transfer the Franchised Business (or any of its assets outside of the normal course of business), any Ownership Interest in Franchisee or any Ownership Interest in the Franchised Business granted hereunder to a member of Your (or Your Owners') family, then the terms and conditions of this Section shall be inapplicable. Nothing in this Section 19.4 shall be construed to relieve you from full compliance with the terms and conditions of Section 18.2 prior to a sale or transfer to family pursuant to this Section.

## 20. BENEFICIAL OWNERS OF FRANCHISEE

You represent, and Franchisor enters into this Agreement in reliance upon such representation, that the individual(s) identified in Attachment 5 is/are the sole holder(s) of a legal or beneficial interest (in the stated percentages) of Franchisee.

## 21. RELATIONSHIP AND INDEMNIFICATION

**21.1 Relationship**.

This Agreement is purely a contractual relationship between the parties and does not appoint or make you Our agent, legal representative, joint-venturer, partner, employee, servant, or independent contractor for any purpose whatsoever. You may not represent or imply to third parties that you are Our agent, and you are in no way authorized to make any contract, agreement, warranty, or representation on Our behalf, or to create any obligation, express or implied, on our behalf. During the initial term of this Agreement, any Interim Period and any extension or renewal hereof, you shall hold yourself out to the public only as a franchisee and an Owner of the Franchised Business operating the Franchised Business pursuant to a franchise from us. You shall take such affirmative action as may be necessary to do so including, without limitation, exhibiting a notice of that fact in a conspicuous place on all forms, stationery or other written materials, the content of which we have the right to specify. You shall also conspicuously identify itself as the independent owner of your business in all business communications, such as email signatures, and on any documents, materials or information released by you. You shall ensure all employees, vendors and contractors receive actual notice of the correct legal name of their employer or the party with whom they have contracted, which is You and not Us. Under no circumstances shall we be liable for any act, omission, contract, debt, nor any other obligation of you. You shall in no way be responsible for any injuries to persons or property resulting from the operation of the Franchised Business. Any third-party contractors and vendors retained by you are Your independent contractors.

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**21.2 Standard of Care**.

This Agreement does not establish a fiduciary relationship between the parties. Unless otherwise specifically provided in this Agreement with respect to certain issues, whenever this Agreement requires you to obtain our written consent or permits you to take any action or refrain from taking any action, we are free to act in our own self-interest without any obligation to act reasonably, to consider the impact on you or to act subject to any other standard of care limiting our right, except as may be provided by statute or regulation.

**21.3 Indemnification**.

You will hold harmless and indemnify Us, Our Affiliates, all holders of a legal or beneficial interest in Us and all officers, directors, executives, managers, members, partners, owners, employees, agents, successors and assigns (collectively "Franchisor Indemnities") from and against all losses, damages, fines, costs, expenses or liability (including reasonable attorneys' fees and all other costs of litigation) ("Damages") incurred in connection with any action, suit, demand, claim, investigation or proceeding, or any settlement thereof ("Claim"), which arises from or is based upon Your (a) ownership or operation of the Franchised Business; (b) violation, breach or asserted violation or breach of any federal, state or local law, regulation or rule; (c) breach of any representation, warranty, covenant, or provision of this Agreement or any other agreement between You and Us (or Our Affiliate); (d) defamation, libel or slander of Us, Our Affiliates, the Frios Pops or the System; (e) acts, errors or omissions committed or incurred in connection with the Franchised Business; (f) acts, errors or omissions committed or occurring in connection with any Transfer; (g) use or occupancy of the Approved Vehicle(s), Carts or coolers; (h) infringement or misuse of a third party's trademark, patent, copyright or other intellectual property; (i) violation of any data privacy laws or failure to comply with the PCI DSS; (j) any determination by a court or agency that We are the employer or joint employer of any of Your employees; or (k) infringement, violation or alleged infringement or violation of any Mark, patent or copyright or any misuse of the Trade Secrets or other Confidential Information. The obligations of this Section 21.3 shall expressly survive the termination of this Agreement.

**21.4 Right to Retain Counsel**.

You shall give us immediate notice of any such action, suit, demand, claim, investigation, or proceeding that may give rise to a claim for indemnification by a Franchisor Indemnity. We have the right to retain counsel of our own choosing in connection with any such action, suit, demand, claim, investigation or proceeding. In order to protect persons, property, our reputation or the goodwill of others, we have the right to, at any time without notice, take such remedial or corrective actions as it deems expedient with respect to any action, suit, demand, claim, investigation or proceeding if, in our sole judgment, there are grounds to believe any of the acts or circumstances listed above have occurred. If our exercise of Our rights under this Section causes any of your insurers to refuse to pay a third-party claim, all cause of action and legal remedies you might have against such insurer shall automatically be assigned to us without the need for any further action on either party's part. Under no circumstances shall we be required or obligated to seek coverage from third parties or otherwise mitigate losses in order to maintain a claim against Franchisee. The failure to pursue such remedy or mitigate such loss shall in no way reduce the amounts recoverable by us from you.

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**21.5 Survival**.

These indemnification provisions under this Section and the other obligations contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration, transfer or termination of this Agreement.

**21.6 Payment of Costs and Expenses**.

You will pay all reasonable attorneys, accounting, expert and consultant fees, court, mediation and arbitration costs and expenses incurred by the Franchisor Indemnities to defend any action brought by a third party against any of the Franchisor Indemnities as set forth in Section 21.3.

## 22. GENERAL CONDITIONS AND PROVISIONS

**22.1 No Waiver**.

Our failure to exercise any power reserved to it hereunder, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom nor practice of the parties in variance with the terms hereof, shall constitute a waiver of our right to demand exact compliance with the terms of this Agreement. Waiver by Us of any particular default by Franchisee shall not be binding unless in writing and executed by us and shall not affect nor impair our right with respect to any subsequent default of the same or of a different nature. Subsequent acceptance by us of any payment(s) due shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement.

**22.2 Injunctive Relief**.

As any breach by Franchisee of any of the restrictions contained herein, including in Sections 6, 7, and 17, would result in irreparable injury to Us, and as the damages arising out of any such breach would be difficult to ascertain, in addition to all other remedies provided by law or in equity, we shall be entitled to seek injunctive relief (whether a restraining order, a preliminary injunction or a permanent injunction) against any such breach, whether actual or contemplated, without the necessity of posting security or bond and you shall be responsible for our reasonable attorneys' fees incurred in pursuing the same. Our right to seek injunctive relief will not affect the parties' waiver of jury trial and covenant to arbitrate all disputes in accordance with Section 23.7. Our rights herein shall include pursuing injunctive relief through arbitration or in a state or federal court.

**22.3 Notices**.

All notices required or permitted under this Agreement shall be in writing and shall be deemed received: (a) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (b) on the next business day after transmission by facsimile or other reasonably reliable electronic communication system; (c) two business days after being sent via guaranteed overnight delivery by a commercial courier service; or (d) five business days after being sent by Registered Mail, return receipt requested. Either party may change its address by a written notice sent in accordance with this Section 22.3. All notices, payments and reports required by this Agreement shall be sent to us at the following address, or at such other address as we may provide:

Frios Franchising Company, LLC
Attn.: Cliff Kennedy, CEO

1201 West I-65 Service Road North
Mobile, AL 36618

All notices to Franchisee shall be sent to the address set forth on Page 1 of this Agreement.

**22.4 Cost of Enforcement or Defense**.

You agree to pay us all damages, costs and expenses (including without limitation reasonable attorneys' fees, arbitration fees, discovery costs, and all other related expenses) that we incur after the termination or expiration of the franchise granted under this Agreement in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation Sections 7 and 17 above); and/or (b) successfully defending a claim from you that we misrepresented the terms of this Agreement, fraudulently induced you to sign this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship. If we are required to enforce or defend this Agreement or any claim arising out of the franchise relationship in a judicial or arbitration proceeding, we shall be entitled to reimbursement of its costs, including reasonable accounting and attorneys' fees, in connection with such proceeding if we prevail.

**22.5 Unlimited Guaranty and Assumption of Obligations**.

All holders of a legal or beneficial interest in Franchisee of 5% or greater shall be required to execute, as of the date of this Agreement, the Unlimited Guaranty and Assumption of Obligations attached as Attachment 3, through which such holders agree to assume and discharge all of your obligations under this Agreement and to be personally liable hereunder for all of the same.

**22.6 Approvals**.

Whenever this Agreement requires Our prior approval or consent, you shall make a timely written request to us for such approval and, except as otherwise provided herein, any approval or consent granted shall be effective only if in writing. We make no warranties or guarantees upon which you may rely and assumes no liability or obligation to you or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or services to you in connection with this Agreement, or by reason of any neglect, delay or denial of any request for approval.

**22.7 Entire Agreement**.

Nothing in the agreement or in any related agreement is intended to disclaim the representations made in the Franchise Disclosure Document.

**22.8 Severability and Modification**.

Except as noted below, each paragraph, part, term, and provision of this Agreement shall be considered severable. If any paragraph, part, term, or provision herein is ruled to be unenforceable, unreasonable, or invalid, such ruling shall not impair the operation of or affect the remaining portions, paragraphs, parts, terms and provisions of this Agreement, and the latter shall continue to be given full force and effect and bind the parties; and such unenforceable, unreasonable, or invalid paragraphs, parts, terms or provisions shall be deemed not part of this Agreement. If we determine that a finding of invalidity adversely affects the basic consideration of this Agreement, we have the right to, at its option, terminate this Agreement.

Notwithstanding the above, each of the covenants contained in Sections 7 and 17 shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of any such covenant is held to be unenforceable, unreasonable, or invalid, then it shall be amended to provide for limitations on disclosure of Trade Secrets or other Confidential Information or on competition to the maximum extent provided or permitted by law.

**22.9 Construction**.

All captions and headings herein are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

**22.10 Force Majeure**.

Whenever a period of time is provided in this Agreement for either party to perform any act, except pay monies, neither party shall be liable nor responsible for any delays due to strikes, lockouts, casualties, acts of God, war, terrorism, governmental regulation, pandemic or other causes beyond the reasonable control of the parties, and the time period for the performance of such act shall be extended for the amount of time of the delay. This clause shall not result in an extension of the term of this Agreement. During any applicable force majeure event, you shall be required to pay Royalty Fees and all fees due to us timely unless otherwise notified in writing by Us.

**22.11 Timing**.

Time is of the essence. Except as set forth in Section 22.10, failure to perform any act within the time required or permitted by this Agreement shall be a material breach.

**22.12 Further Assurances**.

Each party to this Agreement will execute and deliver such further instruments, contracts, forms or other documents, and will perform such further acts, as may be necessary or desirable to perform or complete any term, covenant or obligation contained in this Agreement.

**22.13 Third Party Beneficiaries**.

Unless expressly stated in this Agreement, nothing herein is intended, nor shall be deemed, to confer upon any person or legal entity any rights or remedies under this Agreement other than to Us or You, and our respective successors and assigns.

**22.14 Multiple Originals**.

Both parties will execute multiple copies of this Agreement, and each executed copy will be deemed an original.

## 23. DISPUTE RESOLUTION

**23.1 Choice of Law**.

This Agreement is effective upon its acceptance in Alabama by our authorized officer. Except to the extent this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 15

U.S.C. Section 1051 and the sections following it) or other federal law, Alabama law governs all claims that in any way relate to or arise out of this Agreement or any of the dealings of the parties ("Claims"). However, no laws regulating the sale of franchises or governing the relationship between franchisor and franchisee shall apply unless the jurisdictional requirements of such laws are met independently of this paragraph. References to any law or regulation also refer to any successor laws or regulations and any implementing regulations for any statute, as in effect at the relevant time. References to a governmental agency also refer to any successor regulatory body that succeeds to the function of such agency.

**23.2 Jurisdiction and Venue**.

You and We each consent and irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts of competent jurisdiction for Mobile County, Alabama, for any Claims, except those required to be submitted to arbitration, and waive any objection to the jurisdiction and venue of such courts. This exclusive choice of jurisdiction and venue provision does not restrict the ability of the parties to confirm or enforce judgments or awards in any appropriate jurisdiction.

**23.3 Jury Waiver**.

**IN ANY TRIAL BETWEEN ANY OF THE PARTIES AS TO ANY CLAIMS, YOU AND WE AGREE TO WAIVE OUR RIGHTS TO A JURY TRIAL AND INSTEAD HAVE SUCH ACTION TRIED BY A JUDGE.**

**23.4 Class Action Waiver**.

**YOU AGREE TO BRING ANY CLAIMS, IF AT ALL, INDIVIDUALLY AND YOU SHALL NOT JOIN SUCH CLAIM WITH CLAIMS OF ANY OTHER PERSON OR ENTITY NOR SHALL YOU BRING, JOIN OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION AGAINST US WITH OTHER FRANCHISEES OR OTHER PERSONS OR ENTITIES.**

**23.5 Limitation of Damages**.

**YOU WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE FRANCHISOR AND AGREES THAT IF THERE IS A DISPUTE, FRANCHISEE WILL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT INCLUDING REASONABLE ACCOUNTING AND LEGAL FEES AS PROVIDED IN SECTION 22.4. FRANCHISEE WAIVES AND DISCLAIMS ANY RIGHT TO CONSEQUENTIAL DAMAGES IN ANY ACTION OR CLAIM AGAINST US CONCERNING THIS AGREEMENT OR ANY RELATED AGREEMENT. IN ANY CLAIM OR ACTION BROUGHT BY FRANCHISEE AGAINST US CONCERNING THIS AGREEMENT, FRANCHISEE'S CONTRACT DAMAGES SHALL NOT EXCEED AND SHALL BE LIMITED TO REFUND OF FRANCHISEE'S INITIAL FRANCHISE FEE AND ROYALTY FEES. OUR LIABILITY TO YOU UNDER THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (i) $100,000.00 OR (ii) ALL AMOUNTS PAID TO US FOR THE INITIAL FRANCHISE FEE AND ROYALTY FEES UNDER THIS AGREEMENT FOR UP TO THREE YEARS PRECEDING THE DATE OF ANY AWARD HEREIN, WHICHEVER IS LESS. WE MAY ALSO REPURCHASE YOUR EQUIPMENT, PURCHASED FROM OR THROUGH US, AT**

**DEPRECIATED VALUE USING THE FIVE-YEAR, STRAIGHT-LINE METHOD OF CALCULATION AS YOUR SOLE MEASURE OF DAMAGES.**

**23.6 Limitation of Actions**.

**FRANCHISEE AGREES TO BRING ANY CLAIMS AGAINST US, IF AT ALL, WITHIN ONE YEAR OF THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIMS OR ONE YEAR FROM THE DATE ON WHICH YOU OR WE KNEW OR SHOULD HAVE KNOWN, IN THE EXERCISE OF REASONABLE DILIGENCE, OF THE FACTS GIVING RISE TO SUCH CLAIMS, WHICHEVER OCCURS FIRST, AND THAT ANY ACTION NOT BROUGHT WITHIN THIS PERIOD SHALL BE BARRED AS A CLAIM, COUNTERCLAIM, DEFENSE, OR SET-OFF EXCEPT FOR CLAIMS FOR: (A) INDEMNIFICATION; OR (B) UNAUTHORIZED USE OF THE CONFIDENTIAL INFORMATION OR MARKS. HOWEVER, THIS PROVISION DOES NOT LIMIT OUR RIGHT TO TERMINATE THIS AGREEMENT IN ANY WAY.**

**23.7 Prior Notice of Claims**.

As a condition precedent to commencing an action for a Claim, you must notify us within 30 days after the occurrence of the violation or breach, and failure to timely give such notice shall preclude any claim for damages and serve as a condition precedent to filing an arbitration against us.

**23.8 Internal Dispute Resolution**.

As a mandatory condition precedent prior to you taking any legal or other action against us, or our owners, officer and directors, whether for damages, injunctive, equitable or other relief (including, but not limited to, rescission), based upon any alleged act or omission of ours, you shall first give us 90 days prior written notice and opportunity to cure such alleged act or omission, or to resolve such matter.

**23.9 Mediation and Arbitration**.

23.9.1. *Mediation.* SUBJECT TO SECTION 23.15 THE PARTIES AGREE TO SUBMIT ANY CLAIM, CONTROVERSY OR DISPUTE BETWEEN OR INVOLVING US OR ANY OF OUR AFFILIATES (AND OUR AND THEIR RESPECTIVE SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS, REPRESENTATIVES AND/OR EMPLOYEES) AND YOU (AND YOUR AGENTS, REPRESENTATIVES AND/OR EMPLOYEES, AS APPLICABLE) ARISING OUT OF OR RELATED TO: (A) THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN US AND YOU OR OUR AND YOUR RESPECTIVE AFFILIATES; (B) OUR RELATIONSHIP WITH YOU; (C) THE VALIDITY OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN YOU AND US OR OUR AND YOUR RESPECTIVE AFFILIATES; OR (D) ANY SYSTEM STANDARD, TO NON-BINDING MEDIATION AT A PLACE THAT WE DESIGNATE WITHIN 25 MILES OF WHERE OUR PRINCIPAL OFFICE IS LOCATED AT THE TIME OF THE DEMAND FOR MEDIATION IS MADE IN MOBILE COUNTY, ALABAMA. THE MEDIATION SHALL BE CONDUCTED BY EITHER A MUTUALLY AGREED-UPON MEDIATOR OR, FAILING SUCH AGREEMENT WITHIN A REASONABLE PERIOD OF TIME (NOT TO EXCEED 15 DAYS) AFTER EITHER PARTY HAS NOTIFIED THE OTHER OF ITS DESIRE TO SEEK MEDIATION, BY THE AMERICAN ARBITRATION ASSOCIATION IN ACCORDANCE WITH ITS COMMERCIAL MEDIATION PROCEDURES. ABSENT AGREEMENT TO THE CONTRARY, THE MEDIATOR SHALL BE

EXPERIENCED IN THE MEDIATION OF DISPUTES BETWEEN FRANCHISORS AND FRANCHISEES. YOU AND WE AGREE THAT ANY STATEMENTS MADE BY EITHER YOU OR US IN ANY SUCH MEDIATION PROCEEDING WILL NOT BE ADMISSIBLE IN ANY SUBSEQUENT ARBITRATION OR LEGAL PROCEEDING OR OTHERWISE DISCLOSED BY EITHER YOU OR US TO ANY THIRD PARTY WHO, EXCEPT TO THE EXTENT A THIRD PARTY IS A PARTICIPANT IN THE MEDIATION PROCEEDING. EACH PARTY WILL BEAR ITS OWN COSTS AND EXPENSES OF CONDUCTING THE MEDIATION AND SHARE EQUALLY THE COSTS OF ANY THIRD PARTIES WHO ARE REQUIRED TO PARTICIPATE. HOWEVER, THE PARTIES MUST IMMEDIATELY AND CONTEMPORANEOUSLY SUBMIT THE DISPUTE FOR NON-BINDING MEDIATION. IF THE PARTIES ARE UNABLE TO RESOLVE THE CLAIM, CONTROVERSY OR DISPUTE WITHIN 90 DAYS AFTER THE MEDIATOR HAS BEEN CHOSEN, THEN, UNLESS SUCH TIME PERIOD IS EXTENDED BY THE WRITTEN AGREEMENT OF THE PARTIES, EITHER PARTY MAY BRING A LEGAL PROCEEDING UNDER THIS SECTION. THE MEDIATION PROVISIONS OF THIS AGREEMENT ARE INTENDED TO BENEFIT AND BIND CERTAIN THIRD-PARTY NON-SIGNATORIES, AND ALL OF YOUR AND OUR OWNERS AND AFFILIATES. ANY MEDIATION PROCEEDING CONDUCTED PURSUANT TO THIS SUB-SECTION AND ANY SETTLEMENT OR AGREEMENT ARISING THEREFROM SHALL BE KEPT CONFIDENTIAL BETWEEN THE PARTIES, EXCEPT FOR ANY SETTLEMENT DISCLOSURE WE ARE LEGALLY REQUIRED TO MAKE WITHIN A FRANCHISE DISCLOSURE DOCUMENT. THE PARTIES INTEND FOR ANY MEDIATION PROCEEDING TO BE BOTH PRIVATE AND CONFIDENTIAL. ANY THIRD PARTIES WHO ARE REQUIRED TO PARTICIPATE IN A MEDIATION PROCEEDING MUST BE BOUND BY THE SAME CONFIDENTIALITY OBLIGATIONS AS THE PARTIES.

23.9.2. *Arbitration*. SUBJECT TO SECTION 23.15 ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, IF NOT RESOLVED BY THE INTERNAL DISPUTE RESOLUTION AND MEDIATION PROCEDURES DESCRIBED ABOVE, MUST BE DETERMINED BY ARBITRATION IN DU PAGE COUNTY, ALABAMA, OR WHERE OUR PRINCIPAL OFFICES ARE LOCATED AT THE TIME THE DEMAND FOR ARBITRATION IS FILED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THIS ARBITRATION CLAUSE WILL NOT DEPRIVE US OF ANY RIGHT WE MAY OTHERWISE HAVE TO SEEK INJUNCTIVE RELIEF FROM A COURT OF COMPETENT JURISDICTION. THE ALABAMA-BASED ARBITRATOR MUST HAVE SUBSTANTIAL EXPERIENCE IN FRANCHISE LAW AND WITH COMMERCIAL DISPUTES. THE PARTIES AGREE THEY WILL ASK THAT THE ARBITRATOR LIMIT DISCOVERY TO THE GREATEST EXTENT POSSIBLE CONSISTENT WITH BASIC FAIRNESS IN ORDER TO MINIMIZE THE TIME AND EXPENSE OF ARBITRATION. IF PROPER NOTICE OF ANY HEARING HAS BEEN GIVEN, THE ARBITRATOR WILL HAVE FULL POWER TO PROCEED TO TAKE EVIDENCE OR TO PERFORM ANY OTHER ACTS NECESSARY TO ARBITRATE THE MATTER IN THE ABSENCE OF ANY PARTY WHO FAILS TO APPEAR. BOTH PARTIES WAIVE ANY RIGHTS THEY MAY HAVE TO DEMAND TRIAL BY JURY OR TO SEEK PUNITIVE DAMAGES FROM ONE ANOTHER. THE ARBITRATOR WILL HAVE NO POWER TO: (A) STAY THE EFFECTIVENESS OF ANY PENDING TERMINATION OF FRANCHISE; (B) ASSESS PUNITIVE DAMAGES AGAINST EITHER PARTY; OR (C) MAKE ANY AWARD THAT MODIFIES OR SUSPENDS ANY LAWFUL PROVISION OF THIS AGREEMENT. THE PARTY AGAINST WHOM THE ARBITRATORS RENDER A DECISION MUST PAY ALL EXPENSES OF ARBITRATION. ANY COURT OF

COMPETENT JURISDICTION MAY ENTER JUDGMENT UPON ANY AWARD. THE PARTIES AGREE AND INTEND THAT AN ARBITRATION WILL BE KEPT BOTH PRIVATE AND CONFIDENTIAL BETWEEN THEM. AT THE OUTSET OF ANY ARBITRATION, THE PARTIES WILL SEEK THE ENTRY OF A PROTECTIVE ORDER FROM THE ARBITRATOR, PROTECTING ALL PLEADINGS, MOTIONS, EXHIBITS, DEPOSITION TRANSCRIPTS, DISCOVERY REQUESTS AND RESPONSES, DOCUMENTS, AWARDS, ORDERS, DECISIONS AND REPORTS FROM DISCLOSURE BY THE PARTIES, THE ARBITRATOR, AND ANY NON-PARTY WITNESSES OR OTHER PARTICIPANTS. ADDITIONALLY, ANY FINAL AWARD SHALL REITERATE SUCH ORDER OF PROTECTION, EXCEPT FOR THE TERMS OF AN AWARD WHICH WE ARE LEGALLY REQUIRED TO DISCLOSE IN A FRANCHISE DISCLOSURE DOCUMENT, OR DISCLOSURES IN CONNECTION WITH JUDICIAL PROCEEDINGS ANCILLARY TO THE ARBITRATION, SUCH AS A JUDICIAL CHALLENGE TO, OR ENFORCEMENT OF, AN AWARD, AND UNLESS OTHERWISE REQUIRED BY LAW.

**23.10 Waiver of Bond**.

You agree that if we are forced to bring suit to enforce any provision of this Agreement, you agree to waive any requirement that we post bond to obtain a temporary, preliminary, or permanent injunction to enforce these duties.

**23.11 Arbitration Fees**.

If we are the substantially prevailing party in arbitration, you agree to reimburse our costs and attorney fees, as well as the arbitration costs and fees, incurred in pursuing or defending the claims against you or us including all mediation and investigation costs and expenses. In any arbitration filed by you where we have no substantive counterclaim against you, you are required to advance and pay all fees to the AAA and the arbitrator.

**23.12 Third Party Beneficiaries.**

Our officers, directors, members, shareholders, agents, and employees are express third party beneficiaries of the terms of the dispute resolution provisions contained herein.

**23.13 Release of Prior Claims.**

By executing this Agreement, Franchisee, individually and on behalf of your heirs, legal representatives, successors and assigns, and each assignee of this Agreement by accepting assignment of the same, forever releases and discharges Us and our officers, directors, employees, agents and servants, including our subsidiary and affiliated corporations, their respective officers, directors, employees, agents and servants, from any and all claims relating to or arising under this Agreement or any other agreement between the parties executed prior to the date of this Agreement including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, securities or antitrust laws of the United States or of any state or territory thereof.

**23.14 Confidentiality**.

All negotiations and mediation proceedings (including all statements and settlement offers made by either party or the mediator in connection with the negotiation and mediation) will be strictly confidential, will be

considered as compromise and settlement negotiations for purposes of applicable rules of evidence, and will not be admissible or otherwise used in connection with any court or arbitration proceeding for any purpose.

**23.15 Disputes Not Subject to Mediation and Arbitration**.

The following disputes will not be subject to mediation or arbitration:

(a) use or ownership of the Marks, Confidential Information, or Trade Secrets;

(b) conduct which is alleged to otherwise infringe the intellectual property rights of Franchisor or any of its Affiliates;

(c) any alleged breach of the provisions of this Agreement relating to data security, Confidential Information, Trade Secrets and in-term and post-term covenants not to compete;

(d) any dispute regarding the Franchisee's obligations to indemnify the Franchisor and/or an Affiliate for any Claims or Damages under this Agreement;

(e) any injunctive actions commenced by either party pursuant to this Agreement or pursuant to any statutory or common law rights; and

(f) claims of non-payment by Us against You under this Agreement.

**23.16 Business Judgment**.

The Parties recognize and any mediator, arbitrator and judge are affirmatively advised, that certain provisions of this Agreement reflect rights of Franchisor to take (or refrain from taking) certain actions in exercise of its business judgment based on its assessment of the long term interests of the franchised system as a whole. Where such discretion has been exercised and is supported by the business judgment of Franchisor, a mediator, arbitrator or judge shall not substitute his or her judgment for the judgment so exercised by Franchisor.

## 24. ACKNOWLEDGMENTS

**24.1 Receipt of this Agreement and the Franchise Disclosure Document**.

You represent and acknowledge that you have received, read and understand this Agreement and Disclosure Document; and that we have given you ample time and opportunity to consult with advisors of your own choosing about the potential benefits and risks of entering into this Agreement. You represent and acknowledge that you have received our Disclosure Document at least 14 calendar days prior to the date on which this Agreement was executed.

**24.2 Consultation by Franchisee**.

You represent that you have been urged to consult with your own advisors with respect to the legal, financial and other aspects of this Agreement, the business franchised hereby and the prospects for that business. You represent that you have either consulted with such advisors or have deliberately declined to do so.

**24.3 True and Accurate Information**.

You represent that all information set forth in any and all applications, financial statements, and submissions to us is true, complete, and accurate in all respects, and you acknowledge that we are relying upon the truthfulness, completeness, and accuracy of such information.

**24.4 Risk**.

You represent that you have conducted an independent investigation of the business contemplated by this Agreement and acknowledges that, like any other business, an investment in a Franchised Business involves business risks and that the success of the venture is dependent, among other factors, upon your business abilities and efforts. We make no representations or warranties, express or implied, in this Agreement or otherwise, as to the potential success of the business venture contemplated hereby.

**24.5 No Guarantee of Success**.

You represent and acknowledge that you have not received or relied on any guarantee, express or implied, as to the revenues, profits or likelihood of success of the Franchised Business. You represent and acknowledge that there have been no representations by Our officers, directors, employees or agents that are not contained in, or are inconsistent with, the statements made in the Franchise Disclosure Document or this Agreement.

**24.6 No Violation of Other Agreements**.

You represent that your execution of this Agreement will not violate any other agreement or commitment to which you or any holder of a legal or beneficial interest in Franchisee is a party.

IN WITNESS WHEREOF the parties hereto, intending to be legally bound hereby have duly executed this Agreement as of _____ ("Effective Date").

| **Franchisor:** | **Franchisee:** |
|---|---|
| FRIOS FRANCHISING COMPANY, LLC | |
| By: _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Name and Title (please print) | Name (please print) |
| _____ | _____ |
| Dated | Dated |

**ATTACHMENT 1 TO THE FRANCHISE AGREEMENT**
**FRANCHISE FEE, DESIGNATED TERRITORY**

**INITIAL FRANCHISE FEE:**

_____

**DESIGNATED TERRITORY:**

| |
|---|
| |

**Franchisor:**
FRIOS FRANCHISING COMPANY, LLC

By: _____
Signature

_____
Name and Title (please print)

_____
Dated

**Franchisee:**

_____
Signature

_____
Name (please print)

_____
Dated

**ATTACHMENT 2 TO THE FRANCHISE AGREEMENT**
**NONDISCLOSURE AND NON-COMPETITION AGREEMENT**

This "Agreement" made as of _____ by and between FRIOS FRANCHISING COMPANY, LLC ("Franchisor," "Company", "we," "us," or "our"), _____ ("Franchisee") and _____ ("Individual," "you," or "your").

**W I T N E S E T H:**

WHEREAS, Franchisee is a party to that certain Franchise Agreement dated _____, ("Franchise Agreement") by and between Franchisee and the Franchisor, Frios Franchising Company, LLC ("Company"); and

WHEREAS, Franchisee desires Individual to have access to and review certain Trade Secrets and other Confidential Information, which are more particularly described below; and

WHEREAS, Franchisee is required by the Franchise Agreement to have Individual execute this Agreement prior to providing Individual access to said Trade Secrets and other Confidential Information; and

WHEREAS, Individual understands the necessity of not disclosing any such information to any other party or using such information to compete against Company, Franchisee or any other franchisee.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and intending to be legally bound hereby, the parties hereby mutually agree as follows:

**1. Trade Secrets and Confidential Information**

1.1 Individual understands Franchisee possesses and will possess Trade Secrets and other Confidential Information that are important to its business.

1.2 For the purposes of this Agreement, a "Trade Secret" is information in any form (including, but not limited to, materials and techniques, technical or non-technical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, product plans, passwords, lists of actual or potential customers or suppliers) related to or used in the Franchised Business that is not commonly known by or available to the public and that information: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1.3 For the purposes of this Agreement "Confidential Information" means technical and non-technical information used in or related to the Franchised Business and not commonly known by or available to the public, including, without limitation, Trade Secrets, methods and products, customer or client services techniques and other techniques and methodologies not generally known to the industry or public, and any other information identified or labeled as confidential when delivered by us. Confidential Information shall not include, however, any information that: (a) is now or subsequently becomes generally available to the public through no fault of you; (b) you can demonstrate it was rightfully in your possession, without obligation of nondisclosure, prior to disclosure pursuant to this

Agreement; (c) is independently developed without the use of any Confidential Information; or (d) is rightfully obtained from a third party who has the right, without obligation of nondisclosure, to transfer or disclose such information;

1.4 Any information expressly designated by Company or Franchisee as "Trade Secrets" or "Confidential Information" shall be deemed such for all purposes of this Agreement, but the absence of designation shall not relieve Individual of his or her obligations hereunder in respect of information otherwise constituting Trade Secrets or Confidential Information. Individual understands Franchisee's providing of access to the Trade Secrets and other Confidential Information creates a relationship of confidence and trust between Individual and Franchisee with respect to the Trade Secrets and other Confidential Information.

1.5 For purposes of this Agreement, "Franchised Business" means a business that sells Frios Pops, and other approved products and services from approved vehicle(s) and carts(s) under the Franchisor's trademarks using the Franchisor's system, Trade Secrets and Confidential Information.

**2. Confidentiality/Non-Disclosure**

2.1 Individual shall not communicate or divulge to (or use for the benefit of) any other person, firm, association, or corporation, with the sole exception of Franchisee, now or at any time in the future, any Trade Secrets or other Confidential Information. At all times from the date of this Agreement, Individual must take all steps reasonably necessary and/or requested by Franchisee to ensure that the Confidential Information and Trade Secrets are kept confidential pursuant to the terms of this Agreement. Individual must comply with all applicable policies, procedures and practices that Franchisee has established and may establish from time to time with regard to the Confidential Information and Trade Secrets.

2.2 Individual's obligations under paragraph 2 of this Agreement shall continue in effect after termination of Individual's relationship with Franchisee, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary, and Franchisee is entitled to communicate Individual's obligations under this Agreement to any future customer or employer to the extent deemed necessary by Franchisee for protection of its rights hereunder and regardless of whether Individual or any of its affiliates or assigns becomes an investor, partner, joint venturer, broker, distributor or the like in a Franchised Business.

**3. Non-Competition**

3.1 During the term of Individual's relationship with Franchisee, Individual will not directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity engage in any Competitive Activities anywhere other than as expressly authorized in writing by Us.

3.2 For a period of 24 months after the expiration or termination of Individual's relationship with Franchisee, regardless of the cause of expiration or termination, Individual shall not, directly or indirectly, for themselves, or through, on behalf of or in conjunction with any person, partnership, corporation, limited liability company or other business entity engage in any Competitive Activities within

(a) Franchisee's Designated Territory;

(b) within 50 miles of the outer boundaries of the Franchisee's Designated Territory;

(c) within 50 miles of any Franchised Business as defined in the Franchisee's Franchise Agreement, or

(d) within any development territory or designated territory granted by Franchisor pursuant to a multi-unit development agreement, franchise agreement, license agreement or other territorial agreement.

3.3 Competitive Activity means:

(a) diverting or attempting to divert any business or customer of the Franchised Business to any Competitive Business, by direct or indirect inducement or otherwise, or doing or performing, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Marks or the System;

(b) owning, maintaining, engaging in, being employed by, performing services for or serving as an officer, director, or principal of, lending money or extending credit to, leasing/subleasing space to, or having any interest in or involvement with a Competitive Business;

(c) calling on, soliciting, accepting business from, or taking away any customers or prospective customers of the Franchised Business or of us, our affiliates or other franchisees for the benefit of any person or entity outside the System. The term "Prospective Customer(s)" includes any person or entity that purchased gourmet pops from the Franchised Business, any wholesale accounts or customers, or any person or entity whose information was provided to the Franchised Business, at any time during the six-month period preceding the termination, expiration, non-renewal or transfer of the Agreement;

(d) calling on, soliciting, accepting business from, or taking away for the benefit of yourself or any other person or entity, any prospective customers or customers of the Franchised Business or of us or our affiliate, that you received any confidential or proprietary information about, regarding products similar to Frios Pops sold by the Franchised Business;

(e) contacting any of your suppliers or vendors for any purpose related to a Competitive Business; or

(f) solicit Our franchisees for any competitive purpose, or knowingly solicit or induce such franchisees to violate any confidentiality, non-competition or franchise agreement.

3.4 Competitive Business means any business that offers the same or similar services as the Franchised Business as defined in the Franchisee's Franchise Agreement under any system, or any other business that sells frozen desserts including pops or a business that offers the same products or services as or similar to or competitive with those offered or provided by the Franchised Businesses as defined in the Franchisee's Franchise Agreement or in which Trade Secrets or other Confidential Information could be used to the disadvantage of us, any Affiliate or our other franchisees; provided, however, that the term "Competitive Business" shall not apply to (a) any business operated by you under a Franchise Agreement

with us, or (b) any business operated by a publicly-held entity in which you own less than a 5% legal or beneficial interest;

**4. Reasonableness of Restrictions**

Individual acknowledges that each of the terms set forth herein, including the restrictive covenants, is fair and reasonable and is reasonably required for the protection of Franchisee, Company, and Company's Trade Secrets and other Confidential Information, the Company's business system, network of franchises and trade and service marks, and Individual waives any right to challenge these restrictions as being overly broad, unreasonable or otherwise unenforceable. If, however, a court of competent jurisdiction determines that any such restriction is unreasonable or unenforceable, then Individual shall submit to the reduction of any such activity, time period or geographic restriction necessary to enable the court to enforce such restrictions to the fullest extent permitted under applicable law. It is the desire and intent of the parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in any jurisdiction where enforcement is sought.

**5. Relief for Breaches of Confidentiality, Non-Solicitation, and Non-Competition**

Individual further acknowledges that an actual or threatened violation of the covenants contained in this Agreement will cause Franchisee and Company immediate and irreparable harm, damage and injury that cannot be fully compensated for by an award of damages or other remedies at law. Accordingly, Franchisee and/or Company shall be entitled, as a matter of right, to an injunction from any court of competent jurisdiction restraining any further violation by Individual of this Agreement without any requirement to show any actual damage or to post any bond or other security. Such right to an injunction shall be cumulative and in addition to, and not in limitation of, any other rights and remedies that Franchisee and Company may have at law or in equity.

**6. Dispute Resolution**

6.1 **Choice of Law.** Except as to claims governed by federal law, Alabama law governs all claims that in any way relate to or arise out of this Agreement or any of the dealings of the parties ("Claims").

6.2 **Jurisdiction and Venue.** You and we agree that venue and jurisdiction for any Claims, except those required to be submitted to arbitration, shall be proper solely in the state and federal court nearest to our corporate headquarters in Mobile County, Alabama.

6.3 **Jury Waiver.** In any trial between any of the parties as to any Claims, you and we agree to waive our rights to a jury trial and instead have such action tried by a judge.

6.4 **Class Action Waiver.** You agree to bring any Claims, if at all, individually and you shall not join such claim with claims of any other person or entity or bring, join or participate in a class action against us.

6.5 **Punitive Damages Waiver.** As to any Claims, you and we agree to waive our rights, if any, to seek or recover punitive damages.

6.6 **Limitation of Actions.** You agree to bring any Claims against us, if at all, within one year of the occurrence of the facts giving rise to such Claims, and that any action not brought within this period shall be barred as a claim, counterclaim, defense, or set-off.

6.7 **Prior Notice of Claims.** As a condition precedent to commencing an action for a Claim, you must notify us 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.

6.8 **Internal Dispute Resolution.** You must first bring any Claim to our CEO, after providing notice as set forth in Section 6(g) above. You must exhaust this internal dispute resolution procedure before you may bring your Claim before a third party. .

6.10 **Waiver of Bond.** You agree that if we are forced to bring suit to enforce any provision of this Agreement, you agree to waive any requirement that we post bond to obtain a temporary, preliminary, or permanent injunction to enforce these duties.

6.11 **Attorney Fees.** If we are the substantially prevailing party as to any Claims, you agree to reimburse our costs and attorney fees incurred in pursuing or defending the Claims.

**7. Miscellaneous**

7.1 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any prior agreements, negotiations and discussions between Individual and Franchisee. This Agreement cannot be altered or amended except by an agreement in writing signed by the duly authorized representatives of the parties.

7.2 This Agreement shall be effective as of the date this Agreement is executed and shall be binding upon the successors and assigns of Individual and shall inure to the benefit of Franchisee, its subsidiaries, successors and assigns. Company is an intended third-party beneficiary of this Agreement with the independent right to enforce the confidentiality and non-competition provisions contained herein.

7.3 The failure of either party to insist upon performance in any one or more instances upon performance of any terms and conditions of this Agreement shall not be construed a waiver of future performance of any such term, covenant or condition of this Agreement and the obligations of either party with respect thereto shall continue in full force and effect.

7.4 In the event that any part of this Agreement shall be held to be unenforceable or invalid, the remaining parts hereof shall nevertheless continue to be valid and enforceable as though the invalid portions were not a part hereof.

7.5 This Agreement may be modified or amended only by a written instrument duly executed by Individual, Franchisee and Company.

7.6 The existence of any claim or cause of action Individual might have against Franchisee or Company will not constitute a defense to the enforcement by Franchisee or Company of this Agreement.

**INDIVIDUAL CERTIFIES THAT HE OR SHE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS AND ACCEPTS THE OBLIGATIONS THAT IT IMPOSES WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO SUCH PERSON TO INDUCE THE SIGNING OF THIS AGREEMENT.**

**THE PARTIES ACKNOWLEDGE THAT THE COMPANY IS A THIRD-PARTY BENEFICIARY TO THIS AGREEMENT AND THAT THE COMPANY SHALL BE ENTITLED TO ENFORCE THIS AGREEMENT WITHOUT THE COOPERATION OF THE FRANCHISEE. INDIVIDUAL AND FRANCHISEE AGREE THAT THIS AGREEMENT CANNOT BE MODIFIED OR AMENDED WITHOUT THE WRITTEN CONSENT OF THE COMPANY.**

IN WITNESS WHEREOF, Franchisee has hereunto caused this Agreement to be executed by its duly authorized officer, and Individual has executed this Agreement, all being done in duplicate originals with one original being delivered to each party as of the day and year first above written.

| **FRANCHISEE:** | **INDIVIDUAL:** |
|---|---|
| _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Name (please print) | Name (please print) |
| _____ | _____ |
| Dated | Dated |

**ATTACHMENT 3 TO THE FRANCHISE AGREEMENT**
**UNLIMITED GUARANTY AND ASSUMPTION OF OBLIGATIONS**

THIS UNLIMITED GUARANTY AND ASSUMPTION OF OBLIGATIONS is given this as of _____ , by _____.

In consideration of, and as an inducement to, the execution of that certain Franchise Agreement dated _____ herewith ("Agreement") by Frios Franchising Company, LLC ("Franchisor"), each of the undersigned hereby personally and unconditionally guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that _____("Franchisee") shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement. Each of the undersigned shall be personally bound by, and personally liable for, Franchisee's breach of any provision in the Agreement, including those relating to monetary obligations and obligations to take or refrain from taking specific actions or engaging in specific activities, such as those contemplated by Sections 6, 7, and 17 of the Agreement. Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or non-performance of any obligations hereby guaranteed; (d) any right it may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (e) any and all other notices and legal or equitable defenses to which it may be entitled.

Each of the undersigned consents and agrees that: (a) its direct and immediate liability under this Guaranty shall be joint and several; (b) it shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (c) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person or entity; and (d) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit or other indulgence which Franchisor may from time to time grant to Franchisee or to any other person including, without limitation, the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable during the term of the Agreement.

This Guaranty represents the entire agreement and understanding of these parties concerning the subject matter hereof, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

Successors and Assigns; Death of Guarantor. This Guaranty shall be binding upon Guarantor and his or her heirs, executors, administrators, successors and assigns and shall inure to the benefit of Franchisor and its successors, endorsees, transferees and assigns. Without limiting any other provision hereof, Guarantor expressly agrees that Guarantor's death shall not serve as a revocation of or otherwise affect the guaranty made hereunder and that Guarantor's estate and heirs shall continue to be liable hereunder with respect to any Guaranteed Obligations created or arising after Guarantor's death.

The validity, interpretation and enforcement of this Guaranty and any dispute arising out of the relationship between Guarantor and Franchisor, whether in contract, tort, equity or otherwise, shall be governed by the internal laws of the State of Alabama (without giving effect to principles of conflicts of law).

Dispute Resolution. You agree to be bound by the Dispute Resolution provisions found in Section 23 of any Franchise Agreement between the parties as if set forth here and as being equally applicable to this Guaranty and the dealings of the parties hereunder.

IN WITNESS WHEREOF, this Guaranty has been entered into the day and year first before written.

**PERSONAL GUARANTOR:**

_____
Signature

_____
Name (please print)

_____
Dated

HOME ADDRESS

_____

_____

_____

TELEPHONE NO.: _____

PERCENTAGE OF OWNERSHIP
IN FRANCHISEE: _____%

**ATTACHMENT 4**
**TO THE FRANCHISE AGREEMENT**
**ACH PAYMENT AGREEMENT**

FRANCHISEE NAME: _____
AUTHORIZATION AGREEMENT FOR ACH Payments

(I/we) do hereby authorize Frios Franchising Company, LLC, hereinafter named the "Franchisor", to initiate (debit or credit) entries to (my/our) (Checking Account / Savings Account) as indicated and named below as the depository financial institution, hereafter named FINANCIAL INSTITUTION pursuant to the terms of the Franchise Agreement by and between us and the Franchisor.

(I/we) acknowledge that the origination of ACH transactions to my (my/our) account must comply with the provisions of U.S. law. Furthermore, if any such debit(s) should be returned NSF, (I/we) authorize the Franchisor to collect such debit(s) by electronic debit and subsequently collect a returned debit NSF fee of $100.00 per occurrence by electronic debit from my account identified below. In the event all funds and interests are not received by Franchisor within five days from presentment and intended withdrawal from our account by Franchisor, then we will be deemed in default of the Franchise Agreement. We further agree to pay all reasonable costs of collection including but not limited to reasonable attorney's fees and court costs incurred by Franchisor. I am a duly authorized check signer on the financial institution account identified below and authorize all of the above as evidenced by my signature below.

CHECK (ACH) INFORMATION ROUTING NUMBER: _____
ACCOUNT NUMBER: _____
DEPOSITORY NAME: _____
BRANCH: _____
CITY: _____ STATE: _____ZIP: _____

COMPANY NAME: _____
FIRST NAME/LAST NAME: _____
BILLING ADDRESS: _____
CITY_____STATE_____ZIP_____
PHONE NUMBER: _____

CUSTOMER NUMBER: _____
SIGNATURE ON FILE: _____
PHONE OR EMAIL APPROVAL AUTHORIZATION NUMBER: _____

**ATTACHMENT 5 TO THE FRANCHISE AGREEMENT**
**HOLDERS OF LEGAL OR BENEFICIAL INTEREST**
**IN FRANCHISEE; OFFICERS; DIRECTORS**

**Holders of Legal or Beneficial Interest:**

Name: _____

Position/Title: _____
Home Address:_____
_____
_____
Telephone No.: _____
E-mail address:_____
Percentage of ownership: _____%

**Officers and Directors:**

Name: _____

Position/Title: _____
Home Address: _____
_____
_____
Telephone No.: _____
E-mail address: _____
Percentage of ownership: _____%

**ATTACHMENT 6 TO THE FRANCHISE AGREEMENT**
**STATE ADDENDA TO THE FRANCHISE AGREEMENT**

**N/A**

**ATTACHMENT 7 TO THE FRANCHISE AGREEMENT**
**GENERAL RELEASE**

THIS GENERAL RELEASE is made and given as of _____ by _____, ("RELEASOR") an individual/corporation/ limited liability company/partnership with a principal address of _____, in consideration of:

_____ the execution by Frios Franchising Company, LLC, an Alabama limited liability company ("RELEASEE"), of a successor Franchise Agreement or other renewal documents renewing the franchise (the "Franchise") granted to RELEASOR by RELEASEE pursuant to that certain Franchise Agreement (the "Franchise Agreement") between RELEASOR and RELEASEE; or

_____ RELEASEE'S consent to RELEASOR'S assignment of its rights and duties under the Franchise Agreement; or

_____ RELEASEE'S consent to RELEASOR'S assumption of rights and duties under the Franchise Agreement;

and other good and valuable consideration, the adequacy of which is hereby acknowledged, and accordingly RELEASOR hereby releases and discharges RELEASEE, RELEASEE's officers, directors, shareholders, managers, members, partners, owners, employees and agents (in their corporate and individual capacities), and RELEASEE's successors and assigns, from any and all causes of action, suits, debts, damages, judgments, executions, claims and demands whatsoever, in law or in equity, that RELEASOR and RELEASOR's heirs, executors, administrators, successors and assigns had, now have or may have, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of this RELEASE arising out of or related to the Franchise or the Franchise Agreement, including, without limitation, claims arising under federal, state and local laws, rules and ordinances.

This General Release shall not be amended or modified unless such amendment or modification is in writing and is signed by RELEASOR and RELEASEE.

IN WITNESS WHEREOF, RELEASOR has executed this General Release as of the date first above written.

RELEASOR: _____
(type/print name)

By: _____

Name: _____

Title: _____
(or, if an individual)

Signed: _____

Name printed: _____

**ATTACHMENT 8 TO THE FRANCHISE AGREEMENT**
**FRANCHISEE DISCLOSURE QUESTIONNAIRE**

As you know, Frios Franchising Company, LLC and you are preparing to enter into a Franchise Agreement for the operation of a Franchised Business. In this Franchisee Disclosure Questionnaire, Frios Franchising Company, LLC will be referred to as "we" or "us." The purpose of this Questionnaire is to determine whether any statements or promises were made to you that we did not authorize and that may be untrue, inaccurate, or misleading. Please review each of the following questions carefully and provide honest and complete responses to each question.

1. Have you received, and personally reviewed Frios Franchising Company LLC's Franchise Agreement and each exhibit, addendum, and schedule attached to it?

Yes/ No _____

2. Do you understand all of the information contained in the Franchise Agreement and each exhibit and schedule attached to it?

Yes/ No _____

If "No," what parts of the Franchise Agreement do you not understand? (Attach additional pages, if necessary.):

_____
_____
_____
_____

3. Have you received and personally reviewed our Disclosure Document we provided to you?

Yes/ No _____

4. Do you understand all of the information contained in this Disclosure Document?

Yes/ No _____

If "No," what parts of the Franchise Disclosure Document do you not understand? (Attach additional pages, if necessary.)

_____
_____
_____
_____

5. Have you discussed the benefits and risks of operating the franchised business with an attorney, accountant, or other professional advisor, and do you understand those risks?

Yes/ No _____

6. Do you understand that the success or failure of your business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms, and other economic and business factors?

Yes/ No _____

7. Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits, or operating costs of a Franchised Business that we or our franchisees operate?

Yes/ No _____

8. Has any employee or other person speaking on our behalf made any statement or promise concerning a Franchised Business that is contrary to, or different from, the information contained in the Disclosure Document?

Yes/ No _____

9. Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a franchised business?

Yes/ No _____

10. Has any employee or other person speaking on our behalf made any statement, promise, or agreement concerning the advertising, marketing, training, support service, or assistance that we will furnish to you that is contrary to, or different from, the information contained in this Disclosure Document?

Yes/ No _____

11. If you have answered "Yes" to any of questions 7 through 10, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered "No" to each of these questions, please leave the following lines blank.

_____
_____
_____
_____
_____

12. Do you understand that in all dealings with you, our officers, directors, employees, and agents act only in a representative capacity and not in an individual capacity and these dealings are solely between you and us?

Yes/ No _____You understand that your answers are important to us and that we will rely on them.

[SIGNATURE PAGE TO FOLLOW]

By signing this Franchisee Disclosure Questionnaire, you are representing that you have responded truthfully to the above questions.

_____
Signature

_____
Print Name of Franchisee/Applicant

_____
Date

**ATTACHMENT 9 TO THE FRANCHISE AGREEMENT**
**CONDITIONAL ASSIGNMENT OF TELEPHONE LISTING, SOCIAL MEDIA AND DIRECTORY LISTING AGREEMENT**

THIS CONDITIONAL ASSIGNMENT OF TELEPHONE LISTING, SOCIAL MEDIA AND DIRECTORY LISTING AGREEMENT ("Agreement") is made and entered into on _____, ("Effective Date") by and between FRIOS FRANCHISING COMPANY, LLC ("Franchisor"), and _____ ("Franchisee").

1. Pursuant to the terms of the Agreement, and other valuable consideration, Franchisee assigns to Franchisor all telephone numbers, directory listings, fax numbers, Internet website addresses and domain names, social media accounts and other listings, whether in electronic or other media, used or to be used by Franchisee in the operation of Franchisee's Franchised Business. Franchisor assumes the performance of all of the terms, covenants, and conditions of the telephone, directory, or other company with respect to any such listings and social media accounts with the same force and effect as if they had originally been issued to Franchisor. This Agreement. is valid on the Effective Date first set forth above and is, in all circumstances, irrevocable. Franchisor may fill in, add, or change the Effective Date and the listings at any time. The telephone, directory, or other company involved with any such listings and social media accounts is hereby authorized by both Franchisor and Franchisee to rely on this Agreement. Furthermore, both Franchisor and Franchisee will hold harmless and indemnify the telephone, directory, or other company involved with any such listings and social media accounts from any claims based on reliance on this Agreement.

2. The Franchisee hereby releases and forever discharges the Franchisor and its successors or assigns from liability of any kind or character which results or may result directly or indirectly from the Franchisor's exercise of its rights hereunder or from the telephone, directory, social media or other company's cooperation with the Franchisor in effecting the terms of this Agreement.

3 The Franchisor will have the absolute right to notify the telephone company, directory, social media or other company and all listing agencies of the termination or expiration of the Franchisee's right to use all telephone numbers, directory listings, social medial accounts, etc. and all classified and other directory listings under the "Frios Gourmet Pops" or "Frios" name and to authorize the telephone, directory, social media or other company and all listing agencies to transfer to the Franchisor or its assignee all telephone numbers, social media accounts and directory listings of the Franchisee's Franchised Business.

4 The telephone, directory, social media and other company and all listing agencies will have the right to accept this Agreement as evidence of the exclusive rights of the Franchisor to such telephone numbers, social media accounts and directory listings, and this Agreement will constitute the authority from the Franchisee for the telephone, directory, social media and other company and listing agency to transfer all such telephone numbers, directory, social media and directory listings to the Franchisor. The Franchisee will not make any claims or commence any action against the telephone, directory, social media and other company and the listing agencies for complying with this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**FRIOS FRANCHISING COMPANY, LLC**

| | |
|---|---|
| Signature: _____ | Signature: _____ |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

**EXHIBIT C TO THE FRANCHISE DISCLOSURE DOCUMENT**

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**EXHIBIT C**

**MULTI-UNIT DEVELOPMENT AGREEMENT**

**Multi-Unit Developer:** _____

**Date:** _____

**Development Territory:** _____

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ATTACHMENTS

ATTACHMENT A DEVELOPMENT TERRITORY, DEVELOPMENT FEE AND DEVELOPMENT SCHEDULE

**FRIOS FRANCHISING COMPANY, LLC**
**MULTI-UNIT DEVELOPMENT AGREEMENT**

THIS MULTI-UNIT DEVELOPMENT AGREEMENT (this "**Agreement**") is made, entered into and effective on _____, ("**Effective Date**") by and between Frios Franchising Company, LLC, an Alabama limited liability company ("**Franchisor**"), and _____ ("**Multi-Unit Developer**").

**INTRODUCTION.**

Franchisor owns or licenses the System and the Marks for use in operating Franchised Businesses.

The Franchisor has the right and authority to grant to qualified third parties the right to license the System and Marks to open and operate a certain number of Franchised Businesses in accordance with a Development Schedule within a specified Development Territory.

The Multi-Unit Developer desires to license the System and Marks to open and operate multiple Franchised Businesses in accordance with a Development Schedule within a specified Development Territory in accordance with the terms and conditions of this Agreement.

The Franchisor desires to grant Multi-Unit Developer the right to open and operate multiple Franchised Businesses in accordance with a Development Schedule within a specified Development Territory in accordance with the terms and conditions of this Agreement.

Pursuant to the above Introduction and in consideration of the mutual promises and covenants set forth in this Agreement, the Franchisor and the Multi-Unit Developer agree, and contract as follows:

## 1. DEFINITIONS

For purposes of this Agreement, the following words will have the following definitions:

1.1 Controlled Entity. "Controlled Entity" will mean an Entity in which (a) the Multi-Unit Developer is the Owner of at least 51% of the Ownership Interests in the Entity; or (b) the Multi-Unit Developer 's Owners are the Owners of at least 51% of the Ownership Interests in the Entity.

1.2 Franchise Agreement. "**Franchise Agreement**" will mean the Franchisor's then-current standard Franchise Agreement.

1.3 Terms Defined in Franchise Agreement. Capitalized terms used but not defined in this Agreement will, if defined in the Franchise Agreement, have the meanings ascribed to such terms in the Franchise Agreement.

## 2. GRANT OF DEVELOPMENT RIGHTS; DEVELOPMENT TERRITORY.

2.1 Development Territory. The Franchisor hereby grants to the Multi-Unit Developer, for the Term of this Agreement, the right to enter into Franchise Agreements with the Franchisor for the development and operation of Franchised Businesses in accordance with the development schedule set out in **Attachment A** ("**Development Schedule**") within the geographical area ("**Development Territory**") set out in **Attachment A**. This Agreement will not constitute the sale of a Franchise to the Multi-Unit Developer but rather will give the Multi-Unit Developer the right

and obligation to enter into Franchise Agreements with the Franchisor to own and operate Franchised Businesses in the Development Territory.

2.2 Non-Exclusive. The Franchisee acknowledges that the rights granted in this Agreement and the Development Territory are non-exclusive. Franchisor has the right to operate and license third parties to operate Franchised Businesses in the Development Territory.

2.3 Personal License. The Multi-Unit Developer will not have the right to franchise, sub-franchise, license or sublicense its rights under this Agreement. The Multi-Unit Developer will not have the right to Transfer this Agreement or its rights under this Agreement, except as specifically provided for in **Section 7.2**.

**3. TERM.**

This Agreement will commence on the Effective Date, and, unless sooner terminated in accordance with the terms of this Agreement, this Agreement and all rights granted hereunder will end on the last day of the calendar month that the final Franchised Business is required to be developed and opened under the Development Schedule ("**Term**"). At the end of the Term of this Agreement, the Multi-Unit Developer's development rights with respect to the Development Territory will automatically terminate, and the Multi-Unit Developer will not have the right to renew or extend the Term of this Agreement.

**4. FEES.**

4.1 Development Fee. In consideration of Franchisor granting the Multi-Unit Developer the right to develop multiple Franchised Businesses in the Development Territory, Multi-Unit Developer will pay the Franchisor a development fee ("**Development Fee**") in an amount equal to:

(a) The Initial Franchise Fee set out in the Initial Franchise Agreement for the first Franchised Business that the Multi-Unit Developer is committed to develop under the Development Schedule; and

(b) $15,000 for each additional Franchised Business that the Multi-Unit Developer is committed to develop under the Development Schedule.

For the avoidance of doubt, the amount of the total amount of the Development Fee is set forth in **Attachment A** of this Agreement.

4.2 Development Fee Due. The Development Fee set out in **Attachment A** is due upon the Multi-Unit Developer's execution of this Agreement.

4.3 Fees are Non-Refundable. The Development Fee will be nonrefundable and will be fully earned by the Franchisor when the Development Fee is paid by the Multi-Unit Developer even if Multi-Unit Developer fails to develop any Franchised Businesses under the terms of this Agreement.

4.4 Initial Franchise Fees and Corresponding Franchise Agreements.

(a) First Franchised Business. Upon executing this Agreement, the Multi-Unit Developer must execute the Initial Franchise Agreement for its first Franchised Business that the Multi-Unit Developer is required to open and operate under this Agreement ("**First Franchised**

**Business**"). The portion of the Development Fee paid in accordance with **Section 4.1(a)** will be applied to the Initial Franchise Fee set out in the Initial Franchise Agreement at the time the Initial Franchise Agreement is executed by the Multi-Unit Developer.

(b) Second Franchised Business. For the second Franchised Businesses Multi-Unit Developer is required to open and operate in the Development Territory pursuant to the Development Schedule, the portion of the Development Fee paid in accordance with **Section 4.1(b)** will be applied to the then current initial franchise fee set out in the then-current Franchise Agreement at the time the Franchise Agreement is executed by the Multi-Unit Developer. Multi-Unit Developer will not be required to pay any additional sums toward the then current initial franchise fee set out in the then current Franchise Agreement.

(c) Any Subsequent Franchised Businesses. For the any subsequent Franchised Businesses Multi-Unit Developer is required to open and operate in the Development Territory pursuant to the Development Schedule, the portion of the Development Fee paid in accordance with **Section 4.1(b)** will be applied to the then current initial franchise fee set out in the then-current Franchise Agreement at the time the Franchise Agreement is executed by the Multi-Unit Developer. Multi-Unit Developer will not be required to pay any additional sums toward the then current initial franchise fee set out in the then current Franchise Agreement.

4.5 Payments to the Franchisor. The Multi-Unit Developer will not, on grounds of the alleged nonperformance by the Franchisor of any of its obligations under this Agreement, any other contract between the Franchisor and the Multi-Unit Developer, or for any other reason, withhold payment of any Development Fees or other payments due the Franchisor pursuant to this Agreement, any Franchise Agreement or any other contract with the Franchisor. The Multi-Unit Developer will not have the right to "**offset**" or withhold any liquidated or unliquidated amounts, damages or other funds allegedly due to the Multi-Unit Developer by the Franchisor against any Development Fees or payments due to the Franchisor by the Multi-Unit Developer pursuant to this Agreement, any Franchise Agreement or any other contract with the Franchisor. The Franchisor will have the right to deduct from amounts payable to the Multi-Unit Developer by the Franchisor or an Affiliate any fees or other payments owed by Multi-Unit Developer to the Franchisor, an Affiliate or a third party. The Franchisor will also have the right to apply the Fees and other payments made to the Franchisor by the Multi-Unit Developer in such order as the Franchisor may designate from time to time.

## 5. DEVELOPMENT SCHEDULE.

5.1 Development Schedule. The Multi-Unit Developer acknowledges and agrees that the Development Schedule set forth in **Attachment A** is a material provision of this Agreement. For purposes of determining compliance with the Development Schedule set forth in this **Section 5.1**, only the Multi-Unit Developer 's Franchised Businesses actually open and continuously operating in the Development Territory as of a given date will be counted toward the number of Franchised Businesses required to be open and continuously operating. The Multi-Unit Developer will be required to open and operate a minimum of two Franchised Businesses in the Development Territory.

5.2 Development Periods. At a minimum, the Multi-Unit Developer shall develop the number of Franchised Business in the Development Territory during each period set out in the Development Schedule ("**Development Period**"). Notwithstanding any provision in the Franchise Agreement to the contrary, the Multi-Unit Developer will be required to open the Franchised Businesses developed by the Multi-Unit Developer under this Agreement according to the

Development Periods set forth in the Development Schedule, and the Franchise Agreement for each of the Multi-Unit Developer's Franchised Businesses will be deemed to be amended accordingly. The Multi-Unit Developer agrees that time is of the essence with respect to compliance with the Development Schedule.

5.3 Reasonableness of Development Schedule. The Multi-Unit Developer represents that it has conducted its own independent investigation and analysis of the prospects for the establishment of Franchised Businesses within the Development Territory and approves of the Development Schedule as being reasonable and viable.

## 6. OTHER OBLIGATIONS OF MULTI-UNIT DEVELOPER.

6.1 Franchise Agreements. The Multi-Unit Developer or a Controlled Entity must sign our then-current Franchise Agreements for each Franchised Business opened under the terms of this Agreement. These Franchise Agreements may not be the same as the Initial Franchise Agreement. The Franchisee agrees to comply with the terms and conditions of each Franchise Agreement as a part of its obligations hereunder and acknowledges that failure to execute and comply with such Franchise Agreements shall be treated as a breach of this Agreement. The failure of the Multi-Unit Developer or the Controlled Entity to provide the Franchisor with an executed Franchise Agreement by the end of any applicable Development Period set out in the Development Schedule will constitute a material breach of this Agreement, and the Franchisor will have the right to terminate this Agreement as provided for herein;

6.2 Ownership of Controlled Entity. All Owners of the Controlled Entity are subject to Franchisor's prior approval before signing any Franchise Agreement and must meet the Franchisor's then current criteria for Franchisees. If the Franchise Agreement required to be executed pursuant to this **Section 6** (and the other applicable provisions of this Agreement) is executed by an approved Controlled Entity, then: (a) the Multi-Unit Developer (or the Multi-Unit Developer 's Owners) will be required to maintain at least a 51% Ownership Interest in the Controlled Entity during the Term of this Agreement; and (b) the Multi-Unit Developer will not be relieved from complying with the terms, conditions and the Multi-Unit Developer's obligations set forth in this Agreement. If the Multi-Unit Developer elects to have a Controlled Entity execute the Franchise Agreement for any Franchised Business being developed under this Agreement, then all terms, conditions and obligations under this Agreement relating to compliance with the Franchise Agreement for that Franchised Business will be the obligation of the Controlled Entity, and not the Multi-Unit Developer.

6.3 Modifications to Franchise Agreement. The Multi-Unit Developer acknowledges that (a) the terms, conditions and economics of the Franchise Agreement may be modified from time to time by the Franchisor, (b) any changes or modifications made to the Franchise Agreement in the future will not be applicable to any Franchise Agreement previously executed by the Multi-Unit Developer, and (c) the Multi-Unit Developer will be required to pay any additional Fees contained in any Franchise Agreement signed by the Multi-Unit Developer after the date of this Agreement.

6.4 Conditions. The Multi-Unit Developer hereby undertakes the obligation to develop and open Franchised Businesses using the System in the Development Territory in strict compliance with the terms and conditions of this Agreement for the Term of this Agreement. The rights and privileges granted to the Multi-Unit Developer by the Franchisor under this Agreement are applicable only in the Development Territory, are personal in nature, and may not be used elsewhere or in any other area by the Multi-Unit Developer.

6.5 Proprietary Marks and Confidential Information. Notwithstanding any provision to the contrary under this Agreement, the Multi-Unit Developer understands and agrees that this Agreement does not grant the Multi-Unit Developer any right to use the Marks or to use any of the Franchisor's Confidential Information and Trade Secrets. Rights to the Marks, Confidential Information and Trade Secrets are granted only under the Franchise Agreements to be executed by the Franchisor and the Multi-Unit Developer.

6.6 Timing Involving Approved Vehicles. The Multi-Unit Developer will not purchase or lease Approved Vehicles for operation in the Development Territory until the Multi-Unit Developer has signed the corresponding Franchise Agreement with the Franchisor for such Franchised Business and has complied with the applicable provisions of the corresponding Franchise Agreement relating to the Approved Vehicle.

**7. ASSIGNMENT.**

7.1 Assignment and Transfer of Agreement by the Franchisor. This Agreement may be unilaterally Transferred and assigned by the Franchisor to a person or Entity without the approval of the Multi-Unit Developer and will inure to the benefit of the successors and assigns of the Franchisor. The Franchisor will provide the Multi-Unit Developer with written notice of any such Transfer, and the Transferee (as that term is defined below) will be required to fully perform all obligations of the Franchisor under this Agreement.

7.2 Assignment by Multi-Unit Developer. The Multi-Unit Developer or, if Multi-Unit Developer is an Entity, then also the Owner(s) of Multi-Unit Developer, may not sell, transfer or assign its (or their) rights under this Agreement or any interest in it or any part of the Multi-Unit Developer Entity. The only exception to this prohibition is a transfer or assignment to an Entity that is an Approved Affiliate as defined below. An Approved Affiliate must be a wholly owned subsidiary of the Multi-Unit Developer or an Entity (A) controlled by Multi-Unit Developer or the individual Owners of Multi-Unit Developer as either the (i) general partner of a limited partnership, (ii) the managing member of a limited liability company; (iii) the majority shareholder a corporation; (iv) a Controlled Entity; and (B) of which Multi-Unit Developer or the individual Owners of Multi-Unit Developer own at least 51% of all Ownership Interest, unless these requirements are waived by the Franchisor, in its sole discretion. The assignment shall be pre-approved by the Franchisor by its execution of the then current form of Franchise Agreement and Multi-Unit Development Agreement which has also been signed by the Approved Affiliate, provided that:

(a) One of the individual Owners of the Approved Affiliate or the Multi-Unit Developer, if the Multi-Unit Developer is the parent of the Approved Affiliate, who has a minimum of 51% of the Ownership Interest in the Approved Affiliate or the Multi-Unit Developer, shall be designated by the Multi-Unit Developer as the Operating Principal; and

(b) The Operating Principal and each other Owner shall, at the request of the Franchisor, execute a separate Non-Competition and Non-Disclosure Agreement and the Personal Guaranty of each Franchise Agreement.

7.3 Acknowledgment of Restrictions. The Multi-Unit Developer and Owners acknowledge and agree that the restrictions on transfers imposed herein are reasonable and necessary to protect the System and the Marks, as well as the reputation and image of the Franchisor, and are for the protection of the Franchisor, the Multi-Unit Developer and all other Multi-Unit Developers and franchisees who have been granted the right to operate Franchised

Businesses. Any Transfer permitted by **Section 7.2** or **Section 9** will not be effective until the Franchisor receives a completely executed copy of all assignment documents and the Franchisor consents to the assignment in writing. Any attempted assignment made without complying with the requirements of this **Section 7.3** will be void.

7.4 Transfer to Competitor Prohibited. The Multi-Unit Developer and the Owners will not transfer this Agreement or their Ownership Interests in the Multi-Unit Developer to any person or Entity that owns, operates, franchises, develops, consults with, manages, is involved in, or controls any Competitive Business or engages in any Competitive Activity.

## 8. TERMINATION RIGHTS OF THE FRANCHISOR

8.1 Immediate Termination Rights of the Franchisor. The Multi-Unit Developer will be deemed to be in default and subject to immediate termination under this Agreement, or the exercise of the remedies set out in **Section 8.6** without prior notice of the default from the Franchisor and without an opportunity to cure the default unless precluded by applicable law or otherwise as stated herein, if any of the following events occur:

(a) the Multi-Unit Developer fails to comply with the Development Schedule set forth in **Section 5** and **Attachment A** (does not have the required number of Franchised Businesses open and operating in the Development Territory as specified in the Development Schedule);

(b) the Multi-Unit Developer ceases to actively engage in development activities in the Development Territory or otherwise abandons the business authorized hereunder for a period of three consecutive months, or any shorter period that indicates an intent by the Franchisee to discontinue development of Franchised Businesses in the Development Territory;

(c) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity fails to timely pay any of its uncontested obligations or liabilities (where there is no reasonable commercial dispute) due and owing to the Franchisor, its Affiliate, suppliers, banks, purveyors, other creditors or to any federal, state or municipal government.

(d) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity is determined to be insolvent within the meaning of applicable state or federal law, any involuntary petition for bankruptcy is filed against the Multi-Unit Developer and the Multi-Unit Developer is unable, within a period of 60 days from such filing, to obtain the dismissal of the involuntary petition, or the Multi-Unit Developer files for bankruptcy or is adjudicated a bankrupt under applicable state or federal law;

(e) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity makes an assignment for the benefit of creditors or enters into any similar arrangement for the disposition of its assets for the benefit of creditors;

(f) the Multi-Unit Developer or any of its Owners, Operating Principal, Executive Management, Guarantors or Controlled Entity are convicted of, or plead guilty to or no contest to a charge of violating any law, and such conviction or plea could have a material adverse effect on the Multi-Unit Developer 's right or ability to operate the Franchised Businesses, perform its obligations under this Agreement or could have a material adverse effect on the Marks, goodwill, reputation or System;

(g) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity materially violates any federal, state or municipal law, rule, code or regulation applicable to the operations of the Multi-Unit Developer's or Controlled Entity's Franchised Businesses, including a violation of any health department rules or regulations relating to any food safety standards that would in any way endanger the health or well-being of any of the customers of the Multi-Unit Developer's or Controlled Entity's Franchised Businesses;

(h) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or a Controlled Entity breaches any provision, term or condition of this Agreement or any Franchise Agreement or other agreement between Multi-Unit Developer or Controlled Entity and Franchisor or its Affiliates and fails to cure such default within the period prescribed in such Franchise Agreement or other agreement;

(i) any check or EFT issued by the Multi-Unit Developer or Controlled Entity is dishonored because of insufficient funds (except where the check is dishonored because of bank error or an error in bookkeeping or accounting) or closed accounts;

(j) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity are involved in any act or conduct which materially impairs the goodwill associated with "FRIOS GOURMET POPS," any other of the Marks or with the System and the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity fails to correct the breach within 24 hours after receipt of written notice of the breach from the Franchisor;

(k) the Multi-Unit Developer or any Controlled Entity engages in any unauthorized business or practice or sells any unauthorized product or service under the Franchisor's Marks or under a name or mark which is confusingly similar to the Franchisor's Marks;

(l) any Franchise Agreement between the Multi-Unit Developer (or a Controlled Entity) and the Franchisor is terminated by either party for any reason;

(m) the Multi-Unit Developer, its Owners, Operating Principal, Guarantors, Controlled Entity or any individual breaches the non-compete and confidentiality covenants set out in the Franchise Agreement or the Non-Competition and Non-Disclosure Agreement;

(n) the Multi-Unit Developer has previously received notices of three or more defaults (whether different defaults noticed together or three separate instances of the same default) pursuant to Section 8.2 in a Development Period and is again in default of this Agreement within the Development Period, regardless of whether the previous defaults were cured by the Franchisee; or

(o) the Multi-Unit Developer transfers or otherwise assigns this Agreement or the rights to develop a Franchised Business hereunder, or an interest in the Multi-Unit Developer Entity, without complying with the provisions of **Section7.2**.

8.2 Termination by Franchisor - 30 Days-Notice. The Franchisor shall have the right to terminate this Agreement (subject to any state laws to the contrary, where state law shall prevail), effective upon 30 days written notice to the Franchisee ("**Breach Notice**"), if the Franchisee breaches any provision of this Agreement other than those provisions listed in **Section 8.1** above and fails to cure the default during such 30 day period. In that event, effective upon expiration of the 30-day period, this Agreement will terminate without further notice to the Franchisee. Defaults shall include, but not be limited to, the following:

(a) the Multi-Unit Developer or Controlled Entity fails to maintain the then current operating procedures and adhere to the specifications and standards established by the Franchisor as set forth herein or in the Manual, defined and described in the Franchise Agreement, or as otherwise communicated to the Franchisee;

(b) the Multi-Unit Developer fails, refuses or neglects to obtain the Franchisor's prior written approval or consent as required by this Agreement; or

(c) the Multi-Unit Developer commits any other act that constitutes good cause under applicable law or court decisions.

8.3 Failure to Comply with Development Schedule. Termination of this Agreement as a result of the Multi-Unit Developer's failure to meet the Development Schedule will not affect the individual Franchise Agreements for the Franchised Businesses opened and operating in the Development Territory pursuant to this Agreement which were signed by the parties prior to termination of this Agreement; however, upon termination of this Agreement, all rights to open and operate additional Franchised Businesses in the Development Territory and all other rights granted to the Multi-Unit Developer under this Agreement will immediately revert to the Franchisor, without affecting those obligations of the Multi-Unit Developer that continue beyond the termination of this Agreement.

8.4 Obligations Upon Termination or Expiration. If this Agreement is terminated by the Franchisor in accordance with this **Section 8**, the rights and duties of the Franchisor and the Multi-Unit Developer will be as follows:

(a) the Multi-Unit Developer will have no rights to open additional Franchised Businesses within the Development Territory;

(b) the Multi-Unit Developer and Controlled Entity (if any) will continue to pay all required Fees and to operate its Franchised Business opened in the Development Territory pursuant to the terms of the applicable Franchise Agreements signed by the Multi-Unit Developer or Controlled Entity (if any) prior to the date of the termination of this Agreement, and will in all other respects continue to comply with such Franchise Agreements;

(c) the Franchisor will have the absolute right to develop Franchised Businesses in the Development Territory or to contract with other persons for the development of additional Franchised Businesses in the Development Territory;

(d) the Multi-Unit Developer will have no right to obtain a refund of any monies it paid to the Franchisor pursuant to this Agreement or the Franchise Agreements;

(e) the indemnities and covenants contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement; and

(f) the Multi-Unit Developer and the Franchisor will not have any rights or obligations with respect to the future Franchise Agreements required to be signed pursuant to the Development Schedule, but which were not executed prior to the termination of this Agreement by the Franchisor.

8.5 Notice of Termination. If this Agreement is terminated by the Franchisor pursuant to this **Sections 8.1** or **8.2,** then the Franchisor will give the Multi-Unit Developer written notice

that this Agreement is terminated and, in that event, the effective date of termination of this Agreement will be the day the written notice of termination is delivered to the Multi-Unit Developer in accordance with the notice provision set out in **Section 16.**

8.6 Other Remedies. Nothing in this **Section 8** will preclude the Franchisor from seeking other remedies or damages under any state or federal law, common law, or under this Agreement against the Multi-Unit Developer, its Owners, Operating Principal, Guarantors or any Controlled Entity including, but not limited to, attorneys' fees, and injunctive relief. If this Agreement is terminated by the Franchisor pursuant to this **Section 8**, or if the Multi-Unit Developer breaches or violates this Agreement by a wrongful termination of this Agreement, then the Franchisor will be entitled to seek recovery of all the damages that the Franchisor has sustained and will sustain in the future as a result of the Multi-Unit Developer's breach of this Agreement. The foregoing will not limit the Franchisor's rights under any Franchise Agreements between the Franchisor and the Multi-Unit Developer or any Controlled Entity.

8.7 Franchisor's Right to Acquire Existing Franchised Businesses. In addition to all of the other rights granted to Franchisor in this **Section 8** upon termination of this Agreement, Franchisor has the right to acquire from Multi-Unit Developer or any Controlled Entity, any Franchised Businesses currently open and operating in the Development Territory. The acquisition shall be made in accordance with the terms of the individual Franchise Agreement for each Franchised Business and the purchase price shall be calculated in accordance with the terms and procedures set forth in such Franchise Agreement.

## 9. OPTION OF THE FRANCHISOR TO PURCHASE

9.1 Notice. The Multi-Unit Developer will not Transfer or otherwise dispose of any interest in or any part of (a) the Multi-Unit Developer 's interest in this Agreement, including the right of the Multi-Unit Developer to develop Franchised Businesses in the Development Territory, or (b) any Ownership Interest in the Multi-Unit Developer (collectively, the "**Major Assets**") to any purchaser without first offering the same to the Franchisor in a written offer that contains the purchase price, payment terms, and all other material terms and conditions of the proposed transaction with the third party, including price and payment terms ("**Multi-Unit Developer 's Offer**"). The Franchisor will have 30 days after receipt of the Multi-Unit Developer's Offer to give the Multi-Unit Developer written notice of the Franchisor's desire to either waive its option to purchase ("**Waiver Notice**") or its intention to exercise its rights to purchase or acquire the Major Assets according to the terms contained in the Multi-Unit Developer's Offer ("**Notice of Intent to Purchase**").

9.2 Due Diligence Review. If the Franchisor provides the Multi-Unit Developer with a Notice of Intent to Purchase within 30 days after receipt of the Multi-Unit Developer's Offer, then the Franchisor will have 90 days after the date the Notice of Intent to Purchase is received by the Multi-Unit Developer ("**Notice Date**") to conduct a due diligence review. The Multi-Unit Developer will promptly provide the Franchisor with all Financial Records and other information requested by the Franchisor or its representatives to conduct its due diligence review. The Franchisor will have the absolute and unconditional right to terminate the Notice of Intent to Purchase and any obligation to purchase the Major Assets from the Multi-Unit Developer for any reason and at any time during the 90-day due diligence review period by giving the Multi-Unit Developer written notice.

9.3 Good Faith Negotiations. Unless the Franchisor terminates its Notice of Intent to Purchase as provided in **Section 9.2**, then the Multi-Unit Developer and the Franchisor will act in

good faith to agree on the terms and conditions of the definitive agreement or agreements for the purchase of the Major Assets (other than those objective terms and conditions contained in the Multi-Unit Developer's Offer) and the closing date for the sale of the Major Assets to the Franchisor will take place within 120 days after the Notice Date.

9.4 Sale to Purchaser. The Multi-Unit Developer will have the right to complete the transaction for the sale of the Major Assets to a purchaser according to the terms and conditions contained in the Multi-Unit Developer's Offer to the Franchisor, if (a) the Franchisor delivers a Waiver Notice to the Multi-Unit Developer, (b) the Franchisor fails to deliver either a Waiver Notice or the Notice of Intent to Purchase to the Multi-Unit Developer within 30 days after receiving the Multi-Unit Developer's Offer, (c) the Franchisor terminates its Notice of Intent to Purchase during the due diligence period pursuant to the provisions of **Section 9.2**, or (d) the Multi-Unit Developer and the Franchisor fail to agree on the terms and conditions for the definitive agreement or agreements for the purchase of the Major Assets by the Franchisor from the Multi-Unit Developer (other than those terms and conditions contained in the Multi-Unit Developer 's Offer) on or before the 120th day after the Notice Date.

9.5 Negotiated Changes with Purchaser. If the Franchisor does not purchase the Major Assets from the Multi-Unit Developer under the terms and conditions contained in the Multi-Unit Developer's Offer, then if during any negotiations with a purchaser the Multi-Unit Developer agrees to negotiate, change, delete, or modify any of the terms and conditions contained in the Multi-Unit Developer's Offer or the terms and conditions contained in the most recent version of the definitive agreement or agreements proposed by the Multi-Unit Developer during negotiations that were not acceptable to the Franchisor, then the Multi-Unit Developer will be required to re-offer to sell the Major Assets to the Franchisor under the new terms and conditions offered to the purchaser in accordance with the provisions of this Article, and the Multi-Unit Developer's failure to do so will be a material breach of this Agreement.

9.6 Compliance with Agreement. The Multi-Unit Developer's obligations under this Agreement will in no way be affected or changed because of non-acceptance by the Franchisor of the Multi-Unit Developer's Offer and, as a consequence, the terms and conditions of this Agreement will remain in full force and effect. The decision by the Franchisor not to exercise the option to purchase granted to it pursuant to this **Section 9** will not, in any way, be deemed to grant the Multi-Unit Developer the right to terminate this Agreement and will not affect the Term of this Agreement. Moreover, if the Franchisor does not exercise the option to purchase granted to it pursuant to this **Section 9.6** and if the Multi-Unit Developer sells or otherwise disposes of its Major Assets to a third party, then both the Multi-Unit Developer and the purchaser will be required to comply in all respects with the terms and conditions of **Section 7** of this Agreement. Any Transfer of the Multi-Unit Developer's Franchised Businesses that does not include a Transfer of this Agreement to the transferee will constitute a wrongful termination of this Agreement by the Multi-Unit Developer.

9.7 Transfer of Ownership Interest. The Ownership Interests owned by the Multi-Unit Developer or by the Owners of the Multi-Unit Developer may not be Transferred or otherwise disposed of by the Multi-Unit Developer or the Owners until the Ownership Interests have first been offered to the Franchisor in writing. If the Multi-Unit Developer or the Owners desire to Transfer their Ownership Interests, then they will first offer the Ownership Interests in the Multi-Unit Developer to the Franchisor in writing under the same terms and conditions as being offered to any party. The Franchisor will have 30 days within which to accept any offer to purchase the Owner's Ownership Interest in the Multi-Unit Developer. The Owner will be required to comply

with the provisions of **Section 7** if the Franchisor does not exercise its right to purchase the Owner's Ownership Interest.

9.8 Bankruptcy Issues. If the Multi-Unit Developer or any person or Entity holding any Ownership Interests (direct or indirect) in the Multi-Unit Developer becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any Transfer of the Multi-Unit Developer's obligations and/or rights hereunder, any material assets of the Multi-Unit Developer , or any indirect or direct interest in the Multi-Unit Developer will be subject to all of the provisions of this **Section 9**.

## 10. REPRESENTATIONS, WARRANTIES AND COVENANTS OF MULTI-UNIT DEVELOPER

10.1 Authority. If the Multi-Unit Developer is an Entity, then the Multi-Unit Developer and the Owners represent, warrant and covenant that the execution of this Agreement and the consummation of the transactions contemplated by this Agreement are within the powers granted to the Multi-Unit Developer by the Organizational Documents and have been duly authorized and approved by the Multi-Unit Developer or by the board of directors, managing partner or other governing body of the Multi-Unit Developer.

10.2 Working Capital. The Multi-Unit Developer will, at all times, maintain sufficient working capital to both operate the Franchised Businesses and to fulfill its development obligations under this Agreement.

10.3 Ownership. If any person or Entity ceases to be one of the Multi-Unit Developer's or Controlled Entity's Owners, or if any individual or Entity becomes an Owner of the Multi-Unit Developer or Controlled Entity, then the Multi-Unit Developer or Controlled Entity will notify the Franchisor in writing and within five days the Multi-Unit Developer or Controlled Entity will require the new Owner to execute all documents required by the Franchisor.

10.4 Continuing Obligation. The representations, warranties and covenants contained in this Article are continuing obligations of the Multi-Unit Developer and the Owners and that any failure to comply with such representations, warranties and covenants will constitute a material breach of this Agreement.

10.5 Compliance with Agreement. The Multi-Unit Developer and the Owners represent, warrant and covenant that they will comply with all requirements and will perform all obligations in accordance with the terms and conditions of this Agreement.

## 11. MULTI-UNIT DEVELOPER 'S COVENANTS NOT TO COMPETE

11.1 Obligation. The Multi-Unit Developer, Controlled Entity (if any) and their Owners acknowledge and agree that the confidentiality and in-term and post-term covenants not to complete set out in the Franchise Agreement are incorporated into this Agreement by reference. The Multi-Unit Developer and Controlled Entity, (if any) and their Owners further acknowledge that they are subject to the confidentiality and in-term and post-term non-compete covenants set out in the Franchise Agreement. The Multi-Unit Developer, Controlled Entity and their Owners will enter into the Non-Competition and Non-disclosure Agreement.

11.2 Effect on Other Agreements. The covenants not to compete set forth in this **Section 11** will apply and be enforced independently of any covenant not to compete set forth in any

other agreements between the Franchisor and the Multi-Unit Developer (or a Controlled Entity) and/or the Owners.

## 12. INDEPENDENT CONTRACTORS

Nothing in this Agreement is intended by the parties hereto to create a fiduciary relationship between them nor to constitute the Multi-Unit Developer or Controlled Entity (if any) as a subsidiary, joint venture, partner, agent or employee of the Franchisor for any purpose whatsoever. It is understood and agreed that the Multi-Unit Developer and Controlled Entity (if any) are an independent contractor and are in no way authorized to make any warranty or representation on behalf of the Franchisor, nor is the Multi-Unit Developer authorized to create any obligation or enter into any contract binding on the Franchisor.

## 13. INDEMNIFICATION

13.1 Scope The Franchisor and its Affiliates and their respective employees, Executive Management, Owners, directors, officers, attorneys, accountants and agents (individually and collectively, the "**Franchisor Indemnified Parties**") will not be obligated to any person or Entity for any Damages arising out of, from, in connection with, relating to, or as a result of the Multi-Unit Developer's and/or Controlled Entity's (if any) negligence, the Multi-Unit Developer's and/or Controlled Entity's (if any) wrongdoing, breach of this Agreement, or the operation of the and/or Controlled Entity's (if any) Franchised Businesses. Therefore, the Multi-Unit Developer and Controlled Entity's (if any) will indemnify and hold harmless the Franchisor Indemnified Parties against, and will reimburse the Franchisor Indemnified Parties for, all Damages that the Franchisor Indemnified Parties incur in the defense of or as a result of any Claim brought against the Franchisor Indemnified Parties arising from, in connection with, arising out of, relating to, or as a result of the Multi-Unit Developer's and/or Controlled Entity's (if any) negligence, wrongdoing, breach of this Agreement or the Multi-Unit Developer's and/or Controlled Entity's (if any) operation of their Franchised Businesses. The Multi-Unit Developer will indemnify the Franchisor Indemnified Parties, without limitation, for all Damages arising from, out of, in connection with, relating to, or as a result of any and all Claims, including, but not limited to:

(a) any personal injury, property damage, commercial loss or environmental contamination resulting from any act or omission of the Multi-Unit Developer and/or Controlled Entity (if any) or their, employees, agents or representatives.

(b) any failure on the part of the Multi-Unit Developer and/or Controlled Entity (if any) to comply with any requirement of any federal or state laws or any rules or regulations of any Governmental Authority;

(c) any failure of the Multi-Unit Developer and/or Controlled Entity (if any) to pay any of its obligations to any person or entity;

(d) any failure of the Multi-Unit Developer and/or Controlled Entity (if any) to comply with any requirement or condition of this Agreement, the Manual, any Franchise Agreement or any other agreement with the Franchisor and/or the Franchisor Indemnified Parties;

(e) any misfeasance or malfeasance by the Multi-Unit Developer and/or Controlled Entity (if any) or their Executive Management, employees, agents or representatives;

(f) any tort committed by the Multi-Unit Developer and/or Controlled Entity (if any) or their Executive Management, employees, agents or representatives;

(g) any determination by a court or agency that the Franchisor is the employer or a joint employer of any of Multi-Unit Developer and/or Controlled Entity's (if any) employees;

(h) any claim, action, suit, or proceeding by Franchisee's employees, including but not limited to workers compensation, unemployment, and wage-and-hour claims; and

(i) any other Claims brought against any of the Franchisor Indemnified Parties.

13.2 Franchisor's Gross Negligence and Intentional Misconduct. Neither the Multi-Unit Developer nor the Controlled Entity (if any) will be obligated to indemnify the Franchisor Indemnified Parties for any Damages attributable to, arising out of, from, in connection with, or as a result of any gross negligence or intentional misconduct by the Franchisor Indemnified Parties.

13.3 Payment of Costs and Expenses. The Multi-Unit Developer and/or the Controlled Entity (if any) will pay all reasonable attorneys' fees, costs and expenses incurred by the Franchisor Indemnified Parties to defend any action brought by a third party against any of the Franchisor Indemnified Parties as set forth in **Section 13.1**.

13.4 Survival. These indemnification provisions under this **Section 13** and the other obligations contained in this Agreement will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

## 14. DISPUTE RESOLUTION.

14.1 Choice of Law. This Agreement is effective upon its acceptance in Alabama by our authorized officer. Except to the extent this Agreement or any particular dispute is governed by the U.S. Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 and the sections following it) or other federal law, Alabama law governs all claims that in any way relate to or arise out of this Agreement or any of the dealings of the parties ("Claims"). However, no laws regulating the sale of franchises or governing the relationship between franchisor and franchisee shall apply unless the jurisdictional requirements of such laws are met independently of this paragraph. References to any law or regulation also refer to any successor laws or regulations and any implementing regulations for any statute, as in effect at the relevant time. References to a governmental agency also refer to any successor regulatory body that succeeds to the function of such agency.

14.2 Jurisdiction and Venue. Multi-Unit Developer and/or the Controlled Entity and Franchisor each consent and irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts of competent jurisdiction for Mobile County, Alabama, for any Claims, except those required to be submitted to arbitration, and waive any objection to the jurisdiction and venue of such courts. This exclusive choice of jurisdiction and venue provision does not restrict the ability of the parties to confirm or enforce judgments or awards in any appropriate jurisdiction.

14.3 Jury Waiver. **IN ANY TRIAL BETWEEN ANY OF THE PARTIES AS TO ANY CLAIMS, MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY AND FRANCHISOR AGREE TO WAIVE OUR RIGHTS TO A JURY TRIAL AND INSTEAD HAVE SUCH ACTION TRIED BY A JUDGE.**

14.4 Class Action Waiver. **MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY AGREE TO BRING ANY CLAIMS, IF AT ALL, INDIVIDUALLY AND MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY SHALL NOT JOIN SUCH CLAIM WITH CLAIMS OF ANY OTHER PERSON**

**OR ENTITY NOR SHALL MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY BRING, JOIN OR PARTICIPATE IN A CLASS OR COLLECTIVE ACTION AGAINST FRANCHISOR WITH OTHER FRANCHISEES OR OTHER PERSONS OR ENTITIES.**

14.5 Limitation of Damages. **MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT OR CLAIM FOR ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE FRANCHISOR AND AGREES THAT IF THERE IS A DISPUTE, FRANCHISEE WILL BE LIMITED TO THE RECOVERY OF ACTUAL DAMAGES SUSTAINED BY IT INCLUDING REASONABLE ACCOUNTING AND LEGAL FEES AS PROVIDED IN SECTION 14.15. FRANCHISEE WAIVES AND DISCLAIMS ANY RIGHT TO CONSEQUENTIAL DAMAGES IN ANY ACTION OR CLAIM AGAINST FRANCHISOR CONCERNING THIS AGREEMENT OR ANY RELATED AGREEMENT. IN ANY CLAIM OR ACTION BROUGHT BY FRANCHISEE AGAINST FRANCHISOR CONCERNING THIS AGREEMENT, FRANCHISEE'S CONTRACT DAMAGES SHALL NOT EXCEED AND SHALL BE LIMITED TO REFUND OF FRANCHISEE'S INITIAL FRANCHISE FEE AND ROYALTY FEES. OUR LIABILITY TO MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE GREATER OF (i) $100,000.00 OR (ii) ALL AMOUNTS PAID TO FRANCHISOR FOR THE INITIAL FRANCHISE FEE AND ROYALTY FEES UNDER THIS AGREEMENT FOR UP TO THREE YEARS PRECEDING THE DATE OF ANY AWARD HEREIN, WHICHEVER IS LESS. FRANCHISOR MAY ALSO REPURCHASE MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY OR EQUIPMENT, PURCHASED FROM OR THROUGH FRANCHISOR, AT DEPRECIATED VALUE USING THE FIVE-YEAR, STRAIGHT-LINE METHOD OF CALCULATION AS MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY OR SOLE MEASURE OF DAMAGES.**

14.6 Limitation of Actions. **FRANCHISEE AGREES TO BRING ANY CLAIMS AGAINST FRANCHISOR, IF AT ALL, WITHIN ONE YEAR OF THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIMS OR ONE YEAR FROM THE DATE ON WHICH MULTI-UNIT DEVELOPER AND/OR THE CONTROLLED ENTITY OR FRANCHISOR KNEW OR SHOULD HAVE KNOWN, IN THE EXERCISE OF REASONABLE DILIGENCE, OF THE FACTS GIVING RISE TO SUCH CLAIMS, WHICHEVER OCCURS FIRST, AND THAT ANY ACTION NOT BROUGHT WITHIN THIS PERIOD SHALL BE BARRED AS A CLAIM, COUNTERCLAIM, DEFENSE, OR SET-OFF EXCEPT FOR CLAIMS FOR: (A) INDEMNIFICATION; OR (B) UNAUTHORIZED USE OF THE CONFIDENTIAL INFORMATION OR MARKS. HOWEVER, THIS PROVISION DOES NOT LIMIT OUR RIGHT TO TERMINATE THIS AGREEMENT IN ANY WAY.**

14.7 Prior Notice of Claims. As a condition precedent to commencing an action for a Claim, Multi-Unit Developer and/or the Controlled Entity must notify Franchisor within 30 days after the occurrence of the violation or breach, and failure to timely give such notice shall preclude any claim for damages and serve as a condition precedent to filing an arbitration against Franchisor.

14.8 Internal Dispute Resolution. As a mandatory condition precedent prior to Multi-Unit Developer and/or the Controlled Entity taking any legal or other action against Franchisor, or our owners, officer and directors, whether for damages, injunctive, equitable or other relief

(including, but not limited to, rescission), based upon any alleged act or omission of ours, Multi-Unit Developer and/or the Controlled Entity shall first give Franchisor 90 days prior written notice and opportunity to cure such alleged act or omission, or to resolve such matter.

14.9 Mediation and Arbitration.

(a) Mediation. Subject to Section 14.16 the parties agree to submit any claim, controversy or dispute between or involving Franchisor or any of our affiliates (and our and their respective shareholders, officers, directors, agents, representatives and/or employees) and Multi-Unit Developer and/or the Controlled Entity (and your agents, representatives and/or employees, as applicable) arising out of or related to: (a) this Agreement or any other agreement between Franchisor and Multi-Unit Developer and/or the Controlled Entity or our and your respective affiliates; (b) our relationship with Multi-Unit Developer and/or the Controlled Entity ; (c) the validity of this Agreement or any other agreement between Multi-Unit Developer and/or the Controlled Entity and Franchisor or our and your respective affiliates; or (d) any System standard, to non-binding mediation at a place that Franchisor designate within 25 miles of where our principal office is located at the time of the demand for mediation is made in Mobile County, Alabama. The mediation shall be conducted by either a mutually agreed-upon mediator or, failing such agreement within a reasonable period of time (not to exceed 15 days) after either party has notified the other of its desire to seek mediation, by the American Arbitration Association in accordance with its Commercial Mediation Procedures. Absent agreement to the contrary, the mediator shall be experienced in the mediation of disputes between franchisors and franchisees. Multi-Unit Developer and/or the Controlled Entity and Franchisor agree that any statements made by either Multi-Unit Developer and/or the Controlled Entity or Franchisor in any such mediation proceeding will not be admissible in any subsequent arbitration or legal proceeding or otherwise disclosed by either Multi-Unit Developer and/or the Controlled Entity or Franchisor to any third party who, except to the extent a third party is a participant in the mediation proceeding. Each party will bear its own costs and expenses of conducting the mediation and share equally the costs of any third parties who are required to participate. However, the parties must immediately and contemporaneously submit the dispute for non-binding mediation. If the parties are unable to resolve the claim, controversy or dispute within 90 days after the mediator has been chosen, then, unless such time period is extended by the written agreement of the parties, either party may bring a legal proceeding under this Section. The mediation provisions of this Agreement are intended to benefit and bind certain third-party non-signatories, and all of your and our owners and affiliates. Any mediation proceeding conducted pursuant to this sub-section and any settlement or agreement arising therefrom shall be kept confidential between the parties, except for any settlement disclosure Franchisor are legally required to make within a franchise disclosure document. The parties intend for any mediation proceeding to be both private and confidential. Any third parties who are required to participate in a mediation proceeding must be bound by the same confidentiality obligations as the parties.

(b) Arbitration. SUBJECT TO SECTION 14.16 ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, IF NOT RESOLVED BY THE INTERNAL DISPUTE RESOLUTION AND MEDIATION PROCEDURES DESCRIBED ABOVE, MUST BE DETERMINED BY ARBITRATION IN DU PAGE COUNTY, ALABAMA, OR WHERE OUR PRINCIPAL OFFICES ARE LOCATED AT THE TIME THE DEMAND FOR ARBITRATION IS FILED BY THE AMERICAN ARBITRATION ASSOCIATION (“AAA”). THIS ARBITRATION CLAUSE WILL NOT DEPRIVE FRANCHISOR OF ANY RIGHT FRANCHISOR MAY OTHERWISE HAVE TO SEEK INJUNCTIVE RELIEF FROM A COURT OF COMPETENT JURISDICTION. THE ALABAMA-BASED ARBITRATOR MUST HAVE SUBSTANTIAL EXPERIENCE IN FRANCHISE LAW AND WITH COMMERCIAL

DISPUTES. THE PARTIES AGREE THEY WILL ASK THAT THE ARBITRATOR LIMIT DISCOVERY TO THE GREATEST EXTENT POSSIBLE CONSISTENT WITH BASIC FAIRNESS IN ORDER TO MINIMIZE THE TIME AND EXPENSE OF ARBITRATION. IF PROPER NOTICE OF ANY HEARING HAS BEEN GIVEN, THE ARBITRATOR WILL HAVE FULL POWER TO PROCEED TO TAKE EVIDENCE OR TO PERFORM ANY OTHER ACTS NECESSARY TO ARBITRATE THE MATTER IN THE ABSENCE OF ANY PARTY WHO FAILS TO APPEAR. BOTH PARTIES WAIVE ANY RIGHTS THEY MAY HAVE TO DEMAND TRIAL BY JURY OR TO SEEK PUNITIVE DAMAGES FROM ONE ANOTHER. THE ARBITRATOR WILL HAVE NO POWER TO: (A) STAY THE EFFECTIVENESS OF ANY PENDING TERMINATION OF FRANCHISE; (B) ASSESS PUNITIVE DAMAGES AGAINST EITHER PARTY; OR (C) MAKE ANY AWARD THAT MODIFIES OR SUSPENDS ANY LAWFUL PROVISION OF THIS AGREEMENT. THE PARTY AGAINST WHOM THE ARBITRATORS RENDER A DECISION MUST PAY ALL EXPENSES OF ARBITRATION. ANY COURT OF COMPETENT JURISDICTION MAY ENTER JUDGMENT UPON ANY AWARD. THE PARTIES AGREE AND INTEND THAT AN ARBITRATION WILL BE KEPT BOTH PRIVATE AND CONFIDENTIAL BETWEEN THEM. AT THE OUTSET OF ANY ARBITRATION, THE PARTIES WILL SEEK THE ENTRY OF A PROTECTIVE ORDER FROM THE ARBITRATOR, PROTECTING ALL PLEADINGS, MOTIONS, EXHIBITS, DEPOSITION TRANSCRIPTS, DISCOVERY REQUESTS AND RESPONSES, DOCUMENTS, AWARDS, ORDERS, DECISIONS AND REPORTS FROM DISCLOSURE BY THE PARTIES, THE ARBITRATOR, AND ANY NON-PARTY WITNESSES OR OTHER PARTICIPANTS. ADDITIONALLY, ANY FINAL AWARD SHALL REITERATE SUCH ORDER OF PROTECTION, EXCEPT FOR THE TERMS OF AN AWARD WHICH FRANCHISOR ARE LEGALLY REQUIRED TO DISCLOSE IN A FRANCHISE DISCLOSURE DOCUMENT, OR DISCLOSURES IN CONNECTION WITH JUDICIAL PROCEEDINGS ANCILLARY TO THE ARBITRATION, SUCH AS A JUDICIAL CHALLENGE TO, OR ENFORCEMENT OF, AN AWARD, AND UNLESS OTHERWISE REQUIRED BY LAW.

14.10 Waiver of Bond. Multi-Unit Developer and/or the Controlled Entity agree that if Franchisor are forced to bring suit to enforce any provision of this Agreement, Multi-Unit Developer and/or the Controlled Entity agree to waive any requirement that Franchisor post bond to obtain a temporary, preliminary, or permanent injunction to enforce these duties.

14.11 Arbitration Fees. If Franchisor are the substantially prevailing party in arbitration, Multi-Unit Developer and/or the Controlled Entity agree to reimburse our costs and attorney fees, as well as the arbitration costs and fees, incurred in pursuing or defending the claims against Multi-Unit Developer and/or the Controlled Entity or Franchisor including all mediation and investigation costs and expenses. In any arbitration filed by Multi-Unit Developer and/or the Controlled Entity where Franchisor have no substantive counterclaim against Multi-Unit Developer and/or the Controlled Entity, Multi-Unit Developer and/or the Controlled Entity are required to advance and pay all fees to the AAA and the arbitrator.

14.12 Third Party Beneficiaries. Our officers, directors, members, shareholders, agents, and employees are express third party beneficiaries of the terms of the dispute resolution provisions contained herein.

14.13 Release of Prior Claims. By executing this Agreement, Franchisee, individually and on behalf of your heirs, legal representatives, successors and assigns, and each assignee of this Agreement by accepting assignment of the same, forever releases and discharges Franchisor and our officers, directors, employees, agents and servants, including our subsidiary and affiliated corporations, their respective officers, directors, employees, agents and servants, from any and all

claims relating to or arising under this Agreement or any other agreement between the parties executed prior to the date of this Agreement including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, securities or antitrust laws of the United States or of any state or territory thereof.

14.14 Confidentiality. All negotiations and mediation proceedings (including all statements and settlement offers made by either party or the mediator in connection with the negotiation and mediation) will be strictly confidential, will be considered as compromise and settlement negotiations for purposes of applicable rules of evidence, and will not be admissible or otherwise used in connection with any court or arbitration proceeding for any purpose.

14.15 Cost of Enforcement or Defense. Multi-Unit Developer and Controlled Entity agree to pay us all damages, costs and expenses (including without limitation reasonable attorneys' fees, arbitration fees, discovery costs, and all other related expenses) that Franchisor incurs after the termination or expiration of the franchise granted under this Agreement in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement; and/or (b) successfully defending a claim from Multi-Unit Developer and Controlled Entity that Franchisor misrepresented the terms of this Agreement, fraudulently induced Multi-Unit Developer and Controlled Entity to sign this Agreement, that the provisions of this Agreement are not fair, or not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship. If Franchisor are required to enforce or defend this Agreement or any claim arising out of the franchise relationship in a judicial or arbitration proceeding, Franchisor shall be entitled to reimbursement of its costs, including reasonable accounting and attorneys' fees, in connection with such proceeding if Franchisor prevail.

14.16 Disputes Not Subject to Mediation and Arbitration. The following disputes will not be subject to mediation or arbitration:

(a) use or ownership of the Marks, Confidential Information, or Trade Secrets;

(b) conduct which is alleged to otherwise infringe the intellectual property rights of Franchisor or any of its Affiliates;

(c) any alleged breach of the provisions of this Agreement relating to data security, Confidential Information, Trade Secrets and in-term and post-term covenants not to compete;

(d) any dispute regarding the Franchisee's obligations to indemnify the Franchisor and/or an Affiliate for any Claims or Damages under this Agreement;

(e) any injunctive actions commenced by either party pursuant to this Agreement or pursuant to any statutory or common law rights; and

(f) claims of non-payment by Franchisor against Multi-Unit Developer and/or the Controlled Entity under this Agreement.

14.17 Injunctive Relief. Notwithstanding anything contained in **Section 14.9** to the contrary, Multi-Unit Developer and Controlled Entity (if any) and Franchisor will be entitled, to the entry of a temporary, preliminary, interim, interlocutory and permanent injunctive relief and orders of specific performance from a court of competent jurisdiction, without posting bond, enforcing the provisions of this Agreement or any other related agreement pertaining to use of the System, Confidential Information, Trade Secrets, Website, Marks, post termination obligations set

out in this Agreement, and any Transfers by Multi-Unit Developer and Controlled Entity (if any). If either party secures any such injunction or order of specific performance, the non-securing party agrees to pay to the securing party its costs and attorneys' fees described in **Section 14.15** and damages that may be permitted under this Agreement. The non-securing party's sole remedy in the event of the entry of such injunctive relief will be the dissolution of such injunctive relief, if warranted, upon a hearing duly held (all claims for damages by reason of the wrongful issuance of such injunction being expressly waived hereby).

14.18 Survival. The provisions of this **Section 14** are intended to benefit and bind certain third-party non-signatories. The provisions of this **Section 14** will continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

14.19 Severability. If a court of competent jurisdiction decides the requirement to mediate or arbitrate a dispute is unenforceable because applicable law does not permit the type of claim involved to be resolved by arbitration, or because this Agreement limits a party's rights or remedies in a manner applicable law does not permit, or for any other reasons, then the arbitration clause shall not be void. Only those portions of the arbitration clause with respect to such claim or claims as are necessary to comply with applicable law will be invalid and considered severable, but the remainder will be enforced.

## 15. ENFORCEMENT

15.1 Effect of Wrongful Termination. If either the Franchisor or the Multi-Unit Developer takes any action to terminate this Agreement except as provided for under the terms of this Agreement, then:

(a) such actions will not relieve either party of, or release either party from, any of its obligations under this Agreement;

(b) the terms and conditions of this Agreement will remain in full force and effect; and

(c) the parties will be obligated to fully perform all terms and conditions of this Agreement until such time as this Agreement expires or is terminated in accordance with the provisions of this Agreement and applicable law.

15.2 Severability. All provisions of this Agreement are severable. Should any provision of this Agreement be for any reason held invalid, illegal or unenforceable, such provision will be deemed restricted in application to the extent required to render it valid, and the remainder of this Agreement will in no way be affected and will 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 **Section 15.2** will 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 effectuate fully the provisions hereof. If any applicable law or rule of any jurisdiction requires a greater prior notice of the termination of this Agreement than is required hereunder or the taking of some other action not required hereunder, or if under any applicable law or rule of any jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by the Franchisor is invalid or unenforceable under applicable law, then the prior notice or other action required by such law or rule will be substituted

for the notice requirements hereof, or such invalid or unenforceable provision, specification, standard or operating procedure will be modified to the extent required to be valid and enforceable.

15.3 Waiver. The Franchisor and the Multi-Unit Developer may, by written instrument signed by the Franchisor and the Multi-Unit Developer, waive any obligation of or restriction upon the other under this Agreement. Acceptance by the Franchisor of any payment by the Multi-Unit Developer and the failure, refusal or neglect of the Franchisor to exercise any right under this Agreement or to insist upon full compliance by the Multi-Unit Developer of its obligations hereunder will not constitute a waiver by the Franchisor of any provision of this Agreement. The Franchisor will have the right to waive obligations or restrictions for other Multi-Unit Developer's under their development agreements without waiving those obligations or restrictions for the Multi-Unit Developer and, except to the extent provided by law, the Franchisor will have the right to negotiate terms and conditions, grant concessions and waive obligations for other Multi-Unit Developer's without granting those same rights to the Multi-Unit Developer and without incurring any liability to the Multi-Unit Developer whatsoever.

15.4 No Oral Modification. No modification, change, addition, rescission, release, amendment or waiver of this Agreement and no approval, consent or authorization required by any provision of this Agreement may be made by any person except by a written agreement signed by a duly authorized officer or partner of the Multi-Unit Developer and a duly authorized officer of Franchisor.

15.5 Entire Agreement. This Agreement and the Franchise Agreement(s) supersede and terminates all prior agreements, either oral or in writing, between the parties involving the franchise relationship and therefore, representations, inducements, promises or agreements alleged by either the Franchisor or the Multi-Unit Developer that are not contained in this Agreement and the Franchise Agreement(s) will not be enforceable. The Introduction is part of this Agreement. The Agreement and Franchise Agreement which constitutes the entire agreement of the parties, and there are no other oral or written understandings or agreements between the Franchisor and the Multi-Unit Developer relating to the subject matter of this Agreement and the Franchise Agreement. This Agreement will not supersede any written agreements or contracts that are signed concurrently with this Agreement. In addition, any Franchise Agreement(s) will remain in full force and effect in accordance with the terms and conditions thereof and will not be superseded by this Agreement. The parties hereby acknowledge that this provision will not act as a disclaimer of the representations made by the Franchisor in the Franchise Disclosure Document provided to the Multi-Unit Developer prior to the execution of this Agreement by the Multi-Unit Developer.

15.6 Headings; Terms. The headings of the Articles are for convenience only and do not in any way define, limit or construe the contents of such Sections. The term "**Multi-Unit Developer"** as used herein is applicable to one or more individuals or an Entity, as the case may be, and the singular usage includes the plural, the masculine usage includes the neuter and the feminine, and the neuter usage includes the masculine and the feminine. References to "**Multi-Unit Developer"** and "**Transferee**" which are applicable to an individual or individuals will mean the Owner or Owners of the equity or operating control of the Multi-Unit Developer or any such assignee or transferee if the Multi-Unit Developer or such assignee or transferee is an Entity.

15.7 Franchisor's Reasonable Business Judgment. Whenever the Franchisor reserves discretion in a particular area or where Franchisor agrees to exercise its rights reasonably or in good faith, Franchisor will satisfy its obligations whenever it exercises reasonable business judgment ("**Reasonable Business Judgment**") in making a decision or exercising a right. The Franchisor's decisions or actions will be deemed to be the result of Reasonable Business Judgment, even if other

reasonable or even arguably preferable alternatives are available, if the Franchisor's decisions or actions are intended, in whole or significant part, to promote or benefit the System generally even if the decision or action also promotes the Franchisor's financial or other individual interests. Examples of items that will promote or benefit the System include, without limitation, enhancing the value of the Marks, improving customer service and satisfaction, improving product quality, improving uniformity, enhancing or encouraging modernization and improving the competitive position of the System.

15.8 Miscellaneous. The rights of the Franchisor hereunder are cumulative and no exercise or enforcement by the Franchisor of any right or remedy hereunder will preclude the exercise or enforcement by the Franchisor of any other right or remedy hereunder or which the Franchisor is entitled by law to enforce. This Agreement is binding upon the parties hereto and their executors, administrators, heirs, assigns and successors in interest. If the Multi-Unit Developer consists of more than one person or Entity, their liability under this Agreement will be deemed to be joint and several.

## 16. NOTICES

All notices required or permitted under this Agreement must be in writing and made by personal service or sent by prepaid certified mail to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

| | |
|---|---|
| Notices to Franchisor: | Frios Franchising Company, LLC<br>Attn.: Cliff Kennedy, CEO<br>1201 West I-65 Service Road North<br>Mobile, AL 36618 |
| With a copy to: | Charles Internicola, Esq.<br>The Internicola Law Firm<br>115 Maple Avenue<br>Red Bank, NJ 07701 |
| With a copy via email to: | ag@businessandfranchiselaw.com |

Notices to Multi-Unit Developer: to the address indicated on the signature page of this Agreement.

For the purposes of this Agreement, personal service will include service by a recognized overnight delivery service (such as Federal Express, Airborne Express or UPS) which requires a written confirmation of delivery to the addressee. Any notice delivered in the manner specified herein will be deemed delivered and received, regardless of whether the recipient refuses or fails to sign for the notice, if addressed to the recipient at the address set forth above or the last designated or last known address of the recipient, and will be deemed effective upon written confirmation of delivery to the recipient or three business days after being mailed, whichever is applicable.

## 17. ACKNOWLEDGMENTS; DISCLAIMER

17.1 Disclaimer. The Franchisor does not warrant or guarantee that the Multi-Unit Developer or any Controlled Entity will derive income or profit from its Franchised Businesses, or that the Franchisor will refund all or part of the Development Fee paid by the Multi-Unit Developer. The Franchisor expressly disclaims the making of any express or implied representations or warranties regarding the sales, earnings, income, profits, Revenues, economics, business or

financial success, or value of the Multi-Unit Developer's or any Controlled Entity's Franchised Businesses except as specifically contained in the Franchise Disclosure Document received by the Multi-Unit Developer or any Controlled Entity.

17.2 Acknowledgments by Multi-Unit Developer. The Multi-Unit Developer and or any Controlled Entity acknowledge that they have conducted an independent investigation of the Franchised Businesses and recognize that the business venture contemplated by this Agreement and the operation of the Franchised Businesses involve business and economic risks. The Multi-Unit Developer and Controlled Entity, if any, acknowledge that the financial, business and economic success of the Multi-Unit Developer's or Controlled Entity's Franchised Businesses will be primarily dependent upon the personal efforts of the Multi-Unit Developer, its management and employees, and on economic conditions in the area where the Multi-Unit Developer's and/or Controlled Entity's Franchised Businesses are located and economic conditions in general. The Multi-Unit Developer and Controlled Entity acknowledge and agree that the officers, directors, employees, and agents of the Franchisor act only in a representative capacity and not in an individual capacity, and that no other persons and/or Entities other than the Franchisor has or will have any duties or obligations to the Multi-Unit Developer or any Controlled Entity under this Agreement. The Multi-Unit Developer and Controlled Entity acknowledge that, it has not received any estimates, projections, representations, warranties or guaranties, expressed or implied, regarding potential sales, revenues, income, profits, earnings, expenses, financial or business success, value of the Franchised Businesses, or other economic matters pertaining to the Multi-Unit Developer's or Controlled Entity's Franchised Businesses from the Franchisor or any of its agents that were not expressly set forth in the Franchise Disclosure Document received by the Multi-Unit Developer and Controlled Entity (if any) from the Franchisor ("**Representations**"). The Multi-Unit Developer and Controlled Entity further acknowledges that if it had received any such Representations, it would not have executed this Agreement, promptly notified the Executive Management of the Franchisor in writing of the person or persons making such Representations and provided to the Franchisor a specific written statement detailing the Representations made.

17.3 Other Multi-Unit Developers. The Multi-Unit Developer acknowledges that other Franchised Multi-Unit Developers have or will be granted development agreements at different times, for different areas, under different economic conditions and in different situations, and further acknowledges that the economics, terms and conditions of such other development agreements may vary substantially in form and in substance from those contained in this Agreement.

17.4 Receipt of Agreement and Franchise Disclosure Document. The Multi-Unit Developer and acknowledges that it received a copy of this Agreement with all material blanks fully completed at least seven calendar days prior to the date that this Agreement was executed by the Multi-Unit Developer. The Multi-Unit Developer further acknowledges that it received a copy of the Franchisor's Franchise Disclosure Document at least 14 calendar days prior to the date on which this Agreement was executed. The Multi-Unit Developer confirms receiving the Franchise Disclosure Document on the date the Multi-Unit Developer signed the acknowledgment of receipt page ("**Receipt Page**") attached to the Franchise Disclosure Document. The Multi-Unit Developer and the Franchisor each acknowledge receiving a signed and dated copy of the Receipt Page.

17.5 Franchisor's Consent. Except where expressly provided to the contrary, any consent, approval, authorization, clearance, exemption, waiver, or similar affirmation required from or by the Franchisor under the terms of this Agreement will be granted or withheld by the Franchisor in its reasonable discretion.

## 18. MULTI-UNIT DEVELOPER 'S LEGAL COUNSEL

The Multi-Unit Developer acknowledges that this Agreement constitutes a legal document which grants certain rights to and imposes certain obligations upon the Multi-Unit Developer. The Multi-Unit Developer has been advised by the Franchisor to retain an attorney or advisor prior to the execution of this Agreement to review the Frios Franchising Company, LLC Franchise Disclosure Document, to review this Agreement in detail, to review all legal documents, to review the economics, operations and other business aspects of the Franchised Businesses, to determine compliance with franchising and other applicable laws, to advise the Multi-Unit Developer on economic risks, liabilities, obligations and rights under this Agreement and to advise the Multi-Unit Developer on tax issues, financing matters, applicable state and federal laws, health and safety laws, environmental laws, employee issues, insurance, structure of the operation of a franchise specializing in the sale of frozen desserts business, and other legal and business matters. The name and telephone number of the Multi-Unit Developer 's attorney or other advisor will be included in **Attachment A** to this Agreement.

## 19. GOVERNING LAW; STATE MODIFICATIONS

19.1 Governing Law; Severability. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. §1051 et seq.), this Agreement and the relationship between the Franchisor and the Multi-Unit Developer will be governed by the laws of the State of Alabama, unless applicable state law specifically provides to the contrary; and further provided that the parties expressly agrees that this Agreement is not intended to confer on any Franchisee that is not operating a Franchised Business in, or a resident of, the State of Alabama the benefit of the Alabama franchise law or any other Alabama law providing specific protection to franchisees residing in or operating in the State of Alabama. The provisions of this Agreement which conflict with or are inconsistent with applicable governing law will be superseded and/or modified by such applicable law only to the extent such provisions are inconsistent. All other provisions of this Agreement will be enforceable as originally made and entered into upon the execution of this Agreement by the Multi-Unit Developer and the Franchisor.

19.2 Applicable State Laws. If applicable, various states have statutes and regulations which may supersede the provisions of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Franchisor, the Multi-Unit Developer and the Multi-Unit Developer 's Owners have respectively signed this Agreement effective as of the date set forth above.

**Franchisor:**
FRIOS FRANCHISING COMPANY, LLC

By: _____
Signature

_____
Name and Title (please print)

_____
Dated

**Multi-Unit Developer:**

_____
Signature

_____
Name (please print)

_____
Dated

_____
Signature

_____
Name (please print)

_____
Dated

**ATTACHMENT A**
**DEVELOPMENT TERRITORY, DEVELOPMENT FEE AND DEVELOPMENT SCHEDULE**

A. TERRITORY: In accordance with **Section 2.1** the Development Territory within which the rights and privileges granted to the Multi-Unit Developer pursuant to this Agreement may be exercised is the geographic area described and delineated as follows:

| |
|---|
| |

B. NUMBER OF FRANCHISED BUSINESSES. The Multi-Unit Developer agrees to open and operate _____ Franchised Businesses in accordance with the Development Schedule.

C. DEVELOPMENT FEE: In accordance with **Section 4.1**, the Multi-Unit Developer will pay the Franchisor a Development Fee in the amount of _____ on the Effective Date of this Agreement.

D. DEVELOPMENT SCHEDULE: In accordance with **Section 5**, the Multi-Unit Developer agrees to the following Development Schedule:

| Development Period | Franchised Business Number | Franchise Agreement Execution | "Required Opening Date" by Which Franchised Business Must be Opened and Continuously Operating in Development Territory | Cumulative Number of Franchised Businesses Required to be Open and Continuously Operating in Territory as of Last Day of the Development Period |
|---|---|---|---|---|
| **First Development Period** | | | | |
| **Second Development Period** | | | | |
| **Third Development Period** | | | | |
| | | | | |

| Development Period | Franchised Business Number | Franchise Agreement Execution | "Required Opening Date" by Which Franchised Business Must be Opened and Continuously Operating in Development Territory | Cumulative Number of Franchised Businesses Required to be Open and Continuously Operating in Territory as of Last Day of the Development Period |
|---|---|---|---|---|
| **Fourth Development Period** | | | | |

Development of Franchised Businesses during the Term of the Agreement are cumulative. Therefore, if the Franchisee meets its total development goal prior to the end of the Development Period, the Franchisee's development goal will be satisfied for that Development Period. Franchised Businesses located in the Development Area existing as of the Effective Date do not count toward fulfillment of the Franchisee's cumulative development goal.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this **Attachment A** on the day and year first above written.

**Franchisor:**
FRIOS FRANCHISING COMPANY, LLC

By: _____
Signature

_____
Name and Title (please print)

_____
Dated

**Multi-Unit Developer:**

_____
Signature

_____
Name (please print)

_____
Dated

_____
Signature

_____
Name (please print)

_____
Dated

**EXHIBIT D TO THE FRANCHISE DISCLOSURE DOCUMENT**

**OPERATIONS MANUAL TABLE OF CONTENTS**

## OPERATIONS MANUAL TABLE OF CONTENTS

### Table of Contents


**Section 1: Culture & Guidelines**

- Introduction and History
- Mission and Core Values
- Brand Standards & Guidelines
- Culture & Happiness Hustler Standards
    - Culture and Happiness Hustler Standards
    - Selecting & Managing Happiness Hustlers
    - Happiness Hustler Code of Conduct
    - The Frios Look
    - Job Description
    - Job Posting Example
    - What Your Employees Expect of You
- Marketing
- Social Media Guidelines and Policies

**Section 2: Training**

- "Sweet Ride" Ops Guide
- Nelson Cart
- Wholesale
- Tablet/Square
- Event/Catering Order Form
- Guest Experience
    - Driving the Guest Experience
    - HEARD
- The hustle!
    - Giving Back in Your Community
    - Partnerships and Relational Sales
    - Fundraisers and Non-Profit Events
    - Booking Events
    - Networking
- Pops
    - Integrity/Best Practices
    - Stabilizer
    - Inventory Management & PAR Levels
    - Ordering & Receiving
    - Temperature Log Tracking
    - Pop Variances
    - Returning Pops/Pop Credit
        - Frios Claim Form
- Financial Responsibility
    - QuickBooks
    - P&L's
    - Accuracy of Billing and Account Information
    - Delinquent Account Process

**Section 3: Technical Details**

- Legal

    - Human Resources
    - Trademark Usage
- Required, Approved, and Suggested Vendors
- Permitting and Licensing
- Additional Insurance
- Pricing
- Flavors and Nutrition
- BIG STORE
- Merch
- Management Team and Franchise Contacts

Total pages: 52

**EXHIBIT E TO THE DISCLOSURE DOCUMENT**

**FINANCIAL STATEMENTS**

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

# Frios Franchising

## Balance Sheet

As of June 30, 2023

| | TOTAL |
|---|---|
| ASSETS | |
| Current Assets | |
| Bank Accounts | |
| 1101000 Checking - ServiceFirst | 1,030.57 |
| **Total Bank Accounts** | **$1,030.57** |
| Accounts Receivable | |
| 1101100 Accounts Receivable (A/R) | 9,940.00 |
| **Total Accounts Receivable** | **$9,940.00** |
| Other Current Assets | |
| 1101050 Undeposited Funds | 1,575.00 |
| 1101101 Credit Card Receivables | 4,520.00 |
| 1107020 Due from FGP Holdings LLC | 46,040.00 |
| 1107030 Due from FGP Manufacturing LLC | 386,712.94 |
| 1107040 Due from Gulf Coast Treats | -53,854.69 |
| **Total Other Current Assets** | **$384,993.25** |
| **Total Current Assets** | **$395,963.82** |
| Other Assets | |
| 1106000 Goodwill and intangibles | 500,000.00 |
| 1106901 Accumulated Amortization- Goodwill | -100,000.00 |
| **Total Other Assets** | **$400,000.00** |
| **TOTAL ASSETS** | **$795,963.82** |
| LIABILITIES AND EQUITY | |
| Liabilities | |
| Current Liabilities | |
| Accounts Payable | |
| 2101000 Accounts Payable (A/P) | 50,509.81 |
| **Total Accounts Payable** | **$50,509.81** |
| Credit Cards | |
| 2101101 Capital One -7762 | 54,654.56 |
| **Total Credit Cards** | **$54,654.56** |
| Other Current Liabilities | |
| 2103000 Deferred Revenue- Current | 133,923.46 |
| **Total Other Current Liabilities** | **$133,923.46** |
| **Total Current Liabilities** | **$239,087.83** |
| Long-Term Liabilities | |
| 2108000 Deferred Revenue | 590,020.00 |
| 2108020 Security Deposits | 15,000.00 |
| **Total Long-Term Liabilities** | **$605,020.00** |
| **Total Liabilities** | **$844,107.83** |

# Frios Franchising

## Balance Sheet

As of June 30, 2023

| | TOTAL |
|---|---|
| Equity | |
| 3100000 Member's Equity | 459,000.00 |
| 3101000 Retained Earnings | -394,702.22 |
| Net Income | -112,441.79 |
| **Total Equity** | **$ -48,144.01** |
| **TOTAL LIABILITIES AND EQUITY** | **$795,963.82** |

# Frios Franchising

## Profit and Loss

January - June, 2023

| | TOTAL |
|---|---|
| Income | |
| 4101000 Administration Fee Income | -820.00 |
| 4101001 Royalties Income | 140,661.55 |
| 4101002 Marketing Fee | 17,000.00 |
| 4101004 Franchising Fees Revenue | 71,996.77 |
| **Total Income** | **$228,838.32** |
| GROSS PROFIT | **$228,838.32** |
| Expenses | |
| 7101001 Advertising & Marketing | 6,942.64 |
| 7101008 Bank Charges & Fees | 2,030.20 |
| 7101015 Dues & Subscriptions | 6,195.30 |
| 7101030 Travel | 5,632.74 |
| 7101043 Other Business Expenses | |
| Management Fee to FGP | 48,500.00 |
| **Total 7101043 Other Business Expenses** | **48,500.00** |
| 7101044 QuickBooks Payments Fees | 5,376.64 |
| 7101053 Taxes & Licenses | 507.50 |
| 7101055 Uncategorized Expense | 0.00 |
| 7102000 Payroll Wage Expenses | 158,769.82 |
| 7102103 Consulting | 21,790.27 |
| 7102104 Legal & Professional Services | 5,500.00 |
| 7102105 Broker Fee | 80,000.00 |
| Melio Credit card fee | 35.00 |
| **Total Expenses** | **$341,280.11** |
| NET OPERATING INCOME | **$ -112,441.79** |
| NET INCOME | **$ -112,441.79** |

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SmithDukes

CONSENT

Smith, Dukes & Buckalew, LLP consents to the use in the Franchise Disclosure Document issued by FGP Franchising, LLC ("Franchisor") on May 31, 2023, as it may be amended, of our report dated May 23, 2023, relating to the financial statements of Franchisor for the period ending December 31, 2022.

Smith, Dukes & Buckalew, L.L.P.

By: Smith, Dukes & Buckalew, LLP
May 31, 2023

# FGP FRANCHISING, LLC

## FINANCIAL REPORT

**December 31, 2022**

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| **FINANCIAL STATEMENTS** | |
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| Statements of changes in member's equity | 5 |
| Statements of cash flows | 6 |
| Notes to financial statements | 7 - 12 |

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SmithDukes

# INDEPENDENT AUDITOR'S REPORT

To the Member of
FGP Franchising, LLC
Mobile, AL

## *Opinion*

We have audited the financial statements of FGP Franchising, LLC, which comprise the balance sheet as of December 31, 2022, and the related statements of income, changes in member's equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of FGP Franchising, LLC as of December 31, 2022, 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 audit in accordance with auditing standards generally accepted in the United States of America (GAAS). 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 FGP Franchising, LLC and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## *Other Matter*

The financial statements of FGP Franchising, LLC for the year ended December 31, 2021 were audited by another auditor who expressed an unmodified opinion on those statements on April 21, 2022.

## *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.



Smith, Dukes & Buckalew LLP
*Mobile:* 3800 Airport Blvd, Ste. 101 / Mobile, AL 36608 / 251.343.1200 / *Fax* 251.344.0966 / smithdukes.com
*Daphne:* 6475 Van Buren Ave., Ste. 200 / Daphne, AL 36526 / 251.621.9600 / *Fax* 251.621.9608

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 FGP Franchising, LLC's ability to continue as a going concern for one year after the date that the financial statements are 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 GAAS 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 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 GAAS, 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 FGP Franchising, 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 FGP Franchising, 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.

Smith, Dukes & Buckalew, L.L.P.

Mobile, Alabama
May 23, 2023

# FINANCIAL STATEMENTS

**FGP FRANCHISING, LLC**

**BALANCE SHEETS**
**December 31, 2022 and 2021**

| ASSETS | 2022 | 2021 |
|---|---|---|
| **CURRENT ASSETS** | | |
| Cash | $ 192 | $ 4,994 |
| Accounts receivable | 8,970 | 1,000 |
| **TOTAL CURRENT ASSETS** | 9,162 | 5,994 |
| **NON-CURRENT ASSETS** | | |
| Intangible assets | 400,000 | 400,000 |
| **TOTAL ASSETS** | $ 409,162 | $ 405,994 |
| **LIABILITIES AND MEMBER'S EQUITY** | | |
| **CURRENT LIABILITIES** | | |
| Accounts payable | $ 90,737 | $ 14,737 |
| Non-refundable deferred franchise fees, current | 96,602 | 60,726 |
| Franchisee deposits | 15,000 | 25,000 |
| **TOTAL CURRENT LIABILITIES** | 202,339 | 100,463 |
| **NON-CURRENT LIABILITIES** | | |
| Non-refundable deferred franchise fees | 426,744 | 287,353 |
| **TOTAL LIABILITIES** | 629,083 | 387,816 |
| **MEMBER'S EQUITY** | | |
| Member contributions | 450,000 | 450,000 |
| Retained earnings | (394,703) | 55,610 |
| Due from related parties | (275,218) | (487,432) |
| **TOTAL MEMBER'S EQUITY** | (219,921) | 18,178 |
| **TOTAL LIABILITIES AND MEMBER'S EQUITY** | $ 409,162 | $ 405,994 |

The Notes to Financial Statements are an integral part of these statements.

**FGP FRANCHISING, LLC**

**STATEMENTS OF INCOME**
**For the Years Ended December 31, 2022 and 2021**

| | 2022 | 2021 |
|---|---|---|
| **REVENUES** | | |
| Royalty fees | $ 305,539 | $ 175,322 |
| Franchising fees | 95,683 | 73,984 |
| **TOTAL REVENUES** | 401,222 | 249,306 |
| **OPERATING EXPENSES** | | |
| Payroll and related costs | 529,154 | 113,053 |
| Advertising and promotion | 99,900 | 107,544 |
| General and administrative | 125,615 | 35,449 |
| Professional fees | 96,866 | 26,747 |
| **TOTAL OPERATING EXPENSES** | 851,535 | 282,793 |
| **OPERATING INCOME (LOSS)** | (450,313) | (33,487) |
| **OTHER INCOME (EXPENSE)** | - | - |
| **NET INCOME (LOSS)** | $ (450,313) | $ (33,487) |

The Notes to Financial Statements are an integral part of these statements.

## FGP FRANCHISING, LLC

## STATEMENTS OF CHANGES IN MEMBER'S EQUITY
## For the Years Ended December 31, 2022 and 2021

| | Member Contributions | Retained Earnings | Total |
|---|---|---|---|
| BALANCE, DECEMBER 31, 2020 | $ 450,000 | $ 89,097 | $ 539,097 |
| Net loss | | (33,487) | (33,487) |
| BALANCE, DECEMBER 31, 2021 | 450,000 | 55,610 | 505,610 |
| Net loss | | (450,313) | (450,313) |
| BALANCE, DECEMBER 31, 2022 | $ 450,000 | $ (394,703) | $ 55,297 |

The Notes to Financial Statements are an integral part of these statements.

## FGP FRANCHISING, LLC

## STATEMENTS OF CASH FLOWS
**For the Years Ended December 31, 2022 and 2021**

| | 2022 | 2021 |
|---|---|---|
| **Cash flows from operating activities:** | | |
| Net loss | $ (450,313) | $ (33,487) |
| Adjustments to reconcile net loss to net cash provided by (used in) operating activities: | | |
| Recognition of non-refundable deferred franchise fees | - | (48,984) |
| (Increase) decrease in: | | |
| Accounts receivable | (7,970) | 550 |
| Increase (decrease) in: | | |
| Franchisee deposits | (10,000) | 20,000 |
| Accounts payable | 76,000 | 12,233 |
| Non-refundable deferred franchise fees | 175,267 | 183,000 |
| Net cash provided by (used in) operating activities | (217,016) | 133,312 |
| **Cash flows from financing activities:** | | |
| (Increase) decrease in amounts due from related parties | 212,214 | (145,940) |
| Net cash provided by (used in) financing activities | 212,214 | (145,940) |
| Net decrease in cash | (4,802) | (12,628) |
| Cash at beginning of year | 4,994 | 17,622 |
| Cash at end of year | $ 192 | $ 4,994 |

The Notes to Financial Statements are an integral part of these statements.

## NOTES TO FINANCIAL STATEMENTS

### NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FGP Franchising, LLC ("Company"), was formed on December 19, 2018, in the state of Delaware as a limited liability company. The Company grants franchises to qualified persons to own a business for a "Frios Gourmet Pops" branded vehicle that features a variety of frozen desserts (pops) and emphasizes prompt, uniform and courteous service.

*Parent and Affiliates*

The Company's predecessor is Frios Gourmet Pops, LLC, an Alabama limited liability company ("FGP"). The Frios Gourmet Pops concept was developed by FGP and its owner Andy Harp. On December 21, 2018, FGP Holding, LLC ("Holding"), a Delaware limited liability company, acquired the operating assets of FGP, Frios Manufacturing, LLC, and Frios Corporate Retail, LLC (collectively the "Frios Entities"), pursuant to the terms of an Asset Purchase Agreement between the Company and the Frios Entities. After the consummation of that transaction, Holding began manufacturing and selling frozen pops under the "Frios Gourmet Pops" brand. The Company acquired the rights to license the "Frios Gourmet Pops" trademarks, logos and other intellectual property previously used in the Frios Gourmet Pops franchise business. Also, the Company acquired all of the existing franchise agreements via Holding and Frios Franchising, LLC, another predecessor company which operated the Frios Gourmet Pops franchise system.

Holding, in acquiring the operating assets of the Frios Entities, also acquired the equipment and machinery for purposes of manufacturing Frios Gourmet Pops. Our affiliate, FGP Manufacturing, LLC, a Delaware limited liability company, formed on December 19, 2018, holds the manufacturing equipment and other operating assets. Holding is the holding company of and owns all of the membership interests of both FGP Manufacturing, LLC and the Company. FGP Manufacturing, LLC produces all of the Frios Gourmet Pops sold to our franchisees.

The Parent and affiliates have not offered franchises in this or any other line of business.

*Location Summary*

The following table summarizes the number of locations operating as of December 31:

| | 2022 | 2021 |
|---|---|---|
| Locations in operation, beginning | 43 | 36 |
| Locations opened | 11 | 7 |
| Locations terminated or closed | - | - |
| Locations in operation, ending | 54 | 43 |
| | | |
| Franchised Locations | 54 | 43 |

## NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

*COVID-19*

In December 2019, a novel strain of coronavirus was reported in Wuhan, China. The World Health Organization has declared the outbreak to constitute a "Public Health Emergency of International Concern." The COVID-19 outbreak is disrupting supply chains and affecting production and sales across a range of industries. The extent of the impact of COVID-19 on the Company's operational and financial performance will depend on certain developments, including the duration and spread of the outbreak, impact on our customers, employees, and vendors all of which are uncertain and cannot be predicted. At this point, the extent to which COVID-19 may impact our financial condition or results of operations is uncertain.

A summary of significant accounting policies follows:

*Basis of Presentation*

The accompanying financial statements have been prepared on an accrual basis in accordance with accounting principles generally accepted in the United States of America ("GAAP").

*Cash and Cash Equivalents*

The Company considers all highly liquid investments with a maturity of three months or less at the time of purchase to be cash equivalents. The Company had no cash equivalents as of December 31, 2022, and 2021.

*Accounts Receivable*

Timing of revenue recognition may be different from the timing of invoicing to customers. The Company records accounts receivable when revenue is recognized prior to invoicing, or unearned revenue when revenue is recognized after invoicing. Management evaluates individual customers' receivables considering their financial condition, credit history and current economic conditions. Accounts receivable are written off if deemed uncollectible and recoveries of accounts receivable previously written off are recorded as income when received. The Company did not have an allowance for doubtful accounts as of December 31, 2022, and 2021 and did not charge-off any accounts receivable during the years ended December 31, 2022, and 2021.

*Property, Plant & Equipment*

The Company has adopted ASC 360 – Property, Plant and Equipment. Property and equipment are stated at historical cost. Depreciation is provided using straight-line method based on the estimated useful lives of the related assets (generally three to seven years). The Company had no property, plant & equipment at December 31, 2022 and 2021.

**NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Intangible Assets*

The Company has adopted ASC 350, Intangibles – Goodwill and Other that requires that goodwill and intangible assets with indefinite lives no longer be amortized to earnings but be tested for impairment at least annually. Intangible assets with finite lives are amortized over their estimated useful lives. The useful life of an intangible asset is the period over which it is expected to contribute directly or indirectly to future cash flows. Intangible assets with infinite lives are reviewed for impairment if events or changes in circumstances indicate that the carrying value might not be recoverable.

*Income Taxes*

The Company has elected to be taxed as a "Disregarded Entity" under the provisions of the Internal Revenue Code. Under those provisions, taxable income and losses of the Company are reported on the income tax returns of its member and no provisions for federal or state taxes has been recorded on the accompanying balance sheet.

The Company adopted ASC 740-10-25-6 "Accounting for Uncertainty in Income Taxes", that requires the Company disclose uncertain tax positions. Under the standard an entity may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold upon examination by taxing authorities. Based on its evaluation, the Company has concluded that there are no significant uncertain tax positions requiring recognition in its financial statements or that would affect the Company's members.

*Revenue Recognition and Non-refundable Deferred Franchise Fees*

The Company recognizes revenue under the guidance of ASC 606 "Contracts with Customers".

The Company's revenue is principally generated through franchise agreements executed with the Company's franchisees. Each franchise agreement is comprised of several performance obligations. The Company identifies those performance obligations, determines the contract price for each obligation, allocates the transaction price to each performance obligation and recognizes revenue when the Company has satisfied the performance obligation by transferring control of the good or service to the franchisee.

When a franchisee purchases a franchise, the Company grants the franchisee the right to operate the franchised business in a designated territory and to use the proprietary methods, techniques, trade dress, trademarks, and logos ("symbolic intellectual property" or "IP"). Revenues related to the designated territory and IP are continuing royalties that are a flat monthly amount as defined in the franchise agreement. These revenues will be used to continue the development of the Company's brand, the franchise system and provide on-going support for the Company's franchisees. The royalties are billed monthly and are recognized as revenue when earned.

## NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Revenue from initial franchise fees is allocated to the performance obligations in the franchise agreement that are distinct from the territory rights and symbolic intellectual property. The amount allocated to each identified performance obligation is determined using the expected cost plus a margin or fair market value approach. Revenue from initial fees is recognized when the performance obligation is satisfied and control of the good or service has been transferred to the franchisee. Unearned initial fee revenues will be recorded as non-refundable deferred revenue and will be recognized as revenue over the term of the franchise agreement.

*Advertising Costs*

The Company expenses advertising costs as incurred. Advertising expense for the years ended December 31, 2022, and 2021 was $99,560 and $107,544, respectively.

*Fair Value of Financial Instruments*

The Company's financial instruments consist of cash and cash equivalents, accounts receivable and accounts payable. The carrying amounts approximate fair value due to their short maturities.

*Concentrations of Credit Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and receivables. The Company grants credit to franchisees. The Company's ability to collect the amounts due from franchisees is affected by fluctuations in the economy and the operations of the franchisees.

*Recently issued accounting pronouncements*

The Company has adopted all recently issued Accounting Standards Updates ("ASU"). The adoption of the recently issued ASUs, including those not yet effective, is not anticipated to have a material effect on the financial position or results of operations of the Company.

## NOTE 2 – CONTRACTS WITH CUSTOMERS

The Company has recorded a liability for unearned revenue associated with initial franchise fee performance obligation of the Company's franchise agreement. The account balances and activity are as follows:

| | December 31, 2022 | December 31, 2021 |
|---|---|---|
| **Non-refundable Deferred Franchise Fees** | | |
| Balance beginning of year | $ 348,079 | $ 214,063 |
| Deferral of non-refundable franchise fees | 260,950 | 183,000 |
| Recognition of non-refundable franchise fees | (85,683) | (48,984) |
| Balance at end of year | $ 523,346 | $ 348,079 |

## NOTE 2 – CONTRACTS WITH CUSTOMERS (CONTINUED)

*Estimated Recognition of Non-refundable Deferred Franchise Fees*

Estimated revenues to be recognized in future periods related to non-refundable deferred franchise fees as reported at December 31, 2022, is as follows:

| | Non-refundable Franchise Fees |
|---|---|
| Year ending December 31, | |
| 2023 | $ 96,602 |
| 2024 | 90,155 |
| 2025 | 90,155 |
| 2026 | 87,015 |
| 2027 | 64,735 |
| Thereafter | 94,684 |
| | $ 523,346 |

*Disaggregation of Revenues*

Disaggregated revenues based on the satisfaction of performance obligations in the Company's contracts with franchisees for the years ended December 31, 2022, and 2021 is as follows:

| | 2022 | 2021 |
|---|---|---|
| Performance obligations satisfied at a point in time | $ 315,539 | $ 200,322 |
| Performance obligations satisfied over time | 85,683 | 48,984 |
| Total revenues | $ 401,222 | $ 249,306 |

## NOTE 3 – INTANGIBLE ASSETS

Intangible assets consist of goodwill allocated to the Company as part of the acquisition described in Note 1 above. The Company has evaluated the goodwill for impairment and has concluded no impairment to the value of the asset has occurred as of December 31, 2022, and 2021. The value on the accompanying balance sheet is $400,000.

## NOTE 4 – RELATED PARTY TRANSACTIONS

At various times, the Company advances funds to and received funds for various business purposes from the Company's Parent and affiliates who are commonly owned. The Company has made certain advances to the Company's Parent and affiliates.

## NOTE 4 – RELATED PARTY TRANSACTIONS (CONTINUED)

Advances are not collateralized, noninterest bearing and due on demand. Net advances due from the related parties as of December 31, 2022, and 2021 were $275,218 and $487,432. The advances are reported as a component of member's equity in the accompanying balance sheet as the net advances do not have stated repayment terms and the ownership of these related parties is the same ownership of the Company.

## NOTE 5 - COMMITMENTS AND CONTINGENCIES

*Litigation*

The Company may be subject to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of management, all matters are of such kind, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

## NOTE 6 –SUBSEQUENT EVENTS

*Date of Management's Evaluation*

Management has evaluated subsequent events through May 23, 2023, the date on which the financial statements were available to be issued.

# FGP FRANCHISING, LLC

FINANCIAL REPORT

AS OF DECEMBER 31, 2021

**FGP FRANCHISING, LLC**
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REESE
CPA LLC

**Independent Auditor's Report**

To the Member
FGP Franchising, LLC
Mobile, Alabama

We have audited the accompanying balance sheets of FGP Franchising, LLC as of December 31, 2021, and 2020 and the related statements of operations, member's equity (deficit) and cash flows for the years ended December 31, 2021, and the notes to 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 audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the 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 consolidated financial statements.

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

***Opinion***

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of FGP Franchising, LLC as of December 31, 2021, and 2020 and the results of their operations and their cash flows for the years ended December 31, 2021, and 2020 in accordance with accounting principles generally accepted in the United States of America.

Reese CPA LLC

Thornton, Colorado
April 21, 2022

**FGP FRANCHISING, LLC**
**BALANCE SHEETS**
**AS OF DECEMBER 31, 2021 AND 2020**

| | 2021 | 2020 |
|---|---|---|
| **ASSETS** | | |
| **CURRENT ASSETS** | | |
| Cash and equivalents | $ 4,994 | $ 17,622 |
| Accounts receivable | 1,000 | 1,550 |
| **TOTAL CURRENT ASSETS** | 5,994 | 19,172 |
| **NON-CURRENT ASSETS** | | |
| Intangible assets | 400,000 | 400,000 |
| **TOTAL ASSETS** | $ 405,994 | $ 419,172 |
| **LIABILITIES AND MEMBER'S EQUITY** | | |
| **CURRENT LIABILITIES** | | |
| Accounts payable | $ 14,737 | $ 2,504 |
| Non-refundable deferred franchise fees, current | 60,726 | 34,000 |
| Franchisee deposits | 25,000 | 5,000 |
| **TOTAL CURRENT LIABILITIES** | 100,463 | 41,504 |
| **NON-CURRENT LIABILITIES** | | |
| Non-refundable deferred franchise fees | 287,353 | 180,063 |
| **TOTAL LIABILITIES** | 387,816 | 221,567 |
| **MEMBER'S EQUITY** | | |
| Member contributions | 450,000 | 450,000 |
| Retained earnings | 55,610 | 89,097 |
| Due from related parties | (487,432) | (341,492) |
| **TOTAL MEMBER'S EQUITY** | 18,178 | 197,605 |
| **TOTAL LIABILITIES AND MEMBER'S EQUITY** | $ 405,994 | $ 419,172 |

The accompanying notes are an integral part of these financial statements.

**FGP FRANCHISING, LLC**
**STATEMENTS OF OPERATIONS**
**YEARS ENDED DECEMBER 31, 2021 AND 2020**

| | 2021 | 2020 |
|---|---|---|
| **REVENUES** | | |
| Franchise sales | $ 73,984 | $ 65,310 |
| Royalty fees | 175,322 | 124,094 |
| **TOTAL REVENUES** | 249,306 | 189,404 |
| **OPERATING EXPENSES** | | |
| Payroll and related costs | 113,053 | 38,109 |
| Advertising and promotion | 107,544 | 19,418 |
| General and administrative | 35,449 | 44,632 |
| Professional fees | 26,747 | 32,547 |
| **TOTAL OPERATING EXPENSES** | 282,793 | 134,706 |
| **OPERATING INCOME (LOSS)** | (33,487) | 54,698 |
| **OTHER INCOME (EXPENSE)** | - | - |
| **NET INCOME (LOSS)** | $ (33,487) | $ 54,698 |

The accompanying notes are an integral part of these financial statements.

**FGP FRANCHISING, LLC**
**STATEMENTS OF CHANGES IN MEMBER'S EQUITY**
**YEARS ENDED DECEMBER 31, 2021 AND 2020**

| | Member's Contributions | Retained Earnings | Total Member's Equity |
|---|---|---|---|
| **BALANCE, DECEMBER 31, 2019** | **$ 450,000** | **$ 34,399** | **$ 484,399** |
| Net income | - | 54,698 | 54,698 |
| **BALANCE, DECEMBER 31, 2020** | **450,000** | **89,097** | **539,097** |
| Net (loss) | - | (33,487) | (33,487) |
| **BALANCE, DECEMBER 31, 2021** | **$ 450,000** | **$ 55,610** | **$ 505,610** |

The accompanying notes are an integral part of these financial statements.

**FGP FRANCHISING, LLC**
**STATEMENTS OF CASH FLOWS**
**YEARS ENDED DECEMBER 31, 2021 AND 2020**

| | 2021 | 2020 |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES** | | |
| Net income | $ (33,487) | $ 54,698 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | |
| Recognition of non-refundable deferred franchise fees | (48,984) | (28,440) |
| Change in assets and liabilities | | |
| Accounts receivable | 550 | 550 |
| Accounts payable | 12,233 | 2,504 |
| Customer deposits | 20,000 | 5,000 |
| Non-refundable deferred franchise fees | 183,000 | 157,500 |
| Net cash provided by operating activities | 133,312 | 191,812 |
| **CASH FLOWS FROM INVESTING ACTIVITIES** | - | - |
| Net cash used by investing activities | - | - |
| **CASH FLOWS FROM FINANCING ACTIVITIES** | | |
| Due from related parties | (145,940) | (174,997) |
| Net cash (used) by financing activities | (145,940) | (174,997) |
| **NET DECREASE IN CASH** | (12,628) | 16,815 |
| **CASH, BEGINNING** | 17,622 | 807 |
| **CASH, ENDING** | $ 4,994 | $ 17,622 |
| **SUPPLEMENTAL DISCLOSURES** | | |
| Cash paid for interest | $ - | $ - |
| Cash paid for taxes | $ - | $ - |

The accompanying notes are an integral part of these financial statements.

## NOTE 1 - NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

FGP Franchising, LLC ("Company") was formed on December 19, 2018, in the State of Delaware as a limited liability company. The Company grants franchises to qualified persons to own a business for a "Frios Gourmet Pops" branded vehicle that features a variety of frozen desserts (pops) and emphasizes prompt, uniform, and courteous service.

*Parent and Affiliates*

The Company's predecessor is Frios Gourmet Pops, LLC, an Alabama limited liability company ("FGP"). The Frios Gourmet Pops concept was developed by FGP and its owner Andy Harp.

On December 21, 2018, FGP Holding, LLC ("Holding"), a Delaware limited liability company, acquired the operating assets of FGP, Frios Manufacturing, LLC, Frios Corporate Retail, LLC (collectively the "Frios Entities"), pursuant to the terms of an Asset Purchase Agreement between the Company and the Frios Entities. After the consummation of that transaction, Holding began manufacturing and selling frozen pops under the "Frios Gourmet Pops" brand. The Company acquired the rights to license the "Frios Gourmet Pops" trademarks, logos and other intellectual property previously used in the Frios Gourmet Pops franchise business. Also, the Company acquired all of the existing franchise agreements via Holding and Frios Franchising, LLC, another predecessor company which operated the Frios Gourmet Pops franchise system.

Holding, in acquiring the operating assets of the Frios Entities, also acquired the equipment and machinery for purposes of manufacturing Frios Gourmet Pops. Our affiliate, FGP Manufacturing, LLC, a Delaware limited liability company, formed on December 19, 2018, holds the manufacturing equipment and other operating assets. Holding is the holding company of and owns all of the membership interests of both FGP Manufacturing, LLC and the Company. FGP Manufacturing, LLC produces all of the Frios Gourmet Pops sold to our franchisees.

The Parent and affiliates have not offered franchises in this or any other line of business.

*Location Summary*

The following table summarizes the number of locations operating as of December 31:

| | 2021 | 2020 |
|---|---|---|
| Locations in operation, beginning | 36 | 27 |
| Locations opened | 7 | 12 |
| Locations terminated or closed | - | (3) |
| Locations in operation, ending | 43 | 36 |
| | | |
| Franchised Locations | 43 | 36 |
| Affiliate owned Locations | - | - |

## NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

*COVID-19*

In December 2019, a novel strain of coronavirus was reported in Wuhan, China. The World Health Organization has declared the outbreak to constitute a "Public Health Emergency of International Concern." The COVID-19 outbreak is disrupting supply chains and affecting production and sales across a range of industries. The extent of the impact of COVID-19 on the Company's operational and financial performance will depend on certain developments, including the duration and spread of the outbreak, impact on our customers, employees, and vendors all of which are uncertain and cannot be predicted. At this point, the extent to which COVID-19 may impact our financial condition or results of operations is uncertain.

A summary of significant accounting policies follows:

*Basis of Presentation*

The accompanying financial statements have been prepared on an accrual basis in accordance with accounting principles generally accepted in the United States of America ("GAAP").

*Cash and Cash Equivalents*

The Company considers all highly liquid investments with a maturity of three months or less at the time of purchase to be cash equivalents. The Company had no cash equivalents as of December 31, 2021, and 2020.

*Accounts Receivable*

Timing of revenue recognition may be different from the timing of invoicing to customers. The Company records an accounts receivable when revenue is recognized prior to invoicing, or unearned revenue when revenue is recognized after invoicing. Management evaluates individual customer's receivables considering their financial condition, credit history and current economic conditions. Accounts receivable are written off if deemed uncollectible and recoveries of accounts receivable previously written off are recorded as income when received. The Company did not have an allowance for doubtful accounts as of December 31, 2021, and 2020 and did not charge-off any accounts receivable during the years ended December 31, 2021, and 2020.

*Property, Plant & Equipment*

The Company has adopted ASC 360 – Property, Plant and Equipment. Property and equipment are stated at historical cost. Depreciation is provided using straight-line method based on the estimated useful lives of the related assets (generally three to seven years). The Company had no property, plant & equipment at December 31, 2020.

*Intangible Assets*

The Company has adopted ASC 350, Intangibles – Goodwill and Other that requires that goodwill and intangible assets with indefinite lives no longer be amortized to earnings but be tested for impairment at least annually. Intangible assets with finite lives are amortized over their estimated useful lives. The useful life of an intangible asset is the period over which it is expected to contribute directly or indirectly to future

cash flows. Intangible assets with infinite lives are reviewed for impairment if events or changes in circumstances indicate that the carrying value might not be recoverable.

**NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Income Taxes*

The Company has elected to be taxed as a "Disregarded Entity" under the provisions of the Internal Revenue Code. Under those provisions, taxable income and losses of the Company are reported on the income tax returns of its member and no provisions for federal or state taxes has been recorded on the accompanying balance sheet.

The Company adopted ASC 740-10-25-6 "Accounting for Uncertainty in Income Taxes", that requires the Company disclose uncertain tax positions. Under the standard an entity may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold upon examination by taxing authorities. Based on its evaluation, the Company has concluded that there are no significant uncertain tax positions requiring recognition in its financial statements or that would affect the Company's members.

*Revenue Recognition and Non-refundable Deferred Franchise Fees*

The Company recognizes revenue under the guidance of ASC 606 "Contracts with Customers".

The Company's revenue is principally generated through franchise agreements executed with the Company's franchisees. Each franchise agreement is comprised of several performance obligations. The Company identifies those performance obligations, determines the contract price for each obligation, allocates the transaction price to each performance obligation and recognizes revenue when the Company has satisfied the performance obligation by transferring control of the good or service to the franchisee.

When a franchisee purchases a franchise, the Company grants the franchisee the right to operate the franchised business in a designated territory and to use the proprietary methods, techniques, trade dress, trademarks, and logos ("symbolic intellectual property" or "IP"). Revenues related to the designated territory and IP are continuing royalties that are a flat monthly amount as defined in the franchise agreement. These revenues will be used to continue the development of the Company's brand, the franchise system and provide on- going support for the Company's franchisees. The royalties are billed monthly and are recognized as revenue when earned.

Revenue from initial franchise fees is allocated to the performance obligations in the franchise agreement that are distinct from the territory rights and symbolic intellectual property. The amount allocated to each identified performance obligation is determined using the expected cost plus a margin or fair market value approach. Revenue from initial fees is recognized when the performance obligation is satisfied and control of the good or service has been transferred to the franchisee. Unearned initial fee revenues will be recorded as non-refundable deferred revenue and will be recognized as revenue over the term of the franchise agreement.

*Advertising Costs*

The Company expenses advertising costs as incurred. Advertising expense for the year ended December 31, 2021, and 2020 was $107,544 and $19,418.

*Fair Value of Financial Instruments*

For the Company's financial instruments consist of cash and cash equivalents, accounts receivable and accounts payable. The carrying amounts approximate fair value due to their short maturities.

**NOTE 1 – NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)**

*Concentrations of Credit Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash and receivables. The Company grants credit to franchisees. The Company's ability to collect the amounts due from franchisees is affected by fluctuations in the economy and the operations of the franchisees.

*Recently issued accounting pronouncements*

The Company has adopted all recently issued Accounting Standards Updates ("ASU"). The adoption of the recently issued ASUs, including those not yet effective, is not anticipated to have a material effect on the financial position or results of operations of the Company.

**NOTE 2 – CONTRACTS WITH CUSTOMERS**

The Company has recorded a liability for unearned revenue associated with initial franchise fee performance obligation of the Company's franchise agreement. The account balances and activity are as follows:

| | December 31, 2021 | December 31, 2020 |
|---|---|---|
| **Non-refundable Deferred Franchise Fees:** | | |
| Balance beginning of year | $ 214,063 | $ 85,003 |
| Deferral of non-refundable franchise fees | 183,000 | 157,500 |
| Recognition of non-refundable franchise fees | (48,984) | (28,440) |
| Balance at end of year | $ 348,079 | $ 214,063 |

*Estimated Recognition of Non-refundable Deferred Franchise Fees*

Estimated revenues to be recognized in future periods related to non-refundable deferred franchise fees as reported at December 31, 2021, is as follows:

| | Non-refundable Franchise Fees |
|---|---|
| Year ending December 31: | |
| 2022 | $ 60,726 |
| 2023 | 60,726 |
| 2024 | 60,726 |
| 2025 | 60,726 |
| 2026 | 57,586 |
| Thereafter | 47,589 |
| | $ 348,079 |

## NOTE 2 – CONTRACTS WITH CUSTOMERS (CONTINUED)

*Disaggregation of Revenues*

Disaggregated revenues based on the satisfaction of performance obligations in the Company's contracts with franchisees for the years ended December 31, 2021, and 2020 is as follows:

| | 2021 | 2020 |
|---|---|---|
| Performance obligations satisfied at a point in time | $ 200,322 | $ 160,964 |
| Performance obligations satisfied through the passage of time | 48,984 | 28,440 |
| Total revenues | $ 249,306 | $ 189,404 |

## NOTE 4 – INTANGIBLE ASSETS

Intangible assets consist of goodwill allocated to the Company as part of the acquisition described in Note 1 above. The Company has evaluated the goodwill for impairment and has concluded no impairment to the value of the asset has occurred as of December 31, 2021, and 2020. The value on the accompanying balance sheet is $400,000.

## NOTE 4 – RELATED PARTY TRANSACTIONS

At various times, the Company advances funds to and received funds for various business purposes from the Company's Parent and affiliates who are commonly owned. The Company has made certain advances to the Company's Parent and affiliates.

Advances are not collateralized, noninterest bearing and due on demand. Net advances due from the related parties as of December 31, 2021, and 2020 were $487,432 and $341,492. The advances are reported as a component of member's equity in the accompanying balance sheet as the net advances do not have stated repayment terms and the ownership of these related parties is the same ownership of the Company.

## NOTE 5 - COMMITMENTS AND CONTINGENCIES

*Litigation*

The Company may be subject to various claims, legal actions and complaints arising in the ordinary course of business. In the opinion of management, all matters are of such kind, or involve such amounts, that unfavorable disposition, if any, would not have a material effect on the financial position of the Company.

## NOTE 6 –SUBSEQUENT EVENTS

*Date of Management's Evaluation*

Management has evaluated subsequent events through April 21, 2022, the date on which the financial statements were available to be issued.

**EXHIBIT F TO THE DISCLOSURE DOCUMENT**

**LIST OF CURRENT AND FORMER FRANCHISEES**

## LIST OF CURRENT AND FORMER FRANCHISEES

**Current Franchisees As of December 31, 2022**

The following is a list of the names of all current franchisees and the address and telephone number of each of their outlets as of December 31, 2022:

(a) **Operational Franchisees.** The following are the names, addresses and telephone numbers of all Frios Gourmet Pops franchisees as of December 31, 2022, who are operational:

| State | Business Location | Franchisee | Contact Information |
|---|---|---|---|
| **Alabama** | 123 Brown Circle<br>Alabaster, AL 35007 | Michael Redenbach | michael@friospops.com<br>205-216-2897 Frios |
| | 112 Clark St.<br>Northeast Cullman, AL 35055 | Carl ("Jay") Keiffer Jr.<br>Kristy B. Keiffer | cullman@friospops.com<br>256-339-4946 |
| | 9719 Chariot Ave<br>Fairhope, AL 36532 | Tiffany Vines | tiffanyvines@friospops.com<br>205-919-6414 |
| | 1502 Noccalula Road<br>Gadsden, AL 35904 | Destin Mince | Destin@friospops.com<br>256-459-4946 |
| | 1 Oakway Driver<br>Mobile, AL 36608 | Cliff Kennedy | cliff@friospops.com<br>251-767-6476 |
| | 152 West Main Street<br>Prattville, AL 36067 | Jim and Brandy Wohlers | Bwohlers@friospops.com<br>334.531.0650 |
| | 1809 Balm Rd<br>Wetumpka, AL 36092 | Scott and Donna Grier | donna@friospops.com<br>334-549-2393 |
| **Arizona** | 2629 N Beverly Pl<br>Buckeye, AZ 85396 | Stephanie Tipton | westvalley@friospops.com |
| **Florida** | 7528 Paradiso Drive<br>Apollo Beach, FL 33572 | Joe and Lisa Birkhead | joeb@friospops.com<br>813-686-4168 |
| | 7449 Joyce Lane<br>Navarre, FL 32566 | Jeanette and Matt Clark | jeanette@friospops.com,<br>matt@friospops.com<br>850-420-5236 |
| | 73 St. Croix Island Dr<br>St. Augustine, FL 32092 | Aimee and Heath Freedman | aimee@friospops.com<br>904-994-3513 |
| | 1316 Dorothy Dr<br>Clearwater, FL 33764 | John Giardini | stpete@friospops.com |
| | 7421 Paradiso Rd<br>Apollo Beach, FL 33572 | Shaune Scott | tampa@friospops.com |
| | 274 Sedona Way Palm Beach Gardens, FL 33418 | Alyssa Lund | alyssa@friospops.com |
| **Georgia** | 152 Bywater Trl<br>Clayton, GA 30525 | Stephen A and Suzanne N Flaherty | Stephen@friospops.com<br>360-929-7155 |
| | 175 Rivoli Landing<br>Macon, GA 31210 | Brandon Anderton | brandon@friospops.com<br>205-585-0834 |
| | 14 Greenville Street<br>Newnan, GA 30263 | Sonya Matthews | sonya@friospops.com<br>678-665-1416 |
| | 90 East Callahan Street<br>Rome, GA 30161 | John Cowan | jcowan@friospops.com<br>706-936-8291 |
| **Michigan** | 6208 Deering Street<br>Garden City, MI 48135 | Karen Hudson | karen@friospops.com<br>313-463-0737 |
| **North Carolina** | 1100 Falcon Road<br>Yadkinville, NC 27055 | Travis Rominger | Travisr@friospops.com<br>336-972-5347 |

| | | | |
|---|---|---|---|
| **Ohio** | 6855 McEwen Road<br>Dayton, OH 45459 | Augustina Deleon | buckeyetreats@friospops.com<br>937-754-0225 |
| **Oklahoma** | 715 Northwest 64th Street<br>Oklahoma City, OK 73116 | Tres and Tara Johnston | tres@friospops.com,<br>tara@friospops.com<br>405-269-1206 |
| | 423 S Main<br>Stillwater, OK 74074 | Brett and Lindsay McKee | brett@friospops.com<br>918-809-5999 |
| | 105 North Greenwood Ave<br>Tulsa, OK 74120 | Angela D. Busby | angela@friospops.com<br>918-829-3911 |
| **Pennsylvania** | 322 Mall Blvd<br>Monroeville, PA 15146 | KC Carlson | KC@friospops.com |
| **South Carolina** | 518 College Ave Suite 170<br>Clemson, SC 29631 | Darryl Morris | Darryl@friospops.com<br>864-324-1208 |
| | 1 North Forest Beach Drive<br>Unit K-5<br>Hilton Head Island, SC 29928 | Chuck and Janet Glausier | chuck@friospops.com,<br>janet@friospops.com<br>703-898-5406 |
| | 3601 Enterprise Dr<br>Rock Hill, SC 29730 | Courtney Ward and Jacovia Cherry | yorkcounty@friospops.com<br>803-412-5600 |
| **Tennessee** | 205 Manufacturers Road<br>Suite 108<br>Chattanooga, TN 37405 | Kerri Raughton | Kerri@friospops.com<br>423-599-2994 |
| | 580 Providence Drive<br>Jefferson City, TN 37760 | Angie Martindale | a.martindale@friospops.com<br>865-250-1107 |
| | 126 West Lincoln Street<br>Tullahoma, TN 37388 | Hiren Patel | hiren@friospops.com<br>334-324-9528 |
| **Texas** | 248 Shoreline Dr<br>Azle, TX 76020 | Leesa and Eric Wolf | leesa@friospops.com<br>817-929-3146 |
| | 1426 Nate Circle<br>Bullard, TX 75757 | Blake and Lisa Daniels | blake@friospops.com<br>817-526-0002 |
| | 13921 Texas 105<br>Unit D-18<br>Conroe, TX 77304 | Sarah Ables | Sarah@friospops.com<br>361-765-1385 |
| | 1640 W. University Drive<br>Denton, TX 76201 | Lauren and Robert Penn | lauren@friospops.com<br>940-368-2763 |
| | 31560 RR-12 Unit 202<br>Dripping Springs, TX 78620 | Becky Cresswell | becky@friospops.com<br>678-362-1730 |
| | 4023 Bear Brook Dr<br>Lancaster, TX 75146 | Keisha Reeder | keisha@friospops.com<br>469-345-2006 |
| | 16002 CR 1830<br>Lubbock, TX 79424 | Chance and Alexa Britt | chance@friospops.com<br>alexa@friospops.com<br>806-759-2000 |
| | 1405 1st Street<br>Arlington, TX 76001 | Funmi Oredope | funmi@friospops.com<br>214-223-6182 |
| | 20628 Fairleaf Street<br>Pflugerville, TX 79424 | Mike and Melissa Brown | melissa@friospops.com,<br>mike@friospops.com<br>512-300-8292 |
| | 3924 Lazy River Ranch Road<br>Roanoke, TX 76262 | Emily and Jared Brand | emilyb@friospops.com<br>817-456-7050 |
| | 521 Youngblood Road<br>Waxahachie, TX 75165 | Joy McDonald | joy@friospops.com<br>214-755-3809 |
| | 120 Paradise Oaks Court<br>Paradise, TX 76073 | Casey Williams | casey@friospops.com |

| | | | |
|---|---|---|---|
| | 10913 Aledo Lane<br>Aubrey, TX 76227 | Desiree Cordova | desiree@friospops.com |
| | 6521 Mosswood Dr<br>Midland, TX 79707 | Tabitha Garcia | tabitha@friospops.com |
| **West Virginia** | 5340 U.S. Route 60 Suite 110<br>Huntington, WV 25705 | JEA Frios LLC<br>(Jeremy Adams) | jeremy@friospops.com<br>304-417-0618 |
| **Wisconsin** | 603 Raymond Rd<br>Waunakee, WI 53597 | Chelsea Metzger | chelsea@friospops.com |

(b) **Former Franchisees.** The following are the names, last known home addresses and home telephone numbers of all franchisees that have been terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under a Frios Gourmet Pops Franchise Agreement during the most recently completed fiscal year (January 1, 2022, to December 31, 2022) or who have not communicated with us within 10 weeks of the date of issuance of this Franchise Disclosure Document:

| State | Business Location | Franchisee | Contact Information |
|---|---|---|---|
| **Alabama** | 100 Company St.<br>Wetumpka, AL 36092 | Troy and Jenny Stubbs | troy@friospops.com<br>334-451-4589 |
| **Florida** | 1005A John Sims Parkway<br>Niceville, FL 32578 | John Roper | John@friospops.com<br>334-819-0117 |
| **Louisiana** | 1907 Jim Casey Drive<br>Shreveport, LA 71103 | Richard and Glenda Townley | glenda@friospops.com<br>318-393-7741 |
| **Texas** | 1902 Green Ridge Court<br>Abilene, TX 79602 | Robyn George | robyn@friospops.com<br>325-704-4280 |
| | 242 Rufe Snow Dr., Suite 150, Keller, TX 76248 | Alison Groom | alison@friospops.com<br>817-675-6882 |
| | 405 S FM 1187 #600<br>Aledo, TX 76008 | Clint and Brittany Cooper | Bcooper@friospops.com<br>817-903-9909 |
| | 10305 Quaker Ave 100<br>Lubbock, TX 79424 | Chance and Alexa Brit | chance@friospops.com<br>575-317-7770 |

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**EXHIBIT G TO THE DISCLOSURE DOCUMENT**

**STATE ADDENDA**

**California FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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1. Item 17 "Renewal, Termination, Transfer and Dispute Resolution: The Franchise Relationship," is supplemented by the addition of the following:

A. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

B. The franchisor, any person or franchise broker in Item 2 of the FDD is not subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a *et seq.*, suspending or expelling such persons from membership in such association or exchange.

C. California Business and Professions Code Sections 20000 through 20043 establish the rights of the franchisee concerning termination, transfer, or non-renewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

D. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law. (11 U.S.C.A. Sec. 101 et seq.).

E. The Franchise Agreement contains a covenant not to compete, which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

F. The Franchise Agreement requires binding arbitration. The arbitration will occur in the State of Alabama with the costs being borne by the franchisee and franchisor.

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5 Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any provisions of a Franchise Agreement restricting venue to a forum outside the State of California.

G. The Franchise Agreement requires application of the laws of the State of Alabama. This provision may not be enforceable under California law.

2. Section 31125 of the California Corporations Code requires us to give you a Disclosure Document, in a form containing the information that the commissioner may by rule or order require, before a solicitation of a proposed material modification of an existing franchise.

3. You must sign a general release of claims if you renew or transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516).

4. Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043.

5. Item 6 "Other Fees," is supplemented by the addition of the following statement: "The highest interest rate allowed by law in the State of California is 10%."

6. The following URL address is for the franchisor's website: www.friospops.com.

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION AT www.dfpi.ca.gov.

**Connecticut FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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1. Item 3 "Litigation," is supplemented by the addition of the following:

A. Neither the Franchisor nor any person identified in Items 1 or 2 above has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against him alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, business opportunity law, securities law, misappropriation of property or comparable allegations.

B. Neither the Franchisor nor any other person identified in Items 1 or 2 above has during the 10 year period immediately preceding the date of this Disclosure Document, been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable in any civil action by final judgment, or been the subject of any material complaint or other legal proceeding where a felony, civil action, complaint or other legal proceeding involved violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, business opportunity law, securities law, misappropriation of property or comparable allegations or which was brought by a present or former purchaser-investor or which involves or involved the business opportunity relationship.

C. Neither the Franchisor nor any person identified in Items 1 or 2 above is subject to any currently effective injunctive or restrictive order or decree relating to the franchise, or under any federal, state or Canadian franchise, securities, business opportunity, antitrust, trade regulation or trade practice law as a result of concluded or pending action or proceeding brought by a public agency, or is a party to a proceeding currently pending in which an order is sought, relating to or affecting business opportunity activities or the seller-purchaser-investor relationship, or involving fraud, including but not limited to, a violation of any business opportunity law, franchise law, securities law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade.

D. Neither Company nor any person identified in Item 2 above is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities & Exchange Act of 1934) suspending or expelling these persons from membership in the association or exchange.

2. Item 4 "Bankruptcy," is supplemented by the addition of the following:

No entity or person listed in Items 1 and 2 of this Disclosure Document has, at any time during the previous 10 fiscal years (a) filed for bankruptcy protection, (b) been adjudged bankrupt, (c) been reorganized due to insolvency, or (d) been a principal, director, executive officer or partner of any

other person that has so filed or was adjudged or reorganized, during or within one year after the period that the person held a position with the other person.

If the seller fails to deliver the products, equipment or supplies or fails to render the services necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract be cancelled.

DISCLOSURES REQUIRED BY CONNECTICUT LAW

The State of Connecticut does not approve, recommend, endorse or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement.

BUSINESS OPPORTUNITY DISCLOSURE

The following business opportunity disclosure is provided by FRIOS FRANCHISING COMPANY, LLC, a registered business in the State of Connecticut.

Disclosure Document is dated: May 31, 2023

**Hawaii FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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Exhibit I "FDD Receipts," is supplemented with the addition of the following:

The Receipt for this Disclosure Document (Exhibit "I") is supplemented to add the following:

1. THIS FRANCHISE WILL BE/HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

2. THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS BEFORE THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS BEFORE THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

3. THIS DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT AND THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

**Illinois FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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DISCLOSURE REQUIRED BY THE STATE OF ILLINOIS

Illinois law governs the Franchise Agreement.

In conformance with Section 4 of the Illinois Franchise Disclosure Act, any provision in a franchise agreement that designates jurisdiction and venue in a forum outside of the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

Franchisee's rights upon Termination and Non-Renewal are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

In conformance with Section 41 of the Illinois Franchise Disclosure Act, any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law of Illinois is void.

No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiting any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Payment of Initial Franchise Fees will be deferred until Franchisor has met its initial obligations to franchisee, and franchisee has commenced doing business. This financial assurance requirement was imposed by the Office of the Illinois Attorney General due to Franchisor's financial status.

**Indiana FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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1. Item 8, "Restrictions on Sources of Products and Services," is supplemented by the addition of the following:

> Under Indiana Code Section 23-2-2.7-1(4), the franchisor will not obtain money, goods, services, or any other benefit from any other person with whom the franchisee does business, on account of, or in relation to, the transaction between the franchisee and the other person, other than for compensation for services rendered by the franchisor, unless the benefit is promptly accounted for, and transmitted by the franchisee.

2. Item 6, "Other Fees" and Item 9, "Franchisee's Obligations", are supplemented, by the addition of the following:

> The franchisee will not be required to indemnify franchisor for any liability imposed upon franchisor as a result of franchisee's reliance upon or use of procedures or products that were required by franchisor, if the procedures or products were utilized by franchisee in the manner required by franchisor.

3. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," is supplemented, by the addition of the following:

> A. Indiana Code 23-2-2.7-1(7) makes unlawful unilateral termination of a franchise unless there is a material violation of the Franchise Agreement and termination is not in bad faith.
>
> B. Indiana Code 23-2-2.7-1(5) prohibits a prospective general release of claims subject to the Indiana Deceptive Franchise Practices Law.
>
> C. ITEM 17(r) is amended subject to Indiana Code 23-2-2.7-1(9) to provide that the post-term non-competition covenant shall have a geographical limitation of the territory granted to Franchisee.
>
> D. ITEM 17(v) is amended to provide that franchisees will be permitted to commence litigation in Indiana for any cause of action under Indiana Law.
>
> E. ITEM 17(w) is amended to provide that in the event of a conflict of law, Indiana Law governs any cause of action that arises under the Indiana Disclosure Law or the Indiana Deceptive Franchise Practices Act.

**Maryland FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiting any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Item 5, "Initial Fees," is supplemented, by the addition of the following:

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

Item 17, "Renewal, Termination, Transfer and Dispute Resolution," is supplemented, by the addition of the following:

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

B. A Franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

C. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

D. The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101, et seq.)

**Michigan FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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

A. A prohibition of your right to join an association of franchisees.

B. A requirement that you assent to a release, assignment, novation, waiver or estoppel that deprives you of rights and protections provided in this act. This shall not preclude you, after entering into a Franchise Agreement, from settling any and all claims.

C. A provision that permits us to terminate a franchise before the expiration of this term except for good cause. Good cause shall include your failure to comply with any lawful provision of the Franchise Agreement and to cure the failure after being given written notice of the failure and a reasonable opportunity, which in no event need be more than 30 days, to cure the failure.

D. A provision that permits us to refuse to renew a franchise without fairly compensating you by repurchase or other means for the fair market value at the time of expiration of your inventory, supplies, equipment, fixtures and furnishings. Personalized materials that have no value to us and inventory, supplies, equipment, fixtures and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (a) the term of the franchise is less than five years, and (b) you are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising or other commercial symbol in the same area subsequent to the expiration of the franchise or you do not receive at least six months advance notice of our intent not to renew the franchise.

E. A provision that permits us to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.

F. A provision requiring that litigation be conducted outside this state. This shall not preclude you from entering into an agreement, at the time of litigation, to conduct litigation at a location outside this state.

G. A provision that permits us to refuse to permit a transfer of ownership of a franchise, except for good cause. The subdivision does not prevent us from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:

(i) The failure of the proposed transferee to meet our then current reasonable qualifications or standards.

(ii) The fact that the proposed transferee is our or Sub-franchisor's competitor.

(iii) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.

(iv) Your or proposed transferee's failure to pay us any sums or to cure any default in the Franchise Agreement existing at the time of the proposed transfer.

H. A provision that requires you to resell to us items that are not uniquely identified with us. This subdivision does not prohibit a provision that grants us a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants us the right to acquire the assets of a franchise for the market or appraised value and has failed to cure the breach in the manner provided in Item 17(g).

I. A provision that permits us to directly or indirectly convey, assign or otherwise transfer our obligations to fulfill contractual obligations to you unless a provision has been made for providing the required contractual services.

2. If our most recent financial statements are unaudited and show a net worth of less than $100,000, you may request that we arrange for the escrow of initial investment and other funds you paid until our obligations, if any, to provide real estate, improvements, equipment, inventory, training or other items included in the franchise offering are fulfilled. At our option, a surety bond may be provided in place of escrow.

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

4. Any questions regarding this notice should be directed to: State of Michigan, Consumer Protection Division, Attention: Franchise Bureau, 670 Law Building, Lansing, MI 48913; telephone number (517) 373-3800.

**Minnesota FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

ADDITIONAL RISK FACTORS:

1. THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE MINNESOTA FRANCHISE ACT. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF COMMERCE OF MINNESOTA OR A FINDING BY

THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

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

AMENDMENT OF FDD DISCLOSURES:

A. Item 6, "Other Fees", Not sufficient funds are governed by Minnesota Statute 604.113, which puts a cap of $30 on service charges.

B. Item 13, "Trademarks", Item 13 is supplemented by the addition of the following: As required by the Minnesota Franchise Act, Minn. Stat. Sec. 80C.12(g), we will reimburse you for any costs incurred by you in the defense of your right to use the marks, so long as you were using the marks in the manner authorized by us, and so long as we are timely notified of the claim and given the right to manage the defense of the claim including the right to compromise, settle or otherwise resolve the claim, and to determine whether to appeal a final determination of the claim.

C. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," Item 17 is supplemented by the addition of the following: With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, Subds. 3, 4 and 5, which require, except in certain specified cases, that you be given 90 days- notice of termination (with 60 days to cure) and 180 days-notice of non-renewal of the Agreement.

D. Item 17 "Renewal, Termination, Transfer and Dispute Resolution," Item 17 is supplemented by the addition of the following: Item 17 shall not provide for a prospective general release of claims against us that may be subject to the Minnesota Franchise Law. Minn. Rule 2860.4400D prohibits a franchisor from requiring a franchisee to assent to a general release.

E. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the Disclosure Document or Franchise Agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum or remedies provided for by the laws of the jurisdiction.

**New York FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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

**INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT A OR YOUR PUBLIC**

**LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS FRANCHISE DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE FRANCHISE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, BUREAU OF INVESTOR PROTECTION AND SECURITIES, 28 LIBERTY STREET, 21ST FLOOR, NEW YORK, NEW YORK 10005.**

**THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE FRANCHISE DISCLOSURE DOCUMENT. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS FRANCHISE DISCLOSURE DOCUMENT.**

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

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

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

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

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

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

3. The following is added to the end of **Item 4**:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the

10-year period immediately before the date of the offering circular: (a) filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the bankruptcy code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within one year after that officer or general partner of the franchisor held this position in the company or partnership.

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

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

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

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

6. The following language replaces the "Summary" section of **Item 17(d)**, titled "Termination by franchisee":

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

7. The following is added to the end of the "Summary" section of **Item 17(j)**, titled "**Assignment of contract by franchisor"**:

However, no assignment will be made except to an assignee who in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor's obligations under the Franchise Agreement.

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

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

**North Dakota FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

1. Item 5, "Initial fees", Item 5 is supplemented by the addition of the following:

Refund and cancellation provisions will be inapplicable to franchises operating under North Dakota Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17. If franchisor elects to cancel this Franchise Agreement,

franchisor will be entitled to a reasonable fee for its evaluation of you and related preparatory work performed and expenses actually incurred.

2. Item 6, "Other Fees", Item 6 is supplemented by the addition of the following:

No consent to termination or liquidated damages shall be required from franchisees in the State of North Dakota.

3. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," Item 17 is supplemented by the addition of the following:

A. Any provision requiring a franchisee to sign a general release upon renewal of the Franchise Agreement has been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

B. Any provision requiring a franchisee to consent to termination or liquidation damages has been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

C. Covenants restricting competition contrary to Section 9-08-06 of the North Dakota Century Code, without further disclosing that such covenants may be subject to this statute, are unfair, unjust and inequitable. Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota.

D. Any provision in the Franchise Agreement requiring a franchisee to agree to the arbitration or mediation of disputes at a location that is remote from the site of the franchisee's business has been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. The site of arbitration or mediation must be agreeable to all parties and may not be remote from the franchisee's place of business.

E. Any provision in the Franchise Agreement which designates jurisdiction or venue or requires the franchisee to agree to jurisdiction or venue in a forum outside of North Dakota is void with respect to any cause of action which is otherwise enforceable in North Dakota.

F. Apart from civil liability as set forth in Section 51-19-12 of the N.D.C.C., which is limited to violations of the North Dakota Franchise Investment Law (registration and fraud), the liability of the franchisor to a franchisee is based largely on contract law. Despite the fact that those provisions are not contained in the franchise investment law, those provisions contain substantive rights intended to be afforded to North Dakota residents and it is unfair to franchise investors to require them to waive their rights under North Dakota Law.

G. Any provision in the Franchise Agreement requiring that the Franchise Agreement be construed according to the laws of a state other than North Dakota are unfair, unjust or inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law

H. Any provision in the Franchise Agreement which requires a franchisee to waive his or her right to a jury trial has been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law.

**Rhode Island FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

Item 17, "Renewal, Termination, Transfer and Dispute Resolution," Item 17 is supplemented by the addition of the following:

> A. The Rhode Island Franchise Investment Act, R.I. Gen. Law Ch. 395 Sec. 19-28.1-14 provides that a provision in a Franchise Agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.
>
> B. Any general release as a condition of renewal, termination or transfer will be void with respect to claims under the Rhode Island Franchise Investment Act.

**Virginia FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

The Virginia Sate Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the franchise agreement.

No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiting any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

**Estimated Initial Investment**. The franchisee will be required to make an estimated initial investment ranging from $40,925 to $71,775. This amount exceeds the franchisor's stockholder's equity as of December 31, 2022, which is ($219,921).

Item 17, "Renewal, Termination, Transfer and Dispute Resolution," Item 17(h) is supplemented by the addition of the following:

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

**Washington FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

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

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

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed $100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed $250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

**Wisconsin FDD Amendment**

Amendments to the Frios

Franchise Disclosure Document

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Item 17, "Renewal, Termination, Transfer and Dispute Resolution," Item 17 is supplemented by the addition of the following:

> The Wisconsin Fair Dealership Law Title XIV-A Ch. 135, Section 135.01-135.07 may affect the termination provision of the Franchise Agreement.

STATE SPECIFIC AMENDMENTS TO FRANCHISE AGREEMENT

AND, IF APPLICABLE, MULTI-UNIT DEVELOPMENT AGREEMENT

## HAWAII FRANCHISE AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement

In recognition of the requirements of the Hawaii Franchise Investment Law, the undersigned agree to the following modifications to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement"), as follows:

1. Sub-Article 14.C.(6). Sub-article 14.C.(6), under the Article section titled "Conditions for Approval of Transfer," is supplemented by the addition of the following language:

; provided, however, that all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of the Hawaii Franchise Investment Law, shall remain in force; it being the intent of this provision that the non-waiver provisions of the Hawaii Franchise Investment Law be satisfied; and

The Hawaii Franchise Investment Law provides rights to the franchisee concerning non-renewal, termination and transfer of the Franchise Agreement. If this Sub-article contains a provision that is inconsistent with the Hawaii Franchise Investment Law, the Hawaii Franchise Investment Law will control.

2. Sub-Article 15.B.(8). Sub-article 15.B.(8), under the Article section titled "Conditions for Renewal," is supplemented by the addition of the following:

; provided, however, that all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of the Hawaii Franchise Investment Law, shall remain in force; it being the intent of this provision that the non-waiver provisions of the Hawaii Franchise Investment Law be satisfied; and

The Hawaii Franchise Investment Law provides rights to the franchisee concerning non-renewal, termination and transfer of the Franchise Agreement. If this subarticle contains a provision that is inconsistent with the Hawaii Franchise Investment Law, the Hawaii Franchise Investment Law will control.

3. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Hawaii Franchise Investment Law are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Hawaii State amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement on the same date as the Franchise Agreement was executed.

| **Franchisor:** FRIOS FRANCHISING COMPANY, LLC | **Franchisee:** |
|---|---|
| _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Name and Title (please print) | Name (please print) |
| _____ | _____ |
| Dated | Dated |

## ILLINOIS FRANCHISE AND DEVELOPMENT AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement

In recognition of the requirements of the Illinois Franchise Disclosure Act, 815 ILCS 705/1 to 705/45, and Ill. Admin. Code tit. 15, §200.100 et seq., the undersigned agree to the following modifications to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement") and, if Franchisor and Franchisee both sign the FRIOS FRANCHISING COMPANY, LLC Multi-Unit Development Agreement (the "Development Agreement"), as follows:

1. Article 18.F. of the Franchise Agreement, and if Franchisee executes a Development Agreement, Article 7.5 of the Development Agreement, under the heading "Governing Law", shall be amended by the addition of the following statement added after the end of the last sentence of Article 18.F. of the Franchise Agreement and Article 7.5 of the Development Agreement:

Illinois Addendum: Illinois law governs the agreements between the parties to this franchise.

Section 4 of the Illinois Franchise Disclosure Act Provides that any provision in a Franchise Agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a Franchise Agreement may provide for arbitration in a venue outside Illinois.

Your rights upon termination and non-renewal of a Franchise Agreement are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Section 41 of the Illinois Franchise Disclosure Act Provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act, or any other law of Illinois is void

2. Article 18.G. of the Franchise Agreement, and if Franchisee executes a Development Agreement, Article 7.6 of the Development Agreement, under the heading "Choice of Law, Non-Binding Mediation, Binding Arbitration, and Consent to Jurisdiction", shall be amended by the addition of the following statement added after the end of the last sentence of Article 18.G. of the Franchise Agreement and Article 7.6 of the Development Agreement:

Illinois Addendum: Illinois law governs the agreements between the parties to this franchise.

Section 4 of the Illinois Franchise Disclosure Act Provides that any provision in a Franchise Agreement that designates jurisdiction or venue outside the State of Illinois is void. However, a Franchise Agreement may provide for arbitration in a venue outside Illinois.

Your rights upon termination and non-renewal of a Franchise Agreement are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure Act.

Section 41 of the Illinois Franchise Disclosure Act Provides that any condition, stipulation or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act, or any other law of Illinois is void.

3. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act (815 ILCS 705/1 to 705/45) are met independently without reference to this amendment.

No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiting any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on behalf of the Franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Illinois amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement and, if applicable, the Development Agreement on the same date as the Franchise Agreement and Development Agreement were, respectively, executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

## MARYLAND FRANCHISE AND DEVELOPMENT AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement and Development Agreement

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement") and, if Franchisor and Franchisee both sign the FRIOS FRANCHISING COMPANY, LLC Multi-Unit Development Agreement (the "Development Agreement"), as follows:

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

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

3. Article 18.G. of the Franchise Agreement, under the heading "Choice of Law, Non-Binding Mediation, Binding Arbitration, and Consent to Jurisdiction," shall be amended by the addition of the following statement added to Article 18.G. of the Franchise Agreement:

> A franchisee may bring a lawsuit in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law.

4. Article 18.I. of the Franchise Agreement, under the heading "Limitations of Claims," shall be amended by the addition of the following statement added to Article 18.I. of the Franchise Agreement:

> An laims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.
>
> A general release required as a condition of renewal, sale and/or assignment or transfer of a Franchise Agreement shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law

5. All representations requiring prospective franchisees to assent to a release, estoppel or waiver of liability are not intended to nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

6. Based upon the franchisor's financial condition, the Maryland Securities Commissioner has required a financial assurance. Therefore, all initial fees and payments owned by franchisees shall be deferred until the franchisor completes its pre-opening obligations under the franchise agreement. In addition, all development fees and initial payments by area developers shall be deferred until the first franchise under the development agreement opens.

7. Section 24 of the Franchise Agreement does not apply to Maryland franchisees.

8. Section 17 of the Development Agreement does not apply to Maryland franchisees.

9. The Franchisee Questionnaire does not apply to Maryland franchisees.

10. No statement, questionnaire or acknowledgement signed or agreed to by a franchisee in connection with the commencement of the franchise relationship shall have the effect of: (i) waiting any claims under any applicable state franchise law, including fraud in the inducement, or (ii) disclaiming reliance on any statement made by any franchisor, franchise seller, or other person acting on behalf of the franchisor. This provision supersedes any other term of any document executed in connection with the franchise.

Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Maryland amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement and, if applicable, the Development Agreement on the same date as the Franchise Agreement and Development Agreement were, respectively, executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

**MINNESOTA FRANCHISE AND DEVELOPMENT AGREEMENT AMENDMENT**

Amendments to the Frios Franchise Agreement

In recognition of the requirements of the Minnesota Statutes, Chapter 80C. and Minnesota Franchise Rules, Chapter 2860, the parties to the attached FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement") and, if Franchisor and Franchisee both sign the FRIOS FRANCHISING COMPANY, LLC Multi-Unit Development Agreement (the "Development Agreement"), as follows:

1.Article 14.C of the Franchise Agreement, under the heading "Conditions for Approval of Transfer," subarticle 14.C(6) is supplemented with the addition of the following language:

; provided, however, that all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of the Minnesota Franchise Act, Minn. Stat. Section 80C.14 et seq. and Minnesota Rules 2860.4400(D), shall remain in force; it being the intent of this provision that the non-waiver provisions of the Minnesota Rules 2860.4400(D) be satisfied; and

Minnesota law provides a franchisee with certain termination and non-renewal rights. Minn. Stat. Sect. 80C.14 Subdivisions 3, 4, and 5 require, except in certain specified cases, that franchisee be given 180 days-notice of nonrenewal of this Agreement by Franchisor.

2. Article 15.B of the Franchise Agreement, under the heading "Conditions for Renewal," sub article 15.B(8) is supplemented with the addition of the following language:

Article 15.B. of the Franchise Agreement, under the heading "Conditions for Renewal," the subarticle 15.B(8) is supplemented with the addition of the following language:

; provided, however, that all rights enjoyed by Franchisee and any causes of action arising in Franchisee's favor from the provisions of the Minnesota Franchise Act, Minn. Stat. Section 80C.14 et seq. and Minnesota Rules 2860.4400(D), shall remain in force; it being the intent of this provision that the non-waiver provisions of the Minnesota Rules 2860.4400(D) be satisfied; and

Minnesota law provides a franchisee with certain termination and non-renewal rights. Minn. Stat. Sect. 80C.14 Subdivisions 3, 4, and 5 require, except in certain specified cases, that franchisee be given 180 days-notice of nonrenewal of this Agreement by Franchisor.

3. Under Article 11 of the Franchise Agreement, under the heading "Notification of Infringement and Claims," the subarticle 11.C. shall be supplemented by the addition of the following:

Franchisor agrees to protect Franchisee, to the extent required by the Minnesota Franchise Act, against claims of infringement or unfair competition with respect to Franchisee's use of the Marks when, in the opinion of Franchisor's counsel, Franchisee's rights warrant protection pursuant to Article 11.E. of this Agreement.

4. Under Article 14 of the Franchise Agreement, under the heading "Conditions for Approval of Transfer," the subarticle 14.C. shall be supplemented by the addition of the following:

Franchisor shall not unreasonably withhold consent to transfer the Franchise Agreement.

5. Under Article 16 of the Franchise Agreement, under the heading "Defaults and Automatic Termination Upon Written Notice Without Cure Period," the subarticle 16.A.(2). shall be supplemented by the addition of the following:

Article 16.A.(2) will not be enforced to the extent prohibited by applicable law.

6. Under Article 16 of the Franchise Agreement, under the heading "Defaults and Automatic Termination After 30 Day Cure Period," the subarticle 16.A.(4)(f), shall be supplemented by the addition of the following:

Subarticle 16.A.(4)(f) will not be enforced to the extent prohibited by applicable law.

7. Under both subarticles 16.A.(2) and 16.A.(4) of the Franchise Agreement, the following is added:

Minnesota law provides a franchisee with certain termination rights. Minn. Stat. Sect. 80C.14 Subdivisions 3, 4, and 5 require, except in certain specified cases, that franchisee be given 90 days-notice of termination (with 60 days to cure) of this Agreement.

8. Article 18.F. of the Franchise Agreement, under the heading "Governing Law", shall be amended by the addition of the following statement added to the end of the last sentence of Article 18.F.:

; except to the extent otherwise prohibited by applicable law with respect to claims arising under the Minnesota Franchise Act.

9. Article 18.G. of the Franchise Agreement and, if Franchisee executes a Development Agreement, Article 7.6 of the Development Agreement, under the heading "Choice of Law, Non-Binding Mediation, Binding Arbitration, and Consent to Jurisdiction", shall be amended by the addition of the following statement added to the end of the last sentence of Article 18.G. of the Franchise Agreement and Article 7.6 of the Development Agreement:

; except the extent otherwise prohibited by applicable law with respect to claims arising under the Minnesota Franchise Act.

10. Article 18.K of the Franchise Agreement, and if Franchisee executes a Development Agreement, Article 7.10 of the Development Agreement, under the heading "Waiver of Jury Trial", shall be supplemented by the addition of the following statement at the end of the sentence contained in Article 18.K. of the Franchise Agreement and Article 7.10 of the Development Agreement:

; except that nothing in this Agreement should be considered a waiver of any right conferred upon Franchisee by the Minnesota Franchise Act.

11. Article 18.I. of the Franchise Agreement and, if Franchisee executes a Development Agreement, Article 7.8 of the Development Agreement, under the heading "Limitations of Claims," shall be supplemented by the addition of the following statement:

Under the Minnesota Franchise Act, any claims between the parties must be commenced within three years of the occurrence of the facts giving rise to such claim, or such claim shall be barred.

12. Article 18 of the Franchise Agreement and if Franchisee executes a Development Agreement, Article 7 of the Development Agreement, under the heading "Enforcement and Construction," shall be supplemented by the addition of the following new subarticle 18.Z. to the Franchise Agreement and Article 7.24 of the Development Agreement:

Any foregoing acknowledgments are not intended to nor shall they act as a release, estoppel or waiver or any liability under the Minnesota Franchise Act.

13. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchise Act are met independently without reference to this amendment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Minnesota State amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement and, if applicable, the Development Agreement on the same date as the Franchise Agreement and Development Agreement were, respectively, executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| _____ | _____ |
| Signature | Signature |
| _____ | _____ |
| Name and Title (please print) | Name (please print) |
| _____ | _____ |
| Dated | Dated |

## NEW YORK FRANCHISE AND DEVELOPMENT AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs., tit. 13, §§ 200.1 through 201.16), the parties to the attached FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement") and, if Franchisor and Franchisee both sign the FRIOS FRANCHISING COMPANY, LLC Multi-Unit Development Agreement (the "Development Agreement"), as follows:

1. Under Article 14.C of the Franchise Agreement, under the heading "Conditions for Approval of Transfer," the subarticle 14.C(6) is supplemented with the addition of the following language:

> ; provided, however, that all rights and causes of action arising in favor of Franchisee from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied.

2. Under Article 15.B of the Franchise Agreement, under the heading "Conditions for Renewal," the subarticle 15.B(8) is supplemented with the addition of the following language:

> ; provided, however, that all rights and causes of action arising in favor of Franchisee from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied.

3. Article 18 of the Franchise Agreement and, if Franchisee executes a Development Agreement, Article 7 of the Development Agreement, under the heading "Enforcement and Construction," shall be supplemented by the addition of the following new subarticle 18.Z. to the Franchise Agreement and Article 7.24 of the Development Agreement:

> Nothing in this Agreement should be considered a waiver of any right conferred upon franchisee by New York General Business Law, Sections 680-695.

4. There are circumstances in which an offering made by FRIOS FRANCHISING COMPANY, LLC would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the State of New York. However, an offer or sale is deemed made in New York if you are domiciled in New York or the Outlet will be opening in New York. FRIOS FRANCHISING COMPANY, LLC is required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

5. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the New York General Business Law, are met independently without reference to this amendment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed and delivered this New York amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement and, if applicable, the Development Agreement on the same date as the Franchise Agreement and Development Agreement were, respectively, executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

## NORTH DAKOTA FRANCHISE AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement

In recognition of the North Dakota Franchise Investment Law, Section 51-19, the parties to the attached FRIOS FRANCHISING COMPANY, LLC Franchise Agreement (the "Franchise Agreement") agree as follows:

The North Dakota Addendum is only applicable if you are a resident of North Dakota or if your Frios Restaurant outlet will be located within the State of North Dakota.

1. Article 15 of the Franchise Agreement is hereby amended by the addition of the following language: "Provisions requiring North Dakota franchisees to sign a general release upon renewal of the Franchise Agreement are not enforceable in North Dakota."

2. Article 16 of the Franchise Agreement is hereby amended by the addition of the following language: "Provisions requiring North Dakota franchisees to consent to termination or liquidated damages are not enforceable in North Dakota."

3. Articles 6 of the Franchise Agreement are hereby amended by the addition of the following language: "Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota."

4. Article 18 of the Franchise Agreement is hereby amended by the addition of the following language: "Covenants requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota may not be enforceable in North Dakota."

5. Article 18 of the Franchise Agreement is hereby amended by the addition of the following language: "for North Dakota franchisees, North Dakota law shall apply."

6. Article 18 of the Franchise Agreement is hereby amended by the addition of the following language: "Provisions requiring a franchisee to consent to a waiver of trial by jury are not enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law."

7. Article 18 of the Franchise Agreement is hereby amended by the addition of the following language: "Provisions requiring the franchisee to consent to a waiver of exemplary and punitive damages are not enforceable under Section 51-19-09 of the North Dakota Franchise Investment Law."

8. Article 18 of the Franchise Agreement is hereby amended by the addition of the following language: "Provisions requiring a franchisee to consent to a limitation of claims within one year have been determined to be unfair, unjust and inequitable within the intent of Section 51-19-09 of the North Dakota Franchise Investment Law. Therefore, for North Dakota franchisees, the statute of limitations under North Dakota Law will apply."

Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of North Dakota Law are met independently without reference to this amendment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed and delivered this North Dakota amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement a on the same date as the Franchise Agreement was executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

**VIRGINIA STATE FRANCHISE AGREEMENT AMENDMENT**

Amendments to the Frios Area Development Agreement

The Virginia Sate Corporation Commission's Division of Securities and Retail Franchising requires us to defer payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor until the franchisor has completed its pre-opening obligations under the development agreement.

IN WITNESS WHEREOF, the parties have duly executed and delivered this Washington State amendment to the FRIOS FRANCHISING COMPANY, LLC Area Development Agreement a on the same date as the Area Development Agreement was executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

## WASHINGTON STATE FRANCHISE AGREEMENT AMENDMENT

Amendments to the Frios Franchise Agreement

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

RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.

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

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

Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed $100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed $250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have duly executed and delivered this Washington State amendment to the FRIOS FRANCHISING COMPANY, LLC Franchise Agreement a on the same date as the Franchise Agreement was executed.

**Franchisor:** FRIOS FRANCHISING COMPANY, LLC **Franchisee:**

| | |
|---|---|
| Signature | Signature |
| Name and Title (please print) | Name (please print) |
| Dated | Dated |

**EXHIBIT H TO THE DISCLOSURE DOCUMENT**

**STATE EFFECTIVE DATES**

## State Effective Dates

The following states have franchise laws that require that the Franchise Disclosure Document be registered or filed with the state, or be exempt from registration: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin.

This document is effective and may be used in the following states, where the document is filed, registered or exempt from registration, as of the Effective Date stated below:

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

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

**EXHIBIT I TO THE DISCLOSURE DOCUMENT**

**RECEIPT**

## RECEIPT

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 Frios Franchising Company, LLC offers You a franchise, it must provide this disclosure document to You 14 calendar-days before You sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that You be given this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of any franchise or other agreement, or payment of any consideration that relates to the franchise relationship. Iowa requires that We give You this disclosure document at the earlier of first personal meeting or 14 days before the execution of the franchise or other agreement or payment of any consideration. Michigan and Oregon require that We give You this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Frios Franchising Company, 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 any applicable state agency (which are listed in Exhibit A).

The name, principal business address, and telephone number of each franchise seller offering the franchise is:

| Name | Principal Business Address | Telephone Number |
|---|---|---|
| Cliff Kennedy | 1201 W. I-65 Service Road North, Mobile, Alabama 36618 | (251) 307-1170 |
| | | |

Date of Issuance: May 31, 2023

I have received a Franchise Disclosure Document dated May 31, 2023, including the following exhibits on the date listed below:

Exhibit A List Of State Administrators/Agents For Service Of Process
Exhibit B. Franchise Agreement And Attachments
Exhibit C. Multi-Unit Development Agreement
Exhibit D. Operations Manual Table Of Contents
Exhibit E. Financial Statements
Exhibit F List Of Current And Former Franchisees
Exhibit G. State Addenda To The Disclosure Document
Exhibit H. State Effective Dates
Exhibit I. Receipts

| _____ | _____ | _____ |
|---|---|---|
| Date | Signature | Printed Name |
| _____ | _____ | _____ |
| Date | Signature | Printed Name |

Please return the signed Receipt to: Frios Franchising Company, LLC 1201 W. I-65 Service Road North, Mobile, Alabama 36618

## RECEIPT (YOUR COPY)

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Frios Franchising Company, LLC offers You a franchise, it must provide this disclosure document to You 14 calendar-days before You sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that You be given this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of any franchise or other agreement, or payment of any consideration that relates to the franchise relationship. Iowa requires that We give You this disclosure document at the earlier of first personal meeting or 14 days before the execution of the franchise or other agreement or payment of any consideration. Michigan and Oregon require that We give You this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Frios Franchising Company, 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 any applicable state agency (which are listed in Exhibit A).

The name, principal business address, and telephone number of each franchise seller offering the franchise is:

| Name | Principal Business Address | Telephone Number |
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| Cliff Kennedy | 1201 W. I-65 Service Road North, Mobile, Alabama 36618 | (251) 307-1170 |
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Exhibit H. State Effective Dates
Exhibit I. Receipts

| _____ | _____ | _____ |
|---|---|---|
| Date | Signature | Printed Name |
| _____ | _____ | _____ |
| Date | Signature | Printed Name |

Please return the signed Receipt to: Frios Franchising Company, LLC 1201 W. I-65 Service Road North, Mobile, Alabama 36618