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MAY 31 2017

Department of
Business Oversight

FRANCHISE DISCLOSURE DOCUMENT



espressamente illy Americas, inc
a Delaware corporation
800 Westchester Avenue, Suite S438
Rye Brook, NY 10573
(914) 253-8141
espressamenteilly.americas@illy.com
www.espressamenteilly.com

We grant the right to operate an Italian-style coffee bars that specialize in serving espresso, cappuccino and coffee related products, light snack food, and other items under our name and marks (the "ILLY Locations")

The total investment necessary to begin operation of an ILLY Location in a (1) Facility, or (2) Separate Location (as defined in Item 1) is between \$433,900 and \$1,745,720 and between \$447,900 and \$1,732,720, respectively. This includes the \$60,000 to \$105,000 that must be paid to us or our affiliate. If you sign a Development Agreement authorizing multiple ILLY Locations, the total investment for the development rights is between \$40,000 and \$48,000. This includes the \$40,000 to \$45,000 that must be paid to us or our affiliate.

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 any affiliate in connection with the proposed sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Barry Sheldon, President for Business Development at 800 Westchester Avenue, Suite S438, Rye Brook, New York 10573 or (914) 253-8141.

The terms of your contract will govern your relationship with us. 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, D C 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 also be laws on franchising in your state. Ask your state agencies about them.

The issuance date May 30, 2017

STATE COVER PAGE

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

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

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR RETAIL LOCATION AGREEMENT, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Risk Factors

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

- *1 THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY LITIGATION ONLY IN THE STATE IN WHICH WE HAVE OUR PRINCIPAL PLACE OF BUSINESS WHEN THE DISPUTE ARISES, WHICH IS CURRENTLY NEW YORK. OUT-OF-STATE LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO LITIGATE WITH US IN NEW YORK THAN IN YOUR OWN STATE.
- *2 THE FRANCHISE AGREEMENT STATES THAT THE LAW OF THE STATE IN WHICH WE HAVE OUR PRINCIPAL PLACE OF BUSINESS WHEN THE DISPUTE ARISES, WHICH IS CURRENTLY NEW YORK, GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW YOU MAY WANT TO COMPARE THESE LAWS.
- 3 THE TOTAL INVESTMENT YOU MUST MAKE TO BEGIN OPERATING AN ILLY LOCATION EXCEEDS THE EQUITY FRANCHISOR HAS IN ITS OWN COMPANY.
- 4 THE FRANCHISEE WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM \$40,000 TO \$1,745,720. THIS AMOUNT MAY EXCEED THE FRANCHISOR'S STOCKHOLDER'S EQUITY AS OF DECEMBER 31, 2016, WHICH IS \$281,258.
- 5 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 WE CONTROL.
- 6 OWNERS OF THE FRANCHISE AND, IN SOME INSTANCES, THEIR SPOUSES WILL BE REQUIRED TO EXECUTE PERSONAL GUARANTEES. THIS REQUIREMENT PLACES THE PERSONAL AND MARITAL ASSETS OF THE FRANCHISE OWNERS AND THEIR SPOUSES AT RISK.
- 7 THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

Local law may supersede these agreement provisions. Certain states require the superseding provisions to appear in an addendum to this disclosure document (see **Exhibits I and J** of this Disclosure Document)

Effective Date See the next page for state effective dates

EFFECTIVE DATES

The following states require that the Disclosure Document be registered or filed with the state, or be exempt from registration California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington and Wisconsin

This Disclosure Document is registered, on file or exempt from registration in the following states having franchise registration and disclosure laws, with the following effective dates

STATES	EFFECTIVE DATE
California	
Hawaii	Not Applicable
Illinois	Not Applicable
Indiana	Not Applicable
Maryland	Not Applicable
Michigan	Not Applicable
Minnesota	Not Applicable
New York	
North Dakota	Not Applicable
Rhode Island	Not Applicable
South Dakota	Not Applicable
Virginia	
Washington	Not Applicable
Wisconsin	Not Applicable

In all other states, the effective date of this Disclosure Document is the issuance date of May 30, 2017

ESPRESSAMENTE ILLY FRANCHISE DISCLOSURE DOCUMENT

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ITEM 1
THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

ESPRESSAMENTE ILLY

espressamente illy Americas, inc (“we,” “us,” or “our”) grants the right to operate Italian-style coffee bars that specialize in serving espresso, cappuccino and coffee related products, light snack food, and other items under our name or marks (the “**ILLY Locations**”) The term “you” or “your” refers to the person or entity (and direct and indirect owners) who buys the franchise

We maintain our principal place of business at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 (914) 253-8141 We are a Delaware corporation, and were organized on July 1, 2008 We conduct business under the names and marks of “ILLY,” “ILLY CAFFE” and “ESPRESSAMENTE ILLY” and do not conduct business under any other name

We do not directly operate any ILLY Locations We began offering franchises for ILLY Locations within the United States as of September 2008 We have also offered franchises for ILLY Locations in Canada since March 2009 We do not engage in any business activity other than the franchising of ILLY Locations using the “ILLY” marks We have never offered franchises in any other line of business

Our agents for service of process are listed in **Exhibit D** to this Disclosure Document

Our Parent, Predecessors and Affiliates

Our parent is illy caffe S p A (“**ILLY ITALY**”), an Italian company formed in 1933, which maintains its principal place of business at via Flavia 112, 34147 Trieste, Italy ILLY ITALY does not offer franchises As described below in **Item 13**, ILLY ITALY has licensed us the right to use, and to license others to use, the Proprietary Marks (defined below)

We have three affiliates, Espressamente France S A S (“**ESPRESSAMENTE FRANCE**”), who operates 4 ILLY coffee bars in France, Espressamente Retail London Ltd (“**ESPRESSAMENTE LONDON**”) who operates 1 ILLY coffee bar in the UK and illy caffe San Francisco LLC who operates 5 ILLY coffee bars and one retail illy Shop in San Francisco Illy caffe San Francisco is owned 100% by ILLY USA ILLY ITALY has ownership interests in the following companies who offer ILLY coffee bar franchises around the world and may provide supplies to our franchisees illycaffe France S A S , ESPRESSAMENTE FRANCE, ESPRESSAMENTE LONDON, and illy caffe North America, Inc (“**ILLY USA**”) (collectively with ILLY ITALY and with us, the “**ILLY GROUP**”) ILLY ITALY is also a partial owner or joint venture partner in other companies that offer franchises for ILLY coffee bars in Europe and Asia ILLY ITALY offers franchises outside the United States exclusively under the Proprietary Marks (defined below) These franchises are for businesses similar to the ILLY Locations offered in the US under this Disclosure Document As of December 31, 2016, we had 163 illy Caffe (bars) in 34 countries

Currently, ILLY USA supplies certain required equipment and products to our retailers (such as ILLY coffee and other specialty beverages and items prepared according to our proprietary recipes, formulae and techniques) ILLY USA is a Delaware corporation with its principal place of business at 800 Westchester Avenue, Suite # S440, Rye Brook, NY 10573

We do not have any predecessors

ILLY Locations

ILLY Locations must be operated in a building designed using, and which bears, our trade dress, and using equipment, furnishings and promotional items according to our specifications. ILLY Locations specialize in the sale of "ILLY" products and specialty beverages and items prepared according to our proprietary recipes, formulae and techniques (together, the "**ILLY PRODUCTS**"), as well as such other food and beverage items, related products and accessories as we may specify from time to time (the "**Additional Products**" and together with the ILLY PRODUCTS, the "**Products**"). Each ILLY Location will have a shopping lay-out area where customers will have a choice of packaged roasted coffee, food products and some equipment related to coffee consumption at home, such as domestic coffee machines and cups.

ILLY Locations must operate using our system (the "**System**"), must offer a full list of the Products to customers, and must provide seating for on-premises consumption as well as take-out services. Some of the features of our System are a specially-designed cafe, with a specially-developed media wall, signage, distinctive interior and exterior design and accessories, Products, procedures for operations, quality and uniformity of products and services offered, procedures for management and inventory control, training and assistance, and marketing and promotional programs. We may periodically change and improve parts of the System.

You must operate your ILLY Location under our standards and procedures, as set out in our confidential operations manuals (the "**Manuals**"). We will allow you access to the Manuals for the duration of the Retail Location Agreement or Franchise Agreement (both defined below). In addition, we will grant you the right to use our marks, including the "ILLY" mark, and any other trade names and marks that we designate in writing for use with the System (the "**Proprietary Marks**").

We offer to enter into agreements with qualified individuals and entities that wish to establish and operate ILLY Locations either (1) in institutional facilities (such as an airport, hotel, theater, museum, art center, educational facility, or business at which food services are managed by service providers with national or international operations (each, a "**Facility**") – these are franchises operated at non-traditional locations), or (2) outside of such Facilities ("**Separate Locations**"). If the ILLY Location is in a Facility, you will sign the Retail Location Agreement attached to this Disclosure Document as **Exhibit A-1**, if the ILLY Location is a Separate Location, you will sign the Franchise Agreement attached to this Disclosure Document as **Exhibit A-2**. Under each Agreement, we will grant you the right (and you will accept the obligation) to operate an ILLY Location at an agreed-upon specified location (the "**Approved Location**").

We may authorize qualified individuals and entities to develop multiple ILLY Locations pursuant to a development agreement, a copy of which is attached as **Exhibit B** (the "**Development Agreement**"). The Development Agreement will grant you the right to develop a certain number of ILLY Locations in a specified geographic area (the "**Development Area**") in accordance with a development schedule. For each ILLY Location authorized under the Development Agreement, you will be required to sign our then-current form of Retail Location Agreement or Franchise Agreement.

Industry-Specific Regulations

You must comply with all local, state, and federal laws that apply to your ILLY Location operations, including for example health, sanitation, no-smoking, EEOC, OSHA, discrimination, employment, and sexual harassment laws. The Americans with Disability Act of 1990 requires readily accessible accommodation for disabled persons and therefore may affect your building construction, site elements, entrance ramps, doors, seating, bathrooms, drinking facilities, etc. For example, you must obtain real estate permits (e.g., zoning), real estate licenses, and operational licenses. There are also regulations that pertain to sanitation, labeling, food preparation, food handling, and food service. If you ask and we grant our approval to you for serving beer and wine, you will also need to obtain permits and approvals if that is required in your locality. You must also comply with all applicable federal, state, and local laws and regulations during the operation of your ILLY Location. You should consult with your attorney concerning those and other local laws and ordinances that may affect your ILLY Location's operation.

Competition

You can expect to compete in your market with locally-owned businesses, as well as with national and regional chains, that offer sandwiches, other food and beverage items, and related products, which may compete with the Products offered at an ILLY Location. The market for these items is well-established and very highly competitive. Competing coffee outlet businesses may include Starbucks, Caribou Coffee, It's a Grind Coffee, Peet's Coffee, Panera, Pret a Manger, Blue Bottle, and Intelligentsia, among others. Coffee shops compete on the basis of many factors, such as price, service, store location, product quality, and store promotions and marketing programs. These businesses are often affected by other factors as well, such as changes in consumer taste, economic conditions, seasonal population fluctuation, and travel patterns. To the extent that customers may be able to buy "ILLY" brand products from other sources than you (for example, from the ILLY USA website, department stores, and specialty grocery stores), you may appear to, or actually, compete with ILLY USA and other sellers of these branded products.

ITEM 2 **BUSINESS EXPERIENCE**

Massimiliano Pogliani, Chairman

Mr. Pogliani has been Chairman since April 2016. Since April 2016, he has been Chief Executive Officer for ILLY ITALY. From November 2012 to November 2015, he was Chief Executive Officer of Vertu Corporation Ltd. in London, England. His office is located at ILLY ITALY's principal address.

Fabrizio Dosi – Director and Vice President

Mr. Dosi has been our Director and Vice President since March 2014. He joined ILLY ITALY in January 2014 as Head of C to C Division. Prior to that, Mr. Dosi was President of illycaffè Asia from April 2012 to December 2013. His office is located at ILLY ITALY's principal address.

Marjorie Guthrie – Controller

Mrs. Guthrie has been our Controller since March 2014. She has also been the Senior Accounting Manager of our parent, ILLY USA since March 2008.

Barry Sheldon – President, Business Development

Mr Sheldon has been our President for Business Development since June 2014. He has been President and Chief Operating Officer of ILLY USA since January 2014. From June 2012 to January 2014, he was Executive Vice President of Sales and Marketing for ILLY USA. From January 2008 to June 2012, Mr Sheldon was our Director of Sales for ILLY USA.

Lon Southerland, Vice President

Mr Southerland has been our Vice President of Business to Consumer Franchising and Company Managing Operations since July 2016. From June 2015 to June 2016, he was an Executive Vice President for GuestMetrics, LLC located in Leesburg, Virginia. Mr Southerland was Senior Vice President of Operations and Development for American Blue Ribbon Holdings located in Nashville, Tennessee from June 2014 to May 2015. From August 2008 to May 2014, he was Senior Corporate Director, Global Food and Beverage for Marriott International, Inc located in Bethesda, Maryland assisting with development of a branded Bistro offering.

Giovanni Montanelli – Operations Manager

Mr Montanelli has been our Operations Manager since April 2012.

Adam Manson - Food and Beverage Manager North America

Mr Manson has been our Food and Beverage Manager since July 2016. He held the following positions with Kimpton Hotels: Operations Manager, West Coast from August 2015 to July 2016 in San Francisco, California; F&B Director of The Argonaut Hotel from March 2014 to August 2015 in San Francisco, California; F&B Director at The Donovan Hotel from July 2013 to March 2014 in San Francisco, California; and F&B Director of The Morrison House from August 2012 to July 2013 in Washington DC. Prior to that, Mr Manson was at Wolfgang Puck's The Source as Manager & Beverage Director, from January 2011 to August 2012, in Washington DC.

Giuliano Iannaccone – Secretary

Mr Iannaccone has held this position with us since March 2016. He has been a partner at the law firm Tarter Krinsky & Drogin LLP located in New York, New York since January 2011.

Gina Piazza – Assistant Secretary

Ms Piazza has held that this position with us since March 2016. She has been counsel at the law firm Tarter Krinsky & Drogin LLP located in New York, New York since January 2012.

* * *

Unless otherwise noted, the current offices of the personnel listed below are located at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573.

ITEM 3
LITIGATION

There is no litigation that 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 Fee

When you sign the Retail Location Agreement or the Franchise Agreement, you must pay us an initial fee ("**Initial Fee**") of \$25,000. The Initial Fee is payable in one lump sum, which will be non-refundable.

We may reduce the Initial Fee if you sign a Development Agreement to open multiple ILLY Locations or if you will operate an ILLY Location in a certain type of Facility in which operating costs can be expected to be on the high end (for example, hotel, airport, etc.), however, we have determined the amount of the reduction. For example, currently, for airport and transit locations, we reduce the Initial Fee to \$15,000 and for affiliate owned locations, we reduce the Initial Fee to \$12,500.

Pre-opening Purchase from ILLY USA

You will be required to purchase certain equipment and inventory (such as coffee machines, coffee, and other ILLY PRODUCTS) from ILLY USA prior to the opening of your ILLY Location, which we estimate will range from \$35,000 to \$80,000, depending on factors such as the size and address of your ILLY Location. You must pay ILLY USA within 30 days after the invoice. These payments are not refundable.

Development Fee

If we grant you the right to develop multiple ILLY Locations under a Development Agreement, you must pay us a development fee (the "**Development Fee**") in an amount equal to \$40,000 when the Development Agreement is signed. The Development Fee is uniform for all developers, fully earned when we receive it, and is non-refundable. The Development Fee is not credited toward the Initial Fee for any ILLY Location developed under the Development Agreement.

Site Visit Costs

Under the Development Agreement, you must reimburse us for the costs we incur in connection with any on-site evaluation we conduct for any proposed site. We estimate this cost to be between \$0 and \$5,000.

Under the Franchise Agreement, if we have not already accepted the location of your ILLY Location when you enter into that contract, you will enter into a Site Selection Addendum Under that addendum, we may have a designee conduct the site visit and you may be required to pay the designee directly

* * * *

The fees noted in Item 5 are uniform for all franchisees

ITEM 6 **OTHER FEES**

Type of Fee <i>(Note 1)</i>	Amount	Due Date	Remarks
Royalty Fee	5% of Net Sales	The 15th day of each month for the preceding month's Net Sales	See <i>Note 2</i> for a definition of " Net Sales " If you operate under the Retail Location Agreement and your ILLY Location is in an airport, the Royalty Fee will be 3 5%
Advertising Obligations	As Agreed	As Agreed	Under the Retail Location Agreement, you and we will agree on marketing minimums See <i>Note 3</i>
	Up to 3% of Net Sales, currently, you are only required to spend 1% of Net Sales on local advertising	Same as Royalty Fee	Under the Franchise Agreement, you must meet the Advertising Obligations described in <i>Note 4</i>
Marketing Materials	Our costs	Upon demand	Only payable if you purchase additional marketing materials from us We provide you with an initial supply of promotional and advertising materials free of charge
Opening Marketing Program	As agreed	As incurred	Under the Retail Location Agreement, you are not required to spend any specific amount for the Opening Marketing Program (defined in <i>Note 3</i>) See <i>Note 3</i>

Type of Fee <i>(Note 1)</i>	Amount	Due Date	Remarks
	As agreed	In conjunction with the initial opening	Under the Franchise Agreement, you must spend this amount for pre-opening and opening marketing and promotional programs in conjunction with the initial opening. You must develop a marketing plan and submit to us for prior written approval. If we require, you must deposit the opening marketing funds with us and we will distribute as necessary to conduct the Opening Marketing Program.
Purchase of Products	Will vary under circumstances	Upon demand	Only payable if you purchase any Products from us or our affiliates. Payment must be according to our payment and credit terms.
Transfer Fee	\$10,000 See Note 5	At time of transfer	Only payable if you make a transfer (as defined in the Retail Location Agreement/Franchise Agreement/Development Agreement)-transfers include, among other things, the sale of that agreement, your rights or obligations in that agreement, or certain assets.
Interest on Overdue Amounts	1.5% per month on the underpayment See Note 6	Upon demand	Only due if you don't pay us the amounts you owe on time. Interest will be charged only on overdue amounts and will start to accrue on the date when the payment was originally due.
Costs and Attorneys' Fees	Will vary under circumstances	Upon demand	If you are in default, you must reimburse us for the expenses we incur (including reasonable attorneys' fees) as a result of your default and to enforce and terminate the agreement. In addition, you must reimburse us for the expenses we incur (including reasonable attorneys' fees), if we obtain an injunction or other relief to enforce any provisions under the agreements against you or resulting from any defense or litigation arising from your misuse of the Proprietary Marks.

Type of Fee <i>(Note 1)</i>	Amount	Due Date	Remarks
Supplier Testing	A charge not to exceed the reasonable cost of inspection and the actual cost of testing. The amount will vary.	Upon demand	Only payable if you propose a new supplier of products, and we inspect the supplier or test the supplier's products.
Unapproved Item Testing	Cost of testing	Upon demand	Only payable if we discover samples at your ILLY Location that are not from a previously approved supplier or fail to conform to our specifications.
Audit Costs <i>(Note 7)</i>	All costs and expenses associated with the audit, reasonable accounting and legal costs.	Upon demand	Only payable if we audit because you did not submit sales statements or keep books and records, or if the inspection discloses an understatement in any report by 3% or more. You will also have to pay interest on the underpayment (see "interest" above and <i>Note 6</i>).
Insurance Premiums	Will vary under circumstances.	As incurred	Only payable if you fail to obtain any of the required insurance policies and we obtain those policies on your behalf.
Indemnity	Will vary under circumstances.	As incurred	You must indemnify and hold the ILLY Parties harmless against any and all Damages arising directly or indirectly from any Asserted Claim as well as from any breach by you of your Retail Location Agreement/Franchise Agreement/Development Agreement. You must also indemnify us for any litigation resulting from your use of the Proprietary Marks in a way that is inconsistent with the terms of that agreement. See <i>Note 8</i> .
Securities Offering Fee	\$10,000 or our actual expenses, whichever is more.	Upon demand	Under the Franchise Agreement, if you make a public or private securities offering, you must reimburse us for our reasonable costs and expenses (including legal and accounting fees) to evaluate your proposed offering. The Retail Location Agreement does not include this fee.

Type of Fee <i>(Note 1)</i>	Amount	Due Date	Remarks
Training	Cost of training room	Upon demand	Under the Retail Location Agreement, you must reimburse us the cost of a training room if one is not available at the Facility. The Franchise Agreement does not include this fee.
Replacement training	Our charges Currently, \$1,400 per day (we may change our rate in the future)	Upon demand	Only payable if one of your Highly Trained Personnel ceases active management of or employment at your ILLY Location. See Note 9.
Additional training at your location	Our charges, plus our out-of-pocket costs Our current charge for a one-day custom course is \$1,400 (we may change our rate in the future)	Upon demand	If you ask that we send trainers to your ILLY Location for additional training, and we agree to do so, then you must pay (a) our trainers' expenses, (b) our then-current charge for extra training, and (c) the travel and lodging of any trainers sent to your ILLY Location. See Note 9.
Refresher training courses	Our charges Currently, \$1,400 per day (we may change our rate in the future)	Upon demand	We may require that any or all of the Highly Trained Personnel attend refresher courses, seminars, and other training programs periodically. See Note 9.
Renewal Fee	The greater of (1) 50% of the then current initial fee, or (2) \$6,000	Before renewal	Only due if you decide to renew the Retail Location Agreement. We do not charge a new Initial Fee in connection with renewals.
	The greater of (1) 50% of the then current initial fee, or (2) \$12,500	Before renewal	Only due if you decide to renew the Franchise Agreement. We do not charge a new Initial Fee in connection with renewals.
Re-Inspection Fee	Our costs and expenses Currently, up to \$500	Upon demand	If you fail or receive an unsatisfactory score on any inspection performed by us or on our behalf, we may charge you for any follow up inspection to confirm that you have corrected all deficiencies identified in the initial inspection.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Taxes	Our costs	Upon demand	Under Franchise Agreement, you reimburse us for any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments to us required under that agreement, unless the tax is credited against income tax otherwise payable by us

Notes

- 1 All fees are payable to us, and are non-refundable
- 2 **"Net Sales"** means all revenue from the sale of all Products, and all other income of every kind and nature related to, derived from, or originating from the ILLY Location, including but not limited to (a) revenues from delivery and catering services, and (b) proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit. Net Sales will also include amounts you earn from the sale of any online group-bought deals (e.g., Groupon or Living Social) and the sale of any gift cards or gift certificates, calculated using our then-current guidelines, which may be based on the redeemed value or sale price of the deals, cards, or certificates. **"Net Sales"** excludes certain costs or adjustments, such as any customer refunds, discounts, sales taxes, and/or other taxes you collect from customers and transmit to the appropriate taxing authorities.

In addition to your Royalty Fees, you must report to us in writing (or electronically) your Net Sales in a form we specify (a **"Sales Report"**). We require you to establish an arrangement for electronic funds transfer or deposit of any payments required under the Retail Location Agreement/Franchise Agreement. You must complete the Authorization Agreement for ACH Payments (Direct Debits) that is attached to the Retail Location Agreement as **Exhibit C** and to the Franchise Agreement as **Exhibit E**.

You must also comply with the payment and reporting procedures we specify in the Manuals.

We reserve the right to receive from some franchisees a lower Royalty Fee, depending on the number of ILLY Locations that franchisee commits to open and the type of Facility in which the ILLY Locations will be located (i.e., hotel, airport, etc.).

- 3 Under the Retail Location Agreement you and we agree to perform a minimum number of activities (to be agreed between the parties) for each year in conjunction with our launch of new products or with communication campaigns. Upon your request, you and we will develop and agree upon an appropriate pre-opening and opening marketing and promotional program(s) to be conducted in conjunction with the your ILLY Location's initial opening (the **"Opening Marketing Program"**). You must pay for advertising as you and we agree. You have no other advertising obligations under the Retail Location Agreement.

- 4 Under the Franchise Agreement, we may require you to make a total marketing contribution up to 3% of Net Sales of the ILLY Location during the previous month (the "**Advertising Obligations**") These Advertising Obligations can be in the form of the following, as we designate from time to time (i) contributions paid to the System Marketing Fund, (ii) contributions paid to any Regional Marketing Fund or a Market Co-op, and/or (iii) expenditures by you on "local advertising and promotion "

If we establish a System Marketing Fund or Regional Marketing Fund, all or a portion of your Advertising Obligations may be paid into such fund, at our direction Any System Marketing Fund and/or Regional Marketing Fund will be maintained and administered by us

If a Market Co-op is formed for the area in which your ILLY Location is located, then, a portion of your Advertising Obligations may be a required contribution to the Market Co-op The specific amount of your contribution to the Market Co-op will be determined by the Market Co-op by a simple majority vote of its members Your Advertising Obligations may exceed 3% of your Net Sales if the members of your Market Co-op approve additional required contributions

In addition to any Advertising Obligations, you must undertake and complete an Opening Marketing Program

- 5 Under the Retail Location Agreement and Development Agreement, the transfer fee is determined at the time of the transfer, and is currently \$10,000
- 6 Interest starts to accrue when your payment was initially due Interest rates will not exceed any maximum rate that may be imposed under applicable law
- 7 The amount of audit costs will be determined by the auditors, legal advisors and other professionals who provide the audit services These costs will vary based on the fees charged by these professionals, travel costs, the scope of the audit needed, the degree to which you cooperate in terms of providing information, the time it takes the auditors to review your records, and inflation
- 8 As used above, "**Asserted Claim**" means any allegation, claim or complaint that is the result of, or in connection with, your exercise of your rights and/or carrying out of your obligations under the Retail Location Agreement/Franchise Agreement/Development Agreement (including but not limited to any claim associated with your operations (or development) of the ILLY Location or otherwise), notwithstanding any claim that any Illy Party was or may have been negligent "**Illy Parties**" means us, our shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents "**Damages**" means all claims, demands causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including without limitation expenses, costs and lawyers' fees incurred for any indemnified party's primary defense or for enforcement of its indemnification rights)
- 9 You will bear all expenses related to your employees attending the training, such as the costs relating to transportation, lodging, meals, wages, and worker's compensation insurance

ITEM 7
ESTIMATED INITIAL INVESTMENT

**YOUR ESTIMATED INITIAL INVESTMENT
ILLY LOCATIONS IN FACILITIES**

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Fee <i>(Note 1)</i>	\$25,000	Note 1	Note 1	Us
Leasehold Improvements <i>(Note 2)</i>	\$35,100 to \$582,500	Note 2	Note 2	Note 2
Equipment <i>(Note 3)</i>	\$176,800 to \$584,220	As incurred	As arranged	Approved Suppliers, Our Affiliates
Computer System <i>(Note 4)</i>	\$0 to \$7,000	As arranged	As arranged	Approved Suppliers
Inventory <i>(Note 5)</i>	\$20,000 to \$40,000	As agreed	As incurred	Us, Our Affiliates or Outside Suppliers
Uniforms	\$3,000 to \$10,000	As agreed	As incurred	Outside Suppliers
Utility Deposits <i>(Note 6)</i>	\$2,000 to \$5,000	As agreed	As incurred	Landlord, and/or Utility Companies
Travel and Accommodations for Training <i>(Note 7)</i>	\$4,000 to \$12,000	As agreed	As incurred	Outside Suppliers
Insurance <i>(Note 8)</i>	\$5,000 to \$15,000	As agreed	As incurred	Outside Provider
Opening Marketing <i>(Note 9)</i>	\$0 to \$40,000	As arranged	As incurred	Outside Suppliers
Business Licenses and Professional Services <i>(Note 10)</i>	\$10,000 to \$20,000	As agreed	As incurred	Outside Suppliers
Pre-opening training/food costs <i>(Note 11)</i>	\$3,000 to \$5,000	As agreed	As incurred	Outside Suppliers
Additional Funds (6 months) <i>(Note 12)</i>	\$150,000 to \$400,000	As agreed	As incurred	Utilities, Wages, facility management, insurer, municipality,
Total Estimated Initial Investment (excluding rent/real estate and Development Fee) <i>(Note 13)</i>	\$433,900 to \$1,745,720	Plus rent/ real estate and Development Fee		

**YOUR ESTIMATED INITIAL INVESTMENT
ILLY LOCATIONS IN SEPARATE LOCATIONS**

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Fee <i>(Note 1)</i>	\$25,000	<i>Note 1</i>	<i>Note 1</i>	Us
Leasehold Improvements <i>(Note 2)</i>	\$35,100 to \$582,500	<i>Note 2</i>	<i>Note 2</i>	<i>Note 2</i>
Equipment <i>(Note 3)</i>	\$176,800 to \$584,220	As incurred	As arranged	Approved Suppliers, Our Affiliates
Computer System <i>(Note 4)</i>	\$14,000	As arranged	As arranged	Approved Suppliers
Inventory <i>(Note 5)</i>	\$20,000 to \$40,000	As agreed	As incurred	Us, Our Affiliates or Outside Suppliers
Uniforms	\$3,000 to \$10,000	As agreed	As incurred	Outside Suppliers
Utility Deposits <i>(Note 6)</i>	\$2,000 to \$5,000	As agreed	As incurred	Landlord, and/or Utility Companies
Travel and Accommodations for Training <i>(Note 7)</i>	\$4,000 to \$12,000	As agreed	As incurred	Outside Suppliers
Insurance <i>(Note 8)</i>	\$5,000 to \$15,000	As agreed	As incurred	Outside Provider
Opening Marketing <i>(Note 9)</i>	\$0 to \$20,000	As arranged	As incurred	Outside Suppliers
Business Licenses and Professional Services <i>(Note 10)</i>	\$10,000 to \$20,000	As agreed	As incurred	Outside Suppliers
Pre-opening training/food costs <i>(Note 11)</i>	\$3,000 to \$5,000	As agreed	As incurred	Outside Suppliers
Additional Funds (6 months) <i>(Note 12)</i>	\$150,000 to \$400,000	As agreed	As incurred	Utilities, Wages, facility management, insurer, municipality,
Total Estimated Initial Investment (excluding rent/real estate and Development Fee) <i>(Note 13)</i>	\$447,900 to \$1,732,720	Plus rent/ real estate and Development Fee		

YOUR ESTIMATED INITIAL INVESTMENT DEVELOPMENT AGREEMENT*

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Development Fee <i>(Note 1)</i>	\$40,000	Note 1	Note 1	Us
Site Visit Costs	\$0 to \$5,000	As Agreed	Upon Demand	Us
Professional Services <i>(Note 9)</i>	\$0 to \$3,000	As agreed	As incurred	Outside Suppliers
Total Estimated Initial Investment <i>(Note 12)</i>	\$40,000 to \$48,000			

**For each ILLY Location developed under the Development Agreement, you must sign a separate Franchise Agreement or Retail Location Agreement and you will have to make an initial investment as noted above*

The first chart above is for an ILLY Location in a Facility, which as noted in Item 1, we define as an institutional facilities such as an airport, hotel, theater, museum, art center, educational facility, or business at which food services are managed by service providers with national or international operations. Variations in these expenditures for Separate Locations, which are located outside Facilities, are reflected in the notes below.

None of the fees or costs estimated in this Item 7 are refundable except to the extent that you can negotiate with vendors. Payments to us are not refundable.

Please note that we do not offer direct or indirect financing to you for any items. The availability and terms of financing from other sources will likely depend on factors such as the availability of financing generally, your creditworthiness, and the policies of lending institutions.

Notes

- 1 **Initial Fee** You must pay us all of the Initial Fee when you sign the Retail Location Agreement or the Franchise Agreement. Also, if you sign a Development Agreement, you will be required to pay us a Development Fee of \$40,000.
- 2 **Leasehold Improvements** You must employ an architect or engineer (who, if we require, is reasonably acceptable to us) to prepare preliminary plans and specifications for site improvement and construction of your ILLY Location based on our prototype design and image specifications. The plans must be approved by us. In addition, you will need to employ a qualified, licensed general contractor, who is reasonably acceptable to us, to construct improvements to, or "build out," the premises at which you will operate the ILLY Location. Generally, you will take the premises from the landlord in "vanilla box" condition (primed drywall ready to be painted, but without improvements). Among other things, you will likely need to arrange for proper electric service, wiring and

plumbing, flooring, wall finishes, additional drywalling, HVAC, lighting and fixtures, storefront modifications, painting, and bathroom facilities. Costs are likely to vary due to many factors (e.g., the type of Facility (if applicable), geographic location and size of your ILLY Location, the existing condition of the premises, the availability and cost of labor and materials, the work the landlord may do as the result of lease negotiations, etc.), and may be much higher, if you wish to establish your ILLY Location in an area where special requirements of any kind (such as historical, architectural, or preservation requirements) will apply. In some instances, you may be able to negotiate with the landlord to conduct some of the work, or to provide you with credits towards your future rent payments and/or tenant improvement allowances (instead of the landlord doing some of the work).

The estimate shown above has not been reduced to reflect any landlord credits or tenant improvement allowances, which we cannot estimate. However, as noted above, your actual costs may vary significantly due to a variety of factors.

- 3 **Equipment** The estimate is for the equipment you will need to operate the ILLY Location, such as refrigerators, freezers, tables and chairs, cabinetry, decor, shelving, menu boards, kitchen smallwares, display cases, etc. The amount you will have to spend for equipment will vary depending upon the ILLY Location's size and style. However, as noted above, your actual costs may vary.
- 4 **Computer System** We currently suggest that you use the Micros RES-3700 V 4 cash register with the 'illy pack' system and related modules. Generally, we require you to use the Micros Systems Cash Register software specified in the Manuals. We estimate that the cost of purchasing the Computer System (defined below) is \$7,000 for each cash register. An ILLY Location in a Facility will likely need one cash register (total cost \$7,000), an ILLY Location at a Separate Location will need two cash registers (total cost \$14,000). If your ILLY Location is in a Facility and depending on the Computer System being used in the Facility, we may allow you to use an existing cash register within the Facility and its existing software, rather than require you to purchase a new cash register for your ILLY Location. In such case, there would be no initial cost for your Computer System.
- 5 **Inventory** Inventory and supplies must be purchased from approved vendors and suppliers.
- 6 **Utility Deposits** The figure is for the estimated cost of telephone and other utility deposits.
- 7 **Travel and Accommodations for Training** Training expenses include the costs for travel, food and lodging incurred while in the training program and are paid to the providers of those services. For the training period, the cost you incur will vary depending upon factors such as the distance traveled, mode of transportation, travel preferences (such as air travel or ground transportation), nature of accommodations, *per diem* expenses actually incurred, and the number of persons who will attend training.

- 8 **Insurance** The estimate is for the annual premium for the policies required under the Retail Location Agreement or the Franchise Agreement and as may be required under the terms of your lease or sublease
- 9 **Opening Marketing** Under the Retail Location Agreement, we will help you develop an appropriate Opening Marketing Program at your request. If your ILLY Location is opening at the same time as the Facility in which it is located, you may elect not to engage in a separate Opening Marketing Program. You are not required to spend the maximum amount, however, a larger amount than you are required to spend may yield better results
- 10 **Business Licensees and Professional Services** The estimate is for the business licenses and permits you must obtain in order to operate the ILLY Location, such as business, restaurant and health licenses and permits. Your actual costs may vary depending upon the licenses and permits that may be required in the area you choose to operate your ILLY Location. The estimate also includes cost for you to obtain services from legal and other business advisor in connection with the signing of the Retail Location Agreement or the Franchise Agreement and other agreements (e.g., lease) in connection with the ILLY Location. Some of these costs may not apply if your ILLY Location will be inside a Facility that you or your affiliates operate
- 11 **Pre-opening training / food costs** This estimate includes the cost of food products used prior to opening while training crew members, pre-opening communications, and pre-opening labor costs incurred while training crew members
- 12 **Additional Funds** You will need additional capital to support on-going expenses, such as payroll, utilities, computer maintenance, and computer up-grades, to the extent that these costs are not covered by sales revenue. New businesses often generate a negative cash flow. We estimate that the amount given will be sufficient to cover on-going expenses for the start-up phase of the business, which we calculate to be 6 months. This is only an estimate, however, and there is no assurance that additional working capital will not be necessary during this start-up phase or after. Our estimate is based on the experience of our management personnel in the coffee outlet industry

Your credit history could impact the amount (and cost) of funds needed during the start-up phase. If you have no credit history or a weak credit history suppliers may give you less favorable lending and payment terms, which might increase the amount of funds you will need during this period

- 13 **Total Estimated Initial Investment** The figures in the chart and the explanatory notes are only estimates. Your actual costs may vary considerably, depending, for example, on factors such as local economic conditions, the local market for the ILLY Location, the prevailing wage rate, competition, the sales level achieved during the initial period of operation, and your management and training experience, skill, and business acumen

The figures in the chart do not include rent for the ILLY Location. If you do not own a location for your ILLY Location, you must purchase or lease a space

If your ILLY Location will be within a Facility, the space available and contractual arrangements necessary will depend on that Facility and its management. Your rent will also vary widely based on your relationship with the owner of the Facility (i.e., whether or not you are affiliated with that company).

If you operate a Separate Location, you will probably need to lease a space at least four months before opening. The locations and sizes of Separate Locations vary, but are typically described as "prime retail." We estimate that rental rates will range from \$50 to \$600 per square foot per year for Separate Locations.

Rent varies considerably from market to market, and from location to location within each market. Rents may vary beyond the range that we have provided, based on factors such as market conditions in the relevant area, the type and nature of improvements needed to the premises, the size of the ILLY Location, the terms of the lease, and the desirability of the location. We assume that you will lease the premises, and therefore do not include in the estimates above any costs related to the purchase of land or the construction of any buildings. If you decide to purchase the property for the location of your ILLY Location, you will incur additional costs that we cannot estimate.

The totals in the row titled "Total Estimated Initial Investment" also do not include the Development Fee, which is only payable if you enter into a Development Agreement with us.

You should review these figures carefully on your own, with a business advisor of your choosing, before making any decision to purchase a franchise for an ILLY Location. You should take into account the cash outlays and probable losses that you may incur while you are trying to get established. Extensive start-up costs may be involved, depending upon your circumstances.

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

General

Conformity with Standards

To insure that the highest degree of quality and service is maintained, you must operate your ILLY Location in conformity with the methods, standards, and specifications as we may periodically prescribe in the Manuals or otherwise in writing.

Purchases from Approved Suppliers

You must buy all Products, supplies, materials, and other products, and equipment, fixtures, furnishings, signs, decor, supplies, and services required for the establishment and operation of your ILLY Location only according to our standards and specifications (as described in the Manuals, which will include standards and specifications for quality, quantity, ingredients and appearance) and only from suppliers (including manufacturers, distributors, and other sources) that we have designated or approved in writing.

Currently, we require that chocolate be purchased from Domori s r l (through its U S distributor), tea be purchased from Dammann Freres (through its US distributor), and marmalade and jam be purchased from Azienda Agrimontana S p A (through its US distributor). Currently, we also require that you use La Marzocco espresso coffee machines in your ILLY Location. The ILLY coffee beans, coffee and other ILLY PRODUCTS are designed and manufactured using the ILLY GROUP's recipes, formulae, standards and specifications and are proprietary to the ILLY GROUP. In order to maintain the high standards of quality and uniformity associated with ILLY PRODUCTS, you must purchase ILLY PRODUCT items only from us, or our affiliates or other designee(s). Currently, we require all ILLY Locations to purchase coffee and other ILLY PRODUCTS from ILLY USA or its distributors (who are the only approved suppliers for these items).

In addition, as described below, you must employ an architect or engineer to prepare, for our approval, preliminary plans and specifications for site improvement and construction of your ILLY Location based on our prototype design and image specifications. Any plans must be approved by us prior to use. (We acknowledge and agree that plans and specifications for ILLY Locations sometimes require adjustments from our standard requirements, and we and you will act reasonably and in good faith to resolve such matters, provided that we will have no obligation to accept or approve any adjustment that we reasonably believe will detract from the quality standards or image of the System.)

Under the Franchise Agreement, we may specify or require that you use certain brands, types, makes, and/or models of communications, computer systems, and hardware, including without limitation: (a) back office and point of sale systems, data, audio, video (including managed video surveillance), telephone, and voice storage, retrieval, and transmission systems for use at Retail Locations, between or among Retail Locations, and between and among Franchisee's Retail Locations and Franchisor, Franchisor's designee and/or Franchisee, (b) POS systems, (c) physical, electronic, and other security systems, (d) printers, "media wall" systems, and other peripheral devices, (e) archival back-up systems, (f) internet access mode (e.g., form of telecommunications connection) and speed, and (g) internet service for customers (collectively, the "**Computer System**"). We may also develop or designate (and require you to install) (a) computer software programs and accounting system software that you must use in connection with the Computer System ("**Required Software**"), (b) updates, supplements, modifications, or enhancements to the Required Software, (c) the tangible media on which you will record or receive data, and (d) the database file structure of your Computer System.

As described below, we currently require franchisees to use the Micros RES-3700 V 4 cash register with the 'ILLY PACK' system and related modules, and the Micros Systems Cash Register software specified in the Manuals. However, if you sign a Retail Location Agreement, depending on the Computer System being used within the Facility, we may allow you to use the existing cash register within the Facility and its existing software, rather than require you to purchase a new cash register for the ILLY Location. In such case, there would be no initial charge for the Computer System.

Except for ILLY GROUP, none of our officers own any interest in any approved or designated suppliers.

We and our affiliates may collect and retain certain manufacturing allowances, marketing allowances, rebates, credits, monies, payments and benefits (collectively, "**Allowances**") offered to us or to our affiliates by manufacturers, suppliers and distributors based upon your purchases of products and other goods and services. We project that these Allowances would

be based on System-wide purchases of food, equipment, supplies, paper goods, merchandise and other items. During our last fiscal year, ILLY USA received approximately \$750,812 in revenue for coffee, tea and accessories purchased directly and indirectly (i.e., through distributors) by franchisees in the United States, which represents approximately 8.8% of ILLY USA's total revenues of approximately \$85,475,000. During our last fiscal year, we received no allowances or rebates based upon franchisee purchases.

We estimate that your purchases from designated or approved suppliers according to our specifications will represent approximately 90% of your total purchases in establishing the ILLY Location, and approximately 50-90% in the continuing operation of the ILLY Location. Our current policy is to use any monies received from suppliers to compensate us for services rendered in connection with approving and overseeing vendor services. We may, however, in our discretion, elect to contribute a portion of these monies to the System Marketing Fund or use the monies for any other purpose.

If you want to buy any Products or any other items (except for ILLY PRODUCTS) from an unapproved supplier, you first must submit to us a written request asking for our approval to do so. When considering whether to approve any particular possible supplier, we will consider (among others) the following factors: whether the supplier can show, to our reasonable satisfaction, the ability to meet our then-current standards and specifications, whether the supplier has adequate quality controls and capacity to supply your needs promptly and reliably, and whether the supplier's approval would enable the System, in our sole opinion, to take advantage of marketplace efficiencies. You may not buy from any supplier that we have not yet approved in writing, and you must stop buying from any supplier that we approve, but later disapprove. We have the right to designate only one supplier for certain items (such as for distribution of products, soft drinks, etc.) in order to take advantage of marketplace efficiencies.

You may not purchase from any proposed new supplier until we have reviewed and, if we think it is appropriate, approved in writing the proposed new supplier. Among other things, we will have the right to require that our representatives be permitted to inspect the proposed new supplier's facilities, and that samples from that supplier be delivered either to us or to an independent laboratory that we designate for testing. Either you or the proposed new supplier must pay us a charge (which will not exceed the reasonable cost of the inspection and the actual cost of the tests). We also may require that the proposed new supplier comply with certain other requirements that we may deem appropriate, including, for example, payment of reasonable fees for services that we may render to such suppliers, such as continuing inspection fees and administrative costs, and fees for design and supervision services, or other payment to us by the supplier on account of their dealings with you or other retailers, with all such fees and payments to be for use by us without restriction (unless otherwise instructed by the supplier). We reserve the right, at our option, to periodically re-inspect the facilities and products of any approved supplier and to revoke our approval if the supplier does not continue to meet any of our then-current criteria.

We reserve the right to revoke approval of any supplier upon its failure to continue to meet any of our then-current criteria.

Although neither the Retail Location Agreement nor the Franchise Agreement obligates us to notify you of our approval or disapproval of a supplier within a specified time, we estimate that we will notify you of approval or disapproval within 60 days of our receipt of your written request. This is only an estimate, and the actual approval time may be shorter or longer than 60 days, in any event, we will notify you in writing of supplier approval or disapproval within 90 days from

our receipt of your written request. If our approval is not received during that timeframe, we have denied your request.

Insurance

Before commencing any activities or operations, you must obtain and maintain the insurance coverage in the amounts that we require. We may modify the coverage and amounts from time to time.

Purchasing / Distribution Cooperatives

We may periodically establish food commissaries and distribution facilities, and we may designate these as approved (or required) manufacturers, suppliers, or distributors.

We may establish strategic alliances or preferred vendor programs with suppliers that are willing to supply some products or services to some or all of the ILLY Locations in our system. If we do establish those types of alliances or programs, we may limit the number of approved suppliers with whom you may deal, we may designate sources that you must use for some or all products and services, and we may refuse to approve proposals to add new suppliers if we believe that action would be in the best interests of the System.

Currently, there are no purchasing or distribution cooperatives in existence.

Purchase Arrangements and other Material Benefits

We (or one of the ILLY GROUP) may from time to time negotiate purchase arrangements with various suppliers for the benefit of the ILLY GROUP, the system and our franchisees, to provide the best pricing options available. Suppliers may vary and prices vary among the suppliers.

Except as described in this **Item 8**, we do not provide any material benefits to you based on your use of designated or approved suppliers.

ITEM 9
RETAILER'S, FRANCHISEE'S AND DEVELOPER'S OBLIGATIONS

This table lists your principal obligations under the Retail Location Agreement (RLA), Franchise Agreement (FA), and Development Agreement (DA). It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.

Obligation	Section(s) in Agreement(s)	Disclosure Document Item(s)
a Site selection and acquisition/lease	RLA Sections 1, 5 FA Sections 1, 5, Exhibit B DA Sections 1, 3, Exhibit A	6, 7 and 11
b Pre-opening purchase/leases	RLA Sections 5, 6 FA Sections 5, 6, Exhibit B DA Section 3 4	7 and 8
c Site development and other pre-opening requirements	RLA Sections 5, 6 FA Sections 5, 6, Exhibit B DA Section 3	6, 7, and 11
d Initial and ongoing training	RLA Section 6 3 FA Sections 6 3, 14 4 8 DA Not Applicable	11
e Opening	RLA Sections 3 7, 5 2, 5 3, 6 2 FA Sections 3 8, 5 3, 5 4, 6 2 DA Not Applicable	11
f Fees	RLA Sections 2 2 6, 4, 14 2 FA Sections 2 2 6, 4, 11 1, 14 4 9 DA Section 2	5, 6 and 7
g Compliance with standards and policies/Manuals	RLA Sections 1 4, 5, 6, 8 FA Sections 1 4, 5, 6, 8 DA Not Applicable	11
h Trademarks and proprietary information	RLA Sections 1 1, 7, 9, 16 2 FA Sections 1 1, 7, 9, 16 2 DA Not Applicable	13 and 14
i Restrictions on products/services offered	RLA Sections 1 4, 6 FA Sections 1 4, 6 DA Not Applicable	16
j Warranty and customer service requirements	RLA Section 6 5 FA Section 6 5 DA Not Applicable	9

Obligation		Section(s) in Agreement(s)	Disclosure Document Item(s)
k	Territorial development and sales quotas	RLA Section 1 3 FA Section 1 3 DA Sections 1, 3 1, 3 4, Exhibit A	12
l	Ongoing product/service purchases	RLA Sections 6 9, 6 10 FA Sections 6 9, 6 10 DA Not Applicable	8
m	Maintenance, appearance and remodeling requirements	RLA Sections 2 2 2, 5, 6 2 6 4, 6 7, 14 2 FA Sections 2 2 2, 5, 6 2, 6 4, 6 7, 14 4 5 DA Not Applicable	11
n	Insurance	RLA Section 13 FA Section 13 DA Not Applicable	6 and 8
o	Advertising	RLA Section 11 FA Section 11 DA Not Applicable	6, 7 and 11
p	Indemnification	RLA Section 19 4, Exhibit B FA Section 19 4, Exhibit C DA Sections 11 4, 11 5, Exhibit B	6
q	Owner's participation/ management/staffing	RLA Sections 6, 17 1 FA Sections 6, 17 1 DA Section 8 1	11 and 15
r	Records and reports	RLA Sections 4 2, 10 FA Sections 4 2, 10 DA Section 5 2 4	6
s	Inspections and audits	RLA Sections 6, 10 FA Sections 6, 10 DA Not Applicable	6 and 11
t	Transfer	RLA Section 14 FA Section 14 DA Section 7	17
u	Renewal	RLA Section 2 2 FA Section 2 2 DA Not Applicable	17

Obligation	Section(s) in Agreement(s)	Disclosure Document Item(s)
v Post-termination obligations	RLA Sections 16, 24 5 FA Sections 16, 24 5 DA Sections 6 7, 14 6	17
w Non-competition covenants	RLA Sections 17 2, 17 3 FA Sections 17 2, 17 3 DA Sections 8 2, 8 3	17
x Dispute resolution	RLA Section 25 FA Section 25 DA Section 15	17
y Taxes/permits	RLA Section 18 FA Section 18 DA Not Applicable	1

ITEM 10 **FINANCING**

We do not offer direct or indirect financing We will not guarantee your note, lease, or other 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 Obligations

Retail Location Agreement and Franchise Agreement

- (1) We will provide to you (or to your designated principal) and, in some circumstances, your owners and approved managers, our standard training program (at a designated time and location (Training is also discussed under the subheading "Training") (Retail Location Agreement, Sections 3 1 and 6 3, Franchise Agreement, Sections 3 1 and 6 3)
- (2) We will make available to you a standard layout and plan for the construction of an ILLY Location and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs You understand and acknowledge that we have the right to modify the prototype architectural plans and specifications as we periodically deem appropriate (Retail Location Agreement, Section 3 2, Franchise Agreement, Section 3 2)

- (3) Only under the Franchise Agreement, if you enter into a Site Selection Addendum, we will provide you with our site selection guidelines and any site selection counseling we deem advisable (Franchise Agreement, Section 3.2 & Site Selection Addendum)
- (4) We will provide you with access to the Manuals (Retail Location Agreement, Section 3.4, Franchise Agreement, Section 3.4)
- (5) We will provide our written approval (or refusal to approve) prior to opening (Retail Location Agreement, Section 3.7, Franchise Agreement, Section 3.8)
- (6) We will provide you with an initial supply of such promotional and advertising materials (such as graphic design, copy and instructions) as we deems appropriate, acting reasonably (Retail Location Agreement, Section 11.2, Franchise Agreement Section 11.6)

Development Agreement

For each ILLY Location developed under the Development Agreement

- (1) We will provide you with site selection guidelines, and such site selection counseling and assistance we deem advisable (Development Agreement, Section 5.1.1)
- (2) We will also provide such on-site evaluation for each ILLY Location we deem advisable in response to your request for site approval, provided, however, that we will not provide on-site evaluation for any proposed site prior to receiving a completed site approval package (which may include all information we reasonably require) You must reimburse us for all reasonable out-of-pocket expenses we incur in connection with any on-site evaluation, including, without limitation, the costs of travel, lodging, wages, and meals (Development Agreement, Section 5.1.2)

Typical Length of Time Before Operation

It typically takes approximately 4 to 8 months between signing the Retail Location Agreement or Franchise Agreement and the opening of your ILLY Location. The time required to open may be affected by various factors including delays in making leasing and financing arrangements, completing construction, leasehold improvements and decor and furnishing, completing training, meeting local ordinances or community requirements, delivery of equipment and signs, and similar factors. You must have all necessary licenses, permits, and approvals, have hired and trained personnel, installed equipment, and otherwise implemented all components of the System before opening. If you fail to begin operations within 6 months after signing a Retail Location Agreement or Franchise Agreement (or within a longer period we and you agree to in the event of a delay caused by the Approved Location landlord or Facility owner or management, as applicable) we may terminate the Retail Location Agreement or Franchise Agreement (without refunding the Initial Fee to you).

Continuing Obligations

We are required by the Retail Location Agreement or Franchise Agreement to provide certain assistance and service to you During the operation of your ILLY Location

- (1) Only under the Franchise Agreement, if created, we will administer the "Illy" System Marketing Fund and any Regional Marketing Fund (Our marketing funds are also described under the heading "Obligations Under Franchise Agreement") (Franchise Agreement, Section 3 6)
- (2) We will approve or disapprove all marketing and promotional materials that you propose For ILLY Locations operated in a Facility, we limit our review to marketing and promotional materials that you propose to use in connection with the operation of the ILLY Location (other than marketing and/or promotional materials related to the Facility generally) You may not use any materials that we disapprove (Retail Location Agreement, Section 3 5, Franchise Agreement, Section 3 5)
- (3) We will use our best efforts to ensure that Products we produce, package, manufacture, sell and distribute are in compliance with all applicable laws, rules, and regulations including (without limitation) laws, rules, and regulations related to food quality and health and safety We will use our best efforts to ensure that these Products bear truthful and accurate labeling that complies with all applicable laws, rules, and regulations (Retail Location Agreement, Section 3 11, Franchise Agreement, Section 3 12)
- (4) We will make available additional training programs, as we deem appropriate (Retail Location Agreement, Section 6 3, Franchise Agreement, Section 6 3)
- (5) We will give you periodic advisory assistance as to the operation and promotion of your ILLY Location, as we deem advisable (Retail Location Agreement, Section 3 8, Franchise Agreement, Section 3 9)

Site Selection

Development Agreement

If we allow you to enter into a Development Agreement, you will need to enter into a separate Retail Location Agreement or Franchise Agreement for each ILLY Location authorized in the Development Schedule Each ILLY Location shall be located at a site we approve, within the Development Area For each proposed site for an ILLY Location, you must submit to us the completed site approval package (which must include the information or materials we may reasonably require, such as a site approval form, a copy of the site plan, a business plan, demographic statistics and information regarding the surrounding businesses, together with an option contract, letter of intent or other evidence confirming your favorable prospects for obtaining the site (the "**Site Approval Materials**")

You must submit the Site Approval Materials by no later than 30 days before the date on which the ILLY Location must open, as listed in the Development Schedule If we give our written approval to a proposed site, we will send written notice of approval to you within 30 days of our receipt of the completed Site Approval Materials If we do not send such notice to you within the 30-day period, then the site shall be deemed disapproved

Retail Location Agreement

The ILLY Location will be located within a hotel or similar venue and, by no later than the date you sign the Retail Location Agreement, you must have located and obtained our acceptance of a potential site. Our acceptance will be based upon our criteria for ILLY Locations including the viability of an ILLY Location within the venue you have selected. We are not required to provide you any assistance in locating or negotiating the purchase or lease of a site. (We understand that many of our franchisees who will operate in Facilities will already be affiliated with the owner or manager of the Facility or will have a separate contractual arrangement with the owner or operator of the Facility.)

You must maintain the condition and appearance of the premises of the ILLY Location consistent with our quality controls and standards, and may not materially alter your ILLY Location or replace or alter your equipment, fixtures or signs without our prior written approval.

Franchise Agreement

If you are executing a Franchise Agreement and, at the time the Franchise Agreement is signed, you have not yet found a location, you must obtain a site subject to our approval, according to the Site Selection Addendum. You will sign the Site Selection Addendum at the same time as the Franchise Agreement. Under the Site Selection Addendum, you must obtain, at your own cost, a location within 90 days after you sign the Franchise Agreement. If you fail to obtain a site according to the Site Selection Addendum within the time required, we may, in our discretion, terminate the Franchise Agreement.

You must submit to us at least one location for site approval within 45 days after you sign the Site Selection Addendum. Within 30 days after receipt of the required site information and materials, we will approve or disapprove the proposed site. If we do not approve a proposed site by written notice to you within 30 days, the site will be deemed disapproved. Within 15 days after we approve the site, you must sign a lease or sublease (if applicable), after obtaining our prior written approval of the lease or sublease terms (if the premises are to be leased or sublet), or a binding agreement to purchase the site. For any ILLY Location that is leased, the lease must include the provisions outlined in our "Lease Rider", attached to the Franchise Agreement as Exhibit G.

We will give you site selection guidelines, including our minimum standards for a location for the ILLY Location, and other site selection counseling and assistance as we may deem advisable. We may also provide on site evaluation if we deem it advisable in response to your requests for site approval. However, we will not provide on site evaluation for any proposed site prior to the receipt of a completed site approval form for the site prepared by you.

Remodeling

You must remodel to bring your ILLY Location current, if you have not yet done so, upon renewal or transfer of your Retail Location Agreement or Franchise Agreement and must complete all required remodeling and refurbishment within such period as we may reasonably specify as a condition of approving the renewal or transfer. (Under the Retail Location Agreement, this requirement will apply so long as such remodeling and refurbishment is consistent with the requirements of the Facility and is consistent with other ILLY Locations.) You must complete all required remodeling and refurbishment within such period as we may specify as a condition of the renewal.

Advertising/Marketing

Obligations Under Retail Location Agreement

We do not require you to contribute to a marketing fund or cooperative, however, recognizing the value of marketing and promotion, and the importance of the standardization of marketing and promotion programs to the furtherance of the goodwill and public image of the System, in the Retail Location Agreement, we and you agree to perform a minimum number of activities to be agreed between the parties for each year in conjunction with the launch of new products by us or with communication campaigns

Obligations Under Franchise Agreement

Under the Franchise Agreement, we can require you spend up to 3% of Net Sales on advertising and promotional activities. Currently, we recommend that franchisees spend 1% of Net Sales on local marketing. Since we have not established a System Marketing Fund or any Regional Marketing Funds, you are not required to contribute amounts to those Funds. We reserve the right to modify the marketing contributions and allocations at any time, however, you will not be required to spend or contribute more than 3% of Net Sales on advertising and promotional activities. The Advertising Obligations may be met through (i) contributions paid to a System Marketing Fund, (ii) contributions paid to a Regional Marketing Fund, (iii) contributions to a Market Co-op, and/or (iv) expenditures on "local advertising and promotion." The following information for the System Marketing Fund, Regional Marketing Funds, and Market Co-ops only applies to Separate Locations operated under a Franchise Agreement.

System Marketing Fund If established, we will direct all marketing programs for the System and administer any System Marketing Fund in our sole discretion. An unaudited statement of the System Marketing Fund's operations, as shown on our books, will be prepared annually, and that statement will be made available to you upon written request. We are not required to spend any particular amount on advertising in the area where your ILLY Location is located. We also reserve the right in our sole discretion, to discontinue any System Marketing Fund upon written notice to you.

If we create a System Marketing Fund, we will direct all marketing programs, with the sole right to decide the concepts, materials, and media used in these programs and the placement and allocation of the programs. The System Marketing Fund, and all contributions to and earnings from the System Marketing Fund, will be used exclusively to meet the costs of marketing and any other activities that we believe will enhance the System's image and, in our sole discretion, promote general public awareness of and favorable support for the System. We will not use any monies in the System Marketing Fund for marketing that is principally a solicitation for the sale of franchises. The System Marketing Fund may also be used to provide contributions to one or more Market Co-ops and/or on local advertising to be spent in local markets that we may designate. You must contribute to the System Marketing Fund by separate payment made payable (or as otherwise directed for payment) to us. All sums you pay to the System Marketing Fund will be maintained in an account separate from our other monies.

We will have the right to charge the System Marketing Fund for the reasonable administrative costs and overhead that we incur in activities reasonably related to the direction and implementation of the System Marketing Fund and marketing programs for you and the System (this includes, for example, costs of personnel for creating and implementing, associated overhead, marketing, merchandising, promotional and marketing programs). The System

Marketing Fund and its earnings will not otherwise inure to our benefit. We will maintain separate bookkeeping accounts for the System Marketing Fund. The System Marketing Fund is not and will not be our asset. No System Marketing Fund has been established as of the date of this disclosure, and therefore, no contributions have been collected or expended.

Regional Marketing Fund If a Regional Marketing Fund is created for the area in which your ILLY Location is situated, you must contribute an amount to the fund that we will determine, which will be based on your monthly Net Sales. We will direct all regional marketing programs and administer any Regional Marketing Fund in our sole discretion. An unaudited statement of the Regional Marketing Fund's operations, as shown on our books, will be prepared annually, and that statement will be made available to you upon written request. Any Regional Marketing Fund created will be administered according to the terms described above for the System Marketing Fund. We reserve the right in our sole discretion, to discontinue any Regional Marketing Fund upon written notice to you. As of the date of this Disclosure Document, there are no Regional Marketing Funds in effect.

Market Co-op We will have the right, as we see fit, to establish a Market Co-op for your region. The purpose of a Market Co-op is to conduct, discuss and plan marketing and promotional campaigns for the ILLY Locations located in that region. As of the date of this Disclosure Document there are no Market Co-ops in effect.

If Market Co-op is established for your area, then you must join the Market Co-op. You will not be required to belong to more than one Market Co-op. Market Co-ops will be established, organized, and governed in the form and manner that we have approved in advance. Unless we specify otherwise, the activities carried on by each Market Co-op will be decided by a simple majority vote of its members. Each ILLY Location owner will be entitled to cast one vote for each ILLY Location owned. Market Co-ops may not use marketing, promotional plans, or materials without our prior written approval, as described below. The specific amount of your contribution to the Market Co-op will be determined by the Market Co-op by a simple majority vote of its members. ILLY Locations that we operate in the region, if any, will have the same rights as those owned by our franchisees (i.e., one vote per ILLY Location). You must submit to the Market Co-op the amount required at the times determined by the Market Co-op, together with the statements or reports the Market Co-op may require. All amounts contributed to the Market Co-op will be deposited into a bank account maintained by the Market Co-op, and will be distributed only in the manner prescribed by the Market Co-op. We may, upon written request, grant to a franchisee an exemption from the requirement of membership in a Market Co-op, or from the requirement to pay all or a portion of the contribution to the Market Co-op. Although each Market Co-op is intended to be of perpetual duration, we maintain the right to terminate any Market Co-op. A Market Co-op will not be terminated, however, until all monies in that Market Co-op have been expended for marketing or promotional purposes.

Under Retail Location Agreement and Franchise Agreement Local Advertising

Certain criteria will apply to any local advertising and promotion that you conduct, and we may designate in the Manuals the types of expenditures that will or will not count towards local advertising and promotion. You may only use advertising and marketing materials that we have provided or that we have approved. You may, and we encourage you to, expend funds for local advertising and promotion of a local nature which will focus on disseminating marketing directly related to your ILLY Location. You are also required to obtain listings for your ILLY Location in the local trade or business telephone directories, including "yellow" and "white" pages and any online directories we designate.

Currently, local advertising and promotion does not include costs or expenses in connection with any of the following (a) salaries and expenses of your employees, including salaries or expenses for attendance at marketing meetings or activities, or incentives provided or offered to such employees, including discount coupons, (b) political donations, (c) the value of discounts provided to consumers, and/or (d) the cost of food, beverage, and merchandise items

Opening Marketing Program

You must conduct an Opening Marketing Program for your ILLY Location, pursuant to a plan we approve. You must spend a minimum amount that we designate. All materials used in the Opening Marketing Program will be subject to our prior written approval, as described below.

Marketing Materials Review and Approval Process

For all proposed advertising, marketing, and promotional plans, you must submit samples of plans and materials to us for our review and prior written approval. If you do not receive written approval from us within a maximum of 14 days of the date we receive the samples or materials, we will be deemed to have disapproved them.

All copyrights in and to advertising, marketing, and promotional materials you develop (or that are developed for you) with respect to the ILLY Location will become our sole property. You must sign the documents (and, if necessary, require your independent contractors to sign the documents) that we deem necessary to implement this provision.

Advertising Councils

We currently do not have a franchisee advertising council that advises us on advertising policies and procedures, however, we may, as we deem appropriate, seek the advice of our Franchisees by formal or informal means regarding marketing, advertising and promotions financed by the System Marketing Fund, any Regional Marketing Fund or any other advertising and promotional matters.

Technology

Computer Systems

We may specify certain requirements for the computer hardware and software for ILLY Locations. You must install and use the Computer System in the manner we require. Unless we agree to waive the requirements in this paragraph, you must record all sales on computer-based point-of-sale systems and using software that we approve or on cash registers designated by us either in the Manuals or in other written specifications. These systems or registers will be deemed part of your Computer System. We currently suggest that franchisees use a Micros RES-3700 V 4 cash register with the 'ILLY PACK' system and related modules at ILLY Locations, as specified in the Manuals. Micros is a software system specially designed to manage coffee outlet chains, which has been customized to meet our requirements. This system registers sales, transactions, receipts, statistics and similar point-of-sale transactions on the Micros database of, and saves the data onto, the myMicros net database. The myMicros net database stores sales data for each ILLY Location. MyMicros also links us, each ILLY Location and all organization members. The myMicros net portal is located on the data centre of Micros and we may move it anywhere we deem appropriate. We require you to purchase the Micros software from Micros Systems, Inc., which can be contacted at 443-285-

6000 If you want to use a different computer system, you must request and obtain our approval of the alternative system

If your ILLY Location will be operated in a Facility, depending on the Computer System being used within the Facility, we may allow you to use an existing cash register within the Facility and its existing software, rather than require you to purchase a new cash register for your ILLY Location. You must make any changes to the Computer System as we require. In such case, there would be no initial charge for your Computer System.

We estimate that the cost of purchasing the Computer System will be up to \$14,000 (e.g., \$7,000 for each cash register). Generally, a regular-sized ILLY Location will need one cash register, while a larger-sized ILLY Location will need two cash registers. ILLY Location sizes vary, but are typically 325 to 2,500 square feet.

You must implement and periodically make upgrades, supplements, modifications, or enhancements to the Computer System as we may reasonably request in writing (collectively, "**Computer Upgrades**"). For example, we may establish an extranet or online ordering system, and if we do, we may require you to upgrade your Computer System to utilize these new programs. You must comply with all specifications we issue with respect to the Computer System and any Computer Upgrades, at your own expense. We estimate that the cost to upgrade your system and to comply with our specifications will be approximately \$650 per year.

You must provide us with unimpeded independent access to your Computer System and the Required Software in the manner, and at the times, we require, and there are no contractual limits on our right to access information and data from the Computer System.

Gift Cards, Loyalty, and Incentive Programs

You must participate in our gift card, loyalty, and incentive programs. This means you must offer for sale, and honor for purchase by customers, all gift cards and other loyalty, incentive, and/or convenience programs that we may periodically institute (including but not limited to loyalty programs that we or a third party vendor operate, as well as mobile payment applications), and you must do all of those things in compliance with our standards and procedures for such programs. For this purpose, you must purchase the software, hardware, and other items needed to sell and process gift cards, and to contract with the supplier of gift cards and gift card processing services, as we may specify in writing in the Manuals or otherwise. You must also pay such monthly and per-swipe transaction fees as may be required by the vendors of the gift card system. You may not sell, issue, or redeem coupons, gift certificates and gift cards other than gift cards we approve in writing.

Data

We may use the data you provide us, that you upload to our system, and/or that we download from your system or that you otherwise create or collect in connection with the System and your operation of the ILLY Location (collectively, the "**Data**") in any manner that we deem appropriate without paying you. We own all Data. You must provide us with copies and/or originals of any Data you create or collect upon our request.

You must abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("**Privacy Laws**"). In addition, you must comply with our standards and policies pertaining to Privacy Laws. If there is a conflict between our privacy policies and

the Privacy Laws, you must comply with the requirements of the law, notify us of the conflict and cooperate with us and our attorneys in determining the best way to resolve the conflict. If you operate at a Facility, we acknowledge that you may be subject to your own corporate policies and standards with respect to privacy issues, and in the event you become aware of any conflict between our standards with respect to privacy issues and your corporate policies and standards, you must advise us of the conflict and we and you will cooperate, as necessary to best comply with both policies and standards so as to ensure compliance with applicable Privacy Laws.

Data Requirements and Usage

If we determine that for any legal or business reasons you should collect, maintain, and/or delete any information from your Computer System, we may include specifications in the Manuals (or otherwise in writing). You must provide us any reports that we reasonably request from such Data, including but not limited to daily downloads of information concerning the operation of the ILLY Location.

Websites and Electronic Mail

Websites (as defined below) are considered "marketing" and are subject (among other things) to our review and prior written approval before they may be used (as described above). As used in the agreements, the term "**Website**" 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, YouTube, Google Plus, Pinterest, etc.), blogs, vlogs, applications to be installed on mobile devices (e.g., iPad or Droid apps), and other applications, etc.

If the ILLY Location is in a Facility, you may use (or authorize third parties to use) the Proprietary Marks, photographs and/or statements within the official website for the Facility. Otherwise (or unless we approve the use in writing), you may not establish (or permit any other party to establish) a Website relating in any manner whatsoever to the ILLY Location or referring to the Proprietary Marks. We have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Website. If we decide to grant our consent for a separate Website for you, we have the right to require that you adhere to certain standards relating to it. For example, we may require you to make periodic updates to the Website to reflect specials and other promotions. We may also require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain (or have maintained on your behalf).

Other than as we specifically permit, you may not use the Proprietary Marks or any abbreviation or other name associated with us and/or the System as part of any e-mail address, domain name, and/or other identification in any electronic medium. You may not transmit or cause any other party to transmit advertisements or solicitations by e-mail, text-message, or other electronic media without first obtaining our written consent as to content and overall distribution plan. You will be solely responsible for compliance with any laws pertaining to sending e-mails including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "**CAN-SPAM Act of 2003**") and the Federal Telephone Consumer Protection Act ("**Electronic Communication**" includes all methods for sending communication electronically, whether or not currently invented or used, including without limitation e-mails, text messages, and faxes).

Training

Initial Training Requirements

By no later than 7 days before opening your ILLY Location, as required by us, you, your managers or owners as necessary to manage the operations of the ILLY Location to our standards and to meet the ILLY Location's particular business demands (the "**Key Personnel**") must attend and successfully complete, to our satisfaction, the training program that we offer. The ILLY Location must be under the active full-time management of either you or the Key Personnel who have successfully completed (to our satisfaction) our training program.

Replacement Personnel

If either you or the Key Personnel who have successfully completed our training program (collectively, the "**Highly Trained Personnel**") cease active management or employment at the ILLY Location, then you must enroll a qualified replacement (who must be reasonably acceptable to us) in our training program not more than 30 days after the end of the former person's full-time employment or management responsibilities. The replacement must attend and successfully complete the basic management training program, to our reasonable satisfaction, as soon as it is practical to do so.

Refresher Courses

We may require that any or all of the Highly Trained Personnel attend refresher courses, seminars, and other training programs periodically. We will bear the cost of all training (instruction and required materials) for you and your initial Key Personnel. For persons who replace the initial Highly Trained Personnel, you must enroll those persons in our training program. You will bear all expenses incurred in attending training (including the fees associated with the training program and refresher training programs), such as the costs relating to transportation, lodging, meals, wages, and worker's compensation insurance.

If you ask that we provide additional on-site training, and we are able to do so, then you will pay us our then-current per diem charges and out-of-pocket expenses. Our per diem charges will be specified in our Manuals, and the current amount is described in **Item 6** of this Disclosure Document.

Description of Training

The training program is a 4-day course taught by our instructors with the assistance of more than 280 slides, 10 short videos from movies and special training films and many role playing situations.

Our instructors are ILLY Quality Assurance Managers and other qualified personnel or third parties appointed by us, including

- **Moreno Faina** (coffee theory) -- Mr. Faina has been a Director at ILLY ITALY's Università del Caffè ("**UDC**") since 2000 and a didactic coordinator for ILLY ITALY since 1982. Mr. Faina is also a diTrieste trainer and Specialty Coffee Association of Europe ("**SCAE**") authorized trainer.

- Pierpaolo Segre has been our training manager since 2000. In addition, from November 2000 to September 2002, Mr. Segre was an ILLY coffee bar manager.
- Giorgio Milos (senior barista training) has been with the ILLY GROUP since 1995 and was put in charge of the first ILLY Location in 2000. He has been a teacher at ILLY ITALY's UDC since 2003. He is World Barista Champion and SCAE authorized trainer.
- Heidi Rasmussen (instructor) has been a quality assurance manager for ILLY USA since 1992.
- Ed Panzella (instructor) has worked with the ILLY GROUP since 1995 and has been a quality assurance manager for ILLY USA since 2005.

In addition to the classroom instruction, we recommend each of the Key Personnel spend one week working in an existing ILLY Location.

TRAINING PROGRAM

Subject	Hours of Classroom Training	Hours of On-The-Job Training	Location
Introduction to ILLY and the ESPRESSAMENTE ILLY brand	½ Day	0 hours	Classroom training at a location we specify
Coffee Theory	½ Day	0 hours	Classroom training at a location we specify
Preparation of Drinks	½ Day	4 Hours combined with multiple activities	Classroom training at a location we specify
Point of Sale and Computer System	0 hours	½ Day	Coordinated with Micros – Third Party Training (Not required if you will be using an existing cash register)
Communication tools (POS and Marketing)	2 Hours	0 hours	Classroom training at a location we specify
Drink Presentation	½ Day	2 Hours combined with multiple activities	Classroom training at a location we specify
Food Presentation	½ Day	4 Hours combined with multiple activities	Classroom training at a location we specify
TOTAL	2 days and 6 hours	1 day and 2 hours	

The training above will be conducted at locations of our choosing (which may include Trieste, Italy, Rye Brook, New York, San Francisco, California or one of the affiliate-operated, franchised, or licensed ILLY Locations) before your ILLY Location opens. Training is conducted as frequently as we determine it necessary to hold a training class.

Manuals

The table of contents of the Manuals is attached as **Exhibit G** (total pages 400)

ITEM 12 **TERRITORY**

Retail Location Agreement and Franchise Agreement

You will have the right to operate the ILLY Location at the Approved Location. If we have not already accepted the location of your ILLY Location when you enter into a Franchise Agreement, you will enter into a Site Selection Addendum, which is attached to the Franchise Agreement as Exhibit B. Under the Site Selection Addendum, we will grant you a site selection area in which we will not establish or franchise another party to establish an ILLY Location until we approve a location for your ILLY Location, but not to exceed 90 days from the date you enter into that addendum.

You may not relocate the ILLY Location without our prior written approval, which we have the right to withhold. If you operate a ILLY Location in a Facility, we will usually grant our approval for a relocation within the same Facility (based on the needs of the Facility, including remodeling and renovation), however, we will not usually grant approval for a relocation outside of the Facility.

Although we grant you some territorial protection, you will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control. But, as long as you remain in compliance with the Retail Location Agreement or the Franchise Agreement, during the term of that Agreement, we will not establish or operate, or license anyone else the right to establish or operate, an ILLY coffee bar at any location within the territory specified in the Retail Location Agreement or Franchise Agreement (the "**Territory**") (except as otherwise provided in "Our Reserved Rights" described below).

For ILLY Locations within Facilities, the Territory will usually be the hotel, airport (or airport terminal, for large airports), museum, etc. The size of the Territory will depend on various factors, including the size and type of Facility, population within the community, foot traffic through the Facility, location, demography, etc.

For Separate Locations, the Territory will typically be a circle with its center at the front door of the Separate Location, and with a radius stated in the Franchise Agreement. We generally intend to provide you with a Territory with a 1-mile radius. (The Territory for a Separate Location will be smaller in urban areas (e.g., a few blocks), where there may be a high concentration of population.)

So long as you comply with the Retail Location Agreement or Franchise Agreement, continuation of your Territory does not depend upon any other conditions. We are not permitted to modify your territorial rights based on other circumstances, such as the achievement of a certain sales volume, market penetration, etc.

You will not have any options, rights of first refusal, or similar rights to acquire additional ILLY Locations or other rights under the Retail Location Agreement or Franchise Agreement.

As described more fully below, you may offer and sell Products only to retail customers, delivery customers and catering customers at and from your ILLY Location. You may not sell Products by use of other means, such as the Internet, catalog, direct mail, and toll-free numbers.

There are no restrictions on our right to solicit or accept orders for Products through alternative channels inside or outside your Territory, except as described in our reserved rights below. We do not have to pay you for soliciting or accepting orders inside your Territory.

Development Agreement

If we enter into a Development Agreement with you, you will agree to develop a certain number of ILLY Locations pursuant to your Development Schedule. Each ILLY Location will be established and operated pursuant to a separate Retail Location Agreement or Franchise Agreement and will be located in the Development Area described in Exhibit A to your Development Agreement.

If you are in compliance with your obligations under the Development Agreement and all Retail Location Agreements and Franchise Agreements between you (or your affiliate(s)) and us, then we will not establish, or license anyone other than you to establish, an ILLY Location in the Development Area until the last date specified in the Development Schedule (except as otherwise provided in the terms of the Development Agreement).

So long as you comply with the Development Agreement, continuation of your Development Area does not depend upon any other conditions.

You will not have any options, rights of first refusal, or similar rights to acquire additional ILLY Locations or other rights under the Development Agreement.

You may offer and sell Products only from your ILLY Locations and only in accordance with the requirements of the applicable Retail Location Agreement or Franchise Agreement and the procedures and standards set forth in our Manuals. You may not sell Products by use of other means, such as the Internet, catalog, direct mail, and toll-free numbers.

Our Reserved Rights

Under the Retail Location Agreement, the Franchise Agreement and/or the Development Agreement, we retain all rights not specifically granted to you, and may, among other things, on any terms and conditions we deem advisable, and without granting you any rights (and, in each case, despite their proximity to your ILLY Location and/or the Territory (or Development Area, as applicable), and despite their actual or threatened impact on sales of your ILLY Location) do all of the following:

- own, acquire, establish, and/or operate and license others to establish and operate, ILLY Locations under the System at any location outside the Territory (or Development Area, if applicable),
- own, acquire, establish, and/or operate, and license others to establish and operate, ILLY Locations under the Proprietary Marks at Reserved Facilities (as defined below) at any location within or outside of the Territory (or Development Area, if applicable). "**Reserved Facilities**" means airports, hotels that are operated as part of, or in connection with, a national or international hotel and lodging chain or brand,

department stores, supermarkets and grocery stores that are operated as part of, or in connection with a retail chain or brand, cultural institutions (examples include, but are not limited to, theaters, museums, art centers and educational facilities), and business and industrial complexes and offices at which the food services are managed by service providers with national or international operations),

- own, acquire, establish, and/or operate and license others to establish and operate businesses (a) using the Proprietary Marks (but not the "ILLY CAFFÈ" mark) and other marks in connection with the operation of such businesses, (b) which businesses may be similar to ILLY Locations, and (c) which may be located within or outside the Territory (or Development Area, if applicable), provided, however, we may not operate or license others to operate an ILLY Location inside the Territory (or Development Area, if applicable) under the System (unless otherwise permitted above), and/or
- sell and distribute, directly or indirectly, and/or license others to sell and to distribute, directly or indirectly, any products (including Products bearing our Proprietary Marks (but not the "ILLY CAFFÈ" mark)) from any location to any business or customer within or outside of the Territory (or Development Area, if applicable), including, without limitation, sales made to customers through restaurants, cafes, retail kiosks, grocery or convenience stores or other retail outlets, mail order, toll-free numbers, on the Internet and/or any other retail locations or distribution channels, provided, however, we may not operate or license others to operate an ILLY Location inside the Territory (or Development Area, if applicable) under the System and the Proprietary Marks (unless otherwise permitted above)

ITEM 13 **TRADEMARKS**

We grant you the right to use certain Proprietary Marks under the Retail Location Agreement or the Franchise Agreement. We do not own the Proprietary Marks. ILLY ITALY is the owner of the Proprietary Marks, and we have the right to use the Proprietary Marks due to the License Agreement described below. ILLY ITALY owns/has applied for the following applications/registrations with the U S Patent and Trademark Office (the "USPTO") on its Principal Register:

Mark	Registration Number	Registration Date
ESPRESSAMENTE	3136011	August 29, 2006
ESPRESSAMENTE	3418653	April 29, 2008
ILLY (and design)	2640278	October 22, 2002
ILLY (and design)	2815287	February 17, 2004
ILLY (typed drawing)	2700832	March 25, 2003
ILLY (typed drawing)	2815286	February 17, 2004

ILLY ITALY has filed all required affidavits and licensed rights to the Proprietary Marks to us. We have the right to use, and to license others to use, the Proprietary Marks in the United States under a non-exclusive, renewable Trademark and System License Agreement between us and ILLY ITALY, dated as of September 1, 2008 ("**License Agreement**") Under the terms of this License Agreement, ILLY ITALY licenses us to use and sublicense the Proprietary Marks

This license will remain in effect for ten years and then automatically renew for ten-year renewal terms unless one party gives the other at least sixty days' notice prior to the expiration of the then-current term. If the License Agreement is terminated, ILLY ITALY will assume our rights and obligations under all existing third-party agreements (including, but not limited to Retail Location Agreements and Franchise Agreements).

Your right to use the Proprietary Marks is limited to the uses that are authorized under the Retail Location Agreement or the Franchise Agreement, and any unauthorized use of the Proprietary Marks will infringe upon our rights. You may not use any Proprietary Mark (1) as part of any corporate name or other business name, (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form, (3) for performing or selling any unauthorized services or products, (4) as part of any domain name, electronic address or search engine or in any other manner for a Website without our prior written approval (unless you operate under a Retail Location Agreement, in which case we authorize you to use the Proprietary Marks within any official Website related to the Facility), or (5) in any other manner that we do not expressly authorize in writing. You must identify yourself as the independent owner or manager of your business and ILLY Location in the manner we specify (such as on invoices, order forms, receipts, and contracts). You must also give the trademark registration notices that we designate, and obtain any assumed business name registrations that applicable law requires. Your use of the Proprietary Marks is strictly limited to use in connection with coffee bar and restaurant services. You must not engage in any activities that would be detrimental or interfere with the operation, reputation, or goodwill of ILLY Locations, us, or the System.

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceeding, or any pending material litigation, involving the Proprietary Marks. Other than the License Agreement, no agreement significantly limits our rights to use or license the Proprietary Marks in any state in a manner material to your ILLY Location. We do not know of any prior rights or infringing uses that could materially affect your use of the principal trademarks in any state.

You must promptly notify us of any unauthorized use of the Proprietary Marks, any challenge to the validity of the Proprietary Marks, or any challenge to ILLY ITALY's ownership of, right to use and to license others to use, or your right to use, the Proprietary Marks. We or ILLY ITALY, have the right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement. We or ILLY ITALY have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. We or ILLY ITALY will defend you against any third party claim, suit, or demand arising out of your use of the Proprietary Marks. If we determine that you have used the Proprietary Marks in compliance with the Retail Location Agreement or the Franchise Agreement, we or ILLY ITALY will indemnify you with respect to such infringement claims, including to reimburse you for the cost of any judgment or settlement, as well as your out-of-pocket costs (except that you will bear the salary costs of your employees). If we determine that you have not used the Proprietary Marks in compliance with the Retail Location Agreement or the Franchise Agreement, you must bear the cost of defense, including the cost of any judgment or settlement, and you must promptly reimburse us for those amounts. If there is any litigation due to your use of the Proprietary Marks, you must sign all documents and do all things as may be necessary to carry out a defense or prosecution, including becoming a nominal party to any legal action.

If it becomes advisable at any time in our sole judgment for you to modify or discontinue using any Proprietary Mark or for you and the Approved Location to use one or more additional or substitute trade or service marks, you will have to immediately comply with our directions. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

You may not use any item bearing the Proprietary Marks without our prior written approval. You are obligated to require all marketing and promotional materials, signs, decorations, paper goods (including without limitation disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in your ILLY Location), any and all replacement trade dress products, and other items which we may designate to bear our then-current Proprietary Marks, and logos in the form, color, location, and manner we prescribe.

ITEM 14

PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

Patents

No current or pending patents are material to the operation of your ILLY Location.

Copyrights

We claim copyright protection covering various materials used in our business and the development and operation of ILLY Locations, including the Manuals, marketing, advertising and promotional materials, and similar materials. We have not registered these materials with the United States Registrar of Copyrights and we are not required to do so.

There are no currently effective determinations of the United States Copyright Office or any court, nor any pending litigation or other proceedings, regarding any copyrighted materials. No agreement limits our rights to use or allow you to use the copyrighted materials. We do not know of any superior prior rights or infringing uses that could materially affect your use of the copyrighted materials. No agreement requires us to protect or defend our copyrights or to indemnify you for any expenses or damages you incur in any judicial or administrative proceedings involving the copyrighted materials. If we require, you must immediately modify or discontinue using the copyrighted materials. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

Confidential Information

Under the Retail Location Agreement or the Franchise Agreement, you may never communicate, disclose, or use for any person's benefit any of the confidential information, knowledge, or know-how concerning the operation of your ILLY Location that may be communicated to you or that you may learn by virtue of your operation of an ILLY Location. You may divulge confidential information only to those of your employees who must have access to it in order to operate your ILLY Location. Any and all information, knowledge, know-how, and techniques that we designate as confidential will be deemed confidential for purposes of the Retail Location Agreement or the Franchise Agreement. However, this will not include information that you can show came to your attention before we disclosed it to you, or that at any time became a part of the public domain, through publication or communication by others.

having the right to do so, or which you are legally compelled to disclose. In the Retail Location Agreement or the Franchise Agreement, you agree to treat as confidential at all times our confidential information and will grant access to such information to your employees only on a need-to-know basis.

In addition, we may require you, your Key Personnel, and certain of your other staff to sign a Non-Disclosure and Non-Competition Agreement. Every one of these agreements must provide that the person signing will maintain the confidentiality of information that they receive in their employment or affiliation with you or your ILLY Location. These agreements must be in a form that we find satisfactory, and must include, among other things, specific identification of our company as a third party beneficiary with the independent right to enforce the covenants. Our current form for this Non-Disclosure and Non-Competition Agreement is attached to the Retail Location Agreement as Exhibit E or to the Franchise Agreement as Exhibit H.

Confidential Manuals

In order to protect our reputation and goodwill and to maintain high standards of operation under our Proprietary Marks, you must conduct your business according to the Manuals. We will allow you access to our Manuals for the term of the Retail Location Agreement or Franchise Agreement.

You must always treat in a confidential manner the Manuals, any other manuals we create (or that we approve) for use with your ILLY Location, and the information contained in the Manuals. You must use best efforts to maintain this information as secret and confidential. You may not copy, duplicate, record, or otherwise reproduce the Manuals and the related materials, or any part (other than printing such materials that are provided electronically), nor may you otherwise let any unauthorized person have access to these materials. The Manuals will always be our sole property. You must always keep the Manuals in a secure place.

We may periodically revise the contents of the Manuals, and you must make corresponding revisions to your copy of the Manuals and comply with each new or changed standard. If there is ever a dispute as to the contents of the Manuals, our master copy of the Manuals (maintained at our home office) will be controlling.

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

Retail Location Agreement or Franchise Agreement

The Retail Location Agreement and Franchise Agreement require that you, or one of your Key Personnel, devote commercially reasonable efforts to the management of your ILLY Location. The person involved in active management of your ILLY Location must successfully complete our training program.

The Retail Location Agreement and Franchise Agreement do not require you to participate personally in the direct operation of your ILLY Location, although we encourage and recommend your active participation.

We require your owner(s) or an affiliated company to sign a Guarantee, Indemnification and Acknowledge Agreement, the form of which is attached to the Retail Location Agreement as Exhibit B or the Franchise Agreement as Exhibit C. We may require certain of your principals, supervisors, managers and others to sign a Non-Disclosure and Non-Competition Agreement, the form of which is attached to the Franchise Agreement as Exhibit H and to the Retail Location Agreement as Exhibit E. We do not impose any other restrictions on your principals or managers.

Development Agreement

If you enter into a Development Agreement with us, you or one of your Key Personnel must devote commercially reasonable efforts to the development of the ILLY Locations identified in your Development Schedule. We may require you to employ one or more district managers (who must be reasonably acceptable to us) to supervise the day to day operations of your ILLY Locations. The individual(s) supervising the day to day operations must complete training courses as we reasonably require.

We require your owner(s) (and may require certain other individuals and entities) to sign a Guarantee, Indemnification and Acknowledge Agreement, the form of which is attached to the Development Agreement as Exhibit B. We may require certain of your principals, supervisors, managers and others to sign a Non-Disclosure and Non-Competition Agreement, the form of which is attached to the Development Agreement as Exhibit C. We do not impose any other restrictions on your principals or managers.

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

You may sell and provide only Products that conform to our standards and specifications. You also will have certain obligations to offer for sale particular items. We have the right, without limit, to change the types of authorized products and services.

You may offer and sell Products only from your ILLY Location, only according to the requirements of the Retail Location Agreement or Franchise Agreement and the procedures and standards set out in the Manuals, and only to retail customers (for consumption on the premises or for carry-out consumption) and delivery customers and catering customers in the Territory. "**Delivery customers**" means customers that purchase Products for delivery to (and consumption in) their home or office or other locations (including the Facility, if applicable) and "**catering customers**" means customers for whom catering services are provided at their homes, offices, and other locations (including the Facility, if applicable).

You may not offer, sell, or distribute Products through any means other than from your ILLY Location, including selling, distributing, or otherwise providing, any Products at wholesale, or for resale or distribution by any third party, or through satellite locations or sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media. All sales will be counted in "Net Sales."

You must honor all credit and debit card payment systems that we specify. You must comply with the then current Payment Card Industry Data Security Standards (PCI/DSS) as those standards may be revised by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org) or successor organization. Among other things, you must

implement the security requirements that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards

ITEM 17
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

THE FRANCHISE RELATIONSHIP

These tables lists certain important provisions of the Retail Location Agreement, Franchise Agreement and Development Agreement You should read these provisions in the Agreements attached to this Disclosure Document

Retail Location Agreement

Provision	Section in Retail Location Agreement	Summary
a Length of the term	§2 1	5 years
b Renewal or extension of the term	§2 2	Your renewal rights permit you to remain as a franchisee after the initial term of your Retail Location Agreement expires If you wish to do so, and you satisfy the required pre-conditions to renewal, we will offer you the right to obtain one additional 5-year term You must sign our then-current Retail Location Agreement for the renewal term, and this new agreement may have different terms and conditions (including e g higher royalty fees) from the agreement that covered your initial term
c Requirements for you to renew or extend	§2 2	Notice, satisfaction of monetary obligations, compliance with Retail Location Agreement, release, sign new Retail Location Agreement, pay renewal fee, and others Your new Retail Location Agreement may have terms that are materially different terms and conditions from your original contract
d Termination by you	§15 1	In the event of bankruptcy, under certain conditions
e Termination by us without cause	Not Applicable	
f Termination by us with cause	§15	For default under agreement, bankruptcy, abandonment, and other grounds, see § 15 of the Retail Location Agreement (Under the U S Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing)

Provision	Section in Retail Location Agreement	Summary
g "Cause" defined – curable defaults	§15 3	Failure to pay amounts owed to us (after 10 days' notice), breach of personal covenants (after 15 days' notice), sale of products not previously approved by us (after 15 days' notice), unauthorized or improper use of Proprietary Marks (after 15 days' notice), and any other default not specified in §§ 15 1 and 15 2 of the Retail Location Agreement (after 30 days' notice)
h "Cause" defined – non-curable defaults	§§15 1 and 15 2	Bankruptcy, abandonment, unauthorized transfer, failure to open or conduct training on time, threat or danger to public health or safety, and others (Under the U S Bankruptcy Code, we may be unable to terminate merely because you make a bankruptcy filing)
i Your obligations on termination/ non-renewal	§16	Cease operating your ILLY Location, payment of amounts due, and others
j Assignment of contract by us	§14 1	We may transfer without your notice or consent, so long as our obligations to you under the Retail Location Agreement are reasonably likely to be performed by the transferee
k "Transfer" by you – defined	§14 2	Includes transfer of (A) the Retail Location Agreement, (B) your rights and obligations under the Retail Location Agreement, or (C) any material asset you use in the operation of your ILLY Location
l Our approval of transfer by you	§14 2	We have the right to approve transfers
m Conditions for our approval of transfer	§14 2	Payment of a transfer fee, transferee's execution of the then-current form of retail location agreement, transferor's execution of general releases, and others
n Our right of first refusal to acquire your business	Not Applicable	
o Our option to purchase your business	§16 10	We have the right to purchase certain assets, such as equipment, signs, and fixtures

Provision	Section in Retail Location Agreement	Summary
p Your death or disability	Not Applicable	
q Non-competition covenants during the term of the franchise	§§17 2 and 17 3	Includes prohibition on engaging in a Competitive Business A " Competitive Business " is considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month
r Non-competition covenants after the franchise is terminated or expires	Not Applicable	
s Modification of the agreement	§23 2	Must be in writing signed by both parties
t Integration / merger clause	§23	Only the final written terms of the agreement (subject to the disclosures in this Disclosure Document) are binding Any representations or promises not included in this Disclosure Document or the agreement may not be enforceable
u Dispute resolution by arbitration or mediation	§§25 2, and 25 5	Before bringing any action in court, the parties must first submit the dispute to non-binding mediation (except that either party can go to court to seek injunctive relief)
v Choice of forum	§25 3	Subject to state law, you must bring any action against us in a federal or state court where our principal place of business is located (currently, New York) We may bring any action against you in a federal or state court where our principal place of business is located (currently, New York)

Provision	Section in Retail Location Agreement	Summary
w Choice of law	§25 1	Subject to state law, the law of the State in which we maintain our principal place of business when the dispute arises (currently, New York), unless the covenants under the Retail Location Agreement would not be enforceable in that state and the ILLY Location is located outside of that state, in which case the laws of the state where the ILLY Location is located apply to those covenants

Franchise Agreement

Provision	Section in Franchise Agreement	Summary
a Length of the franchise term	§2 1	5 years
b Renewal or extension of the term	§2 2	Your renewal rights permit you to remain as a franchisee after the initial term of your Franchise Agreement expires. If you wish to do so, and you satisfy the required pre-conditions to renewal, we will offer you the right to obtain one additional 5-year term. You must sign our then-current Franchise Agreement for the renewal term, and this new agreement may have different terms and conditions (including e.g. higher royalty fees and/or marketing contributions) from the agreement that covered your initial term.
c Requirements for you to renew or extend	§2 2	Notice, satisfaction of monetary obligations, compliance with Franchise Agreement, release, sign new Franchise Agreement, pay renewal fee, and others, see §§ 2 2 1–2 2 10 in Franchise Agreement. Your new Franchise Agreement may have terms that are materially different terms and conditions from your original contract.
d Termination by you	Not Applicable	
e Termination by us without cause	Not Applicable	

Provision	Section in Franchise Agreement	Summary
f Termination by us with cause	§15	For default under agreement, bankruptcy, abandonment, and other grounds, see § 15 of the Franchise Agreement (Under the U S Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing)
g "Cause" defined – curable defaults	§15 3	Failure to pay amounts owed to us (after 10 days' notice), breach of personal covenants (after 15 days' notice), sale of products not previously approved by us (after 15 days' notice), unauthorized or improper use of Proprietary Marks (after 15 days' notice), and any other default not specified in §§ 15 1 and 15 2 of the Franchise Agreement (after 30 days' notice)
h "Cause" defined – non-curable defaults	§§15 1 and 15 2	Bankruptcy, abandonment, conviction of felony, failure to open or conduct training on time, threat or danger to public health or safety, and others (Under the U S Bankruptcy Code, we may be unable to terminate merely because you make a bankruptcy filing)
i Your obligations on termination/ non-renewal	§16	Cease operating your ILLY Location, payment of amounts due, and others, see §§ 16 1 – 16 11 of the Franchise Agreement
j Assignment of contract by us	§14 1	There are no limits on our right to assign the Franchise Agreement
k "Transfer" by you – defined	§14 3	Includes transfer of (A) the Franchise Agreement, (B) yourself, (C) your rights and obligations under the Franchise Agreement, or (D) any material asset you use in the operation of your ILLY Location
l Our approval of transfer by you	§14 3	We have the right to approve transfers
m Conditions for our approval of transfer	§14 4	Release, signature of new agreement, payment of transfer fee, and others
n Our right of first refusal to acquire your business	§14 5	We can match any offer
o Our option to purchase your business	§16 4 1	Upon termination or expiration, we have the right to take over your lease or acquire the real property if you own it

Provision	Section in Franchise Agreement	Summary
p Your death or disability	§§14 6, 14 7 and 14 8	Your estate must transfer your interest to a third party we have approved, within a year after death or 6 months after the onset of disability
q Non-competition covenants during the term of the franchise	§§17 2 and 17 3	Includes prohibition on engaging in a Competitive Business A ' Competitive Business ' is considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month
r Non-competition covenants after the franchise is terminated or expires	§17 3	Includes a 2 year prohibition similar to "q" (above), within 1 mile of your ILLY Location, or any other ILLY Location then-operating under the System, with the exception of " Excluded Existing Businesses " listed on Exhibit A to the Franchise Agreement
s Modification of the agreement	§23 2	Must be in writing signed by both parties
t Integration / merger clause	§23	Only the final written terms of the agreement (and this FDD) are binding Any representations or promises outside of the disclosure document and Franchise Agreement may not be enforceable
u Dispute resolution by arbitration or mediation	§§25 2 and 25 5	Before bringing any action in court, the parties must first submit the dispute to non-binding mediation (except that we can go to court to seek injunctive relief)
v Choice of forum	§25 3	Subject to state law, you must bring any action against us in a federal or state court where our principal place of business is located (currently, New York) We may bring any action against you in a federal or state court where our principal place of business is located (currently, New York)

Provision	Section in Franchise Agreement	Summary
w Choice of law	§25 1	Subject to state law, the law of the State in which we maintain our principal place of business when the dispute arises (currently, New York), unless the covenants under the Franchise Agreement would not be enforceable in that state and the ILLY Location is located outside of that state, in which case the laws of the state where the ILLY Location is located apply to those covenants

Development Agreement

Provision	Section in Development Agreement	Summary
a Length of the term	§4	The last date specified in the Development Schedule
b Renewal or extension of the term	Not Applicable	
c Requirements for you to renew or extend	Not Applicable	
d Termination by you	Not Applicable	
e Termination by us without cause	Not Applicable	
f Termination by us with cause	§6	For default under agreement, bankruptcy, failure to meet Development Schedule, and other grounds, see §6 of the Development (Under the U S Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing)
g "Cause" defined – curable defaults	§6 3	All other defaults not specified in §§6 1 and 6 2 of the Development Agreement Section 6 3 of the Development Agreement provides that you will have 30 days within which to cure these defaults
h "Cause" defined – non-curable defaults	§§6 1 and 6 2	Bankruptcy, failure to meet Development Schedule, and others (Under the U S Bankruptcy Code, we may be unable to terminate merely because you make a bankruptcy filing)

Provision	Section in Development Agreement	Summary
i Your obligations on termination/ non-renewal	§6 7	After termination of the Development Agreement, you will have no rights to develop any additional ILLY Locations for which Retail Location Agreements or Franchise Agreements have not already been signed
j Assignment of contract by us	§7 1	There are no limits on our right to assign the Development Agreement
k "Transfer" by you – defined	§7 2	Includes a transfer of (A) the Development Agreement, (B) your rights and obligations under the Development Agreement, or (C) any material asset you use in the operation of any ILLY Location
l Our approval of transfer by you	§7 2	We have the right to approve transfers
m Conditions for our approval of transfer	§7 2	Payment of a transfer fee, transferee's execution of the then-current form of development agreement, transferor's execution of general releases, and others
n Our right of first refusal to acquire your business	Not Applicable	
o Our option to purchase your business	Not Applicable	
p Your death or disability	Not Applicable	
q Non-competition covenants during the term	§§8 2 and 8 3	Includes prohibition on engaging in a Competitive Business A " Competitive Business " is considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month

Provision	Section in Development Agreement	Summary
r Non-competition covenants after the franchise is terminated or expires	§8 3	Includes a 2 year prohibition similar to “q” (above) located within the Development Area, with 3 miles of the Development Area, and within 1 mile of any ILLY Location then-operating under the System, with the exception of “ Excluded Existing Businesses ” listed on Exhibit A to the Development Agreement
s Modification of the agreement	§13	Must be in writing signed by both parties
t Integration / merger clause	§13	Only the final written terms of the agreement (subject to the disclosures in this Disclosure Document) are binding Any representations or promises not included in this Disclosure Document or the agreement may not be enforceable
u Dispute resolution by arbitration or mediation	§§15 2 and 15 5	Before bringing any action in court, the parties must first submit the dispute to non-binding mediation (except that we can go to court to seek injunctive relief)
v Choice of forum	§15 3	Subject to state law, you must bring any action against us in a federal or state court where our principal place of business is located (currently, New York) We may bring any action against you in a federal or state court where our principal place of business is located (currently, New York)
w Choice of law	§15 1	Subject to state law, the law of the State in which we maintain our principal place of business when the dispute arises (currently, New York)

ITEM 18 **PUBLIC FIGURES**

We do not use any public figures to promote the System

ITEM 19
FINANCIAL PERFORMANCE REPRESENTATIONS

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

Please carefully read all of the information in the following table, and all of the notes following the table, in conjunction with your review of the historical data.

Annual Gross Revenues for Calendar Year 2016 for ILLY Locations

Presented below is annual gross revenue data for the franchised locations for the calendar year ending December 31, 2016.

Retail Location Number	Month / Year First Opened	Annual Gross Revenue
1 (In a Facility)	22/08/2010	\$793,074
2 (In a Facility)	4/5/2010	\$713,000
3 (In a Facility)	3/3/2011	\$490,798
4 (In a Facility)	12/3/2011	\$239,525
5 (Separate Location)	16/11/2011	\$581,187
6 (In a Facility)	26/03/2013	\$352,055
7 (Separate Location)	23/04/2013	\$289,974
8 (In a Facility)	12/2/2013	\$350,679
9 (Separate Location)	1/12/2014	\$642,851
10 (In a Facility)	11/11/2014	\$964,935
11 (Separate Location)	12/28//2015	\$414,601
12 (In a Facility)	12/31/2015	\$149,966
13 (Separate Location)	2/05//2016*	\$316,908
14 (In a Facility)	09/09/2016*	\$353,512

In the two tables below, we have excluded Locations 13 and 14 because the Locations were not open the full calendar year

Average Gross Sales for FY 2016	Number of Locations that Exceeded Average	Percentage of Locations that Exceeded Average
\$498,554	5	42%

Median Gross Sales for FY 2016	Number of Locations that Exceeded Median	Percentage of Locations that Exceeded Median
\$384,000	7	50%

* * *

- A new franchisee's financial results are likely to vary from the results stated in this financial performance representation
- Your individual results may differ from the results stated above There is no assurance that you will achieve the stated results
- You are strongly advised to perform an independent investigation of this opportunity to determine whether or not the franchise may be profitable and to consult your attorney, accountant and other professional advisors before entering into a Development Agreement, Franchise Agreement or Retail Location Agreement You should construct your own pro forma cash flow statement, balance sheet, and statement of operations, and make your own financial projections regarding sales, revenues, costs, customer base, and business development for your ILLY Locations
- The gross revenue data was provided to us in connection with royalty reporting by the franchisees of the ILLY Locations We do not know whether the records were prepared in accordance with generally accepted accounting principles The information presented in this Item 19 has not been audited
- Written substantiation for the financial performance representations will be made available to you upon reasonable request

We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets We also do not authorize our employees or representatives to make any such representations either orally or in writing If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Barry Sheldon, President for Business Development, 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 and (914) 253-8141, the Federal Trade Commission, and the appropriate state regulatory agencies

ITEM 20
OUTLETS AND FRANCHISEE INFORMATION

Table No 1
Systemwide Outlet Summary - US ONLY
For years 2014 to 2016^(Note 1)

Outlet Type	Year	Outlets at the Start of the Year^(Note 1)	Outlets at the End of the Year^(Note 1)	Net Change
Franchised Outlets ^(Note 2)	2014	9	11	2
	2015	11	9	-2
	2016	9	8	-1
Company-Owned Outlets	2014	0	0	0
	2015	0	4	4
	2016	4	5	+1
Total Outlets	2014	9	11	2
	2015	11	13	+2
	2016	13	13	0

Table No 2
Transfers of Outlets from Franchisees to New Owners
(other than to us)
For years 2014 to 2016^(Note 1)

State^(Note3)	Year	Number of Transfers
CA	2014	0
	2015	1
	2016	0
Total	2014	0
	2015	1
	2016	0

Table No 3
Status of Franchised Outlets
For years 2014 to 2016 *(Note 1)*

State <i>(Note 3)</i>	Year	Outlets at Start of Year	Outlets Opened	Terminatio ns	Non- Renewals	Reacquired by Us	Ceased Operations – Other Reasons	Outlets at End of the Year <i>(Note 2)</i>
CA	2014	4	1	0	0	0	0	5
	2015	5	0	0	0	3	0	2
	2016	2	1	0	0	0	2	1
CO	2014	0	0	0	0	0	0	0
	2015	0	1	0	0	0	0	1
	2016	1	0	0	0	0	0	1
FL	2014	2	0	0	0	0	0	2
	2015	2	0	0	0	0	0	2
	2016	2	0	0	0	0	0	2
IL	2014	1	0	0	0	0	0	1
	2015	1	0	0	0	0	0	1
	2016	1	0	0	0	0	0	1
MA	2014	1	0	0	0	0	0	1
	2015	1	0	0	0	0	0	1
	2016	1	0	0	0	0	0	1
MI	2014	0	1	0	0	0	0	1
	2015	1	0	0	0	0	0	1
	2016	1	0	0	0	0	0	1
VA	2014	1	0	0	0	0	0	1
	2015	1	0	0	0	0	0	1
	2016	1	0	0	0	0	0	1
Totals	2014	9	2	0	0	0	0	11
	2015	11	1	0	0	3	0	9
	2016	9	1	0	0	0	2	8

Table No 4
Status of Company-Owned Outlets
For years 2014 to 2016^(Note 1)

State ^(Note 3)	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of the Year
CA	2014	0	0	0	0	0	0
	2015	0	1	3	0	0	4
	2016	4	1	0	0	0	5
Totals	2014	0	0	0	0	0	0
	2015	0	1	3	0	0	4
	2016	4	1	0	0	0	5

Notes to Tables 1-4

- 1 The numbers for 2014-2016 are as of the end of our fiscal year for each year, which is December 31 of each year
- 2 In addition to the Franchised Outlets, there is one licensed ILLY coffee bar in the United States Please refer to Exhibit E
- 3 States not listed had no activity during the relevant period

Table No 5
Projected Openings As Of January 1, 2017

State	Retail Location Agreements/Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet in the Next Fiscal Year	Projected New Company-Owned Outlet in the Next Fiscal Year
California	0	3	2
Total	0	3	2

Our current franchisees are listed in **Exhibit E**

No franchisees have had a Retail Location Agreement or Franchise Agreement terminated, canceled or not renewed or who otherwise voluntarily or involuntarily ceased to do business with us during the most recently completed fiscal year (December 31, 2016), or who failed to communicate with us within 10 weeks from the date of issuance of this Disclosure Document If you buy this franchise, your contact information may be disclosed to other buyers when you leave the System

There are no currently effective confidentiality agreements between us and any former or current franchisees We do not know of any trademark-specific organization associated with our System No independent franchisee organization has asked to be included in this Disclosure Document

ITEM 21
FINANCIAL STATEMENTS

Attached as **Exhibit F** are our audited financial statements for the fiscal year ended December 31, 2015, December 31, 2014 and December 31, 2013. Our fiscal year ends on December 31 each year. Exhibit F also includes our unaudited financial statements for the period ending April 30, 2017.

ITEM 22
CONTRACTS

The following contracts are attached as exhibits to this Disclosure Document:

- Retail Location Agreement
 - (A) Retailer-Specific Information,
 - (B) Guarantee, Indemnification and Acknowledgment,
 - (C) Authorization Agreement for Prearranged Payments (Direct Debit)
 - (D) ADA Certification,
 - (E) Non-Disclosure and Non-Competition Agreement
 - (F) Optional – Hotel Addendum
- Franchise Agreement
 - (A) Approved Location and Territory,
 - (B) Site Selection Addendum,
 - (C) Guarantee, Indemnification and Acknowledgment,
 - (D) List of Principals,
 - (E) Authorization Agreement for Prearranged Payments (Direct Debits),
 - (F) ADA Certification,
 - (G) Lease Rider,
 - (H) Non-Disclosure and Non-Competition Agreement
- Development Agreement
 - (A) Development Area and Development Schedule
 - (B) Guarantee, Indemnification and Acknowledgment
 - (C) Non-Disclosure and Non-Competition Agreement

ITEM 23
RECEIPTS

The last two pages of this Disclosure Document (**Exhibit L**) are identical pages acknowledging receipt of this entire document (including the exhibits). Please sign and return to us one copy, please keep the other copy along with this Disclosure Document.

EXHIBIT A-1
RETAIL LOCATION AGREEMENT

**ILLY CAFFÈ
RETAIL LOCATION AGREEMENT**

ILLY CAFFÈ
RETAIL LOCATION AGREEMENT

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Exhibits

- A Retailer-Specific Information
- B Guarantee, Indemnification and Acknowledgement
- C Authorization Agreement for Prearranged Payments (Direct Debits)
- D ADA Certification
- E Non-Disclosure and Non-Competition Agreement
- F Hotel Addendum

**ILLY CAFFÈ
RETAIL LOCATION AGREEMENT**

THIS RETAIL LOCATION AGREEMENT (the "**Agreement**") is made and entered into on this _____ day of _____, 20____ (the "**Effective Date**"), by and between

- **ESPRESSAMENTE ILLY AMERICAS, INC**, a Delaware corporation with its principal place of business at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 ("**Franchisor**"), and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Retailer**")

RECITALS

A WHEREAS, Franchisor is a Delaware company that is part of an Italian corporate family internationally known and appreciated for the production and marketing of coffee, coffee related products and accessories under the trademark "ILLY" Capitalizing on the consumer awareness and the image and reputation of the "ILLY" products, Franchisor and its affiliates, as the result of the expenditure of time, skill, effort and money, have developed and own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**," the expression "**the Retail Location**" refers to the Retail Location operated by Retailer at the Approved Location) that operate under the Proprietary Marks (defined below) in buildings that are designed using and which bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY Products**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY Products and Additional Products will be referred to as "**Products** ")

B WHEREAS, the distinguishing characteristics of the System include, without limitation, a specially-designed building or facility, distinctive interior and exterior design and accessories, Products, procedures for operations, quality and uniformity of products and services offered, procedures for management and inventory control, training and assistance, and marketing and promotional programs, all of which may be changed, improved, and further developed by Franchisor from time to time

C WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks "ILLY CAFFÈ" and "ILLY" and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the "**Proprietary Marks**")

D WHEREAS, Franchisor and its affiliates continue to develop, use, and control the use of the Proprietary Marks to identify for the public the source of products and

services marketed under the Proprietary Marks and under the System, and to represent the System's high standards of quality, appearance, and service

E WHEREAS, Retailer is a _____, which operates, or has the right to operate within, a certain facility described on **Exhibit A** (the "**Facility**")

F WHEREAS, as a component of Retailer's management of the Facility, Retailer wishes to enter into this agreement for the purpose of operating one of the Retail Locations under the System within the Facility, and to receive the training, expertise, know-how, and other assistance provided by Franchisor in connection therewith

G WHEREAS, Retailer understands and acknowledges the importance to Franchisor and its affiliates, of Franchisor's high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised under this Agreement in conformity with Franchisor's standards and specifications

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, agree as follows

1 GRANT

1.1 *Rights, Obligations* Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Retailer the right, and Retailer accepts the obligation, to (a) operate the Retail Location under the System in the format specified by Franchisor, (b) use the Proprietary Marks and the System, only in connection with the Retail Location, as Franchisor may periodically change or improve the Proprietary Marks and the System, and (c) do these things only at the address listed at the Approved Location (as defined in **Section 1.2**)

1.2 *Approved Location* The address of the "**Approved Location**" under this Agreement is specified in **Exhibit A** to this Agreement. Retailer shall not relocate the Retail Location without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold approval of the Approved Location under this **Section**. Retailer acknowledges and agrees that approval of Retailer's proposed location, under this **Section**, does not constitute any assurance, representation, or warranty of Franchisor of any kind, that the Approved Location will be profitable or successful.

1.3 *Territory and Franchisor's Reserved Rights* Except as otherwise provided in this Agreement, during the term of this Agreement, Franchisor shall not establish or operate, nor license any other person to establish or operate, a Retail Location at any location within the territory specified in **Exhibit A** (the "**Territory**") Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Retailer any rights therein (and, in each case, despite their proximity to the Approved Location and/or the Territory, and

despite their actual or threatened impact on sales of the Retail Location) do all of the following

- 1 3 1 Own, acquire, establish, and/or operate and license others to establish and operate, Retail Locations under the System at any location outside the Territory,
 - 1 3 2 Own, acquire, establish, and/or operate, and license others to establish and operate, Retail Locations under the Proprietary Marks at Reserved Facilities (as defined below) at any location within or outside the Territory As used in this Agreement, "**Reserved Facilities**" shall mean airports, hotels that are operated as part of, or in connection with, a national or international hotel and lodging chain or brand, department stores, supermarkets and grocery stores that are operated as part of, or in connection with a retail chain or brand, cultural institutions (examples include, but are not limited to, theaters, museums, art centers and educational facilities), and business and industrial complexes and offices at which the food services are managed by service providers with national or international operations,
 - 1 3 3 Own, acquire, establish, and/or operate and license others to establish and operate businesses (a) using the Proprietary Marks (but not the "ILLY CAFFÈ" mark) and other marks in connection with the operation of such businesses, (b) which businesses may be similar to Retail Locations, and (c) which may be located within or outside the Territory (but this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Territory under the System, unless permitted pursuant to **Section 1 3 2**), and/or
 - 1 3 4 Sell and distribute, directly or indirectly, and/or license others to sell and to distribute, directly or indirectly, any products (including products bearing the Proprietary Marks (but not the "ILLY CAFFÈ" mark)) from any location and to any business or customer within or outside of the Territory, including without limitation through restaurants, cafes, retail kiosks, grocery or convenience stores or other retail outlets, and any other distribution channels (including without limitation, through retail, wholesale, mail order, toll free numbers, or the Internet), provided that this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Territory under (x) the System, and (y) the Proprietary Marks, unless permitted pursuant to **Section 1 3 2** above
- 1 4 *Limits on Where Retailer Can Sell* Retailer shall offer and sell Products only from the Retail Location, only in accordance with the requirements of this Agreement and the procedures and standards set forth in the Manuals, and only to (a) retail customers for consumption on the Retail Location's premises, (b) retail customers for personal carry-out consumption of Products sold at the Retail Location, (c) delivery to customers located in the Territory, and (d) to catering customers located in the Territory, provided that all such activities shall be conducted only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals and all applicable laws As used in this Agreement, the term "**delivery customers**" means customers that purchase Products for delivery to (and consumption in) their home or office or other locations (including the Facility), and "**catering customers**"

means customers for whom catering services are provided at their homes, offices, and other locations (including the Facility) Retailer shall not engage in any other type of sale of, or offer to sell, or distribution of Products, including but not limited to, selling, distributing, or otherwise providing, any Products at wholesale, or for resale or distribution by any third party, or through satellite locations, sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media

2 TERM AND RENEWAL

2.1 *Term* The term of this Agreement will start on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, will expire five (5) years from the Effective Date

2.2 *Renewal* Retailer may, at its option, renew this Agreement for one (1) additional term of five (5) years The grant of an additional term shall be subject to the following conditions, all of which must be met before renewal

2.2.1 Retailer shall give Franchisor written notice of Retailer's election to renew no fewer than six (6) months nor more than twelve (12) months before the end of the initial term,

2.2.2 Retailer shall remodel and refurbish the Retail Location to comply with Franchisor's then-current standards in effect for new Retail Locations to the extent applicable, so long as such remodeling and refurbishment is consistent with the requirements of the Facility and is consistent with other Franchisor Retail Locations Retailer shall complete all required remodeling and refurbishment within such period as Franchisor may specify as a condition of the renewal

2.2.3 Retailer shall not be in material default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Retailer and Franchisor or its subsidiaries and affiliates related to the Retail Location, and, in Franchisor's reasonable judgment, Retailer must have substantially complied with all the material terms and conditions of this Agreement, such other agreements related to the Retail Location, as well as the operating standards that Franchisor has prescribed during the term of this Agreement,

2.2.4 Retailer must have satisfied all monetary obligations owed by Retailer to Franchisor and Franchisor's subsidiaries and affiliates, and to approved suppliers and distributors, and must have timely met those obligations in all material respects throughout the term of this Agreement, excepting only those obligations that are subject to a bona fide dispute, which Retailer shall use good faith efforts to resolve prior to renewal,

2.2.5 Retailer shall execute Franchisor's then-current form of retail location agreement, which agreement shall supersede this Agreement in all respects (except with respect to the renewal provisions of the new retail location agreement, which shall not supersede this **Section 2**), and Retailer

acknowledges that the terms, conditions, and provisions of which, and the obligations of the parties thereto, may differ substantially from the terms, conditions, provisions and obligations in this Agreement, including, without limitation, a higher percentage royalty fee and marketing contribution,

- 2 2 6 Retailer shall pay, in lieu of an initial fee, a renewal fee equal to fifty percent (50%) of the then-current initial fee, but not less than Six Thousand Dollars (\$6,000),
- 2 2 7 Retailer shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its current and former subsidiaries and affiliates, and their respective officers, directors, agents, and employees,
- 2 2 8 Retailer shall confirm (through documentation acceptable to Franchisor) to Franchisor that Retailer has the right to remain in possession of the premises of the Retail Location for the duration of the renewal term, or shall obtain approval by Franchisor of a new site for the Retail Location for the duration of the renewal term, and
- 2 2 9 Retailer and its personnel shall comply with Franchisor's then-current qualification and training requirements

3 FRANCHISOR'S DUTIES

- 3 1 *Training* Before the date of opening of the Retail Location, Franchisor (directly or through a provider designated by Franchisor) shall provide to Retailer, and managers of Retailer (provided that any such person must be effectively employed by Retailer or under contract with Retailer for the Retail Location), such training programs as Franchisor may designate, to be conducted at such time(s) and location(s) designated by Franchisor. Franchisor shall also provide such ongoing training as it may periodically deem appropriate. Franchisor shall be responsible for the cost of instruction and materials (except as set forth in **Section 6 3**)
- 3 2 *Standard Layout* Franchisor shall make available to Retailer a standard layout and plan for the construction of a Retail Location and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs. Retailer understands and acknowledges that Franchisor has the right to modify the prototype architectural plans and specifications as Franchisor periodically deems appropriate
- 3 3 *Opening Assistance* Franchisor shall have the right (but not the obligation) to provide a representative to be present at the opening of the Retail Location. Franchisor will provide such additional on-site pre-opening and opening supervision and marketing assistance as Franchisor deems advisable
- 3 4 *Manuals* Franchisor shall provide Retailer with access to Franchisor's confidential operations manuals (the "**Manuals**"), in the manner and as described in **Section 8**
- 3 5 *Marketing Materials* Franchisor shall review and shall have the right, acting reasonably, to approve or disapprove all marketing and promotional materials that Retailer proposes to use in connection with the operation of the Retail Location

(other than marketing and/or promotional materials related to the Facility generally), pursuant to **Section 11**

- 3 6 *Opening Marketing Program* On Retailer's request, Franchisor may, as it deems appropriate, assist Retailer in developing and conducting the Opening Marketing Program (as described in **Section 11 4**), which program shall be conducted at Retailer's expense
- 3 7 *Inspection Before Opening* Franchisor shall have the right to inspect the Retail Location before it first opens for business. Retailer shall not open the Retail Location or otherwise start operations without Franchisor's prior written approval
- 3 8 *Periodic Assistance* Franchisor will provide periodic assistance to Retailer in the marketing, management, and operation of the Retail Location as Franchisor determines at the time(s) and in the manner agreed to by Franchisor and Retailer, acting reasonably
- 3 9 *Delegation* Retailer acknowledges and agrees that any designee, employee, or agent of Franchisor, or an independent contractor may perform any duty or obligation imposed on Franchisor by this Agreement, as Franchisor may direct
- 3 10 *Franchisor's Decision-making* In fulfilling its obligations pursuant to this Agreement, and in conducting any activities or exercising any rights pursuant to this Agreement, Franchisor (and its affiliates) shall have the right (a) to take into account, as it sees fit, the effect on, and the interests of, other Retail Locations and systems and in which Franchisor has an interest and on Franchisor's (and its affiliates') own activities, (b) to share market and product research, and Franchisor's proprietary and non-proprietary business information, with other Retail Locations and systems in which Franchisor (or its affiliates) has an interest, or with Franchisor's affiliates, (c) to introduce proprietary items or operational equipment used by the System into other systems in which Franchisor has an interest, and/or (d) to allocate resources and new developments between and among systems, and/or Franchisor's affiliates, as Franchisor sees fit. Retailer understands and agrees that all of Franchisor's obligations under this Agreement are subject to this **Section**, and that nothing in this **Section** shall in any way affect Retailer's obligations under this Agreement
- 3 11 *Products* Franchisor shall use its best efforts to ensure that Products Franchisor produces, packages, manufactures, sells and distributes are in compliance with all applicable laws, rules, and regulations including, without limitation, as they relate to food quality and health and safety. Franchisor shall use its best efforts to ensure that these Products bear truthful and accurate labeling that complies with all applicable laws, rules, and regulations

4 FEES, SALES REPORTING

- 4 1 *Initial Fee* Retailer shall pay Franchisor an initial fee of Twenty-Five Thousand Dollars (\$25,000) (the "**Initial Fee**"), which shall be due and payable at the time that this Agreement is signed. Payment of the Initial Fee shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor in

granting these rights and for Franchisor's lost or deferred opportunity to grant such rights to others

- 4.2 **Royalty Fee** For each month during the term of this Agreement, Retailer shall (a) pay Franchisor a continuing royalty fee in an amount equal to five percent (5%) of the Net Sales of the Retail Location ("**Royalty Fees**"), and (b) report to Franchisor in writing (or electronically) its Net Sales in a form specified by Franchisor (a "**Sales Report**"). As used in this Agreement, the term "**Net Sales**" means all revenue from the sale of all Products, and all other income of the Retail Location of every kind and nature related to, derived from, or originating from the Retail Location, including but not limited to (a) revenues from delivery and catering services, and (b) proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit. Net Sales will also include amounts Retailer earns from the sale of any online group-bought deals (e.g., Groupon or Living Social) and the sale of any gift cards or gift certificates, calculated using Franchisor's then-current guidelines, which may be based on the redeemed value or sale price of the deals, cards, or certificates. "Net Sales" excludes certain costs or adjustments, such as any customer refunds, discounts, sales taxes, and/or other taxes Retailer collects from customers and transmits to the appropriate taxing authorities.
- 4.3 **Due Date** All payments required by **Section 4.2** based on the Net Sales for the preceding month, and the Sales Report required by **Section 4.2** for the Net Sales for the preceding month, shall be paid and submitted so as to be received by Franchisor on or before the fifteenth (15th) day of each month.
- 4.3.1 Retailer shall deliver to Franchisor any and all reports, statements and/or other information required under **Section 10**, at the time and in the format reasonably requested by Franchisor. Retailer shall establish an arrangement for electronic funds transfer or deposit of any payments required under this **Section 4**.
- 4.3.2 Retailer agrees to sign and return to Franchisor Franchisor's current form of Authorization Agreement for ACH Payments (Direct Debits for Royalty and Other Fees), a copy of which is attached to this Agreement as **Exhibit C**, and Retailer shall comply with the payment and reporting procedures specified by Franchisor in the Manuals.
- 4.3.3 Retailer expressly acknowledges and agrees that Retailer's obligations for the full and timely payment of Royalty Fees (and all other amounts provided for in this Agreement) shall be absolute, unconditional, fully earned, and due upon Retailer's generation of Net Sales.
- 4.3.4 Retailer agrees that it shall not, for any reason, delay or withhold the payment of all or any part of those or any other payments due under this Agreement, put the same in escrow or set-off the same against any claims or alleged claims Retailer may allege against Franchisor, or others, excepting only those obligations that are subject to a bona fide dispute, which Retailer shall use good faith efforts to resolve on a timely basis by providing Franchisor with notice in writing of the basis for any such dispute. Retailer

shall not, on grounds of any alleged non-performance by Franchisor or others, withhold payment of any fee (including without limitation Royalty Fees) nor withhold or delay submission of any reports due under this Agreement (including but not limited to Sales Reports)

- 4 4 *No Subordination* Retailer shall not subordinate to any other obligation its obligation to pay Franchisor the Royalty Fee and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise
- 4 5 *Payment Method* All payments due under this Agreement shall be paid in United States Dollars and shall be deemed fully earned and non-refundable upon receipt
- 4 6 *Late Payment* Any payment or report not actually received by Franchisor on or before such date shall be deemed overdue. If any payment is overdue, Retailer shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1 5%) per month, but not more than the maximum rate permitted by law (if any). Entitlement to such interest shall be in addition to any other remedies Franchisor may have
- 4 7 *Purchase of Products* Retailer will pay Franchisor and its affiliates for any Product and other items purchased from them in accordance with such payment and credit terms as may be periodically established. Any credit terms are contingent on Retailer and its affiliates being in compliance with this Agreement and all other agreements entered into with Franchisor or its affiliates
- 4 8 *Other Funds Due* Retailer shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor that is accompanied by reasonable substantiating material, any monies that Franchisor has paid, or has become obligated to pay, on behalf of Retailer, by consent or otherwise under this Agreement

5 RETAIL LOCATION, CONSTRUCTION AND RENOVATION

- 5 1 *Establishing the Retail Location* Retailer shall at its own expense construct, equip and establish the Retail Location in compliance with this Agreement and have it open and in operation no later than six (6) months after the Effective Date of this Agreement (or such longer period as is agreed to by the parties in the event of delay caused by the Retail Location landlord or Facility owner or management, as applicable). Time is of the essence. Retailer acknowledges and agrees that any site selection assistance or approval provided by Franchisor shall not be construed or interpreted as a guarantee of success for the Approved Location (or any other site), nor shall any location recommendation or approval made by Franchisor be deemed a representation that any particular location is available for use as a Retail Location. The specific site of the Retail Location within the Facility, including any relocation of the Retail Location pursuant to **Section 5 4**, is subject to the approval of Franchisor
- 5 2 *Preparing the Site* Retailer agrees that, promptly after obtaining possession of the Approved Location, Retailer shall do all of the following things
- 5 2 1 Employ a qualified, licensed architect or engineer to prepare, for Franchisor's approval, preliminary plans and specifications for site improvement and

construction of the Retail Location based upon prototype design and image specifications furnished by Franchisor as described in **Section 3.2**. Retailer understands and acknowledges that every detail of the Retail Location is important to Retailer, Franchisor, and other retailers in the System in order to develop and maintain high operating standards, to increase the demand for the services and products, and to protect Franchisor's reputation and goodwill. Franchisor acknowledges and agrees that plans and specifications for Retail Locations situated in locations such as the Facility sometimes require adjustments from Franchisor's standard requirements, and Franchisor and Retailer agree to each act reasonably and in good faith to resolve such matters, provided that Franchisor shall have no obligation to accept or approve any adjustment that Franchisor reasonably believes shall detract from the quality standards or image of the System.

- 5.2.2 Obtain all zoning classifications and clearances which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to the Approved Location. In addition, Retailer shall obtain all required permits and licenses (such as liquor licenses and building, utility, health and sign permits). After having obtained such approvals, clearances, licenses, and permits, Retailer shall submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications. Once approved by Franchisor, such final plans shall not thereafter be changed or modified without Franchisor's prior written consent.
- 5.2.3 Purchase or lease, or cause to be purchased or leased, equipment, fixtures, furniture and signs as required under this Agreement (including but not limited to the specifications provided by Franchisor in writing, whether in the Manuals or otherwise).
- 5.2.4 Otherwise complete development of and have the Retail Location ready to open and commence the conduct of its business in accordance with **Section 6.2**.
- 5.3 *Construction or Renovation*. In connection with any construction or renovation and equipping of the Retail Location, Retailer, at its expense, shall comply, to Franchisor's satisfaction, with all of the following requirements:
 - 5.3.1 Retailer shall comply with all federal, state, and local laws, codes and regulations, including, without limitation, the applicable provisions of the Americans with Disabilities Act (the "**ADA**") (and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), regarding the construction, design and operation of the Retail Location. In connection therewith, Retailer acknowledges and agrees that:
 - 5.3.1.1 Any standard layout and plans that Franchisor provides to Retailer, do not meet and are not meant to address the requirements of any federal, state or local law, code or regulation (including without limitation those concerning the ADA and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), nor shall such plans contain the requirements of, or be

used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Retail Location, compliance with all of which shall be Retailer's responsibility and at Retailer's expense. Retailer shall, pursuant to **Section 5 2**, adapt, at Retailer's expense, the standard specifications to the site for Retailer's Retail Location, subject to Franchisor's approval

- 5 3 1 2 Franchisor's approval of preliminary and final plans, as described in **Section 5 2** shall be limited to conformance with Franchisor's standard image specifications and layout and shall not relate to Retailer's obligations with respect to any federal, state, and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Retail Location, which subjects shall be Retailer's sole responsibility
- 5 3 1 3 If Retailer receives any complaint, claim, or other notice related to the Retail Location alleging a failure to comply with the ADA, Retailer agrees that it shall provide Franchisor with a copy of such notice within five (5) days after receipt thereof
- 5 3 2 Retailer shall obtain all permits and certifications required for the lawful construction and operation of the Retail Location and shall, upon Franchisor's written request, certify in writing to Franchisor that all such permits and certifications have been obtained
- 5 3 3 Retailer shall employ a qualified, licensed general contractor who is reasonably acceptable to Franchisor to construct the Retail Location and to complete all improvements. Retailer shall obtain and maintain in force during the entire period of construction the insurance required under **Section 13**, and Retailer shall deliver to Franchisor, upon Franchisor's written request, such proof of such insurance as Franchisor shall require. Retailer acknowledges and agrees that Franchisor shall not be liable for the unsatisfactory performance of any contractor retained by Retailer
- 5 3 4 Retailer shall complete the construction and/or remodeling, equipment, fixture, furniture and sign installation and decorating of the Retail Location in full and strict compliance with plans and specifications for the Retail Location that Franchisor has specified or approved in writing (including, without limitation, any exterior design decorations and other signage as Franchisor may require in connection with the opening of the Retail Location), as well as all applicable ordinances, building codes and permit requirements
- 5 3 5 Before opening for business, Retailer shall comply with all pre-opening requirements set forth in this Agreement, the Manuals, and/or otherwise specified by Franchisor in writing
- 5 3 6 Before opening the Retail Location, and after any renovation, Retailer shall execute and deliver to Franchisor an ADA Certification in the form attached to this Agreement as **Exhibit D**, to certify to Franchisor that the Retail Location and any proposed renovations comply with the ADA

- 5 4 *Relocation* Retailer agrees not to relocate the Retail Location without Franchisor's prior written consent. Franchisor shall have the right to grant or to withhold its approval as to any proposed relocation and, if Franchisor's approval is granted, Retailer understands that Franchisor's approval will not be deemed to be a guarantee, representation, or assurance by Franchisor that the Retail Location will be profitable or successful. Franchisor acknowledges that a temporary relocation of the Approved Location within the Facility may be necessary due to Facility renovation.

6 RETAILER'S DUTIES

- 6 1 *Importance of Following Standards* Retailer understands and acknowledges that every detail of the Retail Location is important to Retailer, Franchisor, and other retailers in order to develop and maintain high operating standards, to increase the demand for the Products, and to protect Franchisor's reputation and goodwill.

- 6 2 *Opening* In connection with the opening of the Retail Location

- 6 2 1 Retailer shall conduct, at Retailer's expense, such pre-opening and opening promotional and marketing activities as Franchisor may require, as set forth in **Section 11**.

- 6 2 2 Retailer shall give Franchisor prior written notice at least fifteen (15) days before the date on which Retailer proposes to first open the Retail Location for business. Retailer shall not open the Retail Location for business prior to obtaining Franchisor's written authorization and Franchisor shall have the right to have a representative of Franchisor present during the opening of the Retail Location.

- 6 2 3 Retailer shall not open the Retail Location until Franchisor has determined that all construction has been substantially completed, and that the construction conforms to Franchisor's standards including, but not limited, to materials, quality of work, signage, decor, paint, and equipment, and Franchisor has given Retailer written approval to open, which approval shall not be unreasonably withheld.

- 6 2 4 Retailer shall not open the Retail Location until the Highly Trained Personnel (as defined in **Section 6 3 1**) have successfully completed all training required by Franchisor, and Retailer has hired and trained to Franchisor's standards a sufficient number of employees as reasonably determined by Retailer to service the anticipated level of the Retail Location's customers.

- 6 2 5 In addition, Retailer shall not open the Retail Location until the Initial Fee and all other amounts due to Franchisor under this Agreement or any other related agreements have been paid.

- 6 2 6 Within thirty (30) days after the Retail Location first opens for business and if Franchisor is able to obtain such information from contractors, suppliers and the owner(s) of the Facility, Retailer must give Franchisor a full written breakdown of all costs associated with the development and construction of

the Retail Location, which must be in such form as Franchisor may reasonably find acceptable or as it may otherwise reasonably require

- 6.3 *Training* Before the opening of the Retail Location, such number of Retailer's managers as is necessary to manage the operations of the Retail Location to Franchisor's standards and to meet the Retail Location's particular business demands (the "**Key Personnel**") shall attend and successfully complete, to Franchisor's satisfaction, the training program offered by Franchisor, pursuant to **Section 3.1**. Once open, the Retail Location shall at all times be operated under the active management of either Retailer or Key Personnel who have successfully completed (to Franchisor's satisfaction) Franchisor's training program. If any required attendee does not satisfactorily complete such training, Franchisor may require that a replacement person attend and successfully complete, to Franchisor's satisfaction, the initial training program.
- 6.3.1 If Retailer and/or the Key Personnel who have successfully completed Franchisor's training program (collectively, the "**Highly Trained Personnel**") cease active management or employment at the Retail Location, Retailer shall enroll a qualified replacement (who shall be reasonably acceptable to Franchisor) in Franchisor's training program, for which Franchisor may charge a commercially reasonable fee, by no later than thirty (30) days after the end of the former person's full-time employment and/or management responsibilities. The replacement shall attend and successfully complete the basic management training program, to Franchisor's reasonable satisfaction, as soon as it is practical to do so.
- 6.3.2 The Highly Trained Personnel may also be required to attend such refresher courses, seminars, and other additional training programs as Franchisor may reasonably specify from time to time and for which Franchisor may require Retailer to pay commercially reasonable fees.
- 6.3.3 If Retailer requests that Franchisor provide additional on-site training, and Franchisor is able to do so, then Retailer agrees that it shall pay Franchisor's then-current per diem charges and out-of-pocket expenses, which shall be as set forth in the Manuals or otherwise in writing.
- 6.3.4 The cost of all training (instruction and required materials and instructors, and Franchisor's instructors' salaries, travel, and entertainment expenses) shall be borne by Franchisor, except as specified above in this **Section 6.3**. All other expenses incurred in connection with training, including without limitation the costs relating to Retailer's employees' transportation, lodging, meals, wages, worker's compensation insurance for Retailer and its employees, and the cost of a training room should one not be otherwise available at the Facility, shall be borne by Retailer.
- 6.4 *Use of the Premises* Retailer shall use the Retail Location premises solely for the operation of the Retail Location, shall keep the Retail Location open and in normal operation for such hours and days as reasonably required by Franchisor or the Facility, and shall refrain from using or permitting the use of the Retail Location premises for any other purpose or activity at any time, without prior written consent of Franchisor. As used in this **Section**, the term "**premises**" shall include the

grounds surrounding the Retail Location, if and to the extent that Retailer has control over any portion of the grounds surrounding the Retail Location

- 6 5 *Staffing* Retailer agrees to maintain a competent, conscientious, courteous, trained staff in numbers sufficient to promptly service customers and to maintain and promote the image and atmosphere required by Franchisor for the System as set forth in the Manuals, including at least one (1) manager on duty at all times and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress and appearance code as Franchisor may prescribe
- 6 6 *Health Standards and Notice of Violations* Retailer shall meet and maintain the highest health standards and ratings applicable to the operation of the Retail Location. If Retailer receives a copy of a material warning, citation, certification and/or rating resulting from inspections conducted by any federal, state or local agency with jurisdiction over the Retail Location, Retailer shall furnish to Franchisor a copy of such notice if the circumstances that caused the warning, citation, or certificate and/or rating is not resolved within thirty (30) days thereof. After the third (3rd) warning, citation, certification and/or rating resulting from such inspection for the Retail Location, Retailer shall forward a copy of every warning, citation, certification and/or rating to Franchisor. Retailer will notify Franchisor within five (5) days of (a) the commencement of any action, suit, or proceeding in respect of the Retail Location, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality in respect of the Retail Location, or (b) the occurrence of any accident or injury in respect of the Retail Location that may adversely affect the operation of the Retail Location, or give rise to liability or a claim against Retailer in respect of its operations of the Retail Location or against Franchisor
- 6 7 *Retail Location Condition and Maintenance* Retailer shall at all times maintain the Retail Location in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and decor as Franchisor may reasonably direct
- 6 8 *Conformity to Standards* To ensure that the highest degree of quality and service is maintained, Retailer shall operate the Retail Location in strict conformity with such methods, standards, and specifications as Franchisor may periodically prescribe in the Manuals or otherwise in writing. Retailer agrees
- 6 8 1 To purchase and maintain for sale and/or provide in the Retail Location, at all times, the ILLY Products and such Additional Products as Franchisor periodically designates as mandatory Product offerings. Retailer shall comply with Franchisor's written standards and specifications for mandatory Products that may include, without limitation, purchasing and maintaining sufficient inventory of Products in accordance with Franchisor's standards and specifications and other requirements (such as for quality, brand, type, production specifications, freshness, and health and safety standards). Retailer shall replace any or all inventory to reflect the current required

Product offerings for the System specified by Franchisor, which offerings Franchisor may change on a periodic basis

- 6 8 2 To sell or offer for sale only such Products as have been expressly approved for sale in writing by Franchisor, to sell or offer for sale all such Products, utilizing the standards and techniques, as specified by Franchisor, to refrain from any deviation from Franchisor's standards and specifications, without Franchisor's prior written consent, and to discontinue selling and offering for sale any Products that Franchisor has disapproved, in writing, at any time (provided that Retailer shall have a period of sixty (60) days to do so) Franchisor has the right to disapprove, in writing, any Product for sale or offer for sale at the Retail Location. If Retailer deviates or proposes to deviate from Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor, except where such deviation is proprietary to Retailer and so designated by Retailer in writing prior to its use in the Retail Location.
- 6 8 3 To maintain in sufficient supply and to use at all times only such ingredients, supplies and materials as have been expressly approved for sale in writing by Franchisor and as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any non-conforming items without Franchisor's specific prior written consent.
- 6 8 4 To permit Franchisor or its agents, at any reasonable time, to remove samples of Products, without payment, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether the samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Retailer to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.
- 6 8 5 To purchase and install, at Retailer's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor specifies, and to refrain from installing or permitting to be installed on or about the Retail Location premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.
- 6 8 6 To refrain from installing or permitting to be installed any vending machine, game or coin operated device, unless specifically approved in writing, in advance, by Franchisor.
- 6 8 7 To fully and faithfully comply with all applicable governing authorities, laws and regulations, which by this reference are made part of this Agreement as if incorporated in this Agreement. Retailer shall immediately close the Retail Location and terminate operations at the Retail Location if (a) any Products sold at the Retail Location shows that it was adulterated or deviates from the standards Franchisor sets for Products, or (b) Retailer fails to maintain the Products, Retail Location premises, equipment, personnel, or operation of the Retail Location in accordance with any applicable law or regulations. In the

event of such closing, Retailer shall immediately notify Franchisor in writing and Retailer shall destroy all contaminated or adulterated products and eliminate the source thereof, and remedy any unsanitary, unsafe, or other condition or other violation of the applicable law or regulation. Retailer shall not reopen the Retail Location until after Franchisor has given Retailer its written authorization.

6.9 *Purchases and Approved Suppliers* Retailer shall purchase all Products, supplies, materials, and other products, and equipment, fixtures, furnishings, signs, decor, supplies, and services required for the establishment and operation of the Retail Location solely from suppliers that Franchisor has designated or approved in writing. Any supplier used by Retailer in its operations other than the operation of the Retail Location (a "**Retailer Supplier**") shall be deemed to be so approved. In determining whether it will approve any particular supplier, Franchisor shall consider various factors, including but not limited to whether the supplier can demonstrate, to Franchisor's continuing reasonable satisfaction, the ability to meet Franchisor's then-current standards and specifications for such items, who possess adequate quality controls and capacity to supply Retailer's needs promptly and reliably, whose approval would enable the System, in Franchisor's sole opinion, to take advantage of marketplace efficiencies, and who have been approved in writing by Franchisor prior to any purchases by Retailer from any such supplier, and have not thereafter been disapproved. For the purposes of this Agreement, the term "**supplier**" shall include, but not be limited to, manufacturers, distributors, resellers, and other vendors. Retailer recognizes that Franchisor shall have the right to appoint only one manufacturer, distributor, reseller, and/or other vendor for any particular item. Retailer acknowledges that these requirements are in addition to, and in no way limit the terms of, **Section 6.10** regarding ILLY Products.

6.9.1 Retailer shall comply with Franchisor's specifications for ordering and purchasing Products, which may include without limitation, placement of some or all purchase orders through Franchisor or designated vendors, billing and payment activities to be conducted directly between Retailer and Franchisor and/or designated vendors, specifications as to Product delivery methods. Notwithstanding the foregoing, in circumstances where Retailer is able to obtain Additional Products, or ingredients thereof in accordance with Franchisor's specifications, from Retailer Suppliers, Retailer shall have the right to obtain such Additional Products or ingredients thereof from such Retailer Supplier and on terms and conditions to which such Retailer Supplier and Retailer shall have agreed unless Franchisor notifies Retailer that a certain Retailer Supplier is no longer an approved supplier.

6.9.2 Franchisor, its affiliates, and/or designees may establish commissaries and/or distribution facilities and arrangements, and Franchisor may designate these as approved or required manufacturers, suppliers or distributors.

6.9.3 If Retailer wishes to purchase any Products or any items (except for ILLY Products, as described in **Section 6.10**) from an unapproved supplier, Retailer shall first submit to Franchisor a written request for such approval. Retailer shall not purchase from any supplier until, and unless, such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's

facilities, and that samples from the supplier be delivered, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by Retailer or the supplier. Franchisor may also require that the supplier comply with such other requirements as Franchisor may deem appropriate, including for example, payment of reasonable fees for services that Franchisor may render to such suppliers, such as continuing inspection fees and administrative costs, and fees for design and supervision services, or other payment to Franchisor by the supplier on account of their dealings with Retailer or other retailers, with all such fees and payments to be for use by Franchisor without restriction (unless otherwise instructed by the supplier). Franchisor reserves the right, at its option, to periodically re-inspect the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria.

- 6.9.4 Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier, nor to require Franchisor to make available to prospective suppliers, standards and specifications for formulas, which Franchisor shall have the right to deem confidential.
- 6.9.5 Notwithstanding anything to the contrary contained in this Agreement, Retailer acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some Retail Locations with some or all of the products and/or services that Franchisor requires for use and/or sale in the development and/or operation of Retail Locations. In this event, Franchisor may limit the number of approved suppliers with whom Retailer may deal, designate sources that Retailer must use for some or all products and services, and/or refuse any of Retailer's requests if Franchisor believes that this action is in the best interests of the System or the network of Retail Locations. Franchisor shall have unlimited discretion to approve or disapprove of the suppliers who may be permitted to sell products and services to Retailer.
- 6.9.6 Retailer acknowledges and agrees that Franchisor and its affiliates shall have the right to collect and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments or benefits offered by manufacturers, suppliers and distributors for the Retail Location to Retailer or to Franchisor or its affiliates based upon Retailer's purchases related to the Retail Location of products and services from manufacturers, suppliers and distributors pursuant to agreements between Franchisor and such manufacturers, suppliers and distributors (collectively, "**Allowances**") These Allowances may be based on System-wide purchases of food, beverages, paper goods and other items. Retailer assigns to Franchisor or its designee all of Retailer's right, title, and interest in and to any and all such Allowances related to the Retail Location and authorizes Franchisor or its designee to collect and retain any or all such Allowances related to the Retail Location without restriction (unless otherwise instructed by the supplier).

- 6 10 *ILLY Products* Retailer acknowledges and agrees that the ILLY coffee beans, coffee and other ILLY Products are designed and manufactured using recipes, formulae, standards and specifications of Franchisor and/or its affiliates, and are proprietary to Franchisor and/or its affiliates. In order to maintain the high standards of quality and uniformity associated with ILLY Products, Retailer agrees to purchase ILLY Product items only from Franchisor, or its affiliates or other designee(s) and to pay them a commercially reasonable price in accordance with the terms and conditions agreed in writing between the parties. In connection with the handling, transport and delivery of any ILLY Products purchased from or through Franchisor, its affiliates or designee(s), Retailer acknowledges that any action or inaction by any third party (e.g., an independent carrier) in connection with the handling, transport and delivery of the ILLY Products shall not be attributable to, nor constitute negligence of, Franchisor.
- 6 11 *Use of the Marks* Retailer shall require all marketing and promotional materials, signs, decorations, paper goods (including without limitation disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in the Retail Location), any and all replacement trade dress products, and other items that may be designated by Franchisor to bear Franchisor's then-current Proprietary Marks, and logos in the form, color, location, and manner then-prescribed by Franchisor.
- 6 12 *Inspections* Retailer grants Franchisor and its agents the right to enter upon the Retail Location premises at any time during any business hours for the purpose of conducting inspections, for among other purposes, preserving validity of the Proprietary Marks, and verifying Retailer's compliance with this Agreement and the policies and procedures outlined in the Manuals. Retailer shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request, and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Retailer shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. In exercising its rights under this **Section**, Franchisor shall take such steps as are necessary so as not to unreasonably interfere with the business operations of the Facility or of Retailer at the Retail Location. If Retailer fails or receives an unsatisfactory score on any inspection performed by or on behalf of Franchisor, Franchisor may charge Retailer all costs and expenses relating to any follow up inspection to confirm that Retailer has corrected all deficiencies identified in the initial inspection.
- 6 13 *Guarantees* Retailer shall ensure that the form of guarantee attached in **Exhibit B** that is designated by Franchisor (either the parent company guarantee or a guarantee of individuals responsible of the operation of the Retail Location) will be executed by the appropriate parties (as determined by Franchisor) so that Franchisor has an appropriate guarantee of Retailer's performance its obligations under this Agreement.
- 6 14 *Uniforms* To promote a uniform System image, Retailer shall require all of its Retail Location personnel to dress, during business hours, in the attire designated by Franchisor. Retailer shall purchase such attire only from approved suppliers.

- 6 15 *Incentive/Convenience Programs* Retailer shall offer for sale, and will honor for purchases by customers, any incentive or convenience programs that Franchisor may periodically institute, and Retailer shall do so in compliance with Franchisor's standards and procedures for such programs
- 6 16 *Prices* Franchisor may set maximum and minimum prices on such menu items, products, and services. If Franchisor imposes a maximum price on a particular menu item, product, or service, Retailer may charge any price for such menu item, product, or service, up to and including the maximum price set by Franchisor. If Franchisor imposes a minimum price on a particular menu item, product, or service, Retailer may charge any price for such menu item, product, or service, down to and including the minimum price set by Franchisor. Such price restrictions shall be consistent and competitive with prices charged for similar quality products and services in the market where the Retail Location is situated, as reasonably determined by Franchisor. Franchisor's rights under this **Section** are subject to any applicable law
- 6 17 *Gift Cards, Loyalty, and Incentive Programs* Retailer must participate in Franchisor's gift card, loyalty, and incentive programs. Retailer agrees to offer for sale, and to honor for purchase by customers, all gift cards and other loyalty, incentive, and/or convenience programs that Franchisor may periodically institute (including but not limited to loyalty programs that Franchisor or a third party vendor operate, as well as mobile payment applications), and Retailer agrees to do all of those things in compliance with Franchisor's standards and procedures for such programs. For this purpose, Retailer must purchase the software, hardware, and other items needed to sell and process gift cards, and to contract with the supplier of gift cards and gift card processing services, as Franchisor may specify in writing in the Manuals or otherwise. Retailer must also pay such monthly and per-swipe transaction fees as may be required by the vendors of the gift card system. Retailer agrees not to sell, issue, or redeem coupons, gift certificates and gift cards other than gift cards Franchisor approves in writing
- 6 18 *Modifications to the System* Retailer recognizes and agrees that Franchisor may periodically change or modify the System and that Retailer will accept and use for the purpose of this Agreement any such change in the System, including new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment or new techniques, as if they were part of this Agreement at the time this Agreement was executed. Retailer will make such expenditures and such changes or modifications as Franchisor may reasonably require pursuant to this **Section** and to **Section 7**

7 PROPRIETARY MARKS

- 7 1 *Franchisor's Representations* Franchisor represents with respect to the Proprietary Marks that
- 7 1 1 Franchisor (and/or an affiliate of Franchisor) is the owner of all right, title, and interest in and to the Proprietary Marks

- 7.1.2 Franchisor has the right to use and to license to Retailer the right to use, and license others to use, the Proprietary Marks in the manner contemplated by this Agreement
- 7.2 *Retailer's Agreement* With respect to Retailer's use of the Proprietary Marks, Retailer agrees that
- 7.2.1 Retailer shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor
- 7.2.2 Retailer shall use the Proprietary Marks only for the operation of the Retail Location and only at the location authorized under this Agreement, or in Franchisor-approved marketing for the business conducted at or from that location
- 7.2.3 Unless Franchisor otherwise directs Retailer, in writing, to do so, Retailer shall operate and advertise the Retail Location only under the name "ILLY CAFFÈ" without prefix or suffix
- 7.2.4 During the term of this Agreement and any renewal of this Agreement, Retailer shall identify itself (in a manner reasonably acceptable to Franchisor) as the owner or manager of the Retail Location in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Retail Location as Franchisor may designate in writing
- 7.2.5 Retailer's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of the rights of Franchisor
- 7.2.6 Retailer shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor
- 7.2.7 Retailer shall not use the Proprietary Marks, or names that might be confused with the Proprietary Marks, as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Retailer in any electronic medium
- 7.2.8 Retailer shall execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability
- 7.2.9 Retailer shall not directly or indirectly engage in any activities that would be detrimental to or interfere with the operation, reputation, or goodwill of the Retail Location, Franchisor or the System. Retailer acknowledges and agrees that such activities include, without limitation, making, posting, and/or transmitting disparaging comments about the Proprietary Marks, the Retail Location, Franchisor, its affiliates, its other franchisees, and/or the System, in an advertisement, letter, e-mail, Internet chat room, teleconference, website, social or professional networking site, or any other such medium. However,

nothing in this **Section** will preclude Retailer from honestly answering questions posed by prospective franchisees seeking information about the Retail Location, Franchisor, or the System

7.2.10 With respect to litigation involving the Proprietary Marks, the parties agree that

7.2.10.1 Retailer shall promptly notify Franchisor of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to Franchisor's ownership of, or Retailer's right to use, the Proprietary Marks licensed under this Agreement. Retailer acknowledges that Franchisor shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. Franchisor shall also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.

7.2.10.2 If Retailer has used the Proprietary Marks in accordance with this Agreement, Franchisor shall defend Retailer at Franchisor's expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of Retailer's use thereof. If Retailer has not used the Proprietary Marks in accordance with this Agreement, Franchisor will defend Retailer, at Retailer's expense, against such third party claims, suits, or demands. Retailer shall promptly notify Franchisor of any suspected unauthorized use of, or any challenge to the validity or ownership of the Proprietary Marks, or its right to use and to license others to use, or Retailer's right to use, the Proprietary Marks licensed under this Agreement.

7.2.10.3 If Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Retailer shall execute any and all documents and do such acts and things as, in the opinion of counsel for Franchisor, are necessary to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Retailer's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to indemnify and hold Retailer harmless with respect to such infringement claims, including to reimburse Retailer for its out-of-pocket litigation costs in doing such acts and things, except that Retailer shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To the extent that such litigation is the result of Retailer's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Retailer shall reimburse Franchisor for the cost of such litigation (or, upon Franchisor's written request, pay Franchisor's legal fees directly), including attorneys' fees, as well as the cost of any judgment or settlement.

7.3 *Retailer's Acknowledgements* Retailer expressly understands and acknowledges that

7.3.1 Franchisor (or its affiliate) is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them

7.3.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System

7.3.3 Neither Retailer nor any principal of Retailer or other person acting on Retailer's behalf shall directly or indirectly contest the validity of Franchisor's ownership of the Proprietary Marks, nor shall Retailer, directly or indirectly, seek to register the Proprietary Marks with any government agency, except with Franchisor's express prior written consent

7.3.4 Retailer's use of the Proprietary Marks does not give Retailer any ownership interest or other interest in or to the Proprietary Marks, except the license granted by this Agreement

7.3.5 Any and all goodwill arising from Retailer's use of the Proprietary Marks shall inure solely and exclusively to the benefit of Franchisor, and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Retailer's use of the System or the Proprietary Marks

7.3.6 The right and license of the Proprietary Marks granted under this Agreement to Retailer is non-exclusive, and Franchisor thus has and retains the rights, subject to the terms and conditions of this Agreement, among others (a) to use the Proprietary Marks itself in connection with selling Products and services, (b) to grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing retailers, and (c) to develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Retailer

7.4 *Change to Marks* Franchisor reserves the right to substitute different Proprietary Marks for use in identifying the System and the businesses operating under the System if the current Proprietary Marks no longer can be used, or if Franchisor, exercising its right to do so, determines that substitution of different Proprietary Marks will be beneficial to the System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement

8 CONFIDENTIAL OPERATING MANUALS

8.1 *Retailer to Abide by Manuals* In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, Retailer shall conduct its business in accordance with the Manuals, which Retailer shall receive access to from Franchisor for the term of this Agreement

for Retailer's use only in connection with the Retail Location during the term of this Agreement

- 8.2 *Format of the Manuals* Franchisor shall have the right to provide the Manual in any format it determines is appropriate, including without limitation paper format or by making the Manuals available to Retailer in electronic form (such as through an internet website) provided that all Manuals shall be in English. If Franchisor elects to provide the Manuals electronically, Retailer shall immediately, at Franchisor's option, destroy or return to Franchisor any and all copies of the Manuals.
- 8.3 *Manuals as Franchisor's Property* The Manuals shall at all times remain the sole property of Franchisor and shall promptly be returned upon the expiration or termination of this Agreement.
- 8.4 *The Manuals are Proprietary and Confidential* The Manuals contain proprietary information of Franchisor and Retailer shall at all times both during the term of this Agreement and subsequent to the expiration and/or termination of this Agreement treat the Manuals, any other manuals created for or approved for use in the operation of the Retail Location, and the information contained therein, as confidential, and shall use best efforts to maintain such information as secret and confidential. Retailer shall not make any unauthorized use or disclosure of any portion of the Manuals. At all times that the Manuals are not in use by authorized personnel, Retailer shall maintain the Manuals in a locked receptacle at the premises of the Retail Location (or password protected if provided electronically), and shall only grant authorized personnel, as defined in the Manuals, access to the key or lock combination of such receptacle (or the password). Retailer shall not at any time copy, duplicate, record, or otherwise reproduce (other than printing such materials that are provided electronically) the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person. Access to any electronic version of the Manuals shall also be subject to Franchisor's reasonable requirements with respect to security and other matters, as described in **Section 12**.
- 8.5 *Which Copy of the Manuals Controls* Retailer shall at all times maintain the Manuals at the Retail Location and ensure that the Manuals are kept current and up to date, and, in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's home office shall be controlling.
- 8.6 *Revisions to the Manuals* Franchisor may periodically revise the contents of the Manuals, and Retailer expressly agrees to make corresponding revisions to its copy of the Manuals and to comply with each new or changed standard.

9 CONFIDENTIAL INFORMATION

- 9.1 *Confidentiality* Retailer shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the Retail Location that may be communicated to Retailer or of which Retailer may be apprised by virtue

of Retailer's operation under the terms of this Agreement. Retailer shall divulge such confidential information only to such of its employees as must have access to it in order to operate the Retail Location. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Retailer can demonstrate came to its attention before disclosure thereof by Franchisor, or which, at or after the time of disclosure by Franchisor to Retailer, had become or later becomes a part of the public domain, through publication or communication by others, or which Retailer is legally compelled to disclose. Retailer covenants to treat as confidential at all times Franchisor's confidential information and shall grant access to such information to its employees only on a need-to-know basis.

9.2 *Consequences of Breach* Retailer acknowledges that any failure to comply with the requirements of this **Section 9** will cause Franchisor irreparable injury, and Retailer agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this **Section 9**.

9.3 *Retailer-Developed Concepts* Retailer agrees to disclose to Franchisor all ideas, concepts, methods, techniques and products conceived or developed by Retailer, its affiliates, owners or employees during the term of this Agreement relating to the development and/or operation of the Retail Location. Retailer hereby grants to Franchisor and agrees to procure from its affiliates, owners or employees a perpetual, non-exclusive, and worldwide right to use any such ideas, concepts, methods, techniques and products in all food and beverage service businesses operated by Franchisor or its affiliates, retailers and designees. Franchisor shall have no obligation to make any payments to Retailer with respect to any such ideas, concepts, methods, techniques or products. Ideas, concepts, methods, techniques and products developed by Retailer that are proprietary to Retailer and are so designated by Retailer prior to being used at the Retail Location shall be excluded from this **Section**. Retailer agrees that it will not use or allow any other person or entity to use any such concept, method, technique or product without obtaining Franchisor's prior written approval.

10 ACCOUNTING AND RECORDS

10.1 Accounting Records

10.1.1 With respect to the operation and financial condition of the Retail Location, Retailer shall adopt, until otherwise specified by Franchisor, a fiscal year a fiscal year that coincides with Franchisor's then-current fiscal year (which is currently a calendar year), as specified by Franchisor in the Manuals or otherwise in writing.

10.1.2 Retailer shall maintain during the term of this Agreement, and, for not less than five (5) years following the termination, expiration, transfer, or non-renewal of this Agreement, full, complete, and accurate books, records, and accounts with respect to the operation and financial condition of the Retail Location prepared in accordance with generally accepted accounting principles and in the form and manner periodically prescribed by Franchisor in the

Manuals or otherwise in writing, or (if approved by Franchisor) in a form and manner consistent with Retailer's general commercial practices. These accounting records for the Retail Location should be separate from the operational records of any other business operations of Retailer and its affiliates. They should include, but not be limited to: (a) daily cash reports, (b) cash receipts journal, point of sale system reports, and general ledger, (c) cash disbursements and weekly payroll journal and schedule, (d) supplier's invoices (paid and unpaid), (e) dated daily and weekly cash register journals and point of sale system reports, (f) operational schedules and weekly inventory records, (g) records of promotion, coupon and discount redemption, (h) records of all other sales not evidenced by the cash receipts (such as wholesale and catering sales), and (i) such other records as Franchisor may reasonably request.

- 10.1.3 Franchisor has the right to specify a common chart of accounts in the Manuals, and, if Franchisor does so, Retailer agrees to use that chart of accounts in accounting for all fiscal transactions of the Retail Location and preparing and submitting Retailer's financial statements to Franchisor.
- 10.2 *Additional Information* Retailer shall also submit to Franchisor, for review or auditing, to the extent required by Franchisor and completed, compiled or maintained by Retailer in respect of the operations of the Retail Location exclusively, such other forms, reports, records, information, and data relating exclusively to the operations of the Retail Location, as and when Franchisor may reasonably designate, in the form and format, and at the times and places reasonably required by Franchisor, upon request and as periodically specified in the Manuals or otherwise in writing, including, without limitation, in electronic format. Retailer shall submit any records required by Franchisor so that Franchisor can comply with any reporting obligations imposed on Franchisor by applicable tax authorities. The reporting requirements of this **Section** shall be in addition to, and not in lieu of, the electronic reporting required under **Section 12**.
- 10.3 *Franchisor's Right to Inspect Books and Records* Franchisor or its designated agents shall have the right at all reasonable times to examine, copy, and/or personally review or audit, at Franchisor's expense, all books, records, and sales and income tax returns of Retailer pertaining to the Retail Location. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Retailer pertaining to the Retail Location at Franchisor's sole cost and expense. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Retailer shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month, but not more than the maximum rate permitted by law (if any). If an inspection is necessitated because Retailer fails to timely provide Sales Reports or if an inspection discloses an understatement in any report by Retailer of three percent (3%) or more, Retailer shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). These remedies shall be in addition to any other remedies Franchisor may have.

- 10.4 *PCI Compliance and Credit Cards* Retailer agrees to comply with all of Franchisor's policies regarding acceptance of payment by credit and/or debit cards, including for example minimum purchase requirements for a customer's use of a credit card (Franchisor may set these requirements in the Manuals) Retailer agrees to comply with Franchisor's requirements concerning data collection and protection, as specified in **Section 12** Retailer agrees to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org), or any successor organization or standards that Franchisor may reasonably specify Among other things, Franchisor agrees to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards

11 MARKETING

- 11.1 *Retailer's Marketing Activities* Recognizing the value of marketing and promotion, and the importance of the standardization of marketing and promotion programs to the furtherance of the goodwill and public image of the System, Retailer and Franchisor agree to perform a minimum number of activities to be agreed between the parties for each year in conjunction with the launch of new products by Franchisor or with communication campaigns
- 11.2 *Materials From Franchisor* Franchisor shall provide Retailer with an initial supply of such promotional and advertising materials (such as graphic design, copy and instructions) as Franchisor deems appropriate, acting reasonably Thereafter, Franchisor may periodically make available certain marketing, advertising and promotional materials for purchase by Retailer at a reasonable price for Retailer's use
- 11.3 *Franchisor's Review and Right to Approve All Proposed Marketing* For all proposed advertising, marketing, and promotional plans relating to the Retail Location exclusively, Retailer shall submit samples of such plans and materials to Franchisor (by means described in **Section 22**), for Franchisor's review and prior written approval If written approval is not received by Retailer from Franchisor within fourteen (14) days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have disapproved them Retailer acknowledges and agrees that any and all copyright in and to advertising, marketing materials, and promotional plans developed by or on behalf of Retailer with respect to the Retail Location shall be the sole property of Franchisor, and Retailer agrees to execute such documents (and, if necessary, use reasonable commercial efforts to require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision
- 11.4 *Opening Marketing Program* Upon Retailer's request, Franchisor and Retailer shall develop and agree upon an appropriate pre-opening and opening marketing and promotional program(s) to be conducted in conjunction with the Retail Location's initial opening (the "**Opening Marketing Program**") The Opening Marketing Program is subject to the provisions of **Section 11.3**

- 11 5 *Local Advertising, Additional Marketing Expenditure Encouraged* In connection with its advertising and marketing of the Retail Location exclusively, Retailer shall only use such advertising and marketing materials as have been provided by Franchisor, or that have been approved by Franchisor pursuant to **Section 11 3** Retailer understands and acknowledges that Retailer may, and is encouraged by Franchisor to spend additional funds for local advertising and promotion of a local nature that will focus on disseminating marketing directly related to the Retail Location Notwithstanding the foregoing, Retailer may at its own expense obtain listings for the Retail Location in the local trade or business telephone directories, including "yellow" and "white" pages and any online directories designated by Franchisor
- 11 6 *Rebates* Retailer acknowledges that periodic rebates, give-aways and other promotions and programs are an integral part of the System Accordingly, Retailer, at its sole cost and expense, shall periodically issue and offer such rebates, give-aways, discounts, incentives and promotions in accordance with any reasonable marketing programs established by Franchisor, and further shall honor rebates, give-aways and other promotions issued by other retailers as long as all of the above do not contravene regulations and laws of appropriate governmental authorities
- 11 7 *Considerations As to Charitable Efforts* Retailer acknowledges and agrees that certain associations between Retailer and/or the Retail Location, and/or the Proprietary 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, the reputation of Franchisor or the good will associated with the Proprietary Marks Accordingly, Retailer shall not, in connection with the Retail Location exclusively, without the prior written approval of Franchisor, engage in any activities with, or donate any money, products, services, goods, or other items to, any charitable, political or religious organization, group, or activity, if such action is taken, or may be perceived by the public to be taken, in the name of, in connection or association with Retailer, the Proprietary Marks, the Retail Location, the Franchisor, or the System

12 **TECHNOLOGY**

- 12 1 *Computer Systems and Software* Retailer acknowledges that its computer hardware and software at the Retail Location (the "**Computer System**") must be compatible and have the ability to track the information on sales as required by Franchisor Franchisor will work with Retailer to determine what computer changes, additions, and/or updates are necessary to accomplish this goal To the extent possible, Retailer shall grant Franchisor unimpeded independent access to Retailer's Computer System and Required Software Retailer agrees to promptly make changes (at its expense) to its computer system requested by Franchisor in writing to permit compatibility with Franchisor's computer system
- 12 2 *Data Requirements and Usage* Franchisor may periodically specify in the Manuals or otherwise in writing the information that Retailer shall collect and maintain on the Computer System at the Retail Location, and Retailer shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained provided they can be formatted to relate to the operation of the Retail

Location exclusively. Retailer shall download daily, or in such other intervals as Franchisor may require, all information and materials Franchisor may require in connection with the operation of the Retail Location, and shall display such information and materials in the manner Franchisor may prescribe, including, without limitation, to employees of the Retail Location or on the media wall display at the Retail Location. All data pertaining to, derived from, or displayed at the Retail Locations (including without limitation data pertaining to or otherwise about Retail Location customers) is and shall be the exclusive property of Franchisor, and Franchisor hereby grants a royalty-free non-exclusive license to Retailer to use said data during the term of this Agreement. In connection with any use of data in the Retail Location.

12.2.1 Retailer shall abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("**Privacy Laws**")

12.2.2 Retailer shall comply with Franchisor's standards and policies pertaining to Privacy Laws. If there is a conflict between Franchisor's standards and policies pertaining to Privacy Laws and actual applicable law, Retailer shall (a) comply with the requirements of the Privacy Laws, (b) within fifteen (15) days of acquiring knowledge of any conflict, Retailer shall give Franchisor written notice of said conflict, and (c) promptly and fully cooperate with Franchisor and Franchisor's counsel in determining the most effective way, if any, to meet Franchisor's standards and policies pertaining to Privacy Laws within the bounds of applicable law. Notwithstanding the above, Franchisor acknowledges that Retailer, in connection with other operations of the Facility, may be subject to its own corporate policies and standards with respect to privacy issues, and in the event Retailer becomes aware of any conflict between Franchisor's standards with respect to privacy issues and Retailer's corporate policies and standards, Retailer shall so advise Franchisor of the conflict and the parties shall cooperate, as necessary to best comply with both parties' policies and standards so as to ensure compliance with applicable Privacy Laws.

12.3 *Website Use*. Franchisor authorizes Retailer to use, or authorize third parties to use, the Proprietary Marks, and any photographs and/or other representations of the Retail Location within any official Website related to the Facility. Unless described in this **Section** or otherwise approved in writing by Franchisor, Retailer shall neither establish nor permit any other party to establish a Website relating in any manner whatsoever to the Retail Location or referring to the Proprietary Marks. Franchisor shall have the right, but not the obligation, to provide one or more references or webpage(s), as Franchisor may periodically designate, within Franchisor's Website. The term "**Website**" 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, YouTube, Google Plus, Pinterest, etc.), blogs, vlogs, applications to be installed on mobile devices (e.g., iPad or Droid apps), and other applications, etc. However, if Franchisor approves, in writing, a separate Website for the Retail Location (which Franchisor is not obligated to approve), then each of the following provisions shall apply.

- 12 3 1 Retailer specifically acknowledges and agrees that any Website owned or maintained by or for the benefit of Retailer shall be deemed "marketing" under this Agreement, and will be subject to (among other things) Franchisor's approval under **Section 11 3**
- 12 3 2 Before establishing any Website, Retailer shall submit to Franchisor, for Franchisor's prior written approval, a sample of the proposed Website domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including, without limitation, meta tags) in the form and manner Franchisor may reasonably require,
- 12 3 3 Retailer shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification
- 12 3 4 In addition to any other applicable requirements, Retailer shall comply with the standards and specifications for Websites that Franchisor may periodically prescribe in the Manuals or otherwise in writing
- 12 3 5 If required by Franchisor, Retailer shall establish such links to Franchisor's Website and others as Franchisor may request in writing
- 12 3 6 If Franchisor requires Retailer to do so, Retailer must make periodic updates to the Website to reflect information such as specials and other promotions at the Retail Location
- 12 3 7 Franchisor may require Retailer to make Franchisor the sole administrator (or co-administrator) of any social networking pages that Retailer maintains or that are maintained on Retailer's behalf, and Franchisor will have the right (but not the obligation) to exercise all of the rights and privileges that an administrator may exercise
- 12 4 *Extranet* If Franchisor establishes an extranet (Franchisor is not required to do so or to maintain an extranet), then Retailer agrees to comply with Franchisor's requirements (as set forth in the Manuals or otherwise in writing) with respect to connecting to and utilizing the extranet in connection with the operation of the Retail Location. Retailer will purchase and maintain such computer software and hardware (including but not limited to telecommunications capacity) as may be required to connect to and utilize the extranet
- 12 5 *Online Ordering System* If established, Retailer agrees to participate in Franchisor's online ordering system on such terms and conditions that Franchisor may specify in the Manuals, and to pay the fees for such online ordering system that Franchisor and/or its vendor reasonably specify
- 12 6 *Electronic Identifiers, E-Mail* Other than as specifically permitted in this **Section 12** or as directed in writing by Franchisor, Retailer shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Retailer or the business in any electronic medium. Retailer agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail, text message, or other electronic media without first obtaining Franchisor's written consent as to

(a) the content of such electronic advertisements or solicitations, and (b) Retailer's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Retailer shall be solely responsible for compliance with any laws pertaining to sending electronic communication including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "**CAN-SPAM Act of 2003**") and the Federal Telephone Consumer Protection Act. (As used in this Agreement, the term "**electronic communication**" is agreed to include all methods for sending communication electronically, whether or not currently invented or used, including without limitation e-mails, text messages, and faxes.)

13 INSURANCE

13.1 *Insuror and Coverage* Before commencing any activities or operations under this Agreement, Retailer agrees to procure and maintain in full force and effect during the term of this Agreement (and for such period thereafter as is necessary to provide the coverage required under this Agreement for events having occurred during the term of this Agreement), at Retailer's sole cost and expense, for the benefit of Franchisor, the following insurance policy or policies in connection with the Retail Location or other facilities on premises, or by reason of the construction, operation, or occupancy of the Retail Location or other facilities on premises. Such policy or policies shall be written by an insurance company or companies reasonably acceptable to Franchisor, with an A.M. Best rating of at least A-/VIII, that are reputable, meet such additional qualifications (including, without limitation, rating standards) as Franchisor may periodically specify, and are licensed and admitted to do business in the state in which the Retail Location is located, and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be periodically specified by Franchisor in the Manuals 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), the following:

13.1.1 Comprehensive general liability insurance, written on an occurrence basis, extended to include contractual liability, products liability and completed operations, and personal and advertising injury, with a combined bodily injury and property damage limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

13.1.2 Business automobile liability insurance, including a combined single bodily injury and property damage coverage for all owned, non-owned, and hired vehicles, with limits of liability not less than One Million Dollars (\$1,000,000) per occurrence for both bodily injury and property damage. Such policy shall have the contractual exclusion removed, unless Retailer provides separate evidence that contractual liability for automobile exposure is otherwise insured. Such policy shall also have a drive other car endorsement with employees of the Retail Location as additional insured.

13.1.3 Statutory workers' compensation insurance meeting all applicable state requirements and employer's liability insurance with minimum limits of at least One Million Dollars (\$1,000,000), as well as such other disability benefits type insurance as may be required by statute or rule of the state in

which the Retail Location is located. Such policy shall contain an "Alternate Employer Endorsement" including Franchisor as the alternate employer.

- 13.1.4 Commercial umbrella liability insurance with limits which bring the total of all primary underlying coverages (comprehensive general liability, business auto liability, and employers liability) to not less than Five Million Dollars (\$5,000,000) total limit of liability. Such umbrella liability will provide at a minimum those coverages and endorsements required in the underlying policies.
- 13.1.5 Property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils, including the perils of flood and earthquake. Appropriate coverage shall also be provided for boiler and machinery exposures and business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement value of the Retail Location, its furniture, fixtures, equipment, and stock (real and personal property). Any deductibles contained in such policy shall be subject to review and approval by Franchisor.
- 13.1.6 Business interruption insurance to cover at least Retailer's obligations with respect to leases, royalties, marketing fund obligations, fixed costs, and other recurring expenses for a period of not less than six (6) months following an interruption to the business' operation.
- 13.1.7 Any other insurance coverage that is required by federal, state, or local law.
- 13.2 *Endorsements* All policies listed in **Section 13.1** shall contain (a) a waiver of subrogation rights as between Franchisor (and its insurance carriers) and Retailer (and its insurance carriers), and (b) such other endorsements as Franchisor may periodically provide in the Manuals. In addition, the policies provided under **Sections 13.1.1** and **13.1.4** shall contain endorsements to provide that the coverages shall be primary and that any insurance carried by any additional insured shall be excess and non-contributory over any insurance carried by Franchisor.
- 13.3 *Notices to Franchisor* In the event of cancellation, material change, or non-renewal of any policy, thirty (30) days' advance written notice must be provided to Franchisor in the manner provided in **Section 22**.
- 13.4 *Construction Coverages* In connection with all significant construction, reconstruction, or remodeling of the Retail Location during the term of this Agreement, Retailer will cause the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manuals, all written by insurance or bonding companies approved by Franchisor, having a rating as set forth in **Section 13.1**.
- 13.5 *Other Insurance Does Not Impact Retailer's Obligation* Retailer's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance that may be maintained by

Franchisor, nor shall Retailer's performance of that obligation relieve it of liability under the indemnity provisions set forth in **Section 19 4**. Additionally, the requirements of this **Section 13** shall not be reduced, diminished, eroded, or otherwise affected by insurance that Retailer carries (and/or claims made under that insurance) for other businesses, included but not limited to other Retail Locations operated by Retailer (and/or its affiliates) under the System

- 13 6 *Additional Named Insured* All policies required under this Agreement (with the exception of worker's compensation insurance) shall (a) list Franchisor, its employees, agents, servants, contractors, and affiliated entities collectively as additional named insureds, and (b) contain a provision that Franchisor, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to Franchisor or its servants, agents, or employees by reason of the negligence of Retailer or its servants, agents, or employees
- 13 7 *Certificates of Insurance* At least thirty (30) days before the time any insurance is first required to be carried by Retailer, and thereafter at least thirty (30) days before the expiration of any such policy, Retailer shall deliver to Franchisor, certificates of insurance evidencing the proper coverage with limits not less than those required under this Agreement. All certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given Franchisor in the event of material alteration to, cancellation, or non-renewal of the coverages evidenced by such certificates
- 13 8 *Proof of Coverage* In addition to its obligations under **Section 13 7**, on the first anniversary of the Effective Date, and on each subsequent anniversary thereof during the term of this Agreement and any renewal of this Agreement, Retailer shall provide Franchisor with proof of insurance evidencing the proper coverage with limits not less than those required under this Agreement, in such form as Franchisor may reasonably require
- 13 9 *Franchisor's Right to Procure Insurance for Retailer* If Retailer does not obtain and maintain the insurance coverages and amounts required by Franchisor, Franchisor may purchase such insurance on Retailer's behalf and Retailer shall immediately reimburse Franchisor for such premium(s) paid
- 13 10 *Changes* Franchisor shall have the right to periodically make such changes in minimum policy limits and endorsements as it may determine

14 TRANSFER OF INTEREST

- 14 1 *By Franchisor* Franchisor has the right to transfer or assign this Agreement to any person or legal entity, without prior notice to, or consent of, Retailer, provided that Franchisor's obligations to Retailer under this Agreement are reasonably likely to be performed by such transferee. This Agreement will be binding on and inure to the benefit of Franchisor and any successors and assigns of Franchisor
- 14 2 *By Retailer* Other than to an affiliate controlled by or under common control with Retailer (an "**Affiliate**"), neither Retailer nor any party that directly or indirectly owns any interest in this Agreement, in Retailer, and/or in the Retail Location, may

(without the prior written consent of Franchisor) sell, assign, transfer, convey, pledge, encumber, merge, create a security interest in, and/or give away (collectively, "**transfer**") any direct or indirect interest in (a) this Agreement, (b) the rights and obligations of Retailer under this Agreement, or (c) any material asset of Retailer utilized in the operation of the Retail Location (except, that it shall not be a violation of this Agreement in the event that any of the above are pledged as part of the general collateral assignment or security interest given in connection with any financing by owner of the Facility provided such general collateral assignment or security interest in the Facility does not grant any specific transfer of this Agreement, the rights and obligations of Retailer under this Agreement, or any material asset of Retailer utilized in the operation of the Retail Location, or confer any right to operate the Retail Location, and it is hereby acknowledged that the transfer of any such rights shall require the written assumption by any transferee of all of the terms and conditions of this Agreement and the prior consent of Franchisor) Franchisor shall not unreasonably withhold its consent for such transfer, provided, however, that Franchisor shall have the right, including for a transfer to an Affiliate, to require conditions such as payment of a transfer fee, transferee's execution of the then-current form of retail location agreement, transferor's execution of general releases, and/or such other reasonable conditions as Franchisor may deem necessary or desirable Any purported transfer not having Franchisor's prior written consent as required by this **Section** shall be null and void and shall also constitute a material breach of this Agreement, for which Franchisor may immediately terminate this Agreement without opportunity to cure, pursuant to **Section 15**

- 14 3 *Consent to Transfer* Franchisor's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party arising prior to the transfer, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor with respect to any claims prior to the transfer or transferee

15 DEFAULT AND TERMINATION

- 15 1 *Automatic* Retailer or Franchisor, as the case may be, shall be deemed to be in default under this Agreement, and all rights granted in this Agreement shall automatically terminate upon written notice to the other, if the defaulting party becomes insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by the defaulting party or such a petition is filed against and not opposed by the defaulting party, or if the defaulting party is adjudicated a bankrupt or insolvent, or if a bill in equity or other proceeding for the appointment of a receiver of the defaulting party or other custodian for the defaulting party's business or assets is filed and consented to by the defaulting party, or if a receiver or other custodian (permanent or temporary) of the defaulting party's assets or property, or any part thereof, is appointed by any court of competent jurisdiction, or if proceedings for a composition with creditors under any applicable law should be instituted by the defaulting party, or against the defaulting party and are uncontested, or if a material final judgment under laws relating to bankruptcy or insolvency remains unsatisfied or of record for thirty (30) days or longer (unless an appeal or a supersedeas bond is filed), or if the defaulting party is dissolved, or if execution is levied against the defaulting party's business or

property, or if suit to foreclose any lien or mortgage against, in the case of Retailer, the Retail Location premises or equipment or, in the case of Franchisor, its personal or real property, is instituted against the defaulting party and not dismissed within thirty (30) days, or if the real or personal property of the Retail Location or of Franchisor, as the case may be, shall be sold after levy thereupon by any sheriff, marshal, or constable

15.2 *With Notice* Retailer shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, without affording Retailer any opportunity to cure the default, effective immediately upon the delivery of written notice to Retailer by Franchisor (in the manner set forth under **Section 22**), upon the occurrence of any of the following events

15.2.1 If Retailer fails to construct and open the Retail Location within the time limits and requirements as provided in **Section 5.1**, or fails to complete the training program to Franchisor's reasonable satisfaction as provided in **Section 6.3**,

15.2.2 If Retailer at any time ceases to operate or otherwise abandons the Retail Location for five (5) consecutive business days (other than for renovation, of which Retailer shall provide written notice to Franchisor) on which the Facility is open for business during its regular business hours, or loses the right to manage the Facility, or otherwise forfeits the right to do or transact business in the jurisdiction where the Retail Location is located, provided, however, that if, through no fault of Retailer, the premises of the Retail Location are damaged or destroyed by an event such that repairs or reconstruction to the damaged or destroyed portions of the Facility cannot be completed within one hundred and eighty (180) days thereafter, then Retailer shall have thirty (30) days after such event in which to relocate the Retail Location to another site within the Facility,

15.2.3 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Retail Location,

15.2.4 If Retailer transfers any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of **Section 14**,

15.2.5 If, contrary to the terms of **Sections 8** or **9**, Retailer discloses, divulges, or otherwise misuses the contents of the Manuals or other confidential information provided to Retailer by Franchisor,

15.2.6 If Retailer knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Retailer's application for a Retail Location) to Franchisor,

15.2.7 If Retailer commits three (3) or more defaults under this Agreement for which Franchisor has notified Retailer of its default under this Agreement in any fifty-two (52) week period, whether or not each such default has been cured after notice, and/or

- 15 2 8 If, on three (3) or more occasions during any twelve (12) month period during the term of the Agreement, any amounts Franchisor is to receive from Retailer by direct debit or otherwise are rejected due to insufficient or unavailable funds
- 15 3 *With Notice and Opportunity to Cure* Retailer shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, after the cure periods described below, upon the occurrence of any of the following events
- 15 3 1 If Retailer defaults in the payment of any monies owed to Franchisor when such monies become due and payable and Retailer fails to pay such monies within ten (10) days after receiving written notice of default, then this Agreement shall terminate without further notice to Retailer effective immediately upon the expiration of the ten (10) day period
- 15 3 2 If Retailer fails to comply with the covenants in **Section 17** or fails to timely obtain execution of the covenants required under **Section 17 5** and Retailer does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Retailer does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period
- 15 3 3 If Retailer sells products not previously approved by Franchisor, or purchases any product from a supplier not previously approved by Franchisor, and Retailer does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Retailer does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period
- 15 3 4 If Retailer makes any unauthorized or improper use of the Proprietary Marks, or if Retailer or one of its Key Personnel fails to utilize the Proprietary Marks solely in the manner and for the purposes directed by Franchisor, or directly or indirectly contests the validity of Franchisor's ownership of the Proprietary Marks or its right to use and to license others to use the Proprietary Marks and Retailer does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Retailer does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period
- 15 3 5 Except as otherwise provided in this **Section 15**, upon any other default by Retailer or Franchisor of its obligations under this Agreement, the non-defaulting party may terminate this Agreement by giving written notice of termination setting forth the nature of such default at least thirty (30) days before the effective date of termination, provided, however, that the defaulting party may avoid termination by immediately initiating a remedy to cure such default, curing it to the non-defaulting party's satisfaction, and by promptly providing proof thereof to the non-defaulting party, all within the thirty (30) day period If any such default is not cured within the specified

time, or within a different amount of time agreed between the parties in circumstances where the specified time is not reasonable given the nature of the default this Agreement shall terminate without further notice effective immediately upon the expiration of the thirty (30) day period

- 15 3 6 If Retailer is in default under the terms of any other retail location agreement or other contract between Retailer (and/or its affiliates) and Franchisor (and/or its affiliates), that will also constitute a default under **Section 15 3 7**
- 15 4 **Bankruptcy** If, for any reason, this Agreement is not terminated pursuant to this **Section 15**, and this Agreement is assumed, or assignment of the same to any person or entity who has made a *bona fide* offer to accept an assignment of the Agreement is contemplated, pursuant to the United States Bankruptcy Code (the "**Code**"), then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor or Retailer, as the case may be, within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of the Agreement, and, in any event, within ten (10) days before the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption
- 15 4 1 Franchisor, in the event that the insolvency or bankruptcy of Retailer has triggered the application of this **Section 15 4**, shall thereupon have the prior right and option, to be exercised by notice given at any time before the effective date of such proposed assignment and assumption, to accept an assignment of the Agreement to Franchisor itself upon the same terms and conditions and for the same consideration, if any, as in the *bona fide* offer made by the proposed assignee, less any brokerage commissions which may be payable by Retailer out of the consideration to be paid by such assignee for the assignment of the Agreement, and
- 15 4 2 In the event that the insolvency or bankruptcy of Franchisor has triggered the application of this **Section 15 4**, all rights and license granted under or pursuant to this Agreement by Franchisor to Retailer are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Code, licenses to rights to "intellectual property" as defined under the Code The parties agree that Retailer, as licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Code The parties further agree that, in the event of commencement of bankruptcy proceedings by or against Franchisor under the Code, Retailer shall be entitled to retain all of its rights under this Agreement
- 15 5 **Damages** Retailer shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Retailer under this Agreement (in addition to other remedies that Franchisor may have)
- 15 6 **Statutory Limitations** If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this **Section 15**, this

Agreement shall be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation

16 OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted under this Agreement to Retailer shall terminate, and

- 16 1 *Cease Operation* Retailer shall immediately cease to operate the Retail Location, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former retailer of Franchisor
- 16 2 *Stop Using Proprietary Marks and Materials* Retailer shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, all intellectual property associated with the System including the marks "ILLY CAFFE" and "ILLY" and any and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Retailer shall cease to use, without limitation, all signs, marketing materials, displays, stationery, forms, and any other articles that display the Proprietary Marks
- 16 3 *Cancel Assumed Names* Retailer shall take such action as may be necessary to cancel any assumed name or equivalent registration that contains any and all of the Proprietary Marks, and/or any other service mark or trademark of Franchisor, and Retailer shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement
- 16 4 *Premises* In connection with the Retail Location
 - 16 4 1 Retailer shall make such modifications or alterations to the premises operated under this Agreement (including, without limitation, changing the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the premises from that of other Retail Locations, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose, which include, without limitation
 - 16 4 1 1 removing coating material from the bar counter and replacing it with a new coating made of a different material and with a different design and shape,
 - 16 4 1 2 filling up any holes and shelves in the counter so the surface of the counter becomes a regular surface,
 - 16 4 1 3 destroying (and giving evidence to Franchisor of destruction) or return to Franchisor any and all (a) materials bearing the "PATTERN" decoration, (b) chandeliers with "ILLY" cups, (c) signs bearing Proprietary Marks or any representation of those marks, (d) "ILLY" art collections, (e) panels with photos of "In Principio"

collection of Sebastiao Salgado, (f) panels or mosaics with images of Xanti Schawinsky, (g) panels or paintings with images of James Rosenquist ("ILLY" trademark and Coffee Flowers Idea), (h) "wall of memories" wall images, (i) "Storytelling" wall images, (j) giant cups, (k) lists/selections of the cities with "ILLY" locations, (l) "ILLY" franchising chain members' plaques, (m) environmental signage (all printed writing on walls or on furniture), (n) cabinet showcase, (o) "ILLY" products for tasting or selling, (p) related fixed or movable promotional materials, (q) any products or promotional material bearing the Proprietary Marks purchased by Retailer during this Agreement, and (r) Manuals

16.4.1.4 removing any and all cups bearing the Proprietary Marks, "ILLY" art collection cups, and "ILLY" espresso cups,

16.4.1.5 removing three (3) kilo tins, and

16.4.1.6 making any additional aesthetic modifications necessary so the premises no longer resembles a Retail Location or the Proprietary Marks

16.4.2 If Retailer fails or refuses to comply with all of the requirements of this **Section 16.4**, Franchisor (or its designee) shall have the right to enter upon the premises of the Retail Location, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Retailer, which expense Retailer agrees to pay upon demand

16.5 *Phone Numbers and Directory Listings* In addition, Retailer shall cease use of the Retail Location's telephone numbers and any domain names, websites, e-mail addresses, and any other identifiers, whether or not authorized by Franchisor, used by Retailer in the operation of the Retail Location exclusively, and shall promptly execute such documents or take such steps necessary to remove reference to the Proprietary Marks in connection with the Retail Location from all trade or business telephone directories, including "yellow" and "white" pages. Retailer hereby authorizes Franchisor to instruct issuers of any internet domain name services, and other providers to transfer any such telephone numbers, domain names, websites, addresses, and any other identifiers exclusively related to Retail Location to Franchisor upon termination of this Agreement, without need for any further approval from Retailer. Without limiting the foregoing, if requested by Franchisor, Retailer shall provide, during the term or upon termination of this Agreement, written confirmation of Franchisor's rights under this **Section**. Retailer agrees that it shall sign such documents and do such things (without cost to Retailer) that may be reasonably requested by Franchisor in order to implement this **Section**.

16.6 *No Use of the Marks in Other Businesses* Retailer agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks, and further agrees not to utilize any designation of origin,

description, trademark, service mark, representation, or trade dress that suggests or represents a present or past association or connection with any or all of Franchisor, the System, the Products and the Proprietary Marks

- 16.7 *Pay All Sums Due* Retailer shall promptly pay all sums owing to Franchisor and its subsidiaries and affiliates (regardless whether those obligations arise under this Agreement or otherwise) In the event of termination for any default of Retailer, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default
- 16.8 *Pay Damages* Retailer shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Retailer under this Agreement and/or subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this **Section 16**
- 16.9 *Return Confidential Information* Retailer shall immediately return to Franchisor the Manuals and all other manuals, records, and instructions containing confidential information (including without limitation any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor
- 16.10 *Franchisor's Option to Buy Certain Assets* Franchisor shall have the option (but not the obligation), which Franchisor may exercise at any time within thirty (30) days after expiration, termination, or default under the prime lease, to purchase from Retailer any or all of the furnishings, equipment, signs, fixtures, supplies, or inventory of Retailer related to the operation of the Retail Location, at the lesser of Retailer's cost or fair market value The cost of Franchisor's proprietary furnishings, equipment, signs, and fixtures shall be determined based upon a five (5) year straight-line depreciation of original costs For equipment that is five (5) or more years old, the parties agree that fair market value shall be deemed to be ten percent (10%) of the equipment's original cost If Franchisor elects to exercise any option to purchase provided in this Agreement, it shall have the right to set off all amounts due from Retailer

17 COVENANTS

- 17.1 *Retailer's or Manager's Commercially Reasonable Efforts* Retailer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Retailer (or a manager who meets the requirements of **Section 6.3**) shall devote commercially reasonable efforts to the management and operation of the Retail Location
- 17.2 *No Injurious Conduct* Retailer specifically acknowledges that, pursuant to this Agreement, Retailer will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System Retailer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Retailer shall not, either directly or

indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity

17.2.1 Do or perform, directly or indirectly, any act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System

17.2.2 Unless released in writing by the employer, employ or seek to employ any Key Personnel who is at that time employed by Franchisor or by any other retailer, franchisee, master franchisee, or developer of Franchisor or development agent, or otherwise directly or indirectly induce such person to leave his or her employment

17.3 *In-Term Covenant* Retailer covenants that, except as otherwise approved in writing by Franchisor

17.3.1 Retailer shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any Competitive Business (as defined in **Section 17.3.2**), or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations within the Territory

17.3.2 A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month

17.4 *Publicly-Held Entities* **Section 17.3** shall not apply to ownership by Retailer of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "**publicly-held corporation**" shall be deemed to refer to a corporation which has securities that have been registered under the Securities Exchange Act of 1934

17.5 *Personal Covenants* Retailer shall require and obtain execution of a confidentiality agreement, the form of which is attached to this Agreement as **Exhibit E**, from manager, supervisor, or a person in a managerial position with Retailer, who has supervisory responsibilities related to the Retail Location. Failure by Retailer to obtain execution of a covenant required by this **Section** shall constitute a default under **Section 15.3.4**

17.6 *Construction* The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this **Section 17** is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Retailer expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this **Section 17**

- 17 7 *Reduction in Scope* Retailer understands and acknowledges that Franchisor shall have the right to reduce the scope of any covenant set forth in this **Section 17**, without Retailer's consent, effective immediately upon receipt by Retailer of written notice thereof, and Retailer agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of **Section 23**
- 17 8 *Claims Not a Defense* Retailer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this **Section 17** Retailer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this **Section 17**
- 17 9 *Defaults* Each party acknowledges that any violation of the terms of this **Section 17** would result in irreparable injury to the other party for which no adequate remedy at law may be available, and each of Retailer and Franchisor accordingly consents to the issuance of an injunction prohibiting any conduct in violation of the terms of this **Section 17**

18 TAXES, PERMITS, AND INDEBTEDNESS

- 18 1 *Payment of Taxes* Retailer shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment, payroll, and sales taxes, and all accounts and other indebtedness of every kind incurred by Retailer in the conduct of the Retail Location
- 18 2 *Taxes* If a withholding tax is required by applicable law to be withheld and paid to the appropriate governmental tax authority having jurisdiction in the Territory in respect of any of the payments due to Franchisor under this Agreement, Retailer shall be entitled to deduct from such payments the appropriate amount required to be withheld, provided that
- 18 2 1 Retailer properly and timely remits any taxes withheld in the name of Franchisor, along with all required documentation, to the appropriate governmental tax authority,
- 18 2 2 concurrently with any payments due to Franchisor under this Agreement, Retailer provides to Franchisor (a) a statement disclosing the amount withheld, the date of payment thereof to such governmental tax authority and the payment in respect of which such amount was withheld, and (b) as soon as the particular governmental tax authority makes the necessary documents available, all withholding tax receipts or other similar official government certifications evidencing all taxes withheld from payments due hereunder and the proper and timely remittance of those taxes to the government in the name of Franchisor, and
- 18 2 3 Retailer cooperates with Franchisor and provides Franchisor with any other information or documentation reasonably requested from time to time by Franchisor and available to Retailer in order to enable Franchisor to

adequately support any foreign tax credit claimed by Franchisor that is attributable to taxes withheld by Retailer from payments due to Franchisor

- 18.3 *Retailer's Right to Contest Liabilities* In the event of any bona fide dispute as to Retailer's liability for taxes assessed or other indebtedness, Retailer 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 shall Retailer 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 Retail Location, or any improvements thereon
- 18.4 *Compliance with Law* Retailer shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Retail Location, including, without limitation, licenses to do business, health certificates, beer, wine or liquor licenses, food handler's permits, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of said laws are in conflict with the terms of this Agreement, the Manuals, or other instructions of Franchisor, Retailer shall (a) comply with said laws, and (b) immediately provide written notice describing the nature of such conflict to Franchisor

19 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 19.1 *Independent Contractor Relationship* The parties acknowledge and agree that (a) this Agreement does not create a fiduciary relationship between them, (b) that Retailer shall be an independent contractor, (c) Retailer is the only party that is in day-to-day control of the Retail Location, and neither this Agreement nor any of the systems, guidance, processes, or requirements under which Retailer operates alter that fact, (d) nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever, and (e) neither this Agreement nor Franchisor's course of conduct is intended nor may be construed to state or imply that Franchisor is the employer of Retailer's employees and/or independent contractors, nor vice versa
- 19.2 *Notice of Status* At all times during the term of this Agreement and any extensions of this Agreement, Retailer shall hold itself out to the public in connection with the Retail Location as an independent contractor operating the business pursuant to this Agreement with Franchisor. Retailer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place within the Retail Location, the content of which Franchisor reserves the right to specify
- 19.3 *No Contracts in Franchisor's Name* It is understood and agreed that nothing in this Agreement authorizes Retailer to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name, and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, nor shall Franchisor be liable by reason of any act or omission of Retailer in its conduct of the

Retail Location or for any claim or judgment arising therefrom against Retailer or Franchisor

19 4 *Indemnification* Retailer shall indemnify and hold the ILLY Parties (as defined below) harmless against any and all Damages (as defined below) arising directly or indirectly from any Asserted Claim (defined below) as well as from any breach of this Agreement by Retailer. Retailer's indemnity obligations shall survive the expiration or termination of this Agreement

19 5 *Definitions* As used in **Section 19 4**, the following terms shall have the following meanings

19 5 1 "**Asserted Claim**" means any allegation, claim or complaint that is the result of, or in connection with, Retailer's exercise of its rights and/or carrying out of its obligations hereunder (including but not limited to any claim associated with Retailer's operations of the Retail Location or otherwise), notwithstanding any claim that any ILLY Party was or may have been negligent

19 5 2 "**ILLY Parties**" means Franchisor, Franchisor's shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents

19 5 3 "**Damages**" means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including without limitation expenses, costs and lawyers' fees incurred for any indemnified party's primary defense or for enforcement of its indemnification rights)

20 **FORCE MAJEURE**

20 1 *Impact* Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing (a) acts of nature, (b) acts of war, terrorism, or insurrection, (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties, and/or (d) the inability, despite reasonable commercial efforts, of Franchisor and/or its affiliates, or any suppliers, to manufacture, purchase, and/or cause delivery of any ILLY Products used in the operation of the Retail Location

20 2 *Transmittal of Funds* The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of **Section 20 1**. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost, provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay, and further provided, however, that Retailer shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension

21 APPROVALS AND WAIVERS

- 21 1 *Request for Approval* Whenever this Agreement requires the prior approval or consent of Franchisor, Retailer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing. Franchisor shall act reasonably in determining whether to grant such approval or consent, shall not unreasonably withhold or delay transmission of such approval or consent and, failing a response within fifteen (15) days, or such other period as is otherwise set forth in this Agreement, to any request by Retailer for such approval or consent, shall be deemed denied and not approved on such matter in respect of which a request for approval or consent was sought.
- 21 2 *No Warranties or Guarantees* Retailer acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Retailer may rely, and assumes no liability or obligation to Retailer, by providing any waiver, approval, consent, or suggestion to Retailer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.
- 21 3 *No Waivers* No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Retailer or any other retailer under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Retailer, or as to subsequent breach or default by Retailer. Subsequent acceptance by Franchisor of any payments due to it under this Agreement shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Retailer of any terms, provisions, covenants, or conditions of this Agreement.

22 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, sent by overnight courier, or by other means which affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, rejected delivery, or attempted delivery shall be deemed to have been given at the date and time of receipt, rejected delivery, or attempted delivery.

23 ENTIRE AGREEMENT AND AMENDMENT

- 23 1 *Entire Agreement* This Agreement and the exhibits referred to in this Agreement constitute the entire, full, and complete Agreement between Franchisor and Retailer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Retailer to execute this Agreement. The parties acknowledge and agree that they relied only on the words printed in this Agreement in deciding whether to enter into this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Retailer to waive reliance on any

representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Retailer or its representative, subject to any agreed-upon changes to the contract terms and conditions described in that disclosure document and reflected in this Agreement (including any riders or addenda signed at the same time as this Agreement)

- 23 2 *Amendment* Except for those permitted to be made unilaterally by Franchisor under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing

24 SEVERABILITY AND CONSTRUCTION

- 24 1 *Severability* Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement shall be considered severable, and if, for any reason, any section, part, term, and/or provision in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties, and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement
- 24 2 *No Third Party Rights* Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Retailer, Franchisor, and such of Retailer's and Franchisor's respective successors and assigns as may be contemplated (and, as to Retailer, permitted) by **Section 14**, any rights or remedies under or by reason of this Agreement
- 24 3 *Construction* Retailer expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law that is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions that a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order
- 24 4 *Headings* All captions in this Agreement are intended solely for the convenience of the parties, and no caption shall be deemed to affect the meaning or construction of any provision hereof
- 24 5 *Survival* All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement

25 APPLICABLE LAW AND DISPUTE RESOLUTION

- 25 1 *Choice of Law* This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises ("**HQ State**"), which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of HQ State's choice-of-law rules), provided, however, that if the covenants in **Section 17** of this Agreement would not be enforceable under the laws of HQ State and the Retail Location is located outside of HQ State, then such covenants shall be interpreted and construed under the laws of the state in which the Retail Location is located. Nothing in this **Section** is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of HQ State to which this Agreement would not otherwise be subject.
- 25 2 *Mediation* Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 25 5** relating to injunctions). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this **Section** shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks.
- 25 2 1 The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation (the "**complainant**") providing written notice of the request for mediation (the "**request**") to the party with whom mediation is sought (the "**respondent**"). The request shall specify with reasonable particularity the matter or matters on which non-binding mediation is sought. A copy of the request shall be given by the complainant simultaneously to Franchisor if Franchisor is not a complainant or respondent.
- 25 2 2 Non-binding mediation commenced hereunder shall be concluded within sixty (60) days of the issuance of the request or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Complainant and respondent shall each bear its own costs of mediation, and each shall bear one-half the cost of the mediator or mediation service.
- 25 3 *Litigation* The parties agree that any action brought by Retailer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Retailer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this **Section** shall not be construed as preventing either party from removing an action from state to federal court. Franchisor and Retailer hereby waive all questions of personal jurisdiction or venue.

for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

- 25.4 *Parties Rights Are Cumulative* No right or remedy conferred upon or reserved to Franchisor or Retailer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- 25.5 *Injunctions* Nothing contained in this Agreement shall bar Franchisor's or Retailer's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.
- 25.6 **WAIVER OF JURY TRIAL** FRANCHISOR AND RETAILER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.
- 25.7 **MUST BRING CLAIMS WITHIN ONE YEAR** ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF RETAILER AND FRANCHISOR, OR RETAILER'S OPERATION OF THE RETAIL LOCATION, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER, SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR, IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES, SUCH CLAIM OR ACTION SHALL BE IRREVOCABLY BARRED.
- 25.8 **WAIVER OF PUNITIVE DAMAGES** FRANCHISOR AND RETAILER HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT.
- 25.9 *Payment of Legal Fees* Retailer shall pay to Franchisor all damages, costs and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs subsequent to the termination or expiration of this Agreement in (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation **Sections 9** and **17** above), and/or (b) successfully defending a claim that Franchisor defrauded Retailer into signing this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement do not govern the parties' relationship.

26 ACKNOWLEDGMENTS

- 26.1 *Retailer's Investigation of the Business Possibilities* Retailer acknowledges that Retailer has conducted an independent investigation of the business franchised under this Agreement, recognizes that this business venture involves business risks, and that its success will be largely dependent upon Retailer's ability (or, if Retailer is an entity, its owners as independent businesspersons), the active participation of Retailer (or if an entity, its owners) in the daily affairs of the business, market

conditions, area competition, availability of product, quality of services provided, as well as other factors

- 26.2 *Retailer Read this Agreement and FDD and Consulted with Advisors* Retailer confirms that it has read and understands this Agreement and the FDD, and that Retailer had sufficient time and opportunity to consult with advisors of Retailer's own choosing (including a lawyer and an accountant) about the potential benefits and risks of entering into this Agreement. Retailer confirms that it has no knowledge of any representations by Franchisor, or anyone purporting to act on Franchisor's behalf, that are contrary to the terms of this Agreement
- 26.3 *No Conflicting Obligations* Each party represents and warrants to the other that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from (a) negotiating and entering into this Agreement, (b) exercising its rights under this Agreement, and/or (c) fulfilling its responsibilities under this Agreement
- 26.4 *Retailer's Responsibility for the Choice of the Approved Location* Retailer acknowledges that it has sole and complete responsibility for the choice of the premises of the Approved Location, that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the site) given any representation, promise, or guarantee of Retailer's success within the Facility, and that Retailer will be solely responsible for its own success within the Facility
- 26.5 *Retailer's Responsibility for Operation of the Retail Location* Although Franchisor retains the right to establish and periodically modify System standards, which Retailer has agreed to maintain in the operation of the Retail Location, Retailer retains the right and sole responsibility for the day-to-day management and operation of the Retail Location and the implementation and maintenance of system standards at the Retail Location
- 26.6 *Different Offerings to Others* Retailer acknowledges and agrees that Franchisor may modify the terms under which Franchisor will offer franchises to other parties in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement
- 26.7 *Public Announcement* Unless required under applicable law (including, without limitation, any applicable securities laws and/or rules and regulations of a securities exchange to which the disclosing party is a member), Retailer shall not make any announcement or press release concerning this Agreement or any of the matters dealt with in this Agreement without Franchisor's prior written consent
- 26.11 *Individual Signature* The individual signing on behalf of the Retailer below represents and warrants to Franchisor that he or she has the authority to execute and deliver this Agreement and all related agreements on Retailer's behalf. Retailer represents and warrants to Franchisor that this Agreement has been duly authorized and executed by or on behalf of Retailer and constitutes the valid and binding obligation of Retailer, enforceable in accordance with its terms

- 26 12 *Fractional Franchise* Retailer represents and warrants that it (or one of its current directors or officers, or a current director or officer of a parent or affiliate) has more than two (2) years of experience in operating various types of foodservice concepts. In addition, Retailer acknowledges and agrees that the parties have a reasonable basis to anticipate that the sales arising from Retailer's relationship with Franchisor will not exceed twenty percent (20%) of Retailer's total dollar volume in sales from all of its foodservice operations during the Retail Location's first year of operation.
- 26 8 *Success Depends on Retailer* Retailer acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Retailer's ability as an independent businessperson, Retailer's active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated under this Agreement.
- 26 9 *General Release* If this Agreement is not the first contract between Retailer (and its affiliates) and Franchisor (and its affiliates), then Retailer agrees to the following: Retailer (on behalf of itself and its parent, subsidiaries and affiliates and their respective past and present members, officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of Retailer's obligations under this Agreement (collectively, "**Retailer Releasors**") freely and without any influence forever release and covenant not to sue Franchisor, its parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities (collectively, "**Franchisor Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**claims**"), which any Retailer Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Retailer Releasor and any Franchisor Releasee, the sale of any franchise to any Retailer Releasor, the development and operation of the Retail Location and the development and operation of all other Retail Locations operated by any Retailer Releasor that are franchised by any Franchisor Releasee. Retailer expressly agrees that fair consideration has been given by Franchisor for this General Release and Retailer fully understands that this is a negotiated, complete and final release of all claims. This General Release does not release any claims arising from representations made in Franchisor's FDD and its exhibits or otherwise impair or affect any claims arising after the date of this Agreement.
- 26 10 *Retailer's Independence* Retailer acknowledges and agrees that (a) Retailer is the only party that employs its employees (even though Franchisor may provide Retailer with advice, guidance, and training), (b) Franchisor is not the employer of any of Retailer's employees, and Franchisor will not play any role in decisions regarding their employment (including but not limited to matters such as recruitment, hiring, compensation, relations, labor matters, review, and/or dismissal), (c) the guidance that Franchisor provides and requirements under which Retailer will operate are intended to promote and protect the value of the brand and the Proprietary Marks,

(d) when forming and in operating Retailer's business, Retailer had to adopt standards to operate that business, and that instead of developing and implementing Retailer's own standards (or those of another party), Retailer chose to adopt and implement Franchisor's standards for Retailer's business (including but not limited to Franchisor's System and the requirements under this Agreement), and (e) Retailer has made (and will remain responsible at all times for) all of the organizational and basic decisions about establishing and forming Retailer's entity, operating its business (including but not limited to adopting Franchisor's standards as Retailer's standards), and hiring employees, engaging professional advisors, and all other facets of Retailer's operation

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written

ESPRESSAMENTE ILLY AMERICAS, INC
Franchisor

Retailer Entity

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address for Notices

Address for Notices

800 Westchester Avenue, Suite S438
Rye Brook, NY 10573
Telephone (914) 253-8141
Attn President

Telephone _____
Fax _____
Attn _____

with a copy to

Telephone _____
Fax _____
Attn General Manager

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT A

RETAILER-SPECIFIC INFORMATION

- 1 The Facility for the Approved Location is _____

- 2 The address for the Approved Location is _____

- 3 The Territory for the Retailer is _____

Initials	
Franchisor	Retailer

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT B - 1

PERSONAL GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

As an inducement to ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") to execute the ILLY CAFFE Retail Location Agreement between Franchisor and _____ ("**Retailer**"), dated _____, 20____ (the "**Agreement**"), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Retailer's monetary obligations under the Agreement will be punctually paid and performed and that all monetary obligations will be punctually paid and performed

Upon demand by Franchisor, the undersigned each hereby jointly and severally agree to immediately make each payment required of Retailer under the Agreement and waive any right to require Franchisor to (a) proceed against Retailer for any payment required under the Agreement, (b) proceed against or exhaust any security from Retailer, (c) pursue or exhaust any remedy, including any legal or equitable relief, against Retailer, or (d) give notice of demand for payment by Retailer. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Retailer, or settle, adjust, or compromise any claims against Retailer, and the undersigned each hereby jointly and severally waive notice of same and agree to remain and be bound by any and all such amendments and changes to the Agreement

The undersigned each hereby jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Retailer to perform any obligation of Retailer under the Agreement, any amendment thereto, or any other agreement executed by Retailer referred to therein

The undersigned each hereby jointly and severally acknowledge and expressly agree to be individually bound by all of the covenants contained in **Sections 7, 9, 14, 16, and 17** of the Agreement, as amended and supplemented, and acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "ILLY CAFFE" and "ILLY" marks, logos or system licensed to Retailer under the Agreement

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death, and the obligations of the other guarantors will continue in full force and effect

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with **Sections 24 and 25** of the Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims). This Guarantee shall be

interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules)

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement

GUARANTOR(S)

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT B - 2

CORPORATE GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

This GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGEMENT, dated as of _____, 20__ (the "**Guarantee**"), is by _____ (the "**Guarantor**"), in favor of ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**"), for its benefit and the benefit of the Indemnified Parties (as defined below)

BACKGROUND

A Franchisor and _____ ("**Retailer**") have entered into that certain ILLY CAFFE Franchise Agreement, dated _____, 20__ (the "**Agreement**")

B Guarantor is the sole parent company of Retailer and will derive direct and indirect economic benefits from the license of the Proprietary Marks and the System to Retailer pursuant to the Agreement

C As a condition to the consummation of the transactions contemplated by the Agreement, Franchisor requires the irrevocable and unconditional guarantee by Guarantor of the due and punctual payment, observance and performance of all of the obligations and liabilities of Retailer under the Agreement

D Guarantor, in furtherance of its business objectives, is willing to provide such guaranty on the terms and conditions set forth in this Guarantee

NOW THEREFORE, Guarantor and Franchisor, in consideration of the undertakings and commitments of each party to the other party set forth herein and in the Agreement, hereby mutually agree as follows

1 Definitions In addition to terms defined elsewhere in this Guarantee, the following terms have the meanings assigned in this **Section 1** Capitalized terms used and not otherwise defined in this Guarantee shall have the meaning given to them in the Agreement

"Indemnified Parties" means Franchisor and its current and prior shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents, individually and collectively, including their respective successors and assigns

"Guaranteed Documents" means the Agreement, as amended and supplemented, and all other agreement executed by Retailer referred to therein

2 Guarantee Obligations The Guarantor hereby irrevocably, absolutely, and unconditionally guarantees, as primary obligor and as a guarantor of payment and performance, to each of the Indemnified Parties, the due, complete and punctual payment of all amounts which are or may become due and payable by Retailer under the Guaranteed Documents, and the due, complete, and punctual performance of all other agreements and undertakings of Retailer under the Guaranteed Documents, in each case, in accordance with the terms thereof, together with all claims for damages arising from or in connection with the failure to punctually and completely pay or perform such obligations

3 Guarantee Process Upon demand by Franchisor (or one of the Indemnified Parties), Guarantor hereby agrees to immediately make each payment required of Retailer under the Guaranteed Documents and waives any right to require Franchisor to (a) proceed against Retailer for any payment required under the Guaranteed Documents, (b) proceed against or exhaust any security from Retailer, (c) pursue or exhaust any remedy, including any legal or equitable relief, against Retailer, or (d) give notice of demand for payment by Retailer. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to Guarantor, extend, modify, or release any indebtedness or obligation of Retailer, or settle, adjust, or compromise any claims against Retailer, and Guarantor hereby waives notice of same and agrees to remain and be bound by any and all such amendments and changes to the Guaranteed Documents.

4 Demand by Indemnified Parties Any demand by Franchisor or one of the Indemnified Parties under this Guarantee shall be conclusive, absent manifest error, as to the matters therein stated, including the amount due. Any Indemnified Party, including but not limited to Franchisor, may enforce this Guarantee.

5 Indemnification Guarantor hereby agrees to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Retailer to perform any obligation of Retailer under the Guaranteed Documents.

6 Acknowledgement Guarantor hereby acknowledges and expressly agrees to be bound by all of the covenants contained in **Sections 7, 9, 14, 16, and 17** of the Agreement, and acknowledges and agrees that this Guarantee does not grant Guarantor any right to use the "ILLY CAFFE" and "ILLY" marks, logos or system licensed to Retailer under the Agreement.

7 Term and Termination This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of Guarantor which arose from events that occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by Guarantor, and all covenants that by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. The terms of this Guarantee shall be binding on Guarantor and any successors and/or assigns permitted under the terms of the Agreement.

8 Waiver and Amendment This Guarantee and any provision of this Guarantee may be terminated, waived, amended, modified or supplemented only by an agreement or instrument in writing, specifying the provision (or, if applicable, the whole of this Guarantee) intended to be terminated, waived, amended, modified or supplemented, and executed by Guarantor and Franchisor. No failure on the part of any Indemnified Party or its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by any Indemnified Party or its agents, of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

9 Severability Should any of the provisions of this Guarantee be or become fully or in part invalid or unenforceable, the other provisions hereof shall remain enforceable and in full force and effect.

10 Further Assurances Guarantor shall execute and deliver all such instruments and take all such actions as Franchisor may from time to time reasonably request in order to effectuate fully the purposes of this Guarantee

11 Reinstatement This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against Retailer or Guarantor for liquidation or reorganization, should Retailer or Guarantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Retailer's or Guarantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the obligations described in **Section 2**, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Franchisor, whether as a "voidable preference", "fraudulent conveyance", or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations contained in this Guarantee shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned

12 Choice of Law and Construction Unless specifically stated otherwise, the terms used in this Guarantee shall be interpreted and construed in accordance with **Sections 24** and **25** of the Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims). This Guarantee shall be interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules)

IN WITNESS WHEREOF, the Guarantor has caused this Guarantee to be duly executed as of the day and year first above written

GUARANTOR

Signed _____

Printed Name _____

Title _____

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT C

AUTHORIZATION AGREEMENT FOR ACH PAYMENTS
(DIRECT DEBITS FOR ROYALTY AND OTHER FEES)

_____(Name of Person or Legal Entity)

_____(ID Number)

The undersigned depositor ("**Depositor**" or "**Retailer**") hereby authorizes ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**" or "**Bank**") to debit or credit such account(s) pursuant to Franchisor's instructions

Depository

Branch

City

State

Zip Code

Bank Transit/ABA Number

Account Number

This authorization is to remain in full and force and effect until sixty (60) days after Franchisor has received written notification from Retailer of its termination

Printed Name of
Depositor _____

Signed _____

Printed Name _____

Title _____

Date _____

ADA CERTIFICATION

(the "**Retail Location**") In accordance with **Section 5.3** of the Retail Location Agreement, Retailer certifies to Franchisor that, to the best of Retailer's knowledge, the Retail Location and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act. Retailer acknowledges that it is an independent contractor and the requirement of this certification by Franchisor does not constitute ownership, control, leasing or operation of the Retail Location. Retailer acknowledges that Franchisor has relied on the information contained in this certification. Furthermore, Retailer agrees to indemnify Franchisor and the officers, directors, and employees of Franchisor in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Retailer's compliance with the Americans with Disabilities Act, as well as the costs, including attorneys' fees, related to the same.

Title _____

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT E

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(BETWEEN RETAILER AND ITS PERSONNEL)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("**Agreement**") is made this _____ day of _____, 20____, by and between _____ (the "**Retailer**"), and _____, who is an owner, manager, supervisor, member, partner, or a person in a managerial position with Retailer who has supervisory responsibilities related to the Approved Location (the "**Member**")

RECITALS

WHEREAS, ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") and its affiliates own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**") that operate under the Proprietary Marks in buildings that are designed using and bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY Products**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY Products and Additional Products will be referred to as "**Products**"),

WHEREAS, Franchisor and Retailer have executed a retail location agreement ("**Retail Location Agreement**") granting Retailer the right to operate a Retail Location at a location identified in the Retail Location Agreement (the "**Retail Location**") and to produce and sell Products approved by Franchisor and use the Proprietary Marks in connection therewith under the terms and conditions of the Retail Location Agreement, and

WHEREAS, Member, by virtue of his or her position with Retailer, will gain access to certain of Franchisor's Confidential Information (defined below), and must therefore be bound by the confidentiality and non-competition agreements as required by the Retail Location Agreement

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows

1 Confidential Information Member shall not, during the term of the Retail Location Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the Retail Location that may be communicated to Member or of which Member may be apprised by virtue of Retailer's operation of the Retail Location under the terms of the Retail Location Agreement Any and all information, knowledge, know-how, and techniques that Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information that Retailer can demonstrate came to its attention before disclosure thereof by Franchisor, or that, at or after the time of disclosure by Franchisor to Retailer, had become or later becomes a part of the public domain, through publication or communication by others

2 Additional Covenants

(a) Member specifically acknowledges that, pursuant to the Retail Location Agreement, and by virtue of its position with Retailer, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System

(b) Member covenants and agrees that during the term of the Retail Location Agreement, except as otherwise approved in writing by Franchisor, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity

(i) Do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System

(ii) Unless released in writing by the employer, employ or seek to employ any Key Personnel who is at that time employed by Franchisor, Retailer or by any other retailer, franchisee, master franchisee, or developer of Franchisor, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment, or

(iii) Own, maintain, operate, engage in, or have any interest in any Competitive Business, or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations within the Territory A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month

3 Injunctive Relief Member acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Member agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement

4 Severability All agreements and covenants contained in this Agreement are severable If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect Franchisor's and/or Retailer's legitimate business needs as permitted by applicable law and public policy In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid

5 Delay No delay or failure by the Franchisor or Retailer to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided in this Agreement, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement

6 Third-Party Beneficiary Member hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly, with Retailer

7 Any capitalized terms that are not defined in this Agreement shall have the meanings given to them in the Retail Location Agreement and shall be interpreted and construed in accordance with **Sections 24 and 25** of the Retail Location Agreement

(including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims) This Agreement shall be interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules)

IN WITNESS WHEREOF, the Retailer and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above

RETAILER

MANAGER

By _____

By _____

Name _____

Name _____

Title _____

Title _____

ILLY CAFFE
RETAIL LOCATION AGREEMENT
EXHIBIT F

HOTEL ADDENDUM

THIS HOTEL ADDENDUM TO THE RETAIL LOCATION AGREEMENT ("**Addendum**") is made and entered into on this _____ day of _____, 20__ (the "**Effective Date**"), by and between

- **ESPRESSAMENTE ILLY AMERICAS, INC**, a Delaware corporation with its principal place of business at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 ("**Franchisor**"), and

_____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Retailer**")

RECITALS

A Franchisor is a Delaware company that is part of a corporate family internationally known and appreciated for the production and marketing of coffee, coffee related products and accessories under the trademark "ILLY" Capitalizing on the consumer awareness and the image and reputation of the "ILLY" products, Franchisor and its affiliates, as the result of the expenditure of time, skill, effort and money, have developed and own a System relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**," the expression "**the Retail Location**" refers to the Retail Location operated by Franchisee at the Approved Location) that operate under the Proprietary Marks in buildings that are designed using and which bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of ILLY PRODUCTS, as well as such Additional Products as Franchisor may specify from time to time

B WHEREAS, Retailer is a _____, which operates a hotel (the "**Facility**") and has entered into a Retail Location Agreement with Franchisor of even date herewith (the "**Retail Location Agreement**") to develop and operate a Retail Location at a location within the Facility identified in the Retail Location Agreement (the "**Approved Location**")

C WHEREAS, Franchisor and Retailer wish to enter into this Addendum to modify the Retail Location Agreement to incorporate specific provisions to reflect that the Facility is a hotel

D All capitalized terms not otherwise defined in this Addendum shall have the same meaning as in the Retail Location Agreement

NOW THEREFORE, Franchisor and Retailer, in consideration of the undertakings and commitments of each party to the other party set forth herein and in the Retail Location Agreement, hereby mutually agree as follows

I TRANSFER OF INTEREST The following new **Section 14 4** is added to **Section 14** of the Retail Location Agreement, "Transfer of Interest"

14 4 *Transfer to Facility Owner* In the event that Retailer will no longer be manager of the Facility or the Management Agreement is terminated, the

owner of the Facility (or its replacement manager) may, upon thirty (30) days written notice, request that this Agreement be transferred to the owner of the Facility, provided the following conditions are met (a) the owner (or new manager) executes documentation acceptable to Franchisor evidencing the owner's (or new manager's) assumption of all of the obligations under this Agreement, (b) the owner (or new manager) cures, or reaches agreement with Franchisor on a timetable for curing, all defaults under this Agreement, if any, existing at the time of the assumption, (c) the owner (or new manager) agrees to indemnify Franchisor from any and all claims that may be asserted by the Retailer or any other party as a result of the owner's (or new manager's) assumption of the obligations under this Agreement, (d) the owner (or new manager) has personnel that satisfy the training requirements to operate the Approved Location, or reaches agreement with Franchisor concerning the timing for completion of such training, and (e) the Facility will continue to be operated as a first-class quality hotel after Retailer ceases to be manager of the Facility or the Management Agreement is terminated (it being agreed that if there is no change in brands under which the Facility is operated, the requirements of this clause (e) will be met)

II DEFAULT AND TERMINATION The following new **Section 15 7** is added to **Section 15** of the Retail Location Agreement, "Default and Termination"

15 6 *Voluntary Termination by Retailer* The parties acknowledge that Retailer is conferred the right to supervise, direct and control the management and operation of the Facility by virtue of a confidential management agreement (the "**Management Agreement**") Retailer shall have the right to terminate this Agreement upon the termination of the Management Agreement for any reason whatsoever. In that event, Franchisor shall have the right (but not the obligation) set forth in **Section 14 4** above, to approve the transfer of this Agreement to the owner or a replacement manager. In the event that this Agreement is not so transferred, the obligations upon termination set forth in **Section 16** below shall apply

III GENERAL This Addendum constitutes an integral part of the Retail Location Agreement between the parties hereto, and the terms of this Addendum shall be controlling with respect to the subject matter hereof. Except as modified or supplemented by this Addendum, the terms of the Retail Location Agreement are hereby ratified and confirmed

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum on the date first above written

ESPRESSAMENTE ILLY AMERICAS, INC

Retailer

By _____

By _____

Name _____

Name _____

Title _____

Title _____

EXHIBIT A-2
FRANCHISE AGREEMENT

**ILLY CAFFÈ
FRANCHISE AGREEMENT**

**ILLY CAFFÈ
FRANCHISE AGREEMENT**

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Exhibits

- A Approved Location and Territory
- B Site Selection Addendum
- C Guarantee, Indemnification and Acknowledgement
- D List of Principals
- E Authorization Agreement for Prearranged Payments (Direct Debits)
- F ADA Certification
- G Lease Rider
- H Non-Disclosure and Non-Competition Agreement

**ILLY CAFFÈ
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the "**Agreement**") is made and entered into on this _____ day of _____, 20____ (the "**Effective Date**"), by and between

- **ESPRESSAMENTE ILLY AMERICAS, INC**, a Delaware corporation with its principal place of business at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 ("**Franchisor**"), and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Franchisee**")

RECITALS

A WHEREAS, Franchisor is a Delaware company that is part of an Italian corporate family internationally known and appreciated for the production and marketing of coffee, coffee related products and accessories under the trademark "ILLY" Capitalizing on the consumer awareness and the image and reputation of the "ILLY" products, Franchisor and its affiliates, as the result of the expenditure of time, skill, effort and money, have developed and own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**," the expression "**the Retail Location**" refers to the Retail Location operated by Franchisee at the Approved Location) that operate under the Proprietary Marks (defined below) in buildings that are designed using and which bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY Products**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY Products and Additional Products will be referred to as "**Products** ")

B WHEREAS, the distinguishing characteristics of the System include, without limitation, a specially-designed building or facility, distinctive interior and exterior design and accessories, Products, procedures for operations, quality and uniformity of products and services offered, procedures for management and inventory control, training and assistance, and marketing and promotional programs, all of which may be changed, improved, and further developed by Franchisor from time to time

C WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks "ILLY CAFFÈ" and "ILLY" and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the "**Proprietary Marks**")

D WHEREAS, Franchisor and its affiliates continue to develop, use, and control the use of the Proprietary Marks to identify for the public the source of products and

services marketed under the Proprietary Marks and under the System, and to represent the System's high standards of quality, appearance, and service

E WHEREAS, Franchisee wishes to enter into this agreement for the purpose of operating a Retail Location under the System, to receive the training, expertise, know-how, and other assistance provided by Franchisor in connection therewith

F WHEREAS, Franchisee understands and acknowledges the importance to Franchisor and its affiliates, of Franchisor's high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised under this Agreement in conformity with Franchisor's standards and specifications

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, agree as follows

1 GRANT

- 1.1 *Rights, Obligations* Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Franchisee the right, and Franchisee accepts the obligation, to (a) operate a Retail Location under the System in the format specified by Franchisor, (b) use the Proprietary Marks and the System, only in connection with the Retail Location, as Franchisor may periodically change or improve the Proprietary Marks and the System, and (c) do these things only at the Approved Location (as defined in **Section 1.2**)
- 1.2 *Approved Location* The street address of the location approved under this Agreement is specified in **Exhibit A** to this Agreement, and is referred to as the "**Approved Location**". If, when this Agreement is signed, Franchisee has not yet found a suitable location for the Retail Location that has been accepted by Franchisor in writing as the Approved Location, Franchisee shall lease, sublease, or acquire a site for the Retail Location, subject to Franchisor's approval, in accordance with the Site Selection Addendum attached as **Exhibit B** (the "**Site Selection Addendum**"). Franchisee shall not relocate the Retail Location without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold approval of the Approved Location under this **Section**. Franchisee acknowledges and agrees that approval of Franchisee's proposed location, under this **Section** or pursuant to the Site Selection Addendum, does not constitute any assurance, representation, or warranty of Franchisor of any kind, that the Approved Location will be profitable or successful
- 1.3 *Territory and Franchisor's Reserved Rights* Except as otherwise provided in this Agreement, during the term of this Agreement, Franchisor shall not establish or operate, nor license any other person to establish or operate, a Retail Location at any location within the territory specified in **Exhibit A** (the "**Territory**"). Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein

(and, in each case, despite their proximity to the Approved Location and/or the Territory, and despite their actual or threatened impact on sales of the Retail Location) do all of the following

- 1 3 1 Own, acquire, establish, and/or operate and license others to establish and operate, Retail Locations under the System at any location outside the Territory,
 - 1 3 2 Own, acquire, establish, and/or operate, and license others to establish and operate, Retail Locations under the Proprietary Marks at Reserved Facilities (as defined below) at any location within or outside the Territory As used in this Agreement, "**Reserved Facilities**" shall mean airports, hotels that are operated as part of, or in connection with, a national or international hotel and lodging chain or brand, department stores, supermarkets and grocery stores that are operated as part of, or in connection with a retail chain or brand, cultural institutions (examples include, but are not limited to, theaters, museums, art centers and educational facilities), and business and industrial complexes and offices at which the food services are managed by service providers with national or international operations,
 - 1 3 3 Own, acquire, establish, and/or operate and license others to establish and operate businesses (a) using the Proprietary Marks (but not the "ILLY CAFFE" mark) and other marks in connection with the operation of such businesses, (b) which businesses may be similar to Retail Locations, and (c) which may be located within or outside the Territory (but this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Territory under the System, unless permitted pursuant to **Section 1 3 2**), and/or
 - 1 3 4 Sell and distribute, directly or indirectly, and/or license others to sell and to distribute, directly or indirectly, any products (including products bearing the Proprietary Marks (but not the "ILLY CAFFE" mark)) from any location to any business or customer within or outside of the Territory, including without limitation through restaurants, cafes, retail kiosks, grocery or convenience stores or other retail outlets, and any other distribution channels (including without limitation, through retail, wholesale, mail order, toll free numbers, or the Internet), provided that this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Territory under (x) the System, and (y) the Proprietary Marks, unless permitted pursuant to **Section 1 3 2**
- 1 4 *Limits on Where Franchisee Can Sell* Franchisee shall offer and sell Products only from the Retail Location, only in accordance with the requirements of this Agreement and the procedures and standards set forth in the Manuals, and only to (a) retail customers for consumption on the Retail Location's premises, (b) retail customers for personal carry-out consumption, (c) delivery to customers located in the Territory, and (d) to catering customers located in the Territory, provided that all such activities shall be conducted only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals and all applicable laws As used in this Agreement, the term "**delivery customers**" means customers that purchase Products for delivery to (and consumption in) their home or office, and

"catering customers" means customers for whom catering services are provided at their homes, offices, and other locations. Franchisee shall not engage in any other type of sale of, or offer to sell, or distribution of Products, including but not limited to, selling, distributing, or otherwise providing, any Products at wholesale, or for resale or distribution by any third party, or through satellite locations, sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media.

2 TERM AND RENEWAL

2.1 *Term* The term of this Agreement will start on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, will expire five (5) years from the Effective Date.

2.2 *Renewal* Franchisee may, at its option, renew this Agreement for one (1) additional term of five (5) years. The grant of an additional term shall be subject to the following conditions, all of which must be met before renewal:

2.2.1 Franchisee shall give Franchisor written notice of Franchisee's election to renew no fewer than six (6) months nor more than twelve (12) months before the end of the initial term,

2.2.2 Franchisee shall remodel and refurbish the Retail Location to comply with Franchisor's then-current standards in effect for new Retail Locations to the extent applicable. Franchisee shall complete all required remodeling and refurbishment within such period as Franchisor may reasonably specify as a condition of the renewal.

2.2.3 Franchisee shall not be in material default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates, and, in Franchisor's reasonable judgment, Franchisee must have substantially complied with all the material terms and conditions of this Agreement, such other agreements, as well as the operating standards that Franchisor has prescribed during the term of this Agreement,

2.2.4 Franchisee must have satisfied all monetary obligations owed by Franchisee to Franchisor and Franchisor's subsidiaries and affiliates, to the System Marketing Fund (defined in **Section 11.2**) and/or the Market Co-op (defined in **Section 11.4**), and to approved suppliers and distributors, and must have timely met those obligations in all material respects throughout the term of this Agreement, excepting only those obligations that are subject to a bona fide dispute, which Franchisee shall use good faith efforts to resolve prior to renewal,

2.2.5 Franchisee shall execute Franchisor's then-current form of franchise agreement, which agreement shall supersede this Agreement in all respects (except with respect to the renewal provisions of the new franchise agreement, which shall not supersede this **Section 2**), and Franchisee acknowledges that the terms, conditions, and provisions of which, and the

obligations of the parties thereto, may differ substantially from the terms, conditions, provisions and obligations in this Agreement, including, without limitation, a higher percentage royalty fee and marketing contribution,

- 2 2 6 Franchisee shall pay,, in lieu of an initial franchise fee, a renewal fee equal to fifty percent (50%) of the then-current initial franchise fee, but not less than Twelve Thousand Five Hundred Dollars (\$12,500),
- 2 2 7 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its current and former subsidiaries and affiliates, and their respective officers, directors, agents, and employees,
- 2 2 8 Franchisee shall confirm (through documentation acceptable to Franchisor) to Franchisor that Franchisee has the right to remain in possession of the premises of the Retail Location for the duration of the renewal term, or shall obtain approval by Franchisor of a new location for the Retail Location for the duration of the renewal term,
- 2 2 9 Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements, and
- 2 2 10 Franchisee shall be current with respect to its obligations to its lessor, suppliers, and any other parties with whom it does business

3 FRANCHISOR'S DUTIES

- 3 1 *Training* Before the date of opening of the Retail Location, Franchisor (directly or through a provider designated by Franchisor) shall provide to Franchisee, and owners or managers of Franchisee (provided that any such person must be effectively employed by Franchisee or under contract with Franchisee for the Retail Location), such training programs as Franchisor may designate, to be conducted at such time(s) and location(s) designated by Franchisor. Franchisor shall also provide such ongoing training as it may periodically deem appropriate. Franchisor shall be responsible for the cost of instruction and materials (except as set forth in **Section 6 3**)
- 3 2 *Standard Layout* Franchisor shall make available to Franchisee a standard layout and plan for the construction of a Retail Location and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs. Franchisee understands and acknowledges that Franchisor has the right to modify the prototype architectural plans and specifications as Franchisor periodically deems appropriate. If Franchisee has entered into the Site Selection Addendum, Franchisor shall also provide the site selection assistance called for in the Site Selection Addendum.
- 3 3 *Opening Assistance* Franchisor shall have the right (but not the obligation) to provide a representative to be present at the opening of the Retail Location. Franchisor will provide such additional on-site pre-opening and opening supervision and marketing assistance as Franchisor deems advisable.

- 3 4 *Manuals* Franchisor shall provide Franchisee with access to Franchisor's confidential operations manuals (the "**Manuals**"), in the manner and as described in **Section 8**
- 3 5 *Marketing Materials* Franchisor shall review and shall have the right to approve or disapprove all marketing and promotional materials that Franchisee proposes to use, pursuant to **Section 11**
- 3 6 *Marketing Funds* If created, Franchisor shall administer the "ILLY" System Marketing Fund and any Regional Marketing Fund, in the manner set forth in **Section 11**
- 3 7 *Opening Marketing Program* Franchisor may, as it deems appropriate, assist Franchisee in developing and conducting the Opening Marketing Program (as described in **Section 11 8**), which program shall be conducted at Franchisee's expense
- 3 8 *Inspection Before Opening* Franchisor shall have the right to inspect the Retail Location before it first opens for business Franchisee shall not open the Retail Location or otherwise start operations without Franchisor's prior written approval
- 3 9 *Periodic Assistance* Franchisor will provide periodic assistance to Franchisee in the marketing, management, and operation of the Retail Location as Franchisor determines at the time(s) and in the manner determined by Franchisor
- 3 10 *Delegation* Franchisee acknowledges and agrees that any designee, employee, or agent of Franchisor, or an independent contractor may perform any duty or obligation imposed on Franchisor by this Agreement, as Franchisor may direct
- 3 11 *Franchisor's Decision-making* In fulfilling its obligations pursuant to this Agreement, and in conducting any activities or exercising any rights pursuant to this Agreement, Franchisor (and its affiliates) shall have the right (a) to take into account, as it sees fit, the effect on, and the interests of, other franchised businesses and systems and in which Franchisor has an interest and on Franchisor's (and its affiliates') own activities, (b) to share market and product research, and Franchisor's proprietary and non-proprietary business information, with other franchised businesses and systems in which Franchisor (or its affiliates) has an interest, or with Franchisor's affiliates, (c) to introduce proprietary items or operational equipment used by the System into other systems in which Franchisor has an interest, and/or (d) to allocate resources and new developments between and among systems, and/or Franchisor's affiliates, as Franchisor sees fit Franchisee understands and agrees that all of Franchisor's obligations under this Agreement are subject to this **Section**, and that nothing in this **Section** shall in any way affect Franchisee's obligations under this Agreement
- 3 12 *Products* Franchisor shall ensure that Franchisor produces, packages, manufactures, sells and distributes are in compliance with all applicable laws, rules, and regulations including, without limitation, as they relate to food quality and health and safety Franchisor shall ensure that these Products bear truthful and accurate labeling that complies with all applicable laws, rules, and regulations

4 FEES, SALES REPORTING

- 4 1 *Initial Franchise Fee* Franchisee shall pay Franchisor an initial franchise fee of Twenty-Five Thousand Dollars (\$25,000) (the "**Initial Franchise Fee**"), which shall be due and payable at the time that this Agreement is signed. Payment of the Initial Franchise Fee shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor's lost or deferred opportunity to franchise others.
- 4 2 *Royalty Fee* For each month during the term of this Agreement, Franchisee shall (a) pay Franchisor a continuing royalty fee in an amount equal to five percent (5%) of the Net Sales of the Retail Location ("**Royalty Fees**"), and (b) report to Franchisor in writing (or electronically) its Net Sales in a form specified by Franchisor (a "**Sales Report**"). As used in this Agreement, the term "**Net Sales**" means all revenue from the sale of all Products, and all other income of every kind and nature related to, derived from, or originating from the Retail Location, including but not limited to (a) revenues from delivery and catering services, and (b) proceeds of any business interruption insurance policies, whether at retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit. Net Sales will also include amounts Franchisee earns from the sale of any online group-bought deals (e.g., Groupon or Living Social) and the sale of any gift cards or gift certificates, calculated using Franchisor's then-current guidelines, which may be based on the redeemed value or sale price of the deals, cards, or certificates. "Net Sales" excludes any customer refunds, discounts, sales taxes, and/or other taxes Franchisee collects from customers and transmits to the appropriate taxing authorities.
- 4 3 *Due Date* All payments required by **Section 4 2** and **Section 11** based on the Net Sales for the preceding month, and the Sales Report required by **Section 4 2** for the Net Sales for the preceding month, shall be paid and submitted so as to be received by Franchisor on or before the fifteenth (15th) day of each month.
- 4 3 1 Franchisee shall deliver to Franchisor any and all reports, statements and/or other information required under **Section 10**, at the time and in the format reasonably requested by Franchisor. Franchisee shall establish an arrangement for electronic funds transfer or deposit of any payments required under this **Section 4**.
- 4 3 2 Franchisee agrees to sign and return to Franchisor Franchisor's current form of Authorization Agreement for ACH Payments (Direct Debits for Royalty, Marketing Fund Contribution, and Other Fees), a copy of which is attached to this Agreement as **Exhibit E**, and Franchisee shall comply with the payment and reporting procedures specified by Franchisor in the Manuals.
- 4 3 3 Franchisee expressly acknowledges and agrees that Franchisee's obligations for the full and timely payment of Royalty Fees and marketing contributions due under **Section 11** (and all other amounts provided for in this Agreement) shall be absolute, unconditional, fully earned, and due upon Franchisee's generation of Net Sales.

- 4.3.4 Franchisee agrees that it shall not, for any reason, delay or withhold the payment of all or any part of those or any other payments due under this Agreement, put the same in escrow or set-off the same against any claims or alleged claims Franchisee may allege against Franchisor, the System Marketing Fund, or others. Franchisee shall not, on grounds of any alleged non-performance by Franchisor or others, withhold payment of any fee (including without limitation Royalty Fees or marketing contributions) nor withhold or delay submission of any reports due under this Agreement (including but not limited to Sales Reports).
- 4.4 *No Subordination* Franchisee shall not subordinate to any other obligation its obligation to pay Franchisor the Royalty Fee and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.
- 4.5 *Late Payment* Any payment or report not actually received by Franchisor (or the appropriate marketing fund) on or before such date shall be deemed overdue. If any payment is overdue, Franchisee shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, but not more than the maximum rate permitted by law (if any). Entitlement to such interest shall be in addition to any other remedies Franchisor may have.
- 4.6 *Purchase of Products* Franchisee will pay Franchisor and its affiliates for any Product and other items purchased from them in accordance with such payment and credit terms as may be periodically established. Any credit terms are contingent on Franchisee and its affiliates being in compliance with this Agreement and all other agreements entered into with Franchisor or its affiliates.
- 4.7 *Other Funds Due* Franchisee shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor that is accompanied by reasonable substantiating material, any monies that Franchisor has paid, or has become obligated to pay, on behalf of Franchisee, by consent or otherwise under this Agreement.

5 RETAIL LOCATION, CONSTRUCTION AND RENOVATION

- 5.1 *Establishing the Retail Location* Franchisee shall at its own expense construct, equip and establish the Retail Location in compliance with this Agreement and have it open and in operation no later than six (6) months after the Effective Date of this Agreement. Time is of the essence. Franchisee acknowledges and agrees that any site selection assistance or approval provided by Franchisor shall not be construed or interpreted as a guarantee of success for the Approved Location (or any other site), nor shall any location recommendation or approval made by Franchisor be deemed a representation that any particular location is available for use as a Retail Location.
- 5.2 *Lease Conditions* If the Retail Location is leased, Franchisee and the landlord must execute the Lease Rider attached to this Agreement as **Exhibit G**. Franchisee must provide Franchisor a copy of the lease and the lease rider along with confirmation that the term of the lease (including renewals) is, at a minimum, the entire term of this Agreement.

- 5.3 *Preparing the Site* Franchisee agrees that, promptly after obtaining possession of the Approved Location, Franchisee shall do all of the following things
- 5.3.1 Employ a qualified, licensed architect or engineer (and if Franchisor requires, an architect or engineer who is reasonably acceptable to Franchisor) to prepare, for Franchisor's approval, preliminary plans and specifications for site improvement and construction of the Retail Location based upon prototype design and image specifications furnished by Franchisor as described in **Section 3.2**. Franchisee understands and acknowledges that every detail of the Retail Location is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the services and products sold by all franchisees, and to protect Franchisor's reputation and goodwill. Franchisor acknowledges and agrees that plans and specifications for Retail Locations may require adjustments from Franchisor's standard requirements, and Franchisor and Franchisee agree to each act reasonably and in good faith to resolve such matters, provided that Franchisor shall have no obligation to accept or approve any adjustment that Franchisor reasonably believes shall detract from the quality standards or image of the System.
 - 5.3.2 Obtain all zoning classifications and clearances which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to the Approved Location. In addition, Franchisee shall obtain all required permits and licenses (such as liquor licenses and building, utility, health and sign permits). After having obtained such approvals, clearances, licenses, and permits, Franchisee shall submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications. Once approved by Franchisor, such final plans shall not thereafter be changed or modified without Franchisor's prior written consent.
 - 5.3.3 Purchase or lease equipment, fixtures, furniture and signs as required under this Agreement (including but not limited to the specifications provided by Franchisor in writing, whether in the Manuals or otherwise).
 - 5.3.4 Otherwise complete development of and have the Retail Location ready to open and commence the conduct of its business in accordance with **Section 6.2**.
- 5.4 *Construction or Renovation* In connection with any construction or renovation and equipping of the Retail Location, Franchisee, at its expense, shall comply, to Franchisor's satisfaction, with all of the following requirements
- 5.4.1 Franchisee shall comply with all federal, state, and local laws, codes and regulations, including, without limitation, the applicable provisions of the Americans with Disabilities Act (the "**ADA**") (and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), regarding the construction, design and operation of the Retail Location. In connection therewith, Franchisee acknowledges and agrees that

- 5 4 1 1 Any standard layout and plans that Franchisor provides to Franchisee, do not meet and are not meant to address the requirements of any federal, state or local law, code or regulation (including without limitation those concerning the ADA and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), nor shall such plans contain the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Retail Location, compliance with all of which shall be Franchisee's responsibility and at Franchisee's expense Franchisee shall, pursuant to **Section 5 3**, adapt, at Franchisee's expense, the standard specifications to the site for Franchisee's Retail Location, subject to Franchisor's approval
- 5 4 1 2 Franchisor's approval of preliminary and final plans, as described in **Section 5 3** shall be limited to conformance with Franchisor's standard image specifications and layout and shall not relate to Franchisee's obligations with respect to any federal, state, and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Retail Location, which subjects shall be Franchisee's sole responsibility
- 5 4 1 3 If Franchisee receives any complaint, claim, or other notice related to the Retail Location alleging a failure to comply with the ADA, Franchisee agrees that it shall provide Franchisor with a copy of such notice within five (5) days after receipt thereof
- 5 4 2 Franchisee shall obtain all permits and certifications required for the lawful construction and operation of the Retail Location and shall, upon Franchisor's written request, certify in writing to Franchisor that all such permits and certifications have been obtained
- 5 4 3 Franchisee shall employ a qualified, licensed general contractor who is reasonably acceptable to Franchisor to construct the Retail Location and to complete all improvements Franchisee shall obtain and maintain in force during the entire period of construction the insurance required under **Section 13**, and Franchisee shall deliver to Franchisor such proof of such insurance as Franchisor shall require Franchisee acknowledges and agrees that Franchisor shall not be liable for the unsatisfactory performance of any contractor retained by Franchisee
- 5 4 4 Franchisee shall complete the construction and/or remodeling, equipment, fixture, furniture and sign installation and decorating of the Retail Location employing a supplier designated or approved by the Franchisor, in full and strict compliance with plans and specifications for the Retail Location that Franchisor has specified or approved in writing (including, without limitation, any exterior design decorations and other signage as Franchisor may require in connection with the opening of the Retail Location), as well as all applicable ordinances, building codes and permit requirements

- 5 4 5 Before opening for business, Franchisee shall comply with all pre-opening requirements set forth in this Agreement, the Manuals, and/or otherwise specified by Franchisor in writing
- 5 4 6 Before opening the Retail Location, and after any renovation, Franchisee shall execute and deliver to Franchisor an ADA Certification in the form attached to this Agreement as **Exhibit F**, to certify to Franchisor that the Retail Location and any proposed renovations comply with the ADA
- 5 5 *Relocation* Franchisee agrees not to relocate the Retail Location without Franchisor's prior written consent. Franchisor shall have the right to grant or to withhold its approval as to any proposed relocation and, if Franchisor's approval is granted, Franchisee understands that Franchisor's approval will not be deemed to be a guarantee, representation, or assurance by Franchisor that the Retail Location will be profitable or successful

6 FRANCHISEE'S DUTIES

- 6 1 *Importance of Following Standards* Franchisee understands and acknowledges that every detail of the Retail Location is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the Products, and to protect Franchisor's reputation and goodwill
- 6 2 *Opening* In connection with the opening of the Retail Location
 - 6 2 1 Franchisee shall conduct, at Franchisee's expense, such pre-opening and opening promotional and marketing activities as Franchisor may require, as set forth in **Section 11**
 - 6 2 2 Franchisee shall give Franchisor prior written notice at least fifteen (15) days before the date on which Franchisee proposes to first open the Retail Location for business. Franchisee shall not open the Retail Location for business prior to obtaining Franchisor's written authorization and Franchisor shall have the right to have a representative of Franchisor present during the opening of the Retail Location
 - 6 2 3 Franchisee shall not open the Retail Location until Franchisor has determined that all construction has been substantially completed, and that the construction conforms to Franchisor's standards including, but not limited, to materials, quality of work, signage, decor, paint, and equipment, and Franchisor has given Franchisee written approval to open, which approval shall not be unreasonably withheld
 - 6 2 4 Franchisee shall not open the Retail Location until the Highly Trained Personnel (as defined in **Section 6 3 1**) have successfully completed all training required by Franchisor, and Franchisee has hired and trained to Franchisor's standards a sufficient number of employees as reasonably determined by Franchisee to service the anticipated level of the Retail Location's customers

- 6 2 5 In addition, Franchisee shall not open the Retail Location until the Initial Franchise Fee and all other amounts due to Franchisor under this Agreement or any other related agreements have been paid
- 6 2 6 Within thirty (30) days after the Retail Location first opens for business, Franchisee must give Franchisor a full written breakdown of all costs associated with the development and construction of the Retail Location, which must be in such form as Franchisor may reasonably find acceptable or as it may otherwise reasonably require
- 6 3 *Training* Before the opening of the Retail Location, Franchisee (or, if Franchisee is a corporation, partnership, limited liability company, or limited liability partnership, one of Franchisee's owners who is designated to supervise the operation of the Retail Location) or such number of managers, who must be reasonably acceptable to Franchisor, as necessary to manage the operations of the Retail Location to Franchisor's standards (the "**Key Personnel**") shall attend and successfully complete, to Franchisor's satisfaction, the training program offered by Franchisor, pursuant to **Section 3 1**. Once open, the Retail Location shall at all times be operated under the active management of either Franchisee or Key Personnel who have successfully completed (to Franchisor's satisfaction) Franchisor's training program. If any required attendee does not satisfactorily complete such training, Franchisor may require that a replacement person attend and successfully complete, to Franchisor's satisfaction, the initial training program
- 6 3 1 If Franchisee and/or the Key Personnel who have successfully completed Franchisor's training program (collectively, the "**Highly Trained Personnel**") cease active management or employment at the Retail Location, Franchisee shall enroll a qualified replacement (who shall be reasonably acceptable to Franchisor) in Franchisor's training program, for which Franchisor may charge a fee, by no later than thirty (30) days after the end of the former person's full-time employment and/or management responsibilities. The replacement shall attend and successfully complete the basic management training program, to Franchisor's reasonable satisfaction, as soon as it is practical to do so
- 6 3 2 The Highly Trained Personnel may also be required to attend such refresher courses, seminars, and other additional training programs as Franchisor may reasonably specify from time to time and for which Franchisor may require Franchisee to pay fees
- 6 3 3 If Franchisee requests that Franchisor provide additional on-site training, and Franchisor is able to do so, then Franchisee agrees that it shall pay Franchisor's then-current per diem charges and out-of-pocket expenses, which shall be as set forth in the Manuals or otherwise in writing
- 6 3 4 The cost of all training (instruction and required materials and instructors, and Franchisor's instructors' salaries, travel, and entertainment expenses) shall be borne by Franchisor, except as specified above in this **Section 6 3**. All other expenses incurred in connection with training, including without limitation the costs relating to transportation, lodging, meals, wages, and

worker's compensation insurance for Franchisee and its employees, shall be borne by Franchisee

- 6 4 *Use of the Premises* Franchisee shall use the Retail Location premises solely for the operation of the Retail Location, shall keep the Retail Location open and in normal operation for such hours and days as Franchisor may periodically specify in the Manuals or as Franchisor may otherwise approve in writing, and shall refrain from using or permitting the use of the Retail Location premises for any other purpose or activity at any time. As used in this **Section**, the term "**premises**" shall include the grounds surrounding the Retail Location
- 6 5 *Staffing* Franchisee agrees to maintain a competent, conscientious, courteous, trained staff in numbers sufficient to promptly service customers and to maintain and promote the image and atmosphere required by Franchisor for the System as set forth in the Manuals, including at least one (1) manager on duty at all times and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress and appearance code as Franchisor may prescribe
- 6 6 *Health Standards* Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Retail Location. Franchisee shall furnish to Franchisor, within five (5) days after receipt thereof, a copy of all inspection reports, warnings, citations, certificates, and/or ratings resulting from inspections conducted by any federal, state or local agency with jurisdiction over the Retail Location
- 6 7 *Retail Location Condition and Maintenance* Franchisee shall at all times maintain the Retail Location in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and decor as Franchisor may reasonably direct
- 6 8 *Conformity to Standards* To ensure that the highest degree of quality and service is maintained, Franchisee shall operate the Retail Location in strict conformity with such methods, standards, and specifications as Franchisor may periodically prescribe in the Manuals or otherwise in writing. Franchisee agrees
- 6 8 1 To purchase and maintain for sale and/or provide in the Retail Location, at all times, the ILLY Products and such Additional Products as Franchisor periodically designates as mandatory Product offerings. Franchisee shall comply with Franchisor's written standards and specifications for mandatory Products that may include, without limitation, purchasing and maintaining sufficient inventory of Products in accordance with Franchisor's standards and specifications and other requirements (such as for quality, brand, type, production specifications, freshness, and health and safety standards). Franchisee shall replace any or all inventory to reflect the current required Product offerings for the System specified by Franchisor, which offerings Franchisor may change on a periodic basis

- 6 8 2 To sell or offer for sale only such Products as have been expressly approved for sale in writing by Franchisor, to sell or offer for sale all such Products, utilizing the standards and techniques, as specified by Franchisor, to refrain from any deviation from Franchisor's standards and specifications, without Franchisor's prior written consent, and to discontinue selling and offering for sale any Products that Franchisor shall have the right to disapprove, in writing, at any time. If Franchisee deviates or proposes to deviate from Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor.
- 6 8 3 To maintain in sufficient supply and to use at all times only such ingredients, supplies and materials as have been expressly approved for sale in writing by Franchisor and as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any non-conforming items without Franchisor's specific prior written consent.
- 6 8 4 To permit Franchisor or its agents, at any reasonable time, to remove samples of Products, without payment, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether the samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.
- 6 8 5 To purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor specifies, and to refrain from installing or permitting to be installed on or about the Retail Location premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.
- 6 8 6 To refrain from installing or permitting to be installed any vending machine, game or coin operated device, unless specifically approved in writing, in advance, by Franchisor.
- 6 8 7 To fully and faithfully comply with all applicable governing authorities, laws and regulations, which by this reference are made part of this Agreement as if incorporated in this Agreement. Franchisee shall immediately close the Retail Location and terminate operations at the Retail Location if (a) any Products sold at the Retail Location shows that it was adulterated or deviates from the standards Franchisor sets for Products, or (b) Franchisee fails to maintain the Products, Retail Location premises, equipment, personnel, or operation of the Retail Location in accordance with any applicable law or regulations. In the event of such closing, Franchisee shall immediately notify Franchisor in writing and Franchisee shall destroy all contaminated or adulterated products and eliminate the source thereof, and remedy any unsanitary, unsafe, or other condition or other violation of the applicable law or regulation. Franchisee shall not reopen the Retail Location until after Franchisor has given Franchisee its written authorization.

- 6 9 *Purchases and Approved Suppliers* Franchisee shall purchase all Products, supplies, materials, and other products, and equipment, fixtures, furnishings, signs, decor, supplies, and services required for the establishment and operation of the Retail Location solely from suppliers that Franchisor has designated or approved in writing. In determining whether it will approve any particular supplier, Franchisor shall consider various factors, including but not limited to whether the supplier can demonstrate, to Franchisor's continuing reasonable satisfaction, the ability to meet Franchisor's then-current standards and specifications for such items, who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably, whose approval would enable the System, in Franchisor's sole opinion, to take advantage of marketplace efficiencies, and who have been approved in writing by Franchisor prior to any purchases by Franchisee from any such supplier, and have not thereafter been disapproved. For the purposes of this Agreement, the term "**supplier**" shall include, but not be limited to, manufacturers, distributors, resellers, and other vendors. Franchisee recognizes that Franchisor shall have the right to appoint only one manufacturer, distributor, reseller, and/or other vendor for any particular item. Franchisee acknowledges that these requirements are in addition to, and in no way limit the terms of, **Section 6 10** regarding ILLY Products.
- 6 9 1 Franchisee shall comply with Franchisor's specifications for ordering and purchasing Products, which may include without limitation, placement of some or all purchase orders through Franchisor or designated vendors, billing and payment activities to be conducted directly between Franchisee and Franchisor and/or designated vendors, specifications as to Product delivery methods.
- 6 9 2 Franchisor, its affiliates, and/or designees may establish commissaries and/or distribution facilities and arrangements, and Franchisor may designate these as approved or required manufacturers, suppliers or distributors.
- 6 9 3 If Franchisee wishes to purchase any Products or any items (except for ILLY Products, as described in **Section 6 10**) from an unapproved supplier, Franchisee shall first submit to Franchisor a written request for such approval. Franchisee shall not purchase from any supplier until, and unless, such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor may also require that the supplier comply with such other requirements as Franchisor may deem appropriate, including for example, payment of reasonable fees for services that Franchisor may render to such suppliers, such as continuing inspection fees and administrative costs, and fees for design and supervision services, or other payment to Franchisor by the supplier on account of their dealings with Franchisee or other franchisees, with all such fees and payments to be for use by Franchisor without restriction (unless otherwise instructed by the supplier). Franchisor reserves the right, at its option, to periodically re-inspect the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria.

- 6 9 4 Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier, nor to require Franchisor to make available to prospective suppliers, standards and specifications for formulas, which Franchisor shall have the right to deem confidential
- 6 9 5 Notwithstanding anything to the contrary contained in this Agreement, Franchisee acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some Retail Locations with some or all of the products and/or services that Franchisor requires for use and/or sale in the development and/or operation of Retail Locations. In this event, Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use for some or all products and services, and/or refuse any of Franchisee's requests if Franchisor believes that this action is in the best interests of the System or the network of Retail Locations. Franchisor shall have unlimited discretion to approve or disapprove of the suppliers who may be permitted to sell products and services to Franchisee
- 6 9 6 Franchisee acknowledges and agrees that Franchisor and its affiliates shall have the right to collect and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments or benefits (collectively, "**Allowances**") offered by manufacturers, suppliers and distributors to Franchisee or to Franchisor or its affiliates based upon Franchisee's purchases of products and services from manufacturers, suppliers and distributors. These Allowances may be based on System-wide purchases of food, beverages, paper goods and other items. Franchisee assigns to Franchisor or its designee all of Franchisee's right, title and interest in and to any and all such Allowances and authorizes Franchisor or its designee to collect and retain any or all such Allowances without restriction (unless otherwise instructed by the supplier)
- 6 10 *ILLY Products* Franchisee acknowledges and agrees that the ILLY coffee beans, coffee and other ILLY Products are designed and manufactured using recipes, formulae, standards and specifications of Franchisor and/or its affiliates, and are proprietary to Franchisor and/or its affiliates. In order to maintain the high standards of quality and uniformity associated with ILLY Products, Franchisee agrees to purchase ILLY Product items only from Franchisor, or its affiliates or other designee(s) and to pay them in accordance with the terms and conditions agreed in writing between the parties. In connection with the handling, transport and delivery of any ILLY Products purchased from or through Franchisor, its affiliates or designee(s), Franchisee acknowledges that any action or inaction by any third party (e g , an independent carrier) in connection with the handling, transport and delivery of the ILLY Products shall not be attributable to, nor constitute negligence of, Franchisor
- 6 11 *Use of the Marks* Franchisee shall require all marketing and promotional materials, signs, decorations, paper goods (including without limitation disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in the Retail Location), any and all replacement trade dress products, and other items that may be designated by Franchisor to bear Franchisor's then-current Proprietary

Marks, and logos in the form, color, location, and manner then-prescribed by Franchisor

- 6 12 *Inspections* Franchisee grants Franchisor and its agents the right to enter upon the Retail Location premises at any reasonable time for the purpose of conducting inspections, for among other purposes, preserving validity of the Proprietary Marks, and verifying Franchisee's compliance with this Agreement and the policies and procedures outlined in the Manuals. Franchisee shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request, and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. If Franchisee fails or receives an unsatisfactory score on any inspection performed by or on behalf of Franchisor, Franchisor may charge Franchisee all costs and expenses relating to any follow up inspection to confirm that Franchisee has corrected all deficiencies identified in the initial inspection.
- 6 13 *Entity Franchisee* If Franchisee is an entity, the following provisions apply
- 6 13 1 *Corporate Franchisee* If Franchisee is a corporation, it shall (a) furnish Franchisor with a copy of its articles of formation and bylaws, as well as such other documents as Franchisor may reasonably request, and any amendments thereto, (b) ensure that the operating documents for the entity confine its activities to exclusively operating the Retail Location or other locations franchised by Franchisor, (c) maintain stop transfer instructions on its records against the transfer of any equity securities and shall only issue securities upon the face of which a legend, in a form satisfactory to Franchisor, appears that references the transfer restrictions imposed by this Agreement, and (d) maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Franchisee and furnish the list to Franchisor upon request.
- 6 13 2 *Partnership/LLP Franchisee* If Franchisee is a partnership or limited liability partnership, it shall (a) furnish Franchisor with its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto, and (b) prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee.
- 6 13 3 *Limited Liability Company Franchisee* If a Franchisee is a limited liability company, it shall (a) furnish Franchisor with a copy of its articles of organization and operating agreement, as well as such other documents as Franchisor may reasonably request, and any amendments thereto, (b) ensure that the operating documents for the entity confine its activities to exclusively operating the Retail Location or other locations franchised by Franchisor, (c) prepare and furnish to Franchisor, upon request, a current list of all members and managers in Franchisee, and (d) if the entity is a certificated limited liability company, maintain stop transfer instructions on its records against the transfer of equity securities and shall only issue securities upon the face of which bear a legend, in a form satisfactory to Franchisor, that references the transfer restrictions imposed by this Agreement.

- 6 14 *Guarantees* Each present and future (a) shareholder of a corporate Franchisee, (b) member of a limited liability company Franchisee, (c) partner of a partnership Franchisee, or (d) partner of a limited liability partnership Franchisee, shall be designated a "**Principal**" (as defined in **Section 14 2**) under this Agreement and shall jointly and severally guarantee Franchisee's performance of each and every provision of this Agreement by executing the Guarantee in the form attached to this Agreement as **Exhibit C**
- 6 15 *Uniforms* To promote a uniform System image, Franchisee shall require all of its Retail Location personnel to dress, during business hours, in the attire designated by Franchisor Franchisee shall purchase such attire only from approved suppliers
- 6 16 *Incentive/Convenience Programs* Franchisee shall offer for sale, and will honor for purchases by customers, any incentive or convenience programs that Franchisor may periodically institute, and Franchisee shall do so in compliance with Franchisor's standards and procedures for such programs
- 6 17 *Prices* Franchisor may set maximum and minimum prices on such menu items, products, and services If Franchisor imposes a maximum price on a particular menu item, product, or service, Franchisee may charge any price for such menu item, product, or service, up to and including the maximum price set by Franchisor If Franchisor imposes a minimum price on a particular menu item, product, or service, Franchisee may charge any price for such menu item, product, or service, down to and including the minimum price set by Franchisor Franchisor's rights under this **Section** are subject to any applicable law
- 6 18 *Gift Cards, Loyalty, and Incentive Programs* Franchisee must participate in Franchisor's gift card, loyalty, and incentive programs Franchisee agrees to offer for sale, and to honor for purchase by customers, all gift cards and other loyalty, incentive, and/or convenience programs that Franchisor may periodically institute (including but not limited to loyalty programs that Franchisor or a third party vendor operate, as well as mobile payment applications), and Franchisee agrees to do all of those things in compliance with Franchisor's standards and procedures for such programs For this purpose, Franchisee must purchase the software, hardware, and other items needed to sell and process gift cards, and to contract with the supplier of gift cards and gift card processing services, as Franchisor may specify in writing in the Manuals or otherwise Franchisee must also pay such monthly and per-swipe transaction fees as may be required by the vendors of the gift card system Franchisee agrees not to sell, issue, or redeem coupons, gift certificates and gift cards other than gift cards Franchisor approves in writing
- 6 19 *Modifications to the System* Franchisee recognizes and agrees that Franchisor may periodically change or modify the System and that Franchisee will accept and use for the purpose of this Agreement any such change in the System, including new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment or new techniques, as if they were part of this Agreement at the time this Agreement was executed Franchisee will make such expenditures and such changes or modifications as Franchisor may reasonably require pursuant to this **Section** and to **Section 7**

7 PROPRIETARY MARKS

- 7.1 *Franchisor's Representations* Franchisor represents with respect to the Proprietary Marks that
- 7.1.1 Franchisor (and/or an affiliate of Franchisor) is the owner of all right, title, and interest in and to the Proprietary Marks
 - 7.1.2 Franchisor has the right to use and to license to Franchisee the right to use, and license others to use, the Proprietary Marks in the manner contemplated by this Agreement
- 7.2 *Franchisee's Agreement* With respect to Franchisee's use of the Proprietary Marks, Franchisee agrees that
- 7.2.1 Franchisee shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor
 - 7.2.2 Franchisee shall use the Proprietary Marks only for the operation of the Retail Location and only at the location authorized under this Agreement, or in Franchisor-approved marketing for the business conducted at or from that location
 - 7.2.3 Unless Franchisor otherwise directs Franchisee, in writing, to do so, Franchisee shall operate and advertise the Retail Location only under the name "ILLY CAFFE" without prefix or suffix
 - 7.2.4 During the term of this Agreement and any renewal of this Agreement, Franchisee shall identify itself (in a manner reasonably acceptable to Franchisor) as the owner of the Retail Location in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Retail Location as Franchisor may designate in writing
 - 7.2.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of the rights of Franchisor
 - 7.2.6 Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor
 - 7.2.7 Franchisee shall not use the Proprietary Marks, or names that might be confused with the Proprietary Marks, as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium
 - 7.2.8 Franchisee shall execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability

- 7 2 9 Franchisee shall not directly or indirectly engage in any activities that would be detrimental to or interfere with the operation, reputation, or goodwill of the Retail Location, Franchisor or the System. Franchisee acknowledges and agrees that such activities include, without limitation, making, posting, and/or transmitting disparaging comments about the Proprietary Marks, the Retail Location, Franchisor, its affiliates, its other franchisees, and/or the System, in an advertisement, letter, e-mail, Internet chat room, teleconference, website, social or professional networking site, or any other such medium. However, nothing in this **Section** will preclude Franchisee from honestly answering questions posed by prospective franchisees seeking information about the Retail Location, Franchisor, or the System.
- 7 2 10 With respect to litigation involving the Proprietary Marks, the parties agree that
- 7 2 10 1 Franchisee shall promptly notify Franchisor of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to Franchisor's ownership of, or Franchisee's right to use, the Proprietary Marks licensed under this Agreement. Franchisee acknowledges that Franchisor shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. Franchisor shall also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.
- 7 2 10 2 If Franchisee has used the Proprietary Marks in accordance with this Agreement, Franchisor shall defend Franchisee at Franchisor's expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of Franchisee's use thereof. If Franchisee has not used the Proprietary Marks in accordance with this Agreement, Franchisor will defend Franchisee, at Franchisee's expense, against such third party claims, suits, or demands. Franchisee shall promptly notify Franchisor of any suspected unauthorized use of, or any challenge to the validity or ownership of the Proprietary Marks, or its right to use and to license others to use, or Franchisee's right to use, the Proprietary Marks licensed under this Agreement.
- 7 2 10 3 If Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee shall execute any and all documents and do such acts and things as, in the opinion of counsel for Franchisor, are necessary to carry out such defense or prosecution, including becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket litigation costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To

the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisee shall reimburse Franchisor for the cost of such litigation (or, upon Franchisor's written request, pay Franchisor's legal fees directly), including attorneys' fees, as well as the cost of any judgment or settlement

- 7.3 *Franchisee's Acknowledgements* Franchisee expressly understands and acknowledges that
- 7.3.1 Franchisor (or its affiliate) is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them
 - 7.3.2 The Proprietary Marks are valid and serve to identify the System and those who are authorized to operate under the System
 - 7.3.3 Neither Franchisee nor any Principal or other person acting on Franchisee's behalf shall directly or indirectly contest the validity of Franchisor's ownership of the Proprietary Marks, nor shall Franchisee, directly or indirectly, seek to register the Proprietary Marks with any government agency, except with Franchisor's express prior written consent
 - 7.3.4 Franchisee's use of the Proprietary Marks does not give Franchisee any ownership interest or other interest in or to the Proprietary Marks, except the license granted by this Agreement
 - 7.3.5 Any and all goodwill arising from Franchisee's use of the Proprietary Marks shall inure solely and exclusively to the benefit of Franchisor, and upon expiration or termination of this Agreement and the license herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the System or the Proprietary Marks
 - 7.3.6 The right and license of the Proprietary Marks granted under this Agreement to Franchisee is non-exclusive, and Franchisor thus has and retains the rights, among others (a) to use the Proprietary Marks itself in connection with selling Products and services, (b) to grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees, and (c) to develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Franchisee
- 7.4 *Change to Marks* Franchisor reserves the right to substitute different Proprietary Marks for use in identifying the System and the businesses operating under the System if the current Proprietary Marks no longer can be used, or if Franchisor, exercising its right to do so, determines that substitution of different Proprietary Marks will be beneficial to the System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement

8 CONFIDENTIAL OPERATING MANUALS

- 8.1 *Franchisee to Abide by Manuals* In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct its business in accordance with the Manuals, which Franchisee shall receive access to from Franchisor for the term of this Agreement for Franchisee's use only in connection with the Retail Location during the term of this Agreement
- 8.2 *Format of the Manuals* Franchisor shall have the right to provide the Manuals in any format it determines is appropriate, including without limitation paper format or by making the Manuals available to Franchisee in electronic form (such as through an internet website) provided that all Manuals shall be in English. If Franchisor elects to provide the Manuals electronically, Franchisee shall immediately, at Franchisor's option, destroy or return to Franchisor any and all copies of the Manuals
- 8.3 *Manuals as Franchisor's Property* The Manuals shall at all times remain the sole property of Franchisor and shall promptly be returned upon the expiration or termination of this Agreement
- 8.4 *The Manuals are Proprietary and Confidential* The Manuals contain proprietary information of Franchisor and Franchisee shall at all times both during the term of this Agreement and subsequent to the expiration and/or termination of this Agreement treat the Manuals, any other manuals created for or approved for use in the operation of the Retail Location, and the information contained therein, as confidential, and shall use best efforts to maintain such information as secret and confidential. Franchisee shall not make any unauthorized use or disclosure of any portion of the Manuals. At all times that the Manuals are not in use by authorized personnel, Franchisee shall maintain the Manuals in a locked receptacle at the premises of the Retail Location (or password protected if provided electronically), and shall only grant authorized personnel, as defined in the Manuals, access to the key or lock combination of such receptacle (or the password). Franchisee shall not at any time copy, duplicate, record, or otherwise reproduce (other than printing such materials that are provided electronically) the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person. Access to any electronic version of the Manuals shall also be subject to Franchisor's reasonable requirements with respect to security and other matters, as described in **Section 12**
- 8.5 *Which Copy of the Manuals Controls* Franchisee shall at all times maintain the Manuals at the Retail Location and ensure that the Manuals are kept current and up to date, and, in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's home office shall be controlling
- 8.6 *Revisions to the Manuals* Franchisor may periodically revise the contents of the Manuals, and Franchisee expressly agrees to make corresponding revisions to its copy of the Manuals and to comply with each new or changed standard

9 CONFIDENTIAL INFORMATION

- 9 1 *Confidentiality* Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the Retail Location that may be communicated to Franchisee or of which Franchisee may be apprised by virtue of Franchisee's operation under the terms of this Agreement. Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to operate the Retail Location. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention before disclosure thereof by Franchisor, or which, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others, or which Franchisee is legally compelled to disclose. Any employee who may have access to any confidential information regarding the Retail Location shall execute a covenant that s/he will maintain the confidentiality of information they receive in connection with their association with Franchisee. Such covenants shall be on a form provided by Franchisor, currently in the form attached as **Exhibit H**, which form shall, among other things, designate Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.
- 9 2 *Consequences of Breach* Franchisee acknowledges that any failure to comply with the requirements of this **Section 9** will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this **Section 9**.
- 9 3 *Franchisee-Developed Concepts* Franchisee agrees to disclose to Franchisor all ideas, concepts, methods, techniques and products conceived or developed by Franchisee, its affiliates, owners or employees during the term of this Agreement relating to the development and/or operation of the Retail Location. Franchisee hereby grants to Franchisor and agrees to procure from its affiliates, owners or employees a perpetual, non-exclusive, and worldwide right to use any such ideas, concepts, methods, techniques and products in all food and beverage service businesses operated by Franchisor or its affiliates, franchisees and designees. Franchisor shall have no obligation to make any payments to Franchisee with respect to any such ideas, concepts, methods, techniques or products. Franchisee agrees that it will not use or allow any other person or entity to use any such concept, method, technique or product without obtaining Franchisor's prior written approval.

10 ACCOUNTING AND RECORDS

10 1 *Accounting Records*

- 10 1 1 With respect to the operation and financial condition of the Retail Location, Franchisee shall adopt, until otherwise specified by Franchisor, a fiscal year a fiscal year that coincides with Franchisor's then-current fiscal year (which is

currently a calendar year), as specified by Franchisor in the Manuals or otherwise in writing

- 10.1.2 Franchisee shall maintain during the term of this Agreement, and, for not less than five (5) years following the termination, expiration, transfer, or non-renewal of this Agreement, full, complete, and accurate books, records, and accounts prepared in accordance with generally accepted accounting principles and in the form and manner periodically prescribed by Franchisor in the Manuals or otherwise in writing, including but not limited to (a) daily cash reports, (b) cash receipts journal, point of sale system reports, and general ledger, (c) cash disbursements and weekly payroll journal and schedule, (d) monthly bank statements, daily deposit slips and cancelled checks, (e) all tax returns, (f) supplier's invoices (paid and unpaid), (g) dated daily and weekly cash register journals and point of sale system reports, (h) semi-annual fiscal period balance sheets and fiscal period profit and loss statements, (i) operational schedules and weekly inventory records, (j) records of promotion, coupon and discount redemption, (k) records of all other sales not evidenced by the cash receipts (such as wholesale and catering sales), and (l) such other records as Franchisor may periodically request. Franchisor may require Franchisee to use a standard chart of accounts for financial reporting provided to Franchisor.
- 10.1.3 Franchisor has the right to specify a common chart of accounts in the Manuals, and, if Franchisor does so, Franchisee agrees to use that chart of accounts in accounting for all fiscal transactions of the Retail Location and preparing and submitting Franchisee's financial statements to Franchisor.
- 10.2 *Financial Statements* In addition to the Sales Reports required pursuant to **Section 4.2**, Franchisee shall, at its expense, provide to Franchisor, in a format specified by Franchisor, the following:
- 10.2.1 a complete annual financial statement (prepared according to generally accepted accounting principles, that includes a fiscal year-end balance sheet, an income statement of the Retail Location for such fiscal year reflecting all year-end adjustments, and a statement of changes in cash flow of Franchisee), on a review basis, prepared by an independent certified public accountant satisfactory to Franchisor, within one hundred twenty (120) days after the end of each fiscal year of the Retail Location during the term hereof, showing the results of operations of the Retail Location during the most recently completed fiscal year.
- 10.2.2 In addition, if Franchisee (and/or any affiliate of Franchisee) operates two (2) or more Retail Locations, pursuant to separate franchise agreements, then at its expense, Franchisee shall also furnish to Franchisor, within ninety (90) days after the end of each fiscal year of the Retail Location during the term hereof, an Administrative P&L. The term "**Administrative P&L**" is understood to mean a profit and loss statement, and such additional financial information in such detail as Franchisor may reasonably require, relating to the expenses Franchisee (and/or its affiliates) incurred with respect to the management of its operations (including without limitation Retail Location management) during said fiscal year, and such Administrative P&L shall be

prepared on a review basis by an independent certified public accountant satisfactory to Franchisor

- 10.3 *Additional Information* Franchisee shall also submit to Franchisor, for review or auditing, such other forms, reports, records, information, and data as and when Franchisor may reasonably designate, in the form and format, and at the times and places reasonably required by Franchisor, upon request and as periodically specified in the Manuals or otherwise in writing, including, without limitation, in electronic format, and/or restated in accordance with Franchisor's financial reporting periods, consistent with Franchisor's then current financial reporting periods and accounting practices and standards. Franchisee shall submit any records required by Franchisor so that Franchisor can comply with any reporting obligations imposed on Franchisor by applicable tax authorities. The reporting requirements of this **Section** shall be in addition to, and not in lieu of, the electronic reporting required under **Section 12**.
- 10.4 *Franchisor's Right to Inspect Books and Records* Franchisor or its designated agents shall have the right at all reasonable times to examine, copy, and/or personally review or audit, at Franchisor's expense, all books, records, and sales and income tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month, but not more than the maximum rate permitted by law (if any). If an inspection is necessitated because Franchisee fails to timely provide Sales Reports or if an inspection discloses an understatement in any report by Franchisee of three percent (3%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). These remedies shall be in addition to any other remedies Franchisor may have.
- 10.5 *PCI Compliance and Credit Cards* Franchisee agrees to comply with all of Franchisor's policies regarding acceptance of payment by credit and/or debit cards, including for example minimum purchase requirements for a customer's use of a credit card (Franchisor may set these requirements in the Manuals). Franchisee agrees to comply with Franchisor's requirements concerning data collection and protection, as specified in **Section 12**. Franchisee agrees to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org), or any successor organization or standards that Franchisor may reasonably specify. Among other things, Franchisor agrees to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

11 **MARKETING**

- 11.1 *Franchisee's Advertising Obligations* Recognizing the value of marketing and promotion, and the importance of the standardization of marketing and promotion

programs to the furtherance of the goodwill and public image of the System, Franchisee and Franchisor agree as follows

- 11 1 1 Franchisor reserves the right to require that Franchisee, during each month (except for expenditures on local advertising and promotion, which shall be measured on an annual basis), spend and/or contribute on advertising and promotion amounts, which, in the aggregate, are equal up to three percent (3%) of Franchisee's Net Sales during the preceding month to advertise and to promote the Retail Location (together, the "**Advertising Obligations**"), provided, however, that the Advertising Obligations may exceed such amount under the circumstances set forth in **Section 11 1 3**. The Advertising Obligations shall be in the form of the following, and in such proportions as may be periodically designated by Franchisor in writing (a) contributions paid to the System Marketing Fund, pursuant to **Section 11 2**, (b) contributions paid to any Regional Marketing Fund, as may be established pursuant to **Section 11 3**, or a Market Co-op, as may be established pursuant to **Section 11 4**, and/or (c) expenditures by Franchisee on "local advertising and promotion" pursuant to **Section 11 5**
- 11 1 2 In addition to the Advertising Obligations, Franchisee shall undertake and complete the Opening Advertising Program, as provided in **Section 11 8**
- 11 1 3 Franchisee's aggregate Advertising Obligations may exceed the maximum percentage specified in **Section 11 1 1** of Franchisee's Net Sales if the members of a Market Coop, of which Franchisee is a member, approve (as described in **Section 11 4 4** below) required contributions to the Market Coop that, when aggregated with Franchisee's other requirements under this **Section 11**, would cause Franchisee's Advertising Obligations to exceed the maximum percentage specified above in **Section 11 1 1** of Franchisee's Net Sales
- 11 2 *System Marketing Fund* Franchisor shall have the right at any time, in its sole discretion, to establish a fund for system-wide advertising and promotion of the System (the "**System Marketing Fund**") During the existence of the System Marketing Fund, Franchisee shall contribute to the System Marketing Fund in the manner specified in **Section 4 3**, such amounts as Franchisor may specify in accordance with **Section 11 1**. The System Marketing Fund shall be maintained and administered by Franchisor as follows
 - 11 2 1 Franchisor shall direct all marketing programs, with sole discretion over the concepts, materials, and media used in such programs and the placement and allocation thereof Franchisee acknowledges that the System Marketing Fund is intended to maximize general public recognition of the System and that Franchisor is not obligated, in administering the System Marketing Fund, to make expenditures for Franchisee that are equivalent or proportionate to Franchisee's contribution, or to ensure that any particular Franchisee benefits directly or pro rata from expenditures by the System Marketing Fund
 - 11 2 2 The System Marketing Fund, all contributions to that fund, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, creating, conducting, and preparing marketing,

advertising, public relations, and/or promotional programs and materials, and any other activities, including socially responsible activities, which Franchisor believes will enhance the image of the System, including, among other things, the costs of preparing and conducting media marketing campaigns, direct mail advertising, marketing surveys and other public relations activities, employing advertising and/or public relations agencies to assist therein, sponsorship of organizations and events, purchasing promotional items, conducting and administering in store promotions, and, providing promotional and other marketing materials and services to the Retail Locations operating under the System

- 11 2 3 Franchisee shall contribute to the System Marketing Fund by separate payment made payable (or as otherwise directed for payment) to Franchisor. All sums paid by Franchisee to the System Marketing Fund shall be accounted for separately and shall not be used to defray any of the expenses of Franchisor, except for such reasonable costs, salaries and overhead, if any, as Franchisor may incur in activities reasonably related to the direction and implementation of the System Marketing Fund and marketing programs for operators and the System, including costs of personnel for creating and implementing marketing, advertising, and promotional programs. The System Marketing Fund and any earnings from it shall not otherwise inure to the benefit of Franchisor. Franchisor shall maintain separate bookkeeping accounts for the System Marketing Fund.
- 11 2 4 Franchisor, upon request, shall provide Franchisee with an annual unaudited accounting of System Marketing Fund receipts and disbursements.
- 11 2 5 Franchisor reserves the right, in its sole discretion, to discontinue the System Marketing Fund upon written notice to Franchisee.
- 11 2 6 Franchisor may, but is not required to, periodically make available to Franchisee, marketing plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point of purchase materials, special promotions, direct mail materials, and similar marketing and promotional materials produced from contributions to the System Marketing Fund. Franchisee acknowledges and agrees that it shall be reasonable for Franchisor to not provide any such materials to Franchisee during any period in which Franchisee is not in full compliance with its obligations to contribute to the System Marketing Fund. Additionally, if monies of the System Marketing Fund are used to produce point of sale materials, or other samples or other promotional materials and items, Franchisor may, on the behalf of the System Marketing Fund, sell such items to franchisees in the System at a reasonable price, and any proceeds from the sale of such items or materials shall be contributed to the System Marketing Fund. The System Marketing Fund may also be used to provide contributions to one or more Market Co-ops and/or on local advertising to be spent in local markets that Franchisor may designate.
- 11 3 *Regional Marketing Fund* Franchisor shall have the right, in its sole discretion, to designate any geographical area for purposes of establishing a regional marketing and promotional fund ("**Regional Marketing Fund**") For so long as a Regional

Marketing Fund (or any successor entity designated by Franchisor) is in existence for the geographic area in which the Retail Location is located, Franchisee shall contribute to the Regional Marketing Fund an amount to be determined by Franchisor in accordance with **Section 11 1**, based upon Franchisee's Net Sales during the preceding month. Franchisor may develop policies regarding the establishment, operations, and maintenance of a Regional Marketing Fund. A Regional Marketing Fund shall be administered according to the terms set forth in **Section 11 2** regarding a System Marketing Fund.

11 4 *Market Co-op* Franchisor shall have the right to designate any geographical area for purposes of establishing a Market Co-op. If a Market Co-op for the geographic area in which the Retail Location is located has been established at the time Franchisee commences operations under this Agreement, Franchisee shall immediately become a member of such Market Co-op. If a Market Co-op for the geographic area in which the Retail Location is located is established during the term of this Agreement, Franchisee shall become a member of such Market Co-op within thirty (30) days after the date on which the Market Co-op commences operation. In no event shall a franchised Retail Location be required to be a member of more than one Market Co-op. The following provisions shall apply to each such Market Co-op:

11 4 1 Each Market Co-op shall be organized (including but not limited to bylaws and other organic documents) and governed in a form and manner, and shall commence operations on a date, approved in advance by Franchisor in writing. Unless otherwise specified by Franchisor, the activities carried on by each Market Co-op will be decided by a simple majority vote of its members. Each Retail Location owner shall be entitled to cast one (1) vote for each Retail Location owned.

11 4 2 Each Market Co-op will be organized for the exclusive purpose of administering regional marketing programs and developing, subject to Franchisor's approval, standardized promotional materials for use by the members in local advertising and promotion.

11 4 3 No advertising, marketing, or promotional plans or materials may be used by a Market Co-op or furnished to its members without the prior approval of Franchisor, pursuant to the procedures and terms as set forth in **Section 11 7**.

11 4 4 Franchisee shall contribute to the Market Co-op in such amounts as Franchisor may specify pursuant to **Section 11 1**, unless the members of the Market Co-op, by a majority vote conducted in accordance with the rules, bylaws, or other governing documents of the Market Co-op, agree to an increase in the Market Co-op contribution to a rate in excess of the amount required by Franchisor. Retail Locations that Franchisor operates in the region, if any, will have the same rights as those owned by its franchisees (i.e., one vote per Retail Location). Franchisee shall submit to the Market Co-op the amount required at such times as determined by the Market Co-op, together with such other statements or reports as may be required by the Market Co-op. All amounts contributed to the Market Co-op shall be deposited into a bank account maintained by the Market Co-op, and shall be distributed only in the manner prescribed by the Market Co-op.

- 11 4 5 Franchisor, in its sole discretion, may grant to any franchisee an exemption for any length of time from the requirement of membership in a Market Co-op, or from the requirement to pay all or a portion of the contribution (described in **Section 11 4 4**) to the Market Co-op upon written request of such franchisee stating reasons supporting such exemption. Franchisor's decision concerning such request for exemption shall be final.
- 11 4 6 Although once established, each Market Co-op is intended to be of perpetual duration, Franchisor maintains the right to terminate any Market Co-op. A Market Co-op will not be terminated, however, until all monies in that Market Co-op have been expended for marketing and/or promotional purposes.
- 11 5 **Local Advertising** Franchisee shall comply with the following with respect to "**local advertising and promotion**" for the Retail Location:
- 11 5 1 Franchisee shall spend on an annual basis such amounts as Franchisor may specify in accordance with **Section 11 1**. Franchisee shall account for such expenditures on a routine basis and shall prepare, in accordance with the schedule and procedures periodically specified by Franchisor, detailed reports describing the amount of money expended on local advertising and promotion during such previous period. Franchisee shall maintain all such statements, reports, and records, and shall submit same to Franchisor as Franchisor may specify in the Manuals or otherwise request of Franchisee. Additionally, at the request of Franchisor, Franchisee shall submit bills, statements, invoices, or other documentation satisfactory to Franchisor to evidence Franchisee's advertising or marketing activities.
- 11 5 2 Franchisor has the right to periodically designate in the Manuals the types of expenditures that will or will not count toward Franchisee's spending requirement. All local advertising, marketing, and promotion by Franchisee shall be in such media, and of such type and format as Franchisor may approve, shall be conducted in a dignified manner, and, shall conform to such standards and requirements as Franchisor may specify. Franchisee shall not use any advertising, marketing materials, or promotional plans unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in **Section 11 7**.
- 11 5 3 The parties expressly agree that local advertising and promotion shall not include costs or expenses that Franchisee incurs or that are spent on Franchisee's behalf in connection with any of the following: (a) salaries and expenses of Franchisee's employees, including salaries or expenses for attendance at marketing meetings or activities, or incentives provided or offered to such employees, including discount coupons, (b) political donations, (c) the value of discounts provided to consumers, and/or (d) the cost of food, beverage, and merchandise items.
- 11 5 4 All local advertising, marketing, and promotion by Franchisee must: (a) be in the media, and of the type and format that Franchisor may approve, (b) be conducted in a dignified manner, and (c) conform to the standards and requirements that Franchisor may specify. Franchisee shall not use any advertising, marketing materials, and/or promotional plans unless and until

Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in **Section 11 7**

- 11 5 5 Upon written notice to Franchisee, Franchisor may require Franchisee to participate in mandatory promotions as Franchisor may periodically develop and implement
- 11 6 *Materials From Franchisor* Franchisor shall provide Franchisee with an initial supply of such promotional and advertising materials (such as graphic design, copy and instructions) as Franchisor deems appropriate. Thereafter (and in no way limiting **Section 11 2 6** regarding materials produced through the System Marketing Fund), Franchisor may periodically make available certain marketing, advertising and promotional materials for purchase by Franchisee at a reasonable price for Franchisee's use
- 11 7 *Franchisor's Review and Right to Approve All Proposed Marketing* For all proposed advertising, marketing, and promotional plans, Franchisee (or the Market Co-op, where applicable) shall submit samples of such plans and materials to Franchisor (by means described in **Section 22**), for Franchisor's review and prior written approval. If written approval is not received by Franchisee or the Market Co-op from Franchisor within fourteen (14) days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have disapproved them. Franchisee acknowledges and agrees that any and all copyright in and to advertising, marketing materials, and promotional plans developed by or on behalf of Franchisee shall be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision
- 11 8 *Opening Marketing Program* In addition to and not in lieu of the Advertising Obligations, Franchisee shall expend a minimum as required by Franchisor for pre-opening and opening marketing and promotional programs in conjunction with the Retail Location's initial opening, pursuant to an opening marketing plan developed by Franchisee and approved in writing by Franchisor (the "**Opening Marketing Program**") The Opening Marketing Program is subject to the provisions of **Section 11 7**. Franchisor reserves the right to require Franchisee to deposit with Franchisor the funds required under this **Section** to distribute as may be necessary to conduct the Opening Marketing Program
- 11 9 *Local Advertising, Additional Marketing Expenditure Encouraged* Franchisee shall only use such advertising and marketing materials as have been provided by Franchisor or the System Marketing Fund, or that have been approved by Franchisor pursuant to **Section 11 7**. Franchisee understands and acknowledges that the required contributions and expenditures are minimum requirements only, and that Franchisee may, and is encouraged by Franchisor to, spend additional funds for local advertising and promotion of a local nature that will focus on disseminating marketing directly related to the Retail Location. Notwithstanding the foregoing, Franchisee shall at its own expense obtain listings for the Retail Location in the local trade or business telephone directories, including "yellow" and "white" pages and any online directories designated by Franchisor

- 11 10 *Rebates* Franchisee acknowledges that periodic rebates, give-aways and other promotions and programs are an integral part of the System. Accordingly, Franchisee, at its sole cost and expense, shall periodically issue and offer such rebates, give-aways, discounts, incentives and promotions in accordance with any reasonable marketing programs established by Franchisor, and further shall honor rebates, give-aways and other promotions issued by other franchisees as long as all of the above do not contravene regulations and laws of appropriate governmental authorities.
- 11 11 *Considerations As to Charitable Efforts* Franchisee acknowledges and agrees that certain associations between Franchisee and/or the Retail Location, and/or the Proprietary 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, the reputation of Franchisor or the good will associated with the Proprietary Marks. Accordingly, Franchisee shall not, without the prior written approval of Franchisor, engage in any activities with, or donate any money, products, services, goods, or other items to, any charitable, political or religious organization, group, or activity, if such action is taken, or may be perceived by the public to be taken, in the name of, in connection or association with Franchisee, the Proprietary Marks, the Retail Location, the Franchisor, or the System.

12 TECHNOLOGY

- 12 1 *Computer Systems and Software* With respect to computer systems and required software
- 12 1 1 Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware be used by, between, or among Retail Locations, including without limitation (a) back office and point of sale systems, data, audio, video (including managed video surveillance), telephone, and voice storage, retrieval, and transmission systems for use at Retail Locations, between or among Retail Locations, and between and among Franchisee's Retail Locations and Franchisor, Franchisor's designee and/or Franchisee, (b) POS systems (as described in **Section 12 1 4**), (c) physical, electronic, and other security systems, (d) printers, "media wall" systems, and other peripheral devices, (e) archival back-up systems, (f) internet access mode (e.g., form of telecommunications connection) and speed, and (g) internet service for customers (collectively, the "**Computer System**")
- 12 1 2 Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate (a) computer software programs and accounting system software that Franchisee must use in connection with the Computer System ("**Required Software**"), which Franchisee shall install, (b) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install, (c) the tangible media upon which such Franchisee shall record or receive data, and (d) the database file structure of Franchisee's Computer System.

- 12.1.3 Franchisee shall, at its expense, install and use the Computer System and Required Software in the manner required by Franchisor
- 12.1.4 Franchisee shall record all sales on the computer-based point of sale system ("**POS system**") specified by Franchisor in the Manuals or otherwise in writing, which shall be deemed part of the Franchisee's Computer System
- 12.1.5 Franchisee shall implement and periodically make upgrades and other changes to the Computer System and Required Software as Franchisor may reasonably request in writing (collectively, "**Computer Upgrades**")
- 12.1.6 Franchisee shall comply with all specifications issued by Franchisor with respect to the Computer System and the Required Software, and with respect to Computer Upgrades, at Franchisee's expense. Franchisee shall also afford Franchisor unimpeded access to Franchisee's Computer System and Required Software as Franchisor may request, in the manner, form, and at the times requested by Franchisor
- 12.2 *Data* All data provided by Franchisee, uploaded to Franchisor's system from Franchisee's system, and/or downloaded from the Franchisee's system to Franchisor's system is and will be owned exclusively by Franchisor, and Franchisor will have the right to use such data in any manner that Franchisor deems appropriate without compensation to Franchisee. In addition, all other data created or collected by Franchisee in connection with the System, or in connection with Franchisee's operation of the business (including but not limited to consumer and transaction data), is and will be owned exclusively by Franchisor during the term of, and following termination or expiration of, this Agreement. Copies and/or originals of such data must be provided to Franchisor upon Franchisor's request. Franchisor hereby licenses use of such data back to Franchisee, at no additional cost, solely for the term of this Agreement and solely for Franchisee's use in connection with the business franchised under this Agreement
- 12.3 *Data Requirements and Usage* Franchisor may, from time-to-time, specify in the Manuals or otherwise in writing the information that Franchisee shall collect and maintain on the Computer System installed at the Retail Locations, and Franchisee shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. Franchisee shall download daily, or in such other intervals as Franchisor may require, all information and materials Franchisor may require in connection with the operation of the Retail Location, and shall display such information and materials in the manner Franchisor may prescribe, including, without limitation, to employees of the Retail Location or on the media wall display at the Retail Location. All data pertaining to, derived from, or displayed at the Retail Locations (including without limitation data pertaining to or otherwise about Retail Location customers) is and shall be the exclusive property of Franchisor, and Franchisor hereby grants a royalty-free non-exclusive license to Franchisee to use said data during the term of this Agreement. In connection with any use of data in the Retail Location
- 12.3.1 Franchisee shall abide by all applicable laws pertaining to the privacy of consumer, employee, and transactional information ("**Privacy Laws**")

- 12.3.2 Franchisee shall comply with Franchisor's standards and policies pertaining to Privacy Laws. If there is a conflict between Franchisor's standards and policies pertaining to Privacy Laws and actual applicable law, Franchisee shall (a) comply with the requirements of the Privacy Laws, (b) immediately give Franchisor written notice of said conflict, and (c) promptly and fully cooperate with Franchisor and Franchisor's counsel in determining the most effective way, if any, to meet Franchisor's standards and policies pertaining to Privacy Laws within the bounds of applicable law. Franchisee shall not publish, disseminate, implement, revise, or rescind a data privacy policy without Franchisor's prior written consent as to that policy.
- 12.4 *No Separate Website* Unless otherwise approved in writing by Franchisor, Franchisee shall neither establish nor permit any other party to establish a Website relating in any manner whatsoever to the Retail Location or referring to the Proprietary Marks. Franchisor shall have the right, but not the obligation, to provide one or more references or webpage(s), as Franchisor may periodically designate, within Franchisor's Website. The term "**Website**" 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, YouTube, Google Plus, Pinterest, etc.), blogs, vlogs, applications to be installed on mobile devices (e.g., iPad or Droid apps), and other applications, etc. However, if Franchisor approves, in writing, a separate Website for Franchisee (which Franchisor is not obligated to approve), then each of the following provisions shall apply:
- 12.4.1 Franchisee specifically acknowledges and agrees that any Website owned or maintained by or for the benefit of Franchisee shall be deemed "marketing" under this Agreement, and will be subject to (among other things) Franchisor's approval under **Section 11.7**.
- 12.4.2 Before establishing any Website, Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a sample of the proposed Website domain name, format, visible content (including, without limitation, proposed screen shots), and non-visible content (including, without limitation, meta tags) in the form and manner Franchisor may reasonably require,
- 12.4.3 Franchisee shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification.
- 12.4.4 In addition to any other applicable requirements, Franchisee shall comply with the standards and specifications for Websites that Franchisor may periodically prescribe in the Manuals or otherwise in writing.
- 12.4.5 If required by Franchisor, Franchisee shall establish such links to Franchisor's Website and others as Franchisor may request in writing.
- 12.4.6 If Franchisor requires Franchisee to do so, Franchisee must make periodic updates to the Website to reflect information such as specials and other promotions at the Retail Location.

- 12.4.7 Franchisor may require Franchisee to make Franchisor the sole administrator (or co-administrator) of any social networking pages that Franchisee maintains or that are maintained on Franchisee's behalf, and Franchisor will have the right (but not the obligation) to exercise all of the rights and privileges that an administrator may exercise
- 12.5 *Extranet* If Franchisor establishes an extranet (Franchisor is not required to do so or to maintain an extranet), then Franchisee agrees to comply with Franchisor's requirements (as set forth in the Manuals or otherwise in writing) with respect to connecting to and utilizing the extranet in connection with the operation of the Retail Location. Franchisee will purchase and maintain such computer software and hardware (including but not limited to telecommunications capacity) as may be required to connect to and utilize the extranet
- 12.6 *Online Ordering System* If established, Franchisee agrees to participate in Franchisor's online ordering system on such terms and conditions that Franchisor may specify in the Manuals, and to pay the fees for such online ordering system that Franchisor and/or its vendor reasonably specify
- 12.7 *Electronic Identifiers, E-Mail* Unless otherwise directed in writing by Franchisor, Franchisee shall not use the Proprietary Marks or any abbreviation or other name associated with Franchisor and/or the System as part of any e-mail address, domain name, and/or other identification of Franchisee or the business in any electronic medium. Franchisee agrees not to transmit or cause any other party to transmit advertisements or solicitations by e-mail, text message, or other electronic media without first obtaining Franchisor's written consent as to (a) the content of such electronic advertisements or solicitations, and (b) Franchisee's plan for transmitting such advertisements. In addition to any other provision of this Agreement, Franchisee shall be solely responsible for compliance with any laws pertaining to sending electronic communication including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "**CAN-SPAM Act of 2003**") and the Federal Telephone Consumer Protection Act. (As used in this Agreement, the term "**electronic communication**" is agreed to include all methods for sending communication electronically, whether or not currently invented or used, including without limitation e-mails, text messages, and faxes.)
- 12.8 *Changes* Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisee agrees that Franchisor shall have the right to establish, in writing, reasonable new standards for the implementation of technology in the System, and Franchisee agrees that it shall abide by those reasonable new standards established by Franchisor as if this **Section 12** were periodically revised by Franchisor for that purpose

13 **INSURANCE**

- 13.1 *Insuror and Coverage* Before commencing any activities or operations under this Agreement, Franchisee agrees to procure and maintain in full force and effect during the term of this Agreement (and for such period thereafter as is necessary to provide

the coverage required under this Agreement for events having occurred during the term of this Agreement), at Franchisee's sole cost and expense, for the benefit of Franchisor, the following insurance policy or policies in connection with the Retail Location or other facilities on premises, or by reason of the construction, operation, or occupancy of the Retail Location or other facilities on premises. Such policy or policies shall be written by an insurance company or companies reasonably acceptable to Franchisor, with an A.M. Best rating of at least A-/VIII, that are reputable, meet such additional qualifications (including, without limitation, rating standards) as Franchisor may periodically specify, and are licensed and admitted to do business in the state in which the Retail Location is located, and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be periodically specified by Franchisor in the Manuals 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), the following

- 13.1.1 Comprehensive general liability insurance, written on an occurrence basis, extended to include contractual liability, products liability and completed operations, and personal and advertising injury, with a combined bodily injury and property damage limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate
- 13.1.2 Business automobile liability insurance, including a combined single bodily injury and property damage coverage for all owned, non-owned, and hired vehicles, with limits of liability not less than One Million Dollars (\$1,000,000) per occurrence for both bodily injury and property damage. Such policy shall have the contractual exclusion removed, unless Franchisee provides separate evidence that contractual liability for automobile exposure is otherwise insured. Such policy shall also have a drive other car endorsement with employees of the Retail Location as additional insured
- 13.1.3 Statutory workers' compensation insurance meeting all applicable state requirements and employer's liability insurance with minimum limits of at least One Million Dollars (\$1,000,000), as well as such other disability benefits type insurance as may be required by statute or rule of the state in which the Retail Location is located. Such policy shall contain an "Alternate Employer Endorsement" including Franchisor as the alternate employer
- 13.1.4 Commercial umbrella liability insurance with limits which bring the total of all primary underlying coverages (comprehensive general liability, business auto liability, and employers liability) to not less than Five Million Dollars (\$5,000,000) total limit of liability. Such umbrella liability will provide at a minimum those coverages and endorsements required in the underlying policies
- 13.1.5 Property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils, including the perils of flood and earthquake. Appropriate coverage shall also be provided for boiler and machinery exposures and business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement

value of the Retail Location, its furniture, fixtures, equipment, and stock (real and personal property) Any deductibles contained in such policy shall be subject to review and approval by Franchisor

- 13 1 6 Business interruption insurance to cover at least Franchisee's obligations with respect to leases, royalties, marketing fund obligations, fixed costs, and other recurring expenses for a period of not less than six (6) months following an interruption to the business' operation
- 13 1 7 Any other insurance coverage that is required by federal, state, or local law
- 13 2 *Endorsements* All policies listed in **Section 13 1** shall contain (a) a waiver of subrogation rights as between Franchisor (and its insurance carriers) and Franchisee (and its insurance carriers), and (b) such other endorsements as Franchisor may periodically provide in the Manuals In addition, the policies provided under **Sections 13 1 1** and **13 1 4** shall contain endorsements to provide that the coverages shall be primary and that any insurance carried by any additional insured shall be excess and non-contributory over any insurance carried by Franchisor
- 13 3 *Notices to Franchisor* In the event of cancellation, material change, or non-renewal of any policy, thirty (30) days' advance written notice must be provided to Franchisor in the manner provided in **Section 22**
- 13 4 *Construction Coverages* In connection with all significant construction, reconstruction, or remodeling of the Retail Location during the term of this Agreement, Franchisee will cause the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manuals, all written by insurance or bonding companies approved by Franchisor, having a rating as set forth in **Section 13 1**
- 13 5 *Other Insurance Does Not Impact Franchisee's Obligation* Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance that may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in **Section 19 4** Additionally, the requirements of this **Section 13** shall not be reduced, diminished, eroded, or otherwise affected by insurance that Franchisee carries (and/or claims made under that insurance) for other businesses, included but not limited to other Retail Locations operated by Franchisee (and/or its affiliates) under the System
- 13 6 *Additional Named Insured* All policies required under this Agreement (with the exception of worker's compensation insurance) shall (a) list Franchisor, its employees, agents, servants, contractors, and affiliated entities collectively as additional named insureds, and (b) contain a provision that Franchisor, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to Franchisor or its servants, agents, or employees by reason of the negligence of Franchisee or its servants, agents, or employees
- 13 7 *Certificates of Insurance* At least thirty (30) days before the time any insurance is first required to be carried by Franchisee, and thereafter at least thirty (30) days

before the expiration of any such policy, Franchisee shall deliver to Franchisor, certificates of insurance evidencing the proper coverage with limits not less than those required under this Agreement. All certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given Franchisor in the event of material alteration to, cancellation, or non-renewal of the coverages evidenced by such certificates.

- 13.8 *Proof of Coverage* In addition to its obligations under **Section 13.7**, on the first anniversary of the Effective Date, and on each subsequent anniversary thereof during the term of this Agreement and any renewal of this Agreement, Franchisee shall provide Franchisor with proof of insurance evidencing the proper coverage with limits not less than those required under this Agreement, in such form as Franchisor may reasonably require.
- 13.9 *Franchisor's Right to Procure Insurance for Franchisee* If Franchisee does not obtain and maintain the insurance coverages and amounts required by Franchisor, Franchisor may purchase such insurance on Franchisee's behalf and Franchisee shall immediately reimburse Franchisor for such premium(s) paid.
- 13.10 *Changes* Franchisor shall have the right to periodically make such changes in minimum policy limits and endorsements as it may determine.

14 TRANSFER OF INTEREST

- 14.1 *By Franchisor* Franchisor has the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.
- 14.2 *Franchisee's Principals* If Franchisee is a corporation, limited liability company, partnership, or limited liability partnership, each owner of Franchisee ("**Principal**"), and the interest of each Principal in Franchisee, is identified in **Exhibit D** to this Agreement. Franchisee represents and warrants that its owners are as set forth on **Exhibit D**, and covenants that it will not permit the identity of such owners, or their respective interests in Franchisee, to change without complying with this Agreement. Franchisor shall have the right to designate any person or entity that owns a direct or indirect interest in Franchisee as a Principal, and **Exhibit D** shall be so amended automatically upon written notice thereof to Franchisee.
- 14.3 *By Franchisee* Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's or Franchisee's Principals' business skill, financial capacity, and personal character. Accordingly:
- 14.3.1 Without Franchisor's prior written consent, neither Franchisee (nor any successor to any part of Franchisee's interest in this Agreement) nor any Principal, nor any other party that directly or indirectly owns any interest in this Agreement, in Franchisee, and/or in the Retail Location, may sell, assign, transfer, convey, pledge, encumber, merge, create a security interest in, and/or give away (collectively, "**transfer**") any direct or indirect interest in

(a) this Agreement, (b) Franchisee, (c) any or all of Franchisee's rights or obligations under this Agreement, and/or (d) all or substantially all of the assets used in the operation of the Retail Location. Any purported transfer not having Franchisor's prior written consent as required by this **Section 14** shall be null and void and shall also constitute a material breach of this Agreement, for which Franchisor may immediately terminate this Agreement without opportunity to cure, pursuant to **Section 15**.

14.3.2 If Franchisee is a corporation or limited company, Franchisee shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.

14.3.3 If Franchisee is a partnership or limited partnership, the partners of the partnership shall not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner shall automatically be deemed a Principal of Franchisee.

14.3.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in **Exhibit D**.

14.4 *Transfer Conditions*. Franchisor shall not unreasonably withhold any consent required by **Section 14.3**, provided, that if Franchisee proposes to transfer its obligations under this Agreement or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, Franchisor shall have the right to require any or all of the following as conditions of its approval:

14.4.1 Franchisee, the Principals, the transferor and any other person required by Franchisor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Franchisee and Franchisor or its affiliates, and federal, state, and local laws and rules,

14.4.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement (or, if a new franchise agreement is signed pursuant to **Section 14.4.4**, such new franchise agreement) as long as such person or entity owns any interest in Franchisee, and, if the obligations of Franchisee were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor,

14.4.3 Franchisee's new Principals (i.e., those who will run the business after the transfer) shall meet Franchisor's educational, managerial, and business

standards, each shall possess a good moral character, business reputation, and credit rating, have the aptitude and ability to operate the Retail Location, as may be evidenced by prior related business experience or otherwise, and have adequate financial resources and capital to operate the Retail Location,

- 14 4 4 If a proposed transfer would result in a change in control of Franchisee, at Franchisor's option, Franchisee shall execute the form of franchise agreement then being offered to new System franchisees, provided that (notwithstanding anything to the contrary in such form of agreement) the term of such agreement shall be five (5) years, and such other ancillary agreements required by Franchisor for the business franchised under this Agreement, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty fee and Advertising Obligations,
- 14 4 5 If so requested by Franchisor, Franchisee, at its expense, shall upgrade the Retail Location to conform to the then-current standards and specifications of new Retail Locations then-being established in the System, and shall complete the upgrading and other requirements set forth in **Section 2 2 2** within the time specified by Franchisor,
- 14 4 6 All monetary obligations of Franchisee under this Agreement shall be paid in full on a current basis, and Franchisee must not be otherwise in default of any of its obligations under this Agreement including, without limitation, its reporting obligations,
- 14 4 7 The transferor shall remain liable for all of the obligations to Franchisor in connection with the Retail Location that arose before the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability,
- 14 4 8 At Franchisee's expense, Franchisee and/or such persons as Franchisor may require pursuant to **Section 6 3** shall successfully complete (to Franchisor's satisfaction) all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require (and while Franchisor will not charge a fee for attendance at such training programs, the transferee shall be responsible for the salary and all expenses of the person who attends training),
- 14 4 9 Franchisee shall pay Franchisor a transfer fee in an amount equal to Ten Thousand Dollars (\$10,000) to compensate Franchisor for its legal, accounting, training, and other expenses incurred in connection with the transfer
- 14 4 10 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in **Sections 17 2 and 17 3**

14.5 *Right of First Refusal*

- 14.5.1 If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within sixty (60) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within sixty (60) days from the date of notice to the seller of the election to purchase by Franchisor.
- 14.5.2 Any material change in the terms of the offer before closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this **Section 14.5** shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this **Section 14**, with respect to a proposed transfer.
- 14.5.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one (1) independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two (2) appraisers shall, in turn, promptly designate a third appraiser, all three (3) appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this **Section 14.5**, Franchisor shall have the right to set off all amounts due from Franchisee, and one-half (1/2) of the cost of the appraisal, if any, against any payment to the seller.
- 14.6 *Death* Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

- 14 7 *Disability* Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor shall have the right to require such interest to be transferred to a third party in accordance with the conditions described in this **Section 14** within six (6) months after notice to Franchisee. "**Permanent Disability**" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of disability is unlikely.
- 14 8 *Effect of Death or Disability* Upon the death or permanent disability any Principal of Franchisee, such person or his representative shall promptly notify Franchisor of such death or claim of permanent disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.
- 14 9 *Consent to Transfer* Franchisor's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- 14 10 *Bankruptcy Issues* If Franchisee or any person holding any interest (direct or indirect) in Franchisee 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 Franchisee, Franchisee's obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee shall be subject to all of the terms of this **Section 14**.
- 14 11 *Securities Offers* All materials for an offering of stock or partnership interests in Franchisee or any affiliate of Franchisee which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review before their use. No offering by Franchisee or any affiliate of Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Franchisee or Franchisee's affiliates, and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Franchisee and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Franchisee (and the offeror if not Franchisee), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Franchisee shall pay Franchisor a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Franchisee shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this **Section** commences. Any such offering shall be subject to all of the other provisions of this **Section 14**, and further, without limiting

the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Franchisee, if Franchisee is not the offeror) after the financing is completed

15 DEFAULT AND TERMINATION

- 15.1 *Automatic* Franchisee shall be deemed to be in default under this Agreement, and all rights granted in this Agreement shall automatically terminate without notice to Franchisee, if Franchisee shall become insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee, or if Franchisee is adjudicated a bankrupt or insolvent, or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction, or if proceedings for a composition with creditors under any applicable law should be instituted by or against Franchisee, or if a material final judgment remains unsatisfied or of record for thirty (30) days or longer (unless an appeal or a supersedeas bond is filed), or if Franchisee is dissolved, or if execution is levied against Franchisee's business or property, or if suit to foreclose any lien or mortgage against the Retail Location premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days, or if the real or personal property of Franchisee's Retail Location shall be sold after levy thereupon by any sheriff, marshal, or constable
- 15.2 *With Notice* Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, without affording Franchisee any opportunity to cure the default, effective immediately upon the delivery of written notice to Franchisee by Franchisor (in the manner set forth under **Section 22**), upon the occurrence of any of the following events
- 15.2.1 If Franchisee fails to locate a site as provided in the Site Selection Addendum, or fails to construct and open the Retail Location within the time limits and requirements as provided in **Section 5.1**, or fails to complete the training program to Franchisor's reasonable satisfaction as provided in **Section 6.3**,
- 15.2.2 If Franchisee at any time ceases to operate or otherwise abandons the Retail Location for five (5) consecutive business days, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Retail Location is located, provided, however, that if, through no fault of Franchisee, the premises of the Retail Location are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld,
- 15.2.3 If Franchisee or any Principal is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably

likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein,

- 15 2 4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Retail Location,
 - 15 2 5 If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of **Section 14**,
 - 15 2 6 If, contrary to the terms of **Sections 8** or **9**, Franchisee discloses, divulges, or otherwise misuses the contents of the Manuals or other confidential information provided to Franchisee by Franchisor,
 - 15 2 7 If Franchisee knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Franchisee's application for a Retail Location) to Franchisor,
 - 15 2 8 If Franchisee commits two (2) or more defaults under this Agreement in any fifty-two (52) week period, whether or not each such default has been cured after notice,
 - 15 2 9 If Franchisee engages in any conduct or practice that is fraudulent, unfair, unethical, or a deceptive practice, and/or
 - 15 2 10 If, on three (3) or more occasions during any twelve (12) month period during the term of the Agreement, any amounts Franchisor is to receive from Franchisee by direct debit or otherwise are rejected due to insufficient or unavailable funds
- 15 3 *With Notice and Opportunity to Cure* Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, after the cure periods described below, upon the occurrence of any of the following events
- 15 3 1 If Franchisee defaults in the payment of any monies owed to Franchisor when such monies become due and payable and Franchisee fails to pay such monies within ten (10) days after receiving written notice of default, then this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the ten (10) day period
 - 15 3 2 If Franchisee fails to comply with the covenants in **Section 17** or fails to timely obtain execution of the covenants required under **Section 17 5**, and Franchisee does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Franchisee does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period
 - 15 3 3 If Franchisee sells products not previously approved by Franchisor, or purchases any product from a supplier not previously approved by Franchisor,

and Franchisee does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Franchisee does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period

15 3 4 If Franchisee makes any unauthorized or improper use of the Proprietary Marks, or if Franchisee or a Principal fails to utilize the Proprietary Marks solely in the manner and for the purposes directed by Franchisor, or directly or indirectly contests the validity of Franchisor's ownership of the Proprietary Marks or its right to use and to license others to use the Proprietary Marks and Franchisee does not cure such default within fifteen (15) days after receiving written notice of default or, in circumstances where such default cannot reasonably be cured within such fifteen-day (15) period, Franchisee does not initiate and diligently proceed to remedy such default within such fifteen-day (15) period

15 3 5 Except as otherwise provided in this **Section 15**, upon any other default by Franchisee of its obligations under this Agreement, Franchisor may terminate this Agreement by giving written notice of termination setting forth the nature of such default at least thirty (30) days before the effective date of termination, provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor, all within the thirty (30) day period. If any such default is not cured within the specified time, or within a different amount of time agreed between the parties in circumstances where the specified time is not reasonable given the nature of the default, this Agreement shall terminate without further notice effective immediately upon the expiration of the thirty (30) day period

15 3 6 If Franchisee is in default under the terms of any other franchise agreement or other contract between Franchisee (and/or its affiliates) and Franchisor (and/or its affiliates), that will also constitute a default under **Section 15 3 5**

15 4 **Bankruptcy** If, for any reason, this Agreement is not terminated pursuant to this **Section 15**, and this Agreement is assumed, or assignment of the same to any person or entity who has made a *bona fide* offer to accept an assignment of the Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of the Agreement, and, in any event, within ten (10) days before the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time before the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to Franchisor itself upon the same terms and conditions and for the same consideration, if any, as in the *bona fide* offer made by the proposed assignee, less

any brokerage commissions which may be payable by Franchisee out of the consideration to be paid by such assignee for the assignment of this Agreement

- 15.5 *Damages* Franchisee shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Franchisee under this Agreement (in addition to other remedies that Franchisor may have)
- 15.6 *Statutory Limitations* If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this **Section 15**, this Agreement shall be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation

16 OBLIGATIONS UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted under this Agreement to Franchisee shall terminate, and

- 16.1 *Cease Operation* Franchisee shall immediately cease to operate the Retail Location, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor
- 16.2 *Stop Using Proprietary Marks and Materials* Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, all intellectual property associated with the System including the marks "ILLY CAFFE" and "ILLY" and any and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee shall cease to use, without limitation, all signs, marketing materials, displays, stationery, forms, and any other articles that display the Proprietary Marks
- 16.3 *Cancel Assumed Names* Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration that contains any and all of the Proprietary Marks, and/or any other service mark or trademark of Franchisor, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement
- 16.4 *Premises* In connection with the Retail Location
- 16.4.1 If Franchisee leased the premises, at Franchisor's option, Franchisee shall, consistent with the Lease Rider, assign to Franchisor any interest which Franchisee has in the lease or sublease for ground upon which the Retail Location is operated and/or for the building in which the Retail Location is operated. If Franchisee owns the premises, Franchisee shall, at the option of Franchisor, sell or lease the premises to Franchisor at the then-current net depreciated asset value for, as applicable, the purchase or lease of the premises. If the parties cannot agree on net depreciated asset value (for, as applicable, the purchase or lease of the premises) within a reasonable time,

an independent appraiser acceptable to Franchisee shall be designated by Franchisor, and his determination shall be binding

- 16 4 2 If Franchisor does not elect or is unable to exercise any option it may have to acquire the lease or sublease for the premises of the Retail Location, or otherwise acquire the right to occupy the premises, Franchisee shall make such modifications or alterations to the premises operated under this Agreement (including, without limitation, changing the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the premises from that of other Retail Locations, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose, which include, without limitation
- 16 4 2 1 removing coating material from the bar counter and replacing it with a new coating made of a different material and with a different design and shape,
- 16 4 2 2 filling up any holes and shelves in the counter so the surface of the counter becomes a regular surface,
- 16 4 2 3 destroying (and giving evidence to Franchisor of destruction) or return to Franchisor any and all (a) materials bearing the "PATTERN" decoration, (b) chandeliers with "ILLY" cups, (c) signs bearing Proprietary Marks or any representation of those marks, (d) "ILLY" art collections, (e) panels with photos of "In Principio" collection of Sebastiao Salgado, (f) panels or mosaics with images of Xanti Schawinsky, (g) panels or paintings with images of James Rosenquist ("ILLY" trademark and Coffee Flowers Idea), (h) "wall of memories" wall images, (i) "Storytelling" wall images, (j) giant cups, (k) lists/selections of the cities with "ILLY" locations, (l) "ILLY" franchising chain members' plaques, (m) environmental signage (all printed writing on walls or on furniture), (n) cabinet showcase, (o) "ILLY" products for tasting or selling, (p) related fixed or movable promotional materials, (q) any products or promotional material bearing the Proprietary Marks purchased by Franchisee during this Agreement, and (r) Manuals
- 16 4 2 4 removing any and all cups bearing the Proprietary Marks, "ILLY" art collection cups, and "ILLY" espresso cups,
- 16 4 2 5 removing three (3) kilo tins, and
- 16 4 2 6 making any additional aesthetic modifications necessary so the premises no longer resembles a Retail Location or the Proprietary Marks
- 16 4 3 If Franchisee fails or refuses to comply with all of the requirements of this **Section 16 4**, Franchisor (or its designee) shall have the right to enter upon the premises of the Retail Location, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as

may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand

- 16.5 *Phone Numbers and Directory Listings* In addition, Franchisee shall cease use of all telephone numbers and any domain names, websites, e-mail addresses, and any other identifiers, whether or not authorized by Franchisor, used by Franchisee while operating the Retail Location, and shall promptly execute such documents or take such steps necessary to remove reference to the Retail Location from all trade or business telephone directories, including "yellow" and "white" pages, or at Franchisor's request transfer same to Franchisor. Franchisee hereby authorizes Franchisor to instruct issuers of any telephone and internet domain name services, and other providers to transfer any such telephone numbers, domain names, websites, addresses, and any other identifiers to Franchisor upon termination of this Agreement, without need for any further approval from Franchisee. Without limiting the foregoing, if requested by Franchisor, Franchisee shall provide, during the term or upon termination of this Agreement, written confirmation of Franchisor's rights under this **Section**. Franchisee agrees that it shall sign such documents and do such things (without cost to Franchisee) that may be reasonably requested by Franchisor in order to implement this **Section**.
- 16.6 *No Use of the Marks in Other Businesses* Franchisee agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks, and further agrees not to utilize any designation of origin, description, trademark, service mark, representation, or trade dress that suggests or represents a present or past association or connection with any or all of Franchisor, the System, the Products and the Proprietary Marks.
- 16.7 *Pay All Sums Due* Franchisee shall promptly pay all sums owing to Franchisor and its subsidiaries and affiliates (regardless whether those obligations arise under this Agreement or otherwise). In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default.
- 16.8 *Pay Damages* Franchisee shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Franchisee under this Agreement and/or subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this **Section 16**.
- 16.9 *Return Confidential Information* Franchisee shall immediately return to Franchisor the Manuals and all other manuals, records, and instructions containing confidential information (including without limitation any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor.
- 16.10 *Franchisor's Option to Buy Certain Assets* Franchisor shall have the option (but not the obligation), which Franchisor may exercise at any time within thirty (30) days after expiration, termination, or default under the prime lease, to purchase from

Franchisee any or all of the furnishings, equipment, signs, fixtures, supplies, or inventory of Franchisee related to the operation of the Retail Location, at the lesser of Franchisee's cost or fair market value. The cost shall be determined based upon a five (5) year straight-line depreciation of original costs. For equipment that is five (5) or more years old, the parties agree that fair market value shall be deemed to be ten percent (10%) of the equipment's original cost. If Franchisor elects to exercise any option to purchase provided in this Agreement, it shall have the right to set off all amounts due from Franchisee.

- 16.11 *Right to Enter and Continue Operations* In order to preserve the goodwill of the System following termination, Franchisor (or its designee) shall have the right to enter the Retail Location (without liability to Franchisee, Franchisee's Principals, or otherwise) for the purpose continuing the Retail Location's operation and maintaining the goodwill of the business during any period in which Franchisor has the option to exercise, or is undertaking activities to effectuate, its rights under **Section 16.10**.

17 COVENANTS

- 17.1 *Commercially Reasonable Efforts* Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or a manager who meets the requirements of **Section 6.3**) shall devote commercially reasonable efforts to the management and operation of the Retail Location.

- 17.2 *No Injurious Conduct* Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

17.2.1 Divert or attempt to divert any business or customer of the Retail Location or of any Retail Location using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.

17.2.2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other retailer, franchisee, master franchisee, or developer of Franchisor or development agent, or otherwise directly or indirectly induce such person to leave his or her employment.

- 17.3 *In-Term and Post-Term Covenant* Franchisee covenants that, except as otherwise approved in writing by Franchisor:

17.3.1 Franchisee shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate,

engage in, or have any interest in any Competitive Business (as defined in **Section 17 3 3**), or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations, either within or outside of the Territory

- 17 3 2 Franchisee shall not for a continuous uninterrupted period of two (2) years from the date of (a) a transfer permitted under **Section 14**, (b) expiration or termination of this Agreement (regardless of the cause for termination), or, in the event of a challenge to (a) or (b) above, then (c) a final order of a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this **Section 17 3**, either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any Competitive Business that is, or is intended to be, located within a one (1) mile radius of either the Approved Location or any other Retail Location operating at the time that the obligations under this **Section 17 3** commence, subject to any exceptions, if applicable, under **Section 17 3 4** for Existing Excluded Businesses
- 17 3 3 A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month. Furthermore, Franchisee acknowledges and agrees that Franchisee shall be considered in violation of these covenants in the event that a person in the immediate family (including spouse, domestic partner, parent or child) of Franchisee (or, if Franchisee is other than an individual, each Principal that is subject to these covenants) engages in a Competitive Business that would violate this **Section 17 3** if such person was subject to the covenants of this **Section 17 3**
- 17 3 4 If Franchisee had any business(es) in operation prior to signing this Agreement, Franchisee may seek Franchisor's approval to continue the operation of such business(es) during this Agreement without such business(es) being a violation of this **Section 17 3**, and any business(es) approved by Franchisor for such treatment (an "**Excluded Existing Business**") shall be identified in **Exhibit A**. Franchisee acknowledges and agrees that only those businesses, if any, identified in **Exhibit A** as Excluded Existing Businesses shall be excluded from the coverage of this **Section 17 3**
- 17 4 *Publicly-Held Entities* **Section 17 3** above shall not apply to ownership by Franchisee of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "publicly-held corporation" shall be deemed to refer to a corporation which has securities that have been registered under the Securities Exchange Act of 1934
- 17 5 *Personal Covenants* Franchisee shall require and obtain execution of covenants similar to those set forth in **Sections 7 3 3, 9, 14, 16**, and this **Section 17** (as modified to apply to an individual), from any or all of the following persons: Franchisee's Retail Location general managers, supervisors, and Principals. The

covenants required by this **Section** shall be in the form provided in **Exhibit H** to this Agreement. Failure by Franchisee to obtain execution of a covenant required by this **Section** shall constitute a default under **Section 15.3.2**.

- 17.6 *Construction* The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this **Section 17** is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this **Section 17**.
- 17.7 *Reduction in Scope* Franchisee understands and acknowledges that Franchisor shall have the right to reduce the scope of any covenant set forth in this **Section 17**, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof, and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of **Section 23**.
- 17.8 *Claims Not a Defense* Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this **Section 17**. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this **Section 17**.
- 17.9 *Defaults* Franchisee acknowledges that Franchisee's violation of the terms of this **Section 17** would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee accordingly consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of the terms of this **Section 17**.

18 TAXES, PERMITS, AND INDEBTEDNESS

- 18.1 *Payment of Taxes* Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment, payroll, and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the business franchised under this Agreement. Franchisee shall pay Franchisor an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor.
- 18.2 *Franchisee's Right to Contest Liabilities* In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee 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 shall Franchisee 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 Retail Location, or any improvements thereon

- 18.3 *Compliance with Law* Franchisee shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Retail Location, including, without limitation, licenses to do business, health certificates, beer, wine or liquor licenses, food handler's permits, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of said laws are in conflict with the terms of this Agreement, the Manuals, or other instructions of Franchisor, Franchisee shall (a) comply with said laws, and (b) immediately provide written notice describing the nature of such conflict to Franchisor.
- 18.4 *Notice of Violations and Actions* Franchisee shall notify Franchisor in writing within five (5) days of receipt of notice of any health or safety violation, the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, or within five (5) days occurrence of any accident or injury, that may adversely affect the operation of the Retail Location or the financial condition of Franchisee, or give rise to liability or a claim against Franchisee or Franchisor.

19 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 19.1 *Independent Contractor Relationship* The parties acknowledge and agree that (a) this Agreement does not create a fiduciary relationship between them, (b) that Franchisee shall be an independent contractor, (c) Franchisee is the only party that is in day-to-day control of the Retail Location, and neither this Agreement nor any of the systems, guidance, processes, or requirements under which Franchisee operates alter that fact, (d) nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever, and (e) neither this Agreement nor Franchisor's course of conduct is intended nor may be construed to state or imply that Franchisor is the employer of Franchisee's employees and/or independent contractors, nor vice versa.
- 19.2 *Notice of Status* At all times during the term of this Agreement and any extensions of this Agreement, Franchisee shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Retail Location, the content of which Franchisor reserves the right to specify.
- 19.3 *No Contracts in Franchisor's Name* It is understood and agreed that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name, and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, nor shall Franchisor be liable by reason of any act or omission of Franchisee in its conduct of the Retail Location or for any claim or judgment arising therefrom against Franchisee or Franchisor.

19 4 *Indemnification* Franchisee shall indemnify and hold the ILLY Parties (defined below) harmless against any and all Damages (as defined below) arising directly or indirectly from any Asserted Claim (defined below) as well as from any breach of this Agreement by Franchisee Franchisee's indemnity obligations shall survive the expiration or termination of this Agreement

19 5 *Definitions* As used in **Section 19 4**, the following terms shall have the following meanings

19 5 1 "**Asserted Claim**" means any allegation, claim or complaint that is the result of, or in connection with, Franchisee's exercise of its rights and/or carrying out of its obligations hereunder (including but not limited to any claim associated with Franchisee's operations of the Retail Location or otherwise), notwithstanding any claim that any ILLY Party was or may have been negligent

19 5 2 "**ILLY Parties**" means Franchisor, Franchisor's shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents

19 5 3 "**Damages**" means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including without limitation expenses, costs and lawyers' fees incurred for any indemnified party's primary defense or for enforcement of its indemnification rights)

20 **FORCE MAJEURE**

20 1 *Impact* Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing (a) acts of nature, (b) acts of war, terrorism, or insurrection, (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties, and/or (d) the inability of Franchisor and/or its affiliates, or any suppliers, to manufacture, purchase, and/or cause delivery of any ILLY Products used in the operation of the Retail Location

20 2 *Transmittal of Funds* The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of **Section 20 1** If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost, provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay, and further provided, however, that Franchisee shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension

21 APPROVALS AND WAIVERS

- 21 1 *Request for Approval* Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing
- 21 2 *No Warranties or Guarantees* Franchisee acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor
- 21 3 *No Waivers* No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Franchisee or any other franchisee under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Franchisee, or as to subsequent breach or default by Franchisee. Subsequent acceptance by Franchisor of any payments due to it under this Agreement shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Franchisee of any terms, provisions, covenants, or conditions of this Agreement

22 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, sent by overnight courier, or by other means which affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, rejected delivery, or attempted delivery shall be deemed to have been given at the date and time of receipt, rejected delivery, or attempted delivery

23 ENTIRE AGREEMENT AND AMENDMENT

- 23 1 *Entire Agreement* This Agreement and the exhibits referred to in this Agreement constitute the entire, full, and complete Agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Franchisee to execute this Agreement. The parties acknowledge and agree that they relied only on the words printed in this Agreement in deciding whether to enter into this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Franchisee to waive reliance on any representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Franchisee or its representative, subject to any agreed-upon changes to the contract terms and conditions described in that disclosure document and reflected in this Agreement (including any riders or addenda signed at the same time as this Agreement)

- 23 2 *Amendment* Except for those permitted to be made unilaterally by Franchisor under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing

24 SEVERABILITY AND CONSTRUCTION

- 24 1 *Severability* Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement shall be considered severable, and if, for any reason, any section, part, term, and/or provision in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties, and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement
- 24 2 *No Third Party Rights* Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, and such of Franchisee's and Franchisor's respective successors and assigns as may be contemplated (and, as to Franchisee, permitted) by **Section 14**, any rights or remedies under or by reason of this Agreement
- 24 3 *Construction* Franchisee expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law that is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions that a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order
- 24 4 *Headings* All captions in this Agreement are intended solely for the convenience of the parties, and no caption shall be deemed to affect the meaning or construction of any provision hereof
- 24 5 *Survival* All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement

25 APPLICABLE LAW AND DISPUTE RESOLUTION

- 25 1 *Choice of Law* This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises ("**HQ State**"), which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of HQ State's choice-

of-law rules), provided, however, that if the covenants in **Section 17** of this Agreement would not be enforceable under the laws of HQ State and the Retail Location is located outside of HQ State, then such covenants shall be interpreted and construed under the laws of the state in which the Retail Location is located. Nothing in this **Section** is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of HQ State to which this Agreement would not otherwise be subject.

- 25.2 **Mediation** Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 25.5** relating to injunctions). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this **Section** shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks.
- 25.2.1 The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation (the "**complainant**") providing written notice of the request for mediation (the "**request**") to the party with whom mediation is sought (the "**respondent**"). The request shall specify with reasonable particularity the matter or matters on which non-binding mediation is sought. A copy of the request shall be given by the complainant simultaneously to Franchisor if Franchisor is not a complainant or respondent.
- 25.2.2 Non-binding mediation commenced hereunder shall be concluded within sixty (60) days of the issuance of the request or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Complainant and respondent shall each bear its own costs of mediation, and each shall bear one-half the cost of the mediator or mediation service.
- 25.3 **Litigation** The parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this **Section** shall not be construed as preventing either party from removing an action from state to federal court. Franchisee hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.
- 25.4 **Parties' Rights Are Cumulative** No right or remedy conferred upon or reserved to Franchisor or Franchisee by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

- 25 5 *Injunctions* Nothing contained in this Agreement shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions
- 25 6 **WAIVER OF JURY TRIAL** FRANCHISOR AND FRANCHISEE IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING
- 25 7 **MUST BRING CLAIMS WITHIN ONE YEAR** ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF FRANCHISEE AND FRANCHISOR, OR FRANCHISEE'S OPERATION OF THE RETAIL LOCATION, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER, SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR, IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES, SUCH CLAIM OR ACTION SHALL BE IRREVOCABLY BARRED
- 25 8 **WAIVER OF PUNITIVE DAMAGES** FRANCHISOR AND FRANCHISEE HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT
- 25 9 *Payment of Legal Fees* Franchisee shall pay to Franchisor all damages, costs and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs subsequent to the termination or expiration of this Agreement in (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation **Sections 9** and **17** above), and/or (b) successfully defending a claim that Franchisor defrauded Franchisee into signing this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement do not govern the parties' relationship

26 ACKNOWLEDGMENTS

- 26 1 *Franchisee's Investigation of the Business Possibilities* Franchisee acknowledges that Franchisee has conducted an independent investigation of the business franchised under this Agreement, recognizes that this business venture involves business risks, and that its success will be largely dependent upon Franchisee's ability (or, if Franchisee is an entity, the Principals as independent businesspersons), the active participation of Franchisee (or if an entity, its Principals) in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided, as well as other factors
- 26 2 *Franchisee Read this Agreement and FDD and Consulted with Advisors* Franchisee confirms that it has read and understands this Agreement and the FDD, and that Franchisee had sufficient time and opportunity to consult with advisors of Franchisee's own choosing (including a lawyer and an accountant) about the potential benefits and risks of entering into this Agreement Franchisee confirms

that it has no knowledge of any representations by Franchisor, or anyone purporting to act on Franchisor's behalf, that are contrary to the terms of this Agreement

- 26 3 *No Conflicting Obligations* Each party represents and warrants to the other that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from (a) negotiating and entering into this Agreement, (b) exercising its rights under this Agreement, and/or (c) fulfilling its responsibilities under this Agreement
- 26 4 *Franchisee's Responsibility for the Choice of the Approved Location* Franchisee acknowledges that it has sole and complete responsibility for the choice of the Approved Location, that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the site) given any representation, promise, or guarantee of Franchisee's success at the Approved Location, and that Franchisee will be solely responsible for its own success at the Approved Location
- 26 5 *Franchisee's Responsibility for Operation of the Retail Location* Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of the Retail Location, Franchisee retains the right and sole responsibility for the day-to-day management and operation of the Retail Location and the implementation and maintenance of system standards at the Retail Location
- 26 6 *Different Franchise Offerings to Others* Franchisee acknowledges and agrees that Franchisor may modify the terms under which Franchisor will offer franchises to other parties in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement
- 26 7 *Public Announcement* Unless required under applicable law (including, without limitation, any applicable securities laws and/or rules and regulations of a securities exchange to which the disclosing party is a member), Franchisee shall not make any announcement or press release concerning this Agreement or any of the matters dealt with in this Agreement without Franchisor's prior written consent
- 26 8 *Individual Signature* The individual signing on behalf of the Franchisee below represents and warrants to Franchisor that he or she has the authority to execute and deliver this Agreement and all related agreements on Franchisee's behalf Franchisee represents and warrants to Franchisor that this Agreement has been duly authorized and executed by or on behalf of Franchisee and constitutes the valid and binding obligation of Franchisee, enforceable in accordance with its terms
- 26 9 *Success Depends on Franchisee* Franchisee acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Franchisee's ability as an independent businessperson, Franchisee's active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated under this Agreement

26 10 *General Release* If this Agreement is not the first contract between Franchisee (and its affiliates) and Franchisor (and its affiliates), then Franchisee agrees to the following Franchisee (on behalf of itself and its parent, subsidiaries and affiliates and their respective past and present members, officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of Franchisee's obligations under this Agreement (collectively, "**Franchisee Releasors**") freely and without any influence forever release and covenant not to sue Franchisor, its parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities (collectively "**Franchisor Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**claims**"), which any Franchisee Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Franchisee Releasor and any Franchisor Releasee, the sale of any franchise to any Franchisee Releasor, the development and operation of the Retail Location and the development and operation of all other Retail Locations operated by any Franchisee Releasor that are franchised by any Franchisor Releasee. Franchisee expressly agrees that fair consideration has been given by Franchisor for this General Release and Franchisee fully understands that this is a negotiated, complete and final release of all claims. This General Release does not release any claims arising from representations made in Franchisor's FDD and its exhibits or otherwise impair or affect any claims arising after the date of this Agreement.

26 11 *Franchisee's Independence* Franchisee acknowledges and agrees that (a) Franchisee is the only party that employs its employees (even though Franchisor may provide Franchisee with advice, guidance, and training), (b) Franchisor is not the employer of any of Franchisee's employees, and Franchisor will not play any role in decisions regarding their employment (including but not limited to matters such as recruitment, hiring, compensation, relations, labor matters, review, and/or dismissal), (c) the guidance that Franchisor provides and requirements under which Franchisee will operate are intended to promote and protect the value of the brand and the Proprietary Marks, (d) when forming and in operating Franchisee's business, Franchisee had to adopt standards to operate that business, and that instead of developing and implementing Franchisee's own standards (or those of another party), Franchisee chose to adopt and implement Franchisor's standards for Franchisee's business (including but not limited to Franchisor's System and the requirements under this Agreement), and (e) Franchisee has made (and will remain responsible at all times for) all of the organizational and basic decisions about establishing and forming Franchisee's entity, operating its business (including but not limited to adopting Franchisor's standards as Franchisee's standards), and hiring employees, engaging professional advisors, and all other facets of Franchisee's operation.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written

ESPRESSAMENTE ILLY AMERICAS, INC

Franchisor

Franchisee Entity

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address for Notices

Address for Notices

800 Westchester Avenue, Suite S438
Rye Brook, NY 10573
Telephone (914) 253-8141
Attn President

Telephone _____
Fax _____
Attn _____

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT A

Approved Location, Territory

- 1 The Approved Location for the Retail Location is _____

- 2 The Territory for the Retail Location is _____

- 3 Excluded Existing Businesses are (if applicable) _____

Initials	
Franchisor	Franchisee

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT B

SITE SELECTION ADDENDUM

ESPRESSAMENTE ILLY AMERICAS, INC ("Franchisor") and
____ ("Franchisee") have this ____ day of _____, 20____
entered into an ILLY CAFFE Franchise Agreement ("Franchise Agreement") and desire to
supplement its terms as set out below in this Site Selection Addendum (the "Addendum")
The parties hereto agree as follows

AGREEMENT

1 **Time to Locate Site** Within ninety (90) days after the date hereof, Franchisee shall acquire or lease/sublease, at Franchisee's expense, commercial real estate that is properly zoned for the use of the business to be conducted by Franchisee under the Franchise Agreement (a "Retail Location") at a site approved by Franchisor as hereinafter provided

Such location shall be within the following area _____ (the "Site Selection Area") The only reason that the Site Selection Area is described is for the purpose of selecting a site for the Retail Location Franchisor will not establish, nor franchise another party to establish, a Retail Location operating under the System within the Site Selection Area until the end of the Search Period For purposes of this Addendum, the term "**Search Period**" means ninety (90) days after the Effective Date, or the period from the date of this Addendum until Franchisor has approved of a location for the Retail Location, whichever event first occurs Upon expiration of the Search Period, the protections of this Paragraph will expire and Franchisee will have no further rights in and to the Site Selection Area other than as otherwise provided in the Franchise Agreement

Franchisee shall submit to Franchisor at least one (1) location for approval pursuant to Paragraph 3 below within forty five (45) days of the date hereof Failure by Franchisee to acquire or lease a site for the Retail Location, or to submit to Franchisor at least one (1) location for site approval, within the time specified in this **Section 1** shall constitute a default under **Section 5 1** of the Franchise Agreement and under this Addendum, and Franchisor, in its sole discretion, may terminate the Franchise Agreement and this Addendum pursuant to the terms of **Section 15 2** of the Franchise Agreement

2 **Site Evaluation Services** Franchisor or its designee shall furnish to Franchisee site selection guidelines, including Franchisor's minimum standards for a location for the Retail Location, and such site selection counseling and assistance as Franchisor may deem advisable In response to Franchisee's request for site approval, Franchisor or its designee shall have the right to perform one (1) on-site evaluation of a proposed site for the Retail Location Franchisor shall have the right to designate a third party designee to conduct any or all of the site selection counseling and assistance and evaluation, and Franchisee may be required to pay such third party designee a fee for such services, provided, however that such fee shall not exceed Ten Thousand Dollars (\$10,000)

3 **Site Selection Package Submission and Approval** Franchisee shall submit to Franchisor, in the form specified by Franchisor, a completed site approval package, which may include a site approval form prescribed by Franchisor, copy of the site plan, business plan, demographic statistics and information regarding the surrounding businesses, and such other information or materials as Franchisor may reasonably require, together with an option contract, letter of intent or other evidence satisfactory to Franchisor which confirms

Franchisee's favorable prospects for obtaining the site for the Approved Location Franchisee acknowledges that time is of the essence Franchisor shall have thirty (30) days after receipt of such information and materials from Franchisee to approve or disapprove, in its sole discretion, the proposed site as the location for the Retail Location In the event Franchisor does not approve a proposed site by written notice to Franchisee within said thirty (30) days, such site shall be deemed disapproved by Franchisor

4 **Lease Responsibilities** Within fifteen (15) days of site approval by Franchisor, Franchisee shall execute a lease which shall be coterminous with the Franchise Agreement, or a binding agreement to purchase the site Franchisor's approval of any lease is conditioned upon inclusion in the lease of the Lease Rider attached to the Franchise Agreement as **Exhibit G** However, Franchisor shall not be responsible for review of the Lease for any terms other than those contained in the Lease Rider

5 **Approved Location** After the location for the Retail Location is approved by Franchisor pursuant to **Section 3** of this Addendum and leased or acquired by Franchisee pursuant to **Section 4** of this Addendum, the location shall constitute the Approved Location described in **Section 1 2** of the Franchise Agreement The Approved Location shall be specified on **Exhibit A** to the Franchise Agreement, and shall become a part the Franchise Agreement Franchisee hereby acknowledges and agrees that approval by Franchisor of a site does not constitute an assurance, representation, or warranty of any kind, express or implied, as to the suitability of the site for the Retail Location or for any other purpose Approval by Franchisor of the site indicates only that Franchisor believes the site complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation Both Franchisee and Franchisor acknowledge that application of criteria that have been effective with respect to other sites and premises may not be predictive of potential for all sites and that, subsequent to approval by Franchisor of a site, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from criteria used by Franchisor could change, thereby altering the potential of a site Such factors are unpredictable and are beyond the control of Franchisor Franchisor shall not be responsible for the failure of a site approved by Franchisor to meet Franchisee's expectations as to revenue or operational criteria Franchisee further acknowledges and agrees that its acceptance of a franchise for the operation of the Retail Location at the site is based on its own independent investigation of the suitability of the site

6 **Construction** This Addendum shall be considered an integral part of the Franchise Agreement between the parties hereto, and the terms of this Addendum shall be controlling with respect to the subject matter hereof All capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Franchise Agreement Except as modified or supplemented by this Addendum, the terms of the Franchise Agreement are hereby ratified and confirmed

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to duly execute and deliver this Addendum on the date first above written

ESPRESSAMENTE ILLY AMERICAS, INC
Franchisor

Franchisee

By _____
Name _____
Title _____

By _____
Name _____
Title _____

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT C

GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

As an inducement to ESPRESSAMENTE ILLY AMERICAS, INC ("Franchisor") to execute the ILLY CAFFE Franchise Agreement between Franchisor and _____ ("Franchisee"), dated _____, 20____ (the "**Agreement**"), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Franchisee's monetary obligations under the Agreement will be punctually paid and performed and that all monetary obligations will be punctually paid and performed

Upon demand by Franchisor, the undersigned each hereby jointly and severally agree to immediately make each payment required of Franchisee under the Agreement and waive any right to require Franchisor to (a) proceed against Franchisee for any payment required under the Agreement, (b) proceed against or exhaust any security from Franchisee, (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee, or (d) give notice of demand for payment by Franchisee. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee, and the undersigned each hereby jointly and severally waive notice of same and agree to remain and be bound by any and all such amendments and changes to the Agreement

The undersigned each hereby jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein

The undersigned each hereby jointly and severally acknowledge and expressly agree to be individually bound by all of the covenants contained in **Sections 7, 9, 14, 16, and 17** of the Agreement, as amended and supplemented, and acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "ILLY CAFFE" and "ILLY" marks, logos or system licensed to Franchisee under the Agreement

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death, and the obligations of the other guarantors will continue in full force and effect

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with **Sections 24 and 25** of the Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims). This Guarantee shall be interpreted and construed under the laws of the State in which Franchisor maintains its

principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules)

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement

GUARANTOR(S)

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT D

LIST OF PRINCIPALS

Name of Principal	Home Address	Interest %

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT E

AUTHORIZATION AGREEMENT FOR ACH PAYMENTS
(DIRECT DEBITS FOR ROYALTY, MARKETING FUND CONTRIBUTION, AND OTHER FEES)

_____ (Name of Person or Legal Entity)

_____ (ID Number)

The undersigned depositor ("**Depositor**" or "**Franchisee**") hereby authorizes ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**" or "**Bank**") to debit or credit such account(s) pursuant to Franchisor's instructions

_____ Depository

_____ Branch

_____ City

_____ State

_____ Zip Code

_____ Bank Transit/ABA Number

_____ Account Number

_____ This authorization is to remain in full and force and effect until sixty (60) days after Franchisor has received written notification from Franchisee of its termination

Printed Name of
Depositor _____

Signed _____

Printed Name _____

Title _____

Date _____

ILLY CAFFÈ
FRANCHISE AGREEMENT
EXHIBIT F

ADA CERTIFICATION

ESPRESSAMENTE ILLY AMERICAS, INC ("Franchisor") and _____
_____ ("Franchisee") are parties to a franchise agreement dated _____
, 20____ (the "**Franchise Agreement**") for the operation of a Retail Location at _____

_____ (the "**Retail Location**") In accordance with
Section 5 4 of the Franchise Agreement, Franchisee certifies to Franchisor that, to the best
of Franchisee's knowledge, the Retail Location and its adjacent areas comply with all
applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and
standards, including but not limited to the Americans with Disabilities Act Franchisee
acknowledges that it is an independent contractor and the requirement of this certification
by Franchisor does not constitute ownership, control, leasing or operation of the Retail
Location Franchisee acknowledges that Franchisor has relied on the information contained
in this certification Furthermore, Franchisee agrees to indemnify Franchisor and the
officers, directors, and employees of Franchisor in connection with any and all claims,
losses, costs, expenses, liabilities, compliance costs, and damages incurred by the
indemnified party(ies) as a result of any matters associated with Franchisee's compliance
with the Americans with Disabilities Act, as well as the costs, including attorneys' fees,
related to the same

Franchisee

By _____

Printed Name _____

Title _____

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT G

LEASE RIDER

THIS LEASE RIDER is made and entered into _____, 20____
BY AND AMONG _____ (the "**Landlord**"), _____ (the
"**Tenant**"), and ESPRESSAMENTE ILLY AMERICAS, INC , whose principal place of business is
800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 ("**Franchisor**")

RECITALS

A This Lease Rider supplements and forms part of the attached Lease Agreement between the Landlord and the Tenant dated _____ (the "**Lease**") for the premises situated at _____ (the "**Premises**") to be used by the Tenant as an ILLY CAFFE Retail Location

B This Lease Rider is entered into in connection with Franchisor's approval of the location of the Premises as an ILLY CAFFE Retail Location and the grant of a franchise to the Tenant pursuant to a Franchise Agreement dated _____, 20____ (the "**Franchise Agreement**")

C This Lease Rider is intended to provide Franchisor the opportunity to reserve the Premises as an ILLY CAFFE Retail Location under the circumstances set out below and to assure the Landlord that Franchisor exercises the option set out below on the basis that any defaults of the Tenant under the Lease will be cured by Franchisor before it takes possession of the Premises

D The Landlord agrees that Franchisor shall have the right but not the obligation to assume the Lease of the Premises on the terms, covenants and conditions contained in this Lease Rider

THE PARTIES HEREBY AGREE

1 **UPON DEFAULT OF TENANT UNDER THE LEASE**

1 1 The Landlord agrees to send to Franchisor copies of any Notice of Default that are given to the Tenant concurrently with the giving of such Notices to the Tenant If the Tenant fails to cure any defaults within the period specified within the Notices, the Landlord shall promptly give to Franchisor further written Notice specifying the defaults that the Tenant has failed to cure Franchisor shall have forty-five (45) days following receipt of the second written Notice to exercise its right to enter a new lease on the same terms as apply to the Lease by written notice to the Landlord and the Tenant and in the event that Franchisor does exercise such right, then the circumstances described in clause 1 2 below shall apply

1 2 The provisions of this clause 1 2 shall take effect if and when Franchisor exercises its rights pursuant to clause 1 1 above Franchisor shall cure the defaults and/or begin paying rent upon the Landlord delivering possession of the Premises to Franchisor If it becomes necessary for the Landlord to pursue legal remedies in order to remove the Tenant and deliver possession of the premises, Franchisor shall, upon written request of the Landlord, pay into the trust account of the Landlord's lawyer to be held upon escrow on an "at call" interest-bearing account, such amounts as are necessary to cure the Tenant's defaults If the Landlord is unable to deliver

possession of the Premises to Franchisor within nine (9) months following the date of exercise referred to in clause 1 0 above, Franchisor shall hereafter have the right, at any time, until the Landlord delivers possession of the Premises, to rescind the option exercise by written notice to the Landlord whereupon all amounts held in escrow including accrued interest shall be returned to Franchisor

2 UPON TERMINATION OF THE FRANCHISE AGREEMENT

If the Franchise Agreement is terminated for any reason during the term of the Lease or any extension or renewal of the Lease, and if Franchisor shall desire to assume the Lease, Franchisor shall promptly give the Landlord written notice to this effect. Within thirty (30) days after receipt of such notice the Landlord shall give Franchisor written notice specifying any defaults of the Tenant under the Lease and the provisions of clause 4 3 below shall apply

3 UPON NON-RENEWAL OF THE LEASE TERM

If the Lease contains term renewal or extension right(s) and if the Tenant allows the term to expire without exercising such right(s), the Landlord shall give Franchisor written notice to this effect and Franchisor shall have the option for thirty (30) days following receipt of such notice to exercise the Tenant's renewal or extension right(s) on the same terms and conditions as are contained in this Lease. If Franchisor elects to exercise such right(s) it shall notify the Landlord in writing whereupon the Landlord and Franchisor shall promptly execute and exchange an agreement whereby Franchisor assumes the Lease effective at the date of termination of any holding over period by the Tenant to the effect that such extension or renewal term shall have subtracted from it the number of days constituting such holding over period

4 ADDITIONAL PROVISIONS

4 1 The Tenant agrees that termination of the Franchise Agreement shall be a default under the Lease. In the event of termination of the Franchise Agreement, or if the Tenant fails to timely cure any defaults under the Lease the Tenant shall within ten (10) days after written demand by Franchisor, assign all of its right, title and interest in and to the Lease to Franchisor. If the Tenant fails to do so within the said ten (10) days, the Tenant hereby designates Franchisor as its agent to execute any and all documents, agreements and to take all action as may be necessary or desirable to effect the assignment of the Lease and the relinquishment of any and all of the Tenant's rights thereunder. The Landlord hereby consents to such assignment subject to Franchisor executing an assignment of the Lease and curing all defaults of the Tenant under the Lease before taking possession of the Premises. The Tenant further agrees to promptly and peaceably vacate the Premises and to remove its personal property at the written request of Franchisor. Any property not so removed by the Tenant within ten (10) days following receipt of such written request shall be deemed abandoned by the Tenant and immediately and permanently relinquished to Franchisor. Franchisor acknowledges that where Franchisor enters into an assignment or sub-letting as referred to in clause 4 5 below it will attempt to procure, if the assignee is a company (other than a listed public company) a Deed of Guarantee in customary form approved or prepared by the landlord from the principal shareholders of the assignee company and (if required by the landlord) by the Directors of the assignee company

4 2 The Tenant shall be and remain liable to the Landlord for all of its obligations under the Lease, notwithstanding any assignment of the Lease to Franchisor. Franchisor shall be entitled to recover from the Tenant all amounts it pays to the Landlord to cure the Tenant's defaults under the Lease including interest thereon and Franchisor's reasonable collection costs

- 4 3 Franchisor, upon taking possession of the Premises, shall concurrently cure the defaults specified by the Landlord in its written notice and shall execute and deliver to the Landlord its assumption of the Tenant's rights and obligations under the Lease. Franchisor shall pay, perform and be bound by all of the duties and obligations under the Lease applicable to the Tenant. Franchisor may elect not to be bound by the terms of any amendment to the Lease executed by the Tenant without obtaining Franchisor's prior written approval to such amendment, which approval shall not be unreasonably withheld or delayed.
- 4 4 After Franchisor assumes the Tenant's interest under the Lease, Franchisor may, at any time, sublet the Premises to a franchisee of Franchisor without having to obtain the prior written consent of the Landlord.
- 4 5 After Franchisor assumes the Tenant's interest under the Lease, Franchisor may, at any time, assign its interest under the Lease but only with the prior written consent of the Landlord and the usual provisions of the Lease concerning consent shall apply. Upon receipt by the Landlord of an assignment agreement pursuant to which the assignee agrees to assume the Lease and to observe the terms, conditions and agreements on the part of the tenant to be performed under the Lease, Franchisor shall thereupon be released from all liability as tenant under the Lease from and after the date of assignment, without any need of a written acknowledgment of such release by the Landlord.
- 4 6 If the Lease or Franchise Agreement is terminated and Franchisor fails to exercise its option as described above, the Tenant agrees, upon written demand by Franchisor to de-identify the Premises as a Retail Location and to promptly remove signs, decor and other items which Franchisor reasonably requests be removed as being distinctive and indicative of a Retail Location. Franchisor may enter upon the Premises without being guilty of trespass or tort to effect de-identification if the Tenant fails to do so within ten (10) days after receipt of written demand from Franchisor, following termination of the Franchise Agreement or Lease. The Tenant shall pay Franchisor for its reasonable costs and expenses in effecting the de-identification. The Landlord shall not be obligated to Franchisor for such costs unless the Landlord and the Tenant share one (1) or more common owners, partners, beneficiaries or shareholders (as the case may be). The Tenant agrees and accepts that its obligations to the Landlord in respect to the provisions of the Lease concerning the removal of signage and additions and alterations at the termination of the Lease subsist notwithstanding the right made available to Franchisor pursuant to this clause.
- 4 7 BY EXECUTING THIS LEASE RIDER TO THE LEASE, FRANCHISOR DOES NOT ASSUME ANY LIABILITY WITH RESPECT TO THE PREMISES OR ANY OBLIGATION AS TENANT UNDER THE LEASE UNLESS AND UNTIL FRANCHISOR EXPRESSLY AND IN A SEPARATE WRITING AGREES TO ASSUME SUCH LIABILITY AND/OR OBLIGATION AS DESCRIBED ABOVE.
- 4 8 All notices pursuant to this Lease Rider shall be in writing and shall be personally delivered, sent by registered mail or reputable overnight delivery service or by other means which afford the sender evidence of delivery or rejected delivery to the addresses described above or to such other address as any party to this Deed may, either by written notice, instruct that notices be given.

[SIGNATURE PAGE TO FOLLOW]

Landlord

Tenant

**ESPRESSAMENTE ILLY
AMERICAS, INC**
Franchisor

By _____

By _____

By _____

Printed
Name _____

Printed
Name _____

Printed
Name _____

Title _____

Title _____

Title _____

ILLY CAFFE
FRANCHISE AGREEMENT
EXHIBIT H

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(BETWEEN FRANCHISEE AND ITS PERSONNEL)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("**Agreement**") is made this _____ day of _____, 20____, by and between _____ (the "**Franchisee**"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a managerial position with, Franchisee (the "**Member**")

RECITALS

WHEREAS, ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") and its affiliates own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**") that operate under the Proprietary Marks in buildings that are designed using and bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY Products**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY Products and Additional Products will be referred to as "**Products**"),

WHEREAS, Franchisor and Franchisee have executed a Franchise Agreement ("**Franchise Agreement**") granting Franchisee the right to operate a Retail Location and to produce and sell Products approved by Franchisor and use the Proprietary Marks in connection therewith under the terms and conditions of the Franchise Agreement, and

WHEREAS, Member, by virtue of his or her position with Franchisee, will gain access to certain of Franchisor's Confidential Information (defined below), and must therefore be bound by the same confidentiality and non-competition agreement that Franchisee is bound by

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows

1 Confidential Information Member shall not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the Retail Location that may be communicated to Member or of which Member may be apprised by virtue of Franchisee's operation under the terms of the Franchise Agreement Any and all information, knowledge, know-how, and techniques that Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information that Franchisee can demonstrate came to its attention before disclosure thereof by Franchisor, or that, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others

2 Covenants Not to Compete

(a) Member specifically acknowledges that, pursuant to the Franchise Agreement, and by virtue of its position with Franchisee, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System

(b) Member covenants and agrees that during the term of the Franchise Agreement, except as otherwise approved in writing by Franchisor, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity

(i) Divert or attempt to divert any business or customer of the Retail Location or of any Retail Location using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System

(ii) Employ or seek to employ any person who is at that time employed by Franchisor, Franchisee, or by any other retailer, franchisee, master franchisee, developer of Franchisor, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment, or

(iii) Own, maintain, operate, engage in, or have any interest in any Competitive Business, or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations, either within or outside of the Territory A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by Franchisor, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any Competitive Business which is, or is intended to be, located within a one (1) mile radius of either the Retail Location or any other Retail Location operating at the time that the obligations under this Agreement commence

(d) As used in this Agreement, the term "**Post-Term Period**" shall mean a continuous uninterrupted period of two (2) years from the date of (a) a transfer permitted under **Section 14** of the Franchise Agreement, (b) expiration or termination of the Franchise Agreement (regardless of the cause for termination), (c) termination of Member's employment with Franchisee, or, in the event of a challenge to (a), (b), or (c) above, then (d) a final order of a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement, either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity)

3 Injunctive Relief Member acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Member agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement

4 Severability All agreements and covenants contained in this Agreement are severable If any of them, or any part or parts of them, shall be held invalid by any court of

competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect Franchisor's and/or Franchisee's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5 Delay No delay or failure by the Franchisor or Franchisee to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided in this Agreement, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6 Third-Party Beneficiary Member hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly, with Franchisee.

7 Any capitalized terms that are not defined in this Agreement shall have the meanings given to them in the Franchise Agreement and shall be interpreted and construed in accordance with **Sections 24 and 25** of the Franchise Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims). This Agreement shall be interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules).

IN WITNESS WHEREOF, the Franchisee and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above.

FRANCHISEE

MEMBER

By _____

By _____

Name _____

Name _____

Title _____

Title _____

EXHIBIT B
DEVELOPMENT AGREEMENT

**ILLY CAFFÈ
DEVELOPMENT AGREEMENT**

**ILLY CAFFÈ
DEVELOPMENT AGREEMENT**

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**ILLY CAFFÈ
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into on this ____ day of _____, 20____(the "**Effective Date**"), by and between

- **ESPRESSAMENTE ILLY AMERICAS, INC** , a Delaware corporation with its principal place of business at 800 Westchester Avenue, Suite S438, Rye Brook, NY 10573 ("**Franchisor**"), and
- _____, a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Developer**")

RECITALS

A WHEREAS, Franchisor is a Delaware company that is part of an Italian corporate family internationally known and appreciated for the production and marketing of coffee, coffee related products and accessories under the trademark "ILLY" Capitalizing on the consumer awareness and the image and reputation of the "ILLY" products, Franchisor and its affiliates, as the result of the expenditure of time, skill, effort and money, have developed and own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**" and, each, a "**Retail Location**") that operate under the Proprietary Marks (defined below) in buildings that are designed using and which bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY PRODUCTS**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY PRODUCTS and Additional Products will be referred to as "**Products**")

B WHEREAS, the distinguishing characteristics of the System include, without limitation, a specially-designed building or facility, distinctive interior and exterior design and accessories, Products, procedures for operations, quality and uniformity of products and services offered, procedures for management and inventory control, training and assistance, and marketing and promotional programs, all of which may be changed, improved, and further developed by Franchisor from time to time

C WHEREAS, Franchisor identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including but not limited to the marks "ILLY CAFFÈ" and "ILLY" and such other trade names, service marks, and trademarks as are now designated (and may hereinafter be designated by Franchisor in writing) for use in connection with the System (the "**Proprietary Marks**")

D WHEREAS, Franchisor and its affiliates continue to develop, use, and control the use of the Proprietary Marks to identify for the public the source of products and services marketed under the Proprietary Marks and under the System, and to represent the System's high standards of quality, appearance, and service

E WHEREAS, Franchisor grants to qualified persons the right to own and operate Retail Locations offering and selling products and services authorized and approved by Franchisor and utilizing Franchisor's System and Proprietary Marks, and

F WHEREAS, Developer wishes to obtain certain rights to develop Retail Locations under Franchisor's System within the limited geographic area described in **Exhibit A** (the "**Development Area**") and Franchisor is willing to grant such rights to Developer under this Agreement

AGREEMENT

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other set forth in this Agreement, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, agree as follows

1 GRANT

1.1 *Rights, Obligations* Franchisor grants to Developer the right (and Developer accepts the obligation), pursuant to the terms and conditions of this Agreement, to develop _____ (_____) Retail Locations in the Development Area (each, an "**Approved Location**") In this regard, the parties further agree that

1.1.1 The Approved Locations shall be developed by Developer pursuant to the development schedule set forth in **Exhibit A** to this Agreement (the "**Development Schedule**"),

1.1.2 Each Approved Location developed under this Agreement shall be established and operated pursuant to a separate Retail Location Agreement (each, a "**Retail Location Agreement**") or a separate Franchise Agreement (each, a "**Franchise Agreement**") with Franchisor that shall be executed as provided in **Section 3.1** below, and

1.1.3 Each Approved Location developed under this Agreement shall be located in the Development Area

1.2 *Limited Exclusivity* If Developer is in compliance with its obligations under this Agreement and any other agreement between Developer (including any affiliate of Developer) and Franchisor, then Franchisor shall not establish, nor license anyone other than Developer to establish, a Retail Location in the Development Area until the last date specified in the Development Schedule, except as otherwise provided under **Sections 1.3** and **1.4** below

1.3 *Franchisor's Reserved Rights* Except as otherwise specifically provided in **Section 1.2** above, Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Developer any rights therein (and, in each case, despite their proximity to any Retail Location operated by Developer and/or the Development Area, and despite their actual or threatened impact on sales of any Approved Location) do all of the following

- 1 3 1 Own, acquire, establish, and/or operate, and license others to establish and operate, Retail Locations under the System at any location outside the Development Area,
- 1 3 2 Own, acquire, establish, and/or operate, and license others to establish and operate, Retail Locations under the Proprietary Marks at Reserved Facilities (as defined below) at any location within or outside the Development Area. As used in this Agreement, "**Reserved Facilities**" shall mean airports, hotels that are operated as part of, or in connection with, a national or international hotel and lodging chain or brand, department stores, supermarkets and grocery stores that are operated as part of, or in connection with a retail chain or brand, cultural institutions (examples include, but are not limited to, theaters, museums, art centers and educational facilities), and business and industrial complexes and offices at which the food services are managed by service providers with national or international operations),
- 1 3 3 Own, acquire, establish, and/or operate and license others to establish and operate businesses (a) using the Proprietary Marks (but not the "ILLY CAFFE" mark) and other marks in connection with the operation of such businesses, (b) which businesses may be similar to Retail Locations, and (c) which may be located within or outside the Development Area (but this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Development Area under the System, unless permitted pursuant to **Section 1 3 2**), and/or
- 1 3 4 Sell and distribute, directly or indirectly, and/or license others to sell and to distribute, directly or indirectly, any products (including products bearing the Proprietary Marks (but not the "ILLY CAFFE" mark)) from any location to any business or customer within or outside of the Development Area, including without limitation through restaurants, cafes, retail kiosks, grocery or convenience stores or other retail outlets, and any other distribution channels (including without limitation, through retail, wholesale, mail order, toll-free numbers, or the Internet), provided that this clause shall not allow Franchisor to operate or license others to operate a Retail Location inside the Development Area under (x) the System, and (y) the Proprietary Marks, unless permitted pursuant to **Section 1 3 2**
- 1 4 *Not a Retail Location Agreement or Franchise Agreement* This Agreement is not a Retail Location Agreement or a Franchise Agreement, and only sets the framework for the parties to enter into such agreements for the operation of Approved Locations under the System. This Agreement does not grant to Developer any right to use in any manner Franchisor's Proprietary Marks or System. Developer shall have no right under this Agreement to license others to use in any manner the Proprietary Marks or System.

2 DEVELOPMENT FEE

- 2 1 *Amount of Development Fee* In consideration of the development rights granted in this Agreement, Developer shall pay to Franchisor a development fee (the "**Development Fee**") in the amount equal of Forty Thousand Dollars (US\$40,000)

- 2 2 *Development Fee is Non-Refundable* The Development Fee shall be fully earned when received by Franchisor and shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor and for the development opportunities lost or deferred as a result of the rights granted Developer in this Agreement. The Development Fee is not credited against any other fees due to Franchisor.

3 DEVELOPMENT OBLIGATIONS

- 3 1 *Establishment of Franchises* Developer shall execute, as applicable, a Retail Location Agreement or Franchise Agreement for each Approved Location. Each Approved Location shall be located at a site approved by Franchisor, within the Development Area, as provided below. The Retail Location Agreement or Franchise Agreement for each Approved Location developed under this Agreement shall be the form of agreement being offered generally by Franchisor at the time each such agreement is executed. The Retail Location Agreement or Franchise Agreement for each Approved Location shall be executed by Developer and submitted to Franchisor for countersignature not later than fifteen (15) days after execution of the lease, or completion of the purchase, of the premises for such Approved Location. If Developer is in full compliance with this Agreement, then for each Retail Location developed under this Agreement (a) the initial franchise fee shall be Twenty-Five Thousand Dollars (US\$25,000), and (b) the royalty fee shall be the then-current royalty fee for new franchisees, provided that the royalty fee shall not exceed five percent (5%) of the Net Sales (as defined in the Retail Location Agreement or Franchise Agreement) of such Approved Location.
- 3 2 *Site Approval Process* For each proposed site for an Approved Location, Developer must submit to Franchisor, in a form specified by Franchisor, a completed site approval package and such other information or materials as Franchisor may reasonably require. Developer must submit the site approval package, information, and materials by no later than thirty (30) days before the date on which the Approved Location must open, as listed in the Development Schedule. If Franchisor gives its written approval to a proposed site, Franchisor shall send written notice of approval to Developer within thirty (30) days of Franchisor's receipt of the completed site approval package. If Franchisor does not send such notice to Developer within the said thirty (30) day period, then the site shall be deemed disapproved by Franchisor.
- 3 3 *No Representations* Franchisor's approval of a prospective Retail Location site or the rendering of assistance in the selection of a site for a Retail Location does not constitute a representation, promise, or guarantee by Franchisor that the proposed site is fit for its intended use or complies with applicable rules, laws or regulations, or that a Retail Location operated at that site would be profitable or otherwise successful. The extent and nature of assistance by Franchisor may vary from time to time and shall be subject to the availability of Franchisor's staff.
- 3 4 *Compliance with Development Schedule* Recognizing that time is of the essence, Developer agrees to satisfy the Development Schedule. Failure by Developer to adhere to the Development Schedule, or failure by Developer to obtain site approval from Franchisor by the Site Approval Deadline provided in the Development Schedule for a particular Approved Location shall constitute a default under this Agreement as provided in **Section 6 2**.

4 TERM

The term of this Agreement and all rights granted under this Agreement shall expire on the last date specified in the Development Schedule, unless this Agreement is earlier terminated in accordance with the terms set out in this Agreement. There is no renewal term for this Agreement.

5 DUTIES OF THE PARTIES

5.1 Franchisor Obligations For each Approved Location developed under this Agreement Franchisor shall furnish to Developer the following:

5.1.1 Site selection guidelines, including Franchisor's minimum standards for a location for the Retail Location, and such site selection counseling and assistance as Franchisor may deem advisable.

5.1.2 Such on-site evaluation as Franchisor may deem advisable in response to Developer's request for site approval, provided, however, that Franchisor shall not provide on-site evaluation for any proposed site prior to the receipt of a completed Site Approval Package and all information relating to the site as required under **Section 3.2**. Developer shall reimburse Franchisor for all reasonable out-of-pocket expenses incurred by Franchisor in connection with any on-site evaluation, including, without limitation, the costs of travel, lodging, wages, and meals.

5.2 Developer Obligations Developer accepts the following obligations:

5.2.1 Developer shall at all times preserve in confidence any and all materials and information furnished or disclosed to Developer by Franchisor, and shall disclose such information or materials only to such of Developer's employees or agents who must have access to it in connection with their employment. Developer shall not at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person.

5.2.2 Developer shall comply with all requirements of federal, state, and local laws, rules, and regulations. To the extent that the requirements of said laws are in conflict with the terms of this Agreement or other instructions of Franchisor, Developer shall (a) comply with said laws, and (b) immediately provide written notice describing the nature of such conflict to Franchisor.

5.2.3 Franchisor shall have the right to require Developer to employ one or more district managers (who shall be individuals reasonably acceptable to Franchisor) to supervise the day to day operations of Developer's Approved Locations. Any such district managers shall be required to attend and successfully complete (to Franchisor's reasonable satisfaction) such training course as Franchisor may reasonably require.

5.2.4 If Developer is entity, Developer shall (a) furnish Franchisor with copies of all entity documents requested by Franchisor, (b) ensure that the entity

documents confine its activities to exclusively operating the Retail Locations, (c) maintain stop transfer instructions on the face of its ownership records (such as stock or membership certificates), and (d) maintain a current list of all direct and indirect owners of Developer and furnish the list to Franchisor upon request. Each present and future owner of Developer jointly and severally guarantee Developer's performance of each and every provision of this Agreement by executing the Guarantee in the form attached to this Agreement as **Exhibit B**.

6 DEFAULT AND TERMINATION

- 6 1 *Automatic* Developer shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice, if Developer becomes insolvent or makes a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer, or if Developer is adjudicated a bankrupt or insolvent, or if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer's business or assets is filed and consented to by Developer, or if a receiver or other custodian (permanent or temporary) of Developer's assets or property, or any part thereof, is appointed by any court of competent jurisdiction, or if proceedings for a composition with creditors under any applicable law are instituted by or against Developer and are uncontested, or if a material final judgment remains unsatisfied or of record for thirty (30) days or longer (unless an appeal or a supersedeas bond is filed), or if Developer is dissolved, or if execution is levied against Developer's business or property, or if suit to foreclose any lien or mortgage against the premises or equipment of any Approved Location developed under this Agreement and is not dismissed within thirty (30) days, or if the real or personal property of any of Developer's Approved Locations is sold after levy thereupon by any sheriff, marshal, or constable.
- 6 2 *With Notice* Developer shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement without affording Developer any opportunity to cure the default, effective immediately upon the delivery of written notice to Developer by Franchisor (in the manner set forth under **Section 9**), upon the occurrence of any of the following events:
- 6 2 1 Developer fails to meet its obligations under the Development Schedule, or
 - 6 2 2 Developer fails to sign when required any Retail Location Agreement or Franchise Agreement, or
 - 6 2 3 A Retail Location Agreement or Franchise Agreement for any Retail Location operated by Developer, or any entity affiliated with Developer, is terminated, or
 - 6 2 4 Developer materially breaches any of the warranties or representations set out in this Agreement,¹ or

- 6 2 5 Developer or any person or entity subject to the covenants contained in **Section 8** materially breaches any covenant or obligation under that section, or
- 6 2 6 Developer transfers or attempts to transfer an interest in violation of this Agreement, or
- 6 2 7 Developer has made any material misrepresentation or omission in the application for the development rights, or
- 6 2 8 Developer has received three (3) notices of default within the previous twelve (12) months under this Agreement, or
- 6 2 9 Developer or any of its affiliates remains in default beyond the applicable cure period under any other agreement between Developer and Franchisor or their respective affiliates (provided that, if the default is not by Developer, Developer is given written notice of the default and a thirty (30) day period to cure the default)
- 6 3 *With Notice and Opportunity to Cure* Except as otherwise provided in **Sections 6 1** and **6 2**, above, if Developer fails to comply with any material term and condition of this Agreement, such action shall constitute a default under this Agreement. Upon the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination (in the manner set forth under **Section 9**) stating the nature of such default at least thirty (30) days before the effective date of termination, provided, however, that Developer may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the thirty-day period (or such longer period as applicable law may require). If any such default is not cured within the specified time, this Agreement and all rights granted under this Agreement (including but not limited to, the right to develop any new Retail Locations) will terminate without further notice to Developer, effective immediately upon the expiration of the thirty (30) day period.
- 6 4 *Bankruptcy* If, for any reason, this Agreement is not terminated pursuant to this **Section 6**, and this Agreement is assumed, or assignment of the same to any person or entity who has made a *bona fide* offer to accept an assignment of the Agreement is contemplated, pursuant to applicable bankruptcy law, then notice of such proposed assignment or assumption, setting forth (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of the Agreement, and, in any event, within ten (10) days before the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption. Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time before the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement itself upon the same terms and conditions and for the same consideration, if any, as in the *bona fide* offer made by the proposed assignee, less any brokerage commissions which may be payable by Developer out of the consideration to be paid by such assignee for the assignment of this Agreement.

- 6 5 *Damages* Developer shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Developer under this Agreement (in addition to other remedies that Franchisor may have)
- 6 6 *Statutory Limitations* If any valid, applicable law or regulation of a competent governmental authority with jurisdiction over this Agreement requires a notice or cure period prior to termination longer than set forth in this **Section 6**, this Agreement shall be deemed amended to conform to the minimum notice or cure period required by the applicable law or regulation
- 6 7 *Effect of Termination or Expiration* Upon termination or expiration of this Agreement, Developer shall have no right to establish or operate any Retail Locations for which a Retail Location Agreement or Franchise Agreement has not been signed by Franchisor. Thereafter, Franchisor shall be entitled to establish, and to license others to establish, Retail Locations in the Development Area (except as may be otherwise provided under any then-effective Retail Location Agreement or Franchise Agreement)
- 6 8 *Non-Exclusive Rights* No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity

7 TRANSFERS

- 7 1 *By Franchisor* Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment
- 7 2 *By Developer* Other than to an affiliate controlled by or under common control with Developer (an "**Affiliate**"), Developer shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber (a) this Agreement, (b) the rights and obligations of Developer under this Agreement, or (c) any material asset of Developer utilized in the operation of an Approved Location (except, that it shall not be a violation of this Agreement in the event that any of the above are pledged as part of the general collateral assignment or security interest given in connection with any financing by owner of the facility in which an Approved Location may be located, provided such general collateral assignment or security interest in such facility does not grant any specific transfer of this Agreement, the rights and obligations of Developer under this Agreement, or any material asset of Developer utilized in the operation of any Approved Location, or confer any right to develop or operate any Approved Location, and it is hereby acknowledged that the transfer of any such rights shall require the written assumption by any transferee of all of the terms and conditions of this Agreement and the prior consent of Franchisor) Franchisor shall not unreasonably withhold its consent for such transfer, provided, however, that Franchisor shall have the right, including for a transfer to an Affiliate, to require conditions such as payment of a transfer fee, transferee's execution of the then-current form of development agreement, transferor's execution of general releases, and/or such other reasonable conditions as Franchisor may deem necessary or desirable

- 7 3 *Consent to Transfer* Franchisor's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party arising prior to the transfer, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor with respect to any claims prior to the transfer or transferee

8 COVENANTS

- 8 1 *Commercially Reasonable Efforts* Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or a designated management employee who will assume primary responsibility for the operations of Developer and shall have been previously approved in writing by Franchisor) shall devote commercially reasonable efforts to the management and operation of the business contemplated under this Agreement
- 8 2 *No Injurious Conduct* Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable specialized training and confidential information from Franchisor relating to the System Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity
- 8 2 1 Divert or attempt to divert any business or customer of any Retail Location to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System
- 8 2 2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other retailer, franchisee, master franchisee, or developer of Franchisor or development agent or otherwise directly or indirectly induce such person to leave his or her employment
- 8 3 *In-Term and Post-Term Covenant* Developer covenants that, except as otherwise approved in writing by Franchisor
- 8 3 1 Developer shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any Competitive Business (as defined in **Section 8 3 3** below), or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations, either within or outside of the Territory
- 8 3 2 Franchisee shall not for a continuous uninterrupted period of two (2) years from the date of (a) a transfer permitted under **Section 7 2**, (b) expiration or termination of this Agreement (regardless of the cause for termination), or, in the event of a challenge to (a) or (b) above, then (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the

foregoing or with respect to the enforcement of this **Section 8 3**, either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any Competitive Business that is, or is intended to be, located within the Development Area, a three (3) mile radius of the Development Area, or a one (1) mile radius of any Retail Location operating at the time that the obligations under this **Section 8 3** commence, subject to any exceptions, if applicable, under **Section 8 3 4** for Existing Excluded Businesses

8 3 3 A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month. Furthermore, Developer acknowledges and agrees that Developer shall be considered in violation of these covenants in the event that a person in the immediate family (including spouse, domestic partner, parent or child) of Developer (or, if Developer is other than an individual, each owner) engages in a Competitive Business that would violate this **Section 8 3** if such person was subject to the covenants of this **Section 8 3**

8 3 4 If Developer had any business(es) in operation prior to signing this Agreement, Developer may seek Franchisor's approval to continue the operation of such business(es) during this Agreement without such business(es) being a violation of this **Section 8 3**, and any business(es) approved by Franchisor for such treatment (an "**Excluded Existing Business**") shall be identified in **Exhibit A**. Developer acknowledges and agrees that only those businesses, if any, identified in **Exhibit A** as Excluded Existing Businesses shall be excluded from the coverage of this **Section 8 3**

8 4 *Publicly-Held Entities* **Section 8 3** above shall not apply to ownership by Developer of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "**publicly-held corporation**" shall be deemed to refer to a corporation which has securities that have been registered under the Securities Exchange Act of 1934

8 5 *Personal Covenants* At Franchisor's request, Developer shall require and obtain execution of a confidentiality agreement, the form of which is attached to this Agreement as **Exhibit C**, from all senior level management personnel of Developer, who have supervisory responsibilities related to the business described in this Agreement. Failure by Developer to obtain execution of a covenant required by this **Section** shall constitute a default under **Section 6 3** above

8 6 *Construction* The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this **Section 8** is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Developer expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this **Section 8**

- 8 7 *Reduction in Scope* Developer understands and acknowledges that Franchisor shall have the right to reduce the scope of any covenant set forth in this **Section 8**, without Developer's consent, effective immediately upon receipt by Developer of written notice thereof, and Developer agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of **Section 13** below
- 8 8 *Claims Not a Defense* Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this **Section 8** Developer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this **Section 8**
- 8 9 *Defaults* Developer acknowledges that Developer's violation of the terms of this **Section 8** would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer accordingly consents to the issuance of an injunction prohibiting any conduct by Developer in violation of the terms of this **Section 8**

9 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, sent by overnight courier, or by other means which affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party Any notice by a means which affords the sender evidence of delivery, rejected delivery, or attempted delivery shall be deemed to have been given at the date and time of receipt, rejected delivery or attempted delivery

10 PERMITS AND COMPLIANCE WITH LAWS

- 10 1 *Compliance with Law* Developer shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business contemplated under this Agreement
- 10 2 *Notice of Violations and Actions* Developer shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, that may adversely affect the operation or financial condition of Developer and/or any Approved Location established pursuant to this Agreement

11 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 11 1 *Independent Contractor Relationship* The parties acknowledge and agree that (a) this Agreement does not create a fiduciary relationship between them, (b) that

Developer shall be an independent contractor, (c) Developer is the only party that is in day-to-day control of the development and operation of Retail Locations, and neither this Agreement nor any of the systems, guidance, processes, or requirements under which Developer operates alter that fact, (d) nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever, and (e) neither this Agreement nor Franchisor's course of conduct is intended nor may be construed to state or imply that Franchisor is the employer of Developer's employees and/or independent contractors, nor vice versa

11 2 *Notice of Status* At all times during the term of this Agreement, Developer shall hold itself out to the public in connection with the Approved Locations and the business described in this Agreement as an independent contractor operating the business pursuant to this Agreement with Franchisor. Developer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place within the Developer's offices, the content of which Franchisor reserves the right to specify

11 3 *No Contracts in Franchisor's Name* It is understood and agreed that nothing in this Agreement authorizes Developer to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name, and that Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action, nor shall Franchisor be liable by reason of any act or omission of Developer in Developer's operations hereunder, or for any claim or judgment arising therefrom against Developer or Franchisor

11 4 *Indemnification* Developer shall indemnify and hold the ILLY Parties (as defined below) harmless against any and all Damages (as defined below) arising directly or indirectly from any Asserted Claim (as defined below) as well as from any breach of this Agreement by Developer. Developer's indemnity obligations shall survive the expiration or termination of this Agreement

11 5 *Definitions* As used in **Section 11 4**, the following terms shall have the following meanings

11 5 1 **"Asserted Claim"** means any allegation, claim or complaint that is the result of, or in connection with, Developer's exercise of its rights and/or carrying out of its obligations hereunder (including but not limited to any claim associated with Developer's development of the Approved Locations or otherwise), notwithstanding any claim that any ILLY Party was or may have been negligent

11 5 2 **"ILLY Parties"** means Franchisor, Franchisor's current and former shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents

11 5 3 **"Damages"** means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses (including without limitation expenses, costs and lawyers' fees incurred for any indemnified party's primary defense or for enforcement of its indemnification rights)

12 APPROVALS AND WAIVERS

- 12 1 *Request for Approval* Whenever this Agreement requires Franchisor's prior approval or consent, Developer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing
- 12 2 *No Warranties or Guarantees* Developer acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Developer may rely, and assumes no liability or obligation to Developer, by providing any waiver, approval, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor
- 12 3 *No Waivers* No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Developer or any other developer under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Developer, or as to subsequent breach or default by Developer. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Developer of any terms, provisions, covenants, or conditions of this Agreement

13 ENTIRE AGREEMENT AND AMENDMENT

This Agreement and the exhibits referred to in this Agreement constitute the entire, full, and complete Agreement between Franchisor and Developer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Developer to execute this Agreement. The parties acknowledge and agree that they relied only on the words printed in this Agreement in deciding whether to enter into this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall disclaim or require Developer to waive reliance on any representation that Franchisor made in the most recent disclosure document (including its exhibits and amendments) that Franchisor delivered to Developer or its representative, subject to any agreed-upon changes to the contract terms and conditions described in that disclosure document and reflected in this Agreement (including any riders or addenda signed at the same time as this Agreement). Except for those permitted to be made unilaterally by Franchisor under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

14 SEVERABILITY AND CONSTRUCTION

- 14 1 *Severability* Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement shall be considered severable, and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible, and

the latter shall continue to be given full force and effect and bind the parties, and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement

- 14 2 *No Third Party Rights* Except as expressly provided to the contrary in this Agreement, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Developer, Franchisor, and such of Developer's and Franchisor's respective successors and assigns as may be contemplated (and, as to Developer, permitted) by **Section 7**, any rights or remedies under or by reason of this Agreement
- 14 3 *Construction* Developer expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law that is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions that a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order
- 14 4 *Definition of Terms* All capitalized terms not defined in this Agreement shall have the meaning ascribed to them in any Retail Location Agreement or the Franchise Agreement executed pursuant to the terms of this Agreement, as the context requires
- 14 5 *Headings* All captions in this Agreement are intended solely for the convenience of the parties, and no caption shall be deemed to affect the meaning or construction of any provision hereof
- 14 6 *Survival* All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement

15 APPLICABLE LAW AND DISPUTE RESOLUTION

- 15 1 *Choice of Law* This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises ("**HQ State**"), which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of HQ State's choice-of-law rules), provided, however, that if the covenants in **Section 8** of this Agreement would not be enforceable under the laws of HQ State and the Approved Location at issue is located outside of HQ State, then such covenants shall be interpreted and construed under the laws of the state in which the Approved Location is located Nothing in this **Section** is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of HQ State to which this Agreement would not otherwise be subject
- 15 2 *Mediation* Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 15 5** relating to injunctions) Any such mediation shall be non-binding and

shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this **Section** shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks

- 15.2.1 The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation (the "**complainant**") providing written notice of the request for mediation (the "**request**") to the party with whom mediation is sought (the "**respondent**"). The request shall specify with reasonable particularity the matter or matters on which non-binding mediation is sought. A copy of the request shall be given by the complainant simultaneously to Franchisor if Franchisor is not a complainant or respondent.
- 15.2.2 Non-binding mediation commenced hereunder shall be concluded within sixty (60) days of the issuance of the request or such longer period as may be agreed upon by the parties in writing. All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatever. Complainant and respondent shall each bear its own costs of mediation, and each shall bear one-half the cost of the mediator or mediation service.
- 15.3 *Litigation* The parties agree that any action brought by Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this **Section** shall not be construed as preventing either party from removing an action from state to federal court. Developer waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.
- 15.4 *Parties' Rights Are Cumulative* No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- 15.5 *Injunctions* Nothing contained in this Agreement shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.
- 15.6 *Waiver of Jury Trial* **FRANCHISOR AND DEVELOPER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING**

- 15 7 *Must Bring Claims Within One Year* ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF DEVELOPER AND FRANCHISOR, OR DEVELOPER'S OPERATION OF THE BUSINESS CONTEMPLATED HEREUNDER, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER, SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION OR IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES, SUCH CLAIM OR ACTION SHALL BE IRREVOCABLY BARRED
- 15 8 *Waiver of Punitive Damages* FRANCHISOR AND DEVELOPER HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES SUSTAINED BY IT
- 15 9 *Payment of Legal Fees* Developer shall pay to Franchisor all damages, costs and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs subsequent to the termination or expiration of this Agreement in (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation **Sections 5 2** and **8** above), and/or (b) successfully defending a claim that Franchisor defrauded Developer into signing this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement do not govern the parties' relationship

16 ACKNOWLEDGMENTS

- 16 1 *Developer's Investigation of the Business Possibilities* Developer acknowledges that it has conducted an independent investigation of the business contemplated under this Agreement, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon its ability (or, if Developer is an entity, the Principals as independent businesspersons), the active participation of Developer (or if an entity, its Principals) in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided, as well as other factors
- 16 2 *No Warranties or Guarantees* Except as set forth in the disclosure document, Franchisor expressly disclaims the making of, and Developer acknowledges that it has not received, any representations, warranty, or guarantee, express or implied, as to the potential revenues, profits, or success of the business venture contemplated by this Agreement
- 16 3 *Receipt of Complete Agreement and FDD* Developer acknowledges that it received a copy of this Agreement, its exhibit(s), and agreements relating to this Agreement (if any) with all of the blank lines filled in, with ample time within which to review with applicable advisors. Developer also acknowledges that Developer received the FDD at least fourteen (14) calendar days before the date on which this Agreement was executed, or as otherwise provided under applicable state law
- 16 4 *Developer Read the FDD and Agreement and Consulted with Advisors* Developer confirms that it has read and understood the FDD, this Agreement, the exhibits to this Agreement, and that Developer had sufficient time and opportunity to consult

with advisors of Developer's own choosing (including a lawyer and an accountant) about the potential benefits and risks of entering into this Agreement. Developer confirms that it has no knowledge of any representations by Franchisor, or anyone purporting to act on Franchisor's behalf, that are contrary to the statements made in the FDD or contrary to the terms of this Agreement.

- 16.5 *No Conflicting Obligations* Each party represents and warrants to the other that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from (a) negotiating and entering into this Agreement, (b) exercising its rights under this Agreement, and/or (c) fulfilling its responsibilities under this Agreement.
- 16.6 *Developer's Responsibility for the Choice of Approved Location Sites* Developer acknowledges that it shall have sole and complete responsibility for the choice of the locations at which Approved Locations will be operated, that Franchisor has not (and shall not be deemed to have, even by Franchisor's approval of the sites that are part of the Development Area or that will become the locations at which Approved Locations will be operated) given any representation, promise, or guarantee of Developer's success at the locations, and that Developer shall be solely responsible for its own success within the Approved Locations.
- 16.7 *Developer's Responsibility for Operation* Although Franchisor retains the right to establish and periodically modify System standards, which Developer has agreed to maintain in the operation of the business contemplated under this Agreement, Developer retains the right and sole responsibility for the day-to-day management and operation of the Approved Locations and the implementation and maintenance of system standards in the business contemplated under this Agreement.
- 16.8 *Different Offerings to Others* Developer acknowledges and agrees that Franchisor may modify the offer of its retail location agreements, franchise agreements, and development agreements to other parties in any manner and at any time, which offers and agreements may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- 16.9 *Public Announcement* Unless required under applicable law (including, without limitation, any applicable securities laws and/or rules and regulations of a securities exchange to which the disclosing party is a member), Developer shall not make any announcement or press release concerning this Agreement or any of the matters dealt with in this Agreement without Franchisor's prior written consent.
- 16.10 *Individual Signature* The individual signing on behalf of the Developer below represents and warrants to Franchisor that he or she has the authority to execute and deliver this Agreement and all related agreements on Developer's behalf. Developer represents and warrants to Franchisor that this Agreement has been duly authorized and executed by or on behalf of Developer and constitutes the valid and binding obligation of Developer, enforceable in accordance with its terms.
- 16.11 *Success Depends on Developer* Developer acknowledges that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon Developer's ability as an independent businessperson, Developer's active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as

well as other factors Franchisor does not make any representation or warranty express or implied as to the potential success of the business venture contemplated under this Agreement

16 12 *General Release* If this Agreement is not the first contract between Developer (and its affiliates) and Franchisor (and its affiliates), then Developer agrees to the following Developer (on behalf of itself and its parent, subsidiaries and affiliates and their respective past and present members, officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities) and all guarantors of Developer's obligations under this Agreement (collectively, "**Developer Releasors**") freely and without any influence forever release and covenant not to sue Franchisor, its parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, partners, members, managers, agents and employees, in their corporate and individual capacities (collectively "**Franchisor Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**claims**"), which any Developer Releasor now owns or holds or may at any time have owned or held, including, without limitation, claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Developer Releasor and any Franchisor Releasee, the sale of any franchise to any Developer Releasor, the development and operation of any Approved Location and the development and operation of all other Retail Locations operated by any Developer Releasor that are franchised by any Franchisor Releasee Developer expressly agrees that fair consideration has been given by Franchisor for this General Release and Developer fully understands that this is a negotiated, complete, and final release of all claims This General Release does not release any claims arising from representations made in Franchisor's FDD and its exhibits or otherwise impair or affect any claims arising after the date of this Agreement

16 13 *Developer's Independence* Developer acknowledges and agrees that (a) Developer is the only party that employs its employees (even though Franchisor may provide Developer with advice, guidance, and training), (b) Franchisor is not the employer of any of Developer's employees, and Franchisor will not play any role in decisions regarding their employment (including, but not limited to, matters such as recruitment, hiring, compensation, relations, labor matters, review, and/or dismissal), (c) the guidance that Franchisor provides and requirements under which Developer will operate are intended to promote and protect the value of the brand and the Proprietary Marks, (d) when forming and in operating Developer's business, Developer had to adopt standards to operate that business, and that instead of developing and implementing Developer's own standards (or those of another party), Developer chose to adopt and implement Franchisor's standards for Developer's business (including, but not limited to, Franchisor's System and the requirements under this Agreement), and (e) Developer has made (and will remain responsible at all times for) all of the organizational and basic decisions about establishing and forming Developer's entity, operating its business (including, but not limited to, adopting Franchisor's standards as Developer's standards), and hiring employees, engaging professional advisors, and all other facets of Developer's operation

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written

ESPRESSAMENTE ILLY AMERICAS, INC

Developer

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address for Notices

800 Westchester Avenue, Suite S438
Rye Brook, NY 10573
Phone (914) 253-8141
Attn President

Address for Notices

Telephone _____
Fax _____
Attn _____

With a copy to

Telephone _____
Fax _____
Attn _____

ILLY CAFFE
DEVELOPMENT AGREEMENT
EXHIBIT A

DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE

1 Development Area All Retail Locations developed under this Development Agreement shall be located within the following boundaries

2 Development Schedule Recognizing that time is of the essence, Developer agrees to satisfy the development schedule set forth below

Number of Retail Locations	Site Approval Deadline	Opening Deadline	Cumulative Total Number of Retail Locations Which Developer Shall Have Open and in Operation as of Opening Deadline

3 Excluded Existing Businesses Excluded Existing Businesses are (if applicable)

Initials	
Developer	Franchisor

ILLY CAFFE
DEVELOPMENT AGREEMENT
EXHIBIT B

GUARANTEE, INDEMNIFICATION AND ACKNOWLEDGMENT

As an inducement to **ESPRESSAMENTE ILLY AMERICAS, INC** ("**Franchisor**") to execute the ILLY CAFFE Development Agreement between Franchisor and _____ ("**Developer**"), dated _____, 20____ (the "**Agreement**"), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor's successors and assigns that all of Developer's monetary obligations under the Agreement will be punctually paid and performed and that all monetary obligations will be punctually paid and performed

Upon demand by Franchisor, the undersigned each hereby jointly and severally agree to immediately make each payment required of Developer under the Agreement and waive any right to require Franchisor to (a) proceed against Developer for any payment required under the Agreement, (b) proceed against or exhaust any security from Developer, (c) pursue or exhaust any remedy, including any legal or equitable relief, against Developer, or (d) give notice of demand for payment by Developer. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Developer, or settle, adjust, or compromise any claims against Developer, and the undersigned each hereby jointly and severally waive notice of same and agree to remain and be bound by any and all such amendments and changes to the Agreement

The undersigned each hereby jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Developer to perform any obligation of Developer under the Agreement, any amendment thereto, or any other agreement executed by Developer referred to therein

The undersigned each hereby jointly and severally acknowledge and expressly agree to be individually bound by all of the covenants contained in **Sections 5, 6, 7, and 8** of the Agreement, as amended and supplemented, and acknowledge and agree that this Guarantee does not grant the undersigned any right to use the "ILLY CAFFE" and "ILLY" marks, logos or system

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death, and the obligations of the other guarantors will continue in full force and effect

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with

Sections 14 and 15 of the Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims) This Guarantee shall be interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules)

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement

GUARANTOR(S)

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

(Seal)

Signed _____
(In his/her individual capacity)

Printed Name _____

Home Address _____

ILLY CAFFE
DEVELOPMENT AGREEMENT
EXHIBIT C

NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(BETWEEN DEVELOPER AND ITS PERSONNEL)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("**Agreement**") is made this __ day of _____, 20__, by and between _____ (the "**Developer**"), and _____, who is a manager, supervisor, or a person in a managerial position with Developer who has supervisory responsibilities related to the development of the Approved Locations (the "**Individual**")

RECITALS

WHEREAS, ESPRESSAMENTE ILLY AMERICAS, INC ("**Franchisor**") and its affiliates own a format and system (the "**System**") relating to the establishment and operation of coffee outlet businesses (the "**Retail Locations**") that operate under the Proprietary Marks in buildings that are designed using and bear Franchisor's interior and exterior trade dress, use equipment, furnishings and promotional items according to Franchisor's specifications, and specialize in the sale of "ILLY" products and specialty beverages and items prepared according to Franchisor's proprietary recipes, formulae and techniques (together, the "**ILLY PRODUCTS**"), as well as such other food and beverage items, related products and accessories as Franchisor may periodically specify ("**Additional Products**") (Together, ILLY PRODUCTS and Additional Products will be referred to as "**Products**"),

WHEREAS, Franchisor identifies Retail Locations by the "ILLY CAFFE" and "ILLY" marks and such other proprietary marks as Franchisor may periodically designate in writing (together, the "**Proprietary Marks**"),

WHEREAS, Franchisor and Developer have executed a Development Agreement ("**Development Agreement**") granting Developer the right to develop one or more Retail Locations and, ultimately, to sign Franchise Agreements to operate approved Retail Locations (the "**Approved Locations**"), acting as the Franchisee under the Franchise Agreements, and use the Proprietary Marks in connection therewith under the terms and conditions of the Development Agreement, and

WHEREAS, Individual, by virtue of his or her position with Developer, will gain access to certain of Franchisor's Confidential Information (defined below) and must therefore be bound by the confidentiality and non-competition agreements as required by the Development Agreement

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows

1 Confidential Information Individual shall not, during the term of the Development Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential

information, knowledge, or know-how concerning the methods of operation of the Approved Location that may be communicated to Individual or of which Individual may be apprised by virtue of Developer's operation of the Approved Location under the terms of the Development Agreement. Any and all information, knowledge, know-how, and techniques that Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information that Developer can demonstrate came to its attention before disclosure thereof by Franchisor, or that, at or after the time of disclosure by Franchisor to Developer, had become or later becomes a part of the public domain, through publication or communication by others.

2 Covenants Not to Compete

(a) Individual specifically acknowledges that, pursuant to the Development Agreement, and by virtue of its position with Developer, Individual will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System.

(b) Individual covenants and agrees that during the term of the Development Agreement, except as otherwise approved in writing by Franchisor, Individual shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity

(i) Divert or attempt to divert any business or customer of any Approved Location or of any Retail Location using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System.

(ii) Employ or seek to employ any person who is at that time employed by Franchisor, Developer or by any other retailer, franchisee, master franchisee, developer of Franchisor, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment, or

(iii) Own, maintain, operate, engage in, or have any interest in any Competitive Business, or any other business to manufacture, sell or otherwise distribute, market or advertise products that would compete with the products offered by Retail Locations, either within or outside the Development Area. A "**Competitive Business**" shall be considered to be a retail business in which the sale of brand name coffee and/or coffee related beverages and products comprise twenty percent (20%) or more of the business' Net Sales in any month.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by Franchisor, Individual shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any Competitive Business which is, or is intended to be, located within the Development Area, a three (3) mile radius of the Development Area, or a one (1) mile radius of any Retail Location operating at the time that the obligations under this Agreement commence.

(d) As used in this Agreement, the term "**Post-Term Period**" shall mean a continuous uninterrupted period of two (2) years from the date of (a) a transfer permitted under **Section 7.2** of the Development Agreement, (b) expiration or termination of this Agreement (regardless of the cause for termination), (c) termination of Individual's employment with Developer, or, in the event of a challenge to (a), (b), or (c) above, then (d) a final order of a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement, either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity)

3 **Injunctive Relief** Individual acknowledges that any failure to comply with the requirements of this Agreement will cause Franchisor irreparable injury, and Individual agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement

4 **Severability** All agreements and covenants contained in this Agreement are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Individual agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect Franchisor's and/or Developer's legitimate business needs as permitted by applicable law and public policy. In so doing, the Individual agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5 **Delay** No delay or failure by the Franchisor or Developer to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided in this Agreement, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6 **Third-Party Beneficiary** Individual hereby acknowledges and agrees that Franchisor is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly, with Developer.

7 Any capitalized terms that are not defined in this Agreement shall have the meanings given to them in the Development Agreement and shall be interpreted and construed in accordance with **Sections 14** and **15** of the Development Agreement (including, without limitation, the terms regarding governing law, jurisdiction and venue, waiver of punitive damages, waiver of jury trials, injunctive relief, and limitations on periods for bringing claims). This Agreement shall be interpreted and construed under the laws of the State in which Franchisor maintains its principal place of business when the dispute arises. In the event of any conflict of law, the laws of the State in which Franchisor maintains its principal place of business when the dispute arises shall prevail (without regard to, and without giving effect to, the application of such state's conflict of law rules).

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, Developer and Individual each attest that he, she, or it has read and understands the terms of this Agreement, and voluntarily signed this Agreement on the date first written above

DEVELOPER

By _____

Name _____

Title _____

INDIVIDUAL

By _____

Name _____

Title _____

EXHIBIT C
LIST OF ADMINISTRATORS

We intend to register this disclosure document as a "franchise" in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

CALIFORNIA Commissioner of Business Oversight Department of Business Oversight 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 876-7500 Toll Free (866) 275-2677	NEW YORK Office of the New York State Attorney General Investor Protection Bureau Franchise Section 120 Broadway, 23rd Floor New York, NY 10271-0332 (212) 416-8236 Phone (212) 416-6042 Fax
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Department 600 East Boulevard Avenue, State Capitol Fifth Floor, Dept 414 Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Office of the Attorney General Franchise Bureau 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Department of Business Regulation Securities Division Bldg 69, First Floor John O Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Department of Labor and Regulation Division of Securities 124 S Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-4823
MARYLAND Office of the Attorney General Securities Division 200 St Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051

MICHIGAN Michigan Attorney General's Office Consumer Protection Div , Franchise Section 525 West Ottawa Street G Mennen Williams Building, 1st Floor Lansing, Michigan 48913 (517) 373-7117	WASHINGTON Department of Financial Institutions Securities Division – 3rd Floor 150 Israel Road, S W Tumwater, Washington 98501 (360) 902-8760
MINNESOTA Commissioner of Commerce Department of Commerce 85 7th Place East, Suite 500 St Paul, Minnesota 55101 (651) 539-1500	WISCONSIN Office of the Commissioner of Securities 201 W Washington Ave , Suite 300 Madison, WI 53703 (608) 261-9555

EXHIBIT D
AGENTS FOR SERVICE OF PROCESS

We intend to register this disclosure document as a "franchise" in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states.

CALIFORNIA Commissioner of Business Oversight Department of Business Oversight 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free (866) 275-2677	NEW YORK New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6th Floor Albany, NY 12231-0001 (518) 473-2492
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Commissioner 600 East Boulevard Avenue, State Capitol Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Director of Department of Business Regulation Department of Business Regulation Securities Division Bldg 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Department of Labor and Regulation Director of the Division of Securities 124 S. Euclid, Suite 104 Pierre, South Dakota 57501 (605) 773-4823
MARYLAND Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA Clerk of the State Corporation Commission 1300 East Main Street, 1 st Floor Richmond, Virginia 23219 (804) 371-9733

MICHIGAN Michigan Attorney General's Office Consumer Protection Div , Franchise Section 525 West Ottawa Street G Mennen Williams Building, 1st Floor Lansing, Michigan 48913 (517) 373-7117	WASHINGTON Director of Department of Financial Institutions Securities Division – 3 rd Floor 150 Israel Road, S W Tumwater, Washington 98501 (360) 902-8760
MINNESOTA Commissioner of Commerce 85 7 th Place East, Suite 500 St Paul, Minnesota 55101 (651) 539-1500	WISCONSIN Commissioner of Securities 201 W Washington Ave , Suite 300 Madison, WI 53703 (608) 261-9555

EXHIBIT E
LIST OF CURRENT AND FORMER FRANCHISEES (AS OF DECEMBER 31, 2016) in USA

LIST OF CURRENT FRANCHISEES

Unit Number	Franchisee Name	Unit Address	City	State/ Zip	Phone Number
1	JW Marriott Hotel, Los Angeles at L A LIVE espressamente illy	710 W Olympic Blvd	Los Angeles	CA 90015	(213) 216-3390
2	CBD Denver Suites LLC Illy caffe at Renaissance Downtown City Center Hotel	9100 E Panorama Drive #300	Englewood	CO 80112	(303) 867-8100
3	Marriott Hotel Services Inc espressamente illy Miami Biscayne Bay Marriott	1633 North Bayshore Drive	Miami	FL 33132	(305) 374-3900
4	Areas USA MIA LLC espressamente illy	Food Court Terminal 4200 NW 21st St	Miami	FL 33142	(305) 869-1424
5	Compass Group USA Inc espressamente illy	455 N Cityfront Plaza Dr	Chicago	IL 60611	(312) 374-1169
6	Air Ventures, espressamente illy (formerly Areas USA BOS, LLC)	Terminal B Logan International Airport	Boston	MA 02128	(617) 963-8154
7	HBF APU JV LLC espressamente illy	Detroit Airport - Terminal A	Detroit	MI 48242	(734) 941-1206
8	Renaissance Hotel Operating Company Inc espressamente illy Renaissance Arlington City View (Potomac Yard)	2800 South Potomac Avenue	Arlington	VA 22202	(703) 413-1300

The following locations are specially licensed locations operating under licenses granted by ILLY ITALY

Unit Number	Franchisee Name	Unit Address	City	State/ Zip	Phone Number
1	Earning Curve LLC, espressamente illy	Palazzo Hotel 3325 Las Vegas Blvd South	Las Vegas	NV 89109	702-869-2233

LIST OF FORMER FRANCHISEES

Franchisee Name	Unit Address	City	State/ Zip	Phone Number
Prima Cosa LLC	1 Sutter Street, mezzanine	San Francisco	CA 94104	(520) 301-6361
Pacific Gateway Concessions LLC espressamente illy	Terminal A, Gate 19/20 Mineta San Jose International Airport 1661 Airport Blvd	San Jose	CA 95110	(650) 246-3860

If you buy this franchise, your contact information may be disclosed to other buyers when you leave our System

EXHIBIT G
TABLE OF CONTENTS OF MANUALS

Espressamente MANUALS

Espressamente  Manuals provide a series of reference points and sound suggestions that are fundamental to create coffee bars in which the consumer feels involved in a polysensorial experience in a distinctive and unique area that is configured like a true coffee temple. The manuals are useful daily operating tools that help to optimize management and the daily organization of activities of the sales outlet.

OPERATIONS MANUAL

- 1 Concept Book (mission, positioning, illycaffè, product mix guidelines, Local Store Marketing, Business Analysis, Operations, Training)
- 2 Quality Manual (description of the quality control system)
- 3 Offer Manual (products range, recipes and preparation, supply chain)

Total for all manuals is approximately 400 total pages

EXHIBIT H
STANDARD RELEASE LANGUAGE

In the event we require you to sign a general release, unless the parties agree otherwise, the following will be the language you will be required to sign

[Retailer or Franchisee or Developer], its officers and directors, its owners, and their respective agents, heirs, administrators, successors, and assigns (the "**Franchisee Group**"), hereby forever release and discharge, and forever hold harmless espressamente illy Americas, inc , its current and former affiliates and predecessors, and their respective shareholders, partners, members, directors, officers, agents, representatives, heirs, administrators, successors, and assigns (the "**Franchisor Group**"), from any and all claims, demands, debts, liabilities, actions or causes of action, costs, agreements, promises, and expenses of every kind and nature whatsoever, at law or in equity, whether known or unknown, foreseen and unforeseen, liquidated or unliquidated, which the Franchisee Group and/or its owners had, have, or may have against any member of the Franchisor Group, including, without limitation, any claims or causes of action arising from, in connection with or in any way related or pertaining, directly or indirectly, to the **[Retail Location Agreement or Franchise Agreement or Development Agreement]**, the relationship created by that agreement, or the development, ownership, or operation of the franchised business. The Franchisee Group further indemnifies and holds the Franchisor Group harmless against, and agrees to reimburse them for any loss, liability, expense, or damages (actual or consequential) including, without limitation, reasonable attorneys', accountants', and expert witness fees, costs of investigation and proof of facts, court costs, and other litigation and travel and living expenses, which any member of the Franchisor Group may suffer with respect to any claims or causes of action which any customer, creditor, or other third party now has, ever had, or hereafter would or could have, as a result of, arising from, or under the **[Retail Location Agreement or Franchise Agreement or Development Agreement]** or the franchised business. The Franchisee Group and its owners represent and warrant that they have not made an assignment or any other transfer of any interest in the claims, causes of action, suits, debts, agreements, or promises described herein.

EXHIBIT I
STATE-SPECIFIC DISCLOSURES

California Disclosure

In recognition of the requirements of the California Franchise Investment Law, Cal Corp Code §§ 31000-31516, and the California Franchise Relations Act, Cal Bus & Prof Code §§ 20000-20043, the Franchise Disclosure Document for espressamente illy Americas, inc in connection with the offer and sale of ILLY Locations for use in the State of California shall be amended to include the following

1 Our website, <http://www.espressamentelly.com>, has not been reviewed or approved by the California Department of Business Oversight. Any complaints concerning the content of the website may be directed to the California Department of Business Oversight at www.dbo.ca.gov

2 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

3 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

4 YOU MUST SIGN A GENERAL RELEASE WHEN YOU EXECUTE OR TRANSFER YOUR RETAIL LOCATION AGREEMENT / FRANCHISE AGREEMENT / DEVELOPMENT AGREEMENT AND IF YOU RENEW YOUR RETAIL LOCATION AGREEMENT/FRANCHISE AGREEMENT. CALIFORNIA CORPORATIONS CODE § 31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE §§ 31000 THROUGH 31516). BUSINESS AND PROFESSIONS CODE § 20010 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE RELATIONS ACT (BUSINESS AND PROFESSIONS CODE §§ 20000 THROUGH 20043)

5 In Item 3, "Litigation," shall be amended by the addition of the following paragraphs

Pursuant to California law, this Item does not include any information regarding the arrest of any person(s) that did not result in a conviction or plea of nolo contendere

Neither we, 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 and Exchange Act of 1934, 15 U S C § 78a, et seq) suspending or expelling such person from membership in such association or exchange

6 Item 5, "Initial Fees," shall be amended by the addition of the following sentence

Payment of all initial fees is postponed until after we have completed all of initial obligations and your ILLY Location is open for business

7 Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraph(s) at the conclusion of the Item

The following notice is required to be inserted in this Disclosure Document by the state of California whenever an applicable provision is included in a Retail Location Agreement/Franchise Agreement We reserve the right to attempt to enforce all of the provisions listed below in which we indicate that this provision may not be enforceable under California law

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, non-renewal or transfer of a Retail Location Agreement/Franchise Agreement If the Retail Location Agreement/Franchise Agreement contains a provision that is inconsistent with the law, the law will control

The Retail Location Agreement, Franchise Agreement and Development Agreement provide for termination upon bankruptcy These provisions may not be enforceable under federal bankruptcy law (11 U S C § 101, et seq)

The Franchise Agreement and Development Agreement contain a covenant not to compete which extends beyond the termination of the Franchise Agreement and Development Agreement These provisions may not be enforceable under California law

The Retail Location Agreement, Franchise Agreement and Development Agreement require application of the laws of the state in which we maintain our principal place of business when the dispute arises (currently, New York) This provision may not be enforceable under California law

8 Each provision of this Addendum to the Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the California Franchise Investment Law, Cal Corp Code §§ 31000 - 31516, and the California Franchise Relations Act, Cal Bus & Prof Code §§ 2000 - 20043, are met independently without reference to this Addendum to the Disclosure Document

New York Disclosure

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 Franchise Disclosure Document (the "**Disclosure Document**") for espressamente illy Americas, inc for use in the State of New York shall be amended as follows

- 1 The following is added to the State Cover Page

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

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE PROSPECTUS HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS

- 2 Item 3, "Litigation," shall be deleted in its entirety, and the following Item 3 shall be substituted in lieu thereof

Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, 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

Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging violation of a franchise, antifraud or securities law, fraud, embezzlement, fraudulent conversion or misappropriation of property, or unfair or deceptive practices or comparable allegations

Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, is

subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency, or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange, or is subject to a currently effective 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

Accordingly, no litigation is required to be disclosed in this Disclosure Document

3 Item 4, "Bankruptcy" shall be deleted in its entirety, and the following Item 4 shall be substituted in lieu thereof

Neither we, nor our predecessor or affiliate, nor any of our or their officers or general partners, during the 10-year period immediately before the date of the Disclosure Document (a) filed as debtor (or had filed against it) a petition to start an action under the U S Bankruptcy Code, (b) obtained a discharge of its debts under the bankruptcy code, or (c) was a principal officer 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 1 year after the officer or general partner of ours held this position in the company or partnership

4 Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by deleting "d", "j", "w" in each chart and the following new "d", "j", "w" shall be substituted in lieu thereof

Retail Location Agreement / Franchise Agreement/Development Agreement

Provision	Selection in Agreement	Summary
d Termination by you	RLA and FA Not Applicable DA Not Applicable	Pursuant to New York General Business Law, you may terminate the Agreement upon any grounds available by law
j Assignment of contract by us	RLA and FA §14 1 DA §7 1	There are no limits on our right to assign the Agreement No assignment will be made except to an assignee who, in our judgment, is willing and able to assume our obligation under the Agreement
w Choice of law	RLA and FA §25 1 DA §15 1	The law of the State in which we maintain our principal place of business (currently, New York) The foregoing choice of law should not be considered as a waiver of any right conferred upon us or you by the General Business Law of the State of New York, Article 33

6 There are circumstances in which an offering made by us 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 the franchisee is domiciled in or the franchise will be opened in New York. We are required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

STATEMENT OF DISCLOSURE DOCUMENT ACCURACY

**WE REPRESENT THAT THIS DISCLOSURE DOCUMENT DOES NOT KNOWINGLY OMIT
ANY MATERIAL FACT OR CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT**

EXHIBIT J
STATE-SPECIFIC AGREEMENT AMENDMENTS

California Retail Location Agreement Amendment

To comply with the requirements of the California Franchise Investment Law, Cal Corp Code §§ 31000-31516, and the California Franchise Relations Act, Cal Bus & Prof Code §§ 20000-20043, the parties to the attached espressamente illy Americas, inc ("**Franchisor**") Retail Location Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to Section 4.1 of the Agreement ("Fees, Sales Reporting")

Payment of the Initial Fee is postponed until after all of Franchisor's initial obligations are complete and the Retail Location is open for business

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this California Amendment to the Retail Location Agreement on the same date as the Retail Location Agreement was executed

ESPRESSAMENTE ILLY AMERICAS, INC

Retailer

By _____

By _____

Name _____

Name _____

Title _____

Title _____

California Franchise Agreement Amendment

To comply with the requirements of the California Franchise Investment Law, Cal Corp Code §§ 31000-31516, and the California Franchise Relations Act, Cal Bus & Prof Code §§ 20000-20043, the parties to the attached espressamente illy Americas, inc ("**Franchisor**") Franchise Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to Section 4 1 of the Agreement ("Royalty Fees, Sales Reporting")

Payment of the Initial Franchise Fee is postponed until after all of Franchisor's initial obligations are complete and the Retail Location is open for business

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this California Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed

ESPRESSAMENTE ILLY AMERICAS, INC

Franchisee

By _____

By _____

Name _____

Name _____

Title _____

Title _____

California Development Agreement Amendment

To comply with the requirements of the California Franchise Investment Law, Cal Corp Code §§ 31000-31516, and the California Franchise Relations Act, Cal Bus & Prof Code §§ 20000-20043, the parties to the attached espressamente illy Americas, inc ("**Franchisor**") Development Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to Section 2.1 of the Agreement ("Development Fee")

Payment of the Development Fee is postponed until after Developer opens the first Retail Location under the Development Agreement

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this California Amendment to the Development Agreement on the same date as the Development Agreement was executed

ESPRESSAMENTE ILLY AMERICAS, INC

Developer

By _____

By _____

Name _____

Name _____

Title _____

Title _____

New York Retail Location Agreement Amendment

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 espressamente illy Americas, inc ("**Franchisor**") Retail Location Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to the end of Section 2 2 7 (Renewal), Section 14 2 (Transfer), and Section 26 9 (General Release)

Any provision in this Agreement requiring Retailer to sign a general release of claims against Franchisor does not release any claim Retailer may have under New York General Business Law, Article 33, Sections 680-695

2 The first paragraph of Section 25 2 of the Agreement, under the heading "Mediation," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

25 2 Mediation Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 25 5** relating to injunctions) Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes Notwithstanding anything to the contrary, this **Section** shall not bar either party from seeking injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks

3 Section 25 5 of the Agreement, under the heading "Injunctions," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

25 5 Injunctions Nothing contained in this Agreement shall bar Franchisor's or Retailer's right to seek injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions

4 Section 25 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following language

25 10 New York Franchise Law Nothing in this Agreement should be considered a waiver of any right conferred upon Retailer by New York General Business Law, Sections 680-695

5 There are circumstances in which an offering made by Franchisor 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 Retailer is domiciled in or the franchise will be opening in New York. Franchisor is required to furnish a New York prospectus to every prospective Retailer who is protected under the New York General Business Law, Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Retail Location Agreement on the same date as the Retail Location Agreement was executed.

ESPRESSAMENTE ILLY AMERICAS, INC

By _____
Name _____
Title _____

Retailer

By _____
Name _____
Title _____

New York Franchise Agreement Amendment

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 espressamente illy Americas, inc Franchise Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to the end of Section 2 2 7 (Renewal), Section 14 4 1 (Transfer), and Section 26 10 (General Release)

Any provision in this Agreement requiring Franchisee to sign a general release of claims against Franchisor does not release any claim Franchisee may have under New York General Business Law, Article 33, Sections 680-695

2 The first paragraph of Section 25 2 of the Agreement, under the heading "Mediation," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

25 2 Mediation Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 25 5** relating to injunctions) Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes Notwithstanding anything to the contrary, this **Section** shall not bar either party from seeking injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks

3 Section 25 5 of the Agreement, under the heading "Injunctions," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

25 5 Injunctions Nothing contained in this Agreement shall bar Franchisor's right to seek injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions

4 Section 25 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following language

25 10 New York Franchise Law Nothing in this Agreement should be considered a waiver of any right conferred upon Franchisee by New York General Business Law, Sections 680-695

5 There are circumstances in which an offering made by Franchisor 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 Franchisee is domiciled in or the franchise will be opening in New York. Franchisor is required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

ESPRESSAMENTE ILLY AMERICAS, INC
Franchisor

Franchisee

By _____

By _____

Name _____

Name _____

Title _____

Title _____

New York Development Agreement Amendment

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 espressamente illy Americas, inc Development Agreement (the "**Agreement**") agree as follows

1 The following sentence is added to the end of Section 7 2 (Transfer) and Section 16 12 (General Release)

Any provision in this Agreement requiring Developer to sign a general release of claims against Franchisor does not release any claim Developer may have under New York General Business Law, Article 33, Sections 680-695

2 The first paragraph of Section 15 2 of the Agreement, under the heading "Mediation," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

15 2 *Mediation* Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided in **Section 15 5** relating to injunctions) Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes Notwithstanding anything to the contrary, this **Section** shall not bar either party from seeking injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation, including, without limitation, claims involving the Proprietary Marks

3 Section 15 5 of the Agreement, under the heading "Injunctions," shall be deleted in its entirety, and shall have no force or effect, and the following paragraph shall be substituted in lieu thereof

15 5 *Injunctions* Nothing contained in this Agreement shall bar Franchisor's right to seek injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions

4 Section 15 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following language

15 10 *New York Franchise Law* Nothing in this Agreement should be considered a waiver of any right conferred upon Developer by New York General Business Law, Sections 680-695

5 There are circumstances in which an offering made by Franchisor 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 Developer is domiciled in or the franchise will be opening in New York. Franchisor is required to furnish a New York prospectus to every prospective developer who is protected under the New York General Business Law, Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Development Agreement on the same date as the Development Agreement was executed.

ESPRESSAMENTE ILLY AMERICAS, INC

By _____
Name _____
Title _____

Developer

By _____
Name _____
Title _____

1

EXHIBIT K
COMPLIANCE CERTIFICATION

Exhibit K
Compliance Certification

As you know, espressamente illy Americas, inc ("we," "us," or "our") and you are preparing to enter into a Retail Location Agreement, Franchise Agreement or Development Agreement (each an Agreement) for the establishment and operation of an "ILLY" franchised coffee bar (an "ILLY Location"). The purpose of this Certification is to determine whether any statements or promises were made to you that we have not authorized and that may be untrue, inaccurate or misleading. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1 I had my first face-to-face meeting with one of our representatives on _____, 20____

2 Have you received and personally reviewed the Agreement, each Addendum and related agreement attached to it?

Yes _____ No _____

3 Do you understand all of the information contained in the Agreement, each Addendum and related agreement provided to you?

Yes _____ No _____

If no, what parts of the Agreement, Addendum, and/or related agreement do you not understand? (Attach additional pages, as needed)

4 Do you understand that the Agreement contains a number of provisions that may affect your legal rights, including required mediation, designated locations or states for any judicial proceedings, a waiver of a jury trial, a waiver of punitive or exemplary damages, limitations on when claims may be filed, and other waivers and limitations?

Yes _____ No _____

- 5 Have you received and personally reviewed our Disclosure Document that was provided to you (the "**Disclosure Document**")?

Yes _____ No _____

- 6 Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes _____ No _____

On what date did you receive it? _____, 20____

- 7 Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes _____ No _____

If no, what parts of the Disclosure Document and/or Addendum do you not understand?
(Attach additional pages, as needed)

- 8 Have you discussed with an attorney, accountant, or other professional advisor the benefits and risks of establishing and operating an ILLY Location?

Yes _____ No _____

If no, do you wish to have more time to do so?

Yes _____ No _____

- 9 Do you understand that the success or failure of your ILLY Location 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 _____

- 10 Has any employee or other person speaking for us made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the actual or potential revenues, profits or operating costs of any

particular "ILLY" franchised business operated by us or any of our franchisees, or of any group of such businesses, that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

- 11 Has any employee or other person speaking for us made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) regarding the amount of money you may earn in operating an ILLY Location that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

- 12 Has any employee or other person speaking for us made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the total amount of revenue an ILLY Location will or may generate that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

- 13 Has any employee or other person speaking for us made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) regarding the costs you may incur in operating an ILLY Location that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

- 14 Has any employee or other person speaking for us made any statement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) concerning the likelihood of success that you should or might expect to achieve from operating an ILLY Location?

Yes _____ No _____

- 15 Has any employee or other person speaking for us made any statement, agreement or promise to you (or, to the best of your knowledge, information and belief, to any person or entity or your behalf) 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 the Disclosure Document or the Agreement?

Yes _____ No _____

- 16 Have you entered into any binding agreement with us concerning the purchase of an ILLY Location before today?
Yes _____ No _____
- 17 Have you paid any money to us concerning the purchase of an ILLY Location before today?
Yes _____ No _____
- 18 Do you understand that the territorial rights you have been granted are subject to limitations and exceptions?
Yes _____ No _____
- 19 Do you understand that we and our subsidiaries retain the right, directly or through others, to sell certain products (e g , coffee products) on a wholesale level inside or outside of your territory?
Yes _____ No _____
- 20 Do you understand that all disputes or claims you may have arising out of or relating to the Agreement must be litigated in New York (if not resolved informally or by mediation)?
Yes _____ No _____
- 21 Has any employee or other person speaking for us made or suggested any "side deals" with you?
Yes _____ No _____
- 22 Do you understand that the Agreement contains the entire agreement between you and us concerning your ILLY Location, meaning that any prior oral or written statements not set out in the Agreement will not be binding?
Yes _____ No _____

EXHIBIT L
RECEIPTS

EXHIBIT L
ITEM 23 • RECEIPT

(Retain this copy for your records)

This Disclosure Document summarizes certain provisions of the Retail Location Agreement Franchise Agreement and other information in plain language Read this Disclosure Document and all agreements carefully

If we offer you a franchise, we must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to us or an affiliate in connection with the proposed offer or sale New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to our relationship with you Iowa requires that we give you this disclosure document at the earlier of the first personal meeting or 14 days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship Michigan requires that we give you this disclosure document at least 10 days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission Washington, D C 20580 and the state agencies listed in **Exhibit C**

The franchisor is espressamente illy Americas inc located at 800 Westchester Avenue Suite S438 Rye Brook NY 10573 Its telephone number is (914) 253-8141
Issuance date May 30, 2017

The franchise seller for this offering is

- | | |
|--|------------------------------------|
| ☐ Barry Sheldon, President for Business Development | espressamente illy Americas inc |
| ☐ Lon Southerland Vice President | 800 Westchester Avenue, Suite S438 |
| ☐ Giovanni Montanelli Operations Manager | Rye Brook, NY 10573 |
| ☐ Adam Manson, Food/Beverage Manager North America | (914) 253-8141 |
| ☐ Joe Cardi, Senior Director Sales | |

espressamente illy Americas, inc , authorizes the respective state agencies identified in Exhibit D to receive service of process for it in the particular state

I have received a Disclosure Document dated May 30, 2017 (with effective dates of state registration as listed on the State Cover Page) that included the following Exhibits

- | | |
|--|---------------------------------------|
| A-1 Retail Location Agreement | F Financial Statements |
| A-2 Franchise Agreement | G Table of Contents for Manuals |
| B Development Agreement | H Standard Release Language |
| C List of State Administrators | I State-specific Disclosures |
| D Agents for Service of Process | J State-specific Agreement Amendments |
| E List of Current and Former Franchisees | K Compliance Certification |
| | L Receipts (2 copies) |

By _____
Prospective Retailer or Franchisee

Printed Name _____

Date Received _____

Street Address _____

E-mail Address _____

Home Phone # _____

Mobile Phone # _____

EXHIBIT L
ITEM 23 • RECEIPT

(Return this signed receipt to us)

This Disclosure Document summarizes certain provisions of the Retail Location Agreement, Franchise Agreement and other information in plain language. Read this Disclosure Document and all agreements carefully.

If we offer you a franchise, we must provide this Disclosure Document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed offer or sale. New York requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to our relationship with you. Iowa requires that we give you this disclosure document at the earlier of the first personal meeting or 14 days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this disclosure document at least 10 days before the execution of any binding franchise or other agreement or the payment of any consideration whichever occurs first.

If we do not deliver this Disclosure Document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D C 20580 and the state agencies listed in **Exhibit C**.

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☐ Adam Manson Food/Beverage Manager North America	(914) 253-8141
☐ Joe Cardì Senior Director Sales	

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A-1 Retail Location Agreement	F Financial Statements
A-2 Franchise Agreement	G Table of Contents for Manuals
B Development Agreement	H Standard Release Language
C List of State Administrators	I State-specific Disclosures
D Agents for Service of Process	J State-specific Agreement Amendments
E List of Current and Former Franchisees	K Compliance Certification
	L Receipts (2 copies)

By _____
Prospective Retailer or Franchisee

Printed Name _____

Date Received _____

Street Address _____

E-mail Address _____

Home Phone # _____

Mobile Phone # _____