FRANCHISE DISCLOSURE DOCUMENT

KONA GRILL®

Kona Grill, Inc.
a Delaware corporation
15059 N. Scottsdale Road, Suite 300
Scottsdale, Arizona 85254
480-922-8100
www.konagrill.com

You will operate an upscale, casual dining restaurant that offers freshly prepared food, attentive service, and an upscale contemporary ambiance that features a diverse selection of flavorful American food, internationally influenced appetizers and entrees, an extensive selection of award-winning sushi, and a full bar offering a broad assortment of wines, specialty cocktails, and beers under the trade name KONA GRILL® ("KONA GRILL® Restaurant" or "Restaurant").

The total investment necessary to develop one KONA GRILL® Restaurant ranges from $3,895,000 to $6,141,250. This includes $185,000 to $220,000 that must be paid to us or our affiliate. If you enter into a multi-unit development agreement with us to develop more than one KONA GRILL® Restaurant, you will also pay us a Territory Fee equal to an amount that you and we agree to and that ranges from $50,000 to $100,000 multiplied by the number of Restaurants to be developed.

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

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Carlos De Leon, 15059 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254; 480-922-8100; Deleon@konagrill.com.

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

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

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

Date of Issuance: April 16, 2018

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 F 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 FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

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

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY MEDIATION IN THE SCOTTSDALE, ARIZONA AREA AND/OR LITIGATION IN MARICOPA COUNTY, ARIZONA. OUT-OF-STATE MEDIATION AND/OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO MEDIATE OR LITIGATE WITH US IN A STATE OTHER THAN IN YOUR OWN STATE.

2. THE FRANCHISE AGREEMENT STATES THAT ARIZONA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.

3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

Effective Date: See State Effective Dates Page.

STATE 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:

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

MICHIGAN NOTICE

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

(a) A prohibition against you joining an association of franchisees.

(b) A requirement that you assent to a release, assignment, novation, waiver, or estoppel which would deprive you of rights and protections provided under the Michigan Franchise Investment Law. This does not preclude you, after entering into a franchise agreement, from settling any and all claims.

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

(d) A provision that permits us to refuse to renew your franchise without fairly compensating you by repurchase or other means, for the fair market value at the time of expiration, of your inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to us and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This provision applies only if:

(i) The term of the franchise is less than five years; and

(ii) You are prohibited by the Franchise Agreement or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise, or if you do not receive at least six months advance notice of our intent not to renew the franchise.

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

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

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

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

(ii) The fact that the proposed transferee is a competitor of ours.

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

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

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

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

The fact that there is a notice of this offering on file with the Attorney General does not constitute approval, recommendation, or endorsement by the Attorney General.

Any questions concerning this notice should be directed to the Michigan Department of Attorney General, Consumer Protection Division, Franchise Unit, 525 W. Ottawa Street, G. Mennen Williams Building, 1st Floor, Lansing, Michigan 48913; 517-373-7117.

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

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EXHIBITS

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

To simplify the language in this disclosure document, the term "we" means Kona Grill, Inc., the franchisor. The term "you" means the person buying the franchise, the franchisee. If the franchisee is a general partnership, the term "you" refers to all partners. If the franchisee is a corporation, limited liability company, or other business entity, the term "you" refers to the franchisee, and the term "Owners" refers to any individual or entity with a beneficial ownership in the franchisee (including shareholders of a corporation, members of a limited liability company, general and limited partners of a limited partnership, etc.).

The Franchisor and Any Parents, Predecessors, and Affiliates

We are a Delaware corporation formed in April 2002. We do business only under our corporate name and under the name "KONA GRILL®" and maintain our principal place of business at 15059 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254. We have no parent company and no predecessor. Our agents for service of process in the states that require franchise registration are listed in Exhibit H.

We grant franchises for upscale, casual dining restaurants that offer freshly prepared food, attentive service, and an upscale, contemporary ambiance that create an exceptional, yet affordable dining experience. Our restaurants operate under the trade name KONA GRILL® ("KONA GRILL® Restaurant" or "Restaurant") and feature a diverse selection of flavorful American food, internationally influenced appetizers and entrees, and an extensive selection of award-winning sushi. Our menu items are prepared from scratch, incorporate over 40 signature sauces and dressings, and are complemented by a full bar offering a broad assortment of wines, specialty cocktails, and beers.

We have been offering franchises of the type described in this disclosure document in the United States since April 16, 2018 and in Canada since 2017 and have never offered franchises in any other line of business. Our subsidiaries, which share our principal place of business, Kona Sushi, Inc., Kona Macadamia, Inc., Kona Texas Restaurants, Inc., and Kona Grill Puerto Rico, Inc. operate KONA GRILL® Restaurants ("Company-Owned Restaurants") that are the same as the type being franchised (see Item 20). Our affiliate, Kona Grill International, Inc. ("Kona International") offers franchises for KONA GRILL® Restaurants in countries outside the United States and Canada and has done so since 2016. Kona International has not offered franchises in any other lines of business, and Kona International shares our principal place of business.

Description of the Franchised Business

We franchise the right to operate Restaurants according to our proprietary business format and system ("System"), which includes our distinctive exterior and interior design, decor, and color scheme; furnishings; proprietary ordering procedures; special recipes and menu items; proprietary food preparation techniques and presentation standards; community and social networking presence and protocols; specifications, policies, and procedures for operations; quality and uniformity of the products and services offered; procedures for inventory, management, and financial control; training and assistance; advertising and promotional programs; and other standards, specifications, techniques, and procedures that we designate for developing, operating, and managing a KONA GRILL® Restaurant, all of which we may change, improve, and further develop.

KONA GRILL® Restaurants are identified by the KONA GRILL® service mark and other proprietary trademarks, service marks, indicia of origin, and trade dress that we designate to identify businesses operating according to our System ("Proprietary Marks").

You will operate your Restaurant according to the terms of our current Franchise Agreement (see Exhibit B). If you and we enter into a multi-unit development agreement, you will develop multiple Restaurants according to the terms of our current Development Agreement (see Exhibit C). Each of these Restaurants will be operated according to the terms of our then-current franchise agreement, which may be materially different than the Franchise Agreement included in this disclosure document.

Market and Competition

The market for the products and services that you will offer is well-established and highly competitive.

Your Restaurant will compete with casual, fast-casual, and full-service restaurants and other meal option providers. Competitors may be locally-owned or large, regional or national chains.

The Restaurant will also compete with other restaurants and retail businesses for management personnel and highly sought-after commercial real estate.

Industry Specific Regulation

You must comply with laws and regulations that apply to businesses generally, including the Americans with Disabilities Amendments Act, Federal Wage and Hour Laws, and the Occupation, Health, and Safety Act. You also must comply with all laws and regulations that apply to restaurants and food safety handling including regulations promulgated by the U.S. Food and Drug Administration, the U.S. Department of Agriculture, and those issued and enforced by state and local health departments. State and local agencies inspect Restaurants to ensure that they comply with these laws and regulations.

The federal Clean Air Act and various state laws require certain state and local areas to meet national air quality standards limiting emissions of ozone, carbon monoxide, and particulate matters, including caps on omissions from commercial food preparation. Some areas have also adopted or are considering proposals that would regulate indoor air quality.

Some state and local authorities have also adopted, or are considering adopting, laws or regulations that would affect the content or make-up of food served in restaurants, such as the level of trans fats and sodium contained in a food item. Additionally, the U.S. Food and Drug Administration has issued regulations that require certain restaurants and retail food establishments to post caloric information on menus and menu boards and to provide additional written nutrition information to consumers upon request.

You will be required to obtain a liquor license to operate the Restaurant. State and local laws, regulations, and ordinances vary significantly in the procedures, difficulty, and costs associated with obtaining a license to sell liquor, the restrictions placed on the manner in which liquor may be sold, and the potential liability imposed by liquor liability (dram shop) laws involving injuries, directly and indirectly, related to the sale of liquor and its consumption.

You should consider these laws and regulations when evaluating your purchase of a franchise.

ITEM 2
BUSINESS EXPERIENCE

Berke Bakay – President, Chief Executive Officer

Berke Bakay has served as our Chief Executive Officer and President since January 2012 and as a director of our company since October 2009. Mr. Bakay is the founder and managing member of BBS Capital Management, LP, a Texas limited partnership that serves as the investment manager to the BBS Capital Fund, LP. BBS Capital Fund, LP is currently the largest stockholder of Kona Grill, Inc. Mr. Bakay served as a director of Arabella Exploration Inc. (NYSE: AXPLF) until June 2016.

Christi Hing – Chief Financial Officer

Christi Hing has served as our Chief Financial Officer since February 2012. Ms. Hing has over 20 years of finance and accounting experience and has been with us since January 2006. She had served as our Vice President and Controller and prior to that as our Director of Financial Reporting. Ms. Hing is a Certified Public Accountant in Arizona.

James Kuhn – Chief Operating Officer

James Kuhn has served as our Chief Operating Officer since December 2017. Mr. Kuhn brings over 25 years of restaurant operations experience to Kona Grill. From April 2015 through November 2017, he served as chief executive officer for Chalak Mitra Group, where he was responsible for 79 company-owned and franchised Genghis Grill® restaurants, domestic and international, and multiple other brands owned by the Chalak Mitra Group. From July 2014 until April 2015, Mr. Kuhn was between positions, and from July 2007 to July 2014, Mr. Kuhn served in roles of increasing responsibility at Ignite Restaurant Group, where his last positions there were President and Chief Operating Officer of Brick House Tavern + Tap.

Carlos De Leon – Vice President, Global Development

Carlos De Leon is a professional international developer currently working as Vice President of Global Development since December 2014. Prior to joining us, he served as a Senior Director of International Development for CEC Entertainment, Inc. from May 2010 to November 2014. He is a member of the International Franchise Association and serves as a voting member of their International Committee.

Richard J. Hauser – Director

Richard J. Hauser has served as a director of our company since December 2004. Mr. Hauser serves as the President and owner of Capital Real Estate, Inc., a commercial real estate services company based in Minneapolis, Minnesota, which he founded in 2001. In addition, Mr. Hauser is the Manager and owner of Net Lease Development, LLC, which is a controlled operating company under Capital Real Estate, Inc. Mr. Hauser also controls and operates BTS Construction LLC, a build-to-suit construction company. Mr. Hauser also serves as a director of Arabella Exploration Inc. (NYSE: AXPLF).

James R. Jundt – Chairman and Director

James R. Jundt was appointed as a director and Chairman of our company in November 2010. Mr. Jundt was a founding investor in the Kona Grill concept, and he is the Chairman of Williston Holding Company, Inc.

Marcus E. Jundt – Director

Marcus E. Jundt was appointed to serve as a director of our company in October 2011. Mr. Jundt was one of the founders of the Kona Grill concept. In 2012, Mr. Jundt founded and serves as President and Chief Executive Officer of Williston Holding Company (WHC), the portfolio of which includes Williston Brewing Company, J Dub's Bar & Grill, Gramma Sharon's Family Restaurant, and Doc Holliday's Roadhouse.

Leonard M. Newman – Director

Leonard M. Newman has served as a director of our company since March 2012. From January 2010 through August 2012, Mr. Newman served as a financial consultant in various industries. Since September 2012, he has served as the Chief Financial Officer of East View Information Services, a leading provider of native and translated foreign language information products and services.

Steven W. Schussler – Director

Steven W. Schussler was appointed to serve as a director of our company in March 2012. Since 2000, Mr. Schussler has been Chief Executive Officer of Schussler Creative, Inc., a restaurant development concept company.

Anthony L. Winczewski – Director

Anthony L. Winczewski has served as a director of our company since April 2005. Mr. Winczewski has served as Chief Executive Officer of Commercial Partners Title, LLC, a title insurance agency engaged in providing commercial, residential, and tax deferred exchange solutions since January 1995.

Unless otherwise specified, all of the individuals named in Item 2 perform their duties in Scottsdale, Arizona.

ITEM 3
LITIGATION

No litigation is required to be disclosed in this Item.

ITEM 4
BANKRUPTCY

In re Marcus Edward Jundt; Case No. 11-10177; US Bankruptcy Court, District of South Dakota: On August 26, 2011, Marcus Edward Jundt filed a voluntary petition for Chapter 7 bankruptcy and was granted a standard discharge on December 6, 2011.

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

ITEM 5
INITIAL FEES

Initial Franchise Fee

When you sign the Franchise Agreement, you must pay us a nonrefundable initial Franchise Fee in the amount of $75,000. The initial Franchise Fee is calculated uniformly for all franchisees. If the Franchise Agreement pertains to the first Restaurant developed pursuant to a Development Agreement and you paid the $75,000 initial Franchise Fee upon execution of the Development Agreement, then we will credit the $75,000 previously paid initial Franchise Fee against the initial Franchise Fee under the first Franchise Agreement.

Franchise Territory Fee

If you enter into a Development Agreement with us, when you sign the Development Agreement, you must pay us a nonrefundable Franchise Territory Fee equal to an amount you and we agree to, but ranging from $50,000 to $100,000, depending on various market factors such as competition, demographics, and number of Restaurants to be developed, multiplied by the number of Restaurants to be developed, plus the $75,000 initial Franchise Fee. When you sign the Franchise Agreement for the first Restaurant to be developed under the Development Agreement, we will credit the $75,000 previously paid initial Franchise Fee against the initial Franchise Fee under the Franchise Agreement.

Site Evaluation Fee

We are not required to provide you any site selection assistance. If we elect to conduct on-site visits to your proposed site, you must reimburse us all travel-related expenses we incur for each site visit.

Floor Plan Expenses

We will prepare one, preliminary, general Restaurant floor plan at no cost to you. If substantial revisions to the preliminary plans are necessary or desired, we may charge you for any out-of-pocket costs we incurred in revising the preliminary plans, and if applicable, a reasonable charge for our personnel's time.

Design Development Expenses

Once the Restaurant site is approved and you provide us information about the premises that we required, we or our designated architect will prepare a design development drawing package ("Design Development Drawings"). We will prepare the Design Development Drawings and one set of revisions at our expense. You must pay for all additional plans and revisions to the Design Development Drawings. If we or our designated architect prepares additional plans or revisions (including without limitation, digital renderings and video renderings), you must pay or reimburse us all related out-of-pocket expenses we incur, and if applicable, a reasonable charge for our personnel's time.

Construction Visit Fee

We may, but are not required to, provide at our expense up to two, on-site construction/refurbishment visits to verify compliance with our standards. If you request that we make additional visits to the site, or if additional visits are required because of your non-compliance with our standards, then you must reimburse us for all costs we incur to conduct such visits.

Extension Fee

If we grant you, at our discretion, a written extension of any construction/refurbishment deadline, you will pay us a nonrefundable $2,500 extension fee for each 30-day period of extension. In lieu of offering the extension and requiring payment of the extension fee, we reserve the right to terminate the applicable Franchise Agreement and/or Development for your failure to meet the required timelines.

Initial Training Costs

You will not be required to pay us any tuition for initial training, and we will provide one set of training materials for each management trainee at no cost to you. However, you must reimburse us within 30 days after completing initial training for any out-of-pocket expenses we incur for supplies, materials, and other costs incurred outside of the ordinary course of business. If any replacement personnel attend initial training before the Restaurant opens, or if we provide remedial training before the Restaurant opens, then you will pay us our then-current training fee, which is currently $15,000 per trainee.

ITEM 6
OTHER FEES

Franchise Agreement

Type of Fee(1)	Amount	Due Date	Remarks
Royalty Fee	5% of Gross Sales	Monthly	See Note 2 for the definition of Gross Sales. You will pay the royalty fee by electronic funds transfer.
Marketing Fund Contribution	Up to 0.75% of Gross Sales; currently 0.5% of Gross Sales	Monthly	You will contribute to the Marketing Fund ("Fund") by electronic funds transfer.

Type of Fee[(1)]	Amount	Due Date	Remarks
Local Advertising Requirement	Up to 4.0% of Gross Sales; currently 3.5% of Gross Sales	Monthly	We may require all or a portion of the local advertising requirement dollars be contributed to an advertising cooperative and/or to the Fund. Payments will be made by electronic funds transfer.
Advertising Cooperatives	Currently 0% of Gross Sales	As determined by the applicable Cooperative	If we establish an advertising cooperative ("Co-op") where your Restaurant is located, you must participate in the Co-op if we require. The members of the Co-op must pay regular dues and all fees associated with the formation of the Co-op. Contributions to the Co-op will count toward your local advertising expenditure requirements.
Merchandise for Resale	Reasonable cost	On demand	We may provide to you at a reasonable cost certain collateral merchandise for resale that identifies the System; for example, caps, and t-shirts, equipment, and decor items.
Interest; Overdue Payments	18% per year or the maximum lawful rate, plus $500 for administrative costs	On demand	We may charge interest on all overdue amounts.

Type of Fee[1]	Amount	Due Date	Remarks
Management Training	No tuition for training of the initial management team for the Restaurant; except, if the Restaurant is developed under a Development Agreement, then-current management training fee for your 4th and subsequent Restaurant, unless you have developed your own training program that is approved by us Then-current fee for any replacement personnel and remedial training; currently, our fee for such training is $15,000 per person	As invoiced	You are not required to pay tuition for training of the initial management training team, unless you are developing your 4th or subsequent Restaurant under a Development Agreement. You must reimburse us for out-of-pocket expenses we incur for supplies, materials, and other costs incurred outside of the ordinary course of business to provide such training (excluding wage expenses for our personnel and the cost of one set of training materials per trainee). For the 4th and each subsequent Restaurant you develop under a Development Agreement, you must pay us our then-current fee if you have not developed an approved management training program.
Opening Team	Our costs, plus our then-current daily stipend; currently, not less than $35 per day	Within 15 days of invoice	You must reimburse us for transportation, lodging, meal, and wage expenses incurred by the Opening Team and pay each member of the Opening Team a daily stipend for incidental expenses.
On-site Assistance; Additional Training	Our costs	As invoiced	You must pay our expenses if we provide you assistance at the Restaurant not otherwise specifically provided for in the Franchise Agreement.
Training Materials	Our costs	As invoiced	We may create written materials or other materials for any training programs at our expense, but any training materials provided at your request will be paid for by you.

Type of Fee[1]	Amount	Due Date	Remarks
Enforcement Costs	Our costs, plus 15%	As invoiced	If you do not operate the Restaurant in compliance with our standards, we may correct the deficiency and you must reimburse us the costs we incur, plus a 15% administration fee. You must pay us our costs (including attorneys' fees and costs) to enforce the Franchise Agreement.
Renewal Fee	Agreed-to amount	Upon execution of renewal franchise agreement	There is no renewal option following the initial Term. The parties may, upon mutual agreement, renew the Franchise Agreement beyond the initial Term for an agreed-to period of time.
Transfer Fee	50% of our then-current initial franchise fee; except, if transfer is among your Principals only, you must reimburse our reasonable costs, but not less than $15,000	When transfer is requested	
Relocation Fee	50% of then-current initial franchise fee	Upon execution of then-current franchise agreement	
Private or Public Offering Fee	$15,000 or greater amount required to reimburse us our costs	As invoiced	Payment is non-refundable. Our reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees. We limit our review to the manner in which the offering materials treat our relationship with you.

Type of Fee[1]	Amount	Due Date	Remarks
Supplier Inspection and Testing	Our costs	As invoiced	Before approving a supplier at your request, we may require you to pay the cost of testing the supplier's products and the cost of inspecting its facilities, including reimbursement of transportation, lodging, meals, and salary expense for individuals performing the evaluation.
Sample Testing	Our costs	As invoiced	We have the right to obtain samples of any inventory items in your Restaurant, without payment to you, in amounts reasonably necessary for testing to determine if our standards are being met.
Software License Fee	Currently $0; our costs when instituted	As invoiced	
Indemnification	Varies according to loss	On demand	You must defend and indemnify us against certain losses relating to your actions.
Audit Fee	Cost of audit, including travel-related expenses	As invoiced	Payable if an audit occurs due to your failure to furnish required information or if you understate any payments due in any report.
Taxes	Our costs	As invoiced	You must reimburse us for any sales or value added taxes, gross receipts tax, withholding tax, or similar tax imposed on us for any payments to us required by the Franchise Agreement, plus our costs to report and remit.
Insurance Fee	Reasonable amount based on our administrative expenses	On demand	If you fail to maintain the required insurance, we may (but need not) obtain it for you. If we do, you must reimburse us for the cost of the premium, plus our administrative expenses.

Type of Fee[1]	Amount	Due Date	Remarks
Force Majeure	Will vary	On demand	Payable during relocation or reconstruction of the Restaurant after a force majeure event.
Liquidated Damages	Will vary	On demand	If you fail to timely meet the Development Schedule, we may, but are not obligated to, grant you additional time to meet your commitment. If we do, we may require you to pay us an amount for each Restaurant that should have been open by the missed deadline. These payments will be an amount we agree to, and such amount will be paid each week until the Restaurant that is not on schedule is open and operating.

Notes:

(1) All fees and expenses described above are non-refundable and, unless otherwise indicated, we impose all fees uniformly, and all fees are payable to us via electronic funds transfer. Unless we have noted differently, we may increase these amounts based on changes in market conditions, our cost of providing services, and future policy changes, but we have no present plans to increase any fees.

(2) "Gross Sales" means: (a) the total of all sales related to or arising from the operation of the Restaurant including, without limitation, all monies and receipts from the sale of all beverages, food, and merchandise, whether such sales are evidenced by cash, services, property, or other means of exchange and regardless of collection, excluding service tips received by or paid to employees (but including service charges added to customer checks where such service charges are not in turn paid out to service staff as tips); (b) the total amount of all sales in connection with sales of goods or services associated with or using the Proprietary Marks or the System, and all other related products or services sold whether from the Restaurant or any other location, including without limitation, special events, catering, and delivery; (c) the proceeds of business interruption insurance applicable to the Restaurant and other awards or proceeds (including damages awarded by any court or in any other dispute resolution proceedings) representing lost sales at the Restaurant; (d) the proceeds from the redemption of Gift Cards or other stored-value card or device redeemed at the Restaurant at 100% of the redeemed value of such card or device; and (e) any and all other revenues derived through the operation of the Restaurant; provided, however, "Gross Sales" excludes (i) any sale of merchandise for which cash or credit has been refunded or re-credited during the accounting period in which such sale occurred; (ii) the amount of any sales tax, goods and services tax, value added tax, or consumption taxes imposed by any federal, state, or local governmental authority directly on sales and collected from customers, provided that the amount of such tax is added to the selling price or absorbed in the selling price and is actually paid by you to the imposing governmental authority; and (iii) complimentary meals, valid coupon credits, discounts from menu prices, and employee/Affiliate discounts up to a maximum aggregate amount of 3% of total Gross Sales (less exclusions in subsections (i) and (ii) above) for the Restaurant during the applicable month. Any sale that has been included in Gross Sales for any accounting period and for which a refund or re-credit is made in a subsequent accounting period will be deducted from Gross Sales for the accounting period in which such refund or re-credit is made. Except as provided in this definition, there will be no further deduction of any other costs or expenses whatsoever, including but not limited to any and all taxes.

ITEM 7
ESTIMATED INITIAL INVESTMENT

YOUR INITIAL ESTIMATED INVESTMENT

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee[1]	$75,000	Lump sum	When you sign the Franchise Agreement	Us
Plans[2]	$150,000 to $200,000	As arranged	As incurred	Suppliers
Leasehold Improvements[3]	$2,000,000 to $3,000,000	As arranged	As arranged	Contractor
Performance Bonds[4]	$60,000 to $111,250	Lump sum	As incurred	Supplier
Architectural/Engineering/Site Evaluation[5]	$200,000 to $250,000	As arranged	As arranged	Architect and Suppliers
Furniture, Decor, and Fixtures[6]	$350,000 to $450,000	As arranged	As arranged	Suppliers
Equipment[7]	$500,000 to $600,000	As arranged	As arranged	Suppliers
Computer/POS System	$60,000 to $80,000	As arranged	As arranged	Suppliers
Interior and Exterior Signage[8]	$40,000 to $80,000	As arranged	As arranged	Suppliers
Initial Inventory	$30,000 to $50,000	As arranged	As invoiced	Suppliers
Initial Business Supplies	$5,000 to $15,000	As arranged	As invoiced	Suppliers
Smallwares	$50,000 to $70,000	As arranged	As invoiced	Suppliers
Liquor License [9]	$5,000 to $500,000	As arranged	As arranged	Government Agencies, Attorneys, Other Third Parties
Utility and Telephone Deposits	Varies	As arranged	As arranged	Suppliers
Business Licenses and Permits	$25,000 to $50,000	As arranged	As arranged	Government Agencies, Attorneys, Other Third Parties

Type of Expenditure	Amount	Method of Payment	When Due	To Whom Payment is to be Made
Initial Training Costs(10)	$40,000 to $55,000	Payroll and as arranged	As incurred	Employees, Third Parties, and Us
Opening Team Costs(11)	$90,000 to $110,000	As arranged	As invoiced	Us and Suppliers
Advertising and Promotional Costs	$10,000 to $25,000	As arranged	As arranged	Suppliers
Insurance(12)	Varies	As arranged	As arranged	Insurance Broker
Other Miscellaneous Pre-opening Expenses	$100,000 to $150,000	As arranged	As arranged	Suppliers
Additional Funds(13) (three to six months)	$105,000 to $250,000	As arranged	As incurred	Suppliers
TOTAL	$3,895,000 to $6,141,250			

Notes:

(1) This amount does not include the amount of the Territory Fee you will pay if you enter into a Development Agreement with us. See Item 5.

(2) You must prepare floor plans and other types of plans we require for our review and approval of the site for the Restaurant. You must provide us with an "as-built" floor plan of the proposed lease space and photo-document the entire existing building and lease space. We will prepare one preliminary floor plan, at no cost, to determine the viability of the proposed lease perimeter, and the most efficient Restaurant layout. Any and all additional plans will be prepared at your expense. If we or our architect prepares additional preliminary floor plans or other any other plans, you will pay or reimburse us for all out-of-pocket expenses and if applicable, a reasonable charge for our personnel's time.

(3) The leasehold/building improvement amounts assume that you will lease the premises for the Restaurant and do not include costs of land acquisition and construction of a building. The low-end estimate is based on the cost of converting an existing, in-line restaurant space containing approximately 7,000 to 7,500 square feet and adapting our prototypical architectural and design plans (including architect fees) to convert the facility. Your actual costs for leasehold improvements also will be affected by various other factors like the location of the Restaurant, local market conditions, whether or not union fees are imposed upon construction costs, and whether or not the landlord pays for certain tenant improvements. These estimates may vary substantially based on your ability to negotiate with your landlord and your financial strength, as well as on local commercial leasing and labor rates and other local conditions.

(4) The cost of performance bonds purchased in connection with leasehold/building improvements range from 3% to 5% of the cost of such improvements.

(5) This estimate represents the cost of initial architectural/engineering services and does not include any revised services that may be required following permit application(s) or changes in premises, if any such costs are incurred. Your actual costs may or may not include site preparations, depending on the arrangements you negotiate with your landlord.

(6) This estimate is based upon furnishing a KONA GRILL® Restaurant that is approximately 7,000 square feet. If your Restaurant is smaller or larger, your costs will most likely vary accordingly.

(7) This estimate is based upon furnishing a KONA GRILL® Restaurant that is approximately 7,000 square feet. If your Restaurant is smaller or larger, your costs will most likely vary accordingly.

(8) This estimate accounts for factors such as the size and location of the premises and the signage and labor necessary to adequately outfit the premises with required materials. If your Restaurant is located in an area that has extensive signage permitting or other requirements, your costs may be more.

(9) The cost to obtain a liquor license varies significantly and is impacted by factors such as location, the availability of liquor licenses where the Restaurant is located, the ability to move a license, the market value of liquor licenses, and your state's laws and regulations, your experience in obtaining a liquor license, and whether or not you engage a service provider to assist you in obtaining a liquor license.

(10) At least 180 days before the scheduled opening date of the Restaurant, you must send the entire management team for pre-opening training to one of the certified training restaurants designated by us. However, we may, in our discretion, reduce the number of members of the management team required to attend pre-opening training based upon your managers' experience and familiarity with the System. If you or your Affiliates operate another KONA GRILL® Restaurant that has been certified by us as a training restaurant, then we may permit the pre-opening training program to be conducted by you at such certified training restaurant. You are not required to pay any tuition or training fee for the pre-opening training of your initial management team; however, you will bear the cost of travel, transportation, meals, wages, and other incidental expenses of your personnel who attend training. Additionally, you must pay us an amount equal to our then-current rate for training tuition for (i) any replacement management personnel, and (ii) any individuals who attend training for the second or subsequent time. You must supply your employees with credit cards or other payment methods sufficient to cover your employees' expenses while attending training. We will determine the length of the pre-opening training, which is anticipated to be five to nine weeks, depending on the job for which the trainee is being trained.

(11) We may provide an "Opening Team" to train your staff on a case by case basis based upon your experience and familiarity with the System. If we provide an Opening Team, we anticipate that the Opening Team will have a 8 to 12 people, but the actual number of members of the Opening Team will be determined by us. The Opening Team will be at your Restaurant for a minimum of 4 weeks. We may provide the Opening Team for a longer period of time as we determine. You must reimburse us for the transportation, lodging, meal, and wage expenses incurred by the Opening Team. If we do not provide an Opening Team, then you will be responsible for training the Restaurant staff and opening the Restaurant in accordance with our standards. Immediately prior to the Restaurant's opening to the public, you will conduct a minimum of two days of practice lunch and dinners during which invited guests will dine at the Restaurant to allow your management and staff the opportunity to practice and develop their food preparation, service, and management skills. The estimated range includes the cost of food and beverages used during the training and practice lunch and dinners, which is estimated to range from $20,000 to $40,000 depending on the number of days of training, the number of practice lunch and dinners that occur, and whether or not a grand opening event is held.

(12) You must obtain and maintain insurance against any demand or claim arising or occurring in connection with the construction and operation of the Restaurant and your business, as required in the Development Agreement and/or Franchise Agreement. Your cost of insurance will vary depending on the insurer, the size and location of your Restaurant, your claims history, and other factors.

(13) You will need additional funds during the start-up phase of your business to pay employees, purchase supplies, and pay other expenses, such as rent. We estimate the start-up phase to be three to six months from the date you open for business. These amounts do not include any estimates for debt service. You must also pay the royalty and other related fees described in Item 6 of this disclosure document. These figures are estimates, and we cannot assure you that you will not have additional expenses. Your actual costs will depend on factors like your management skills, experience, and business acumen. You should base your estimated start-up expenses on the anticipated costs in your market and consider whether you will need additional cash reserves.

We relied on our and our affiliates' experience to compile the range of costs listed in this Item 7. You should review the amounts listed above carefully with your business advisor. Unless otherwise stated above, these estimates are subject to increases based on changes in market conditions, our cost of providing services, and future policy changes. At the present time, we have no plans to increase payments we control.

We do not offer any financing for your initial Franchise Fee or any portion of your initial investment. Unless otherwise stated, the amounts described above are not refundable.

ITEM 8
RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

Purchases from Approved or Designated Suppliers; Purchases According to Specifications

You must purchase from us or from our approved suppliers all equipment, supplies, services, food, and other products and materials used in the operation of the Restaurant. You must also purchase the computer hardware and software that we require from our approved supplier. See Item 11 for more information about computer hardware and software requirements.

If you propose to purchase from an unapproved source any items for use in your Restaurant for which we have identified, designated, or approved supplier(s), you must request our approval. We may require, as a condition of granting approval, that our representatives be permitted to inspect the supplier's facilities, and that information, specifications, and samples as we reasonably require be delivered to us or to an independent, certified laboratory for testing. We may charge a fee for testing, which will not exceed the reasonable cost of the inspection and the actual cost of the test. We will notify you within 60 days of your request as to whether you may purchase products from the proposed supplier.

Currently, neither we nor any of our Affiliates are designated or approved suppliers for any products or services, and neither we, nor any of our officers owns an interest in any privately-held suppliers or a material interest in any publicly-held suppliers of our franchise system.

You may purchase items and services for which we have not identified approved suppliers from any supplier, if the items and services meet our specifications. These specifications may include brand requirements. If brand requirements have been identified, you may purchase and use only approved brands.

Franchised Location and Lease

You must acquire a site for your Restaurant that meets our site selection criteria and that we approve. If the Restaurant occupies a space according to a commercial lease, the lease must contain terms that we specify. (See Site Selection Addendum, Attachment C to the Franchise Agreement; or Section 4.3 of the Development Agreement.)

Insurance

You must obtain and maintain insurance policies protecting you and protecting us and our affiliates as additional insureds on a primary, non-contributory basis. The insurance must be underwritten by insurers we approve and who are authorized to do business in the jurisdiction where the Restaurant is located. These policies must include the coverage that we require, which currently includes: (a) commercial general liability insurance, including product liability insurance and contractual liability coverage, with minimum limits of $2,000,000 per occurrence and $5,000,000 aggregate; (b) all risk (aka special form) property coverage on the Restaurant and all fixtures, equipment, supplies, and other property used in the operation of the Restaurant, for full repair and replacement value without any co-insurance; (c) liquor liability coverage with minimum limits of $2,000,000 per occurrence; (d) business interruption covering a minimum 12 months loss of income, including coverage for the Royalties; (e) automobile liability insurance, including owned, hired, and non-owned vehicle coverage with a minimum combined single limit of $2,000,000 per claim; (f) workers' compensation and employer's liability insurance covering all of Franchisee's employees; (g) umbrella liability insurance, which also includes liquor liability, employers' liability and automobile liability, with minimum limits of $5,000,000. You and your insurers must agree to waive rights of subrogation against us and our affiliates. At least 15 days before construction of the Restaurant begins, and at any other time a carrier or coverage is changed, you must deliver to us certificates of insurance evidencing the proper types and minimum amounts of required coverage, and evidence of the waiver, within 30 days of such events. We reserve the right to unilaterally modify the minimum coverage requirements set forth above as market or industry conditions warrant.

Revenue Derived from Franchisee Purchases and Leases

We and our affiliates may derive revenue from your purchases and leases to the extent that you buy products or services directly from us or from our affiliates. We may also derive revenue as a result of your purchases from approved suppliers. As of the date of this disclosure document, neither we nor our affiliates had received any revenue as a result of franchisee purchases or leases directly from us, our affiliates, or third-party suppliers.

Purchasing Arrangements; Purchasing Cooperatives

We may negotiate purchase arrangements with primary suppliers for the benefit of franchisees. If we negotiate a purchase agreement for the region where your Restaurant is located, you must participate in the purchasing program. We do not provide material benefits to you (for example, renewal or granting additional franchises) based on your purchase of particular products or services or use of particular suppliers. From the date of our inception to the date of this disclosure document, neither we nor our affiliates received any revenue as a result of these types of purchasing arrangements.

Currently, no purchasing or distribution cooperatives exist in the franchise system.

Estimated Proportion of Required Purchases and Leases to all Purchases and Leases

We estimate that your purchases and leases from us or our designated or approved suppliers will be approximately 90% of your total initial investment (not including the initial Franchise Fee) and approximately 90% to 95% of your ongoing purchases and leases in the operation of the Restaurant.

ITEM 9
FRANCHISEE'S OBLIGATIONS

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

Obligation	Section(s) in Franchise Agreement	Disclosure Document Item
a. Site selection and acquisition/lease		Items 8 and 11
b. Pre-opening purchases/leases		Items 5, 6, 7, 8, and 11
c. Site development and other pre-opening requirements		Items 1, 7, 8, and 11
d. Initial and ongoing training		Items 6, 7, and 11
e. Opening		Items 7 and 11
f. Fees		Items 5, 6, 8, and 11
g. Compliance with standards and policies/Operations Manual		Items 8, 11, 14, and 16

Obligation	Section(s) in Franchise Agreement	Disclosure Document Item
h. Trademarks and proprietary information		Items 11, 13, and 14
i. Restrictions on products/services offered		Items 8 and 16
j. Warranty and customer service requirements		Item 16
k. Territorial development and sales quotas		Item 12
l. Ongoing product/service purchases		Items 8, 11, and 16
m. Maintenance, appearance, and remodeling requirements		Item 8
n. Insurance		Items 7 and 8
o. Advertising		Items 6, 8, and 11
p. Indemnification		Item 6
q. Owner's participation/ management/staffing		Items 1, 11, and 15
r. Records and reports		Item 11
s. Inspections and audits		Items 6 and 11
t. Transfer		Items 6, 12, and 17
u. Renewal or extension of rights		Items 6, 12, and 17
v. Post-termination obligations		Item 17
w. Noncompetition covenants		Item 17
x. Dispute resolution		Item 17

ITEM 10
FINANCING

We do not offer direct or indirect financing, and we do not guarantee your notes, leases, or other obligations.

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

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

<u>Pre-opening Obligations</u>. Before you open your KONA GRILL® Restaurant, we or our designee will:

1. Provide you site selection assistance we believe to be necessary. (Development Agreement – Sections 4.2 and 4.3; Franchise Agreement – Site Selection Addendum)

You must identify and secure a site for your Restaurant within the Territory and within the required timelines identified in Schedule 3 to the Development Agreement (if you have signed a Development Agreement) or within a non-exclusive Designated Area within 90 days after signing the Franchise Agreement (if you have not signed a Development Agreement). Your failure to obtain a site that we approve and open within the specified time period is a default under the Development and/or Franchise Agreement for which we may terminate. (Development Agreement – Section 4.1, Section 12.3, and Schedule 3; Franchise Agreement – Site Selection Addendum and Section 13.3)

2. Review your proposed site for compliance with our site selection guidelines and approve or deny your site approval request within 60 days after receiving your site information. You cannot place the Restaurant at a site we have not first accepted in writing. (Development Agreement – Section 4.3; Franchise Agreement – Site Selection Addendum)

3. Provide you one preliminary floor plan. (Development Agreement – Section 4.5(b); Franchise Agreement – Section 6.1(b) and 6.2(a))

4. Provide you one set of Design Development Drawings and one set of revisions after we have received from you information about the premises that we require. (Development Agreement – Section 4.5(c); Franchise Agreement – Section 6.1(c)

5. Approve or disapprove your construction drawings and plans within 30 days after receiving the drawings and plans. (Development Agreement – Section 4.7; Franchise Agreement – Section 6.5)

6. Conduct construction visits we believe to be necessary. (Development Agreement – Section 4.9; Franchise Agreement – Section 6.5)

7. Provide you access to our Operations Manual. (Franchise Agreement – Section 4.7)

8. Provide you a list of any designated and/or approved suppliers and/or approved brands. (Franchise Agreement – Section 7.3.2)

9. Conduct initial training for your management team. (Development Agreement – Section 8.7; Franchise Agreement – Section 4.4)

10. Provide an Opening Team to assist with the opening of the Restaurant. (Development Agreement – Section 8.7(g); Franchise Agreement – Section 4.1)

<u>Continuing Obligations</u>. During the operation of your KONA GRILL® Restaurant, we or our designee will:

1. Provide ongoing consultation and advice we deem appropriate. (Franchise Agreement – Section 4.3)

2. Provide you access to our Operations Manual. (Franchise Agreement – Section 4.7)

3. Give you updated lists of approved suppliers, as we deem appropriate. (Franchise Agreement – Section 7.3.2)

4. Provide you with copies of marketing materials and administer the Marketing Fund. (Franchise Agreement – Sections 4.5 and 8.6)

5. Approve or disapprove advertising materials we have not previously approved within 21 days after receiving such materials. (Franchise Agreement – Section 8.4)

6. Provide you access to proprietary software programs (if any) that may be developed by us or on our behalf for use in the Restaurant. We reserve the right to charge a reasonable license fee for such programs. (Franchise Agreement – Section 7.7.1)

Typical Length of Time Before You Open Your Restaurant

We estimate that it will be approximately 18 months from the time you sign the Development Agreement or Franchise Agreement to the time you begin operations. This time period may be shorter or longer depending on the modifications that must be made to the site to accommodate your Restaurant. You must open and begin operating the Restaurant as required in Schedule 3 to the Development Agreement (if you have signed a Development Agreement) or as required in Schedule 1 of the Franchise Agreement (if you have not signed a Development Agreement). (Development Agreement – Section 4.1, Section 11.4, and Schedule 3; Franchise Agreement – Site Selection Addendum, 13.3, and Schedule 1)

Advertising

Our advertising program for the products and services offered by KONA GRILL® Restaurants currently consists primarily of local marketing efforts coordinated at the Restaurant level by individual franchisees. These activities may include both marketing inside the Restaurant to current customers, as well as external efforts. In addition, some marketing activities are coordinated by us for the benefit of all Restaurants in our franchise network. These efforts may include activities such as "limited time offer" menu items, public relations, social media, email marketing, and loyalty programs. Our advertising materials currently are created in-house and with the help of an outside advertising agency. You may develop your own advertising and marketing materials, at your own expense, subject to the requirements described below.

We must approve all of your promotional and marketing materials before you may use them, whether in paper, electronic, or digital format. To obtain approval, you must submit to us samples of the proposed materials and notify us of the intended media. We will make reasonable efforts to approve or disapprove your materials within 21 days from the date we receive them. You may not use the materials until they are approved, and we have the right to disapprove materials that we have previously approved.

Each year you will be required to spend up to 4.75% of your Restaurant's Gross Sales on advertising-related expenditures. Currently, you are required to spend 3.5% of Gross Sales on local advertising and contribute 0.5% of your Restaurant's Gross Sales to the Marketing Fund. Any time after the Restaurant has been operating for 48 months, we may vary the portion of the advertising expenditure requirements that you are required to spend for local advertising, cooperative advertising, or as a Marketing Fund contribution; but in no event will the total required expenditures for advertising exceed 4.75% of the Restaurant's Gross Sales.

Marketing Fund

You must contribute monthly 0.5% of your Restaurant's Gross Sales to the Marketing Fund.

We may use Marketing Fund monies to pay for any and all costs of maintaining, administering, directing, preparing, purchasing, and placing advertising anywhere in the United States (including the cost of preparing and conducting television, radio, magazine, newspaper, and e-commerce advertising campaigns; photography; direct mail and outdoor billboard advertising; public relations activities; and employing advertising agencies or consultants to assist in those activities). Marketing Fund monies may also be used to defray any of our reasonable operating and overhead costs that we incur in activities reasonably related to the administration, management, and direction of the Marketing Fund.

We or our designee will administer the Marketing Fund. We will not use Marketing Fund monies for creating or placing any advertisement that is principally a solicitation for new franchisees, but may include in all advertising prepared using Marketing Fund monies (including Internet advertising) information concerning franchise opportunities, and a portion of Marketing Fund monies may be used to create and maintain one or more pages on our Website devoted to advertising franchise opportunities and identifying and screening inquiries and applications submitted by franchise candidates. Any amounts contributed to the Marketing Fund that are not spent in the year they are collected will remain in the Marketing Fund for use during the next year.

We are not obligated to contribute to the Marketing Fund, and we anticipate that each KONA GRILL® Restaurant owned by us or an affiliate of ours will not contribute to the Marketing Fund on the same basis as our franchisees. We will provide you an annual unaudited statement of Marketing Fund contributions and expenditures upon your written request. We are not obligated to spend Marketing Fund monies on the placement of advertising in your trade area or to ensure that your Restaurant benefits directly or on a pro rata basis from the expenditure of Marketing Fund monies.

Local Advertising

In each calendar year during the term of the Franchise Agreement, you must spend 3.5% of Gross Sales to promote the Restaurant in your market area. However, we may require you to contribute all or a portion of your local advertising dollars to an advertising Co-op, described below. You will be given credit for having made your required local advertising expenditures when these substitute contributions are made by you. If you fail to spend an amount equal to or greater than the required amount on local marketing and advertising for any calendar year, then we may require you to pay to the Marketing Fund the difference between the amount required to be spent on local advertising in any calendar year and the actual amount spent on approved local advertising expenditures for such calendar year. If we do not then operate a Marketing Fund, we may require you to pay such amount to us.

Franchisee Advertising Co-op or Advertising Council

We can designate any geographic area in which two or more affiliate-owned or franchised KONA GRILL® Restaurants are located as a region for a franchisee advertising cooperative ("Co-op"). If we do, the Co-op must be organized and governed as we determine, and the Co-op must pay any fees associated with organizing the Co-op, including attorneys' fees and state filing fees. Any Co-ops we authorize will be for the exclusive purpose of administering advertising programs and developing promotional materials for use by members in local advertising. If a Co-op is established for an area in which any of your Restaurants is located, you must become a member of the Co-op and participate in the Co-op by contributing the amounts we require.

No advertising council has been established for the franchise system.

Computer System and Cash Registers

The Franchise Agreement requires that you use only the point of sale cash registers and computer systems and equipment that we prescribe for the Restaurants ("Computer System") and that you adhere to our requirements for use. We currently require the use of the Aloha System. Requirements may include connection to remote servers, off-site electronic repositories, and high-speed Internet connections. We may require you to add to your Computer System memory, ports, and other accessories or peripheral equipment or additional, new, or substitute software, replace or upgrade your Computer System (software and hardware) and other computers, and enter into maintenance agreements for the Computer System and other computers. You must enter into all software license agreements, "terms of use" agreements, and software and hardware maintenance agreements, in the form and manner we prescribe, and pay all fees imposed under the agreements. We anticipate the cost of purchasing the required Computer System and software to be approximately $60,000 to $80,000.

You must acquire and use, from the date the Franchise Agreement is signed until the expiration or termination of the Franchise Agreement, a valid email address. You must provide us notice of any changes to your email address and provide us the new or revised email address immediately upon its acquisition.

We may independently poll your Gross Sales and other information input and compiled by your Computer System from a remote location. We also may require that you connect to a Web-based application that enables us to independently access and poll the information on your Computer System. There is no contractual limitation on our right to independently access this information. All data you provide or that is uploaded or downloaded from or to your Computer System is and will be owned exclusively by us, and we have the right to use such data in any manner that we deem appropriate, without compensation to you.

Neither we, nor affiliates, nor any third parties must provide ongoing maintenance, repairs, upgrades, or updates to your Computer System. Except as described above, there are currently no optional or required maintenance/upgrade contracts for the Computer System.

You must, at all times, be compliant with all applicable and current Payment Card Industry Data Security Standards ("PCI DSS") requirements and other data security policies that we may implement. For more information about PCI DSS, you may visit https://www.pcisecuritystandards.org/.

Initial Training

At least 180 days before the scheduled opening date of your Restaurant, your entire management team must attend and satisfactorily complete, as we determine, our initial training program. We may, in our discretion, reduce the number of members of the management team required to attend initial training based upon your or your managers' experience and familiarity with our System. Currently, all initial training is conducted over a period of approximately five to nine weeks at our certified training restaurants, which may be located throughout the United States, and is scheduled as system needs require. If you or your affiliate operate another *Kona Grill* Restaurant that we have certified as a training restaurant, then we may permit you to conduct the pre-opening training program at such certified training restaurant. You must pay us within 30 days after completing initial training for any out-of-pocket expenses we incur for supplies, materials, and other costs incurred outside of the ordinary course of business to provide such training (but not for any wage expenses for our personnel nor for the cost of one set of training materials per management trainee).

Our training is administered under the supervision of Kevin Ryan, who has 20 years of experience in the field of training and/or restaurant operations and has been with us since 2005. Training will also be conducted by qualified members of our staff, including management personnel and employees. Instruction materials come from a variety of sources, and will include information taken from our Operations Manual and many other tools and materials that you will be expected to use in your daily operations.

The subjects covered and other information relevant to our initial training program are described below.

INITIAL TRAINING PROGRAM

Subject	**Classroom Training Hours**	**On-the-Job Training Hours(1)**	**Location**
Back of House Training	0	100-200	Certified Training Restaurant
Front of House Training	0	100-200	Certified Training Restaurant
TOTAL HOURS OF TRAINING	0	200-400	

(1) The total number of hours will be different depending on the job for which the trainee is being trained.

Our initial training program is subject to change, without notice, to reflect updates in the materials, methods, and manuals and changes in personnel. The subjects taught and the time periods allocated for each subject may vary based on the experience of the trainees.

We may periodically make other required or optional training available to your employees, as well as other programs, seminars, and materials, and you must ensure that all employees, as we may direct, satisfactorily complete any required training within the time specified. All training will be provided at a location we designate, and you must pay your employees' travel expenses and room, board, and wages during the training. We reserve the right to charge a reasonable fee to you for training, seminars, and materials, whether required or optional. We may require, as a condition of providing training, that your managers and employees sign confidentiality and non-competition agreements in the form we require.

Confidential Operations Manual

We will provide you one copy of our Operations Manual, which may be provided in whole or in part via online access. Your online access to the Operations Manual does not grant you ownership of the Operations Manual or any of its contents. A copy of the current table of contents of the Operations Manual is attached as Exhibit F. We consider the contents of the Operations Manual to be proprietary, you must treat them as confidential, and you may not make any copies of the Operations Manual. Our Operations Manual contains 823 pages.

ITEM 12
TERRITORY

Even though we grant you some territory 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.

Development Agreement

If you sign a Development Agreement, we grant you a Territory. We determine the Territory before you sign the Development Agreement based on various market and economic factors like market demographics, the penetration of KONA GRILL® Restaurants and similar businesses in the market, the availability of appropriate sites, and growth trends in the market. The Territory may be all or a portion of a city, a single or multi-county area, or some other area, and will be described in Schedule 1 to the Development Agreement. Each site for each Restaurant that you develop under a Development Agreement must satisfy our then-current site selection requirements. You cannot place a Restaurant at a site we have not first accepted in writing.

You must develop Restaurants in the Territory as required by the Development Schedule in Schedule 3 of the Development Agreement. You and we agree to the Development Schedule before signing the Development Agreement.

If you comply with the Development Agreement and all other agreements that you or your affiliates have with us or our affiliates, then, subject to the retained rights described below, we and our affiliates will not establish, or authorize anyone except you to establish, a KONA GRILL® Restaurant in the Territory during the term of the Development Agreement. We retain all other rights. Among other things, this means that we can:

(a) Advertise and promote sales at or by Restaurants, at any location, including within the Territory;

(b) Offer and sell collateral and ancillary products and services, such as pre-packaged food products, clothing, and memorabilia, in the Territory under the Proprietary Marks, even though those products and services may be similar to items offered at your Restaurants;

(c) Offer and sell any products and services (regardless of similarity to products and services sold in your Restaurant(s)) under any names and marks other than the Proprietary Marks at any location, including within the Territory;

(d) Establish and operate a Restaurant anywhere outside of the Territory;

(e) Establish and operate any business other than a Restaurant (including restaurants) anywhere inside or outside of the Territory; and

(f) Operate one or more Websites that advertise Restaurants, allow customers and potential customers to make reservations at Restaurants (including the Franchised Restaurants), sell any product or service including pre-packaged food products, clothing or memorabilia, or permit other activities (whether or not similar), even though the Website is accessible to or viewable by persons in the Territory.

(g) Operate other types of facilities besides Restaurants in the Territory, including facilities that are identified by some or all of the Proprietary Marks; and

(h) Operate, and license others to operate, KONA GRILL® Restaurants under the Proprietary Marks and the System at any location in any Captive Market, regardless of whether the Captive Market is located in the Protected Territory or not. "Captive Market" means any airports, hospitals, universities and schools, hotels, stadiums, arenas, ballparks, festivals, fairs, military bases/posts, and other mass gathering locations or temporary events.

If you fail to comply with the Development Schedule, or otherwise default under the Development Agreement, then we may (in addition to our other remedies) terminate or modify your territory rights, reduce the area of territory protection, or reduce the number of Restaurants that you may establish. When the Development Agreement expires or is terminated, you cannot develop additional Restaurants in the Territory (but may complete development of and/or operate Restaurants under then existing Franchise Agreements), and we may develop or authorize others to develop KONA GRILL® Restaurants in the Territory as long as such Restaurants are not located in any Protected Territory granted to you by any Franchise Agreement and exercise all other rights not expressly granted to you on an exclusive basis under your Franchise Agreements.

Except as described above, the continuation of any Territory rights granted to you does not depend on the achievement of a certain sales volume or other contingency, and we may not alter your Territory.

Franchise Agreement

The Franchise Agreement gives you the right to operate a Restaurant at a site we accept as meeting our site selection guidelines ("Location"). If you do not sign a Development Agreement, you must select the site for your Restaurant from within the Designated Area identified in the Site Addendum to your Franchise Agreement. If you are in compliance with the Franchise Agreement and any other agreement you or your affiliates have with us or our affiliates, we and our affiliates will not establish or authorize anyone except you to establish a KONA GRILL® Restaurant in the Protected Territory defined in the Franchise Agreement during the term of the Franchise Agreement. The Protected Territory will generally be a circle around your Restaurant that has a radius of 1.5 miles.

Continuation of your Protected Territory does not depend on the achievement of a certain sales volume, market penetration, or other contingency. If you default under the Franchise Agreement, then we may (in addition to our other remedies) terminate or modify your territory rights. You do not receive the right to acquire additional franchises within or outside of your Protected Territory unless you sign a Development

Agreement or another Franchise Agreement with us, and we are not required to enter into any additional Franchise Agreements with you unless you have signed a Development Agreement.

You must operate the Restaurant only at the Location. You may not actively sell to, offer to sell to, or accept business from consumers located outside your Protected Territory through any method of distribution, including alternative channels such as the Internet, catalog sales, telemarketing, kiosks, or food trucks. You cannot relocate the Restaurant without our consent. We will not unreasonably withhold our consent to such relocation if certain conditions are met, including the payment of a relocation fee equal to 50% of the then-current initial Franchise Fee. If you lose possession of the Location as the result of an event of Force Majeure, you must apply to us within 30 days for our approval to relocate your Restaurant. You must relocate to a site we approve as required by the Franchise Agreement.

We retain all other rights. Among other things, this means that we can:

(a) Advertise and promote sales at or by Restaurants, at any location, including within the Protected Territory;

(b) Offer and sell collateral and ancillary products and services, such as pre-packaged food products, clothing, and memorabilia, in the Protected Territory under the Proprietary Marks, even though those products and services may be similar to items offered at your Restaurant;

(c) Offer and sell any products and services (regardless of similarity to products and services sold in your Restaurant(s)) under any names and marks other than the Proprietary Marks at any location, including within the Protected Territory;

(d) Establish and operate a Restaurant anywhere outside of the Protected Territory;

(e) Establish and operate any business other than a Restaurant (including restaurants) anywhere inside or outside of the Protected Territory; and

(f) Operate one or more Websites that advertise Restaurants, allow customers and potential customers to make reservations at Restaurants (including the Franchised Restaurants), sell any product or service including pre-packaged food products, clothing or memorabilia, or permit other activities (whether or not similar), even though the Website is accessible to or viewable by persons in the Protected Territory.

(g) Operate other types of facilities besides Restaurants in the Protected Territory, including facilities that are identified by some or all of the Proprietary Marks; and

(h) Operate, and license others to operate, KONA GRILL® Restaurants under the Proprietary Marks and the System at any location in any Captive Market, regardless of whether the Captive Market is located in the Protected Territory or not. “Captive Market” means any airports, hospitals, universities and schools, hotels, stadiums, arenas, ballparks, festivals, fairs, military bases/posts, and other mass gathering locations or temporary events.

There are no restrictions on our right to solicit or accept business from consumers inside the Protected Territory without paying any compensation to you.

Unless we approve in writing, you must not establish a separate Website or establish any social media pages using the Proprietary Marks. If we approve your establishment of a Website or any social media pages using the Proprietary Marks, such Websites and social media pages must comply with the terms of the Franchise Agreement.

ITEM 13
TRADEMARKS

We have filed for registration the following Proprietary Marks on the principal register of the U.S. Patent and Trademark Office ("USPTO"). We intend to renew the registrations and to file all appropriate affidavits at the appropriate times, as required by law.

Mark	Register	Registration Number	Registration Date
KONA GRILL®	Principal	2414461	December 19, 2000

There is no presently effective determination of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state or any court, nor any pending infringement, opposition, or cancellation proceeding, nor any pending material litigation involving the Proprietary Marks which is relevant to their ownership, use, or licensing.

We know of no superior prior rights or infringing use that could materially affect your use of the Proprietary Marks, and we know of no agreements currently in effect which significantly limit our rights to use or license the use of the Proprietary Marks in any manner material to the franchise.

We know of no agreements currently in effect which significantly limit our rights to use or license the use of the Proprietary Marks in any manner that is material to you.

We are not obligated to protect your rights to use the Proprietary Marks or to protect you against claims of infringement or unfair competition.

You must immediately notify us of any infringement of the Proprietary Marks or of any challenge to the use of any of the Proprietary Marks or claim by any person of any rights in any of the Proprietary Marks. You and your Owners must agree not to communicate with any person other than us, any designated affiliate, and our or their counsel about any infringement, challenge, or claim. We, or our affiliates, have sole discretion to take any action we deem appropriate and the right to exclusively control any litigation or Patent and Trademark Office (or other) proceeding from any infringement, challenge, or claim concerning any of the Proprietary Marks. You must execute all instruments and documents and give us any assistance that, in our counsel's or our affiliates' counsel's opinion, may be necessary or advisable to protect and maintain our interests or those of our affiliates in any litigation or proceeding or to otherwise protect and maintain our or their interest in the Proprietary Marks.

You may use only the Proprietary Marks that we designate, must use them only in the manner that we authorize and permit, and must use them with the symbols, "®", "™", or "SM", as appropriate. You may use the Proprietary Marks only in connection with the operation and promotion of the Restaurant, and only in the manner we prescribe. You may not use the Proprietary Marks or any part of the Proprietary Marks in your corporate name, and may not use them to incur any obligation or indebtedness on our behalf. You must also follow our instructions for identifying yourself as a franchisee and for filing and maintaining the requisite trade name or fictitious name registrations. You must execute any documents we or our counsel determine are necessary to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability. Neither you nor your Principals may take any action that would prejudice or interfere with the validity of our rights with respect to the Proprietary Marks and may not contest the validity of our interest in the Proprietary Marks or assist others to do so.

You may not use the Proprietary Marks or any part or derivative of the Proprietary Marks on the Internet, except as expressly permitted in writing. This prohibition includes use of the Proprietary Marks or any derivative of the Marks as part of any URL or domain name, including but not limited to any gaming Website, social networking Website, or marketing/discounting Website; as part of any user name; or as part of any unauthorized email address.

We have the right to substitute different trade names, service marks, trademarks, and indicia of origin for the Proprietary Marks if the Proprietary Marks can no longer be used, or if we determine, in our sole discretion, that the substitution will be beneficial to the System. If we do, we may require you to discontinue or modify your use of any Proprietary Mark or use one or more additional or substitute marks at your expense.

ITEM 14
PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

We do not own any patents that are material to the franchise, nor do we have any pending patent applications. We do claim copyright protection and proprietary rights in the original materials used in the System, including our menus, Operations Manual, bulletins, correspondence, and communications with our franchisees, training, advertising, and promotional materials, the content and design of our Website, and other written materials relating to the operation of KONA GRILL® Restaurants and the System ("Copyrighted Works").

There is no presently effective determination of the U.S. Copyright Office (Library of Congress) or any court affecting our copyrights. There is no currently effective agreement that limits our right to use and/or license our copyrights. We are not obligated by the Franchise Agreement, or otherwise, to protect any rights you have to use the copyrights. We have no actual knowledge of any infringements that could materially affect the ownership, use, or licensing of the copyrights. You may not use any of our Copyrighted Works on the Internet without our written permission. This includes display of the Copyrighted Works on commercial, gaming, marketing, promotional, or social networking Website.

You and your employees must maintain the confidentiality of all information contained in the Operations Manual and other information that we consider confidential, proprietary, or trade secret information. "Confidential Information" means all trade secrets, the Standards, and other elements of the System; all customer information; all information contained in the Operations Manual; our proprietary recipes and standards and specifications for product preparation, packaging and service; financial information; marketing data; vendor and supplier information; all other knowledge, trade secrets, or know-how concerning the methods of operation of the Restaurant which may be communicated to you, or of which you may be apprised, by virtue of their operation under the terms of the Franchise Agreement, and all other information that we designate.

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

You and all personnel described below must each devote his/her full time efforts to the management and operations of your KONA GRILL® Restaurants.

You must designate and maintain at all times during the term of the Development Agreement and each Franchise Agreement a Brand Director and, if applicable, a Director of Operations. You may operate as the Brand Director if you enter into the Franchise Agreement individually. The Brand Director is primarily responsible for making all business decisions on your behalf, and the Director of Operations is primarily responsible for devoting his or her full time and best efforts to the management and supervision of your duties and obligations under the Development Agreement and each Franchise Agreement, as well as the operation of the Restaurants. If you operate less than three KONA GRILL® Restaurants, and if we approve, the Brand Director may also be, and assume the duties of, the Director of Operations. Each Brand Director and Director of Operations (if applicable) must attend and successfully complete our initial training program, unless modified by our Director of Training. Your initial Brand Director (and Director of Operations, if applicable) must be named in the Development Agreement and in each Franchise Agreement. Any replacement Brand Director or Director of Operations must be designated within 10 calendar days of their respective predecessor's resignation or termination and must attend and successfully complete our training program.

Under the Franchise Agreement, you must also hire a General Manager and two Assistant Managers, and an Executive Chef, Sous Chef, and Head Sushi Chef for each Restaurant within 60 days of our request, but in no event later than 180 days prior to the projected opening date for the Restaurant. All such personnel must meet our criteria and attend and successfully complete our training programs. At our request, you must hire such additional personnel as we deem necessary.

If you open more than six KONA GRILL® Restaurants, then you must hire additional Directors of Operations so that no Director of Operations oversees more than six KONA GRILL® Restaurants. If you open more than five KONA GRILL® Restaurants, then before opening the sixth KONA GRILL® Restaurant, you must hire a Regional Culinary Partner and one, additional Regional Culinary Partner for every six KONA GRILL® Restaurants opened thereafter. Each Director of Operations and Regional Culinary Partner must attend and successfully complete, as we determine, our initial training.

Any person we designate, including but not limited to spouses of Principals who are not also Principals, and any individual who attends our training or who has access to our training and to materials or information we disclose to you, including but not limited to your Brand Director, Director of Operations, District Manager, General Managers, Assistant Managers, Executive Chefs, Sous Chefs, and Head Sushi Chefs, must execute confidentiality and non-competition covenants agreements which will be substantially in the form of Attachment B to the Development Agreement and the Franchise Agreement and Development Agreement. Those of your Principals who do not sign the Principals' guaranty agreement (Attachment A to the Development Agreement and Franchise Agreement) must also sign the confidentiality and non-competition agreement.

Under the Development Agreement, your Principals must, at the time each Franchised Restaurant is opened under the Development Schedule, make a capital contribution in cash in an amount not less than 50% of the total investment required to open such Franchised Restaurant.

ITEM 16
RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You must offer and sell all menu items that we require, and only those menu items that we have approved, and in the method or manner we determine, including dine-in, carry-out, and catering. You must prepare, package, and serve all menu items according to our recipes, standards, and procedures for preparation, presentation, and service as communicated to you from time to time via the Operations Manual or other written directives. Our standards and procedures may include, without limitation, adherence to recipes (including use of prescribed ingredients and prescribed measure of ingredients), use of containers and paper goods bearing the Proprietary Marks, packaging, plating, and presentation procedures, product holding times, and other standards for displaying for sale menu items and other merchandise. We may add, eliminate, or modify authorized goods and services, in our sole discretion, including but not limited to limiting the geographical area in which you can provide catering services. There are no contractual limitations on our rights to make these changes.

You may not co-brand with another concept, or offer or provide catering or delivery services from a cart, kiosk, or food truck/vehicle without our prior written consent. You may not ship or deliver KONA

GRILL® products, regardless of the destination, without our prior written consent, nor distribute KONA GRILL® products through wholesale channels, such as supermarkets, convenience stores, or other retailers, or through food service providers such as commissaries or airlines through in-flight services.

We have the right to establish maximum, minimum, or other retail pricing requirements to the extent permitted by law.

You may not permit in the Restaurant any vending, game or gaming machines, payphones, automatic teller machines, Internet kiosks, or other mechanical or electrical devices, except for those we require or approve.

ITEM 17
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

THE FRANCHISE RELATIONSHIP

These tables list certain important provisions of the Franchise Agreement and related agreements. You should read these provisions in the Franchise Agreement attached to this disclosure document.

Provisions	Section in Franchise Agreement	Summary
a. Length of the franchise term	Section 13.1	The initial Term is 15 years.
b. Renewal or extension of the term	Section 13.2	There is no renewal option following the initial Term. The parties may, upon mutual agreement, renew the Franchise Agreement beyond the initial Term for an agreed-to period of time.
c. Requirements for franchisee to renew or extend	Section 13.2	To remain a franchisee, you must meet all required conditions to renew, including signing our then-current form of Franchise Agreement, which may be materially different than the form attached to this disclosure document. Additionally, you must: give us written notice of your desire to renew; complete all scheduled refurbishments and upgrades or complete such work as and when we require; be in compliance with the Franchise Agreement and all other agreements between you or your affiliates and us or our affiliates; and pay us our then-current initial franchise fee; and you and your Principals must sign a general release.
d. Termination by franchisee	Not applicable	Not applicable.
e. Termination by franchisor without cause	Not applicable	Not applicable.

Provisions	Section in Franchise Agreement	Summary
f. Termination by franchisor with cause	Section 13	We can terminate if you materially default under your Franchise Agreement. In the event of the death or permanent incapacity of an owner, we may terminate if you fail to adhere to the applicable transfer requirements.
g. “Cause” defined – curable defaults	Sections 13.3.3 and 13.3.4	You have 10 days to cure non-payment of fees, 30 days to cure non-compliance with laws and defaults not listed in Sections 13.3.1 and 13.3.2, and in the case of a breach or default in the performance of your obligations under any other agreement between you and us or any of our affiliates, the notice and cure provisions of the other agreement will control. You have three months to transfer the interest of an owner in the event of death or permanent disability.

Provisions	Section in Franchise Agreement	Summary
h. “Cause” defined – non-curable defaults	Sections 13.3.1 and 13.3.2	Non-curable defaults: bankruptcy, foreclosure, insolvency or general assignment for the benefit of creditors, receivership is filed for or appointed, composition with creditors, entry of a final judgment of $25,000 or more remains unsatisfied, dissolution, failure to comply with our requirements regard the public offering of your entity, filing of levy of execution against your business or property, sale of property after levy, failure to comply with transfer provisions, abandonment; you, your Principals, or your employees cause a threat to the public health or safety; you or any of your Principals is convicted of or pleads nolo contender to felony or any crime reasonably likely to adversely affect our Proprietary Marks and related goodwill and our System; breach of the representations and warranties; failure to maintain the confidentiality of the Confidential Information; failure to obtain and maintain required insurance; maintenance or submission of false books or records; failure to comply with our requirements regarding the products and services you offer and sell and where you can sell or offer such products and services; failure to timely locate a site for the Restaurant that we approve, construct or refurbish the site; or open the Restaurant for business; failure to obtain signed confidentiality and non-competition agreements we require; misuse or unauthorized use of the Proprietary Marks; you or any of your Principals engage in any act, conduct, or practice that we deem to be deceptive, misleading, unethical, or otherwise contrary to or in conflict with the reputation and image of the System.

Provisions	Section in Franchise Agreement	Summary
i. Franchisee's obligations on termination/nonrenewal	Section 13.4	You must cease use of our trademarks, de-identify, cancel all assumed names that contain any of the Proprietary Marks, pay all amounts due to us, and return the Operations Manual to us. We may, at our option, assume all telephone numbers for the Restaurant. We may, at our option, assume your lease and purchase certain Restaurant assets. You must, at our option, cancel or assign to us your rights to any Internet Websites or Web pages or email addresses which contain our Proprietary Marks. See also "r" below.
j. Assignment of contract by franchisor	Section 11.1	No restriction on our right to assign.
k. "Transfer" by franchisee – defined	Section 11.2	You must not transfer any direct or indirect interest in you, the Franchise Agreement, or the assets of the business without our consent. Includes transfer of the Franchise Agreement, changes in ownership of the franchisee entity, transfers of assets, private and public offerings, and transfer upon death or permanent disability.
l. Franchisor approval of transfer by franchisee	Sections 11.2	Transfers require our prior written consent, which we may withhold in our discretion.
m. Conditions for franchisor approval of transfer	Sections 11.2.1	You must be in compliance with your Franchise Agreement; the new franchisee must meet our then-current criteria for new franchisees; the new franchisee must sign our then-current form of franchise agreement; you and all of your Principals must sign a general release; you must pay a transfer fee of 50% of our then-current initial franchise fee; and the new franchisee and its principals and managers must attend and successfully complete the training we require. (See also "r" below.)
n. Franchisor's right of first refusal to acquire franchisee's business	Section 11.2.2	We can match any bona fide offer for your business.
o. Franchisor's option to purchase your business	Section 13.4(h)	Upon termination or expiration of the Franchise Agreement, we have the option to purchase some or all of your equipment, furnishings, and fixtures at the lesser of your cost or then-current fair market value.

Provisions	Section in Franchise Agreement	Summary
p. Death or disability of franchisee	Section 11.2.3	Same requirements as for transfer in "m" above, except there is no transfer fee and we do not have right of first refusal. If your interest is not transferred within five months following your (or a major member, partner, or shareholder's) death or legal incapacity, your Franchise Agreement may be terminated.
q. Non-competition covenants during the term of the franchise	Section 9.5	Neither you nor your Principals may, directly or indirectly, divert or attempt to divert business to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and/or the System; employ or seek to employ any person who is employed by us or by any of our other franchisees or developers; and/ or own, maintain, engage in, or have an equity interest in a Competing Business. "Competing Business" means (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ's, Bonefish Grill, Brio, Del Frisco's Grille, Joe's Crab Shack, Outback Steakhouse, P.F. Chang's, Seasons 52, and The Cheesecake Factory. "Competing Food Items" means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

Provisions	Section in Franchise Agreement	Summary
r. Non-competition covenants after the franchise is terminated or expires	Section 9.6	Neither you nor your Principals may, directly or indirectly, divert or attempt to divert business to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and/or the System; employ or seek to employ any person who is employed by us or by any of our other franchisees or developers; and/ or own, maintain, engage in, or have an equity interest in a Competing Business within the Protected Territory or within 25 miles from the outer boundaries of the Protected Territory or any KONA GRILL® restaurant.
s. Modification of the agreement	Sections 16.2	Must be in writing and signed by all parties, unless the Franchise Agreement allows us to make unilateral changes.
t. Integration/merger clause	Section 16.2	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to state law). Any representations or promises outside of the disclosure document and the Franchise Agreement and other related written agreements between you and us may not be enforceable. Nothing in the Franchise Agreement or any other related written agreement is intended to disclaim representations made in the franchise disclosure document.
u. Dispute resolution by arbitration or mediation	Section 15	Claims, controversies, or disputes from or relating to the Franchise Agreement must be mediated, except for actions seeking injunctive relief and actions we bring which are related to or based on our Proprietary Marks or Confidential Information or on your failure to pay fees. If the claims, controversies, or disputes are not resolved in mediation, they will be litigated.
v. Choice of forum	Section 15	Mediation will be held in the Scottsdale, Arizona area. Venue for any other proceedings will be the federal and state courts that service Maricopa County, Arizona (subject to applicable state law). See the State Specific Addenda attached to this disclosure document.

Provisions	Section in Franchise Agreement	Summary
w. Choice of law	Section 15.1	Subject to applicable state law, the Franchise Agreement is to be interpreted and construed under Arizona law (without giving effect to any conflict of laws) except that any law regulating the offer or sale of franchises, business opportunities, or similar interests or governing the relationship between us and you will not apply unless its jurisdictional requirements are met independently. See the State Specific Addenda attached to this disclosure document.

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

Provisions	Section in Development Agreement	Summary
a. Length of the franchise term	Section 12.1.1	The earlier of the date you open the last having the last Restaurant required by the development schedule; or the date on which the last Restaurant is required to be opened by Development Schedule.
b. Renewal or extension of the term	Section 12.1.2	No right to renew.
c. Requirements for franchisee to renew or extend	Not applicable	Not applicable.
d. Termination by franchisee	Not applicable	Not applicable.
e. Termination by franchisor without cause	Not applicable	Not applicable.
f. Termination by franchisor with cause	Section 12.2, 12.3, and 12.4	We may terminate the Development Agreement for your default of the Development Agreement and/or your default of other agreements between you or your affiliates and us or our affiliates.

Provisions	Section in Development Agreement	Summary
g. “Cause” defined – curable defaults	Section 12.4	You have 30 days to cure non-compliance with laws and defaults not listed in Sections 12.2 and 12.3, and in the case of a breach or default in the performance of your obligations under any other agreement between you and us or any of our affiliates (cross-default), the notice and cure provisions of the other agreement will control. You have five months to transfer the interest of an owner in the event of death or permanent disability.
h. “Cause” defined – non-curable defaults	Sections 12.2 and 12.3	Non-curable defaults: bankruptcy, foreclosure, insolvency or general assignment for the benefit of creditors, receivership is filed for or appointed, composition with creditors, entry of a final judgment of $25,000 or more remains unsatisfied, dissolution, failure to comply with our requirements regard the public offering of your entity, filing of levy of execution against your business or property, sale of property after levy, failure to comply with transfer provisions; you or any of your Principals is convicted of or pleads nolo contender to felony or any crime reasonably likely to adversely affect our Proprietary Marks and related goodwill and our system; breach of the representations and warranties; failure to maintain the confidentiality of the Confidential Information; failure to obtain and maintain required insurance; failure to obtain signed confidentiality and non-competition agreements we require; failure to timely comply with the provisions of the Development Agreement and each Franchise Agreement; you or any of your Principals engage in any act, conduct, or practice that we deem to be deceptive, misleading, unethical, or otherwise contrary to or in conflict with the reputation and image of the System; failure by you or any of your affiliates to comply with the terms and conditions of any Franchise Agreement beyond any applicable cure period or any other agreement between you and any of your affiliates and us or our affiliates; failure to pay any monies owed.

Provisions	Section in Development Agreement	Summary
i. Franchisee's obligations on termination/nonrenewal	Sections 7.2 and 13.4.	You will have no right to establish or operate any Restaurant for which a Franchise Agreement has not been signed; you must pay us liquidated damages; you must comply with confidentiality and non-competition covenants.
j. Assignment of contract by franchisor	Section 10.1	No restriction on our right to assign.
k. "Transfer" by franchisee – defined	Sections 10.2, 10.4, and 10.5	You must not transfer any direct or indirect interest in you, the Development Agreement, or the assets of the business without our consent. Includes transfer of the Development Agreement, changes in ownership of the developer entity, transfers of assets, private and public offerings, and transfer upon death or permanent disability.
l. Franchisor approval of transfer by franchisee	Sections 12.2. and 12.3.	Transfers require our prior written consent, which we may withhold in our discretion.
m. Conditions for franchisor approval of transfer	Section 10.2	You must be in compliance with your Development Agreement; the new developer must meet our then-current criteria for new franchisees; the new developer must sign our then-current form of development agreement; you and all of your Principals must sign a general release; you must pay a transfer fee of 50% of our then-current franchise territory fee; and the new developer and its principals and managers must attend and successfully complete the training we require. (See also "r" below.)
n. Franchisor's right of first refusal to acquire franchisee's business	Section 10.3	We can match any bona fide offer for your business.
o. Franchisor's option to purchase your business	Not applicable	Not applicable.
p. Death or disability of franchisee	Section 10.4	Same requirements as for transfer in "m" above, except there is no transfer fee and we do not have right of first refusal. If your interest is not transferred within five months following your (or a major member, partner, or shareholder's) death or legal incapacity, your Franchise Agreement may be terminated.

Provisions	Section in Development Agreement	Summary
q. Non-competition covenants during the term of the franchise	Section 7.2	Neither you nor your Principals may, directly or indirectly, divert or attempt to divert business to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and/or the System; employ or seek to employ any person who is employed by us or by any of our other franchisees or developers; and/ or own, maintain, engage in, or have an equity interest in a Competing Business. “Competing Business” means (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ’s, Bonefish Grill, Brio, Del Frisco’s Grille, Joe’s Crab Shack, Outback Steakhouse, P.F. Chang’s, Seasons 52, and The Cheesecake Factory. “Competing Food Items” means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

Provisions	Section in Development Agreement	Summary
r. Non-competition covenants after the franchise is terminated or expires	Section 7.3	Neither you nor your Principals may, directly or indirectly, divert or attempt to divert business to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and/or the System; employ or seek to employ any person who is employed by us or by any of our other franchisees or developers; and/ or own, maintain, engage in, or have an equity interest in a Competing Business within the Territory or within 25 miles from the outer boundaries of the Protected Territory or any KONA GRILL® restaurant.
s. Modification of the agreement	Section 15.2	Must be in writing and signed by all parties, unless the Development Agreement allows us to make unilateral changes.
t. Integration/merger clause	Section 15.2	Only the terms of the Development Agreement and other related written agreements are binding (subject to state law). Any representations or promises outside of the disclosure document and the Development Agreement and other related written agreements between you and us may not be enforceable. Nothing in the Development Agreement or any other related written agreement is intended to disclaim representations made in the franchise disclosure document.
u. Dispute resolution by arbitration or mediation	Section 14	Claims, controversies, or disputes from or relating to the Development Agreement must be mediated, except for actions seeking injunctive relief and actions we bring which are related to or based on our Proprietary Marks or Confidential Information or on your failure to pay fees. If the claims, controversies, or disputes are not resolved in mediation, they will be litigated.
v. Choice of forum	Section 14	Mediation will be held in the Scottsdale, Arizona area. Venue for any other proceedings will be the federal and state courts that service Maricopa County, Arizona (subject to applicable state law). See the State Specific Addenda attached to this disclosure document.

Provisions	Section in Development Agreement	Summary
w. Choice of law	Section 14.1	Subject to applicable state law, the Franchise Agreement is to be interpreted and construed under Arizona law (without giving effect to any conflict of laws) except that any law regulating the offer or sale of franchises, business opportunities, or similar interests or governing the relationship between us and you will not apply unless its jurisdictional requirements are met independently. See the State Specific Addenda attached to this disclosure document.

ITEM 18
PUBLIC FIGURES

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

ITEM 19
FINANCIAL PERFORMANCE REPRESENTATIONS

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

The average sales and certain cost information for the 45 Company-Owned Restaurants ("Sample Restaurants") that operated for the entire period from January 1, 2017 through December 31, 2017 ("Reporting Period) is provided below. We excluded information for one restaurant that opened during the Reporting Period. The Sample Restaurants represent 97.8% of the Kona Grill restaurants that existed at the end of the Reporting Period.

Sales Information for Sample Restaurants During the Reporting Period	
Average Gross Sales[(1)]	$3,933,947
Highest Gross Sales	$6,815,995
Lowest Gross Sales	$1,849,866
Median Gross Sales	$3,910,678
Restaurants that Performed Above the Average	23, or 51%
Restaurants that Performed Below the Average	22, or 49%

Cost Information for Sample Restaurants During the Reporting Period[(2)]	
Average Food[(3)] Cost as % of Total Food Revenue	26.9%
Average Alcohol[(4)] Cost as % of Total Alcohol Revenue	22.3%
Total Cost of Goods Sold as % of Gross Sales	27.4%
Labor[(5)] as % of Gross Sales	31.2%
Occupancy Cost[(6)] as % of Gross Sales	9.2%

Annual Costs You Will Incur (Not Included in Costs Above) [(7)] (Assuming Median Gross Sales)	
Royalties (5% of Gross Sales)	$196,697
Advertising Assessment (Currently, 0.5% of Gross Sales)	$19,670
Marketing (Assumes 3.5% of Gross Sales)	$137,688

Note (1): The Net Sales realized will vary from Restaurant to Restaurant and will be directly affected by many factors, such as the Restaurant's size, geographic location, competition in the marketplace; the presence of other Kona Grill Restaurants; and the quality of management and service at the Restaurant.

Note (2): The cost information presented in this table does not make up all of the operating costs you will incur. In addition to those costs listed in the third table, you will incur other operating costs, such as debt service and taxes.

Note (3): Food sales were 72.7% of total food and alcohol sales. The food cost for 20 restaurants (44.4%) was less than or equal to 26.9%, and the food cost for 25 restaurants (55.6%) was more than 26.9%. The highest food cost was 31.2%, the lowest was 23.3%, and the median was 27.0%.

Note (4): Alcohol sales were 27.3% of total food and alcohol sales. The alcohol cost for 22 restaurants (48.9%) was less than or equal to 22.3%, and the alcohol cost for 23 restaurants (51.1%) was more than 22.3%. The highest alcohol cost was 30.9%, the lowest was 18.0%, and the median was 22.4%.

Note (5): Labor costs include wages and bonuses for salaried managers and hourly employees and does not include the cost of any benefits such as paid vacations, health insurance, etc. The labor cost for 20 restaurants (44.4%) was less than 31.2%, and the labor cost for 25 restaurants (55.6%) was more than 31.2%. The highest labor cost was 48.3%, the lowest was 24.4%, and the median was 31.6%.

Note (6): The occupancy cost for 26 restaurants (57.8%) was less than 9.2%, and the rent for 19 restaurants (42.2%) was more than 9.2%. The highest rent was 33.7%, the lowest was 3.5%, and the median was 8.9%.

Note (7): These costs are those costs you will incur as a direct result of operating a franchised Kona Grill Restaurant. These costs are not all of the costs you will incur in operating your Kona Grill Restaurant.

Some restaurants have sold this amount and have incurred these costs. Your individual results may differ. There is no assurance that you will achieve this much or that these will be your costs.

You should conduct an independent investigation of the costs and expenses you will incur in operating your Restaurant. Written substantiation for the financial performance representation will be made available to you upon reasonable request.

We have written substantiation in our possession to support the information appearing in this Item 19, and this information will be made available to you on reasonable request.

Other than the preceding financial performance representation, we do not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting Carlos De Leon, Kona Grill, Inc. 15059 North Scottsdale Road, Suite 300; 480-922-8100, the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20
OUTLETS AND FRANCHISEE INFORMATION

Table No. 1
SYSTEMWIDE OUTLET SUMMARY
FOR YEARS 2015 TO 2017(1)

Outlet Type	Year	Outlets at the Start of the Year	Outlets at End of Year	Net Change
Franchised	2015	0	0	0
	2016	0	0	0
	2017	0	0	0
Company-Owned	2015	30	37	+7
	2016	37	45	+8
	2017	45	46	+1
Total Outlets	2015	30	37	+7
	2016	37	45	+8
	2017	45	46	+1

Notes:

(1) Our fiscal year ends December 31 of each year.

Table No. 2
TRANSFERS OF OUTLETS FROM FRANCHISEES TO NEW OWNERS
(OTHER THAN THE FRANCHISOR)
FOR YEARS 2015 TO 2017(1)

State	Year	Number of Transfers
All States	2015	0
	2016	0
	2017	0
Totals	2015	0
	2016	0
	2017	0

Notes:

(1) Our fiscal year ends December 31 of each year.

Table No. 3
STATUS OF FRANCHISED OUTLETS
FOR YEARS 2015 TO 2017[(1)]

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of Year
All States	2015	0	0	0	0	0	0	0
	2016	0	0	0	0	0	0	0
	2017	0	0	0	0	0	0	0
Totals	2015	0	0	0	0	0	0	0
	2016	0	0	0	0	0	0	0
	2017	0	0	0	0	0	0	0

Notes:

(1) Our fiscal year ends December 31 of each year.

Table No. 4
STATUS OF COMPANY-OWNED OUTLETS
FOR YEARS 2015 TO 2017[(1)]

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Alabama	2015	0	0	0	0	0	0
	2016	0	1	0	0	0	1
	2017	1	0	0	0	0	1
Arizona	2015	4	0	0	0	0	4
	2016	4	0	0	0	0	4
	2017	4	1	0	0	0	5
California	2015	0	0	0	0	0	0
	2016	0	1	0	0	0	1
	2017	1	0	0	0	0	1
Colorado	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Connecticut	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
	2017	1	0	0	0	0	1
Florida	2015	2	1	0	0	0	3
	2016	3	1	0	0	0	4
	2017	4	0	0	0	0	4
Georgia	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Hawaii	2015	0	0	0	0	0	0
	2016	0	1	0	0	0	1
	2017	1	0	0	0	0	1
Idaho	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Illinois	2015	2	0	0	0	0	2
	2016	2	0	0	0	0	2
	2017	2	0	0	0	0	2
Indiana	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Louisiana	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Maryland	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Michigan	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Minnesota	2015	1	0	0	0	0	1
	2016	1	1	0	0	0	2
	2017	2	0	0	0	0	2
Missouri	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired from Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Nebraska	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Nevada	2015	1	1	0	0	0	2
	2016	2	0	0	0	0	2
	2017	2	0	0	0	0	2
New Jersey	2015	1	0	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Ohio	2015	1	1	0	0	0	2
	2016	2	0	0	0	0	2
	2017	2	0	0	0	0	2
Puerto Rico	2015	0	1	0	0	0	1
	2016	1	0	0	0	0	1
	2017	1	0	0	0	0	1
Tennessee	2015	0	0	0	0	0	0
	2016	0	1	0	0	0	1
	2017	1	0	0	0	0	1
Texas	2015	7	2	0	0	0	9
	2016	9	1	0	0	0	10
	2017	10	0	0	0	0	10
Virginia	2015	1	1	0	0	0	2
	2016	2	1	0	0	0	3
	2017	3	0	0	0	0	3
Totals	2015	30	7	0	0	0	37
	2016	37	8	0	0	0	45
	2017	45	1	0	0	0	46

Notes:

(1) Our fiscal year ends December 31 of each year.

Table No. 5
PROJECTED OPENINGS AS OF DECEMBER 31, 2017

State	Franchise Agreement Signed But Outlet Not Open	Projected New Franchised Outlets in Next Fiscal Year	Projected New Company owned Outlets in Next Fiscal Year
All States	0	0	0
Totals	0	0	0

Exhibit D reflects the name of each of our franchisees and the address and telephone numbers of their Restaurants as of the date of this disclosure document. Exhibit D also reflects the name, city, state, and current business (or if unknown, home) telephone number of every franchisee who ceased to do business under the Franchise Agreement or had an outlet terminated, canceled, not renewed, or transferred as of the date of this disclosure document, or who has not communicated with us within 10 weeks of the application date of this disclosure document.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

During the last three fiscal years, no current or former franchisees have signed confidentiality clauses that restrict them from discussing with you their experiences as a franchisee in our franchise System.

Currently, there are no trademark specific franchisee associations.

ITEM 21
FINANCIAL STATEMENTS

Attached as Exhibit A are our audited financial statements for our fiscal year ended December 31, 2017.

ITEM 22
CONTRACTS

Attached to this disclosure document are the following contracts and their attachments:

Attached as Exhibit B is our current form of Franchise Agreement with all attachments.

Attached as Exhibit C is our current form of Development Agreement with all attachments.

Attached as Exhibit D is our current form of General Release (sample form).

ITEM 23
RECEIPTS

The last two pages of this disclosure document are detachable duplicate Receipts. Please sign and date both copies of the Receipt. Keep one signed copy of the Receipt for your file and return to us the other signed copy of the Receipt. The Receipt contains the names of our franchise sellers or brokers.

EXHIBIT A

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

FINANCIAL STATEMENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Kona Grill, Inc.

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Kona Grill, Inc. (the Company) as of December 31, 2017 and 2016, the related consolidated statements of comprehensive loss, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2017, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2017 and 2016, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2017, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company’s financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company’s auditor since 2001.
Phoenix, Arizona
March 22, 2018

KONA GRILL, INC.
CONSOLIDATED BALANCE SHEETS
(In thousands, except share data)

	December 31, 2017	December 31, 2016
ASSETS		
Current assets:		
Cash and cash equivalents	$ 5,042	$ 3,476
Investments	58	178
Receivables	1,371	1,850
Inventory	1,706	2,176
Prepaid expenses and other current assets	867	1,052
Total current assets	9,044	8,732
Other assets	1,116	1,383
Property and equipment, net	81,639	98,268
Total assets	$ 91,799	$ 108,383
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 2,890	$ 4,115
Accrued expenses	12,934	14,450
Current portion of long-term debt	779	712
Total current liabilities	16,603	19,277
Long-term debt	36,921	25,921
Deferred rent and other long-term liabilities	32,612	31,610
Total liabilities	86,136	76,808
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, $0.01 par value, 2,000,000 shares authorized; none issued	—	—
Common stock, $0.01 par value, 30,000,000 shares authorized, 10,225,915 shares issued and 10,109,715 shares outstanding at December 31, 2017 and 10,568,230 shares issued and 10,452,030 shares outstanding at December 31, 2016	102	106
Additional paid-in capital	86,227	88,703
Accumulated deficit	(79,666)	(56,234)
Treasury stock, at cost, 116,200 shares at December 31, 2017 and 2016	(1,000)	(1,000)
Total stockholders' equity	5,663	31,575
Total liabilities and stockholders' equity	$ 91,799	$ 108,383

See accompanying notes to the consolidated financial statements.

KONA GRILL, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(In thousands, except per share data)

	Year Ended December 31,		
	2017	**2016**	**2015**
Revenue	$ 179,081	$ 169,523	$ 143,023
Costs and expenses:			
Cost of sales	48,673	45,314	38,803
Labor	65,778	62,027	50,187
Occupancy	16,602	13,754	10,528
Restaurant operating expenses	28,929	24,740	20,293
General and administrative	13,453	13,272	12,612
Preopening expense	816	4,533	4,746
Depreciation and amortization	15,183	14,421	9,966
Asset impairment charge	9,341	12,454	—
Lease termination and exit costs	1,392	—	—
Other	—	—	161
Total costs and expenses	200,167	190,515	147,296
Loss from operations	(21,086)	(20,992)	(4,273)
Write off of deferred financing costs	472	—	—
Interest expense, net	1,784	571	180
Loss before income taxes	(23,342)	(21,563)	(4,453)
Income tax expense	90	66	43
Net Loss	$ (23,432)	$ (21,629)	$ (4,496)
Net loss per share (Note 1):			
Basic and diluted	$ (2.32)	$ (2.00)	$ (0.40)
Weighted average shares outstanding (Note 1):			
Basic and diluted	10,121	10,791	11,264
Comprehensive loss	$ (23,432)	$ (21,629)	$ (4,496)

See accompanying notes to the consolidated financial statements.

KONA GRILL, INC.
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In thousands)

	Common Stock Shares	Common Stock Amount	Additional Paid-in Capital	Accumulated Deficit	Treasury Stock	Stockholders' Equity
Balances at December 31, 2014...........	11,209	113	96,422	(30,109)	(1,000)	65,426
Stock-based compensation.....................	—	—	1,363	—	—	1,363
Issuance of common stock under the Employee Stock Purchase Plan and exercise of stock options........................	81	1	624	—	—	625
Purchase and retirement of common stock..	(18)	—	(227)	—	—	(227)
Net loss and comprehensive loss	—	—	—	(4,496)	—	(4,496)
Balances at December 31, 2015...........	11,272	114	98,182	(34,605)	(1,000)	62,691
Stock-based compensation.....................	—	—	1,262	—	—	1,262
Issuance of common stock under the Employee Stock Purchase Plan and exercise of stock options net of share repurchase for minimum tax	132	1	450	—	—	451
Purchase and retirement of common stock..	(952)	(9)	(11,191)	—	—	(11,200)
Net loss and comprehensive loss	—	—	—	(21,629)	—	(21,629)
Balances at December 31, 2016...........	10,452	106	88,703	(56,234)	(1,000)	31,575
Stock-based compensation.....................	—	—	831	—	—	831
Issuance of common stock under the Employee Stock Purchase Plan and exercise of stock options........................	53	—	261	—	—	261
Purchase and retirement of common stock..	(395)	(4)	(3,568)	—	—	(3,572)
Net loss and comprehensive loss	—	—	—	(23,432)	—	(23,432)
Balances at December 31, 2017...........	10,110	$ 102	$ 86,227	$ (79,666)	$ (1,000)	$ 5,663

See accompanying notes to the consolidated financial statements.

KONA GRILL, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2017	2016	2015
Operating activities			
Net loss	$ (23,432)	$ (21,629)	$ (4,496)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization	15,155	14,421	9,781
Stock-based compensation	831	1,262	1,363
Loss on disposal of assets	28	—	185
Amortization of deferred financing costs	185	99	81
Write off of deferred financing costs	472	—	—
Asset impairment charge	9,341	12,454	—
Lease termination and exit costs	1,392	—	—
Change in operating assets and liabilities:			
Receivables	478	(275)	(1,187)
Inventory	470	(311)	(366)
Prepaid expenses and other current assets	164	(164)	(69)
Accounts payable	4	564	86
Accrued expenses	(701)	4,044	1,290
Deferred rent and other long term liabilities	1,513	10,422	3,626
Net cash provided by operating activities	5,900	20,887	10,294
Investing activities			
Purchase of property and equipment	(11,840)	(41,900)	(38,077)
Change in other assets	125	(133)	(138)
Net cash used in investing activities	(11,715)	(42,033)	(38,215)
Financing activities			
Borrowings from revolving credit facility	13,500	14,500	—
Repayments on revolving credit facility	(1,750)	(2,500)	—
Borrowings from term loan	—	15,000	—
Repayments on term loan	(750)	(188)	—
Fees paid for credit facility	(308)	(496)	—
Proceeds from issuance of common stock under the Employee Stock Purchase Plan and exercise of stock options	261	674	625
Payment for withholding tax from net settled stock option exercise	—	(223)	—
Purchase and retirement of common stock	(3,572)	(11,200)	(227)
Net cash provided by financing activities	7,381	15,567	398
Net increase (decrease) in cash and cash equivalents	1,566	(5,579)	(27,523)
Cash and cash equivalents at the beginning of the year	3,476	9,055	36,578
Cash and cash equivalents at the end of the year	$ 5,042	$ 3,476	$ 9,055
Supplemental disclosures of cash flow information			
Cash paid for interest (net of capitalized interest)	$ 1,571	$ 323	$ 99
Cash paid for income taxes, net of refunds	$ 58	$ 2	$ 12
Noncash investing activities			
Accounts payable and accrued expenses related to property and equipment purchases	$ 233	$ 3,258	$ 7,266

See accompanying notes to the consolidated financial statements.

1. The Company and Summary of Significant Accounting Policies

Description of Business

Kona Grill, Inc., including its wholly-owned subsidiaries, (referred to herein as the "Company" or "we," "us," and "our") owns and operates upscale casual dining restaurants under the name "Kona Grill." Our restaurants feature a diverse selection of contemporary American favorites and award-winning sushi items that are prepared fresh daily at each restaurant location. As of December 31, 2017, we owned and operated 46 restaurants in 23 states throughout the United States and Puerto Rico. Our three international franchise partners opened Kona Grill locations in Monterrey, Mexico; Dubai, United Arab Emirates; and Vaughan (Toronto), Canada in 2017. Our chief operating decision maker function is comprised of our Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer who manage our restaurant operation base that aggregates into one reportable segment. Accordingly, we have a single operating segment and reporting unit structure.

Basis of Presentation

The consolidated financial statements include the accounts and operations of the Company and its wholly owned subsidiaries. All significant intercompany balances and transactions have been eliminated in consolidation.

Ability to Continue as a Going Concern

The accompanying consolidated financial statements have been prepared assuming the Company will continue as a going concern. The Company has incurred losses resulting in an accumulated deficit of $79.7 million, has a net working capital deficit of $7.6 million and outstanding debt of $37.8 million as of December 31, 2017. These conditions together with recent debt covenant violations and subsequent debt covenant waivers and debt amendments, raise substantial doubt about the Company's ability to continue as a going concern. The ability to continue as a going concern is dependent upon the Company generating profitable operations, improving liquidity and reducing costs to meet its obligations and repay its liabilities arising from normal business operations when they become due. The Company has evaluated its plans to alleviate this doubt, which will include slowing new restaurant development, implementing cost-savings initiatives and evaluating potential closure of underperforming restaurants. While the Company believes that its existing cash and cash equivalents as of December 31, 2017, coupled with its anticipated cash flow generated from operations, will be sufficient to meet its anticipated cash requirements, there can be no assurance that the Company will be successful in its plans to increase profitability or to obtain alternative financing on acceptable terms, when required or if at all. These consolidated financial statements do not include any adjustments to the recoverability and classification of recorded asset amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates.

Cash and Cash Equivalents

We consider all highly liquid investments that are readily convertible into cash and have an original maturity of three months or less at the time of purchase to be cash equivalents. Amounts receivable from credit card processors are also considered cash equivalents because they are both short-term and highly liquid in nature and are typically converted to cash within three business days of the sales transaction.

Investments

Investments consist primarily of certificates of deposit that are generally highly liquid in nature. We classify our investments based on the intended holding period.

Inventory

Inventory consists of food and beverage products that are valued at the lower of cost or market using the first-in, first-out method.

Concentration of Credit Risk

Financial instruments that potentially subject us to a concentration of credit risk principally consist of cash and cash equivalents, investments and accounts receivable. We maintain our day-to-day operating cash balances in non-interest-bearing transaction accounts, which are insured by the Federal Deposit Insurance Corporation ("FDIC") up to $250,000. Although we maintain balances that exceed the federally insured limit, we have not experienced any losses related to our accounts, and we believe credit risk to be minimal.

Property and Equipment

Property and equipment are recorded at cost. We capitalize all direct costs on the construction of leasehold improvements and interest incurred during the construction and development period. Leasehold improvements are amortized over the shorter of the useful life of the asset or the related lease term that includes reasonably assured lease renewals as determined on the date of acquisition of the leasehold improvement. Improvements that materially extend the life of an asset are capitalized while repair and maintenance costs are expensed as incurred.

Depreciation and amortization are recorded on a straight-line basis over the following estimated useful lives:

Furniture and fixtures	5-7 years
Equipment	2-7 years
Computer software and electronic equipment	3 years
Leasehold improvements	Shorter of the useful life or the lease term

Impairment of Long-Lived Assets

We evaluate long-lived assets, such as property and equipment, for impairment whenever events or changes in restaurant operating results indicate that the carrying value of those assets may not be recoverable. Factors considered include, but are not limited to, significant underperformance relative to expected historical or projected future operating results; significant negative industry or economic trends; and significant changes in legal factors or in the business climate. The assessment of impairment is performed on a restaurant-by-restaurant basis. Recoverability is assessed by comparing the carrying value of the asset to the undiscounted cash flows expected to be generated by the asset. This assessment process requires the use of estimates and assumptions regarding future cash flows and estimated useful lives, which are subject to a significant degree of judgment. If indicators of impairment are present and if we determine that the carrying value of the asset exceeds the fair value of the restaurant assets, an impairment charge is recorded to reduce the carrying value of the asset to its fair value.

As a result of the process described above, we recorded long-lived asset impairment charges of $9.3 million and $12.5 million, for 2017 and 2016, respectively. Such amounts are included in "Asset impairment charge" in the consolidated statements of comprehensive loss (Note 2).

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that is determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, a three-tier value hierarchy was established, which prioritizes the inputs used in the valuation methodologies in measuring fair value.

Level 1: Fair values determined by quoted prices in active markets for identical assets or liabilities that the reporting entity has the ability to access.

Level 2: Fair values utilize inputs other than quoted prices that are observable for the asset or liability, and may include quoted prices for similar assets and liabilities in active markets, and inputs other than quoted prices that are observable for the asset or liability.

Level 3: Fair values determined by unobservable inputs that are not corroborated by market data and may reflect the reporting entity's own assumptions market participants would use in pricing the asset or liability.

The carrying value for certain of our financial instruments, including cash and cash equivalents, accounts receivable and accounts payable approximates fair value because of their short-term nature. Our investments represent certificates of deposit and are considered available-for-sale securities that are valued using market observable inputs (Level 2). Our long-term debt is valued using primarily Level 2 inputs including current applicable rates for similar instruments and approximates the carrying value of such obligations.

In addition to our assets and liabilities that are measured at fair value on a recurring basis, we are required by GAAP to measure certain assets and liabilities at fair value on a nonrecurring basis after initial recognition. Generally, assets, liabilities and reporting units are measured at fair value on a nonrecurring basis as a result of impairment reviews and any resulting impairment charge. In connection with our impairment review of long-lived assets described in Note 2, we measured the fair value of our asset groups that were not deemed recoverable, based on Level 2 and Level 3 inputs consisting of the fair market value or discounted future cash flows associated with the use and eventual disposition of the asset group. The discounted cash flow method is based on Level 3 inputs consisting primarily of our restaurant forecasts and utilizes forward-looking assumptions and projections, as well as factors impacting long-range plans such as pricing, discount rates and commodity prices.

Leases

We lease our restaurant locations under operating lease agreements with initial terms ranging from 10 to 20 years. Most of these agreements require minimum annual rent payments plus contingent rent payments based on a percentage of revenue which exceed the minimum base sales threshold. Contingent rent payments, to the extent they exceed minimum payments, are accrued over the periods in which the liability is incurred. Rent expense associated with these contingent payments is recorded prior to the achievement of specified sales levels if exceeding such amount is considered probable and is estimable. The lease agreements typically also require scheduled increases to minimum annual rent payments. For leases that contain rent escalations, we record the total rent payable over the initial lease term, starting on the date we gain possession of the property (including the construction period), on a straight-line basis. Any difference between minimum rent and straight-line rent is recorded as deferred rent. Deferred rent also includes tenant improvement allowances which are amortized as a reduction of rent expense on a straight-line basis over the term of the lease. As part of the initial lease terms, we negotiate with our landlords to secure these tenant improvement allowances and record such allowances as lease incentive receivables when determined to be collectible. These amounts are included in receivables on the consolidated balance sheets.

Revenue Recognition

Revenues from food, beverage, and alcohol sales are recognized when payment is tendered at the point of sale. Revenue are recorded net of promotions and discounts. Revenues from gift card sales are recognized upon redemption. Prior to redemption, the outstanding balances of all gift cards are included in accrued expenses in the accompanying consolidated balance sheets. We recognize gift card breakage income when the likelihood of the redemption of the gift cards becomes remote. Gift card breakage income is recorded in "Revenue" on the consolidated statements of comprehensive loss and amounted to $0.2 million for the year ended December 31, 2017, We did not record any breakage income related to our gift card liability for the years ended December 31, 2016 and 2015, respectively.

We execute franchise agreements for units operated by third parties. Our franchise agreements typically provide for payment of development and initial franchise fees in addition to subsequent royalty fees based on the gross sales of each restaurant. Royalties are based on a percentage of gross sales at franchise restaurants and are recognized when earned and collectability is reasonably assured. We recognize initial fees received from a franchisee as revenue when we have performed substantially all initial services required by the franchise agreement, which is generally upon the opening of a store. Fees collected in advance are deferred until earned. Upfront fees paid by franchisees in connection with development agreements are deferred when the development agreement includes a minimum number of restaurants to be opened by the franchisee. Initial franchise and development fees are recorded as deferred revenue and included in "Deferred rent and other long-term liabilities" in our consolidated balance sheets. The deferred amounts are recognized as revenue on a pro rata basis as the franchisee opens each respective restaurant.

Sales Taxes

Revenues are presented net of sales taxes. The sales tax obligation is included in accrued expenses until the taxes are remitted to the appropriate taxing authorities.

Advertising and Marketing Costs

Advertising and marketing costs are expensed as incurred. Advertising and marketing expense for 2017, 2016 and 2015 was $1.7 million, $0.9 million and $0.7 million, respectively, and is included in restaurant operating expenses in the accompanying consolidated statements of comprehensive loss. We maintain a customer loyalty club (the Konavore™ program), an email-based marketing program designed to communicate new menu offerings, restaurant specific events, and other marketing messages to keep Kona Grill top of mind for consumers. The Konavore™ loyalty program offers members a discount coupon upon enrolling in the program and a discount coupon for a member's birthday. These coupons are recognized upon redemption and recorded in the financial statements as a sales discount. Costs associated with the redemption of a promotion in the form of a coupon for discounted product are recorded in cost of sales as these coupons are typically redeemed with the purchase of additional food and beverage items. Costs associated with promotional giveaways of food and beverages to local businesses and sponsorship of events are viewed as advertising in nature and recorded in restaurant operating expenses.

Preopening Expense

Costs directly related to the opening of new restaurants, including employee relocation, travel, employee payroll and related training costs, and rent expense subsequent to the date we take possession of the property through the restaurant opening are expensed as incurred.

Stock-Based Compensation

We maintain stock award plans under which we may issue incentive stock options, non-qualified stock options, restricted stock, and other types of awards to employees, directors, and consultants. Stock options issued under these plans are granted with an exercise price at or above the fair market value of the underlying common stock on the date of grant and expire five years from the date of grant. Employee stock options generally vest 25% each year over a four-year period, while annual recurring awards for non-employee director options vest 25% each quarter over a one-year period. Certain stock option awards for executive officers may vest earlier in the event of a change of control or termination, as defined in the executive officer's employment agreement. We apply the Black-Scholes valuation model in determining the fair value of stock option grants. We recognize compensation cost for our stock awards using a graded vesting schedule on a straight line basis over the requisite service period.

Income Taxes

We utilize the liability method of accounting for income taxes. Under the liability method, deferred tax assets and liabilities are computed at each balance sheet date for temporary differences between the consolidated financial statements and tax basis of assets and liabilities that will result in taxable or deductible amounts in the future based on tax rates in effect in the years in which the temporary differences are expected to affect taxable income. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts that will more likely than not be realized.

We recognize the impact of a tax position in our financial statements if that position more likely than not will be sustained upon examination by a tax authority. We recognize accrued interest and penalties related to uncertain tax positions as income tax expense.

Net Loss Per Share

Basic and diluted loss per common share is computed by dividing loss by the weighted average number of common shares outstanding during the period. For 2017, 2016 and 2015, there were 0.9 million, 0.8 million and 0.6 million stock options outstanding, respectively, that were not included in the dilutive earnings per share calculation because the effect would have been anti-dilutive.

The following table sets forth the computation of basic and diluted net loss per share:

	Year Ended December 31,		
	2017	**2016**	**2015**
	(In thousands, except per share data)		
Numerator:			
Net loss	$ (23,432)	$ (21,629)	$ (4,496)
Denominator:			
Weighted average shares — basic	10,121	10,791	11,264
Effect of dilutive stock options	—	—	—
Weighted average shares — diluted	10,121	10,791	11,264
Net loss per share:			
Basic and diluted	$ (2.32)	$ (2.00)	$ (0.40)

Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2014-09, *Revenue from Contracts with Customers (Topic 606)*. The pronouncement was issued to clarify the principles for recognizing revenue and is effective for reporting periods beginning after December 15, 2017. We have completed our assessment of the revised standard and impacts on the Company's consolidated financial statements and disclosures. We have reviewed a sample of contracts that are representative of the current types of revenue generating streams, including our assessment of the impacts, on initial franchise fees and breakage income recognized on our unredeemed gift cards. Additionally, this ASU requires enhanced disclosures, including significant judgments in measurement and recognition.

While we do not anticipate a significant change as a result of adopting the new standard, we have identified the most significant impact associated with the adoption of the new standard relates to accounting for development and franchise fees received in connection with our current and future franchise related activity. We currently believe that the services we provide related to upfront fees we receive from franchisees such as territory or initial fees do not contain separate and distinct performance obligations from the franchise right and thus those upfront fees will be recognized as revenue on a straight-line basis over the term of each respective franchise agreement. The standard requires the unearned portion of fees received to be presented in our consolidated balance sheets as a contract liability. Additionally, we have evaluated the impact that ASU 2014-09 will have on our recognition of breakage income related to our unredeemed gift cards. Based upon the above review, we have determined the adoption of ASU 2014-09 in fiscal year 2018 will not have a material effect on our consolidated financial statements and related disclosures.

We will adopt the new standard effective January 1, 2018. The guidance may be applied retrospectively for all periods presented or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application. We will adopt the standard retrospectively with the cumulative effect of initially applying the amended guidance recognized at January 1, 2018. Consequently, we will apply the guidance to the most current period presented in the financial statements issued subsequent to the adoption date. However, had we adopted the standard as of January 1, 2017, our revenue and operating loss for the year would have been reduced by approximately $0.3 million.

In addition to the changes presented above, we have historically recognized sales commissions as a component of labor expenses as they are incurred. Under the new standard, certain sales commissions will be capitalized and amortized to general and administrative expense over the expected life of the customer relationship. We do not expect a material change to the amount we recognize as general and administrative expense on an annual basis, nor do we expect to recognize a material cumulative effective adjustment to Accumulated Deficit as of January 1, 2018.

Lastly, we assessed the disclosure requirements under ASU 2014-09, and we anticipate disclosing additional information, as necessary, to comply with the requirements of the new standard.

In March 2016, the FASB issued ASU 2016-09, Compensation - Stock Compensation (Topic 718) which simplifies the accounting for employee share-based payment transactions, including the accounting for income taxes, forfeitures, and statutory tax withholding requirements, as well as classification in the statement of cash flows. The standard is effective for fiscal years beginning after December 15, 2016. The Company has adopted this standard effective January 1, 2017. Under the new standard, income tax benefits and deficiencies are to be recognized as income tax expense or benefit in the income statement and the tax effects of exercised or vested awards should be treated as discrete items in the reporting period in which they occur. The Company should also recognize excess tax benefits regardless of whether the benefit reduces taxes payable in the current period. Excess tax benefits should be classified along with other income tax cash flows as an operating activity. In regards to forfeitures, the Company has elected to not change its accounting policy and continue to estimate the number of awards that are expected to vest. The adoption of this standard created an additional $2.1 million in deferred tax assets, which was offset by the Company’s full valuation allowance. As such, we determined the adoption of this standard did not have a material impact on our consolidated financial position and results of operations. See Note 5 for further discussion.

In February 2016, ASC Topic 842, Leases, was issued to increase the transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. In order to meet that objective, the new standard requires recognition of the assets and liabilities that arise from leases. Accordingly, a lessee will recognize a right-of-use (ROU) asset for its right to use the underlying asset and a lease liability for the corresponding lease obligation. Both the ROU asset and lease liability will initially be measured at the present value of the future minimum lease payments over the lease term. Subsequent measurement, including the presentation of expenses and cash flows, will depend on the classification of the lease as either finance or an operating lease. Initial costs directly attributable to negotiating and arranging the lease will be included in the ROU asset. Lessees can make an accounting policy election by class of underlying asset not to recognize a ROU asset and corresponding lease liability for leases with a term of 12 months or less. Accounting by lessors will remain largely unchanged from current U.S. GAAP. The leasing standard is applicable for most entities starting in 2019. Public business entities are required to apply the leasing standard for annual reporting periods (including interim periods therein) beginning after December 15, 2018. The leasing standard is required to be applied to leases in existence as of the date of adoption using a modified retrospective transition approach.The modified retrospective approach includes a number of optional practical expedients that companies may elect to apply. These practical expedients relate to the identification and classification of leases that commenced before the effective date, initial direct costs for leases that commenced before the effective date, and the ability to use hindsight in evaluating lessee options to extend or terminate a lease or to purchase the underlying asset. The transition guidance also provides specific guidance for sale and leaseback transactions, build-to-suit leases, leveraged leases, and amounts previously recognized in accordance with the business combinations guidance for leases. We are currently performing an assessment of the revised standard, including optional practical expedients, and assessing our existing lease portfolio in order to determine the impact to our accounting systems, processes and internal control over financial reporting. To date, we have reviewed a sample of contracts that are representative of our current lease environment. We expect the adoption of this guidance to have a material impact on our consolidated financial statements; however the effect is not currently estimable.

2. Property and Equipment

Property and equipment consisted of the following (in thousands):

	December 31,	
	2017	2016
Leasehold improvements	$ 114,346	$ 115,902
Equipment	29,596	29,900
Furniture and fixtures	11,798	12,196
	155,740	157,998
Less accumulated depreciation and amortization	(75,429)	(62,921)
	80,311	95,077
Construction in progress	1,328	3,191
Total property and equipment, net	$ 81,639	$ 98,268

We capitalize direct internal payroll and travel costs on the construction of leasehold improvements incurred during the construction and development period. Capitalized costs were $0.6 million and $1.3 million in 2017 and 2016, respectively.

We review the carrying value of our long-lived assets on a restaurant-by-restaurant basis when indicators of potential impairment exist. Such indicators include, but are not limited to, significant underperformance relative to expected, historical or projected future operating results; significant negative industry or economic trends; and significant changes in laws and regulations. Given the continued underperformance of certain restaurants we determined impairment indicators were present as of December 31, 2017. As such, we conducted additional impairment analyses and performed a recoverability test which ultimately concluded the property and equipment of three restaurants were impaired.

During the year ended December 31, 2017 and 2016, we recorded non-cash asset impairment charges of $9.3 million and $12.5 million for certain underperforming restaurants based upon an assessment of each restaurant's historical operating performance combined with expected cash flows for these restaurants over the respective remaining lease term. We reduced the carrying value of these assets to their estimated fair value which was determined using a discounted cash flow model or the market value of each restaurant's assets. The fair values of each of the reporting units as well as the related assets and liabilities utilized to determine the impairment were measured using Level 2 and Level 3 inputs as described in Note 1. This impairment charge was recorded to asset impairment charge in the consolidated statement of comprehensive loss.

We have not closed any of these underperforming restaurants at this time, however, we will continue to evaluate each of these restaurants on a case-by-case basis. Additionally, while we believe that our estimates of fair value are appropriate, we will continue to monitor these asset values of each individual restaurant, and should actual values differ materially from our estimates, we may be required to record impairment charges in the future.

Additionally, during 2017, we wrote-off $0.9 million of long-lived assets associated with our decision not to open a restaurant in El Segundo. This asset impairment charge is reflected within “Lease termination and exit costs” in the accompanying consolidated statements of comprehensive loss. See Note 10 for further discussion.

3. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

	December 31,	
	2017	**2016**
Accrued payroll and benefits	$ 4,290	$ 4,549
Gift cards	3,995	4,311
Sales and use taxes	1,275	1,776
Lease termination[(1)]	1,048	—
Business and income taxes	514	563
Accrued occupancy	249	240
Accrued construction and remodel	209	2,005
Other	1,354	1,006
Total accrued expenses	$ 12,934	$ 14,450

(1) Balance is attributable to lease termination costs associated with the decision not to open a restaurant in El Segundo, California. See Note 10.

4. Debt and Credit Agreements

On October 12, 2016, we entered into the Second Amended and Restated Credit Agreement (the “Second Amended Credit Agreement”) with KeyBank National Association (“KeyBank”) and Zions First National Bank to (i) increase the combined revolving and term credit facilities (the “credit facility”) from $35 million to $60 million, comprised of a $45 million revolver (“Revolver”) and $15 million term loan (“Term Loan”), and (ii) extend the maturity date of the credit facility to October 12, 2021. The credit facility is secured by our personal property and assets. Certain of our wholly owned subsidiaries have also guaranteed the credit facility. On March 29, 2017, we entered into Amendment No. 1 to the Second Amended and Restated Credit Agreement, which amended certain financial covenants in the Second Amended Credit Agreement.

On July 7, 2017, we entered into Amendment No. 2 to the Second Amended and Restated Credit Agreement (“Amendment No.2”). Amendment No. 2 amended the Second Amended Credit Agreement to, among other things, decrease the total available credit from the revolving credit facility from $45 million to $30 million, which including the $15 million term loan, resulted in an overall reduction of the credit facility from $60 million to $45 million. Additionally, (a) the maturity date was amended from October 12, 2021 to October 12, 2019, provided that if the Company’s *pro forma* leverage ratio is less than 4.25 to 1.00 at any time prior to the maturity date, the Company may request a one year extension of the maturity date until October 12, 2020; (b) the applicable margins for base rate loans and the applicable margins for LIBOR rate loans were increased by 25 bps to 75 bps depending on the Company’s leverage ratio; and (c) the maximum leverage ratio was increased and the minimum fixed charge coverage ratio was decreased to provide increased flexibility as further described below. The terms of Amendment No. 2 were effective as of June 30, 2017.

Amendment No. 2 requires us to comply with certain covenants on a quarterly basis, including (a) a minimum fixed charge coverage ratio of (i) 1.25 to 1.00 for the fiscal quarter ended June 30, 2017; (ii) 1.20 to 1.00 for the fiscal quarters ended September 30, 2017, December 31, 2017, March 31, 2018, June 30, 2018, September 30, 2018, and December 31, 2018; and (iii) 1.30 to 1.00 for the fiscal quarter ended March 31, 2019 and each fiscal quarter thereafter; and (b) a maximum leverage ratio of (i) 5.50 to 1.00 for the fiscal quarters ended June 30, 2017, September 30, 2017, and December 31, 2017; (ii) 5.25 to 1.00 for the fiscal quarters ended March 31, 2018, June 30, 3018, September 30, 2018 and December 31, 2018; and (iii) 5.00 to 1.00 for the fiscal quarter ended March 31, 2019 and each fiscal quarter thereafter.

On October 30, 2017, we entered into Amendment No. 3 to the Second Amended and Restated Credit Agreement ("Amendment No. 3"). Amendment No. 3 amends the Second Amended Credit Agreement to, among other things, (a) implement a monthly reporting requirement; (b) restrict certain restricted payments as defined in the Second Amended Credit Agreement; and (c) implement a limitation on capital expenditures subject to approval by the Lenders in their sole discretion.

On March 9, 2018, we entered into Amendment No. 4 to the Second Amended and Restated Credit Agreement ("Amendment No. 4"). Amendment No. 4 amends the Second Amended Credit Agreement to, among other things, reduces the available credit on the Revolver from $30 million to $25 million as of the effective date of Amendment No. 4 and further reduces the available credit on the Revolver to $22.5 million at June 30, 2018 and $20 million at December 31, 2018. Additionally, (a) the maturity date was amended from October 12, 2019 to January 13, 2020 with no option to extend the maturity; (b) the applicable margins for base rate loans and the applicable margins for LIBOR rate loans were increased by 50 bps to 100 bps depending on the Company's leverage ratio; and (c) the maximum leverage ratio was increased and the minimum fixed charge coverage ratio was decreased to provide increased flexibility as further described below. The terms of Amendment No. 4 were effective as of March 9, 2018.

Amendment No. 4 requires us to comply with certain covenants on a quarterly basis, including (a) a minimum fixed charge coverage ratio of (i) 1.10 to 1.00 for the fiscal quarters ended March 31, 2018, June 30, 2018 and September 30, 2018; (ii) 1.15 to 1.00 for the fiscal quarters ended December 31, 2018 and March 31, 2019 and (iii) 1.20 to 1.00 for the fiscal quarter ended June 30, 2019 and each fiscal quarter thereafter; and (b) a maximum leverage ratio of (i) 6.25 to 1.00 for the fiscal quarter ended March 31, 2018; (ii) 6.00 to 1.00 for the fiscal quarter ended June 30, 3018; (iii) 5.50 to 1.00 for the fiscal quarter ended September 30, 2018; (iv) 5.00 to 1.00 for the fiscal quarters ended December 31, 2018, March 31, 2019 and June 30, 2019; and (v) 4.25 for the fiscal quarter ended September 30, 2019 and each fiscal quarter thereafter.

The Company was not in compliance with the fixed charge coverage ratio and the leverage ratio at December 31, 2017. A waiver was received on March 9, 2018 for the quarter ended December 31, 2017. The Company believes that it is probable that it will be in compliance at future covenant compliance dates.

Debt consists of the following at December 31, 2017 and 2016:

		December 31, 2017			December 31, 2016
	Maturity Date	Unamortized Deferred Financing Costs (a)	Fair Value of Debt (b)	Carrying Value of Debt	Carrying Value of Debt
Revolver	Oct. 2019	$ 257	$ 23,750	$ 23,750	$ 12,000
Term Loan	Oct. 2019	113	14,063	14,063	14,813
Total debt		$ 370	$ 37,813	37,813	26,813
Debt issuance costs presented with debt (a)				(113)	(180)
Total debt, net				37,700	26,633
Less: current portion				779	712
Long-term debt				$ 36,921	$ 25,921

(a) We have presented the deferred financing costs associated with the Term Loan in the balance sheet as a direct deduction from the carrying amount of the debt liability as of December 31, 2017 and 2016. The deferred financing costs related to the Revolver continue to be presented as an asset, and are included in both Prepaid expenses and other current assets and Other assets on the consolidated balance sheets as of December 31, 2017 and 2016. In connection with Amendment No. 2 the Company wrote-off unamortized deferred financing costs associated with both its amended Revolver and Term Loan of approximately $0.4 million and $0.1 million, respectively, for the year ended December 31, 2017.

(b) Our Revolver and Term Loan bear interest at rates commensurate with market rates and therefore their respective carrying values approximate fair value.

The interest rate under Amendment No. 4 is KeyBank's base rate or LIBOR, at our option, plus an applicable margin depending on our leverage ratio. The LIBOR margins range from 2.00% to 5.00% and the base rate margins range from 1.00% to 4.00%. For such times when the leverage ratio is greater than or equal to 6.0, then the applicable margin for base rate loans and the applicable margin for LIBOR rate loans will be 4.00% and 5.00%, respectively. For such times when the leverage ratio is greater than or equal to 5.5 but less than 6.0, then the applicable margin for base rate loans and the applicable margin for LIBOR rate loans will be 3.50% and 4.50%, respectively. Payments on the Term Loan are due quarterly and are subject to acceleration upon certain events as defined in the Second Amended Credit Agreement, while borrowings on the Revolver are interest only, payable quarterly with respect to each base rate loan and at varying times with respect to LIBOR rate loans, with outstanding principal and interest due at maturity. Prepayment is permitted at any time without penalty, subject to certain restrictions on the order of repayment or prepayment. We are obligated to pay a commitment fee at an annual rate of 0.175% to 0.350%, depending on our leverage ratio, times the unused total revolving commitment of the credit facility based on the average daily amount outstanding under the credit facility for the previous quarter. For such times when the leverage ratio is greater than 4.25, the commitment fee annual rate will be 0.50%. The commitment fee is payable quarterly in arrears. During 2017, 2016 and 2015, we incurred commitment fees of $0.1 million for each year.

We incurred gross interest expense of $1.9 million, $0.6 million and $0.2 million during the years ended December 31, 2017, 2016 and 2015, respectively; which includes approximately $0.1 million of commitment fees incurred during the years ended December 31, 2017, 2016 and 2015, respectively. Additionally, capitalized interest was $0.1 million and $0.2 million for the years ended December 31, 2017 and 2016, respectively. We did not capitalize any interest for the year ended December 31, 2015.

At December 31, 2017, we had $37.8 million in outstanding borrowings, consisting of $23.7 million under the Revolver and $14.1 million under the Term Loan. As of December 31, 2017, net availability under the credit facility was $6.25 million, subject to compliance with certain covenants.

Our current projections indicate that we will maintain the outstanding borrowings for the next 12 months and, thus, all borrowings under the credit facility are classified as long-term debt, except for amounts payable in the next 12 months which are classified as current.

As of December 31, 2017, the required principal payments for all borrowings for each of the five years following the balance sheet date are as follows (in thousands):

2018	$	844
2019		36,969
2020		—
2021		—
2022		—
Thereafter		—
Total	$	37,813

As previously mentioned above, upon execution of Amendment No. 4, the maturity date of our credit facility was extended to January 13, 2020, and among other things, includes required payments on our Revolver borrowings during 2018. As such, subsequent to the execution of Amendment No. 4, the required principal payments for all borrowings for each of the five years following the balance sheet date are as follows:

2018	$	4,594
2019		844
2020		32,375
2021		—
2022		—
Thereafter		—
Total	$	37,813

5. Income Taxes

Income tax expense consisted of the following (in thousands):

	Year Ended December 31,		
	2017	2016	2015
Current:			
Federal	$ —	$ —	$ —
State	90	66	43
Total current	90	66	43
Deferred:			
Federal	—	—	—
State	—	—	—
Total deferred	—	—	—
Total	$ 90	$ 66	$ 43

Income tax expense differed from amounts computed by applying the federal statutory rate to loss from operations before provision for income taxes as follows (in thousands):

	Year Ended December 31, 2017	2016	2015
Income tax expense at federal statutory rate of 34%	$ (7,936)	$ (7,331)	$ (1,514)
State income taxes, net of federal benefit	(1,109)	(1,382)	46
Nondeductible expenses	702	701	583
Business tax credit	(1,754)	(1,692)	(1,503)
Federal rate change	8,042	—	—
Other	639	108	(273)
Change in valuation allowance	1,506	9,662	2,704
Total	$ 90	$ 66	$ 43

The temporary differences that give rise to significant portions of deferred tax assets and liabilities were as follows (in thousands):

	December 31, 2017	2016
Deferred tax assets (liabilities):		
Net operating loss carryforward	$ 11,944	$ 10,694
Deferred rent	8,092	11,570
Business tax credits	14,422	12,558
Organizational and preopening costs	340	558
Stock-based compensation	774	1,033
Accrued expenses	98	157
Property and equipment	(2,452)	(7,338)
Other	660	984
Net deferred tax assets	33,878	30,216
Valuation allowance	(33,878)	(30,216)
Total	$ —	$ —

The Tax Cuts and Jobs Act (“the Tax Act”) was enacted on December 22, 2017. The Tax Act reduces the U.S. federal corporate tax rate from 34% to 21%, effective January 1, 2018, limits deductions for, among other things, interest expense, executive compensation and meals and entertainment while enhancing deductions for equipment and other fixed assets. The Tax Act provisions regarding foreign reporting do not apply to Kona at this time.

The SEC staff issued SAB 118, which provides guidance on accounting for the tax effects of the Tax Act. SAB 118 provides a measurement period that should not extend beyond one year from the Tax Act’s enactment date for companies to complete its accounting under ASC 740. In accordance with SAB 118, to the extent a company has not completed its analysis of the Tax Act but can provide a reasonable estimate, it must record a provisional estimate in its financial statements.

As of December 31, 2017, we have not finalized our accounting for the tax effects of the enactment of the Tax Act; however, as described below, we have made a reasonable estimate of the effects on our existing deferred tax balances and uncertain tax positions.

We remeasured our deferred tax assets and liabilities based on the rates at which they are expected to reverse in the future. However, we are still analyzing certain aspects of the Tax Act and refining our calculations, which could potentially affect the provisional measurement of these balances. We also anticipate that the completion of our 2017 income tax returns by the third quarter of 2018 could also impact any provisional amounts recorded. Based on our current estimates, we do not anticipate any net change to our deferred tax balances as we anticipate a full valuation allowance will remain in place. Due to the continued full valuation allowance no provisional amounts are recorded at December 31, 2017.

We have no reserves for uncertain tax positions and no adjustment or provisional amounts to record at December 31, 2017.

We anticipate that the completion of our 2017 income tax returns, future guidance and additional information and interpretations with the respect to the Tax Act will cause us to further review a need for provisional amounts to be recorded as of December 31, 2017. If necessary, and in accordance with SAB 118, we will record such adjustments in the period that relevant guidance and/or additional information becomes available and our analysis is completed but don't expect it to have a material impact on our income taxes.

The valuation allowance increased $3.7 million and $9.7 million at December 31, 2017 and 2016. At December 31, 2017, we had $41.1 million in federal net operating loss carryforwards, $64.2 million in state net operating loss carryforwards and $15.1 million in federal business tax credit carryforwards, the majority of which is comprised of FICA tip credit carryforwards. These credits and certain state net operating loss carryforwards are also subject to annual limitations due to ownership change rules under the Internal Revenue Code.

The Company recorded the effect of the adoption of ASU 2016-09 as of January 1, 2017, which resulted in an increase to deferred tax assets of approximately $2.1 million. The realization of our deferred tax assets ultimately depends on the existence of sufficient taxable income in future periods. We have analyzed, and will continue to analyze, the positive and negative evidence to support our conclusion regarding the appropriate amount of our valuation allowance. This analysis incorporates our recent earnings history and forecasted future results. We are currently in a three-year cumulative loss which points to a full valuation allowance for our net deferred tax assets due to the uncertainty surrounding their future utilization. The valuation allowance could be reduced in a subsequent period if there is sufficient evidence to support a conclusion that it is more likely than not that our deferred tax assets will be realized. Future changes in our valuation allowance could have a material effect on our results of operations in the period recorded.

As of December 31, 2017, there were no accrued interest or penalties recorded in the consolidated financial statements. We are subject to U.S. federal income tax as well as income tax of multiple state jurisdictions. The earliest tax year still subject to examination by a significant taxing jurisdiction is 2013.

6. Stockholders' Equity

Preferred Stock

We are authorized to issue 2,000,000 shares of preferred stock with a par value of $0.01. There were no shares of preferred stock that were issued or outstanding at December 31, 2017 or 2016.

Common Stock

Stock Purchase and Retirement Program

In November 2015, our Board of Directors authorized a stock repurchase program of up to $10.0 million of our outstanding common stock. We completed the stock repurchase authorization in June 2016 and repurchased and retired 832,937 shares at a cost of $10.0 million.

In October 2016, our Board of Directors authorized an additional stock repurchase of up to $5.0 million of outstanding common stock. As of December 31, 2016, we repurchased and retired $1,427,000 or 136,790 shares under the 2016 authorization. We completed the $5.0 million stock repurchase program in February 2017 with the purchase and retirement of 532,376 shares.

Stockholder Rights Plan

On September 6, 2016, our Board of Directors approved the declaration of a dividend of one purchase right (a "Right") for each outstanding share of common stock, par value $0.01 per share, of the Company (the "Common Stock"). Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of preferred stock of the Company (the "Preferred Stock") at a price of $55.94 per share (the "Purchase Price"), subject to adjustment, under certain conditions specified in the Rights Agreement. Rights will be exercisable only if a person or group acquires 9.9% or more of the Company's common stock (subject to certain exceptions), and thus becomes an "Acquiring Person" under the Rights Plan. In the event that any person or group of affiliated or associated persons becomes an Acquiring Person, each holder of a Right, other than Rights beneficially owned by the Acquiring Person, affiliates and associates of the Acquiring Person and certain transferees thereof (which will thereupon become null and void), will thereafter have the right to receive upon exercise of a Right, for the exercise price of the Right, in lieu of preferred stock, shares of Common Stock of the Company having a market value equal to twice such exercise price. The Rights are not exercisable until the Distribution Date, as defined in the Rights Agreement filed on Form 8-K on September 6, 2016. The Rights will expire on September 6, 2019, unless the Rights are earlier redeemed or exchanged by the Company, or upon the occurrence of certain transactions.

7. Stock-Based Compensation

Stock Options

We maintain stock award plans under which we may issue incentive stock options, non-qualified stock options, restricted stock, and other types of awards to employees, directors, and consultants. We typically grant non-qualified stock options with an exercise price at the fair market value of the underlying common stock on the date of grant and such options expire five years from the date of grant. Employee stock options generally vest 25% each year over a four-year period, while annual recurring awards for non-employee director options vest 25% each quarter over a one-year period.

We grant stock options under our 2012 Stock Award Plan (the "2012 Plan"). The total shares of common stock reserved for issuance were 3.7 million, of which 1.3 million shares were available for grant as of December 31, 2017.

We account for stock-based compensation using the fair value recognition provisions. Compensation expense is recognized ratably over the vesting term of the option and is included in general and administrative expenses. The following table presents information related to stock-based compensation (in thousands):

	Year Ended December 31,		
	2017	2016	2015
Stock-based compensation................................	$831	$1,262	$1,363

The fair value of each option award is estimated on the date of grant using the Black-Scholes option pricing model and is affected by assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the actual and projected employee stock option exercise behavior, expected volatility, risk-free interest rate, expected dividends, and expected term. Expected volatility is based on the historical volatility of our stock. The expected term of the options represents the estimated period of time until exercise and is based on historical experience of similar awards, giving consideration to the contractual terms, vesting schedules and expectations of future employee behavior. The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for the expected term of the option. We have not paid dividends in the past and do not plan to pay any dividends in the near future. Compensation expense is recognized only for those options expected to vest, with forfeitures estimated based on our historical experience and future expectations. The fair value of stock options granted was estimated at the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions:

	2017	2016	2015
Expected volatility	54.1%	45.2%	40.7%
Risk-free interest rate	1.7%	0.9%	0.9%
Dividend yield	0.0%	0.0%	0.0%
Expected life (in years)	3.5	3.2	3.0
Weighted average fair value per option granted	$2.58	$4.57	$6.67

Activities under our stock award plans during 2017, 2016 and 2015 were as follows:

	Shares Under Option	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (years)	Aggregate Intrinsic Value (in thousands)
Outstanding options at December 31, 2014	740,250	$ 10.66		
Granted	380,268	23.28		
Forfeited	(81,213)	19.73		
Exercised	(77,837)	7.40		
Outstanding options at December 31, 2015	961,468	15.15		
Granted	251,532	14.26		
Forfeited	(111,094)	11.49		
Exercised	(127,706)	6.73		
Outstanding options at December 31, 2016	974,200	16.44		
Granted	294,178	6.62		
Forfeited	(215,507)	15.96		
Exercised	(40,000)	5.41		
Outstanding options at December 31, 2017	1,012,871	$ 14.12	2.5	$ —
Exercisable at December 31, 2017	605,728	$ 15.67	1.9	$ —

The intrinsic value of options exercised during 2017, 2016 and 2015 was $0.1 million, $0.8 million and $1.2 million, respectively. The total fair value of shares vested during 2017, 2016 and 2015 was $1.1 million, $1.1 million and $1.0 million, respectively. As of December 31, 2017, there was approximately $1.1 million of unrecognized stock-based compensation expense related to unvested share-based compensation arrangements, which is expected to be recognized over a weighted average period of 2.1 years.

Information regarding options outstanding and exercisable at December 31, 2017 is as follows:

	Options Outstanding			Options Exercisable	
Range of Exercise Prices	Shares	Weighted Average Remaining Contractual Life (years)	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
$2.15 – $8.71	374,725	3.1	$ 7.11	168,250	$ 8.52
$11.82 – $18.85	401,150	2.2	$ 15.14	272,114	$ 15.34
$23.49	236,996	2.1	$ 23.49	165,364	$ 23.49
	1,012,871	2.5	$ 14.12	605,728	$ 15.67

8. Employee Benefit Plans

Defined Contribution Plan

We maintain a voluntary defined contribution plan covering eligible employees as defined in the plan documents. Participating employees may elect to defer the receipt of a portion of their pre-tax or post-tax compensation, subject to applicable laws, and contribute such amount to one or more investment options. We currently match in cash a certain percentage of the employee contributions to the plan and also pay for related administrative expenses. Matching contributions made during 2017, 2016 and 2015 were $0.3 million for each year.

Employee Stock Purchase Plan

Our 2005 Employee Stock Purchase Plan (ESPP) reserves 425,000 shares of common stock for issuance. The ESPP permits eligible employees to purchase common stock at a discount through payroll deductions up to 15% of employees' eligible earnings during the offering period. During 2017, 2016 and 2015, the purchase price per share at which shares of common stock were sold in under the ESPP was equal to 85%, 95% and 95%, respectively, of the fair market value of common stock on the last day of the applicable offering period. During 2017, 2016 and 2015, 13,271 shares, 4,333 shares and 2,743 shares, respectively, were purchased under the ESPP.

9. Commitments and Contingencies

Leases

We lease our restaurant locations under operating leases having terms expiring from 2018 to 2029. The leases typically include renewal clauses of five years exercisable at our option and rent escalation clauses stipulating specific rent increases. We record deferred rent to recognize rent evenly over the lease term. These leases typically require the payment of contingent rentals based on a percentage of gross revenues above specified minimum amounts as defined in the respective lease agreement. The leases also typically require us to pay our proportionate share of common area maintenance, property tax, insurance, and other occupancy-related costs. We also lease office space and certain equipment under operating lease agreements.

Rent expense on all operating leases was as follows (in thousands):

	Year Ended December 31,		
	2017	2016	2015
Minimum base rent	$ 14,898	$ 12,203	$ 9,618
Contingent rent	137	222	269
Total rent	$ 15,035	$ 12,425	$ 9,887

As of December 31, 2017, future minimum lease payments under operating leases, including all signed leases for restaurants to be opened and excluding unexercised renewal options periods, were as follows (in thousands):

2018	$ 15,734
2019	15,844
2020	15,325
2021	14,945
2022	13,768
Thereafter	42,008
Total minimum lease payments	$ 117,624

Litigation

We are engaged in various legal actions, which arise in the ordinary course of our business. Although there can be no assurance as to the ultimate disposition of these matters, it is the opinion of our management, based upon the information available at this time, that the expected outcome of these matters, individually or in the aggregate, will not have a material adverse effect on the results of operations or financial condition of our company.

On December 13, 2012, Frank Neal Goss filed a lawsuit against Kona Grill Macadamia, Inc., a wholly-owned subsidiary of the Company ("Macadamia") and Anthony DeAngelo in the Circuit Court of Jackson County, Kansas City, Missouri. The claim revolves around a fight that Goss and DeAngelo allegedly had outside of the Company's Kansas City restaurant on March 1, 2011, which is claimed to have resulted in physical injury to the plaintiff. The plaintiff also claims that Macadamia failed to take certain actions that allegedly would have prevented the fight. A default judgment of approximately $3.5 million was entered on December 18, 2013 against Macadamia, but was subsequently set aside by order of the Circuit Court on April 7, 2014. On August 17, 2015, we filed a Motion for Summary Judgment requesting judgment in our favor on all claims asserted against us by the plaintiff. On August 18, 2015, the plaintiff filed for a voluntary dismissal of the claim without prejudice; however, on April 22, 2016, the plaintiff re-filed the claim in the Circuit Court. A trial date was scheduled for June 12, 2017. The plaintiff filed for a motion of continuance on June 2, 2017 and the motion was granted. In January 2018, a confidential general release was signed by the plaintiff. On January 29, 2018, the Circuit Court dismissed the case with prejudice.

On November 29, 2017, Continental Atrium Corporation filed a complaint for damages in the Superior Court for the State of California for the County of Los Angeles alleging, among other things, that the Company breached its written contract relating to the Company's decision in April 2017 to not move forward with the construction of a restaurant in El Segundo as discussed in Note 10 below (the "Complaint"). The Complaint alleges that beginning no later than August 15, 2017, the Company has failed to pay rent and other amounts owed to the plaintiff. A case management conference is scheduled for April 30, 2018. As of December 31, 2017, we had $1.0 million in lease termination and exit costs recorded in accrued expenses in the accompanying consolidated balance sheets associated with this matter.

10. Lease Termination and Exit Costs

As a result of our continued focus on improving sales and margins at our existing restaurants, in addition to slowing growth to provide us with capital allocation flexibility, we made the decision in the second quarter of 2017 to not open a restaurant in El Segundo, California and stopped construction on this restaurant. We recognized $1.4 million associated with the estimated costs to terminate the lease, asset impairment charges, write-off of deferred rent liability, and other costs associated with this location during the year ended December 31, 2017.

Lease termination and exit costs attributable to the El Segundo restaurant are reflected within "Lease termination and exit costs" in the accompanying consolidated statements of comprehensive loss. Such costs consisted of the following (in thousands):

	Year Ended December 31,		
	2017	2016	2015
Lease termination costs	$ 1,048	$ —	$ —
Write-off of deferred rent liability	(510)	—	—
Asset impairment charge	854	—	—
Total lease termination and exit costs	$ 1,392	$ —	$ —

The lease termination and exit cost accrual is included in accrued expenses on the consolidated balance sheets. Activities associated with the lease termination and exit cost accrual are summarized below (in thousands):

	Lease Exit Costs
Lease termination and exit costs accrued at December 31, 2016	$ —
Lease termination and exit-related costs	1,048
Cash payments	—
Lease termination and exits costs accrued at December 31, 2017	$ 1,048

11. Selected Quarterly Financial Data (Unaudited)

Summarized quarterly unaudited financial data for 2017 and 2016 is as follows (in thousands, except per share data):

	2017			
	March 31	June 30	September 30	December 31
Revenue	$ 45,225	$ 46,977	$ 44,390	$ 42,489
Loss from operations [2]	(3,042)	(3,422)	(2,802)	(11,820)
Net loss [2]	(3,373)	(4,327)	(3,323)	(12,409)
Basic and diluted net loss per share [1] [2]	$ (0.33)	$ (0.43)	$ (0.33)	$ (1.23)

	2016			
	March 31	June 30	September 30	December 31
Revenue	$ 39,277	$ 43,296	$ 43,358	$ 43,592
Loss from operations	(1,578)	(738)	(2,411)	(16,265)
Net loss	(1,656)	(835)	(2,555)	(16,583)
Basic and diluted net loss per share [1]	$ (0.15)	$ (0.08)	$ (0.24)	$ (1.58)

(1) The per share calculations for each quarter are based on the weighted average basic and diluted shares outstanding for that quarter and may not total to the full year amount.

(2) During the quarters ended December 31, 2017 and 2016 we recorded an asset impairment charge of $9.3 million and $12.5 million, respectively.

EXHIBIT B

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

FRANCHISE AGREEMENT (WITH ALL ATTACHMENTS)

FRANCHISE AGREEMENT

KONA GRILL, INC.
15059 N. Scottsdale Road, Suite 300
Scottsdale, Arizona 85254

[●]

DATED AS OF [●]

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KONA GRILL, INC.
FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement"), executed and entered into this **[●]** day of **[●], [●]** by and between KONA GRILL, INC., a Delaware corporation ("Franchisor"), and [●], a [●] ("Franchisee").

RECITALS

WHEREAS, Franchisor has developed, and is the owner of, the System;

WHEREAS, Franchisor owns certain Proprietary Marks that are utilized in connection with and identify the System;

WHEREAS, Franchisor and its Affiliates continue to develop, use, and control the use of the Proprietary Marks to identify the source of services and products marketed under the System and to represent the System's high standards;

WHEREAS, Franchisor has the right to grant franchises and grant the right to others to grant franchises to use the System outside the United States of America;

WHEREAS, Franchisee desires to obtain from Franchisor and Franchisor desires to grant to Franchisee certain rights to use the System and the Proprietary Marks to develop and establish the Franchised Restaurant at the Site;

WHEREAS, Franchisee desires to receive training and other assistance provided by Franchisor in connection with the operation of the Franchised Restaurant;

NOW THEREFORE, Franchisor and Franchisee in consideration of the undertakings and commitments set forth herein, agree as follows:

AGREEMENT

1. DEFINITIONS

As used in this Agreement and the above Recitals, the following capitalized terms shall have the meanings attributed to them in this Section:

1.1 "Account" has the meaning set forth in Section 3.4(a).

1.2 "Accounting Period" means a period of time for which payments owed Franchisor accrue, which Franchisor may, in its sole discretion, define in terms of days, weeks, or months.

1.3 "Action" means any cause of action, suit, proceeding, claim, demand, investigation, or inquiry (whether a formal proceeding or otherwise) with respect to which Franchisee's indemnity applies.

1.4 "Affiliate" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified Person. In addition to the foregoing, if the specified Person is an individual, the term "Affiliate" also includes (a) the individual's spouse, (b) the members of the immediate family (including parents, siblings, and children) of the individual or of the individual's spouse and (c) any corporation, limited liability company, general or limited partnership, trust, association, or other business or investment entity that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with any of the foregoing individuals. For purposes of this definition, the term "control" (including the terms “controlling,” “controlled by,” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.5 “Agreement” means this Franchise Agreement and all schedules and attachments hereto.

1.6 “Assistant General Manager” means a person who assists the General Manager with supervising the day-to-day management and operations of the Franchised Restaurant in accordance with the Standards.

1.7 “Assistant Manager” means a person who assists the General Manager and Assistant General Manager with supervising the day-to-day management and operations of the Franchised Restaurant in accordance with the Standards.

1.8 “Business Day” means each day, other than a Saturday, Sunday, U.S. holiday, or any other day on which the Federal Reserve is not open for business in the United States.

1.9 “Cash Register System” means computer-based point of sale systems approved by Franchisor and/or such other types of cash registers or back office programs used to record, analyze, and report sales, labor, inventory, and tax information as may be designated by Franchisor in the Operations Manual or otherwise in writing.

1.10 “Cease to Operate” means, with reference to the Franchised Restaurant, refraining from offering or selling any goods or services therefrom.

1.11 “Cease to Use” means, with reference to the Proprietary Marks, System, Operations Manual, and distinctive trade dress, forms, slogans, signs, symbols, and devices associated with the System, refraining from deriving any economic benefit therefrom, or displaying to the public and, at Franchisor’s option and as applicable, destroying or relinquishing and delivering to Franchisor or its designee title and possession of all items bearing the Proprietary Marks, the Operations Manual, and all embodiments thereof, and any distinctive trade dress, forms, slogans, signs, symbols, or devices associated with the System.

1.12 “Claim” means any controversies, disputes, causes of actions, or claims arising between Franchisee or its Affiliates and their respective officers, directors, shareholders, partners, agents, employees, and attorneys (in their representative capacity) and Franchisor and its Affiliates arising out of or related to the relationship of the parties hereto, this Agreement, or any provision hereof, and/or the validity of this Agreement, or any provision hereof.

1.13 “Comp Card” shall have the meaning assigned thereto in Section 7.8.

1.14 “Competing Business” means (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ’s, Bonefish Grill, Brio, Del Frisco’s Grille, Joe’s Crab Shack, Outback Steakhouse, P.F. Chang’s, Seasons 52, and The Cheesecake Factory.

1.15 "Competing Food Items" means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

1.16 "Computer System" means the computer systems, hardware, software, and all peripheral equipment required to be used by Franchised Restaurants, including without limitation: (i) back office and point of sale systems, data, audio, video, and voice storage, retrieval, and transmission systems for use at Franchised Restaurants; (ii) cash register systems; (iii) physical, electronic, and other security systems; (iv) printers and other peripheral devices; (v) archival back-up systems; and (vi) Internet access mode (e.g., form of telecommunications connection) and speed.

1.17 "Computer Upgrades" means periodic upgrades, updates, and other changes to the Computer System and Required Software, including but not limited to connection to remote servers, off-site electronic repositories, and high-speed Internet connections, ports, and other accessories and peripheral equipment.

1.18 "Confidential Information" means the terms of this Agreement and Attachments and any amendments hereto, the components of the System, the Operations Manual, manuals, written directives, and all drawings, equipment, recipes, and all other information know-how, techniques, materials, and data imparted or made available by Franchisor of its Affiliates to Franchisee which is (i) designated as confidential, (ii) known by Franchisee to be considered confidential by Franchisor, or (iii) by its nature inherently or reasonably to be considered confidential.

1.19 "Design Development Drawings" shall have the meaning set forth in Section 6.1(c).

1.20 "Developed Materials" shall have the meaning assigned thereto in Section 10.4 herein.

1.21 "Development Agreement" means, if applicable, the Development Agreement entered into between Franchisee (or its Affiliate) and Franchisor pursuant to which this Agreement is being executed.

1.22 "Director of Operations" means an individual as described in Section 5.1 who shall devote his or her full time and best efforts to the management and supervision of (i) Franchisee's duties and obligations hereunder; and (ii) the operation of the Franchised Restaurant.

1.23 "Due Date" means time period or date Franchisor specifies for all payments required by this Agreement. If the Due Date is not a Business Day, then payment will be due on the next Business Day.

1.24 "Equity Interest" means a direct or indirect ownership or beneficial interest in the capital stock of, partnership, or membership interest in, or other equity, ownership, or beneficial interest in (including the right to vote) any type of legal entity, including any trust or foundation.

1.25 "Execution Date" means the date upon which the Agreement is deemed duly executed and entered into by Franchisee and Franchisor, as indicated on the first page of the Agreement.

1.26 "Executive Chef" means a person who (i) is responsible for optimizing profits by controlling food cost, production, labor, and increasing sales through food quality, speed of service, and food preparation to specifications in the back-of-the-house, and (ii) supervises the execution of and oversees all kitchen operations, ensuring Standards of quality and service are met and that the kitchen provides nutritious, safe, eye-appealing, properly flavored and prepared food, while maintaining a safe and sanitary work environment for all employees.

1.27 "Extranet" means a private network based upon Internet protocols that will allow users inside and outside of Franchisor'\'s headquarters to access certain parts of Franchisor's computer network via the Internet.

1.28 "Force Majeure" means acts or circumstances which are beyond such party's control including fire, storm, flood, earthquake, explosion, or accident; acts of war or terrorism, rebellion, insurrection, or sabotage; epidemic; failures or delays of transportation; and strikes, provided that (i) nothing herein shall excuse or permit any delay or failure to remit any amount payable hereunder on the applicable date due; (ii) financial inability, insolvency, currency fluctuations, currency devaluations or inflation shall never be deemed an act of God or other cause beyond a party's control; and (iii) no such cause shall excuse or permit any delay or failure to perform for more than 90 calendar days, (iv) the non-performing party provides written notice to the other party of the Force Majeure event within three calendar days of the occurrence of such event, (v) the non-performing party is without fault and the delay or failure could not have been prevented by reasonable precautions by the non-performing party, (vi) such acts or circumstances cause a demonstrable, material, and adverse impact on the non-performing party's business or obligations under this Agreement, and, (vii) if Franchisee is the non-performing party, the acts or circumstances cause a demonstrable, material, and adverse impact on the casual dining industry in the Protected Territory. Any delay resulting from any of such causes shall extend performance accordingly, as may be reasonable (but not to exceed 90 calendar days after the cause of the event ceased), so long as the non-performing party continues to use its best efforts to re-commence performance and mitigate the impact of its non-performance. If a Force Majeure event continues for a period which exceeds 90 calendar days, Franchisor may terminate this Agreement, effective upon delivery of notice thereof to Franchisee, without need of judicial declaration to that effect and without prejudice to the corresponding collection of damages.

1.29 "Franchisee Party" means Franchisee, Franchisee's Principals, or Franchisee's Affiliates.

1.30 "Franchise Fee" means a fee in the amount of $75,000 paid by Franchisee to Franchisor reflecting, in part, certain expenses incurred or to be incurred by Franchisor in providing services hereunder and in consideration of, in part, the right to develop and operate the Franchised Restaurant at the Site under the System.

1.31 "Franchised Restaurant" means the Restaurant opened and operated at the Site pursuant to and in accordance with this Agreement.

1.32 "Franchisee" has the meaning set forth in the preamble of this Agreement.

1.33 "Franchisee's Principal" means those Persons listed on <u>Schedule 2</u> hereto as holding an Equity Interest in Franchisee.

1.34 "Franchisor" means Kona Grill, Inc. or any person or legal entity to which Kona Grill, Inc. assigns or otherwise transfers its rights and obligations contained in this Agreement.

1.35 "General Manager" means a manager of the Franchised Restaurant responsible for (i) the overall operations of such restaurant, (ii) ensuring total guest satisfaction while increasing sales, profits, and brand awareness through excellent execution of operational standards and guidelines, and (iii) optimizing profits by controlling food, beverage, and labor costs.

1.36 "Gift Card" means a gift card, a gift certificate, a stored-value card, or any similar item or device.

1.37 "Governmental Authority" means any government, national, provincial, state, county, municipal, local, or other ministry, department, agency, whether administrative or regulatory, or any other body which may exercise similar functions.

1.38 "Governmental Rule" means any statute, law, code, regulation, ordinance, rule, judgment, order, decree, permit, certification, concession, grant, agreement, directive, guideline, policy, requirement, or other Governmental Authority restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereafter in effect (including environmental laws).

1.39 "Gross Sales" means: (a) the total of all sales related to or arising from the operation of the Franchised Restaurant including, without limitation, all monies and receipts from the sale of all beverages, food, and merchandise, whether such sales are evidenced by cash, services, property, or other means of exchange and regardless of collection, excluding service tips received by or paid to employees (but including service charges added to customer checks where such service charges are not in turn paid out to service staff as tips); (b) the total amount of all sales in connection with sales of goods or services associated with or using the Proprietary Marks or the System, and all other related products or services sold whether from a Franchised Restaurant or any other location, including without limitation, special events, catering, and delivery; (c) the proceeds of business interruption insurance applicable to a Franchised Restaurant and other awards or proceeds (including damages awarded by any court or in any other dispute resolution proceedings) representing lost sales at a Franchised Restaurant; (d) the proceeds from the redemption of Gift Card or other stored-value card or device redeemed at the Franchised Restaurant at 100% of the redeemed value of such card or device; and (e) any and all other revenues derived through the operation of a Franchise Restaurant; provided, however, "Gross Sales" excludes (i) any sale of merchandise for which cash or credit has been refunded or re-credited during the accounting period in which such sale occurred; (ii) the amount of any sales tax, goods and services tax, value added tax, or consumption taxes imposed by any federal, state, or local governmental authority directly on sales and collected from customers, provided that the amount of such tax is added to the selling price or absorbed in the selling price and is actually paid by Franchisee to the imposing governmental authority; and (iii) complimentary meals, valid coupon credits, discounts from menu prices, and employee/Affiliate discounts up to a maximum aggregate amount of 3% of total Gross Sales (less exclusions in subsections (i) and (ii) above) for the Franchised Restaurant during the applicable calendar month. Any sale that has been included in Gross Sales for any accounting period and for which a refund or re-credit is made in a subsequent accounting period will be deducted from Gross Sales for the accounting period in which such refund or re-credit is made. Except as provided in this Section, there will be no further deduction of any other costs or expenses whatsoever, including but not limited to any and all taxes.

1.40 "Head Sushi Chef" means a person who (i) is responsible for producing quality sushi in a timely manner, assuring sushi is prepared to Standards, ensuring Standards of quality and service are met while providing nutritious, safe, eye-appealing, properly flavored and prepared food, and maintaining a safe and sanitary work environment, and (ii) prepares sushi and interacts with guests at the sushi bar as well as prepares sushi for dining room orders.

1.41 "Indemnitees" means Franchisor and its successors and assigns, Affiliates, directors, officers, employees, shareholders, employees, representative, contractors, and agents and/or any designee(s) of Franchisor which administer the Marketing Fund.

1.42 "Initial Franchise Fee" means that certain initial franchise fee paid by Franchisee pursuant to a Development Agreement with respect to the first Restaurant developed under such Development Agreement, if any. For the sake of clarity, the Initial Franchise Fee does not include the Franchise Territory Fee (as defined in the Development Agreement, if any), which is a separate fee, nor does it include the Franchise Fee paid for additional franchise agreements entered into.

1.43 "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and software, which comprise the interconnected worldwide network of networks that employ the TCP/IP (Transmission Control Protocol/Internet Protocol), or any predecessor or successor protocols to such protocol, to communicate information of all kinds by fiber optics, wire, radio, or other methods of electronic transmission.

1.44 "Losses and Expenses" means all losses, compensatory, exemplary, or punitive damages, fines, penalties, charges, costs, expenses, lost profits, assessments and fees (including reasonable attorneys', experts', accountants', and consultants' fees); interest, court costs, settlement or judgment amounts, compensation for damages to Franchisor's reputation and goodwill, costs of or resulting from delays, financing costs, costs of advertising material and media time/space, and costs of changing, substituting, or replacing the same, and any and all expenses of recall, refunds, compensation, public notices, and other similar amounts incurred, charged against, or suffered by the Indemnitees in connection with any Action.

1.45 "Marketing Fund" means the fund or funds established by Franchisor from time to time in accordance with Section 8.6 below for the purposes of advertising, marketing, and concept evolution, and promotion of the System and other purposes relating to increasing the overall recognition of the System and the Proprietary Marks.

1.46 "Marketing Fund Contribution" has the meaning set forth in Section 3.3.

1.47 "Minority Interest" means an Equity Interest of less than 5% of the Equity Interests of a legal entity.

1.48 "Opening Team" means a team consisting of Franchisor's employees and certain of Franchisee's employees to whom Franchisor has consented, which shall perform the functions described in Section 4.1.

1.49 "Operational" used in reference to the Franchised Restaurant, means a Franchised Restaurant (a) that is fully constructed and finished out as approved by Franchisor and in accordance with all Governmental Rules, (b) that is legally permitted to render its services to the general public pursuant to this Agreement in accordance with Governmental Rules, (c) that has received all necessary operating permits, licenses, and approvals as may be necessary to operate the System in accordance with Standards and applicable Governmental Rules, and (d) for which all amounts due and payable under this Agreement and the Development Agreement (if applicable) have been paid in full, including, without limitation, the Franchise Fee.

1.50 "Operations Manual" means, collectively, (i) Franchisor's manual describing (generally) the procedures and parameters for the opening and operation of a Franchised Restaurant, (ii) instructions, policies, and procedures relating to food service, (iii) any other written directives, drawings, recipes, and other written information or materials made available by Franchisor in connection with the opening and operation of a Franchised Restaurant, and (iv) all translations thereof, in each case, as may be amended, updated, or revised from time to time by Franchisor. All or any portion of the Operations Manual may be made available to Franchisee by means of the Extranet or such other electronic form chosen by Franchisor.

1.51 "Person" means an individual, corporation, limited liability company, partnership, association, joint stock company, trust or trustee thereof, estate or executor thereof, unincorporated organization, or joint venture, court, or governmental unit or any agency or subdivision thereof, or any other legally recognizable entity.

1.52 "Privacy Laws" means any laws pertaining to the privacy of consumer, employee, and transactional information.

1.53 "Proprietary Marks" means the trademarks, trade names, trade dress, service marks, logos, emblems, and other indicia of origin as designated from time to time by Franchisor (including all translations thereof), which may be owned by Franchisor or its Affiliates, or licensed to Franchisor with sublicensing rights, including, but not limited to, the mark "Kona Grill" and such other trademarks or service marks and trademark or service mark applications listed on Schedule 3 hereto.

1.54 "Protected Territory" means the area within a 1.5-mile radius of the Franchised Restaurant.

1.55 "Regional Culinary Partner" means each individual hired by Franchisee on a full-time basis to whom the Executive Chefs of all of Franchisee's and its Affiliates' Restaurants in a designated area report.

1.56 "Required Software" means computer software programs and accounting system software that Franchisee must use in connection with the Computer System.

1.57 "Restaurant" means a restaurant utilizing the System and the Proprietary Marks operated by Franchisor or its Affiliate or pursuant to the terms and conditions of a franchise agreement granted by Franchisor.

1.58 "Royalty" or "Royalties" has the meaning assigned thereto in Section 3.2 herein.

1.59 "Site" means the location for the establishment and operation of the Franchised Restaurant identified on Schedule 1.

1.60 "Sous Chef" means a person who (i) assists with the daily operations of the kitchen and provides professional leadership and direction to kitchen personnel, (ii) ensures that all recipes, food preparations, and presentations meet Standards and commitment to quality, (iii) maintains a safe, orderly, and sanitized kitchen; and (iv) assists the Executive Chef in managing food cost, labor cost, and recipe standards.

1.61 "Standards" means the standards, instructions, requirements, methods, specifications, policies, and procedures for the site review and approval, design, construction, training, opening, purchasing, operation, and marketing of Restaurants, as amended from time to time by Franchisor and as contained in, and being a part of, the Confidential Information and Operations Manual, pursuant to which Franchisee will construct, open, operate, and market the Franchised Restaurant.

1.62 "System" means the distinctive system developed and licensed by Franchisor for the establishment, development, and operation of upscale casual-dining restaurants, the distinguishing characteristics of which include without limitation, the Proprietary Marks, characteristic decorations, furnishings and materials, specially-designed equipment and equipment layouts, uniforms, trade secret food products and other special recipes, menus and food and beverage designations, food and beverage preparation and service procedures and techniques, operating procedures for sanitation and maintenance, methods and techniques for inventory and cost controls, record keeping and reporting, personnel training and management, and advertising and promotional programs, cornerstones of operation, and Operations Manual, all of which may be changed, improved or further developed by Franchisor from time to time.

1.63 "Taxes" has the meaning set forth in Section 3.4(b).

1.64 "Term" means the term of this Agreement as described in Section 13.1 below and any extensions thereof, pursuant to Section 13.2, if applicable.

1.65 "Transfer" means (i) the sale, assignment, conveyance, pledge, mortgage, or other encumbrance, whether direct or indirect, in whole or in part, or in one or a series of related transactions or occurrences, of (A) this Agreement, (B) any Development Agreement, (C) any Equity Interests in Franchisee or any of Franchisee's Principals, or (D) the assets of Franchisee or any of Franchisee's Principals, other than transfers conducted in the ordinary course of business or (ii) the issuance, creation, or granting of new or additional Equity Interests, or the dilution or cancellation of existing Equity Interests, in Franchisee or any of Franchisee's Principals.

1.66 "Transaction Tax" has the meaning set forth in Section 3.4(f).

1.67 A "Void" occurs when one or more items entered into the point-of-sale system is cancelled *before* the item is prepared <u>and</u> for which: (a) no fee was charged nor received; and (b) no food or beverage cost was incurred. Food and/or beverage items that were prepared, but for which no fee, or a reduced fee, was charged or received, are not "Voids," but are considered complimentary meals or discounts subject to the limitations set forth in the Gross Sales definition herein.

1.68 "Wage Expenses" means such wages and/or salaries (including a reasonable allocation of the cost of benefits) and payroll taxes of, or with respect to, Franchisor's (or other described party's) employees, agents, and/or representatives to be reimbursed to Franchisor or such party as described herein.

1.69 "Website" means information that can be accessed through a common Internet address.

2. GRANT OF RIGHTS

2.1 Grant. Subject to the terms, conditions, and limitations of this Agreement, Franchisor hereby grants to Franchisee the right, and Franchisee undertakes the obligation, to establish and operate the Franchised Restaurant at the Site and at no other location. If Franchisee obtains Franchisor's prior written consent for a delivery and/or catering services program, Franchisee may offer delivery of approved menu items prepared in the Franchised Restaurant and intended for immediate consumption, and/or catering services with approved menu items. Any such delivery or catering services will be limited to the Protected Territory or such other geographical area set forth in Franchisor's written consent. Any consent granted by Franchisor for delivery or catering services may be withheld or conditioned in Franchisor's sole and absolute discretion, and may be withdrawn by Franchisor at any time upon written notice to Franchisee. Any proposed modifications to an approved delivery or catering services program are subject to Franchisor's prior written consent before implementation. Franchisee's use of the Proprietary Marks or any element of the System in the operation of a business at any other location or through any other channel of distribution without Franchisor's express written authorization will constitute willful infringement of Franchisor's rights in the Proprietary Marks and System. FRANCHISEE HAS NO RIGHT UNDER THIS AGREEMENT TO SUB-LICENSE OTHERS TO USE OR TO GRANT ANY RIGHTS IN THE PROPRIETARY MARKS OR THE SYSTEM.

2.2 Exclusivity. Subject to the rights retained by Franchisor hereunder, for so long as Franchisee is in compliance with its obligations under this Agreement and all other agreements between Franchisee or its Affiliate(s) on the one hand and Franchisor or its Affiliate(s) on the other hand, or until the expiration or termination of this Agreement, if sooner, Franchisor will not, without Franchisee's prior written consent, establish, or operate, or license anyone other than Franchisee to establish or operate a Restaurant, which is physically located in the Protected Territory. Upon expiration or termination of this Agreement, or if Franchisee is no longer in compliance with the terms hereof, the rights granted under this Section 2.2 shall expire.

2.3 Limitation of Rights. The license granted by this Agreement is only for the operation of a single Restaurant at the approved Site. Franchisor retains all rights not expressly granted hereunder. Franchisor, its Affiliates, and their respective franchisees and licensees or any other authorized third party may, among other things:

(a) Advertise and promote sales of or by Restaurants, at any location, including within the Protected Territory;

(b) Offer and sell collateral and ancillary products and services, such as pre-packaged food products, clothing, and memorabilia, in the Protected Territory under the Proprietary Marks, even though those products and services may be similar to items offered by the Franchised Restaurant;

(c) Offer and sell any products and services (regardless of similarity to products and services sold in the Franchised Restaurant) under any names and marks *other than* the Proprietary Marks, at any location, including within the Protected Territory;

(d) Establish and operate a Restaurant anywhere outside of the Protected Territory, including locations that are adjacent to or surrounded by the Protected Territory;

(e) Establish and operate any business other than a Restaurant (including restaurants) anywhere inside or outside of the Protected Territory;

(f) Operate one or more Websites that advertise Restaurants, allow customers and potential customers to make reservations at Restaurants (including the Franchised Restaurant), sell any product or service including pre-packaged food products, clothing, or memorabilia, or permit other activities (whether or not similar), even though the Website is accessible to or viewable by persons in the Protected Territory;

(g) Operate other types of facilities besides Restaurants in the Protected Territory, including facilities that are identified by some or all of the Proprietary Marks; and

(h) Operate, and license others to operate, *Kona Grill* Restaurants under the Marks and the System at any location in any Captive Market, regardless of whether the Captive Market is located in the Protected Territory or not. "Captive Market" means any airports, hospitals, universities and schools, hotels, stadiums, arenas, ballparks, festivals, fairs, military bases/posts, and other mass gathering locations or temporary events.

2.4 Gift Cards. Franchisee acknowledges that the license granted hereunder with regard to the Proprietary Marks does not extend to Gift Cards. Franchisee is not permitted to issue any Gift Cards bearing the Proprietary Marks, or any Gift Card that purports to be redeemable at the Franchised Restaurant, unless Franchisor, in its sole discretion, consents to the same in writing and the parties enter into a separate agreement setting forth mutually agreeable terms and conditions for the sale and redemption of Gift Cards, including Franchisor's absolute right to modify or amend the terms of the Gift Card program from time to time and to terminate or suspend the Gift Card program at any time.

3. FEES AND CONTRIBUTIONS

3.1 Franchise Fee. Upon the execution of this Agreement, Franchisee shall deliver to Franchisor a Franchise Fee of $75,000 in immediately available funds. The Franchise Fee is fully earned by Franchisor and non-refundable upon receipt, in consideration for, among other things, Franchisor's administrative expenses and lost or deferred opportunities in entering into this Agreement. Notwithstanding the foregoing, if this is the first franchise agreement Franchisee is entering into pursuant to a Development Agreement with Franchisor, then Franchisor will credit the amount of the Initial Franchise Fee that Franchisor paid when it entered into the Development Agreement towards payment of the Franchise Fee due hereunder.

3.2 Royalty Fees. Beginning the first full or partial month in which the Franchised Restaurant is Operational, and on or before the Due Date of each Accounting Period thereafter, Franchisee will pay Franchisor a continuing monthly royalty fee equal to 5% of the Gross Sales for the immediately preceding month ("Royalty" or "Royalties").

3.3 Marketing Fund; Local Advertising Expenditures.

(a) In accordance with Section 3.3(c) and Section 8.6, beginning the first full or partial month in which the Franchised Restaurant is Operational, and on or before the Due Date of each Accounting Period thereafter, Franchisee will pay to the Marketing Fund a continuing monthly amount designated by Franchisor ("Marketing Fund Contribution"). As of the Execution Date, the Marketing Fund Contribution equals 0.5% of the Gross Sales for the immediately preceding month.

(b) In addition to contributions to the Marketing Fund, Franchisee shall also spend a percentage of Gross Sales on local marketing and advertising of the Franchised Restaurant in accordance with Section 3.3(c) and Section 8.5 hereof. As of the Execution Date, Franchisee must spend 3.5% of Gross Sales each month on local marketing and advertising.

(c) Any time after the Franchised Restaurant's first 48 months of operation, Franchisor may increase the minimum amount to be contributed or expended by Franchisee under Sections 3.3(a) and (b) above; provided, however, that the amount required to be contributed by Franchisee under Section 3.3(a) shall in no event exceed 0.75% of Gross Sales, and the amount required to be spent by Franchisee under Section 3.3(b) shall in no event exceed 4% of Gross Sales for any period.

3.4 Payments and Taxes.

(a) All payments made by Franchisee to Franchisor pursuant to this Agreement shall be made via Franchisor's then-current electronic funds transfer program authorizing Franchisor to use a pre-authorized bank draft system. Franchisee shall: (a) comply with Franchisor's procedures, as specified in the Operations Manual or otherwise in writing; (b) perform those acts and sign and deliver those documents as may be necessary to accomplish payment by electronic funds transfer as described in this Section 3.7; (c) give Franchisor an authorization in the form designated by Franchisor to initiate debit entries and/or credit correction entries to the Account for payments of the Royalties and all other amounts payable under this Agreement, including any interest charges; and (d) make sufficient funds available in Franchisor's commercial bank operating account ("Account") for withdrawal by electronic funds transfer no later than the Due Date for payment thereof. Notwithstanding the provisions of this Section 3., Franchisor reserves the right to modify, at its option, the method by which Franchisee pays Royalties and other amounts owed under this Agreement upon receipt of written notice by Franchisor. Franchisee's failure to have sufficient funds in the Account is a material breach of this Agreement.

(b) All payments required to be made by Franchisee pursuant to this Agreement shall be the gross amount determined according to the applicable section of this Agreement without deduction for or on account of any taxes, levies, imports, duties, charges, fees (including, but not limited to, bank wiring fees) and withholdings (including non-resident withholding taxes) of any nature (collectively, "Taxes") now or hereafter imposed by any governmental or other authority that may be imposed on such payments. If Franchisee is required to withhold or deduct any amounts from any payment to Franchisor, such as a withholding tax, then the amount payable to Franchisor shall be increased by such amount as is necessary to make the actual amount received by Franchisor (after such withholding tax and after any additional Taxes on account of such additional payment) equal to the amount that would have been received by Franchisor had no deduction or withholding been required.

(c) In cases where Franchisee's local law and/or tax authority requires Taxes to be withheld, Franchisee is responsible for and shall pay the amount required to be withheld to the applicable taxing authority and shall promptly deliver to Franchisor, no later than seven days after Franchisee has issued each of its payments to Franchisor, receipts and respective tax forms issued by the applicable governmental or taxing authorities showing that all Taxes were properly withheld and remitted in compliance with applicable law. Franchisee is responsible for and shall pay all Taxes (including, without limitation, Taxes required to be withheld from payments

Franchisee makes to Franchisor or Franchisor's Affiliates, Taxes on income or gross receipts and any sales, use, value added, or goods, and services Taxes) that arise as a result of this Agreement or other similar agreements between Franchisee and Franchisor, including Taxes that may arise as a result of Franchisee acquiring materials, supplies, specifications, or other assets from Franchisor.

(d) In the event of any bona fide dispute with any taxing authority as to 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 any Franchised Restaurant, any improvements thereon, or any assets of Franchisee that are part of the System or contain the Proprietary Marks.

(e) Notwithstanding anything set forth in Section 3.4(d) above, Franchisee shall not withhold or offset any portion of any payment due to Franchisor's alleged non-performance hereunder or due to the application of any Taxes. The parties acknowledge and agree that any Taxes imposed upon or with respect to this Agreement or any payment for any consultation, information, data, research, materials, supplies, specifications, or the like acquired by or provided to Franchisee in connection with this Agreement or any other agreement contemplated herein, or otherwise in connection with any such agreements, shall be paid by Franchisee.

(f) Franchisee bears sole and exclusive responsibility for the reporting and payment of all Taxes imposed directly upon it by any jurisdiction. In addition, Franchisor may be responsible now or in the future to collect and remit certain taxes or fees, including but not limited to, sales tax, use tax, excise tax, value added tax, franchise tax, or consumer tax (collectively, "Transaction Tax"). To the extent that any Transaction Tax is imposed by any taxing authority on the payments made by Franchisee to Franchisor, Franchisee bears sole financial responsibility for the Transaction Tax and will pay Franchisor the Transaction Tax, to the extent Franchisor is required to collect and remit the tax, and such Transaction Tax payments shall be in addition to any other payments that are required under this Agreement.

(g) Except for Royalty Payments and Marketing Fund Contributions, which are due as required in Section 3.2 and Section 3.3(c), respectively, unless another time period is provided in this Agreement, all payments are due to Franchisor 15 days after delivery of an invoice or statement therefor. Any amounts not paid when due will accrue interest and late fees pursuant to Section 3.5 below from and after the Due Date until paid in full. Invoices sent to Franchisee for reimbursement of expenses will include a line item breakdown of the types of expenses.

3.5 Overdue Payments. Any payment not actually received by Franchisor or its designee when due shall accrue late charges at an interest rate of 18% per year, or the maximum rate permitted by applicable law, whichever is less, from the date it was due until paid. Such interest charges will be in addition to any other remedies that may be available to Franchisor. In addition, each payment not actually received by Franchisor or its designee when due will be subject to a late charge of $500 to cover Franchisor's administrative expenses. The parties confirm that this sum of $500 represents a good faith estimate of Franchisor's internal and external costs associated with a late payment and shall not be construed as a penalty.

3.6 Accounting Period. Franchisor has the right to change or modify the definition of an Accounting Period, in its discretion, for the entire *Kona Grill* franchise system, generally, or for Franchisee, individually, if Franchisee fails to comply with this Agreement. Franchisor will provide Franchisee at least 30 days advance written notice of any change in any Accounting Period affecting the *Kona Grill* franchise system, or at least 30 days advance written notice of any change in any Accounting Period affecting Franchisee, individually. Franchisee make all changes necessary to conform to such change or modification.

4. ONGOING SUPPORT SERVICES.

4.1 Opening Team. The Opening Team shall assist in (i) training Franchisee's employees at the Site; and (ii) the opening of the Franchised Restaurant. Subject to the terms of this Section 4.1, Franchisor will provide the Opening Team to train Franchisee's staff based on the anticipated staffing for the Franchised Restaurant. The Opening Team is anticipated to have a minimum of 12 people; provided, however, the actual number of members of the Opening Team and the determination of whether an Opening Team will be provided for the Franchised Restaurant shall be determined by Franchisor on a case-by-case basis based upon Franchisee's experience and familiarity with the System. The Opening Team shall be present at the Site for a minimum of four weeks; provided, however, that the length of time shall be determined by Franchisor on a case-by-case basis based upon Franchisee's experience and familiarity with the System. Within 15 days of receipt of invoice, Franchisee must reimburse Franchisor for all of the costs that Franchisor incurs to provide such training and support, including without limitation airfare and baggage fees, hotel/lodging (based on single occupancy at moderate accommodations, preferably an extended stay hotel with in-room kitchen facilities), Internet fees, ground transportation, a per diem stipend (a daily charge determined by advance agreement for anticipated expenses incurred by the Opening Team for meals outside of the training restaurant; laundry; fees and tips for persons who provide services, such as food servers, hotel housekeeping and skycaps; and telephone expenses, which stipend amount will be based on the amount Franchisor pays its training personnel at Affiliate-owned Restaurants, subject to adjustment based on the applicable regional cost of living, but in no event less than $35.00 per day), and Wage Expenses for the Opening Team to provide such training program. If requested by Franchisor, Franchisee shall (a) make the reservations for the hotel/lodging in reasonable proximity to the Franchised Restaurant for Franchisor's Opening Team for the duration of the training program; and/or (b) Franchisee shall pay the hotel/lodging vendor directly for the cost of such hotel/lodging. Notwithstanding the foregoing, Franchisor reserves the unfettered right to determine, in its sole discretion, based on current events and security concerns, whether to send its Opening Team to the Restaurant. In the event that Franchisor does not provide an Opening Team for the Franchised Restaurant based on Franchisee's experience and familiarity with the System, or for any other reason, then Franchisee will be responsible for training the staff of and opening the Franchised Restaurant in compliance with the Standards. Franchisee will develop a written restaurant opening training program that will conform as nearly as practical to the restaurant opening training program and training materials utilized by Franchisor for Restaurant openings. Prior to use, Franchisee will submit to Franchisor for its approval such written restaurant opening training program and materials, and any subsequent modifications thereto. If Franchisor does not provide an Opening Team for any reason, there will be no reduction or adjustment to the Franchise Fee, monthly Royalties, or any other payments due hereunder. Immediately prior to the Franchised Restaurant's opening to the public, Franchisee will conduct a minimum of two days of practice lunch and dinners during which invited guests will dine at the

Franchised Restaurant to allow Franchisee's management and staff the opportunity to practice and develop their food preparation, service, and management skills.

4.2 On-Site Assistance. From time to time, Franchisor's representative or designee may visit, at Franchisee's expense, the Site to provide assistance not otherwise specifically provided for in this Agreement, including but not limited to assistance in ascertaining the availability of locally-sourced food and beverages or other assistance specifically requested by Franchisee, including but not limited to additional training, marketing, market studies, competitor analysis, and information technology. Franchisee shall bear all costs Franchisor incurs in connection with such visits.

4.3 Ongoing Support. Franchisor shall provide such ongoing consultation and advice as it deems appropriate, which may include information about new product development, instruction concerning the operation and management of a *Kona Grill* Restaurant, advertising and marketing advice, and financial and accounting advice. Such consultation and advice may be provided, in Franchisor's discretion, through Restaurant visits by Franchisor's personnel or other persons it designates, via meetings, seminars, or conferences, and/or through dissemination of electronic or printed materials.

4.4 Training.

(a) At least 180 days prior to the scheduled opening date of the Franchised Restaurant, or when required by the appointment of additional Directors of Operations as required by Section 5.1 of this Agreement and the appointment of Regional Culinary Partner(s) as required by Section 5.5 of this Agreement, Franchisee will send the entire management team for initial training to a certified training restaurant designated by Franchisor; provided, however, Franchisor may, in its discretion, reduce the number of members of the management team required to attend the initial management training based upon Franchisee's or its managers' experience and familiarity with the System. The length of the initial training may vary by job description and will be determined by Franchisor in its sole discretion. If Franchisee or its Affiliate operates another *Kona Grill* Restaurant that has been certified by Franchisor as a training restaurant, then Franchisor may permit the pre-opening training program to be conducted by Franchisee at such certified training restaurant. Prior to the opening of the Franchised Restaurant, management team trainees must successfully complete, as Franchisor determines in its sole discretion, pre-opening training. Should any manager be replaced, the replacement manager must attend a management training program comparable to the pre-opening training program. Each replacement manager must successfully complete, as Franchisor determines in its sole discretion, a management training program promptly after commencing employment with Franchisee and prior to assuming a management role at the Franchised Restaurant.

(b) If this Agreement has been executed pursuant to a Development Agreement, Franchisee shall bear the cost of the initial management training in accordance with Section 8.7 of the Development Agreement. If this Agreement has not been executed pursuant to a Development Agreement, or if such costs are not addressed in the Development Agreement, then Franchisee shall be required to pay Franchisor its then-current training fee for the initial training of Franchisee's initial management team, and Franchisee shall bear the cost of wages, travel, transportation, meals, and other incidental expenses of its personnel attending training. Additionally, within 30 days after completing initial training, Franchisee shall pay Franchisor for all training materials, equipment, uniforms, and all other training-related expenses, including the stipend and travel, lodging, and dining expenses for persons who attend training, and bonuses paid to training managers. Further, Franchisee shall pay to Franchisor an amount equal to Franchisor's then-current rate for training tuition for (i) any replacement management personnel, and (ii) any individuals attending training for the second or subsequent time. Franchisor will determine the length of the pre-opening training, which is anticipated to be 12 weeks.

4.5 Marketing Materials. Upon written request from time to time, Franchisor shall provide Franchisee with copies of existing marketing materials and other existing advertising prepared by Franchisor or its designee at no cost to Franchisee. Franchisor, at its discretion, may provide hard copies or electronic copies of such materials. Franchisee must obtain Franchisor's prior consent to any changes to the materials provided by Franchisor. If Franchisor makes any changes to the materials or designs any marketing materials at Franchisee's request, then Franchisee must reimburse Franchisor its related costs.

4.6 Internet Support. Subject to Section 7.7, if and when such capability is established by Franchisor, Franchisor may, upon request, provide Franchisee with advice and support for the Franchised Restaurant via the Internet.

4.7 Operations Manual. Franchisor shall provide Franchisee with access to the then-current Operations Manual and a copy of prototype plans and specifications for the establishment and operation of a typical Restaurant. The Operations Manual and other material may be provided in hard copy and/or in electronic format, including by means of the Extranet, at Franchisor's discretion. Franchisor retains ownership of any and all copyright rights in or to the Operations Manual and such materials. Franchisee shall observe Franchisor's reasonable requests concerning copyright notices. Franchisee shall at all times ensure that Franchisee's copy of the Operations Manual is kept current and up-to-date, and in the event of any dispute as to the contents of the Operations Manual, the terms of the version of the Operations Manual maintained by Franchisor at Franchisor's home office shall be controlling. Any hard copies of the Operations Manual and such plans and materials shall be returned to Franchisor immediately upon termination or expiration of this Agreement.

4.8 Periodic Meetings. At Franchisor's option, Franchisee will meet in person, or by telephone, using Internet compatible video conferencing, or by other electronic methods with Franchisor up to four times each calendar year, for the purpose of reviewing the operations of the Franchised Restaurant, discussing procedures to improve such operations, reviewing Franchisee's financial performance, sales, expenses, and real estate pipeline, discussing marketing, supply chain, and training matters, as well as sharing knowledge and information relating to the operation of *Kona Grill* restaurants in general and such other related topics as Franchisor may determine. All meetings each calendar year will be held at a place designated by Franchisor or by telephone, using Internet compatible video conferencing or other electronic methods. Franchisee must install at its offices or have access to Internet-based video conferencing equipment compatible with Franchisor's video conferencing equipment for such meetings and other meetings and conferences held by Franchisor from time-to-time. Franchisor and Franchisee will mutually agree on the dates for such meetings. Franchisor and Franchisee each will be responsible for any travel and living expenses incurred by its respective personnel to attend these meetings. In additional to the foregoing meetings, if Franchisor elects to conduct an annual conference or meeting for its franchisees, licensees, partners, or other global operators, Franchisee will send one or more appropriate representatives to attend and participate in such conference or meeting. Franchisee will be responsible for the travel costs, accommodations, compensation, and other expenses of its representative(s) to attend.

4.9 Performance by Designee. Franchisee acknowledges and agree that any rights or duties of Franchisor may be exercised and/or performed by any of Franchisor's designees, agents (who may be an unaffiliated third party), or employees.

5. OPERATIONS AND TRAINING

5.1 Director of Operations. Franchisee shall appoint and maintain a Director of Operations at all times during the Term of this Agreement. If Franchisee and/or it Affiliate(s) operate less than three KONA GRILL® Restaurants, and if Franchisor approves, Franchisee's Brand Director may also be, and assume the duties of, the Director of Operations. If Franchisee and/or its Affiliate(s) operate more than six KONA GRILL® Restaurants, then Franchisee and/or its Affiliates must hire additional Directors of Operations so that no Director of Operations oversees more than six KONA GRILL® Restaurants. Franchisee hereby designates the person named in Schedule 2 as its initial Director of Operations. Any replacement Director of Operations shall be designated within 10 calendar days of the prior Director of Operations' resignation or termination. Each Director of Operations shall attend and successfully complete Franchisor's training program in accordance with Section 4.4(a) above, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Director of Operations. In addition, each Director of Operations shall reside in reasonable proximity to the Franchised Restaurant (or the Territory, if this Agreement has been executed pursuant to a Development Agreement). The Director of Operations hereunder and under the Development Agreement may be the same individual.

5.2 Brand Director. Franchisee shall appoint and maintain a Brand Director at all times during the Term of this Agreement. If Franchisee is an individual, then Franchisee may also be the Brand Director. Franchisee hereby designates the person named in Schedule 2 as its initial Brand Director. Any replacement Brand Director shall be designated within 10 calendar days of the prior Brand Director's resignation or termination. Each Brand Director shall attend and successfully complete Franchisor's training program in accordance with Section 4.4(a) above, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Brand Director. The Brand Director hereunder and under the Development Agreement shall be the same individual.

5.3 Management Personnel. Franchisee shall hire a General Manager and two Assistant Managers for the Franchised Restaurant within 60 calendar days of Franchisor's request, but in no event later than 180 days prior to the projected opening date for the Franchised Restaurant. All such management personnel shall (i) meet Franchisor's then-current criteria for their respective positions, and (ii) attend and successfully complete Franchisor's training program required for their respective positions. Franchisee is responsible for all transportation, lodging, meal, and wage costs associated with such training. When possible, any replacement management personnel shall be designated prior to the resignation or termination of the then-current respective personnel.

5.4 Chef Personnel. Franchisee shall hire an Executive Chef, Sous Chef, and Head Sushi Chef for the Franchised Restaurant within 60 calendar days of Franchisor's request, but in no event later than 180 days prior to the projected opening date for the Franchised Restaurant. All such chef personnel shall (i) meet Franchisor's then-current criteria for their respective positions, and (ii) attend and successfully complete Franchisor's training program required for their respective positions. Franchisee is responsible for all transportation, lodging, meal, and wage costs associated with such training. When possible, any replacement chef personnel shall be designated prior to the resignation or termination of the then-current respective personnel.

5.5 Regional Culinary Partners. Franchisee will appoint and maintain a Regional Culinary Partner prior to the opening of the sixth Restaurant and one additional Regional Culinary Partner for every six Restaurants opened thereafter (e.g., a second Regional Culinary Partner will be engaged on or before the opening of the 12th Restaurant). Each Regional Culinary Partner shall attend and successfully complete Franchisor's training program in accordance with Section 4.4(a) above, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Regional Culinary Partner.

5.6 Hiring Decisions. Franchisee shall be ultimately responsible for all hiring, firing, demotion, promotion, disciplinary, and other employment-related decisions and is solely obligated for any labor and/or employment-related claims made by any of its employees or independent contractors against Franchisee or Franchisor. Franchisee will fully indemnify and defend Franchisor from any and all labor and employment-related claims that the employees or independent contractors of Franchisee may bring against Franchisor.

5.7 Training Requirements. Franchisee shall comply with the employee training procedures and requirements reasonably prescribed by Franchisor, which may include, without limitation, testing requirements. Franchisor may periodically make other required or optional training available to Franchisee's employees, as well as other programs, seminars, and materials, and Franchisee must ensure that all employees who are required to attend such training satisfactorily complete the training within the time specified. All training will be provided at a location Franchisor designates, and Franchisee must pay its employees' travel expenses and room, board, and wages during the training. Franchisor reserves the right to charge a reasonable fee for the training, seminars, and materials described in this section, whether required or optional. Franchisor may also require, as a condition of providing training, that Franchisee's managers and employees sign confidentiality and non-competition agreements in the form Franchisor requires.

5.8 Training Materials. Franchisor may create written materials for, and audio and/or video recording of, any training programs at Franchisor's expense. Unless otherwise provided herein, Franchisor reserves the right to charge Franchisee for any training materials provided by Franchisor at Franchisee's request. Such fee will be based on Franchisor's cost to develop and produce such materials.

6. CONSTRUCTION, REFURBISHMENT, AND UPGRADES.

6.1 New and Relocated Franchised Restaurant Design Steps. Franchisee must follow the following design steps in constructing a new or relocated Franchised Restaurant:

(a) As-Built Drawings and Photographs. Franchisee shall provide Franchisor with an "As-built" Floor Plan of the proposed lease space and AutoCAD files, and Franchisee shall photo-document the entire existing building and lease space, including, but not limited to, all exterior building walls, pole or pylon signs, parking lot, lighting fixtures, landscaping, concrete walks, and interior walls, floors, ceilings, and structural elements, mechanical, electrical, and plumbing equipment and fixtures. The items required above must be submitted to

Franchisor for review and approval no later than seven days after Franchisor's written request. For freestanding property sites, Franchisee shall provide to Franchisor, for its review and approval, no later than seven days after Franchisor's written request, a plat plan for the prospective Site, a site survey plan, and photos of the site and surrounding area.

(b) Preliminary Floor Plan. Franchisor shall prepare one preliminary floor plan, at no cost to Franchisee, to determine the viability of the proposed lease perimeter, and the most efficient Restaurant layout. Such drawings will be preliminary and general in nature. Franchisor will use this preliminary floor plan as part of its Site evaluation process. Minor revisions to the preliminary floor plan will be made at Franchisor's cost. If substantial revisions to the preliminary plans are necessary or desired, Franchisor reserves the right to charge Franchisee for any out-of-pocket costs incurred in revising the preliminary plans, and if applicable, a reasonable charge for Franchisor's personnel's time.

(c) Design Development Drawings. Once Franchisor approves the Site, Franchisee shall provide to Franchisor, at Franchisee's expense, field measurements of the lease or occupancy space, no later than 10 days after Franchisor approves the Site. Franchisor or Franchisor's designated architect will prepare a design development drawing package comprised of: dimensioned floor plans; floor finish plan; utility point of connection location plan; exterior and interior elevations (including wall decor and merchandise shelving); reflected ceiling plan locating light fixtures, roof plan, televisions, artwork, and speakers; door and window schedules and specifications; furniture and equipment floor plan and schedule; and toilet room fixture plan and elevations ("Design Development Drawings"). The Design Development Drawings will include a kitchen floor plan, but will not include mechanical, electrical, or plumbing drawings of any kind, including without limitation, kitchen rough-ins, nor will the Design Development Drawings include digital renderings or video renderings. As part of the Design Development Drawings, Franchisor shall provide to Franchisee the elevations and an itemized schedule (including cut sheets) for the kitchen equipment included in the kitchen floor plan, as well as sign drawings and specifications for exterior and interior signs. Franchisor shall have a minimum of 30 days after receipt of field measurements to prepare such Design Development Drawings. Franchisor shall prepare the Design Development Drawings and one set of revisions thereto, at Franchisor's expense. Any and all additional plans and revisions under this Section 6.1 shall be prepared at Franchisee's expense. If Franchisor or Franchisor's architect prepares additional plans or revisions under this Section 6.1 (including without limitation, digital renderings and video renderings), Franchisee will pay or reimburse to Franchisor all out-of-pocket expenses and if applicable, a reasonable charge for Franchisor's personnel's time. Fees for Franchisor's personnel's time shall be competitive with market rates in the United States for comparable design services and will include travel expenses incurred by Franchisor's personnel for visits to the prospective Site if necessary for preparation or approval of drawings under this Section 6.1, subject to the terms of Section 6.5 herein with respect to the initial two visits. If Franchisor requests that Franchisee directly pay any costs or expenses incurred in preparing the floor plans or drawings to any third parties, including without limitation, any architect, kitchen consultant, or other design professional, Franchisee shall pay the same directly to the applicable parties within 15 days after receipt of an invoice therefor.

(d) Construction Drawings. Using the design direction of the Design Development Drawings (as described in Section 6.1(c) above), Franchisee's local architect and engineers will prepare the following construction drawings to meet local construction and legal requirements: site plan, building and wall Sections, exterior and interior details, structural drawings, engineering drawings and specifications (civil, structural, mechanical, electrical, and plumbing), all specialty items such as aquariums, water features, fire features, lighting systems, exterior misting systems and heating systems, etc., and general specifications. Franchisee shall timely submit the final set of construction drawings to Franchisor and Franchisor's approved architect for its written approval, no later than 30 days after Franchisee receives the Design Development Drawings from Franchisor. Notwithstanding anything contained herein to the contrary, Franchisee shall purchase the kitchen equipment package, sign package, and specialty items, including, but not limited to, aquariums, water features, lighting systems, patio mist fans, storefront system, and custom furniture, fixtures, and equipment from Franchisor's approved vendors, unless alternates are approved in advance, in writing by Franchisor, at Franchisor's sole discretion.

(e) Permit and Pricing: Once the construction drawings are approved by Franchisor in writing, Franchisee may submit the final set of construction drawings to the:

i. Landlord or property owner for the Site;

ii. Local authorities for construction permit;

iii. Local construction companies for project pricing; and

iv. Franchisor-approved vendors for pricing quotations.

6.2 Remodeled and Refurbished Franchised Restaurant Design Steps. Franchisee must follow the applicable design steps as described in Section 6.1, as well as described in this Section 6.2, in constructing a remodeled or refurbished Franchised Restaurant:

(a) Preliminary Floor Plan. Franchisor shall prepare one preliminary floor plan, at no cost to Franchisee, to determine Franchisor's required project scope and estimated project costs. This floor plan is used as an exhibit to Franchisor's project scope letter ("Scope Letter") to Franchisee. Any and all additional plans under this Section 6.2 shall be prepared at Franchisee's expense. If Franchisor or Franchisor's architect prepares additional preliminary floor plans or other any other plans under this Section 6.2, Franchisee will pay or reimburse Franchisor all of Franchisor's out-of-pocket expenses and if applicable, a reasonable charge for Franchisor's personnel's time. Fees for Franchisor's personnel's time shall be competitive with market rates in the United States for comparable design services and will include travel expenses incurred by Franchisor's personnel for visits to the prospective Site if necessary for preparation or approval of drawings under this Section 6.2. If Franchisor requests that Franchisee directly pay any costs or expenses incurred in preparing the floor plans or drawings to any third parties, including without limitation, any architect, kitchen consultant, or other design professional, Franchisee shall pay the same directly to the applicable parties within 15 days after receipt of an invoice therefor.

(b) Design Development Drawings. Depending on the Scope Letter, Franchisor, at its sole discretion, may require certain Design Development Drawings to be prepared by Franchisor or Franchisor's architect.

(c) Construction Drawings. Depending on the Scope Letter, Franchisor, at its sole discretion, may require certain construction drawings to be prepared by Franchisor or Franchisor's architect.

(d) Permit and Pricing. Once the Design Development Drawings or construction drawings are approved by Franchisor in writing, Franchisee may submit the final set of Design Development Drawings or construction drawings to the:

i. Landlord or property owner for the Site;

ii. Local authorities for construction permit;

iii. Local construction companies for project pricing; and

iv. Franchisor-approved vendors for pricing quotations.

6.3 Pre-Construction/Refurbishment Approval Criteria. Prior to commencing any construction/refurbishment at the Site, Franchisee, at its own cost, shall submit to Franchisor for its prior written approval:

(a) Complete architectural and engineering drawings and specifications for the Franchised Restaurant in accordance with applicable laws, regulations, or ordinances and which conform to Franchisor's general design and specifications including, but not limited to, those required under Sections 6.1 and 6.2 above. Once approved by Franchisor, pursuant to Section 6.4 below, such plans and specifications shall not be modified without the prior written consent of Franchisor;

(b) A statement in the form prescribed by Franchisor and signed by Franchisee, certifying that Franchisee has:

i. complied with all applicable laws, regulations, or ordinances in preparing its plans and specifications;

ii. employed a qualified architect or engineer, approved by Franchisor, to prepare construction/refurbishment documents and supervise the construction/refurbishment of the Franchised Restaurant and completion of all improvements (such statement shall also identify the architect or engineer and describe his or her qualifications in detail);

iii. obtained all such permits and certifications required for lawful construction/refurbishment and operation of the Franchised Restaurant, including, without limitation, zoning, access, signage, and fire requirements; and

iv. obtained required licenses to sell beer, wine, and liquor at the Franchised Restaurant.

(c) A construction/refurbishment schedule acceptable to Franchisor.

6.4 Pre-Construction/Refurbishment Approval. Upon receipt of the documents described in Sections 6.1 and 6.2 above, Franchisor will notify Franchisee of its approval or disapproval in writing within a period of 21 days. Franchisor's failure to respond to Franchisee within such period shall be deemed disapproval. Given that the construction/refurbishment and appearance of the Franchised Restaurant is critical to the continued success and viability of the System, Franchisor will have absolute discretion in making such decision, and Franchisee will accept any of Franchisor's decisions as final.

6.5 Commencement and Completion of Construction/Refurbishment and Extensions. Franchisee will commence construction/refurbishment within 10 days after the pre-construction/refurbishment approval has been obtained and shall diligently prosecute the same to completion thereafter.

If this Agreement has been executed pursuant to a Development Agreement, any pre-opening construction must be completed within the deadlines set forth in the Development Agreement. If this Agreement has not been executed pursuant to a Development Agreement, any pre-opening construction must be completed within six months following commencement of construction. Any refurbishment must be completed within six months following commencement of refurbishment. As used in this Section 6.5, "completion" shall mean that all exterior and interior carpentry, electrical, audio-visual, painting, and finishing work and installation of all fixtures, equipment, and signs, in accordance with the plans and specifications approved by Franchisor for such construction or refurbishment have been fully completed.

Franchisor, in its sole discretion and without obligation, may grant to Franchisee written extensions for any construction/refurbishment deadline, with the understanding that, if granted, Franchisee shall pay to Franchisor a non-refundable extension fee of $2,500 for each 30-day period of extension.

Franchisor may, at its sole discretion and its expense, provide up to two on-site construction/refurbishment visits to verify compliance with the Standards. If Franchisee requests that Franchisor make additional visits to the Site or if additional visits are required to prepare or approve the drawings and specifications contemplated in Sections 6.1 or 6.2 above or because of non-compliance with the Standards, then Franchisee shall pay all costs Franchisor incurs to conduct such visits within 15 days after receipt of an invoice therefor. Franchisee shall fully cooperate with Franchisor and provide Franchisor and its representatives with full access to the Site in connection with all such visits.

6.6 Inspection. Franchisee agrees that Franchisor and its agents shall have the right to inspect the construction/refurbishment at all reasonable times. Franchisee shall cooperate fully with Franchisor and provide Franchisor and its representatives with full access to the Site in connection therewith.

6.7 Continuing Statements. Beginning with the calendar month after the pre-construction/refurbishment approval issued by Franchisor and until one calendar month after the construction/refurbishment is completed, Franchisee shall provide Franchisor, on or before each Friday of each week, with a statement in the form (including progress photographs) prescribed by Franchisor and signed by Franchisee, certifying Franchisee's continued compliance with and maintenance of the requirements of Section 6.3(b). If Franchisee fails to timely provide such statement, Franchisor shall have the right to enforce against Franchisee any and all options and remedies available to Franchisor under this Agreement, at law, or in equity (said remedies are non-exclusive and non-cumulative).

6.8 Approval for Opening. Subject to an event of Force Majeure, once construction/refurbishment is completed, and within seven days after obtaining Franchisor's written approval for opening/reopening, Franchisee shall open/reopen the Franchised Restaurant to the public. Franchisee shall not open/reopen the Franchised Restaurant to the public unless Franchisor has granted its written approval to do so.

6.9 Scheduled Refurbishment of Premises. Unless otherwise agreed by Franchisor in writing, Franchisee shall fully update and remodel the premises of the Franchised Restaurant every eight years such that the premises shall be in conformity with the then-current System image, design, trade dress, and signage in accordance with Franchisor's then-current prototype designs for a Restaurant.

6.10 Relocation. Once the Franchised Restaurant is established at the Site in accordance with this Agreement, Franchisee shall not relocate the Franchised Restaurant without the prior written consent of Franchisor. Franchisor will not unreasonably withhold its consent of such relocation and may require, among other things, that: (i) Franchisee has provided Franchisor with at least 90 days prior written notice of its intent to relocate; (ii) Franchisee is not in default under this Agreement, and all of Franchisee's accrued monetary obligations to Franchisor have been satisfied; (iii) Franchisee has paid a relocation fee in an amount equal to 50% of the then-current initial Franchise Fee; (iv) the new location is within the Protected Territory; (v) Franchisee executes the then-current form of franchise agreement, which agreement may contain materially different terms from this Agreement, including, without limitation, higher royalty fees, contributions, System assessments, and a different Protected Territory, for a term equal to the unexpired portion of the initial Term of this Agreement and all unexpired renewal terms hereunder, and any other ancillary agreements as Franchisor may require; provided, however, that Franchisee shall not be required to pay the initial franchise fee contained in Franchisor's then-current form of franchise agreement; and (vi) Franchisee has made provisions acceptable to Franchisor for the removal of all signs and other materials containing Proprietary Marks from the existing site. Franchisee will receive written notification of Franchisor's decision regarding relocation of the Franchised Restaurant. If Franchisee approves the relocation, Franchisee must relocate the Franchised Restaurant within 180 days of receipt of notice of such approval.

7. OPERATION

7.1 Management Personnel and Chef Personnel. Franchisee shall at all times employ the personnel set forth in Section 5, each of whom shall devote his/her full time efforts to the Franchised Restaurant.

7.2 Operations Standards. Franchisee acknowledges that every detail of the Franchised Restaurant is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain the high standards and public image of the System, to increase the demand for the products and services sold by all Restaurants, and to protect Franchisor's reputation and goodwill. As such, Franchisee will:

(a) Operate the Franchised Restaurant in accordance with the Operations Manual, including all amendments thereto, to ensure that the highest degree of quality and service is uniformly maintained;

(b) Devote the requisite time, energy, and best efforts to the management and operation of the Franchised Restaurant;

(c) Use, prepare, maintain in sufficient supply, and offer for sale all and only such products, materials, ingredients, supplies, and paper goods as conform with Standards;

(d) Sell or offer for sale all and only such services, products, and menu items that meet the Standards, have been expressly approved for sale in writing by Franchisor, and as have been prepared and served in accordance with Franchisor's methods and techniques. Franchisee must refrain from any deviation from Standards for serving or selling the above without Franchisor's prior written consent and must discontinue selling and offering for sale any such items as Franchisor may in Franchisor's sole discretion, disapprove at any time;

(e) Use at the Franchised Restaurant only such menus that comply with the style, pattern, and design prescribed by Franchisor;

(f) Purchase and install, at Franchisee's expense, all Franchisor-approved fixtures, furnishings, signs, equipment, and Computer System from Franchisor's approved vendors and suppliers as Franchisor may reasonably direct from time to time in the Operations Manual or otherwise in writing;

(g) Employ security officers, if necessary, for secure operation of the Franchised Restaurant;

(h) Employ the number of employees such that Franchisee complies with Franchisor's food, safety, service, cleanliness, and other operations-related Standards and comply with all applicable laws, rules, and regulations with respect to such employees;

(i) Cause all employees to wear uniforms of the color, style, and design prescribed by Franchisor;

(j) Use the Site only for the operation of the Franchised Restaurant as well as keep and maintain the Franchised Restaurant open and Operational for the minimum number of hours and days as reasonably required by Franchisor (including without limitation, daily lunch and dinner service, unless Franchisor has expressly agreed otherwise in a signed writing); and

(k) Meet and maintain the highest governmental standards and ratings applicable to the operation of the Franchised Restaurant (including health and alcohol) and immediately advise Franchisor in writing of any operational license (including health and alcohol) standard violations applicable to the operation of the Franchised Restaurant.

7.3 Suppliers and Product Lists.

7.3.1 Franchisee shall purchase all equipment, supplies, services, food, and other products and materials used in the operation of the Franchised Restaurant solely from suppliers approved in writing by Franchisor. If Franchisor negotiates a purchase agreement for the area where the Restaurant is located, Franchisee must participate in the purchasing program. Franchisee may be required to purchase some or all of such items from Franchisor. Franchisee must request Franchisor's approval in writing to acquire any equipment, supplies, or other products and materials from a supplier not previously approved by Franchisor. To qualify for approval, such suppliers must (i) demonstrate the ability to meet Franchisor's Standards for such items, and (ii) possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably. Franchisor shall not be responsible for the delivery or the condition of goods ordered from any vendor. 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, at Franchisor's option, either to Franchisor or to an independent, certified laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test and any other costs Franchisor incurs for approval of any new suppliers, ingredient, equipment, supplies, or other products and materials proposed by Franchisee shall be paid by Franchisee or the supplier to Franchisor. Franchisor reserves the right, at its option, to 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, in Franchisor's discretion, any of Franchisor's criteria.

Franchisor will notify Franchisee within 60 days of Franchisee's request as to whether Franchisee may purchase products from the proposed supplier.

7.3.2 Franchisee will, at least quarterly, and also upon Franchisor's request from time to time, verify to Franchisor that Franchisee's product list complies with Franchisor's specifications. Franchisor will provide Franchisee with a list of designated and/or approved suppliers and/or approved brands from time to time. Such verification will include, at a minimum, the type of product, the manufacturer, the distributor, the order history for the prior 12 months, the ingredient list for the product, and such other information as may be requested by Franchisor, including but not limited to technical data sheets, health certificates, and lab test results. Franchisee will provide such data electronically or in such format as requested by Franchisor. If: (a) any product fails to meet Franchisor's specifications, (b) there is insufficient information about a product, or (c) there is any food safety or quality assurance concerns, then in addition to any other rights or remedies afforded to Franchisor, Franchisee, at Franchisee's sole expense, will immediately: (i) discontinue use of the product in the Franchised Restaurant and/or in connection with Franchisor's brand, and (ii) place a rush order with a supplier approved by Franchisor for a replacement product meeting Franchisor's specifications. Additionally, Franchisor may require, at Franchisee's expense, re-testing or additional testing of products which appear to be non-compliant with Franchisor's specifications, or for which Franchisor requires additional information.

7.4 General Maintenance. Franchisee shall at all times maintain the Franchised Restaurant in the highest degree of sanitation, repair, and condition and in strict accordance with the Standards, as the same may be modified by Franchisor from time to time. Within two weeks after receipt of notice from Franchisor, or sooner if required by law, Franchisee will order the materials necessary to make any additions, alterations, repairs, and replacements that Franchisor requires, including, without limitation, such periodic repainting, equipment repairs, and replacement of obsolete signs, equipment, and floor coverings (including carpet and tile) as Franchisor requires. Thereafter, Franchisor shall determine, in its sole discretion, whether or not Franchisee has completed the required maintenance. If Franchisee fails to maintain the Franchised Restaurant in the required condition, then in addition to any other remedies available to Franchisor, Franchisor will have the right, but not the obligation, to take such lawful action, at Franchisee's cost and expense, to correct the deficiency in the Franchised Restaurant; and/or Franchisor may charge Franchisee all costs Franchisor incurred in enforcing the requirements of this Section 7.4, plus a 15% administration fee.

7.5 Inspection. Franchisor will provide such continuing advisory assistance, as it deems advisable, which assistance may be by telephone or other remote means, in the operation of the Franchised Restaurant. Franchisee will permit Franchisor or its agents, at any reasonable time, access to the Franchised Restaurant to conduct inspections to ensure compliance with Franchisor's then-current Standards.

7.5.1 Testing. In conducting its inspections, Franchisor will have the right to obtain samples of any inventory items without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent certified laboratory to determine whether said samples meet Franchisor's then-current Standards. Franchisor may require Franchisee to bear the cost of such testing if the item or supplier of the item has not previously been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.

7.5.2 Recommendations. Franchisee acknowledges that Franchisor or its agents will have the authority to make immediate recommendations and resolutions to correct any deficiencies detected during such inspections (including ceasing of the use of the non-conforming equipment, advertising materials, products, or supplies).

7.5.3 Failure to Correct Deficiencies. In the event Franchisee fails or refuses to implement recommendations or resolutions, Franchisor shall have the right, but not the obligation, to enter upon the Franchised Restaurant premises for the purpose of making or causing to be made such corrections as may be required, with all costs to be paid by Franchisee. The failure to correct any such deficiencies shall be a material default under Section 13.3.4.

7.6 Accounting and Records.

7.6.1 General Accounting Principles. Franchisee shall maintain for at least 5 years (or such longer period as may be required by applicable law) from the dates of preparation, full, complete, and accurate books, records, and accounts in accordance with generally accepted accounting principles in the jurisdiction where the Site is located and in the form and manner prescribed by Franchisor from time to time in the Operations Manual or otherwise in writing.

7.6.2 Accounting Statements. In addition to the general accounting requirements, at Franchisee's cost, Franchisee shall submit to Franchisor:

(a) Unaudited monthly profit and loss statements (in the form prescribed by Franchisor and showing the sources of all income and the amount expended each month during the period on local advertising as well as including, but not limited to, earnings before the deduction of interest, tax, and amortization expenses (EBITDA), cash flow, and investment payback) and balance sheet within 15 days after the end of each month during the Term;

(b) Unaudited annual statements, as well as a schedule of capital expenditures and a schedule of advertising expenditures, within 90 days after the end of each fiscal year during the Term;

(c) Copies of Franchisee's quarterly sales tax returns; and

(d) Such other financial statements, reports, and records as Franchisor prescribes.

7.6.3 Inspection of Accounting and Records. Franchisor or its representatives (including independent auditors, attorneys, or agents) shall have the right at all reasonable times to examine and copy (and to remove and return the materials to be copied from the premises on which they are located), at Franchisor's expense, the books, records and tax returns of Franchisee. Franchisee will cooperate fully and will require the Franchised Restaurant to cooperate fully with Franchisor's representatives and any independent accountants hired by Franchisor to conduct any such inspection or audit.

If an inspection should reveal that payments due have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at 18% per year, or the maximum rate permitted by law, whichever is less.

Notwithstanding the foregoing, if an inspection is made necessary by Franchisee's failure to furnish reports, supporting records, or other information as herein required, or to furnish such reports, records, or information on a timely basis, or if an inspection should reveal that payments due have been understated in any report to Franchisor, then Franchisee shall reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, reasonable accounting and attorneys' fees, including any related travel expenses). The foregoing remedies shall be in addition to any other remedies Franchisor may have, including, without limitation, the remedies for default.

7.6.4 Records of Ownership Interests in Franchisee. In addition to the terms and conditions of Section 11 hereof, if there is a change in Franchisee's Principal's listed in Schedule 2 during the Term, Franchisee shall immediately provide Franchisor a list of all Persons owning an Equity Interest in Franchisee; provided, however, that if Franchisee's shares are publicly traded on a nationally recognized stock exchange, the list of shareholders required shall include only those owning 5% or more of the shares outstanding.

7.6.5 Sales Records. Franchisee shall record all food, beverage, merchandise, and all other sales by, at, from, or through the Franchised Restaurant on cash register systems approved by Franchisor in accordance with Section 7.7, below. To the extent that Restaurant sales and other financial information from the Franchised Restaurant is not available to Franchisor directly from the Cash Register Systems in an automated and immediately usable format, Franchisee must report, in the form Franchisor requires, Gross Sales and all other Restaurant financial information Franchisor requires for each Accounting Period. In addition, within three Business Days following Franchisor's request, Franchisee shall provide a written explanation, with sufficient details and back-up, to reconcile the total receipts of each Franchised Restaurant and all deductions against total revenues through the cash register systems or otherwise taken by Franchisee to determine Gross Sales, including detail on all Voids. All reported information must comply with any other requirements as prescribed by Franchisor from time to time. Such information will be provided to Franchisor in a format approved by Franchisor.

7.7 Technology.

7.7.1 Computer System.

(a) Franchisor shall have the right to specify or require that certain brands, types, makes, and/or models of communications be used in connection with the Computer System.

(b) Franchisor shall have the right, but not the obligation, to develop or have developed for it, or to designate (i) Required Software, which Franchisee shall install; (ii) updates, supplements, modifications, or enhancements to the Required Software, which Franchisee shall install; (iii) the tangible media upon which Franchisee shall record data; and (iv) the database file structure of Franchisee's Computer System. Franchisee must enter into such software license agreements and "terms of use" agreement Franchisor requires and pay all fees imposed thereunder.

(c) Franchisee shall, at its sole cost and expense, install and use the Computer System and Required Software, which may include a license fee payable to us or a third party, and enter into maintenance agreements for the Computer System.

(d) Franchisee shall, at its sole cost and expense, implement and periodically make all Computer Upgrades as Franchisor may reasonably request in writing.

(e) 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. Franchisee shall also afford Franchisor unimpeded access to Franchisee's Computer System and Required Software, including permitting Franchisor, as Franchisor may request, in the manner, form, and at the times requested by Franchisor and providing Franchisor all login, password, and other information required for such access.

7.7.2 Cash Registers. Franchisee shall record all sales on the cash register system Franchisor requires, which shall be deemed part of Franchisee's Computer System. Franchisee shall utilize computer-based, point-of-sale cash registers which are fully compatible with any program or system which Franchisor, in its discretion, may employ, and Franchisee shall record all Gross Sales and all sales information on such equipment. Franchisee will provide Franchisor unimpeded access (Franchisor is not required to request access in writing or otherwise) to the cash register systems so that Franchisor may electronically poll the Franchised Restaurant sales in real time, 24 hours per day and seven days per week.

7.7.3 Data. Franchisor may independently poll the Restaurant's Gross Sales and other information input compiled by the Computer System from a remote location. Franchisor may also require that Franchisee connect to a Web-based application that enables Franchisor to independently access and poll the Computer System information. There is no contractual limitation on Franchisor's right to independently access this information. All data provided by Franchisee, uploaded to Franchisor's system from Franchisee's system, and/or downloaded from 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 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 and solely for Franchisee's use in connection with the Franchised Restaurant.

7.7.4 Privacy.

(a) Franchisor may, from time-to-time, specify in the Operations Manual or otherwise in writing the information that Franchisee shall collect and maintain on the Computer System installed at the Franchised Restaurants, and Franchisee shall provide to Franchisor such reports as Franchisor may reasonably request from the data so collected and maintained. All data pertaining to or derived from the Franchised Restaurants (including without limitation data pertaining to or otherwise about Franchised Restaurant 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.

(b) Franchisee shall comply with all applicable Privacy Laws.

(c) Franchisee shall comply with Franchisor's Standards pertaining to Privacy Laws. If there is a conflict between Franchisor's Standards pertaining to Privacy Laws and actual applicable law, Franchisee shall: (i) comply with the requirements of applicable law; (ii) immediately give Franchisor written notice of such conflict; and (iii) promptly and fully cooperate with Franchisor and Franchisor's counsel in determining the most effective way, if any, to meet Franchisor's Standards pertaining to Privacy Laws within the bounds of applicable law.

(d) Franchisor's privacy policy is considered Confidential Information, and Franchisee shall not publish, disseminate, implement, revise, or rescind Franchisor's data privacy policy without Franchisor's prior written consent.

7.7.5 Telecommunications. Franchisee shall comply with Franchisor's requirements (as set forth in the Operations Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between Franchisee's Computer System and Franchisor's Extranet and/or such other computer systems as Franchisor may reasonably require.

7.7.6 Extranet. Franchisor may establish an Extranet (but is not required to do so or to maintain an Extranet). If Franchisor does establish an Extranet, then Franchisee shall comply with Franchisor's requirements (as set forth in the Operations Manual or otherwise in writing) with respect to connecting to the Extranet and utilizing the Extranet in connection with the operation of Franchisee's Franchised Restaurant. The Extranet may include, without limitation, the Operations Manual, training, or other assistance materials, and sales and information reporting solutions (both upstream and downstream, as Franchisor may direct). Franchisee shall 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.

7.7.7 Websites. Unless otherwise approved in writing by Franchisor, Franchisee shall not establish a separate Website, but shall only have one or more references or Web page(s), as designated and approved in advance by Franchisor, within Franchisor's Website. However, if Franchisor requires, Franchisee shall design, develop, and maintain a separate Website dedicated to the promotion of the Franchised Restaurant (and other franchised *Kona Grill* restaurants, if any, operated by Franchisee or its Affiliates). If Franchisor requires Franchisee to develop and maintain a separate Website or otherwise approves Franchisee's request to do so (which Franchisor is not obligated to approve), then each of the following provisions shall apply:

(a) Franchisee specifically acknowledges and agrees that any Website owned or maintained by or for the benefit of Franchisee shall be deemed advertising under this Agreement, and will be subject to (among other things) Franchisor's approval;

(b) Franchisee shall not establish or use any Website without Franchisor's prior written approval;

(c) Franchisee shall adopt and utilize Franchisor's then-current Website wireframe design as an approved template, but may localize the Website wireframe with Franchisor's prior written approval;

(d) 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;

(e) Franchisee shall not use or modify such Website without Franchisor's prior written approval as to such proposed use or modification;

(f) In addition to any other applicable requirements, Franchisee shall comply with the Standards for Websites that Franchisor may periodically prescribe in the Operations Manual or otherwise in writing;

(g) Franchisee shall register any approved domain name in the name of Franchisor or its designee (or if Franchisor acquires the domain name directly, then Franchisee will reimburse Franchisor for the same, along with any and all renewal and related fees);

(h) If required by Franchisor, Franchisee shall establish such hyperlinks to Franchisor's Website and others as Franchisor may request in writing; and

(i) Franchisee shall be solely responsible to ensure compliance of its Website with all applicable laws and regulations, including without limitation, any privacy laws, payment card industry compliance, and Website security.

Franchisee acknowledges that certain information related to Franchisee's participation in Franchisor's Website or Extranet may be considered Confidential Information, including access codes and identification codes. Franchisee's right to participate in Franchisor's Website and Extranet, or otherwise use the Proprietary Marks or System on the Internet or other online communications, will terminate when this Agreement expires or terminates. Unless otherwise approved in writing by Franchisor, Franchisee shall not establish any social media pages using the Proprietary Marks. If Franchisor approves Franchisee's establishment of any social media pages using the Proprietary Marks, such social media pages shall comply with the terms set forth herein which are applicable to a Website, to the fullest extent practical.

7.7.8 Online Use of Proprietary Marks. 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 in any electronic medium. Franchisee will not transmit or cause any other party to transmit advertisements or solicitations by e-mail, social media/networking Websites, or other electronic media without first obtaining Franchisor's written consent as to the content of such e-mail advertisements or solicitations as well as Franchisee's plan for transmitting such advertisements. Without limiting the generality of the foregoing, unless otherwise approved in writing by Franchisor, Franchisee will not use the Proprietary Marks or any part or derivative of the Proprietary Marks or any abbreviation, acronym, or phonetic variation thereof as part of any URL or, domain name, including but not limited to any gaming Website, social networking Website, or marketing/discounting Website; as part of any user name; as part of any unauthorized e-mail address; or as part of any unauthorized software application (app). Additionally, Franchisee will not display on any Website (including commercial Websites, gaming Websites, social media/networking Websites, and marketing and advertising Websites) any of Franchisor's copyrighted works, which include the design portion of its Proprietary Marks, or any menu items or collateral merchandise identified by the Proprietary Marks. In addition, Franchisee shall be solely responsible for compliance with any laws pertaining to Internet marketing and sending e-mails including but not limited to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act of 2003).

7.7.9 Outsourcing. Franchisee may hire a third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, the Computer Upgrades, or the Cash Register System currently required by Franchisor. However, Franchisor expressly reserves the right to, at any time during the Term and upon delivery of written notice to Franchisee, (a) require Franchisee to provide prior written notice and/or obtain Franchisor's prior approval of any such outsourcing arrangements, and (b) elect to require Franchisee to change vendors (including to a vendor that is an Affiliate of Franchisor) as part of an initiative to harmonize technology platforms for Franchised Restaurants.

7.7.10 Changes to Technology. Franchisee and Franchisor acknowledge and agree that changes to technology are dynamic and not predictable within the Term. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, Franchisor had the right to establish, in writing, new Standards for the implementation of technology in the System; and Franchisee will, at its own expense, comply with the new Standards established by Franchisor.

7.8 Guest Satisfaction. Franchisee will use its best efforts to promptly rectify any guest complaints and issues to the reasonable satisfaction of the guest and Franchisor. Regardless of whether Franchisee has been granted a license to issue and redeem Gift Cards, Franchisee will, prior to the opening of the Franchised Restaurant, develop and have available some type of card, certificate, or other promotional material entitling guests to complimentary food and beverages in the Franchised Restaurant ("Comp Card") that the managers of the Franchised Restaurant may give to guests in the event of dissatisfaction with the guest experience at the Franchised Restaurant. Prior to production of the Comp Cards, Franchisee will submit to Franchisor a mock up for Franchisor's written approval. The Comp Cards will clearly state that such cards may only be redeemed at the Franchised Restaurant (or other franchised restaurants operated by Franchisee), and Franchisee will institute all processes necessary to redeem Comp Cards when presented at the Franchised Restaurant. The value of Comp Cards will be excluded from Gross Sales to the extent permitted under the definition of "Gross Sales" herein. Franchisee is solely responsible for compliance with all laws, regulations, and other legal requirements applicable to the issuance, redemption, and expiration of Comp Cards.

7.9 Pricing. To the fullest extent permitted by applicable law, Franchisor reserves the right to establish maximum, minimum, or other pricing requirements with respect to the prices Franchisee charges for products or services offered at or from the Restaurant.

8. ADVERTISING

8.1 General Requirements. Recognizing the importance of the standardization of advertising programs to the furtherance of the goodwill and public image of the System, Franchisor and Franchisee agree that all advertising by Franchisee shall be conducted in a commercially acceptable manner and shall conform to Standards, as approved by Franchisor.

8.2 Annual Marketing Calendar. No later than 30 days prior to the beginning of each calendar year, Franchisee shall submit to Franchisor a detailed marketing calendar for Franchisor's review and approval. Franchisee's annual marketing calendar must contain at least the following information: (a) overall annual budget; (b) planned monthly financial allocation for local marketing; (c) promotions planned and timing for each; and (d) marketing mediums planned to execute the marketing plan monthly and annually. If Franchisee's submission does not comply with at least the minimum requirements set forth in this Section 8.2, such failure constitutes a breach of the Agreement.

8.3 Pre-Approved Advertising. Franchisor may offer from time to time to provide, upon Franchisee's request and at Franchisee's expense, approved local advertising and promotional plans and materials, including, without limitation, Franchisor-created marketing assets that include but are not limited to logos, photography, Website templates, brochure templates, print ad templates, e-mail club templates, and coupons. All such advertising shall be placed in or distributed through such media or channel of communication as approved by Franchisor. Notwithstanding the foregoing, Franchisee will be solely responsible to ensure that any such advertising, promotional plans, and materials, and other marketing assets and templates provided by Franchisor comply with all applicable legal requirements and other restrictions of the jurisdiction in which the Franchised Restaurant is situated, prior to Franchisee's use, and Franchisor will have no liability for any non-compliance.

8.4 New Advertising. Samples of all planned advertising (including, but not limited to Websites, online advertisements, social media sites, billboards, commercials, print ads, posters, brochures, radio ads, in or any other ads that customers can see), not previously approved by Franchisor, must be submitted to Franchisor (via e-mail), for Franchisor's prior approval. Upon receipt of such planned advertising, Franchisor will attempt to notify Franchisee no later than 21 days after receipt of the proposed advertising as to whether or not such advertising has been approved or identify any changes that are necessary to receive approval. If Franchisor does not provide notification within such 21-day period, the materials will automatically be deemed not approved. Franchisee shall not utilize any advertising (including without limitation, all social media) which has not been approved by Franchisor, or which has been subsequently disapproved by Franchisor, which Franchisor can disapprove at any time in its sole discretion. All such advertising shall be placed in or distributed through such media or channel of communication as approved by Franchisor. Notwithstanding Franchisor's approval of any planned advertising, Franchisee will be solely responsible for compliance of the same with all applicable legal requirements and other restrictions of the jurisdiction in which the Franchised Restaurant is situated.

8.5 Minimum Local Advertising Expenditures. Franchisee shall spend in accordance with the Franchisor-approved Annual Marketing Calendar and proportionately to match the actual Franchised Restaurant sales seasonality, the percentage of Gross Sales specified by Franchisor pursuant to Sections 3.3(b) and 3.3(c) for such advertising and promotion in the vicinity of the Franchised Restaurant. If Franchisee fails to spend an amount equal to or greater than the amount required by Section 3.3(b) and 3.3(c) on local marketing and advertising for any calendar year, then Franchisor may require Franchisee to pay to the Marketing Fund the difference between the amount required to be spent per Sections 3.3(b) and 3.3(c) for any calendar year and the actual amount spent on approved local advertising expenditures for such calendar year, or if Franchisor does not then operate a Marketing Fund, Franchisor may require Franchisee to pay such amount to Franchisor.

8.6 Marketing Fund. During the Term, Franchisor will establish and administer a Marketing Fund for the purpose of preparing, maintaining, directing, and distributing promotional, marketing, and advertising materials and providing other advisory and consulting services for franchisees, licensees, partners, and other entities operating the *Kona Grill* brand in the United States. Franchisee will contribute to such fund the Marketing Fund Contribution as determined in accordance with Section 3.3(a) and 3.3(c) hereof. Contributions to the Marketing Fund will be paid at the time and in the manner as described in Section 3.3(a), and subject to the late payment charges described in Section 3.6.

The Marketing Fund will be maintained and administered by Franchisor or its designee as follows:

(a) The underlying goal of the Marketing Fund shall be to maximize general public recognition and acceptance of the Proprietary Marks and to enhance the collective success of all Restaurants. Franchisor and/or its designees will direct all advertising and other programs produced using the Marketing Fund and will have sole discretion to approve or disapprove the creative concepts, materials, and media used in those programs, the placement of advertisements, and the allocation of the money in the Marketing Fund to production, placement, or other costs. In administering the Marketing Fund, Franchisor and its designees are not obligated to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution, or to ensure that Franchisee or any particular Restaurant benefits directly or *pro rata* from the placement of advertising of the expenditure of Marketing Fund monies.

(b) The Marketing Fund may be used to satisfy any and all costs of maintaining, administering, directing, preparing, purchasing, and placing advertising anywhere in the United States (including the cost of preparing and conducting television, radio, magazine, newspaper, and e-commerce advertising campaigns; photography; direct mail and outdoor billboard advertising; public relations activities; and employing advertising agencies or consultants to assist in those activities).

(c) All sums paid by Franchisee to the Marketing Fund will be maintained in a separate account or accounts by Franchisor and/or its designees and may be used to defray any of Franchisor's reasonable operating and overhead costs that Franchisor incurs in activities reasonably related to the administration, management, and direction of the Marketing Fund, including without limitation all costs and expenses for the activities described in this Section 8.6. The Marketing Fund and its earnings will not otherwise inure to the benefit of Franchisor. The Marketing Fund is operated solely as a conduit for collecting and expending the Marketing Fund fees as outlined above. Franchisor and its designees have no fiduciary duty to Franchisee, or any other franchisees, or their respective principals, including Franchisee's Principals with regard to the operation or administration of the Marketing Fund. Franchisor will have the sole authority to determine how monies in the Marketing Fund are utilized.

(d) Franchisor will have no obligation to contribute to the Marketing Fund.

(e) An unaudited statement of the operations of the Marketing Fund will be prepared annually and will be made available to Franchisee upon written request.

(f) Although the Marketing Fund is intended to be of perpetual duration, Franchisor may terminate the Marketing Fund. The Marketing Fund will not be terminated, however, until all monies in the Marketing Fund have been expended or returned to contributing Restaurants (whether franchised or operated by Franchisor or its Affiliates), without interest, on the basis of their respective contributions.

(g) Franchisor reserves the right to structure the Marketing Fund's organization and administration in ways that, in Franchisor's judgment, most effectively and efficiently accomplish the Marketing Fund's objectives. Accordingly, Franchisor may organize or reorganize the Marketing Fund as one or more separate non-profit corporations, regional cooperatives, or other appropriate entities and transfer all or portions of the Marketing Fund's assets to such entity or entities to administer the Marketing Fund. Franchisee will become a member of any such entity designated by Franchisor and, in that regard, to sign a participation agreement and take such other steps as Franchisor reasonably specifies; except that the expenditure and contribution amounts set forth in Section 3.3(c) will remain the same.

(h) In the event Franchisor's designee maintains or administers the Marketing Fund, neither Franchisor nor its officers, directors, employees, or agents shall be liable to Franchisee for any act, error, or omission committed by such designee or in connection with the designation of such designee(s).

(i) Franchisee acknowledges and agrees that amounts contributed to the Marketing Fund may be spent in any location in the United States, and that regardless of where such amounts are allocated, the intent of such expenditures will be to increase the general recognition of the System.

8.7 Advertising Cooperative. In accordance with Section 8.6(g), Franchisor may, but shall not be obligated to, establish (or require Franchisee and other System franchisees or developers to establish) a regional advertising cooperative in the region where the Franchised Restaurant is located for the purposes conducting marketing, advertising, and promotions targeted to such region. If such a cooperative is established, Franchisee shall become a member of such cooperative and contribute thereto on a monthly or other periodic basis in an amount designated by Franchisor. Any amounts required to be contributed to such advertising cooperative will be credited to Franchisee's local advertising expenditure requirements and shall be subject to the maximum limitation set forth in Section 3.3(c).

8.8 Media Contact and Public Commentary. Unless legal requirements or a court order require otherwise, Franchisee must obtain from Franchisor the pre-approval of any public announcement, media contact, or public commentary relating to or about Franchisor, Kona Grill, Inc., or its Affiliates or the *Kona Grill* brand or operations, whether inside or outside the Protected Territory, and the timing of such announcements, statements, or commentary. The content of all media contact, public commentary, and public announcements will be subject to pre-approval by Franchisor's head of marketing or such other representative as may be designated by Franchisor. Franchisee agrees to comply with all of Franchisor's policies regarding media contact and public statements with regard to the *Kona Grill* brand and operations, as the same may be modified by Franchisor from time to time. Under no circumstances will Franchisee or its Affiliates make any comments or statements about pending litigation involving or relating in any way to Franchisor, Kona Grill, Inc., or the *Kona Grill* brand unless Franchisor has authorized the same in writing or as required by legal requirements or court order. In any situation where public disclosure is required by legal requirements or a court order, Franchisee will use its best efforts to notify Franchisor in advance on the basis and scope of the disclosure obligations that require Franchisee to disclose any information relating to Franchisor, Kona Grill, Inc., or the *Kona Grill* brand and will disclose only the minimum amount of information necessary to comply with the applicable legal requirements or court order.

9. REPRESENTATIONS AND WARRANTIES AND COVENANTS

9.1 Representations, Warranties, and Covenants of Franchisee. If Franchisee is not an individual, then Franchisee and each of Franchisee's Principals represent, warrant, and covenant to Franchisor that:

9.1.1 Duly Formed. If Franchisee is a corporation, limited liability company, general or limited partnership, or other form of business entity, it is duly formed and organized, validly existing, and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to enter into this Agreement and perform the obligations contained herein.

9.1.2 Authorization. The execution, delivery, and performance by Franchisee of this Agreement and all other agreements contemplated herein has been duly authorized by all requisite actions on the part of Franchisee and no further actions are necessary to make this Agreement or such other agreements valid and binding upon it and enforceable against it in accordance with their respective terms.

9.1.3 Execution and Performance. Neither the execution, delivery, nor performance by Franchisee of this Agreement or any other agreements contemplated hereby will conflict with, or result in a breach of, any term or provision of Franchisee's charter, by-laws, articles of organization, or partnership agreement and/or other governing documents and any amendments thereto, any indenture, mortgage, deed of trust, non-competition covenant, or other material contract or agreement to which Franchisee is a party, or by which it or any of its assets are bound, or breach any order, writ, injunction, or decree of any court, administrative agency, or governmental body.

9.1.4 Corporate Documents. Certified copies of Franchisee's and Franchisee's Principals (if an entity) charter, by-laws, articles of organization, annual returns, partnership agreement, membership agreement, and/or other governing documents and any amendments thereto, including board of director's or partner's resolutions authorizing this Agreement have been delivered to Franchisor and such documents provide that any Equity Interest in Franchisee and Franchisee's Principals (if an entity) shall be in nominative form only and that bearer shares shall not be permitted. Any amendments or changes to such governing or charter documents subsequent to the date of this Agreement shall not be undertaken without Franchisor's prior written consent.

9.1.5 Ownership Interests. All Equity Interests of Franchisee's Principals in Franchisee are accurately and completely described in Schedule 2 to this Agreement and have been issued in nominative form only. Franchisee will maintain at all times a current list of all owners of record and all beneficial owners of Equity Interests in Franchisee. Franchisee will immediately provide such list to Franchisor upon any change in the information set forth in Schedule 2.

9.2 Financial Statements. Franchisee and, at Franchisor's request, each of Franchisee's Principals have provided Franchisor with their most recent financial statements in the form and for the time periods specified by Franchisor. The financial statements (i) present fairly Franchisee's financial position and the financial position of each of Franchisee's Principals, as applicable, at the dates indicated therein and, with respect to Franchisee, the results of its operations and cash flow for the periods then ended; (ii) are certified as true and correct by

Franchisee's Chief Financial Officer or President, as applicable; and (iii) have been prepared in conformity with generally accepted accounting principles, applied on a consistent basis. No material liabilities, adverse claims, commitments, or obligations of any nature, whether accrued, unliquidated, absolute, contingent, or otherwise, exist as of the date of this Agreement which are not reflected as liabilities on Franchisee's financial statements or those of Franchisee's Principals.

9.3 Franchisee's Principals. Franchisee will notify Franchisor within 10 days following the date that any person previously identified as Franchisee's Principal ceases to qualify as such or that any new person succeeds to or otherwise comes to occupy a position which would qualify such person as one of Franchisee's Principals. Such so-qualified person will immediately execute all documents and instruments (including, as applicable, this Agreement) required by Franchisor to be executed by others in a comparable position; but if there is any conflict between this provision and the transfer provisions of Section 11, the provisions of Section 11 will control.

9.4 Guaranty. As an inducement and as a condition to Franchisor's execution and acceptance of this Agreement, Franchisee's Principals will, jointly and severally, guarantee the performance of Franchisee's obligations, covenants, and agreements under this Agreement, pursuant to the terms and conditions of the Agreement and Guaranty of Franchisee's Principals in the form of Attachment A to this Agreement, and will otherwise bind themselves to the terms of this Agreement as stated herein.

9.5 Non-Competition During Term of Agreement. In consideration of the training described herein and disclosure to Franchisee of the System and the Confidential Information, during the Term, Franchisee, Franchisee's Principals, and their respective Affiliates shall not, directly or indirectly:

(a) Divert or attempt to divert business of any Restaurant or the Franchised Restaurant to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and/or the System; and/or

(b) Employ or seek to employ any person who is employed by Franchisor or by any other franchisee or developer of Franchisor, or induce such person to leave such employment, except as provided in Section 9.5.1 herein; and/or

(c) Except as provided for herein, own, maintain, engage in, or have an Equity Interest in a Competing Business; provided that this provision shall not apply to any Minority Interest collectively held by Franchisee or Franchisee's Principals in any publicly-held corporation listed on a national stock exchange.

9.5.1 If a Franchisee Party desires to make an offer of employment to an employee of Franchisor or its Affiliates, Franchisee must, at least 180 days before the desired hire date, obtain the prior written approval of Franchisor, which Franchisor has the absolute right to withhold. If Franchisor grants its approval, Franchisor will determine an appropriate fee to be paid by Franchisee to compensate Franchisor or its Affiliate for the estimated internal and external costs to locate, hire, and train the employee's replacement, plus a reasonable fee payable to Franchisor or its Affiliates to compensate the Restaurant from which the employee is departing. If a Franchisee Party decides to hire such employee, Franchisee will pay the foregoing fee by the earlier of (a) 60 days after the date the employee accepts a Franchisee Party's offer of employment, or (b) 60 days prior to the date scheduled for the employee's last day of work for Franchisor or its Affiliates.

9.6 Non-Competition after Termination or Non-Renewal of Agreement. In consideration of the training described herein and disclosure to Franchisee of the System and the Confidential Information, for a period of two years after the expiration and non-renewal or termination of this Agreement, or after the approved Transfer by Franchisee and/or Franchisee's Principals, Franchisee, Franchisee's Principals, and their respective Affiliates shall not, directly or indirectly:

(a) Divert or attempt to divert business of any Restaurant or the Franchised Restaurant to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and/or the System;

(b) Employ or seek to employ any person who is employed by Franchisor or by any other franchisee or developer of Franchisor, or induce such person to leave such employment; and

(c) Except as provided for herein, own, maintain, engage in, or have any Equity Interest in a Competing Business which is located within the Protected Territory or within 25 miles from the outer boundaries of the Protected Territory or any Restaurant; provided that this provision shall not apply to any Minority Interest collectively held by Franchisee or Franchisee's Principals in any publicly-held corporation.

9.7 Independent Covenants. Each of the covenants in Sections 9.5 and 9.6 will be construed as independent of any other covenant or provision of this Agreement.

(a) Franchisee and each of Franchisee's Principals understand and acknowledge that Franchisor will have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 9.5 and 9.6, or any portion thereof, without their consent, effective immediately upon notice to Franchisee; and Franchisee and Franchisee's Principals agree that they will comply with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 16.2 hereof.

(b) Franchisee and each of Franchisee's Principals expressly agree that the existence of any claims they may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to the enforcement by Franchisor of the covenants in Sections 9.5 and 9.6.

(c) Franchisee and each of Franchisee's Principals acknowledge that the covenants not to compete contained in Sections 9.5 and 9.6 are reasonable and necessary to protect the business and goodwill of the System and to avoid misappropriation or other unauthorized use of the System and Franchisor's other trade secrets.

(d) Franchisee and each of Franchisee's Principals acknowledge and confirm that Franchisee and Franchisee's Principals possess the education, training, and experience necessary to earn a reasonable livelihood apart from operating a Competing Business.

(e) The time period of the competitive restrictions set forth above will be automatically extended by the time period of any breach of Sections 9.5 or 9.6.

9.8 Breach of Covenants Causes Irreparable Injury. Franchisee acknowledges that if it or any of Franchisee's Principals violates of any covenant set forth in Section 9.5 or 9.6, such conduct or action would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee hereby consents to the issuance of, and will all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an *ex parte* or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

9.9 Additional Covenants. Franchisee shall require and obtain for the benefit of Franchisor execution of the confidentiality and non-competition agreement substantially in the form of Attachment B from any and all of its employees having access to materials or information furnished or disclosed to Franchisee by Franchisor, any of its Affiliates, and any other person Franchisor requires, including, without limitation, all Directors of Operation, General Managers, Assistant General Managers, Executive Chefs, Sous Chefs, Head Sushi Chefs, and other management personnel.

9.10 Non-Liability. Franchisee acknowledges and agrees that Franchisor shall not, by virtue of any approvals, advice, or services provided to Franchisee, assume responsibility or liability to Franchisee or any third parties to which it would not otherwise be subject.

9.11 Performance by Franchisor. Franchisee acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any designee, employee, or agent of Franchisor, as Franchisor may direct.

9.12 Net Worth. Franchisee and Franchisee's Principals shall at all times maintain at all times during the Term of this Agreement sufficient working capital to fulfill their obligations under this Agreement. Within 90 days after the end of Franchisee's tax year, Franchisee will provide audited financial statements for Franchisee and if requested, Franchisee's Principals.

10. PROPRIETARY RIGHTS AND INFORMATION

10.1 Confidential Information. Except as expressly provided herein, Franchisee shall have no right, title, or interest in the Confidential Information. Franchisee and Franchisee's Principals shall only communicate, disclose, or use the Confidential Information as expressly permitted herein or as required by law. Franchisee and Franchisee's Principals shall disclose the Confidential Information only to such of Franchisee's employees, agents, or independent contractors who must have access to it in connection with their employment. The covenant in this Section will survive the expiration, termination, or transfer of this Agreement or any interest in this Agreement and will be perpetually binding upon Franchisee and each of Franchisee's Principals.

10.1.1 Confidentiality Agreements. Franchisee shall cause Franchisee's employees having access to the Confidential Information and any other person Franchisor requires to execute confidentiality and non-competition agreements substantially in the form of Attachment B. Neither Franchisee, Franchisee's Principals, nor their respective employees may at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce the Confidential Information, in whole or in part, nor otherwise make the same available to any unauthorized person.

10.1.2 Improvements. Franchisee is not authorized to make any improvements or modifications of any type or nature to the Confidential Information or the System. If Franchisee makes any unauthorized improvements (as determined by Franchisor) to the Confidential Information or the System, Franchisee and Franchisee's Principals shall each execute an amendment to this Agreement reflecting such improvements and Franchisor's exclusive ownership thereof. All such improvements shall be automatically transferred and assigned to Franchisor and shall become part of the System and be considered Confidential Information. Franchisee agrees to execute in the future such documents or instruments as may be requested by Franchisor to formalize such transfer and assignment.

10.2 Proprietary Marks. Franchisee acknowledges Franchisor's exclusive ownership of, or right to sublicense, the Proprietary Marks and shall neither directly or indirectly, infringe, contest, or otherwise impair Franchisor's exclusive ownership of, and/or license, with respect to the Proprietary Marks either during or after the termination or expiration of this Agreement. Franchisee also expressly acknowledges and agrees that:

(a) The Proprietary Marks will only be used by Franchisee in connection with the operation of the Franchised Restaurant under the System and only in the manner authorized and prescribed by Franchisor herein or by written notification.

(b) Except for the non-exclusive license to use granted herein, Franchisee and Franchisee's Principals acquire no right, title, or interest in (or any goodwill associated with) the System or the Proprietary Marks.

(c) Upon the expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the System or the Proprietary Marks and all goodwill associated with Franchisee's use of the System and the Proprietary Marks will inure to the benefit of Franchisor or Franchisor's licensors, as the case may be.

(d) Franchisee and Franchisee's Principals shall promptly notify Franchisor of any use by any third party of the Proprietary Marks of which Franchisee and Franchisee's Principals know or have reason to know is unauthorized.

(e) Franchisee and Franchisee's Principals shall promptly notify Franchisor of any litigation action or claim instituted by any person or legal entity against Franchisor, Franchisee, or Franchisee's Principals involving the Proprietary Marks and, if necessary, shall execute any and all documents, and render such assistance as may, in the opinion of Franchisor's counsel, be reasonably requested to carry out such defense or prosecution.

(f) Franchisee shall operate, advertise, and promote the Franchised Restaurant under the Proprietary Marks designated by Franchisor, without prefix or suffix, and shall use no other name or mark and shall refrain from using any of the Proprietary Marks in conjunction with any word or symbol without Franchisor's prior written consent. Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name and will obtain Franchisor's approval of its corporate or other legal name before applying for or filing it with the applicable government authority.

(g) This license to use the Proprietary Marks is non-exclusive, and Franchisor has the right: (i) to grant other franchises for the Proprietary Marks, in addition to those franchises already granted to existing franchisees, (ii) to use the Proprietary Marks in connection with the sale of food and other products through the Internet or at wholesale and/or retail outlets in the Protected Territory, and (iii) to develop and establish other systems for the same or similar products and services utilizing the same Proprietary Marks, or any similar or other proprietary marks, and to grant licenses thereto without providing Franchisee any right therein.

(h) Franchisee will use, promote, and offer for sale under the Proprietary Marks only those products and services which meet Franchisor's Standards.

(i) Franchisee will execute all documents requested by Franchisor or its counsel that are necessary to obtain protection for the Proprietary Marks or to maintain their continued validity or enforceability and to take no action that would jeopardize the validity or enforceability thereof.

(j) Franchisor has the absolute right, for any reason, to modify or discontinue the use of any Proprietary Mark and/or use one or more additional or substitute trade or service marks and require Franchisee's use of same. Franchisee will comply therewith within 90 days after notice thereof by Franchisor or such longer time as Franchisor states in such notice.

10.3 Copyrights. Franchisee and Franchisee's Principals acknowledge that Franchisor owns the worldwide copyright and other ownership rights to all materials provided by Franchisor (in all forms or media now or hereafter known) including, without limitation, the Operations Manual, promotional materials, and software. Franchisee also agrees:

(a) If registration of the copyright of any of the materials mentioned above is required by law or deemed advisable by Franchisor, Franchisee agrees to cooperate with and assist Franchisor in obtaining the registration in the name of Franchisor and will not register or attempt to register or assist or be involved in any way with the registration (either directly or indirectly) of such materials;

(b) Franchisee agrees to use proper copyright and other proprietary notices in connection with all copyright materials and conform with Franchisor's Standards; and

(c) Franchisee agrees to promptly cause the execution of any assignments, waivers of rights, or other documents, and take any further actions needed or advisable to ensure that Franchisor has such copyright and other rights described in this Section 10.

10.4 Developed Materials. It is hereby understood and agreed that all formulations, specifications, recipes, menu items, training materials and programs, the Operation Manuals, Standards, and all components of the System provided by Franchisor to Franchisee are the sole and exclusive property of Franchisor. Any additions, modifications, improvements, or supplements to the foregoing (collectively, "Developed Material"), including without limitation all formulations, specifications, recipes, and menu items developed in whole or in part by Franchisee and approved by Franchisor for use in the Franchised Restaurant, whether or not they can be patented or copyrighted, including all right, title, and interest thereto anywhere in the world, shall be the property of Franchisor. Franchisee will, and will ensure that it has any consent necessary to, disclose to Franchisor all Developed Material conceived, developed, or created by Franchisee, Franchisee's Principals, their respective Affiliates, and all of their respective employees, agents and contractors during the Term. Franchisor and its Affiliates will have, and Franchisee hereby grants and agrees to procure from its Principals and its Affiliates and all of their respective employees, agents, and contractors a perpetual, exclusive, and worldwide right to incorporate Developed Material into the System for use in all restaurants operated by Franchisor, its Affiliates and its and their franchisees and licensees. Developed Materials are expressly deemed to be "works-made-for-hire" within the meaning of U.S.

copyright law and shall be automatically, on creation, vested in the Franchisor absolutely without further consideration as of and from the date of creation. If, and to the extent that, any Developed Material does not automatically vest in the Franchisor, the Developed Material shall be held on trust for Franchisor. Franchisee hereby assigns, and shall cause any of its employees, agents, or contractors to assign (by way of present and, where appropriate, future assignment), all intellectual property rights with full title guarantee to Franchisor without further consideration as of and from the date of creation. Franchisee will promptly execute all documents and do all acts as Franchisor may consider necessary or desirable to perfect and protect the right, title and interest of Franchisor in and to all intellectual property rights and interest in such Developed Material. Franchisee shall procure, from its Affiliates, Principals, and its and their respective employees, agents and contractors an irrevocable waiver of any and all moral rights in or to any Developed Material. Without limiting the definition of Developed Material, the parties acknowledge that all registerable and patentable designs, copyrighted works, trade dress, trademarks, and service marks, which will be seen by customers in the Restaurants, or on a Website, will be automatically deemed Developed Material hereunder. Neither Franchisor nor its Affiliates will have any obligation to make any payment to Franchisee or any other person or entity with respect to any Developed Material. Franchisee will not use, nor will it permit the use of, any Developed Material, without obtaining Franchisor's prior written approval. Franchisee acknowledges that the Developed Material may be used by Franchisee only in conjunction with the operation of the Franchised Restaurant and may not be used for any other purpose.

11. TRANSFER OF INTEREST

11.1 Transfer by Franchisor. Franchisor shall have the right to transfer or assign this Agreement, its rights to the Proprietary Marks, and all or any part of its rights or obligations herein to any person or legal entity without the consent of Franchisee or Franchisee's Principals. Upon such transfer by Franchisor, any transferee or assignee of Franchisor shall become solely responsible for all such obligations of Franchisor under this Agreement from the date of transfer or assignment. Without limiting the foregoing, Franchisee acknowledges that Franchisor may sell its assets (including its rights in the Proprietary Marks and the System) to a third party; may offer its securities privately or publicly; may merge, acquire, other legal entities or be acquired by another legal entity; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring. With regard to any or all of the above sales, assignments, and dispositions, Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor or its Affiliates arising from or related to Franchisor's transfer of its rights in this Agreement, the Proprietary Marks, or the System to any other party. Further, Franchisee will issue in writing such acknowledgements, waivers, or consents at a subsequent date in connection with a proposed transfer of this Agreement by Franchisor or an Equity Interest in Franchisor if deemed necessary or desirable by Franchisor or its counsel for the purposes of complying with any Governmental Authority or Governmental Rule. Nothing contained in this Agreement will require Franchisor to remain in the business of operating or licensing the operation of the Restaurants or other businesses or to offer any services or products to Franchisee, whether or not bearing or not bearing the Proprietary Marks, if Franchisor transfers or assigns its rights in or obligations under this Agreement.

11.2 Transfer by Franchisee. Franchisee and Franchisee's Principals understand and acknowledge that the rights and duties set forth in this Agreement are personal to Franchisee and are granted, in part, in reliance upon the skill, aptitude, business, and financial capacity of

Franchisee and Franchisee's Principals and their intention of complying with its terms and conditions. Therefore, if Franchisee and/or Franchisee's Principals desire to Transfer any interest to any individual or entity (including a trust), then such transferring party must first obtain the prior written approval of Franchisor, which Franchisor may withhold in its discretion and business judgment or may condition on any or all of the conditions set forth below. Any such attempted Transfer not approved by Franchisor shall be null and void from its purported inception.

11.2.1 General Conditions. In connection with Franchisor granting the approval of any transfer, Franchisor may, in its sole discretion, require, among other things, satisfaction of any or all of the following:

(a) Franchisee shall be in full compliance with all of the terms and conditions of this Agreement, including, without limitation, all payment obligations;

(b) Franchisee and/or any of Franchisee's Principals shall remain liable for the performance of its obligations contained in this Agreement through the date of Transfer and shall execute all instruments reasonably requested by Franchisor to evidence such liability;

(c) The transferee shall satisfy, in Franchisor's judgment, Franchisor's then-current criteria for a franchisee including, without limitation: (i) education; (ii) business skill, experience, and aptitude; (iii) character and reputation; and (iv) financial resources;

(d) The transferee and all owners of any record or beneficial interest in the capital stock (or other interest) of transferee shall execute all instruments (including a new franchise agreement and guaranty) reasonably requested by Franchisor to evidence acceptance and assumption of all of the terms and conditions of this Agreement. Such new franchise agreement shall contain terms substantially similar with this Agreement, provided that Franchisor may increase the total monthly Royalty and advertising fees contemplated in this Agreement by up to one percentage point; and

(e) Franchisee and Franchisee's Principals (if applicable) must have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates, and the officers, directors, members, shareholders, partners, agents, representatives, independent contractors, servants, and employees of each of them, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and any other agreement between Franchisee or any of Franchisee's Affiliates and Franchisor or any of its Affiliates or under applicable laws, rules, regulations, or orders;

(f) Franchisee pays a transfer fee equal to (i) 50% of the then-current initial franchise fee if Franchisee does not have a majority Equity Interest (as reasonably determined by Franchisor) in the transferee (who is not one of Franchisee's Principals); or (ii) an amount equal to the reasonable costs incurred by Franchisor in connection with the Transfer among Franchisee's Principals only, but in no event less than $15,000;

(g) At the transferee's expense, the transferee's principals or management personnel must attend and successfully complete, as Franchisor determines in its sole discretion, such training programs relating to the development, ownership, operation, and management of Restaurants as Franchisor may designate in its discretion; and

(h) The transferee has complied with Franchisor's then-current application requirements for a new franchise.

11.2.2 Right of First Refusal. In the event that Franchisee and/or any of Franchisee's Principals or any holder of an Equity Interest in Franchisee desire to effectuate a Transfer, Franchisor shall have the right and option, exercisable within 60 days after Franchisor's receipt of all materials and information described in Section 11.2.2(a), (b), (c), and (e) to purchase the interest proposed to be transferred in according with the following:

(a) Franchisee or the proposed transferee shall notify Franchisor in writing of any bona fide proposed Transfer and set forth a complete description of all terms and fees of the proposed Transfer in the manner prescribed by Franchisor, including the prospective transferee's name, address, financial qualifications, and previous five years business experience;

(b) Franchisee shall provide Franchisor with any additional information, agreements, certifications, or documents Franchisor requests for use in its evaluation of whether to exercise its first refusal right;

(c) Upon receipt of Franchisor's request, Franchisee or the proposed transferee shall promptly provide Franchisor with access to any real or personal property, documents, or records relevant to the transaction and to the interest which is the subject of the Transfer. Once Franchisor has received all materials submitted by Franchisee or the proposed transferee and has reviewed all property, records, and documents it has requested, Franchisor shall notify Franchisee or the proposed transferee of its decision to exercise its option to acquire the interest being transferred, and the conditions, if any, under which it will approve the proposed Transfer.

(d) If Franchisor exercises its first refusal right, the transferor shall transfer the interest to Franchisor or to its assignee pursuant to an agreement to purchase which contains the material terms to which the transferor and the proposed transferee has agreed. If the offer or proposed purchase contract omitted any terms customarily addressed in a transfer of an interest of the type which is the subject of the transaction, Franchisor may supply those terms in the purchase agreement and related documents.

(e) If the proposed transferor wishes to make a Transfer, the transferor shall provide Franchisor with a copy of any offer or agreement to purchase, signed by the proposed transferee, together with copies of any documents referenced in the offer or agreement. If all material terms of the proposed sale are not described in the offer or agreement, Franchisee shall provide details of all such terms in its submission to Franchisor, accompanied by the proposed transferee's written agreement to the terms.

(f) In the event the consideration, terms, and/or conditions offered by the third party are such that Franchisor or its nominee may not reasonably be able to furnish the same consideration, terms, and/or conditions, then Franchisor or its nominee, as appropriate, may purchase the interest proposed to be transferred 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, an independent appraiser shall be designated by Franchisor, and such appraiser's determination shall be binding.

Notwithstanding the foregoing, Franchisor's right of first refusal under this Section 11.2.2 will not apply to a proposed Transfer solely among the Franchisee Parties.

11.2.3 Death or Disability. Within 15 days after the death or permanent disability of Franchisee or any of Franchisee's Principals, Franchisee or a representative of Franchisee must notify Franchisor in writing. Any transfer upon death or permanent disability will be subject to the same terms and conditions as described in this Section for any *inter vivos* transfer.

Upon the death of Franchisee (if a natural person) or any Franchisee's Principal who is a natural person and who has an interest in this Agreement, in the Franchised Restaurant, or in Franchisee, the executor, administrator, or other person representative of the deceased will transfer the interest of the deceased to a third party approved by Franchisor within five months after the date of the grant of representation of the deceased Franchisee's or Franchisee's Principal's estate. If no personal representative is designated or appointed and no probate proceedings are instituted with respect to the estate of the deceased, then the distributee of the interest of the deceased must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee will transfer the interest of the deceased to a third party approved by Franchisor within five months after the date of death of the deceased.

Upon the permanent disability of Franchisee (if a natural person) or any of Franchisee's Principals who is a natural person and who has an interest in this Agreement, in the Franchised Restaurant or in Franchisee, Franchisor may require the interest to be transferred to a third party in accordance with the conditions described in this Section 11 within five months after notice to Franchisee. For purposes of this Section 11.2.3, "permanent disability" means any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement or in the Guaranty made part of this Agreement for at least 90 consecutive days, and from which condition recovery within 90 days from the date of determination of disability is unlikely. If the parties disagree as to whether a person is permanently disabled, the existence of permanent disability will be determined by a licensed practicing physician selected by Franchisor, upon examination of the person or if the person refuses to submit to an examination, then (for the purpose of this Section 11.2.3) the person automatically will be considered permanently disabled as of the date of refusal. The costs of any examination required by this Section 11.2.3 will be paid by Franchisor.

If an interest is not transferred upon death or permanent disability as required in this Section 11.2.3, then the failure will constitute a material event of default under this Agreement.

11.2.4 <u>Public Offerings</u>. Equity Interests in Franchisee and Franchisee's Principals may be offered, only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. Such approval will be subject to the following:

(a) All registration materials required for such offering by applicable law shall be submitted to Franchisor for review prior to their being filed with any government agency;

(b) No offering material (for either a public or private offering) shall express or imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance or public offering of Franchisee, Franchisee's Principals, or Franchisor securities. Franchisor may, at its option, require such offering materials to contain a written statement prescribed by Franchisor concerning the limitations described in the preceding sentence;

(c) Franchisee, Franchisee's Principals, and the other participants in the registration and offering must fully indemnify Franchisor in connection with the offering;

(d) For each proposed public offering, other than offerings which are exempt from registration, Franchisee shall pay to Franchisor a non-refundable fee of $15,000, or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees;

(e) Franchisor's receipt of a legal opinion from counsel satisfactory to Franchisor stating (a) that the offering materials and the conduct of the securities offering comply in all material respects with applicable laws in the jurisdiction from which an offer of securities originates or into which an offer of securities is directed, and (b) that neither the conduct nor consummation of the securities offering will result in a violation of any anti-terrorism or anti-money laundering laws; and

(f) Franchisee and Franchisee's Principals shall give Franchisor at least 90 calendar days prior written notice before the effective date of any offering or other transaction covered by this Section 11.2.4.

12. INSURANCE AND INDEMNITY

12.1 Insurance. Prior to the commencement of construction of the Franchised Restaurant and for the Term of this Agreement, Franchisee shall obtain and maintain insurance protecting Franchisee and the Indemnitees against any demand or claim arising or occurring in connection with the construction and operation of the Franchised Restaurant. If Franchisee fails to do so, Franchisor shall have the right to procure such insurance policies on behalf of Franchisee. Franchisee must keep in force, during the Term of this Agreement, the following types of insurance coverage: (i) commercial general liability insurance, including product liability insurance and contractual liability coverage, with minimum limits of $2,000,000 per occurrence and $5,000,000 aggregate; (ii) all risk (aka special form) property coverage on the Restaurant and all fixtures, equipment, supplies, and other property used in the operation of the Restaurant, for full repair and replacement value without any co-insurance; (iii) liquor liability coverage with minimum limits of $2,000,000 per occurrence; (iv) business interruption covering a minimum 12 months loss of income, including coverage for the Royalties; (v) automobile liability insurance, including owned, hired, and non-owned vehicle coverage with a minimum combined single limit of $2,000,000 per claim; (vi) workers' compensation and employer's liability insurance covering all of Franchisee's employees; (vii) umbrella liability insurance, which also includes liquor liability, employers' liability and automobile liability, with minimum limits of $5,000,000. Such policies shall: (A) be primary to any insurance policies maintained by Franchisor, with any such insurance carried by Franchisor considered excess; (B) contain a waiver of subrogation in favor of Franchisor; (C) name the Indemnitees as additional insureds; (D) contain no provision which limits or reduces coverage in the event of a claim by any one or more of the Indemnitees; (E) provide that policy limits shall not be reduced, coverage restricted, canceled, allowed to lapse, or otherwise altered or such policy(ies) amended without Franchisor's consent; and (F) be obtained from reputable insurance companies approved by Franchisor and authorized to do business in all jurisdictions in which the Franchised Restaurant is located. Franchisee will further make any and all contributions to government-administered insurance and other plans and programs in respect of its employees and businesses, as and when required by applicable Governmental Rule and will provide Franchisor with evidence of same upon request. Franchisee will also:

(a) at least 15 days before construction of the Restaurant begins, within 30 days any other time a carrier or coverage is changed, and each year thereafter, deliver to Franchisor certificates of insurance evidencing the types and minimum amounts of required coverage and evidence of the subrogation waiver;

(b) increase the insurance coverage amounts in the amounts indicated by Franchisor, or modify the types of required coverage, upon 30 days prior written notice from Franchisor; and

(c) reimburse Franchisor for any insurance policies obtained by Franchisor on behalf of Franchisee if Franchisee fails to obtain the insurance required by this Section.

12.2 Indemnity.

12.2.1 Indemnification. Franchisee and Franchisee's Principals agree to and hereby, jointly and severally, indemnify, defend (by counsel chosen by Franchisor), and agree to hold harmless each Indemnitee from all Losses and Expenses alleged, incurred, or assessed in connection with:

(a) Franchisee's or any Franchisee's Principal's alleged infringement or alleged violation of any trademark or other proprietary name, mark, or right allegedly owned or controlled by a third party;

(b) The violation, breach, or asserted violation or breach, by Franchisee or any of Franchisee's Principals, of any applicable law, regulation, ruling, standard, or directive or any industry standard;

(c) Libel, slander, or any other form of defamation of Franchisor, the System, or any franchisee operating under the System, by Franchisee or by any of Franchisee's Principals;

(d) The violation or breach by Franchisee or any of Franchisee's Principals, of any warranty, representation, agreement, or obligation in this Agreement or in any other agreement, between Franchisee or its Affiliates and the Indemnitees;

(e) Acts, errors, or omissions of Franchisee, any of Franchisee's Affiliates, or any of Franchisee's Principals and the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of Franchisee and its Affiliates in connection with the activities contemplated under this Agreement, including, without limitation, the construction, opening, and operation of the Franchised Restaurant; and

(f) Any and all labor, employment-related, or workers compensation claims that the employees or independent contractors of Franchisee or Franchisee's Principals may bring against Franchisor or any Indemnitee.

Notwithstanding anything to the contrary contained herein, Franchisee's obligation to indemnify, defend, and hold harmless the Indemnitees does not apply to any cause of action, suit, proceeding, claim, demand, investigation, or inquiry (whether a formal proceeding or otherwise) to the extent resulting from Franchisor's willful misconduct.

12.2.2 Notice and Counsel. Franchisee and each of Franchisee's Principals agree to give Franchisor immediate notice of any Action. Franchisor may engage, at Franchisee's expense, separate counsel to represent the Indemnitees in such Action and/or elect to assume (but under no circumstance is obligated to undertake) the defense and/or reasonable settlement of any Action. Franchisor's election to settle shall not diminish Franchisee's and each of Franchisee's Principal's obligation to defend, indemnify and hold the Indemnitees harmless from all Losses and Expenses.

12.2.3 Settlement and Remedial Actions. In order to protect persons or property, or its reputation or goodwill, or the reputation or goodwill of others, Franchisor may, at any time and without notice, as it, in its sole judgment deems appropriate, consent or agree to settlements or take such other remedial or corrective actions it deems expedient with respect to any Action if, in Franchisor's sole judgment, there are reasonable grounds to believe that:

(a) any of the acts or circumstances enumerated in Section 12.2.1(a) through (f) above have occurred; and

(b) any act, error, or omission as described in Section 12.2.1(e) may result directly or indirectly in damage, injury, or harm to any person or any property.

12.2.4 Expenses. All Losses and Expenses incurred under this Section 12.2 shall be chargeable to and paid by Franchisee or any of Franchisee's Principals pursuant to Franchisees obligations of indemnity under this Section 12.2 regardless of any actions, activity, or defense undertaken by Franchisor or the subsequent success or failure of such actions, activity, or defense.

12.2.5 Third Party Recovery. Under no circumstances shall the Indemnitees be required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain a claim for indemnification against Franchisee or any of Franchisee's Principals. Franchisee and each of Franchisee's Principals agree that the failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable from Franchisee or any of Franchisee's Principals by the Indemnitees.

12.2.6 Third Party Liability. The Indemnitees do not assume any liability whatsoever for acts, errors, or omissions of any third party with whom Franchisee, any of the Franchisee's Principals, Franchisee's Affiliates, or any of the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of Franchisee, its Principals, or their Affiliates may contract, regardless of the purpose. Franchisee and each of its Principals will hold harmless, defend, and indemnify the Indemnitees for all Losses and Expenses which may arise out of any acts, errors, or omissions of Franchisee, Franchisee's Principals, their respective Affiliates, and the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of each and any such other third parties without limitation and without regard to the cause or causes thereof or the strict liability or negligence of Franchisor or any other party or parties arising in connection therewith, and whether such negligence be sole, joint, or concurrent, or active or passive (except as otherwise expressly provided in the last grammatical paragraph of Section 12.2.1).

12.2.7 Survival. Franchisee and Franchisee's Principals expressly agree that the terms of this Section 12 shall survive the termination, expiration, or transfer of this Agreement or any interest herein.

13. TERM, RENEWAL, AND TERMINATION

13.1 Term. Unless terminated as provided for herein, the term of this Agreement shall commence upon the Execution Date and shall expire 15 years thereafter. Furthermore, Franchisee shall cause the term of any real property lease agreement Franchisee executes for the Franchised Restaurant to match the duration of the initial Term or renewal Term, as the case may be. In addition, Franchisee shall cause any such real property lease agreement to permit Franchisee to assign such agreement to Franchisor without any fee or modification thereof, without the landlord's consent.

13.2 Renewal. The parties may, upon mutual agreement, renew this Agreement beyond the initial Term for an agreed-to period of time, provided that at the end of the initial Term:

(a) Franchisee has given Franchisor written notice of its desire to renew not less than 12 months nor more than 18 months prior to the end of the initial Term;

(b) Franchisee shall have during the Term timely completed all scheduled refurbishments and upgrades in accordance with Section 6.9 and shall otherwise complete, or agree in writing to complete, such refurbishments and upgrades to the premises (in the manner contemplated by Section 6.9 or otherwise) and such other maintenance, refurnishing, renovating, or remodeling of the premises and equipment that Franchisor may require in its discretion to meet Franchisor's then-current Standards;

(c) Franchisee is in compliance with all of the terms of this Agreement and any other agreement between Franchisee (or any of its Affiliates) and Franchisor (or any of its Affiliates);

(d) Franchisee shall have executed upon renewal hereunder Franchisor's then-current form of franchise agreement, which agreement may have different terms from this Agreement including, without limitation, the Royalty fee, contributions, and System assessments, for a term equal to the renewal terms hereof (unless otherwise agreed to by Franchisor), and any other ancillary agreements as Franchisor may then require;

(e) Franchisee shall have paid the then-current initial franchise fee on a pro rata basis for the number of years agreed to in the renewal term; and

(f) Franchisee and Franchisee's Principals shall execute a general release, in a form prescribed by Franchisor, of any and all claims against the Indemnitees.

13.3 Termination.

13.3.1 Automatic Termination. Franchisee will be in default under this Agreement, and all rights granted by this Agreement will automatically terminate without notice to Franchisee without need of a judicial or arbitral declaration to that effect and without prejudice to the corresponding collection of damages:

(a) If Franchisee becomes insolvent or makes a general assignment for the benefit of creditors;

(b) If Franchisee files a voluntary petition under any bankruptcy or debtor's relief law or admits in writing its inability to pay its debts when due;

(c) If Franchisee is adjudicated bankrupt or insolvent in proceedings filed against Franchisee under any applicable law; 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;

(d) If proceedings for a composition with creditors under any applicable law is instituted by or against Franchisee;

(e) If a final judgment against Franchisee in any amount Franchisor deems material (but in no event will an amount below $25,000 be deemed material) remains unsatisfied or of record for 30 days or longer (unless an appeal bond is filed and an appeal timely prosecuted);

(f) If Franchisee is dissolved;

(g) If Franchisee, or any of Franchisee's Principals, makes any offer, attempts to offer, solicits an offer, or takes steps to offer publicly any interest in Franchisee in violation of Section 11.2.4;

(h) If execution is levied against Franchisee's business or property in any amount Franchisor deems material (but in no event will an amount below $25,000 be deemed material);

(i) If suit to foreclose any lien or mortgage against the Franchised Restaurant premises, equipment, business or any asset thereof in any amount Franchisor deems material (but in no event will an amount below 25,000 be deemed material) is instituted against Franchisee and not dismissed within 30 days;

(j) If the real or personal property of Franchised Restaurant will be sold after levy thereupon by any sheriff, marshal, or constable;

(k) If any of Franchisee's Principals violates the requirements for Transfers contained in Section 11; or

(l) If a violation of the noncompetition or nondisclosure covenants set forth in Section 9.5, 9.6, or Article 10 shall occur.

13.3.2 <u>Termination upon Notice</u>. This Agreement shall terminate immediately upon notice from Franchisor to Franchisee without providing Franchisee the right to cure such default, without need of a judicial or arbitral declaration to that effect, and without prejudice to the corresponding collection of damages, if:

(a) Franchisee ceases to do business at the Franchised Restaurant; or

(b) Franchisee or any of Franchisee's Principals cause a threat or danger to the public health or safety in the construction or operation of the Franchised Restaurant; or

(c) Franchisee or any of Franchisee's Principals is convicted of, or pleads *nolo contendere* (or equivalent plea under local law) to a felony (or crime of similar import under local law) or any other crime or offense that is reasonably likely, in the opinion of Franchisor, to adversely affect the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein; or

(d) Franchisee or any of Franchisee's Principals, as applicable, breach any of the representations and warranties in Sections 9 and 17 hereof; or

(e) Franchisee or any of Franchisee's Principals discloses or divulges the contents of the Operations Manual or other trade secret or Confidential Information provided Franchisee by Franchisor contrary to the provisions of this Agreement; or

(f) Franchisee fails to maintain the insurance required by Section 12.1; or

(g) Franchisee knowingly maintains false books or records, or submits any false reports to Franchisor; or

(h) Franchisee operates the Franchised Restaurant or sells products or services authorized by Franchisor for sale at the Franchised Restaurant from a location which has not been approved by Franchisor, or sells unauthorized products or services at the Franchised Restaurant; or

(i) Franchisee fails to timely locate and obtain Franchisor's approval of a Site in accordance with the timeframes set forth in the Development Agreement or, if applicable, the Site Selection Addendum attached hereto; or

(j) Franchisee fails to timely construct or refurbish the Franchised Restaurant in accordance with Article 6 hereof; or

(k) Franchisee fails to timely open the Franchised Restaurant for business as a Restaurant by the date described in Section 6.8 and as required in Schedule 1; or

(l) Franchisee at any time ceases to operate or otherwise abandons the Franchised Restaurant, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Restaurant is located. This provision will not apply if, through no fault of Franchisee, the premises are damaged or destroyed by an event of Force Majeure, provided that Franchisee complies with the 90 calendar day requirements set forth in Section 1.23 of this Agreement, or applies for Franchisor's approval to relocate or reconstruct the premises within 30 days after the event and Franchisee diligently pursues the reconstruction or relocation after Franchisor's approval. Franchisor will not unreasonably withhold its approval to relocate or reconstruct the premises after an event of Force Majeure, but Franchisor may condition its approval upon Franchisee's payment of an agreed minimum fee to Franchisor during the period in which the Franchised Restaurant is not in operation and the replacement Restaurant must be located in the same Protected Territory; or

(m) Franchisee fails to obtain execution of the covenants and related agreements required under Section 9.8 within 30 days after being requested to do so by Franchisor; or

(n) Franchisee misuses or makes any unauthorized use of the Proprietary Marks or otherwise materially impairs the goodwill associated therewith or Franchisor's rights therein and Franchisee fails to cure that default within 24 hours after notice from Franchisor; or

(o) Franchisee or any of Franchisee's Principals engage in any act, conduct, or practice which Franchisor, in its sole judgment, deems to be deceptive, misleading, unethical, or otherwise contrary to or in conflict with the reputation and image of the System.

13.3.3 Termination with 10-Day Notice. Franchisee shall have 10 days after its receipt from Franchisor of a written notice to remedy Franchisee's failure, refusal, or neglect to pay promptly any monies due under this Agreement or to submit the financial information or other reports required by Franchisor under this Agreement. If such default is not cured within such cure period, this Agreement shall terminate without further notice to Franchisee without need of a judicial or arbitral declaration to that effect and without prejudice to the corresponding collection of damages effective immediately upon the expiration of the 10-day period.

13.3.4 Termination with 30-Day Notice. Except as otherwise provided in this Article 13, Franchisee shall have 30 days after its receipt from Franchisor of a written notice within which to remedy any default of the terms of this Agreement and the attachments hereunder and provide evidence thereof to Franchisor. If any such default is not cured within such cure period, this Agreement shall terminate without further notice to Franchisee, without need of a judicial or arbitral declaration to that effect and without prejudice to the corresponding collection of damages effective immediately upon the expiration of the 30-day period.

13.3.5 Deferral of Termination. Notwithstanding anything to the contrary contained in this Article 13, Franchisor, in its sole discretion, may elect to waive or defer any termination of this Agreement based on Franchisee's breach. No such waiver or deferral will be effective unless such waiver or deferral is provided by Franchisor in writing.

13.4 Obligations upon Termination or Expiration. Upon termination or expiration of this Agreement for any reason, all rights of Franchisee under this Agreement will immediately terminate, and Franchisee must comply with the following, which requirements survive the termination of this Agreement:

(a) Amounts Due. Franchisee will promptly pay to Franchisor and its Affiliates all sums due under this Agreement and any other agreements, including, without limitation, all Royalties, advertising fees, damages, costs, expenses, and reasonable attorneys' fees incurred by Franchisor by reason of default on the part of Franchisee, whether or not the expenses occur before or after the termination or expiration of this Agreement.

In addition, Franchisee and Franchisee's Principals will pay to Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor in connection with obtaining any remedy available to Franchisor for any violation of this Agreement and subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 13.4.

(b) Franchised Restaurant. Franchisee will immediately Cease to Operate the Franchised Restaurant and Cease to Use the Proprietary Marks, the System, and the Operations Manual in any manner including any advertising, equipment, format, confidential methods, procedures, and techniques associated with the Franchised Restaurant, the Proprietary Marks, the System, and the Operations Manual, and shall not thereafter hold itself out as a former franchisee of Franchisor.

(c) Operations Manual. Franchisee shall immediately return all manuals, including the Operations Manual, records, files, instructions, correspondence, and all materials related to operating the Franchised Restaurant, and shall retain no copy or record of any of the foregoing, excepting only Franchisee's copy of this Agreement and of any correspondence between the parties, and any other documents which Franchisee and Franchisee's Principals reasonably need for compliance with any provision of law.

(d) Proprietary Marks. Franchisee will immediately Cease to Use in any manner whatsoever, any Proprietary Marks and distinctive trade dress, forms, slogans, signs, symbols, or devices associated with the System.

(e) Assumed Name. Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains any of the Proprietary Marks, and Franchisee and Franchisee's Principals shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within 30 days after termination or expiration of this Agreement.

(f) Confidentiality and Non-Competition. Franchisee and Franchisee's Principals will comply with the non-competition covenants and the restrictions on confidential information contained in Sections 9.5, 9.6, and 10.1 of this Agreement. Any other person required to execute similar covenants pursuant to Sections 9.8 and 10.1 will also comply with those covenants.

(g) Leases. If Franchisee leases the Franchised Restaurant premises or leases any equipment used in the operation of the Franchised Restaurant from a third party, then Franchisee will, at Franchisor's option, assign to Franchisor any interest that Franchisee has in the lease or sublease. Franchisor may exercise this option at any time within 30 days from and including either the date of termination or (subject to any existing right to renew) expiration of this Agreement. The time for closing on the assignment of the lease described in this Section 13.4(g) will be on the date of or no later than 10 days after Franchisor's exercise of its option hereunder unless Franchisor is also exercising its purchase option under Section 13.4(h), in which case the date of the closing will be on the same closing date prescribed for the purchase option. In any event, closing will take place at Franchisor's corporate offices or at such other location Franchisor may designate.

(h) Purchase Option. Except as provided in Section 13.4(g) (with respect to leased equipment), Franchisor will have the option, to be exercised within 30 days from and including either the date of termination or expiration of this Agreement (unless appraisals are needed as described below, in which case such option shall be exercised within 30 days after such appraisals are provided), to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, motor vehicles, supplies, and inventory of Franchisee related to the operation of the Franchised Restaurant, at Franchisee's cost or fair market value, whichever is less. Franchisor will purchase Franchisee's assets only and will assume no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If the parties cannot agree on the fair market value within 30 days after Franchisor's exercise of its option, fair market value will be determined by two appraisers, with each party selecting one appraiser, and the average of their determinations will be binding. In the event of such appraisal, each party will bear its own legal and other costs and will split the appraisal fees equally. Within 30 days after Franchisor's receipt of such appraisal, the parties' agreement as to fair market value or Franchisor's receipt of such information and materials from Franchisee as Franchisor may prescribe evidencing Franchisee's cost, as applicable, Franchisor shall have the right to rescind its exercise of such option. If Franchisor elects to exercise any option to purchase herein provided, it will have the right to set off all amounts due from Franchisee to Franchisor or any of its Affiliates (including any costs for the appraisal) and any costs incurred in connection with any escrow arrangement (including reasonable legal fees) against any payment therefor and will pay the remaining amount in cash.

With respect to the option described in this Section 13.4(h), Franchisee will deliver to Franchisor, in a form satisfactory to Franchisor, such warranties, deeds, releases of lien, bills of sale, assignments, and any other documents and instruments necessary in order to perfect Franchisor's title and possession in and to the properties being purchased or assigned and to meet the requirements of all tax and government authorities. If, at the time of closing, Franchisee has not obtained all of these certificates and other documents, Franchisor may, in its sole discretion, place the purchase price or rent in escrow pending issuance of any required certificates or documents.

The time for closing of the purchase and sale of the properties described in this Section 13.4(h) will be a date not later than 60 days after the purchase price is determined by the parties or the determination of the appraisers, or such date Franchisor receives and obtains all necessary permits and approvals, whichever is later, unless the parties mutually agree to designate another date. Closing will take place at Franchisors corporate offices or at such other location as Franchisor may designate.

(i) Modification of Premises. If Franchisor does not elect to exercise the options under Sections 13.4(g) or 13.4(h) as applicable, to acquire the lease or sublease for the Franchised Restaurant premises, then Franchisee will make all modifications or alterations to the Franchised Restaurant premises that are necessary to distinguish the appearance of the Franchised Restaurant from that of other Restaurants and will make any specific additional changes that Franchisor reasonably requests. If Franchisee fails or refuses to comply with the requirements of this Section 13.4(i), then Franchisor may enter upon the premises of the Franchised Restaurant, without being guilty of trespass or any other crime or tort, to make or cause to be made the changes required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

(j) Assignments. If requested by Franchisor, Franchisee will (at Franchisee's expense) assign to Franchisor all rights to the: (a) telephone numbers of the Franchised Restaurant and any related business listings; and (b) all e-mail addresses, URLs, domain names, Internet listings, and Internet accounts related to the Franchised Restaurant. Franchisee will execute all forms and documents required by Franchisor, by any telephone company, by any Internet service provider, and by any other service provider at any time to transfer those services and numbers to Franchisor. This power of attorney will survive the expiration or termination of this Agreement. Franchisee will thereafter use different telephone numbers, e-mail addresses, and Internet and other listings at or in connection with any subsequent business conducted by Franchisee.

14. REMEDIES

14.1 Remedies. Upon the occurrence of an uncured breach, Franchisor may exercise one or more of the following remedies or such other remedies as may be available at law or in equity (each of the following remedies are non-exclusive and non-cumulative):

14.1.1 Cure. Franchisor, at Franchisor's discretion and without obligation, may cure such breach at Franchisee's expense and, in connection therewith, Franchisee (i) hereby grants to Franchisor all rights and powers necessary or appropriate to accomplish such cure; (ii) shall indemnify and hold the Indemnitees harmless from and against all costs, expenses (including reasonable fees of counsel and other engaged professionals), liabilities, claims, demands, and causes of action (including actions of third parties) incurred by or alleged against any Indemnitee in connection with Franchisor's cure; and (iii) shall reimburse or pay such costs or damages within 10 days of receipt of Franchisor's invoice therefor; and/or

14.1.2 Specific Enforcement. Franchisor may, in addition to pursuing any other remedies, specifically enforce Franchisee's and Franchisee's Principals' obligations, covenants, and agreements or obtain injunctive or other equitable relief in connection with the violation or anticipated violation of such obligations, covenants, and agreements without the necessity of showing (i) actual or threatened harm; (ii) the inadequacy of damages as a remedy; or (iii) the likelihood of success on the merits, and without being required to furnish bond or other security. Nothing in this Agreement shall impair Franchisor's right to obtain equitable relief; and/or

14.1.3 Reduction of Protected Territory. Franchisor, in its sole discretion, may completely terminate or, alternatively, reduce the Protected Territory granted Franchisee pursuant to Section 2.2. If Franchisor elects to reduce the Protected Territory, then this Agreement will remain in effect and will be considered to be automatically amended accordingly, upon written notice to Franchisee, in each case, without need of a judicial or arbitral declaration to that effect and without prejudice to the corresponding collection of damages.

15. GOVERNING LAW; DISPUTE RESOLUTION

15.1 Governing Law. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 *et seq.*) or other federal law, the internal laws of the State of Arizona (without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of laws of any other jurisdiction) shall govern all matters arising out of or relating to this Agreement and its attachments and schedules, the relationship between the parties pertaining to this Agreement, and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement and any disputes or controversies arising therefrom.

15.2 Mediation. Both Franchisee and Franchisor will attempt in good faith to settle any Claim. If Franchisor and Franchisee are unable to do so, then they will submit the Claim (except as set forth in Section 15.4 below) to non-binding mediation, which will be conducted in the Scottsdale, Arizona area before a single mediator agreed to by all parties to the mediation. Mediation will be conducted in accordance with the mediation rules of the American Arbitration Association, ("AAA"), but mediation is not required to be administered by the AAA. If the parties cannot reach agreement regarding the selection of the mediator within a reasonable period of time (not to exceed 15 days) after either party has notified the other of its desire to seek mediation, then a mediator must be selected in accordance with the AAA rules governing mediation. Unless otherwise agreed by the parties, the mediator must have knowledge and experience relating to franchising or the casual dining industry. No mediator chosen pursuant to this Section 15.2 shall be related to or affiliated with Franchisor, Franchisee, either party's Affiliates, any of Franchisee's Principals, or any officer, director, employee, agent, or representative of any of the foregoing. The costs and expenses of mediation, including compensation of the mediator (but excluding attorneys' fees and travel-related costs incurred by either party in connection with the mediation), shall be borne by the parties equally. If the parties are unable to resolve the Claim within 90 days after the mediator has been appointed, unless such time period is extended by written agreement of the parties, then either party may bring a legal proceeding in accordance with Section 15.3 below. Franchisor and Franchisee agree that statements made in any such mediation proceeding will not be admissible for any purpose in any subsequent legal proceeding.

15.3 Litigation. With respect to any Claims which are not finally resolved through mediation as provided in Section 15.2 above, the parties irrevocably submit themselves to the jurisdiction of the state and the federal district courts located in Maricopa County in the state of Arizona and hereby waive all questions of personal jurisdiction for the purpose of carrying out this provision. Franchisor and Franchisee agree that service of process may be made upon them in any proceeding relating to or arising out of this Agreement or the relationship created by this Agreement by any means allowed by the state of Arizona or federal law.

15.4 Extraordinary Relief. Notwithstanding anything to the contrary in this Article 15, Franchisor shall be entitled to seek and obtain injunctive relief in any court of competent jurisdiction without submitting a Claim to mediation or arbitration if the Claim relates to ongoing or threatened conduct that will cause Franchisor loss or damages, under the applicable rules for obtaining restraining orders and preliminary injunctions (or similar relief available in the jurisdiction where the Site is located). Furthermore, notwithstanding anything to the contrary in this Article 15, Franchisor and Franchisor's Affiliates have the right to commence a civil action in any court of competent jurisdiction against Franchisee or take other appropriate action for the following reasons: (i) to collect sums of money due to Franchisor; (ii) for infringement of the Proprietary Marks or other violation of Franchisor's intellectual property rights; (iii) to compel Franchisee to compile and submit required reports to Franchisor; or (iv) to permit evaluations or audits authorized by this Agreement.

15.5 Venue. If any cause of action, claim, suit, or demand allegedly arising from or related to the terms of this Agreement or the relationship of the parties pertaining to this Agreement and the transactions contemplated thereby is not, for any reason, subject to arbitration under Section 15.3 above, or if legal proceedings are otherwise required to enforce an arbitration award or for Franchisor to seek extraordinary relief, then Franchisee and Franchisee's Principals irrevocably (i) submit themselves to the exclusive jurisdiction of the State Courts of Arizona, located in Maricopa County, Arizona, and the United States Federal District Court for the District of Arizona, Phoenix Division; (ii) waive all questions of personal jurisdiction for the purpose of effectuating this provision; (iii) agree that service of process may be made upon any of them in any proceeding relating to, or arising out of, this Agreement by any means allowed by Arizona or Federal law; and (iv) agree that venue is proper for any such proceeding in Maricopa County, Arizona. Notwithstanding the foregoing, Franchisor has the right to bring any cause of action, claim, suit, or demand in any court with jurisdiction over matters occurring at the Franchised Restaurant, or in any other jurisdiction, including where Franchisee is domiciled or based.

15.6 Fees and Costs. The party prevailing in a judicial proceeding or appeal thereof will be awarded its costs and expenses including, but not limited to, reasonable accounting, paralegal, expert witness fees, attorneys' fees, and costs of court, whether incurred prior to, in preparation for, or in contemplation of the filing of any written demand, claim, action, hearing, or proceeding to enforce the obligations of this Agreement.

15.7 Limitation of Claims. Franchisee will not assert any claim or cause of action against Franchisor, its officers, directors, shareholders, employees, or Affiliates after two years following the event giving rise to such claim or cause of action.

16. MISCELLANEOUS

16.1 Independent Contractors. The relationship created by this Agreement is not a fiduciary, special, or any other similar relationship, but rather is an arm's-length business relationship, and Franchisor does not owe Franchisee any duties except as expressly provided in this Agreement. Franchisee is an independent contractor, and nothing in this Agreement is intended to, or does in fact, constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer, or servant of the other for any purpose. During the Term of this Agreement, Franchisee will hold itself out to the public as an independent contractor conducting the operations of the Franchised Restaurant pursuant to the rights granted by Franchisor. Nothing in this Agreement authorizes Franchisee or any of its Principals 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 Franchisor will in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of Franchisee or any of Franchisee's Principals or any claim or judgment arising therefrom. All employees hired by Franchisee or working for Franchisee or its Affiliates are Franchisee's or its Affiliate's employees and will not, for any purpose, be deemed Franchisor's employees or employees of any of Franchisor's Affiliates, nor will be they be subject to Franchisor's control. Franchisor has no authority to hire, fire, promote, demote, or discipline any of Franchisee's or its Affiliate's employees or take any disciplinary action whatsoever against any of them. Additionally, Franchisee must communicate to all employees that Franchisee, not Franchisor, is their employer; and Franchisee must ensure that no payroll checks or other employment-related documents (such as job applications and W-2s) contain or reference the Marks or Franchisor's name. Each of the parties will file its own tax, regulatory, and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

16.2 Entire Agreement. This Agreement and the attachments hereto constitute the entire agreement between Franchisor, Franchisee, and Franchisee's Principals concerning the subject matter hereof. All prior agreements, discussions, representations, warranties, and covenants are merged herein. THERE ARE NO WARRANTIES, REPRESENTATIONS, COVENANTS, OR AGREEMENTS, EXPRESS OR IMPLIED, BETWEEN THE PARTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. Except those permitted to be made unilaterally by Franchisor, any amendments or modifications of this Agreement shall be in writing and executed by Franchisor and Franchisee. Notwithstanding the foregoing statements in this Section 16.2, nothing in this Agreement and the attachments, schedules, and exhibits hereto is intended to disclaim any of Franchisor's representations contained in the franchise disclosure document, if so provided to Franchisee.

16.3 Judgment; Discretion. FRANCHISEE AND FRANCHISOR ACKNOWLEDGE THAT VARIOUS PROVISIONS OF THIS AGREEMENT SPECIFY CERTAIN MATTERS THAT ARE WITHIN THE DISCRETION OR JUDGMENT OF FRANCHISOR OR ARE OTHERWISE TO BE DETERMINED UNILATERALLY BY FRANCHISOR. IF THE EXERCISE OF FRANCHISOR'S DISCRETION OR JUDGMENT AS TO ANY SUCH MATTER IS SUBSEQUENTLY CHALLENGED, THE PARTIES TO THIS AGREEMENT EXPRESSLY DIRECT THE TRIER OF FACT THAT FRANCHISOR'S RELIANCE ON A BUSINESS REASON IN THE EXERCISE OF ITS DISCRETION OR JUDGMENT IS TO BE VIEWED AS A REASONABLE AND PROPER EXERCISE OF SUCH DISCRETION OR

JUDGMENT, WITHOUT REGARD TO WHETHER OTHER REASONS FOR ITS DECISION MAY EXIST, WITHOUT REGARD TO WHETHER THE TRIER OF FACT WOULD INDEPENDENTLY ACCORD THE SAME WEIGHT TO THE BUSINESS REASONS, AND WITHOUT REGARD TO WHETHER SUCH DISCRETION OR JUDGMENT IS EXERCISED IN THE BEST INTERESTS OF FRANCHISEE.

16.4 No Waiver. Either party's failure to exercise any right or remedy or to enforce any obligation, covenant, or agreement herein shall not constitute a waiver by, or estoppel of, such party's right to enforce strict compliance with any such obligation, covenant, or agreement. No custom or practice shall modify or amend this Agreement. Either party's waiver of, or failure or inability to enforce, any right or remedy shall not impair such party's rights or remedies with respect to subsequent default of the same, similar, or different nature. Acceptance of any payment shall not waive any default.

16.5 Severability. If all or any portion of any covenant contained herein are held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee and Franchisee's Principals expressly agree to be bound by any lesser covenant subsumed within the terms of the covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement. Notwithstanding the above, should any term, covenant, or provision hereof, or the application thereof, be determined by a valid, final, non-appealable order to be invalid or unenforceable, this Agreement shall be deemed amended to delete therefrom the term or provision so held to be invalid or unenforceable and all of the remaining terms, covenants, or provisions hereof shall continue in full force and effect without regard to the invalid or unenforceable provision. In such event, such term, covenant, or provision shall be deemed modified to impose the maximum duty permitted by law and such term, covenant, or provision shall be valid and enforceable in such modified form as if separately stated in and made a part of this Agreement. Notwithstanding the foregoing, if any term hereof is so determined to be invalid or unenforceable and such determination adversely affects, in Franchisor's absolute discretion, Franchisor's ability to preserve its rights in, or the goodwill underlying, the Proprietary Marks, the System, and/or the Confidential Information, or materially affects Franchisor's other rights hereunder or its ability to receive and enjoy the economic benefits of this Agreement (including those provisions requiring the payment by Franchisee of liquidated damages or interest on past due payments or amounts under the indemnity provided by Franchisee) or to protect the System or the Proprietary Marks (including the covenants regarding non-competition and confidentiality), Franchisor may terminate this Agreement immediately upon notice to Franchisee without need of a judicial declaration to that effect and without prejudice to the corresponding collection of damages.

16.6 Notice. All notices required or desired to be given hereunder shall be in writing and shall be sent by electronic mail, personal delivery, or expedited delivery service, to the following addresses or such other addresses as designated addresses or such other addresses as designated by Franchisor or Franchisee in writing pursuant to this Section:

Notices to Franchisor:	Kona Grill, Inc. 15059 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85254 Attn: Carlos de Leon Vice President – Global Development

Tel: 480-922-8100
Email: deleon@konagrill.com

With an electronic copy to: Tracy Durchslag, Esq.
Tel: 602-740-0291
Email: tracy@durchslaglaw.com

Notices to Franchisee: [●]
Tel: [●]
Email: [●]

Notices posted by personal delivery, expedited delivery service, or electronic mail shall be deemed given upon receipt. Notice to Franchisee shall constitute notice to Franchisee's Principals.

16.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.

16.8 Headings. The section headings in this Agreement are for convenient reference only and shall be given no substantive or interpretive effect.

16.9 Further Assurances. Franchisor and Franchisee shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

16.10 Compliance with Laws. Franchisee agrees to comply at its sole expense with all laws and regulations applicable to this Agreement and the operation of the Franchised Restaurant. Copies of all inspection reports, warnings, certificates, and ratings, issued by any governmental entity during the Term in connection with the conduct of the Franchised Restaurant which indicate Franchisee's failure to meet or maintain the highest governmental standards (such as, without limitation, a sanitation rating or grade of "A" or its equivalent) or less than full compliance by Franchisee with any applicable law, rule, or regulation, shall be forwarded to Franchisor by Franchisee within five days of Franchisee's receipt thereof.

17. ACKNOWLEDGMENTS

17.1 Independent Investigation. Franchisee and Franchisees Principals acknowledge that they have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that the success of this business venture involves substantial business risks and will largely depend upon the ability of Franchisee. Franchisor expressly disclaims making, and Franchisee and Franchisees Principals acknowledge that they have not received or relied on, any warranty or guaranty, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

Franchisee's Principals Initials, individually and on behalf of Franchisee ____________

17.2 Opportunity to Assess Risks. Franchisee and Franchisee's Principals acknowledge that they have received, read, and understand this Agreement and the related Attachments and agreements and that Franchisor has afforded them sufficient time and opportunity to consult with advisors selected by Franchisee about the potential benefits and risks entering into this Agreement.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee ____________

17.3 No Extraneous Promises. Franchisee and Franchisee's Principals confirm and acknowledge that no written or oral agreements, promises, commitments, undertakings, or understandings were made to or with Franchisee that are not expressly set forth in this Agreement and any duly executed amendment or addendum attached to this Agreement. Notwithstanding the foregoing, nothing in these acknowledgements or otherwise in this Agreement disclaims or requires Franchisee to waive reliance on any representation Franchisor made in the franchise disclosure document (including its exhibits and amendments) that Franchisor delivered to Franchisee in connection with this franchise offering, unless Franchisor was exempt from providing Franchisee such disclosure document.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee _____________

17.4 No Extraneous Inducements. Franchisee and Franchisee's Principals confirm and acknowledge that no representation, warranty, guaranty, or promise, other than those expressly set forth in this Agreement, was made by Franchisor or any other person to induce Franchisee to sign this Agreement. Franchisee and Franchisee's Principals recognize that neither Franchisor nor any other party can guarantee Franchisee's business success or state the exact costs of opening and operating the Franchised Restaurant and that such success and costs will depend primarily upon Franchisee's own efforts and business ability. Franchisee and Franchisee's Principals also recognize that any new business venture is speculative.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee _____________

17.5 Commercial Relationship. Franchisee and Franchisee's Principals acknowledge that this Agreement creates an arm's-length commercial relationship that cannot and will not be transformed into a fiduciary or other "special" relationship by course of dealing, by any special indulgences or benefits that Franchisor bestows on Franchisee, or by inference from a party's conduct.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee _____________

17.6 Compliance with Anti-Terrorism Laws. Franchisee and Franchisee's Principals represent, covenant, and warrant to Franchisor that, to the best of their knowledge, neither Franchisee nor any of Franchisee Principals or managerial employees thereof is identified, either by name or an alias, pseudonym, or nickname, on the lists of "Specially Designated Nationals" or “Blocked Persons” maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (texts currently available at www.treas.gov/offices/enforcement/ofac/). Further, Franchisee and Franchisee’s Principals represent, covenant, and warrant that, to the best of their knowledge, they have not violated, and agree that they will not violate, any law (in effect now or which may become effective in the future) prohibiting corrupt business practices, money laundering, or the aid or support of persons or entities who conspire to commit acts of terror against any person or government, including acts prohibited by the U.S. Patriot Act, Public Law No. 107-56 (text currently available at http://www.epic.org/privacy/terrorism/hr3162.html), U.S. Executive Order 13244, or similar law. The foregoing constitute continuing representations and warranties, and Franchisee shall notify Franchisor immediately in writing of the occurrence of any event or the development of any circumstance that might render the foregoing representation and warranty false, inaccurate, or misleading.

Franchisee’s Principals Initials,
individually and on behalf of
Franchisee ______________

17.7 Compliance with Anti-Corruption Laws. Franchisee will, and will cause all of its employees, consultants, contractors, sub-contractors, and all other persons under its supervision to, conduct all activities under this Agreement and in connection with the development, ownership, and operation of the Franchised Restaurant in compliance with the U.S. Foreign Corrupt Practices Act (a copy of which can be found at <http://www.usdoj.gov/criminal/fraud/fcpa/>), and all other comparable Anti-Corruption Laws (as defined below) or regulations in the jurisdiction where the Site is located, as well as any international conventions that outlaw bribery and corrupt practices (including for example the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), and all Franchisor policies relating to anti-corruption.

Franchisee represents, warrants, and covenants to Franchisor that:

(a) Franchisee has not, and will not, in connection with its performance under this Agreement, or in connection with any other business transactions involving Franchisor, make, offer, give, or promise to make, offer, or give, directly or indirectly, any payment (in currency, property, or other thing of value): (i) to any Government Official (as defined below) or to an intermediary for payment to any Government Official; or (ii) to any political party if that payment or transfer would violate any applicable law. It is the intent of the parties that no payments or transfers of value be made that have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. This does not, however, prohibit normal and customary business entertainment or the giving of business mementos of nominal value in connection with Franchisee’s performance under this Agreement, provided the entertainment or giving of the memento is otherwise legal under local law and does not violate or exceed Franchisor’s or the recipient’s rules, policies, or other ethical standards.

(b) If Franchisee learns or has reason to know of: (i) any payment, offer, or agreement to make a payment to a Government Official or political party for the purpose of obtaining or retaining business or securing any improper advantage for Franchisor under this Agreement or otherwise, or (ii) any other development during the Term that in any way makes inaccurate or incomplete Franchisee’s anti-corruption related representations, warranties, or certifications at any time during the Term, Franchisee will immediately advise Franchisor in writing of the knowledge or suspicion and the basis therefor.

(c) Franchisee understands that Franchisor has the right to monitor compliance with its policies, including to verify compliance with the representations in this Section. Franchisor's right to monitor includes the right to conduct, or have its designee conduct, unannounced inspections of Franchisee's facilities and records. Franchisee will cooperate fully with any investigation, the scope, method, nature, and duration of which is determined at the sole reasonable discretion of Franchisor.

(d) None of Franchisee's Personnel (as defined below) and none of those Personnel's Family Members (as defined below) are Government Officials. If any of Franchisee's Personnel or their Family Members become a Government Official, Franchisee shall immediately notify Franchisor in writing.

Franchisee hereby acknowledges and agrees to these representations and agrees that at any time during the Term when requested by Franchisor, Franchisee will provide to Franchisor a certification in the form required by Franchisor.

As stated in Section 13.3.2, if Franchisor believes, in good faith, that Franchisee has acted in any way that may subject Franchisor to liability under any Anti-Corruption Law, or has otherwise failed to comply with the terms of this Section, Franchisor may terminate this Agreement immediately upon notice to Franchisee.

Franchisee agrees that Franchisor may make full disclosure of information relating to any possible violation of any Anti-Corruption Law or any related offenses to the U.S. government and its agencies, and to any other public or private person or entity that Franchisor determines has a legitimate need to know.

For purposes of this Section 17.7, the following terms have the meanings set forth below:

"Anti-Corruption Laws" are those laws or regulations that make it unlawful to offer, pay, promise, or authorize to pay any money, gift, or anything of value (including bribes, entertainment, kickbacks, or any benefit), directly or indirectly, (a) to any Government Official or any political party in order to assist with obtaining, retaining or securing an improper business advantage, or (b) to any other person, with the intention of inducing or rewarding improper performance of a relevant function or activity.

"Government Official" means any (i) any officer or employee of any agency, instrumentality, subdivision, or other body of national, regional, or municipal government; (ii) any commercial or similar entity that the government controls or owns, including state-owned and state-operated companies or enterprises; (iii) any public international organization (e.g. United Nations, World Bank); (iv) any political party or official thereof; or (v) any candidate for political office.

"Family Member" means a person's spouse/domestic partner, children, stepchildren, grandchildren, parents, stepparents, siblings, mother/father–in-law, son/daughter-in-law, brother/sister-in-law, and/or first- or second-cousins.

"Personnel" means owners, shareholders, partners or members as well as officers, directors, executives, and employees, as well as any of their Family Members.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee _____________

17.8 No Claims. Franchisee and Franchisee's Principals represent, covenant, and warrant to Franchisor that, to the best of their knowledge, neither they nor an Affiliate of either hold or are due, as applicable, any claims, debts, liabilities, demands, obligations, expenses, actions, or causes of action of any nature, character, or description related to this Agreement against Franchisor, and its Affiliates and each of their respective successors, partners, and the partners, shareholders, representatives, assigns, agents, servants, employees, independent contractors, officers, and directors of each of them, in their corporate and individual capacities.

Franchisee's Principals Initials,
individually and on behalf of
Franchisee _____________

IN WITNESS WHEREOF, the parties hereto have fully executed, sealed, and delivered this Agreement in duplicate on the day and year first above written.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: __________________________
Name:
Title:

FRANCHISEE:

[●], a [●]

By: __________________________
Name:
Title:

SCHEDULE 1

THE SITE

The location for the Site as approved by Franchisor is:

____
____
____
____
____
____

The Restaurant must be open and operating no later than ______________________,

SCHEDULE 2

STATEMENT OF OWNERSHIP INTERESTS AND FRANCHISEE'S PRINCIPALS

Below is a list of all Persons holding an Equity Interest in Franchisee and a description of the nature and percentage of such Equity Interest. All such individuals and entities are hereby deemed to be "Franchisee's Principals" described in and designated pursuant to this Agreement, each of whom will execute the Agreement and Guaranty of Franchisee's Principals attached hereto as Attachment A. If any Person listed below is a legal entity, all Persons holding an Equity Interest in such legal entity must also be listed below together with a description of the nature and percentage of such Equity Interest.

Name	Percentage/Nature of Equity Interest[1]

The initial Brand Director is: ______________________________

The initial Director of Operations is: ______________________________

[1] All Equity Interests in Franchisee and Franchisee's Principals (if an entity) are held in nominative form only and no bearer shares have been issued or will be issued.

ATTACHMENT A

AGREEMENT AND GUARANTY OF FRANCHISEE'S PRINCIPALS

Each of the undersigned acknowledges and agrees as follows:

(1) Each has read the terms and conditions of that certain International Franchise Agreement, entered into as of the [●] day of [●],[●] ("Franchise Agreement"), by and between KONA GRILL, INC., a Delaware corporation ("Franchisor"), and [●], a [●] ("Franchisee") and acknowledges that the execution of this Guaranty and the undertakings of the Franchisee's Principals in the Franchise Agreement are in partial consideration for, and a condition to, the granting of the rights contracted in the Franchise Agreement, and that Franchisor would not have granted the rights contained in the Franchise Agreement without the execution of this Guaranty and the other undertakings by each of the undersigned;

(2) Each is included in the term "Franchisee's Principals";

(3) Each individually, jointly, and severally, makes all of the covenants, representations, warranties and agreements of Franchisee's Principals set forth in the Franchise Agreement and is obligated to perform thereunder; and

(4) Each individually, jointly and severally, unconditionally, and irrevocably guarantees to Franchisor and its successors and assigns that all of Franchisee's obligations under the Franchise Agreement will be punctually paid and performed. Upon default by Franchisee or upon notice from Franchisor, each will immediately make each payment and perform each obligation required of Franchisee under the Franchise Agreement.

(5) Without affecting the obligations of any of Franchisee's Principals under this Guaranty, Franchisor may, without notice to Franchisee's Principals, waive, renew, extend, modify, amend, or release any indebtedness or obligation of Franchisee or settle, adjust, or compromise any claims that Franchisor may have against Franchisee.

(6) Each of Franchisee's Principals waives all demands and notices of every kind with respect to the enforcement of this Guaranty, including notices of presentment, demand for payment or performance by Franchisee, any default by Franchisee or any guarantor, and any release of any guarantor or other security for this Guaranty or the obligations of Franchisee.

(7) Franchisor may pursue its rights against any of Franchisee's Principals without first exhausting its remedies against Franchisee and without joining any other guarantor and no delay on the part of Franchisor in the exercise of any right or remedy will operate as a waiver of the right or remedy, and no single or partial exercise by Franchisor of any right or remedy will preclude the further exercise of that or any other right or remedy.

(8) Upon receipt by Franchisor of notice of the death of any of Franchisee's Principals, the estate of the deceased will be bound by the foregoing Guaranty, but only for defaults and obligations under the Franchise Agreement existing at the time of death, and in that event, the obligations of the remaining Franchisee's Principals will continue in full force and effect.

(9) Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to them in the Franchise Agreement.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

ATTEST: FRANCHISEE'S PRINCIPALS

____
Printed Name:

____
Printed Name:

____
Printed Name:

ATTACHMENT B
CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Confidentiality and Non-Competition Agreement ("Agreement") is made and entered into this [●] day of [●], [●], by and between Kona Grill, Inc., a Delaware corporation ("Franchisor"), and [●], a [●] ("Franchisee"), and [●] ("Covenantor").

RECITALS

WHEREAS, Franchisor and Franchisee have entered into a franchise agreement dated [●] ("Franchise Agreement"), pursuant to which Franchisor has granted Franchisee the right to establish and operate a Franchised Restaurant and to use the Proprietary Marks and System solely in connection therewith; and

WHEREAS, Franchisor has provided, or will provide to Franchisee, a confidential operations manual and such other written or printed material to explain the operation of the System and aid in its use ("Documentation") and certain confidential information, knowledge, and know-how concerning the construction and methods of operation of the Franchised Restaurant relating to the System, including the Documentation, drawing, materials, equipment, techniques, products, recipes, and other data of Franchisor ("Trade Secrets"); and

WHEREAS, the Proprietary Marks and Trade Secrets provide economic advantages to Franchisor and the Trade Secrets are not generally known to, and are not readily ascertainable by proper means by, Franchisor's competitors who could obtain economic value from knowledge and use of the Trade Secrets; and

WHEREAS, Covenantor acknowledges that receipt of and the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises, and covenants made by Covenantor or herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

Confidentiality Agreement

1. Franchisor and Franchisee shall disclose to Covenantor some or all of the Trade Secrets. All information and materials, including, without limitation, the Documentation, which Franchisor provides to Franchisee and/or Covenantor shall be deemed confidential Trade Secrets for purposes of this Agreement.

2. Covenantor shall at all times treat as confidential, and shall not at any time disclose, distribute, copy, duplicate, record, or otherwise reproduce, in whole or in part, or otherwise make available to any person or source or otherwise use in any manner except for the operation of the Franchised Restaurant, the contents of the Trade Secrets without the prior written consent of Franchisor.

3. Covenantor agrees that any goodwill that may arise from Covenantor's use of the Trade Secrets shall at all times remain the sole and exclusive property of Franchisor and shall inure to the sole benefit of Franchisor.

4. Covenantor agrees to notify Franchisor and Franchisee promptly in writing of any loss, theft, or unauthorized disclosure or use of any of the Trade Secrets of which Covenantor has knowledge.

5. Covenantor shall surrender any material containing some or all of the Trade Secrets, including the Documentation, to Franchisee or Franchisor, upon request, or upon termination of employment by Franchisee, or upon conclusion of the use for which such information or material may have been furnished to Covenantor.

Covenants Not to Compete

1. Covenantor specifically acknowledges that, pursuant to Covenantor's employment or association with Franchisee, Covenantor will receive valuable, specialized training and/or confidential information. In consideration for the disclosure of the Trade Secrets, Covenantor covenants that during Covenantor's employment or association with Franchisee, and for one year following the earlier of the expiration, termination, or transfer of all of Franchisee's interest in the Franchise Agreement or the termination of Covenantor's association with or employment by Franchisee, except as otherwise approved in writing by Franchisor, Covenantor shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with, any person or legal entity:

(a) Divert or attempt to divert any business or customer of the Franchised Restaurant to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System;

(b) Employ or seek to employ any person who is at that time employed by Franchisor, Franchisee, or by any principal of Franchisee, or otherwise directly or indirectly induce such person to leave his or her employment; or

(c) Own, maintain, operate, engage in, be employed by, provide any assistance to, or have any interest in (as owner or otherwise) (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ's, Bonefish Grill, Brio, Del Frisco's Grille, Joe's Crab Shack, Outback Steakhouse, P.F. Chang's, Seasons 52, and The Cheesecake Factory; provided however, that this provision shall not apply to the operation by Covenantor of any license or franchise which may be granted by Franchisor to Covenantor; and provided, further, that this provision shall not apply to any ownership by Covenantor, of less than 5% of the outstanding equity securities in any publicly-held corporation. "Competing Food Items" means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

(d) Covenantor understands and acknowledges that Franchisor will have the right, in its sole discretion, to reduce the scope of any non-competition covenant set forth above, or any portion thereof, without its consent, effective immediately upon notice to Covenantor; and Covenantor agrees that he or she will comply with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 4 under the heading entitled "Miscellaneous."

Miscellaneous

1. Franchisee and Covenantor agree that in the event of a breach of this Agreement, Franchisor and/or Franchisee shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies which are made available to it at law or in equity, to a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security.

2. Covenantor will pay all expenses (including court costs and reasonable attorneys' fees) incurred by Franchisor and Franchisee in enforcing this Agreement.

3. THIS AGREEMENT SHALL BE INTERPRETED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF ARIZONA, WITHOUT REFERENCE TO ARIZONA CHOICE OF LAW PRINCIPLES.

4. Except as otherwise specifically provided herein, this Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

5. Capitalized terms used in this Agreement but not defined herein shall have the meanings given to them in the Franchise Agreement.

6. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or mailed by certified mail, return receipt requested, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:	Kona Grill, Inc. 15059 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85254 Attn: Carlos de Leon Vice President – International Development Tel: 480-922-8100 Email: deleon@konagrill.com
With an electronic copy to:	Tracy Durchslag, Esq. Tel: 602-740-0291 Email: tracy@durchslaglaw.com
Notices to Franchisee:	[●] Tel: [●] Email: [●]
Notices to Covenantor:	[●] Tel: [●] Email: [●]

Notices posted by personal delivery, express delivery service, or electronic mail shall be deemed given upon receipt.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: ____________________________
Name:
Title:

FRANCHISEE:

[●], a [●]

By: ____________________________
Name:
Title:

COVENANTOR:
[●]

By: ____________________________
Name:

ATTACHMENT C

KONA GRILL, INC.
SITE SELECTION ADDENDUM TO FRANCHISE AGREEMENT

This Site Selection Addendum ("Site Addendum") is made part of, and incorporated into, the Franchise Agreement by and between Kona Grill, Inc. ("Franchisor") and _______________ ("Franchisee") dated ________, 20__, ("Franchise Agreement"). Initially capitalized terms used but not defined herein have the meanings set forth in the Franchise Agreement.

RECITALS

A. Franchisor and Franchisee have entered into the Franchise Agreement without having entered into a Development Agreement.

B. Franchisor and Franchisee desire to modify the Franchise Agreement to provide for certain site selection and acquisition procedures and obligations with respect to the Restaurant.

NOW, THEREFORE, Franchisor and Franchisee expressly covenant and agree as follows:

AGREEMENT

1. Designated Area. Franchisee assumes all cost, liability, expense, and responsibility for locating, obtaining, and developing a Site for the Restaurant within the geographic area described below ("Designated Area"). Franchisee acknowledges and agrees that it acquires no rights in and to the Designated Area, other than the right to select a site for the Restaurant from within its boundaries.

____

____

____

Following Franchisee's selection and Franchisor's acceptance of a Site for the Restaurant, the Site will be identified in Schedule 1 to the Franchise Agreement and the Designated Area will be of no further force or effect.

2. Site Selection.

If Franchisee has not identified a proposed site when it enters into the Franchise Agreement, then Franchisee must identify and secure a site no later than 90 days after execution of the Franchise Agreement. Franchisor may, with respect to each proposed site, as a condition to approval of such site, conduct one site visit. Franchisee shall reimburse Franchisor the travel-related expenses it incurs in connection with each such Site visit.

Franchisor agrees to use its commercially reasonable efforts to review all timely submitted and complete Development Materials for a proposed site in accordance with Franchisor's then-current Standards and site selection criteria and procedures and provide a response to Developer within 60 calendar days after Franchisor's receipt of all required Development Materials for such proposed site and completion of any site visit, if required. Franchisor shall have no obligation to approve any proposed site and may refuse to review Development Materials that have not been timely submitted or are incomplete. Unless otherwise specified by Franchisor in writing, Franchisor's failure to approve a proposed site within 60 calendar days after its receipt of all timely submitted and complete Development Materials shall constitute rejection of such site. "Development Materials" means, collectively, (i) a specific description of the proposed site (including, without limitation, the address, dimensions, and description of the terms of any purchase or lease contract) on a form required by Franchisor, (ii) a feasibility study (including, without limitation, demographic data, photographs, maps, artists' renderings, site plans, and documentation indicating Developer's prospects to acquire the proposed site and manner of financing its acquisition and build-out), and (iii) pro forma financials for the proposed site (including, among other things, projected monthly sales for the Franchised Restaurant), and (iv) such other information as Franchisor requires.

Neither Franchisor's (i) consent to nor (ii) assistance in the selection of, any Site shall constitute Franchisor's representation or warranty that a Franchised Restaurant operated at such Site will be profitable or meet any financial projection.

If Franchisee proposes to enter into a lease or other occupancy contract with respect to any proposed site, Franchisor may, in its sole discretion, require Franchisee to submit the lease or occupancy contract to Franchisor for review and approval. In addition to the covenants set forth below, such lease or occupancy contract must provide Franchisor the opportunity to conduct an in-person visit to the proposed site per this Section 2. before such lease or occupancy contract is executed. Franchisor's review of such documents is for the sole purpose of determining if Franchisor's required terms are included in such documents, not for the purpose of reviewing the financial terms of such documents. Franchisor may condition its consent to such lease or occupancy contract upon the inclusion of the following covenants in such lease or occupancy contract:

(a) the landlord shall deliver to Franchisor, simultaneously with delivery to the Franchisee, any notice alleging Franchisee's default under the lease or occupancy contract which threatens or purports to terminate the lease or occupancy contract;

(b) Franchisor may enter the Franchised Restaurant premises to protect the Proprietary Marks or the System or to cure any event of default or default under the lease or occupancy contract or the applicable Franchise Agreement;

(c) Franchisee may assign the lease or occupancy contract to Franchisor without any fee or modification thereof and the Franchisee may assign or sublease the lease or occupancy contract for any part of the remaining term of the lease, each without the landlord's consent; and

(d) the landlord and Franchisee shall not amend the lease in any way which is inconsistent with the provisions of (1) through (3) above, inclusive.

Franchisee shall furnish to Franchisor a complete copy of the lease within 10 calendar days after execution. The copy of the lease must be accompanied by a certificate of an officer of Franchisee certifying that (i) the terms and conditions of the lease are consistent with the summary delivered as part of the Development Materials; and (ii) the covenants in clauses (1) through (4) are included therein (or certifying to Franchisor that Franchisee used its best efforts to obtain such covenants, but the landlord would not agree).

Notwithstanding the terms of Section 2.(d) of this Site Addendum, Franchisee shall:

(1) deliver to Franchisor, immediately after delivery to or by Franchisee, any notice of default under the lease or occupancy contract which threatens or purports to terminate the lease or occupancy contract;

(2) permit (or not inhibit) Franchisor to enter the Franchised Restaurant premises to protect the Proprietary Marks or the System or to cure any event of default or default under the lease or occupancy contract or the applicable Franchise Agreement; and

(3) not amend the lease in any way which is inconsistent with the provisions of Sections 2.(e)(1) through (3), inclusive, of this Site Addendum.

Any actions or decisions by Franchisee to acquire by lease, purchase, or other agreement the rights to a site proposed for a Franchised Restaurant before Franchisor's final approval of such site are at Franchisee's sole risk, and Franchisor will have no responsibility or liability whatsoever to Franchisee or any other party in the event the site is not approved.

3. Conflict with Franchise Agreement. Whenever there is a conflict or inconsistency between this Site Addendum and any provision of the Franchise Agreement, the provisions of this Site Addendum will control.

IN WITNESS WHEREOF, the parties hereto have fully executed, sealed, and delivered this Site Addendum on the dates set forth below.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: ____________________________
Name:
Title:
Date:

FRANCHISEE:
[●], a [●]

By: ____________________________
Name:
Title:
Date:

CALIFORNIA AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The California Department of Business Oversight requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. CORP. CODE Section 31000 *et seq*., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 *et seq*. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

   a. California Business and Professions Code Sections 20000 through 20043 provides rights to Franchisee concerning termination, transfer, or non-renewal of a franchise. If the Agreement contains a provision that is inconsistent with California law, California law will control.

   b. The Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 *et seq*.).

   c. The Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

   d. The Agreement requires application of the laws of the State of Arizona. This provision may not be enforceable under California law.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

ILLINOIS AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Illinois Attorney General's Office requires that certain provisions contained in franchise documents be amended to be consistent with Illinois law, including the Franchise Disclosure Act of 1987, 815 ILCS 705/1 *et seq* ("**Act**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. Paragraphs 705/19 and 705/20 of the Act provide rights to you concerning nonrenewal and termination of this Agreement. If this Agreement contains a provision that is inconsistent with the Act, the Act will control.

b. Any release of claims or acknowledgments of fact contained in the Agreement that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Act, or a rule or order under the Act, will be void and are hereby deleted with respect to claims under the Act.

c. If the Agreement requires litigation to be conducted in a forum other than the State of Illinois, the requirement is void with respect to claims under the Act.

d. If the Agreement requires that it be governed by a state's law, other than the state of Illinois, to the extent that such law conflicts with the Act, the Act will control.

e. Section 41 of the Act provides that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Act or any other law of Illinois is void.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

MARYLAND AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Maryland Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Maryland law, including the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §§ 14-201 *et seq.* (2015 Repl. Vol.) ("**Law**"). To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. Any release required as part of the Agreement or as a condition of the sale, renewal, assignment, or transfer of the franchise will not apply to any liability under the Law.

b. Any acknowledgments or representations of Franchisee made in the Agreement which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Law are not intended to nor will they act as a release, estoppel, or waiver of any liability incurred under the Law.

c. Any requirement that litigation be conducted in a forum other than the State of Maryland will not be interpreted to limit any rights Franchisee may have under the Law to bring suit in the State of Maryland.

d. The limitation on the period of time mediation and/or litigation claims must be brought will not act to reduce the 3-year statute of limitations afforded Franchisee for bringing a claim arising under the Law. Any claims arising under the Law must be brought within 3 years after the grant of the franchise.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

MINNESOTA AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Commissioner of Commerce for the State of Minnesota requires that certain provisions contained in franchise documents be amended to be consistent with Minnesota Franchise Act, Minn. Stat. Section 80C.01 *et seq*., and with the rules and regulations promulgated thereunder (collectively, "**Franchise Act**"). To the extent the Agreement/and or disclosure document contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The Minnesota Department of Commerce requires that franchisors indemnify Minnesota franchisees against liability to third parties resulting from claims by third parties that the franchisee's use of the franchisor's proprietary marks infringes trademark rights of the third party.

b. Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 require, except in certain specified cases, that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement. If the Agreement contains a provision that is inconsistent with the Franchise Act, the provisions of the Agreement will be superseded by the Franchise Act's requirements and will have no force or effect.

c. If Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Franchise Act, such release will exclude claims arising under the Franchise Act, and such acknowledgments will be void with respect to claims under the Franchise Act.

d. If the Agreement requires that it be governed by the laws of a state other than the state of Minnesota, or if the Agreement requires arbitration or mediation, those provisions will not in any way abrogate or reduce any rights of the franchisee, as provided for in the Franchise Act, including the right to submit matters to the jurisdiction of the courts of Minnesota.

e. Any provision that requires the franchisee to consent to a claims period that differs from the applicable statute of limitations period under Minn. Stat § 80C.17, Subd. 5. may not be enforceable under Minnesota.

2. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit Franchisor from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or Agreement can abrogate or reduce any of Franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, including Franchisee's rights to any procedure, forum, or remedies provided for in such law.

3. The Agreement/and or disclosure document is hereby amended to delete all references to liquidated damages (as defined in the Agreement) that are in violation of Minnesota law; provided that no such deletion will excuse the franchisee from liability for actual or other damages, and the formula for liquidated damages in the Agreement/and or disclosure document will be admissible as evidence of actual damages.

4. To the extent required by Minnesota law, the Agreement/and or disclosure document is amended to delete all references to a waiver of jury trial.

5. All sections of the Agreement/and or disclosure document referencing Franchisor's <u>right to obtain</u> injunctive relief are hereby amended to refer to Franchisor's right to <u>seek to obtain</u>.

6. Each provision of this Agreement is effective only to the extent that the jurisdictional requirements of Minnesota law applicable to the provision are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: ______________________________________

Name: ____________________________________

Title: _____________________________________

Date: _____________________________________

FRANCHISEE:
[●]
a **[●]**

By: ______________________________________

Name: ____________________________________

Title: _____________________________________

Date: _____________________________________

NEW YORK AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The New York Department of Law requires that certain provisions contained in franchise documents be amended to be consistent with New York law, including the General Business Law, Article 33, Sections 680 through 695 ("**Law**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. If franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Law, regulation, rule, or order under the Law, such release will exclude claims arising under the Law and the regulations promulgated thereunder, and such acknowledgments will be void. It is the intent of this provision that non-waiver provisions of Sections 687.4 and 687.5 of the General Business Law be satisfied.

b. If the Agreement requires that it be governed by the law of a state, other than the state of New York, the choice of law provision will not be considered to waive any rights conferred upon franchisee under the Law.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ____________________	By: ____________________
Name: ____________________	Name: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

NORTH DAKOTA AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. If the Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgments shall be void with respect to claims under the Law.

b. Covenants not to compete during the term of and upon termination or expiration of the Agreement are enforceable only under certain conditions according to North Dakota Law. If the Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.

c. If the Agreement requires litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.

d. If the Agreement requires that it be governed by the law of a state, other than the State of North Dakota, to the extent that such law conflicts with North Dakota Law, North Dakota Law will control.

e. If the Agreement requires mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.

f. If the Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.

g. Any provision that provides that the parties waive their right to a jury trial may not be enforceable under North Dakota law.

h. Any provision that provides that the franchisee consent to a waiver of punitive and exemplary damages may not be enforceable under North Dakota Law.

i. Any provision that requires the franchisee to consent to a claims period that differs from the applicable statute of limitations period under North Dakota Law may not be enforceable under North Dakota Law.

j. If the Agreement requires the franchisee to consent to a limitation of claims, the statute of limitations period under North Dakota law applies.

k. If the Agreement requires the franchisee to pay all costs and expenses incurred by Franchisor in enforcing the agreement, the prevailing party in any enforcement action is entitled to recover all costs and expenses, including attorneys' fees.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR: Kona Grill, Inc. a Delaware corporation	**FRANCHISEE:** **[●]** a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

RHODE ISLAND AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. §§ 19-28.1-1 to 19-28.1-34 ("**Act**"). To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. If the Agreement requires litigation to be conducted in a forum other than the State of Rhode Island, the requirement is void with respect to any claims brought under the Act.

b. If this Agreement requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with the Act, such law is void.

c. If the franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Act, or a rule or order under the Act, such release will exclude claims arising under the Act, and such acknowledgments will be void with respect to claims under the Act.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

**WASHINGTON AMENDMENT TO KONA GRILL, INC.
FRANCHISE AGREEMENT**

The Kona Grill, Inc. Franchise Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Director of the Washington Department of Financial Institutions requires that certain provisions contained in franchise documents be amended to be consistent with Washington law, including the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 to 19.100.940 ("**Act**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The Act provides rights to Franchisee concerning nonrenewal and termination of the Agreement. If the Agreement contains a provision that is inconsistent with the Act, the Act will control.

b. If Franchisee is required in the Agreement to execute a release of claims, such release will exclude claims arising under the Act; except when the release is executed under a negotiated settlement after the Agreement is in effect and where the parties are represented by independent counsel.

c. If there are provisions in the Agreement that unreasonably restrict or limit the statute of limitations period for claims brought under the Act, or other rights or remedies under the Act, those provisions may be unenforceable.

d. If the Agreement requires litigation, arbitration, or mediation to be conducted in a forum other than the state of Washington, the requirement may be unenforceable under Washington law. Arbitration involving a franchise purchased in the state of Washington, must either be held in the state of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

e. If the Agreement requires that it be governed by the law of a state, other than the state of Washington, and if there is a conflict between the law and the Act, the Act will control.

f. Transfer fees are collectable to the extent they reflect Franchisor's reasonable estimated or actual costs in effecting a transfer.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Washington Franchise Investment Protection Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**FRANCHISEE:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ____________________	Name: ____________________
Title: _____________________	Title: _____________________
Date: _____________________	Date: _____________________

EXHIBIT C

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

DEVELOPMENT AGREEMENT (WITH ALL ATTACHMENTS)

KONA GRILL®

DEVELOPMENT AGREEMENT

KONA GRILL, INC.
15059 N. Scottsdale Road, Suite 300
Scottsdale, Arizona 85254

[●]

DATED AS OF [●]

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KONA GRILL, INC.
DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed and entered into as of this [●] day of [●],[●], by and between Kona Grill, Inc., a Delaware corporation ("Franchisor") and [●], a [●] ("Developer").

RECITALS

WHEREAS, Franchisor has developed, and is the owner of, the System;

WHEREAS, Franchisor owns certain Proprietary Marks that are utilized in connection with and identify the System;

WHEREAS, Franchisor and its Affiliates continue to develop, use, and control the use of the Proprietary Marks to identify the source of services and products marketed under the System and to represent the System's high standards;

WHEREAS, Franchisor has the right to grant franchises and grant the right to others to grant franchises to use the System outside the United States of America;

WHEREAS, Developer desires to obtain from Franchisor and Franchisor desires to grant to Developer certain rights to develop Franchised Restaurants under the System in the Territory;

NOW THEREFORE, Franchisor and Developer in consideration of the undertakings and commitments set forth herein, agree as follows:

AGREEMENT

1. DEFINITIONS

As used in this Agreement and the above Recitals, the following capitalized terms shall have the meanings attributed to them in this Section:

1.1 "Action" means any cause of action, suit, proceeding, claim, demand, investigation or inquiry (whether a formal proceeding or otherwise) with respect to which Developer's indemnity applies.

1.2 "Affiliate" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. In addition to the foregoing, if the specified Person is an individual, the term "Affiliate" also includes (a) the individual's spouse, (b) the members of the immediate family (including parents, siblings and children) of the individual or of the individual's spouse and (c) any corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity that directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with any of the foregoing individuals. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.3 “Agreement” means this Development Agreement and all schedules and attachments hereto.

1.4 “Assistant General Manager” means a person who assists the General Manager with supervising the day-to-day management and operations of a Franchised Restaurant in accordance with the Standards.

1.5 “Assistant Manager” means a person who assists the General Manager and Assistant General Manager with supervising the day-to-day management and operations of a Franchised Restaurant in accordance with the Standards.

1.6 “Brand Director” means an individual appointed by Developer who has the authority to make all business decisions on behalf of Developer.

1.7 “Claim” has the meaning set forth in Section 13.2.

1.8 “Competing Business” means (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ’s, Bonefish Grill, Brio, Del Frisco’s Grille, Joe’s Crab Shack, Outback Steakhouse, P.F. Chang’s, Seasons 52, and The Cheesecake Factory.

1.9 “Competing Food Items” means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

1.10 “Confidential Information” means the terms of this Agreement and any amendments thereto and any Franchise Agreement entered hereunder, the components of the System, the Development Criteria, written directives and all drawings, equipment, recipes, and all other information know-how, techniques, materials, and data imparted or made available by Franchisor or its Affiliates which is (i) designated as confidential, (ii) known by Developer to be considered confidential by Franchisor, or (iii) by its nature inherently or reasonably considered confidential.

1.11 “Controlled Affiliate” means, with respect to Developer, an Affiliate in which Developer owns and controls not less than 51% of the Equity Interests and for which the governing documents do not provide for (i) super-majority voting rights or (ii) rights of first refusal, options or other buy-out rights in favor of any minority owner.

1.12 “Design Development Drawings” has the meaning set forth in Section 4.5(c).

1.13 “Developer” has the meaning set forth in the preamble of this Agreement.

1.14 “Developer Party” means Developer, any of Developer’s Principals, Developer’s Affiliate, and/or any Franchisee (defined below).

1.15 “Developer’s Principals” means those Persons listed on Schedule 2 hereto as holding a direct or indirect Equity Interest in Developer.

1.16 "Development Criteria" means Franchisor's procedures and parameters for the development, opening and operation of Franchised Restaurants, including, without limitation, any site selection criteria, market data, written instructions, directives, drawings, materials, studies, or other information made available by Franchisor in connection with the development, opening, and operation of Franchised Restaurants, in each case, as may be updated or amended from time to time by Franchisor. All or any portion of the Development Criteria may be made available to Developer by means of the Extranet or such other electronic form chosen by Franchisor.

1.17 "Development Materials" means, collectively, (i) a specific description of the proposed site (including, without limitation, the address, dimensions, and description of the terms of any purchase or lease contract) on a form required by Franchisor, (ii) a feasibility study (including, without limitation, demographic data, photographs, maps, artists' renderings, site plans, and documentation indicating Developer's prospects to acquire the proposed site and manner of financing its acquisition and build-out), and (iii) pro forma financials for the proposed site (including, among other things, projected monthly sales for the Franchised Restaurant), and (iv) such other information as Franchisor requires.

1.18 "Development Schedule" has the meaning set forth in Section 4.1 hereof.

1.19 "Director of Operations" means an individual designated as described in Section 7.2 who shall devote his or her full time and best efforts to the management and supervision of (i) Developer's duties and obligations hereunder; (ii) Franchisee's duties and obligations under each Franchise Agreement; and (iii) the operation of the Franchised Restaurants.

1.20 "District Manager" means each individual hired by Developer on a full-time basis and whose job duties will include planning and executing the penetration strategy within the Territory while providing guidance and leadership to management teams within a geographical area within the Territory.

1.21 "Equity Interest" means a direct or indirect ownership or beneficial interest in the capital stock of, partnership or membership interest in, or other equity, ownership, or beneficial interest in (including the right to vote) any type of legal entity, including any trust or foundation.

1.22 "Execution Date" means the date upon which the Agreement is deemed duly executed by Developer and Franchisor, as indicated on the first page of this Agreement.

1.23 "Executive Chef" means a person who (i) is responsible for optimizing profits by controlling food cost, production, labor and by increasing sales through food quality, speed of service, and food preparation to specifications in the back-of-the-house, and (ii) supervises the execution of and oversees all kitchen operations, ensuring Standards of quality and service are met and that the kitchen provides nutritious, safe, eye-appealing, properly flavored and prepared food, while maintaining a safe and sanitary work environment for all employees.

1.24 "Extranet" means a private network based upon Internet protocols that will allow authorized users inside and outside of Franchisor's headquarters to access certain parts of Franchisor's computer network via the Internet.

1.25 "Force Majeure" has the meaning set forth in Section 14.11.

1.26 "Franchise Agreement" means Franchisor's then-current form of franchise agreement.

1.27 "Franchise Territory Fee" means the fee in Dollars calculated as described in Section 3.1 payable to Franchisor by Developer in consideration of the development opportunities lost or deferred by Franchisor through the Term as a result of Franchisor's entering into this Agreement with Developer.

1.28 "Franchised Restaurant" means a Restaurant opened pursuant to the Development Schedule and operated by Franchisee or a Controlled Affiliate (i) at a Site approved by Franchisor pursuant to this Agreement and (ii) pursuant to a duly executed Franchise Agreement.

1.29 "Franchisee" means the "Franchisee" under each Franchise Agreement entered into pursuant to this Agreement, who shall be either Developer or a Controlled Affiliate approved by Franchisor.

1.30 "Franchisor" means Kona Grill, Inc. or any person or legal entity to which Kona Grill, Inc. assigns or otherwise transfers its rights and obligations contained in this Agreement.

1.31 "General Manager" means a manager of a Franchised Restaurant responsible for (i) the overall operations of such restaurant, (ii) ensuring total guest satisfaction while increasing sales, profits, and brand awareness through excellent execution of operational standards and guidelines, and (iii) optimizing profits by controlling food, beverage, and labor costs.

1.32 "Head Sushi Chef" means a person who (i) is responsible for producing quality sushi in a timely manner, assuring sushi is prepared to Standards, ensuring Standards of quality and service are met while providing nutritious, safe, eye-appealing, properly flavored and prepared food, and maintaining a safe and sanitary work environment, and (ii) prepares sushi and interacts with guests at the sushi bar as well as prepares sushi for dining room orders.

1.33 "Governmental Authority" means any government, national, provincial, state, county, municipal, local, or other ministry, department, agency, whether administrative or regulatory, or any other body which may exercise similar functions.

1.34 "Governmental Rule" means any statute, law, code, regulation, ordinance, rule, judgment, order, decree, permit, certification, concession, grant, agreement, directive, guideline, policy, requirement, or other Governmental Authority restriction or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereafter in effect (including environmental laws).

1.35 "Indemnitees" means Franchisor and its successors and assigns, Affiliates, directors, officers, employees, shareholders, employees, representative, contractors, and agents.

1.36 "Losses and Expenses" means all losses, compensatory, exemplary or punitive damages, fines, penalties, charges, costs, expenses, the lost profits, assessments and fees (including reasonable attorneys', experts', accountants', and consultants' fees); interest, court costs, settlement or judgment amounts, compensation for damages to Franchisor's reputation and goodwill, costs of or resulting from delays, financing costs, costs of advertising material and media time/space, and costs of changing, substituting, or replacing the same, and any and all expenses of recall, refunds, compensation, public notices, and other similar amounts incurred, charged against, or suffered by the Indemnitees in connection with any Action.

1.37 "Operational" used in reference to a Franchised Restaurant, means a Franchised Restaurant (a) that is fully constructed and finished out as approved by Franchisor, (b) that is legally permitted to render its services to the general public pursuant to a duly executed

Franchise Agreement, (c) that has received all necessary operating permits, licenses and approvals as may be necessary to operate the System in accordance with Standards, and (d) for which all amounts due and payable under this Agreement and the applicable Franchise Agreement have been paid in full, including, without limitation, the initial franchise fees.

1.38 "Person" means an individual, corporation, limited liability company, partnership, association, joint stock company, trust or trustee thereof, estate or executor thereof, unincorporated organization, or joint venture, court, or governmental unit or any agency or subdivision thereof, or any other legally recognizable entity.

1.39 "Proprietary Marks" means the trademarks, trade names, trade dress, service marks, logos, emblems and other indicia of origin as designated from time to time by Franchisor (including all translations thereof), which may be owned by Franchisor or its Affiliates, or licensed to Franchisor with sublicensing rights including, but not limited to, the mark "Kona Grill" and such other trademarks or service marks and trademark or service mark applications owned by Franchisor or its Affiliates, which Developer or its Affiliates only has the right to use pursuant to a Franchise Agreement.

1.40 "Regional Culinary Partner" means each individual hired by Franchisee on a full-time basis to whom the Executive Chefs of all of Franchisee's and its Affiliates' Restaurants in a designated area report.

1.41 "Restaurant" means a restaurant utilizing the System and the Proprietary Marks operated by Franchisor or its Affiliate or pursuant to the terms and conditions of a Franchise Agreement granted by Franchisor.

1.42 "Site" means the location for the construction and operation of a Franchised Restaurant which has been approved per Section 4.3 of this Agreement.

1.43 "Site Approval" means the form executed by Franchisor and Developer prior to each Franchise Agreement, which sets forth the terms of Franchisor's consent for Developer to build a Franchised Restaurant on the Site.

1.44 "Sous Chef" means a person who (i) assists with the daily operations of the kitchen and provides professional leadership and direction to kitchen personnel, (ii) ensures that all recipes, food preparations, and presentations meet Standards and commitment to quality, (iii) maintains a safe, orderly, and sanitized kitchen; and (iv) assists the Executive Chef in managing food cost, labor cost, and recipe standards.

1.45 "Standards" means the standards, instructions, requirements, methods, specifications, policies and procedures for the development, construction, equipping, training, opening, operation and marketing of Restaurants, as amended from time to time by Franchisor and as contained in, and being a part of, the Confidential Information and Operations Manual, pursuant to which Developer will develop Franchised Restaurants hereunder.

1.46 "System" means the distinctive system developed and licensed by Franchisor for the establishment, development, and operation of upscale casual-dining restaurants, the distinguishing characteristics of which include, without limitation, the Proprietary Marks, characteristic decorations, furnishings and materials, specially-designed equipment and equipment layouts, technology utilized to facilitate operation of such restaurants, trade secret food products and other special recipes, menus and food and beverage designations, food and beverage preparation and service procedures and techniques, operating procedures for sanitation and maintenance, methods and techniques for inventory and cost controls, record keeping and reporting, personnel training and management, and advertising and promotional programs, cornerstones of operation, and operational policies, all of which may be changed, improved or further developed by Franchisor from time to time.

1.47 "Taxes" has the meaning set forth in Section 3.3(b).

1.48 "Term" means the term of this Agreement as described in Section 11.1, below.

1.49 "Territory" means the territory set forth in Schedule 1 hereto.

1.50 "Transaction Tax" has the meaning set forth in Section 3.3(f).

1.51 "Transfer" means (i) the sale, assignment, conveyance, pledge, mortgage, or other encumbrance, whether direct or indirect, in whole or in part, or in one or a series of related transactions or occurrences, of (A) this Agreement, (B) any Franchise Agreement, (C) any Equity Interests in Developer, any of Developer's Principals or a Franchisee, or (D) the assets of Developer, any of Developer's Principals or a Franchisee other than transfers conducted in the ordinary course of business or (ii) the issuance, creation or granting of new or additional Equity Interests, or the dilution or cancellation of existing Equity Interests, in Developer, any of Developer's Principals or a Franchisee.

1.52 "Website" means information that can be accessed through a common Internet address.

2. GRANT OF RIGHTS

2.1 Grant. Subject to the terms, conditions, and limitations of this Agreement, Franchisor hereby grants to Developer the right, and Developer undertakes the obligation, to establish the number of Franchised Restaurants specified in the Development Schedule at duly approved Sites in the Territory pursuant to separate Franchise Agreements to be executed in accordance with this Agreement. Franchisor retains all rights not expressly granted to Developer hereunder.

2.2 Exclusivity Territory. Subject to the rights retained by Franchisor hereunder, for so long as Developer is in compliance with its obligations under this Agreement and all other agreements between Developer or its Affiliate(s) on the one hand and Franchisor or its Affiliate(s) on the other hand, or until the expiration or termination of this Agreement, if sooner, Franchisor will not, without Developer's prior written consent, establish or operate, or license anyone other than Developer to establish or operate a Restaurant, which is physically located in the Territory. Upon expiration or termination of this Agreement, or if Developer is no longer in compliance with the terms hereof, the exclusive rights granted under this Section 2.2 shall expire.

2.3 Limitation of Rights. Franchisor retains all rights not expressly granted hereunder. Franchisor, its Affiliates, and their respective franchisees and licensees may, among other things:

(a) Advertise and promote sales of or by Restaurants, at any location, including within the Territory;

(b) Offer and sell collateral and ancillary products and services, such as pre-packaged food products, clothing, and memorabilia, in the Territory under the Proprietary Marks, even though those products and services may be similar to items offered by the Franchised Restaurants;

(c) Offer and sell any products and services (regardless of similarity to products and services sold in the Franchised Restaurants) under any names and marks other than the Proprietary Marks at any location, including within the Territory;

(d) Establish and operate a Restaurant anywhere outside of the Territory;

(e) Establish and operate any business other than a Restaurant (including restaurants) anywhere inside or outside of the Territory; and

(f) Operate one or more Websites that advertise Restaurants, allow customers and potential customers to make reservations at Restaurants (including the Franchised Restaurants), sell any product or service including pre-packaged food products, clothing or memorabilia, or permit other activities (whether or not similar), even though the Website is accessible to or viewable by persons in the Territory.

(g) Operate other types of facilities besides Restaurants in the Territory, including facilities that are identified by some or all of the Proprietary Marks; and

(h) Operate, and license others to operate, *Kona Grill* Restaurants under the Proprietary Marks and the System at any location in any Captive Market, regardless of whether the Captive Market is located in the Territory or not. "Captive Market" means any airports, hospitals, universities and schools, hotels, stadiums, arenas, ballparks, festivals, fairs, military bases/posts, and other mass gathering locations or temporary events.

THIS AGREEMENT IS NOT A FRANCHISE AGREEMENT, AND DEVELOPER HAS NO RIGHT TO USE, OR TO LICENSE TO OTHERS IN ANY MANNER, THE PROPRIETARY MARKS OR THE SYSTEM BY VIRTUE HEREOF.

2.4 Controlled Affiliates. If Developer desires to have one or more Controlled Affiliates enter into Franchise Agreements for certain Franchised Restaurants in the Territory, Developer shall submit to Franchisor a written request explaining in detail the reasons Developer desires to do so and provide Franchisor with all information Franchisor requires in connection with considering such request. Developer shall submit such request no later than 90 calendar days prior to the date by which the Franchise Agreement for such Franchised Restaurant must be executed in accordance with the Development Schedule. Franchisor shall have no obligation to approve any proposed Controlled Affiliate and may refuse to review information regarding such proposed Controlled Affiliate that has not been timely submitted or is incomplete. Unless otherwise specified by Franchisor in writing, Franchisor's failure to approve a proposed Controlled Affiliate within 30 calendar days after its receipt of all timely submitted and complete information shall constitute rejection of such Controlled Affiliate. All Franchise Agreements signed by Controlled Affiliates shall be guaranteed by Developer and each of Franchisee's Principals (as defined in each Franchise Agreement).

3. FEES

3.1 Franchise Territory Fee. Upon execution of this Agreement, Developer shall pay to Franchisor a non-refundable Franchise Territory Fee in the amount of [●] multiplied by the number of Franchised Restaurants to be opened pursuant to the Development Schedule, totaling $[●].

3.2 Initial Franchise Fee. In addition to the Franchise Territory Fee, upon execution of this Agreement, Developer shall pay Franchisor a non-refundable initial franchise fee in the amount of $75,000, and such payment will be credited toward the initial franchise fee due upon the execution of the first Franchise Agreement executed hereunder. Additionally, Franchisee or its Affiliate shall pay Franchisor a non-refundable initial franchise fee in the amount of $75,000 for each subsequent Franchise Agreement entered into pursuant to this Agreement. All initial franchise fees shall be deemed fully earned by Franchisor when received.

3.3 Payment and Taxes.

(a) All payments made by Developer to Franchisor pursuant to this Agreement shall be sent via electronic wire transfer of immediately available funds to such account as may be designated by Franchisor in writing from time to time.

(b) All payments required to be made by Developer pursuant to this Agreement shall be the gross amount determined according to the applicable section of this Agreement without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings (including non-resident withholding taxes) of any nature (collectively, "Taxes") now or hereafter imposed by any governmental or other authority that may be imposed on such payments. If Developer is required to withhold or deduct any amounts from any payment to Franchisor, such as a withholding tax, then the amount payable to Franchisor shall be increased by such amount as is necessary to make the actual amount received by Franchisor (after such withholding tax and after any additional Taxes on account of such additional payment) equal to the amount that would have been received by Franchisor had no deduction or withholding been required.

(c) In cases where Developer's local law or tax authority requires Taxes to be withheld, Developer is responsible for and shall pay the amount required to be withheld to the applicable taxing authority and shall promptly deliver to Franchisor, no later than seven days after Developer has issued each of its payments to Franchisor, receipts and respective tax forms issued by the applicable governmental or taxing authorities showing that all Taxes were properly withheld and remitted in compliance with applicable law. Developer is responsible for and shall pay all Taxes (including, without limitation, Taxes required to be withheld from payments Developer makes to Franchisor or Franchisor's Affiliates, Taxes on income or gross receipts, and any sales, use, value added, or goods and services Taxes) that arise as a result of this Agreement or other similar agreements between Developer and Franchisor, including Taxes that may arise as a result of Developer acquiring materials, supplies, specifications or other assets from Franchisor.

(d) In the event of any bona fide dispute with any taxing authority as to liability for Taxes assessed or other indebtedness, Developer 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 Developer 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 any Franchised Restaurant, any improvements thereon, or any assets of Developer that are part of the System or contain the Proprietary Marks.

(e) Notwithstanding anything set forth in Section 3.4(d) above, Developer shall not withhold or offset any portion of any payment due to Franchisor's alleged non-performance hereunder or due to the application of any Taxes. The parties acknowledge and agree that any Taxes imposed upon or with respect to this Agreement or any payment for any consultation, information, data, research, materials, supplies, specifications or the like acquired by or provided to Developer in connection with this Agreement or any other agreement contemplated herein, or otherwise in connection with any such agreements shall be paid by Developer.

(f) Developer bears sole and exclusive responsibility for the reporting and payment of all Taxes imposed directly upon it by any jurisdiction. In addition, Franchisor may be responsible now or in the future to collect and remit certain taxes or fees, including but not limited to, sales tax, use tax, excise tax, value added tax, franchise fee tax or consumer tax (collectively, "Transaction Tax"). To the extent that any Transaction Tax is imposed by any taxing authority on the payments made by Developer to Franchisor, Developer bears sole financial responsibility for the Transaction Tax and will pay Franchisor the Transaction Tax, to the extent Franchisor is required to collect and remit the tax, and such Transaction Tax payments shall be in addition to any other payments that are required under this Agreement.

(g) All funds payable to Franchisor will be paid to Franchisor by wire transfer, to the bank designated from time to time by Franchisor ("Bank Account"), or via such other method designated from time to time by Franchisor. Developer will bear all the costs and expenses of obtaining funds and transferring depositing payments in the Bank Account, including without limitation any charges by intermediary banks.

(h) Unless another time period is provided in this Agreement, all payments are due to Franchisor 15 days after delivery of an invoice or statement therefor. Any amounts not paid when due will accrue interest and late fees pursuant to Section 3.6 from and after the due date until paid in full. Invoices sent to Developer for reimbursement of expenses will include a line item breakdown of the types of expenses.

3.4 Overdue Payments. Any payment not actually received by Franchisor or its designee when due shall accrue late charges equal to 1.5% per month or the maximum rate permitted by applicable law, whichever is less, from the date it was due until paid. Such interest charges will be in addition to any other remedies that may be available to Franchisor. In addition, each payment not actually received by Franchisor or its designee when due will be subject to a late charge of $500 to cover Franchisor's administrative expenses. The parties confirm that this sum of $500 represents a good faith estimate of Franchisor's internal and external costs associated with a late payment and shall not be construed as a penalty.

4. DEVELOPMENT

4.1 Development Schedule. Developer will, either directly or through a Controlled Affiliate, obtain approval of the Site for each Franchised Restaurant, execute separate Franchise Agreements for each Franchised Restaurant, and establish Franchised Restaurants in the Territory in accordance with the development schedule set forth on Schedule 3 hereto ("Development Schedule").

4.2 Development Timeline. To be in compliance with its Development Schedule obligations:Developer must submit all Development Materials for the proposed Site for each Franchised Restaurant in time to achieve proper Site Approval on its due date set forth in the Development Schedule.

(b) Each proposed Site must receive an unconditional Site Approval executed by Franchisor no later than the date set forth in the Development Schedule.

(c) The Franchise Agreement for each proposed Site must be fully executed by Franchisor and the applicable Franchisee and all franchise fees paid no later than the date set forth in the Development Schedule.

(d) Each Franchised Restaurant must be Operational by the date set forth in the Development Schedule.

Time is of the essence with respect to each of the Development Schedule obligations specified in this Section 4, and each of the Development Schedule obligations (including, but not limited to, the Site Approval and the construction start dates, the Franchise Agreement execution date, and the opening date) must be met by the date set forth in the Development Schedule for Developer to be in compliance with the Development Schedule. Franchisor's agreement to extend any deadline in the Development Schedule or waive any other requirement of this Section 4 shall not waive, extend, or modify the Development Schedule or require Franchisor to grant similar extensions or waivers in the future. Notwithstanding the foregoing sentence, if an event of Force Majeure occurs that directly affects the ability of Developer to open the Franchised Restaurant next scheduled to be Operational pursuant to the Development Schedule, and Developer has provided the required written notice, then the date such Franchised Restaurant is required to be Operational may be extended up to 90 calendar days after the event that caused the Force Majeure ceased, and solely with respect to such Franchised Restaurant upon Developer's compliance with the terms of Section 14.11. Any extension of such 90 calendar day period must be in a writing signed by Franchisor. The Development Schedule shall be otherwise unaffected by any Force Majeure event.

4.3 Site Selection.

(a) If Developer has not identified a proposed site before entering into each Franchise Agreement hereunder, then Developer must identify and secure a Site no later than 90 days after execution of each Franchise Agreement for each Restaurant to be developed hereunder. Franchisor may, with respect to each proposed Site, conduct one site visit. Developer shall reimburse Franchisor the travel-related expenses it incurs in connection with each such Site visit.

(b) Franchisor agrees to use its commercially reasonable efforts to review all timely submitted and complete Development Materials for a proposed Site in accordance with Franchisor's then-current Standards and Site selection criteria and procedures and provide a response to Developer within 60 calendar days after Franchisor's receipt of all required Development Materials for such proposed Site and completion of any Site visit, if required. Franchisor shall have no obligation to approve any proposed Site and may refuse to review Development Materials that have not been timely submitted or are incomplete. Unless otherwise specified by Franchisor in writing, Franchisor's failure to approve a proposed Site within 60 calendar days after its receipt of all timely submitted and complete Development Materials shall constitute rejection of such Site.

(c) Neither Franchisor's (i) consent to nor (ii) assistance in the selection of, any Site shall constitute Franchisor's representation or warranty that a Franchised Restaurant operated at such Site will be profitable or meet any financial projection.

(d) If Developer of Developer's Affiliate proposes to enter into a lease or other occupancy contract with respect to any proposed site, Franchisor may, in its sole discretion, require Franchisee to submit the lease or occupancy contract to Franchisor for review and approval. In addition to the covenants set forth below, such lease or occupancy contract must provide Franchisor the opportunity to conduct an in-person visit to the proposed site per Section 4.3(a) before such lease or occupancy contract is executed. Franchisor's review of such documents is for the sole purpose of determining if Franchisor's required terms are included in such documents, not for the purpose of reviewing the financial terms of such documents. Franchisor may condition its consent to such lease or occupancy contract upon the inclusion of the following covenants in such lease or occupancy contract:

(1) the landlord shall deliver to Franchisor, simultaneously with delivery to Developer or its Affiliate, any notice alleging Developer's or its Affiliate's default under the lease or occupancy contract which threatens or purports to terminate the lease or occupancy contract;

(2) Franchisor may enter the Franchised Restaurant premises to protect the Proprietary Marks or the System or to cure any event of default or default under the lease or occupancy contract or the applicable Franchise Agreement;

(3) Developer or its Affiliate may assign the lease or occupancy contract to Franchisor without any fee or modification thereof, and Developer or its Affiliate may assign or sublease the lease or occupancy contract for any part of the remaining term of the lease, each without the landlord's consent; and

(4) the landlord and Developer or its affiliate shall not amend the lease in any way which is inconsistent with the provisions of (1) through (3) above, inclusive.

Developer shall furnish to Franchisor a complete copy of the lease within 10 calendar days after execution. The copy of the lease must be accompanied by a certificate of an officer of Developer or its Affiliate certifying that (i) the terms and conditions of the lease are consistent with the summary delivered as part of the Development Materials; and (ii) the covenants in clauses (1) through (4) are included therein (or certifying to Franchisor that Developer or its Affiliate used its best efforts to obtain such covenants, but the landlord would not agree).

(e) Notwithstanding the terms of Section 4.3(d), Developer shall:

(1) deliver to Franchisor, immediately after delivery to or by Developer, any notice of default under the lease or occupancy contract which threatens or purports to terminate the lease or occupancy contract;

(2) permit (or not inhibit) Franchisor to enter the Franchised Restaurant premises to protect the Proprietary Marks or the System or to cure any event of default or default under the lease or occupancy contract or the applicable Franchise Agreement; and

(3) not amend the lease in any way which is inconsistent with the provisions of Sections 4.3(e)(1) through (3), inclusive.

(f) Any actions or decisions by Developer or its Affiliate to acquire by lease, purchase, or other agreement the rights to a site proposed for a Franchised Restaurant before Franchisor's final approval of such site are at Developer's or its Affiliate's sole risk, and

Franchisor will have no responsibility or liability whatsoever to Developer or its Affiliate or any other party in the event the site is not approved.

4.4 Design and Construction Provisions Effective Prior to Execution of a Franchise Agreement. Each Franchise Agreement will contain specific terms for the design and construction of each prospective Franchised Restaurant. In the event that Developer or Franchisee commences the design or construction of a prospective Site before the execution of a Franchise Agreement for a Franchised Restaurant at such site, the terms of Sections 4.4 through Sections 4.13 will be and remain applicable; provided, however, upon execution of a Franchise Agreement for a Franchised Restaurant at a Site, the terms of the Franchise Agreement as they pertain solely to the design and construction of the particular Franchised Restaurant at the Site will control over the terms of Sections 4.4 through 4.13 herein to the extent of any conflict between the Franchise Agreement for a particular Franchised Restaurant and the terms of Sections 4.4 – 4.13 herein. Any actions or decisions by Developer to undertake the design or construction of a prospective Site before execution of a Franchise Agreement for such Franchised Restaurant are at Developer's sole risk, and Franchisor will have no responsibility or liability to Developer or any other party in the event that a Franchise Agreement is not mutually executed.

4.5 New Franchised Restaurant Design Steps. Developer must follow the following design steps in designing and constructing a prospective Franchised Restaurant:

(a) As-Built Drawings and Photographs. Developer shall provide Franchisor with an "As-built" Floor Plan of the proposed lease space, AutoCAD files, and Franchisee shall photo-document the entire existing building and lease space, including, but not limited to, all exterior building walls, pole, or pylon signs, parking lot, lighting fixtures, landscaping, concrete walks, and interior walls, floors, ceilings, and structural elements, mechanical, electrical, and plumbing equipment and fixtures. The items required above must be submitted to Franchisor for review and approval no later than seven days after Franchisor's written request. For freestanding property sites, Developer shall provide to Franchisor for its review and approval, no later than seven days after Franchisor's written request, a plat plan for the prospective Site, a site survey plan, and photos of the site and surrounding neighborhood.

(b) Preliminary Floor Plan. Franchisor shall prepare one preliminary floor plan, at no cost to Developer, to determine the viability of the proposed lease perimeter and the most efficient Restaurant layout. Such drawings will be preliminary and general in nature. Franchisor will use this preliminary floor plan as part of its Site evaluation process. Minor revisions to the preliminary floor plan will be made at Franchisor's cost. If substantial revisions to the preliminary plans are necessary or desired, Franchisor reserves the right to charge Developer for any out-of-pocket costs incurred in revising the preliminary plans, and if applicable, a reasonable charge for Franchisor's personnel's time.

(c) Design Development Drawings. Once Franchisor approves the Site, Developer shall provide to Franchisor, at Developer's expense, field measurements of the lease or occupancy space, no later than 10 days after Franchisor approves the Site. Franchisor or Franchisor's designated architect will prepare a design development drawing package comprised of: dimensioned floor plans; floor finish plan; utility point of connection location plan; exterior and interior elevations (including wall decor and merchandise shelving); reflected ceiling plan locating light fixtures, roof plan, televisions, artwork, and speakers; door and window schedules and specifications; furniture and equipment floor plan and schedule; and toilet room fixture plan and elevations ("Design Development Drawings"). The Design Development Drawings will include a kitchen floor plan, but will not include mechanical, electrical, or plumbing drawings of any kind, including without limitation, kitchen rough-ins, nor will the Design Development Drawings include digital renderings or video renderings. As part of the Design Development Drawings, Franchisor shall provide to Developer the elevations and an itemized schedule (including cut sheets) for the kitchen equipment included in the kitchen floor plan, as well as sign drawings and specifications for exterior and interior signs. Franchisor shall have a minimum of 30 days after receipt of field measurements to prepare such Design Development Drawings. Franchisor shall prepare the Design Development Drawings and one set of revisions thereto, at Franchisor's expense. Any and all additional plans and revisions under this Section 4.5 shall be prepared at Developer's expense. If Franchisor or Franchisor's architect prepares additional plans or revisions under this Section 4.5 (including without limitation, digital renderings and video renderings), Developer will pay or reimburse to Franchisor all out-of-pocket expenses and if applicable, a reasonable charge for Franchisor's personnel's time. Fees for Franchisor's personnel's time shall be competitive with market rates in the United States for comparable design services and will include travel expenses incurred by Franchisor's personnel for visits to the prospective Site if necessary for preparation or approval of drawings under this Section 5.5, subject to the terms of Section 5.9 herein with respect to the initial two visits. If Franchisor requests that Developer directly pay any costs or expenses incurred in preparing the floor plans or drawings to any third parties, including without limitation, any architect, kitchen consultant, or other design professional, Developer shall pay the same directly to the applicable parties within 15 days after receipt of an invoice therefor.

(d) Construction Drawings. Using the design direction of the Design Development Drawings, Developer's local architect and engineers will prepare the following construction drawings to meet local construction and legal requirements: site plan, building and wall sections, exterior and interior details, structural drawings, engineering drawings and specifications (civil, structural, mechanical, electrical, and plumbing), all specialty items such as aquariums, water features, fire features, lighting systems, exterior misting systems and heating systems, etc., and general specifications. Developer shall timely submit the final set of construction drawings to Franchisor and Franchisor's approved architect for its written approval, no later than 42 days after Developer receives the Design Development Drawings from Franchisor. Notwithstanding anything contained herein to the contrary, Developer shall purchase Franchisor's kitchen equipment package, sign package, and specialty items, including, but not limited to, aquariums, water features, lighting systems, patio mist fans, storefront system and custom furniture, fixtures, and equipment from Franchisor's approved vendors, unless alternates are approved in advance, in writing by Franchisor, at Franchisor's sole discretion.

(e) Permit and Pricing: Once the construction drawings are approved by Franchisor in writing, Developer may submit the final set of construction drawings to the:

i. Landlord or property owner for the Site;

ii. Local authorities for construction permit;

iii. Local construction companies for project pricing; and

iv. Franchisor-approved vendors for pricing quotations.

4.6 Pre-Construction Approval Criteria. Prior to commencing any construction at the Site, Developer, at its own cost, shall submit to Franchisor for its prior written approval:

(a) Complete architectural and engineering drawings and specifications for the Franchised Restaurant in accordance with applicable laws, regulations, or ordinances, and which conform to Franchisor's general design and specifications including, but not limited to, those required under Section 5.5 above. Once approved by Franchisor pursuant to Section 5.7 below, such plans and specifications shall not be modified without the prior written consent of Franchisor;

(b) A statement in the form prescribed by Franchisor and signed by Developer, certifying that Developer has:

i. complied with all applicable laws, regulations, or ordinances in preparing its plans and specifications;

ii. employed a qualified architect or engineer, approved by Franchisor, to prepare construction documents and supervise the construction of the Franchised Restaurant and completion of all improvements (such statement shall also identify the architect or engineer and describe his or her qualifications in detail);

iii. obtained all such permits and certifications required for lawful construction and operation of the Franchised Restaurant, including, without limitation, zoning, access, sign and fire requirements; and

iv. obtained required licenses to sell beer, wine, and liquor at the Franchised Restaurant.

(c) A construction schedule acceptable to Franchisor.

4.7 Pre-Construction Approval. Upon receipt of the documents described in Sections 4.5 and 4.6 above, Franchisor will notify Developer of its approval or disapproval in writing within a period of 21 days. Franchisor's failure to respond to Developer within such period shall be deemed disapproval. Given that the construction and appearance of the Franchised Restaurant is critical to the continued success and viability of the System, Franchisor will have absolute discretion in making such decision, and Developer will accept any of Franchisor's decisions as final.

4.8 Commencement and Completion of Construction. Developer will commence construction within 10 days after the pre-construction approval has been obtained and shall diligently prosecute the same to completion thereafter in accordance with the deadlines set forth in this Development Agreement. As used in this Section 4.8, "completion" shall mean that all exterior and interior carpentry, electrical, audio-visual, painting, and finishing work, and installation of all fixtures, equipment, and signs, in accordance with the plans and specifications approved by Franchisor for such construction have been fully completed.

4.9 On-Site Construction Visits. Franchisor may, in its sole discretion and at its expense, provide up to two, on-site construction visits to verify compliance with the Standards. If Developer requests that Franchisor make additional visits to the Site, or if additional visits are required to prepare or approve the drawings and specifications contemplated in Sections 4.5 and 4.6 above or because of non-compliance with the Standards, then Developer shall pay the expenses Franchisor incurs for such visits within 15 days after receipt of an invoice therefor.

Developer shall fully cooperate with Franchisor and provide Franchisor and its representatives with full access to the Site in connection with all such visits.

4.10 Inspection. Developer agrees that Franchisor and its agents shall have the right to inspect the construction of the Franchised Restaurant at all reasonable times. Developer shall cooperate fully with Franchisor and provide Franchisor and its representatives with full access to the Site in connection therewith.

4.11 Continuing Statements. Beginning with the calendar month after the pre-construction approval issued by Franchisor, and until one calendar month after the construction is completed, Developer shall provide Franchisor, on or before each Friday of each week, with a statement in the form (including progress photographs) prescribed by Franchisor and signed by Developer, certifying Developer's continued compliance with and maintenance of the requirements of Section 4.6(b). If Developer fails to timely provide such statement, Franchisor shall have the right to enforce against Developer any and all options and remedies available to Franchisor under this Agreement, at law or in equity, (such remedies are non-exclusive and non-cumulative).Approval for Opening. Subject to an event of Force Majeure, once construction is completed, and within seven days after obtaining Franchisor's written approval for opening and mutual execution of Franchisors' then-current form of Franchise Agreement, Developer shall open the Franchised Restaurant to the public. Developer shall not open the Franchised Restaurant to the public unless Franchisor has granted its written approval to do so and a Franchise Agreement for the Franchised Restaurant has been mutually executed and delivered.

5. ONGOING SUPPORT SERVICES

5.1 Site Visits. In addition to the optional Site visits described in Section 4.3(a), if requested by Developer in writing, Franchisor will make, at no charge to Developer (except as provided in this Section 5.1), up to two development support visits each year to the Territory for the first two years after the execution of this Agreement for purposes of conducting a general review of available sites in the Territory. Such visits shall be scheduled in coordination with Developer. Developer shall reimburse Franchisor for any travel-related expenses Franchisor incurs related to any additional development support visits requested after the two initial visits each year during the first two years. Upon Developer's written request prior to any scheduled visit, Franchisor shall give Developer notice of the total estimated costs related to any development support visit. Franchisor may conduct Site visits under this Section 5.1 contemporaneously with other visits to the Territory that Franchisor may make from time to time under this Agreement or any Franchise Agreement.

5.2 Marketing Materials. Upon written request, Franchisor may provide Developer with existing marketing and other advertising materials prepared by Franchisor, which Developer may use in to market and advertise the Franchised Restaurants in the Territory, pursuant to the terms and conditions related to the use of marketing materials and the Marks, as set forth in each Franchise Agreement. If Developer desires to make changes to such materials, Developer must obtain Franchisor's written consent prior to making such changes, and Developer will be solely responsible for all costs associated therewith. Notwithstanding the foregoing, Developer will be solely responsible to ensure that any such marketing and advertising materials provided by Franchisor comply with all applicable legal requirements prior to Developer's use, and Franchisor will have no liability for any non-compliance. Further, Developer shall not use such marketing and other advertising materials unless and until one or more Franchise Agreements are fully executed, and then such use shall be pursuant to the terms of such Franchise Agreements.

5.3 Internet Support. Subject to Section 6.11, if and when such Internet capability is established by Franchisor, Franchisor may, at its option, provide Developer with advice and support for the development of Franchised Restaurants in the Territory via the Internet.

5.4 Development Criteria. Franchisor shall provide Developer with access to the then-current Development Criteria and a copy of approved plans and specifications for the establishment and operation of a typical Restaurant located in the United States. The Development Criteria and other material may be provided in hard copy and/or in electronic format, including by means of the Extranet. Developer acknowledges Franchisor's ownership of any copyright rights in or to the Development Criteria and such materials. Developer shall observe Franchisor's reasonable requests concerning copyright notices. Any hard copies of the Development Criteria and such plans and materials shall be returned to Franchisor immediately upon termination or expiration of this Agreement.

6. REPRESENTATIONS, WARRANTIES, AND COVENANTS

6.1 Representations, Warranties, and Covenants of Developer. If Developer is not an individual, then Developer and each of Developer's Principals represent, warrant, and covenant to Franchisor that:

(a) Duly Formed. If Developer is a corporation, limited liability company, limited or general partnership, or other form of business entity, it is duly formed and organized, validly existing, and in good standing under the laws of the jurisdiction of its organization with all requisite power and authority to enter into this Agreement and perform the obligations contained herein.

(b) Authorization. The execution, delivery, and performance by Developer of this Agreement and all other agreements contemplated herein has been duly authorized by all requisite actions on the part of Developer and no further actions are necessary to make this Agreement or such other agreements valid and binding upon it and enforceable against it in accordance with their respective terms.

(c) Execution and Performance. Neither the execution, delivery, nor performance by Developer of this Agreement or any other agreements contemplated hereby will conflict with, or result in a breach of any term or provision of Developer's charter, by-laws, articles of organization, or partnership agreement and/or other governing documents and any amendments thereto, any indenture, mortgage, deed of trust, non-competition covenant, or other material contract or agreement to which Developer is a party, or by which it or any of its assets are bound, or breach any order, writ, injunction, or decree of any court, administrative agency, or governmental body.

(d) Corporate Documents. Certified copies of Developer's and Developer's Principals (if an entity) charter, by-laws, articles of organization, partnership agreement, membership agreement, and/or other governing documents and any amendments thereto, including board of director's or partner's resolutions authorizing this Agreement, have been delivered to Franchisor and such documents provide that any Equity Interest in Developer and Developer's Principals (if an entity) shall be in nominative form only and that bearer shares shall not be permitted. Any amendments or changes to such governing or charter documents subsequent to the Execution Date, shall not be undertaken without Franchisor's prior written consent.

(e) Ownership Interests. All Equity Interests in Developer and Developer's Principals are accurately and completely described in Schedule 2 to this Agreement and have been issued in nominative form only. Developer will maintain at all times a current list of all owners of record and all beneficial owners of Equity Interests in Developer. Developer will immediately provide such list to Franchisor upon any change in the information set forth in Schedule 2.

6.2 Financial Statements. Developer and, at Franchisor's request, each of Developer's Principals have provided Franchisor with their respective most recent financial statements in the form and for the time periods specified by Franchisor. The financial statements (i) present fairly Developer's financial position and the financial position of each of Developer's Principals, as applicable, at the dates indicated therein and, with respect to Developer, the results of its operations and cash flow for the periods then ended; (ii) are certified as true and correct by the Developer's Chief Financial Officer or President, as applicable; and (iii) have been prepared in conformity with generally accepted accounting principles, applied on a consistent basis. No material liabilities, adverse claims, commitments, or obligations of any nature, whether accrued, unliquidated, absolute, contingent, or otherwise, exist as of the Execution Date which are not reflected as liabilities on Developer's financial statements or those of Developer's Principals.

6.3 Developer's Principals. Developer will notify Franchisor within 10 calendar days following the date that any person previously identified as Developer's Principal ceases to qualify as such or that any new person succeeds to or otherwise comes to occupy a position which would qualify such person as one of Developer's Principals. Such so-qualified person will immediately execute all documents and instruments (including, as applicable, this Agreement) required by Franchisor to be executed by others in a comparable position; but if there is any conflict between this provision and the transfer provisions of Section 9, the provisions of Section 9 will control.

7. GUARANTY

7.1 As an inducement and as a condition to Franchisor's execution and acceptance of this Agreement, Developer's Principals will, jointly and severally, guarantee the performance of Developer's obligations, covenants, and agreements under this Agreement, pursuant to the terms and conditions of the Agreement and Guaranty of Developer's Principals in the form of Attachment A to this Agreement, and will otherwise bind themselves to the terms of this Agreement as stated herein.

7.2 Non-Competition During Term of Agreement. In consideration of, among other things, the disclosure to Developer of the System and the Confidential Information, during the Term of this Agreement, Developer, Developer's Principals, and their respective Affiliates shall not, directly or indirectly: Divert or attempt to divert business of any Restaurant or Franchised Restaurant to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System;

(b) Employ or seek to employ any person who is employed by Franchisor or by any other franchisee or developer of Franchisor or entice such person to leave such employment, except as provided in Section 6.5.1 below; and

(c) Except as provided for herein, own, maintain, engage in, or have an Equity Interest in a Competing Business; provided that this provision shall not apply to any Minority Interest collectively held by Franchisee or Franchisee's Principals in any publicly-held corporation listed on a national stock exchange.

(d) If a Developer Party desires to make an offer of employment to an employee of Franchisor or its Affiliates, Developer must, at least 180 days before the desired hire date, obtain the prior written approval of Franchisor, which Franchisor has the absolute right to withhold. If Franchisor grants its approval, Franchisor will determine an appropriate fee to be paid by Developer to Franchisor or its Affiliates for the estimated internal and external costs to locate, hire, and train the employee's replacement, plus a reasonable fee payable to Franchisor or its Affiliates to compensate the Restaurant from which the employee is departing. If a Developer Party decides to hire such employee, Developer will pay the foregoing fee by the earlier of (a) 60 days after the date the employee accepts a Developer Party's offer of employment, or (b) 60 days prior to the date scheduled for the employee's last day of work for Franchisor or its Affiliates.

7.3 Non-Competition after Termination or Non-Renewal of Agreement. In consideration of, among other things, the disclosure to Developer of the System and the Confidential Information, for a period of two years after the expiration of this Agreement or approved Transfer by Developer and/or Developer's Principals, Developer, Developer's Principals, and their respective Affiliates shall not, directly or indirectly:

(a) Divert or attempt to divert business of any Restaurant or Franchised Restaurant to any Competing Business, or do or perform any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and/or the System;

(b) Employ or seek to employ any person who is employed by Franchisor or by any other franchisee or developer of Franchisor, or entice or induce such person to leave such employment; and

(c) Except as provided for herein, own, maintain, engage in, or have an Equity Interest in a Competing Business which is located within the Territory or within 25 miles from the outer boundaries of the Territory or any Restaurant; provided that this provision shall not apply to any Minority Interest collectively held by Franchisee or Franchisee's Principals in any publicly-held corporation.

7.4 Independent Covenants. Each of the covenants in Sections 6.5 and 6.6 will be construed as independent of any other covenant or provision of this Agreement.

(a) Developer and Developer's Principals understand and acknowledge that Franchisor will have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 6.5 and 6.6, or any portion thereof, without their consent, effective immediately upon notice to Developer; and Developer and Developer's Principals agree that they will comply with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 14.2 hereof.

(b) Developer and Developer's Principals expressly agree that the existence of any claims they may have against Franchisor, whether or not arising from this Agreement, will not constitute a defense to the enforcement by Franchisor of the covenants in Sections 6.5 and 6.6.

(c) Developer and each Developer's Principal acknowledges that the covenants not to compete contained in Sections 6.5 and 6.6 are reasonable and necessary to protect the business and goodwill of the System and to avoid misappropriation or other unauthorized use of the System and Franchisor's other trade secrets.

(d) Developer and each Developer's Principal acknowledge and confirm that Developer and Developer's Principals possess the education, training, and experience necessary to earn a reasonable livelihood apart from operating a Competing Business.

(e) The time period of the competitive restrictions set forth above will be automatically extended by the time period of any breach of Sections 6.5 or 6.6.

7.5 Breach of Covenants Causes Irreparable Injury. Developer acknowledges that if it or any of Developer's Principals violates of any covenant set forth in Section 6.5 or 6.6, such conduct or action would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee hereby consents to the issuance of, and will all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an *ex parte* or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

7.6 Additional Covenants. Developer shall require and obtain for the benefit of Franchisor execution of the confidentiality and non-competition agreement substantially in the form of Attachment B from any and all of its employees having access to materials or information furnished or disclosed to Developer by Franchisor, or any other person Franchisor requires, including, which limitation, all Brand Directors, Directors of Operations, General Managers, Assistant General Managers, Assistant Managers, Executive Chefs, Sous Chefs, Head Sushi Chefs, and other management personnel.

7.7 Personal Investment. Developer's Principals shall, at the time each Franchised Restaurant is opened under the Development Schedule, make a capital contribution to the Developer in cash in an amount not less than 30% of the total investment required to open such Franchised Restaurant.

7.8 Extranet. Franchisor may establish an Extranet (but is not required to do so or to maintain an Extranet). If Franchisor does establish an Extranet, then Developer shall comply with Franchisor's policies with respect to connecting to the Extranet and utilizing the Extranet in connection with the development of Franchised Restaurants. The Extranet may include, without limitation, the Development Criteria, training and marketing materials, and sales and data reporting solutions (both upstream and downstream, as Franchisor may direct). Developer shall 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.Websites. Unless approved in writing by Franchisor, or as otherwise required in accordance with the terms of a Franchise Agreement, Developer shall not establish a separate Website or a presence on any social medial Website for its Franchised Restaurants or otherwise use or display the Proprietary Marks on the Internet or otherwise, including but not limited to any gaming Website, social networking Website, or marketing/discounting Website; as part of any user name; as part of any unauthorized email address; or as part of any unauthorized software application (app). Developer hereby transfers and assigns to Franchisor any and all right, title, and interest in and to any Internet domain names registered by Developer referencing any of the Proprietary Marks. At

Franchisor's request, Developer shall execute a domain name assignment agreement as may be necessary to give effect to such transfer and assignment.

7.10 Non-Liability. Developer acknowledges and agrees that Franchisor shall not, by virtue of any approvals, advice, or services provided to Developer, assume responsibility or liability to Developer or any third parties to which it would not otherwise be subject.

7.11 Performance by Franchisor. Developer acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any designee, employee, or agent of Franchisor, as Franchisor may direct.

8. KEY MANAGEMENT AND TRAINING

8.1 Director of Operations. Director shall appoint and maintain a Director of Operations at all times during the Term of this Agreement and as required in any Franchise Agreement executed hereunder. If Developer and/or it Affiliate(s) operate less than three KONA GRILL® Restaurants, and if Franchisor approves, Developer's Brand Director may also be, and assume the duties of, the Director of Operations. If Developer and/or its Affiliate(s) operate more than six KONA GRILL® Restaurants, then Developer and/or its Affiliates must hire additional Directors of Operations so that no Director of Operations oversees more than six KONA GRILL® Restaurants. Developer hereby designates the person named in Schedule 2 as its initial Director of Operations. Any replacement Director of Operations shall be designated within 10 calendar days of the prior Director of Operations' resignation or termination. Each Director of Operations shall attend and successfully complete Franchisor's training program in accordance with Section 8.7 below, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Director of Operations. In addition, each Director of Operations shall reside in reasonable proximity to the Territory. The Director of Operations hereunder and under any Franchise Agreement may be the same individual.

8.2 Brand Director. Developer shall appoint and maintain a Brand Director at all times during the Term of this Agreement. If Developer is an individual, then Developer may also be the Brand Director. Developer hereby designates the person named in Schedule 2 as its initial Brand Director. Any replacement Brand Director shall be designated within 10 calendar days of the prior Brand Director's resignation or termination. Each Brand Director shall attend and successfully complete Franchisor's training program in accordance with Section 8.7 below, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Brand Director. The Brand Director hereunder and under each Franchise Agreement shall be the same individual.

8.3 Management Personnel. Director or its Affiliate shall hire a General Manager and two Assistant Managers for each Restaurant developed hereunder within 60 calendar days of Franchisor's request, but in no event later than 180 days prior to the projected opening date for each such Restaurant. All such management personnel shall (i) meet Franchisor's then-current criteria for their respective positions, and (ii) attend and successfully complete Franchisor's training program required for their respective positions. Developer or its Affiliate is responsible for all transportation, lodging, meal, and wage costs associated with such training. When possible, any replacement management personnel shall be designated prior to the resignation or termination of the then-current respective personnel.

8.4 Chef Personnel. Developer or its Affiliate shall hire an Executive Chef, Sous Chef, and Head Sushi Chef for each Restaurant developed hereunder within 60 calendar days of Franchisor's request, but in no event later than 180 days prior to the projected opening date for each such Restaurant. All such chef personnel shall (i) meet Franchisor's then-current criteria for their respective positions, and (ii) attend and successfully complete Franchisor's training program required for their respective positions. Franchisee is responsible for all transportation, lodging, meal, and wage costs associated with such training. When possible, any replacement chef personnel shall be designated prior to the resignation or termination of the then-current respective personnel.

8.5 Regional Culinary Partners. Developer or its Affiliate will appoint and maintain a Regional Culinary Partner prior to the opening of the sixth Restaurant and one additional Regional Culinary Partner for every six Restaurants opened thereafter (e.g., a second Regional Culinary Partner will be engaged on or before the opening of the 12th Restaurant). Each Regional Culinary Partner shall attend and successfully complete Franchisor's training program in accordance with Section 8.6 below, except that such training may be modified, in Franchisor's sole discretion, to accommodate the typical duties of a Regional Culinary Partner.

8.6 Hiring Decisions. Developer shall be ultimately responsible for all hiring, firing, demotion, promotion, disciplinary, and other employment-related decisions and is solely obligated for any labor and/or employment-related claims made by any of its employees, employee candidates, or independent contractors against Developer or Franchisor. Developer will fully indemnify and defend Franchisor from any and all labor and employment-related claims that the employees, employee candidates, or independent contractors of Developer may bring against Franchisor.

8.7 Training.

(a) Each Franchise Agreement will contain specific terms for the training of Developer's management and staff. In the event that Franchisor commences the training of Developer's or Franchisee's management or staff before the execution of a Franchise Agreement for a Franchised Restaurant at a Site, the terms of this Section 8.7 will be applicable; provided, however, upon execution of a Franchise Agreement for a Franchised Restaurant at a Site, the terms of the Franchise Agreement as they pertain solely to the training of the management and staff for the particular Franchised Restaurant at the Site will control over the terms of this Section 8.7 and only to the extent of any conflict between the Franchise Agreement for a particular Franchised Restaurant and the terms of this Section 8.7. Any actions or decisions by Developer or Franchisee to commence training before execution of a Franchise Agreement for such Franchised Restaurant are at Developer's sole risk, and Franchisor will have no responsibility or liability to Developer or any other party in the event that a Franchise Agreement is not mutually executed.

(b) At least 180 days prior to the scheduled opening date of each Restaurant developed hereunder, or when required by the appointment of additional Directors of Operations as required by Section 8.1 of this Agreement and the appointment of Regional Culinary Partner(s) as required by Section 8.5 of this Agreement Developer or its Affiliate will send the entire management team for pre-opening training to a certified training restaurant designated by Franchisor; provided, however, Franchisor may, in its discretion, reduce the number of members of the management team required to attend pre-opening training based upon Franchisee's or its managers' experience and familiarity with the System. The length of the initial training may vary by job description and will be determined by Franchisor in its sole discretion. If Developer or its Affiliate operates another *Kona Grill* Restaurant that has been certified by Franchisor as a training restaurant, then Franchisor may permit the pre-opening training program to be conducted by Developer or its Affiliate at such certified training restaurant. Management team trainees must successfully complete, as Franchisor determines in its sole discretion, pre-opening training.

(c) For the management teams for the initial three Franchised Restaurants in the Territory, Developer shall not be charged any tuition costs for such training. For the training of the initial management team for each of the three initial Franchised Restaurants, Franchisor will bear the cost of: (i) providing its management training program, (ii) three uniforms per manager, (iii) one set of written training materials per manager; and (iv) one set of tools (cleaver, cut glove, measuring cups, and spoons) per manager. For each management training program (including the training of the initial three management teams), Developer shall bear the cost of wages, travel, accommodations, transportation, meals and other incidental expense of its personnel attending training, in addition to any other costs provided for herein. Developer will supply its employees with credit cards or other payment methods sufficient to cover such employees' expenses while at the training program. Developer will be responsible for making the travel arrangements and reserving accommodations for its personnel and all related costs therefor. Notwithstanding the foregoing, if Franchisor pays for all or any portion of the travel arrangements for Developer's personnel in connection with the management training program, Developer will promptly reimburse Franchisor for costs incurred upon receipt of an invoice.

(d) After the training of the initial management teams for the initial three Franchised Restaurants, (i) Franchisor may charge its then-current training fee for the initial training of Developer's or Franchisee's initial management team; and (ii) within 30 days after completing initial training, Developer shall pay Franchisor for all training materials, equipment, uniforms, and all other training-related expenses, including the stipend and travel, lodging, and dining expenses for persons who attend training, and bonuses paid to training managers. Further, Developer shall pay to Franchisor an amount equal to Franchisor's then-current rate for training tuition and applicable related expenses for (A) any replacement management personnel, and (B) any individuals attending training for the second or subsequent time. Franchisor will determine the length of the initial management training, which is anticipated to be 12 weeks.

(e) Prior to the opening of each Franchised Restaurant, management team trainees must successfully complete, as Franchisor determines in its sole discretion, the initial management training program. Should any manager be replaced, the replacement manager must attend a management training program comparable to the initial management training program. Each replacement manager must successfully complete, as Franchisor determines in its sole discretion, a management training program promptly after commencing employment with Franchisee and prior to assuming a management role at the Franchised Restaurant.

(f) After Developer or its Affiliate has opened three Franchised Restaurants in the Territory, Developer may request in writing to have one of its Franchised Restaurants designated as a training center. In such event, Franchisor may, but shall not be obligated to, certify one of Developer's Franchised Restaurants as a training center. Among other things, to be approved as a training center, a Franchised Restaurant must (i) be in full compliance with

Standards, including any required refurbishments or remodeling, (ii) have a General Manager that has been certified by Franchisor as being a trainer pursuant to Franchisor's Standards, which may include, without limitation, attending additional training sessions, and (iii) otherwise meet Franchisor's criteria for training centers. Management team trainees must successfully complete, as Franchisor determines in its sole discretion, the initial management training. Personnel at Franchised Restaurants designated as training centers may be subject to continuing training requirements by Franchisor, the cost of which shall be borne by Developer.

(g) Subject to Section 8.7(a) above, if, prior to the execution of a Franchise Agreement for a Franchised Restaurant at a Site, Franchisor provides an opening team to assist in the training of Developer's or Franchisee's employees at a Site; and/or the opening of the Franchised Restaurant, then within 15 days after receipt of invoice, Developer must reimburse Franchisor for all of the costs that Franchisor incurs to provide such training and support, including without limitation airfare, baggage fees, hotel/lodging (based on single occupancy at moderate accommodations, preferably an extended stay hotel with in-room kitchen facilities), Internet fees, ground transportation, a per diem stipend (a daily charge determined by advance agreement for anticipated expenses incurred by the Opening Team for meals outside of the training restaurant; laundry; fees and tips for persons who provide services, such as food servers, hotel housekeeping and skycaps; and telephone expenses, which stipend amount will be based on the amount Franchisor pays its training personnel at Affiliate-owned Restaurants, subject to adjustment based on the applicable regional cost of living, but in no event less than $35.00 per day), and wages and/or salaries (including a reasonable allocation of the cost of benefits) and payroll taxes of, or with respect to, Franchisor's opening team providing such training program.

(h) For each Restaurant developed hereunder, Developer or its Affiliate shall not be required to pay any tuition or training fee for the pre-opening training of its initial management team; however, Developer or Affiliate shall bear the cost of wages, travel, transportation, meals, and other incidental expenses of its personnel attending training. In addition, Developer or its Affiliate shall pay to Franchisor an amount equal to Franchisor's then-current rate for training tuition for (i) any replacement management personnel, and (ii) any individuals attending training for the second or subsequent time. Franchisor will determine the length of the pre-opening training, which is anticipated to be 12 weeks.

(i) Developer shall comply with the employee training procedures and requirements reasonably prescribed by Franchisor, which may include, without limitation, testing requirements. Franchisor may periodically make other required or optional training available to Developer's employees, as well as other programs, seminars, and materials, and Developer must ensure that all employees who are required to attend such training satisfactorily complete the training within the time specified. All training will be provided at a location Franchisor designates, and Developer must pay its employees' travel expenses and room, board, and wages during the training. Franchisor reserves the right to charge a reasonable fee for the training, seminars, and materials described in this section, whether required or optional. Franchisor may also require, as a condition of providing training, that Developer's managers and employees sign confidentiality and non-competition agreements in the form Franchisor requires.

8.8 Training Materials. Franchisor may create written materials for, and audio and/or video recording of, any training programs at Franchisor's expense. Unless otherwise provided herein, any training materials provided by Franchisor at Developer's request. Such fee will be based on Franchisor's cost to develop and produce such materials.

8.9 In-Territory Assistance. From time to time, Franchisor's representative may visit, at Developer's expense, the Developer in the Territory to provide assistance not otherwise specifically set forth in this Agreement, including but not limited to assistance in ascertaining the availability of locally sourced material, food and beverages or other assistance specifically requested by Developer, including, but not limited to, additional training, marketing, site reviews, market studies, competitor analysis and information technology. Developer shall bear all costs Franchisor incurs in connection with such visits.

9. PROPRIETARY INFORMATION

9.1 Confidential Information. Except as expressly provided herein, Developer shall have no right, title, or interest in the Confidential Information. Developer and the Developer's Principals shall only communicate, disclose, or use the Confidential Information as expressly permitted herein or as required by law. Developer and Developer's Principals shall disclose the Confidential Information only to such of Developer's employees, agents, or independent contractors who must have access to it in connection with their employment. The covenant in this Section will survive the expiration, termination, or transfer of this Agreement or any interest in this Agreement and will be perpetually binding upon Developer and each of Developer's Principals.

9.2 Confidentiality Agreements. Developer shall require and obtain for the benefit of Franchisor execution of the confidentiality and non-competition agreement substantially in the form of Attachment B from any and all of its employees having access to materials or information furnished or disclosed to Franchisee by Franchisor, any of its Affiliates, and any other person Franchisor requires, including, without limitation, all Directors of Operation, General Managers, Assistant General Managers, Executive Chefs, Sous Chefs, Head Sushi Chefs, and other management personnel. Neither Developer, Developer's Principal's, nor their respective employees may at any time, without Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce the Confidential Information, in whole or in part, nor otherwise make the same available to any unauthorized person.

9.3 Improvements. If Developer makes any improvements (as determined by Franchisor) to the Confidential Information or the System, Developer and Developer's Principals shall each execute an amendment to this Agreement reflecting such improvements and Franchisor's exclusive ownership thereof. All such improvements, which are hereby assigned to Franchisor, shall be considered Confidential Information. Developer hereby unconditionally assigns to Franchisor all of its right, title, and interest in and to such improvements. Such improvements are expressly deemed to be "works-made-for-hire" within the meaning of U.S. copyright law and are assigned to Franchisor without further consideration as of and from the date of creation. If, and to the extent that, any improvements are found by a court of competent jurisdiction not to be "work-made-for-hire" within the meaning of U.S. copyright law, Developer agrees that all Developer's rights in or to such improvements are hereby expressly assigned to Franchisor or its designee without further consideration as of and from the date of creation. Developer will execute any and all reasonable documents, in a form approved by Franchisor, necessary to effectuate the foregoing at any time. Developer will procure from its Affiliates, Developer's Principals, and each Franchisee, and its and their respective employees, agents, and contractors a waiver of any and all moral rights any of them may have in or to any improvements described in this Section 8.3. Without limiting in any way the definition of "improvement" under this Section 8.3, the parties acknowledge that all registerable and patentable designs, copyrighted works, trade dress, trademarks, and service marks, which will be seen by customers in any Franchised Restaurant, or on a Website promoting the *Kona Grill* brand, will be automatically deemed improvements hereunder. Neither Franchisor nor its Affiliates will have any obligation to make any payment to Developer or any other person or entity with respect to any such improvements. Developer agrees that it will not use, nor will it permit the use of, any such improvements, without obtaining Franchisor's prior written approval. Developer acknowledges that the improvements may be used by Developer only in conjunction with the development of the Franchised Restaurants and may not be used for any other purpose. This provision shall survive the termination of this Agreement.

9.4 Proprietary Marks. Developer acknowledges Franchisor's exclusive ownership of or right to sublicense the Proprietary Marks and shall neither directly or indirectly infringe, contest, or otherwise impair Franchisor's exclusive ownership of, and/or license with respect to, the Proprietary Marks either during or after termination or expiration of this Agreement. Franchisor has the absolute right, for any reason, to modify or discontinue the use of any Proprietary Mark, and/or use one or more additional or substitute trade or service marks. Developer agrees to comply therewith within 90 days after notice thereof by Franchisor or such longer time as Franchisor states in such notice.

10. TRANSFER OF INTEREST

10.1 Transfer by Franchisor. Franchisor has the right to transfer or assign this Agreement, its rights to the Proprietary Marks, and all or any part of its rights or obligations herein to any person or legal entity without the consent of Developer or Developer's Principals. Upon such transfer by Franchisor, any transferee or assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of transfer or assignment. Without limiting the foregoing, Developer acknowledges that Franchisor may sell its assets (including its rights in the Proprietary Marks and the System) to a third party; may offer its securities privately or publicly; may merge, acquire other legal entities, or be acquired by another legal entity; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring. With regard to any or all of the above sales, assignments, and dispositions, Developer expressly and specifically waives any claims, demands, or damages against Franchisor or its Affiliates arising from or related to Franchisor's transfer to any other party Franchisor's rights in this Agreement, the Proprietary Marks, or the System. Further, Developer agrees to issue in writing such acknowledgments, waivers, or consents at a subsequent date in connection with a proposed transfer of this Agreement by Franchisor or an Equity Interest in Franchisor if deemed necessary or desirable by Franchisor or its counsel for the purposes of complying with any Governmental Authority or Governmental Rule. Nothing contained in this Agreement requires Franchisor to remain in the business of operating or licensing the operation of the Restaurants or other businesses or to offer any services or products to Developer, whether or not bearing or not bearing the Proprietary Marks, if Franchisor transfers or assigns its rights in or obligations under this Agreement.

10.2 Transfer by Developer. Developer and Developer's Principals understand and acknowledge that the rights and duties set forth in this Agreement are personal to Developer and are granted, in part, in reliance upon the skill, aptitude, business, and financial capacity of Developer and Developer's Principals and their intention of complying with its terms and conditions. Therefore, if Developer and/or Developer's Principals desire to Transfer any interest to any individual or entity (including a trust), then such transferring party must first obtain the prior written approval of Franchisor, which Franchisor may withhold in its discretion and business judgment. Any such attempted Transfer not approved by Franchisor shall be null and void from its purported inception.

In determining whether or not Franchisor approves the transfer, then Franchisor may require, among other things, satisfaction of any or all of the following:

(a) Developer shall be in full compliance with all of the terms and conditions of this Agreement, including, without limitation, all payment obligations;

(b) Developer and/or any Developer's Principal shall remain liable for the performance of its obligations contained in this Agreement through the date of Transfer and shall execute all instruments reasonably requested by Developer to evidence such liability;

(c) the transferee shall satisfy, in Franchisor's judgment, Franchisor's then-existing criteria for a developer including, without limitation: (i) education; (ii) business skill, experience and aptitude; (iii) character and reputation; and (iv) financial resources;

(d) the transferee's principals or management personnel shall be admitted to and attend such training programs relating to the development, ownership, operation, and management of Restaurants as Franchisor may designate in its discretion;

(e) the transferee and all owners of any record or beneficial interest in the capital stock (or other interest) of transferee shall execute all instruments (including a new, then-current development agreement and guaranty) reasonably requested by Franchisor to evidence acceptance and assumption of all of the terms and conditions of this Agreement. Such new development agreement shall contain terms substantially similar to this Agreement;

(f) Developer pays a transfer fee equal to (i) 50% of the then-current Franchise Territory Fee, if the Developer does not have a majority Equity Interest (as reasonably determined by Franchisor) in the transferee or (ii) an amount equal to the reasonable costs incurred by Franchisor in connection with the Transfer among Developer's Principals (including without limitation, any and all costs and fees incurred by Franchisor in preparing, delivering, updating, filing, or registering any franchise disclosure documents, registrations, or similar documents in connection with the proposed transfer) but in no event less than $15,000.00; and

(g) Developer and Developer's Principals (if applicable) must have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, its Affiliates, and the officers, directors, members, shareholders, partners, agents, representatives, independent contractors, servants, and employees of each of them, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement and any other agreement between Developer or any of Developer's Affiliates and Franchisor or any of its Affiliates, including but not limited to all Franchise Agreements entered into hereunder, or under applicable law.

Notwithstanding the foregoing, Franchisor reserves the right to disapprove any transfer, in its sole discretion, to the extent allowed by applicable law.

10.3 Right of First Refusal. In the event that Developer and/or any of Developer's Principals or any holder of an Equity Interest in Developer desire to effectuate a Transfer, Franchisor shall have the right and option, exercisable within 60 calendar days after Franchisor's receipt of all materials and information described in Section 9.3(a), (b), (c), and (e), to purchase the interest proposed to be transferred in accordance with the following:

(a) Developer or the proposed transferee shall notify Franchisor in writing of any bona fide proposed Transfer and set forth a complete description of all terms and fees of the proposed Transfer in the manner prescribed by the Franchisor, including the prospective transferee's name, address, financial qualifications, and previous five years business experience;

(b) Developer shall provide Franchisor with any additional information, agreements, certifications or documents Franchisor requests for use in its evaluation of whether to exercise its first refusal right.

(c) Upon receipt of the Franchisor's request, Developer or the proposed transferee shall promptly provide Franchisor with access to any real or personal property, documents, or records relevant to the transaction and to the interest which is the subject of the Transfer. Once Franchisor has received all materials submitted by Developer or the proposed transferee and has reviewed all property, records, and documents it has requested, Franchisor shall notify Developer or the proposed transferee of its decision to exercise its option to acquire the interest being transferred, and the conditions, if any, under which it will approve the proposed Transfer.

(d) If the Franchisor exercises its first refusal right, the transferor shall transfer the interest to Franchisor or to its assignee pursuant to an agreement to purchase which contains the material terms to which the transferor and the proposed transferee had agreed. If the offer or proposed purchase contract omitted any terms customarily addressed in a transfer of an interest of the type which is the subject of the transaction, Franchisor may supply those terms in the purchase agreement and related documents.

(e) If the proposed transferor wishes to make a Transfer, the transferor shall provide Franchisor with a copy of any offer or agreement to purchase, signed by the proposed transferee, together with copies of any documents referenced in the offer or agreement. If all material terms of the proposed sale are not described in the offer or agreement, Developer shall provide details of all such terms in its submission to the Franchisor, accompanied by the proposed transferee's written agreement to the terms.

(f) In the event the consideration, terms, and/or conditions offered by the third party are such that Franchisor or its nominee may not reasonably be able to furnish the same consideration, terms, and/or conditions, then Franchisor or its nominee, as appropriate, may purchase the interest proposed to be transferred 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, an independent appraiser shall be designated by Franchisor, and such appraiser's determination shall be binding.

10.4 Death or Disability. Within 15 calendar days after the death or permanent disability of Developer or any Developer's Principal, Developer, or a representative of Developer, must notify Franchisor in writing. Any transfer upon death or permanent disability will be subject to the same terms and conditions as described in this Section for any *inter vivos* transfer. Upon the death of Developer (if a natural person) or any Developer's Principal who is a natural person and who has an interest in this Agreement, the Developer's business or in Developer, the executor, administrator, or other person representative of the deceased will transfer the interest of the deceased to a third party approved by Franchisor within five months after the date of death. If no personal representative is designated or appointed and no probate proceedings are instituted with respect to the estate of the deceased, then the distributee of the interest of the deceased must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee will transfer the interest of the deceased to a third party approved by Franchisor within five months after the date of death of the deceased.

Upon the permanent disability of Developer (if a natural person) or any Developer's Principal who is a natural person and who has an interest in this Agreement, in Developer's business or in Developer, Franchisor may require the interest to be transferred to a third party in accordance with the conditions described in this Section 9 within three months after notice to Developer. For purposes of this Section 9.4, "permanent disability" means any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement or in the Guaranty made part of this Agreement for at least 90 consecutive calendar days, and from which condition recovery within 90 calendar days from the date of determination of disability is unlikely. If the parties disagree as to whether a person is permanently disabled, the existence of permanent disability will be determined by a licensed practicing physician selected by Franchisor, upon examination of the person or if the person refuses to submit to an examination, then (for the purpose of this Section 9.4) the person automatically will be considered permanently disabled as of the date of refusal. The costs of any examination required by this Section 9.4 will be paid by Franchisor.

If an interest is not transferred upon death or permanent disability as required in this Section 9.4 then the failure will constitute a material event of default under this Agreement.

10.5 Public Offerings. Equity Interests in Developer and Developer's Principals may be offered, only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. Such approval will be subject to the following:All registration materials required for such offering by applicable law shall be submitted to Franchisor for review prior to their being filed with any government agency;

(b) No offering material (for either a public or private offering) shall express or imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance or public offering of Developer, Developer's Principals, or Developer's securities. Franchisor may, at its option, require such offering materials to contain a written statement prescribed by Franchisor concerning the limitations described in the preceding sentence;

(c) Developer, Developer's Principals, and the other participants in the registration and offering must fully indemnify Franchisor in connection with the offering;

(d) For each proposed public offering, other than offerings which are exempt from registration, Developer shall pay to Franchisor a non-refundable fee of $15,000 or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including, without limitation, legal and accounting fees;

(e) Franchisor's receipt of a legal opinion from counsel satisfactory to Franchisor stating (i) that the offering materials and the conduct of the securities offering comply in all material respects with the laws of the jurisdiction from which an offer of securities originates or into which an offer of securities is directed, (ii) that neither the conduct nor consummation of the securities offering will result in a violation of any anti-terrorism or anti-money laundering laws; and (iii) that all applicable disclosures, if any, with respect to this Agreement are included in the offering materials; and

(f) Developer and Developer's Principals shall give Franchisor at 90 calendar days prior written notice before the effective date of any offering or other transaction covered by this Section 9.5.

11. INSURANCE AND INDEMNITY

11.1 Insurance. During the Term of this Agreement, Developer shall obtain and maintain insurance protecting Developer and the Indemnitees against any demand or claim arising or occurring in connection with the operation of Developer's business. If Developer fails to do so, Franchisor shall have the right to procure any such insurance policies on behalf of Developer. Developer must keep in force, during the Term of this Agreement, the following types of insurance coverage: (i) commercial general liability insurance, including product liability insurance and contractual liability coverage, with minimum limits of $2,000,000 per occurrence and $5,000,000 aggregate; (ii) all risk (aka special form) property coverage on the Restaurant and all fixtures, equipment, supplies and other property used in the operation of the Restaurant, for full repair and replacement value without any co-insurance; (iii) liquor liability coverage with minimum limits of $2,000,000 per occurrence; (iv) business interruption covering a minimum 12 months loss of income, including coverage for the Royalties; (v) automobile liability insurance, including owned, hired and non-owned vehicle coverage with a minimum combined single limit of $2,000,000 per claim; (vi) workers' compensation and employer's liability insurance covering all of Franchisee's employees; (vii) umbrella liability insurance, which also includes liquor liability, employer's liability and automobile liability, with minimum limits of $5,000,000. Such policies shall: (A) be primary to any insurance policies maintained by Franchisor, with any such insurance carried by Franchisor considered excess; (B) contain a waiver of subrogation in favor of Franchisor; (C) name the Indemnitees as additional insureds; (D) contain no provision which limits or reduces coverage in the event of a claim by any one (1) or more of the Indemnitees; (E) provide that policy limits shall not be reduced, coverage restricted, canceled, allowed to lapse, or otherwise altered or such policy(ies) amended without Franchisor's consent; and (F) be obtained from reputable insurance companies approved by Franchisor and authorized to do business in all jurisdictions in which the Franchised Restaurant is located. Developer will further make any and all contributions to government-administered insurance and other plans and programs in respect of its employees and businesses, as and when required by applicable Governmental Rule and will provide Franchisor with evidence of same upon request. Additionally, Developer will:furnish Franchisor with evidence that Developer has obtained the required insurance not less than 15 calendar days after the Execution Date, and each year afterwards, and at any other time a carrier or coverage is changed;

(b) increase the insurance coverage amounts in the amounts indicated by Franchisor, or modify the types of required coverage, upon 30 calendar days prior written notice from Franchisor; and

(c) reimburse Franchisor for any insurance policies obtained by Franchisor on behalf of Developer if Developer fails to obtain the insurance required by this Section.

11.2 Indemnity.

11.2.3 Indemnification. Developer and Developer's Principals hereby, jointly and severally, indemnify, defend (by counsel chosen by Franchisor), and hold harmless each Indemnitee from all Losses and Expenses alleged, incurred, or assessed in connection with:

(a) Developer's or any Developer's Principal's alleged infringement or alleged violation of any trademark or other proprietary name, mark, or right allegedly owned or controlled by a third party;

(b) The violation, breach, or asserted violation or breach, by Developer or any of Developer's Principals, of any applicable law, regulation, ruling, standard, or directive or any industry standard;

(c) Libel, slander, or any other form of defamation of Franchisor, the System, or any developer or franchisee operating under the System, by Developer, or by any of Developer's Principals;

(d) The violation or breach by Developer or any of Developer's Principals of any warranty, representation, agreement, or obligation in this Agreement or in any other agreement between Developer or its Affiliates and the Indemnitees;

(e) Any and all labor or employment-related claims that current or former employees, employee candidates, or independent contractors of Developer or Developer's Principals may bring against Franchisor or any Indemnitee; and

(f) Acts, errors, or omissions of Developer, any of Developer's Affiliates, or any of Developer's Principals and the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of Developer and its Affiliates in connection with the development activities contemplated under this Agreement, including, without limitation, the Site Approval, the design and construction, or the opening or operation of a Franchised Restaurant.

11.2.4 Notice and Counsel. Developer and each of Developer's Principals agree to give Franchisor immediate notice of any Action. Franchisor may engage, at its expense, separate counsel to represent the Indemnitees in such Action and/or elect to assume (but under no circumstance is obligated to undertake) the defense and/or reasonable settlement of any Action. Franchisor's election to settle shall not diminish Developer's and each of Developer's Principal's obligation to defend, indemnify, and hold the Indemnitees harmless from all Losses and Expenses.

11.2.5 Settlement and Remedial Actions. In order to protect persons or property, or its reputation or goodwill, or the reputation or goodwill of others, Franchisor may, at any time and without notice, as it, in its sole judgment deems appropriate, consent or agree to settlements or take such other remedial or corrective actions it deems expedient with respect to any Action if, in Franchisor's sole judgment, there are reasonable grounds to believe that:

(a) any of the acts or circumstances enumerated in Section 10.2.1 (a) through (f) above have occurred; or

(b) any act, error, or omission as described in Section 10.2.1(f) may result directly or indirectly in damage, injury, or harm to any person or any property.

11.2.6 Expenses. All Losses and Expenses incurred under this Section shall be chargeable to and paid by Developer or any of Developer's Principals pursuant to Developer's obligations of indemnity under this Section 10 regardless of any actions, activity, or defense undertaken by Franchisor or the subsequent success or failure of such actions, activity, or defense.

11.2.7 Third Party Recovery. Under no circumstances shall the Indemnitees be required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain a claim for indemnification against Developer or any of Developer's Principals. Developer and each of Developer's Principals agree that the failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable from Developer or any of Developer's Principals by the Indemnitees.

11.2.8 Third Party Liability. The Indemnitees do not assume any liability whatsoever for acts, errors, or omissions of any third party with whom Developer, any of the Developer's Principals, Developer's Affiliates, or any of the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of Developer, its Principals, or their Affiliates may contract, regardless of the purpose. Developer and each of its Principals will hold harmless and indemnify the Indemnitees for all Losses and Expenses which may arise out of any acts, errors, or omissions of Developer, Developer's Principals, their respective Affiliates, and the officers, directors, shareholders, partners, agents, representatives, independent contractors, and employees of each and any such other third parties without limitation and without regard to the cause or causes thereof or the strict liability or negligence of Franchisor or any other party or parties arising in connection therewith, and whether such negligence be sole, joint or concurrent, or active or passive.

11.2.9 Survival. Developer and Developer's Principals expressly agree that the terms of this Section 10 shall survive the termination, expiration, or transfer of this Agreement or any interest herein.

12. TERM AND TERMINATION

12.1 Term and Renewal.

12.1.1 Term. Unless terminated as provided for herein, the Term of this Agreement and all rights granted hereunder shall commence on the Execution Date and expire on the earlier of the (i) date on which Developer successfully and in a timely manner completes the Development Schedule by having the last Franchised Restaurant Operational; or (ii) the date on which the last Franchised Restaurant is required to be opened as set forth on the Development Schedule.

12.1.2 Renewal. Unless otherwise mutually agreed to in an amendment to this Agreement, Developer shall have no right to renew or extend the Term of this Agreement or develop additional Franchised Restaurants beyond the Franchised Restaurants contemplated by the Development Schedule. To the fullest extent permitted by law, Developer hereby irrevocably waives any right to renew or extend the Term of this Agreement. Automatic Termination. Developer will be in default under this Agreement, and all rights granted by this Agreement will automatically terminate without notice to Developer, without need of a judicial or arbitral declaration to that effect and without prejudice to the corresponding collection of damages:

(a) If Developer becomes insolvent or makes a general assignment for the benefit of creditors;

(b) If Developer files a voluntary petition for bankruptcy or commences proceedings under any other debtor's relief law, or admits in writing its inability to pay its debts when due;

(c) If Developer is adjudicated bankrupt or insolvent in proceedings filed against Developer under applicable law; 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;

(d) If proceedings for a composition with creditors under applicable law is instituted by or against Developer;

(e) If a final judgment against Developer in any amount Franchisor deems material (but in no event will an amount below $25,000 be deemed material) remains unsatisfied or of record for 30 calendar days or longer (unless an appeal bond is filed and an appeal timely prosecuted);

(f) If Developer is dissolved;

(g) If Developer, or any of Developer's Principals, makes any offer, attempts to offer, solicits an offer, or takes steps to offer publicly any interest in Developer in violation of Section 9.5 of this Agreement;

(h) If execution is levied against Developer's business or property in any amount Franchisor deems material (but in no event will an amount less than $25,00 be deemed material);

(i) If suit to foreclose any lien or mortgage against the Developer's business or any asset thereof in any amount Franchisor deems material (but in no event will an amount less than $25,00 be deemed material) is instituted against Developer and is not dismissed within 30 calendar days;

(j) If the real or personal property of Developer's business will be sold after levy thereupon by any sheriff, marshal, or constable;

(k) If any of Developer's Principals violates the requirements for Transfers contained in Section 11; or

(l) If a violation of the non-competition or nondisclosure covenants set forth in Section 6.5, 6.6, or Section 8 shall occur.

12.3 Termination upon Notice. This Agreement shall terminate immediately upon notice from Franchisor to Developer without providing Developer the right to cure such default, without need of a judicial or arbitral declaration to that effect, and without prejudice to the corresponding collection of damages, if:

(a) Developer or any of Developer's Principals is convicted of, or pleads nolo contendere (or equivalent plea in the Territory) to a felony (or crime of similar import in the Territory) or any other crime or offense that is reasonably likely, in the opinion of Franchisor, to adversely affect the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein; or

(b) Developer or any of Developer's Principals, as applicable, breaches any of the representations and warranties in Sections 6 and 15 hereof; or

(c) Developer or any of Developer's Principals discloses or divulges any Confidential Information contrary to the provisions of this Agreement; or

(d) Developer fails to maintain the insurance(s) required by Section 10.1; or

(e) Developer or any of Developer's Principals fails to obtain execution of the covenants and related agreements required under Section 6.8 within 30 calendar days after being requested to do so by Franchisor; or

(f) Developer or any of Developer's Principals engage in any act, conduct, or practice which Franchisor, in its sole judgment, deems to be deceptive, misleading, unethical or otherwise contrary to or in conflict with the reputation and image of the System; or

(g) Developer fails to meet its obligations under the Development Schedule (including, but not limited to, the Site Approval and construction start dates, the Franchise Agreement execution date, and the opening date set forth therein); or

(h) Developer or any of Developer's Affiliates fails to comply with (i) the terms or conditions of any Franchise Agreement beyond any applicable period of notice and opportunity to cure, or (ii) any other agreement by and between Developer or any of its Affiliates and Franchisor or any of its Affiliates; or

(i) Developer fails to pay the Franchisor any amounts payable hereunder on the dates such payment is due.

12.4 Termination with 30-Day Notice. Except as otherwise provided in this Section 11, Developer shall have 30 calendar days after its receipt from Franchisor of a written notice within which to remedy any default of the terms of this Agreement and the attachments hereunder and provide evidence thereof to Franchisor. If any such default is not cured within such cure period, Franchisor may terminate this Agreement without further notice to Developer, without need of a judicial or arbitral declaration to that effect, and without prejudice to the corresponding collection of damages effective immediately upon the expiration of the 30 calendar day period.

12.5 Deferral of Termination. Notwithstanding anything to the contrary contained in this Section 11, Franchisor, in its sole discretion, may elect to waive or defer any termination of this Agreement based on Developer's breach. No such waiver or deferral will be effective unless such waiver or deferral is provided by Franchisor in writing.

13. REMEDIES

Remedies. Upon the occurrence of an uncured default of this Agreement, Franchisor may exercise one or more of the following remedies or such other remedies as may be available at law or in equity (each of the following remedies are non-exclusive and non-cumulative and shall be without prejudice to Franchisor's right of termination as set forth in Section 11):

13.1 Reduction of Exclusivity. Franchisor, at its sole discretion, may completely terminate or, alternatively, reduce the number of Franchised Restaurants that Developer was given the right to develop and establish pursuant to the Development Schedule or terminate or reduce the territorial exclusivity granted Developer pursuant to Section 2.2 in the understanding that this Agreement will remain in effect and will be considered to be amended accordingly, in each case, without need of a judicial or arbitral declaration to that effect and without prejudice to Franchisor's right to seek damages; and/orCure. Franchisor, at Franchisor's discretion and without obligation, may cure such breach at Developer's expense and, in connection therewith, Developer (i) hereby grants to Franchisor all rights and powers necessary or appropriate to accomplish such cure; (ii) shall indemnify and hold the Indemnitees harmless from and against all costs, expenses (including reasonable fees of counsel and other engaged professionals), liabilities, claims, demands, and causes of action (including actions of third parties) incurred by or alleged against any Indemnitee in connection with Franchisor's cure; and (iii) shall reimburse or pay such costs or damages within 10 calendar days of receipt of Franchisor's invoice therefor; and/or

13.3 Specific Enforcement. Franchisor may, in addition to pursuing any other remedies, specifically enforce Developer's and Developer's Principal's obligations, covenants, and agreements or obtain injunctive or other equitable relief in connection with the violation or anticipated violation of such obligations, covenants, and agreements without the necessity of showing (i) actual or threatened harm; (ii) the inadequacy of damages as a remedy; or (iii) likelihood of success on the merits, and without being required to furnish bond or other security. Nothing in this Agreement shall impair Franchisor's right to obtain equitable relief; and/or

13.4 Imputed Royalties. If Developer fails to timely meet its Development Schedule commitment and Franchisor determines, in its sole discretion, to grant Developer additional time to meet its commitment, then Franchisor may offer Developer, subject to the requirements of applicable law, the opportunity to pay imputed royalties to Franchisor for each Franchised Restaurant that should have been open and operating by a certain date under the Development Schedule. Such imputed royalties shall be [●] and No/100 (US$[●]) per week until such time as the Franchised Restaurant is open and Operational. Franchisor, when it determines if it will offer the right to pay imputed royalties to Developer, will also determine the period of time for which Developer may pay such imputed royalties; provided that, if at the expiration of such period of time, Developer has not met the Development Schedule requirements, Franchisor may then exercise any and all rights available to Franchisor under this Agreement and under applicable law. Nothing in this clause will obligate Franchisor to offer the right to pay imputed royalties to Developer. Imputed royalties, if made available to Developer, will be due and payable in the same manner as royalty fees would have been payable under a duly executed Franchise Agreement.

14. GOVERNING LAW; DISPUTE RESOLUTION

14.1 Governing Law. Except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 *et seq.*) or other federal law, the internal laws of the State of Arizona (without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of laws of any other jurisdiction) shall govern all matters arising out of or relating to this Agreement and its attachments and schedules, the relationship between the parties pertaining to this Agreement, and all of the transactions it contemplates, including its validity, interpretation, construction, performance, and enforcement and any disputes or controversies arising therefrom.

14.2 Mediation. Both Developer and Franchisor will attempt in good faith to settle any controversies, disputes, or claims arising between Developer or its Affiliates and their respective officers, directors, shareholders, partners, agents, employees and attorneys (in their representative capacity) and Franchisor and its Affiliates arising out of or related to the relationship of the parties hereto, this Agreement or any provision hereof, and/or the validity of this Agreement, or any provision hereof (each collectively, a "Claim"). If Franchisor and Developer are unable to do so, then they will submit the Claim (except as set forth in Section 13.4 below) to non-binding mediation before a single mediator to be administered by the American Arbitration Association ("AAA"). Such mediation shall be conducted in the Scottsdale, Arizona area. The mediator shall be agreed upon by the parties and, failing such agreement within a reasonable period of time (not to exceed 15 calendar days) after either party has notified the other of its desire to seek mediation, by the AAA in accordance with its rules governing mediation. Unless otherwise agreed by the parties, a mediator appointed by the AAA must have knowledge and experience relating to international franchising or the casual dining industry. No mediator chosen pursuant to this Section 13.2 shall be related to or affiliated with Franchisor, Developer, either party's Affiliates, any of Developer's Principals, or any officer, director, employee, agent, or representative of the foregoing. The costs and expenses of mediation, including compensation of the mediator (but excluding attorneys' fees and travel-related costs incurred by either party in connection with the mediation), shall be borne by the parties equally. If the parties are unable to resolve the Claim 90 calendar days after the mediator has been appointed, unless such time period is extended by written agreement of the parties, then either party may bring a legal proceeding in accordance with Section 13.3 below. Franchisor and Developer agree that statements made in any such mediation proceeding will not be admissible for any purpose in any subsequent legal proceeding.

14.3 Litigation. With respect to any Claims which are not finally resolved through mediation as provided in Section 13.2 above, the parties irrevocably submit themselves to the jurisdiction of the state and the federal district courts located in Maricopa County in the state of Arizona and hereby waive all questions of personal jurisdiction for the purpose of carrying out this provision. Franchisor and Developer agree that service of process may be made upon them in any proceeding relating to or arising out of this Agreement or the relationship created by this Agreement by any means allowed by the state of Arizona or federal law.

14.4 Extraordinary Relief. Notwithstanding anything to the contrary in this Section 13, Franchisor shall be entitled to seek and obtain injunctive relief in any court of competent jurisdiction without submitting a Claim to mediation or arbitration if the Claim relates to ongoing or threatened conduct that will cause Franchisor loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions (or similar relief available in the Territory). Furthermore, notwithstanding anything to the contrary in this Section 13, Franchisor and Franchisor's Affiliates have the right to commence a civil action in any court of competent jurisdiction against Developer or take other appropriate action for the following reasons: (i) to collect sums of money due to Franchisor; (ii) for infringement of the Proprietary Marks or other violation of Franchisor's intellectual property rights; (iii) to compel Developer to compile and submit required reports to Franchisor; or (iv) to permit evaluations or audits authorized by this Agreement. Venue. If any cause of action, claim, suit, or demand allegedly arising from or related to the terms of this Agreement or the relationship of the parties pertaining to this Agreement and the transactions contemplated thereby is not, for any reason, subject to arbitration under Section 13.3 above, or if legal proceedings are otherwise required to enforce an arbitration award or for Franchisor to seek extraordinary relief, then Developer and Developer's Principals irrevocably (i) submit themselves to the exclusive jurisdiction of the State Courts of Arizona, located in Maricopa County, Arizona, and the United States Federal District Court for the District of Arizona, Phoenix Division; (ii) waive all questions of personal jurisdiction for the purpose of effectuating this provision; (iii) agree that service of process may be made upon any of them in any proceeding relating to, or arising out of, this Agreement by any means allowed by Arizona or Federal law; and (iv) agree that venue is proper for any such proceeding in Maricopa County, Arizona. Notwithstanding the foregoing, Franchisor has the right to bring any cause of action, claim, suit, or demand in any court with jurisdiction over matters in the Territory, or in any other jurisdiction, including where Developer is domiciled or based. Fees and Costs. The party prevailing in a judicial proceeding or appeal thereof will be awarded its costs and expenses including, but not limited to, reasonable accounting, paralegal, expert witness fees, attorneys' fees, and costs of court, whether incurred prior to, in preparation for, or in contemplation of the filing of any written demand, claim, action, hearing or proceeding to enforce the obligations of this Agreement.

14.7 Limitation of Claims. Franchisee will not assert any claim or cause of action against Franchisor, its officers, directors, shareholders, employees, or Affiliates after two years following the event giving rise to such claim or cause of action.

15. MISCELLANEOUS

15.1 Independent Contractors. The relationship created by this Agreement is not a fiduciary, special, or any other similar relationship, but rather is an arm's-length business relationship, and Franchisor does not owe Franchisee any duties except as expressly provided in this Agreement. Developer is an independent contractor, and nothing in this Agreement is intended to, or does in fact, constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, joint employer, or servant of the other for any purpose. During the Term of this Agreement, Developer will hold itself out to the public as an independent contractor conducting the operations of the Franchised Restaurant pursuant to the rights granted by Franchisor. Nothing in this Agreement authorizes Franchisee or any of its Principals 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 Franchisor will in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of Franchisee or any of Franchisee's Principals or any claim or judgment arising therefrom. All employees hired by Developer or working for Developer or its Affiliates are Franchisee's or its Affiliate's employees and will not, for any purpose, be deemed Franchisor's employees or employees of any of Franchisor's Affiliates, nor will be they be subject to Franchisor's control. Franchisor has no authority to hire, fire, promote, demote, or discipline any of Developer's or its Affiliate's employees or take any disciplinary action whatsoever against any of them. Additionally, Developer must communicate to all employees that Developer, not Franchisor, is their employer; and Developer must ensure that no payroll checks or other employment-related documents (such as job applications and W-2s) contain or reference the Marks or Franchisor's name. Each of the parties will file its own tax, regulatory, and payroll reports with respect to its respective employees and operations, saving and indemnifying the other party hereto of and from any liability of any nature whatsoever by virtue thereof.

15.2 Entire Agreement. This Agreement, the Schedules and the Attachments hereto constitute the entire agreement between Franchisor, Developer, and Developer's Principals concerning the subject matter hereof. All prior agreements, discussions, representations, warranties, and covenants are merged herein. THERE ARE NO WARRANTIES, REPRESENTATIONS, COVENANTS, OR AGREEMENTS, EXPRESS OR IMPLIED, BETWEEN THE PARTIES EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT. Except those permitted to be made unilaterally by Franchisor, any amendments or modifications of this Agreement shall be in writing and executed by Franchisor and Developer. Notwithstanding the foregoing statements in this Section 14.2, nothing in this Agreement and the attachments, schedules, and exhibits hereto is intended to disclaim any of Franchisor's representations contained in the franchise disclosure document, if so provided to Franchisee.

15.3 Judgment; Discretion. DEVELOPER AND FRANCHISOR ACKNOWLEDGE THAT VARIOUS PROVISIONS OF THIS AGREEMENT SPECIFY CERTAIN MATTERS THAT ARE WITHIN THE DISCRETION OR JUDGMENT OF FRANCHISOR OR ARE OTHERWISE TO BE DETERMINED UNILATERALLY BY FRANCHISOR. IF THE EXERCISE OF FRANCHISOR'S DISCRETION OR JUDGMENT AS TO ANY SUCH MATTER IS SUBSEQUENTLY CHALLENGED, THE PARTIES TO THIS AGREEMENT EXPRESSLY DIRECT THE TRIER OF FACT THAT FRANCHISOR'S RELIANCE ON A BUSINESS REASON IN THE EXERCISE OF ITS DISCRETION OR JUDGMENT IS TO BE VIEWED AS A REASONABLE AND PROPER EXERCISE OF SUCH DISCRETION OR JUDGMENT, WITHOUT REGARD TO WHETHER OTHER REASONS FOR ITS DECISION MAY EXIST, WITHOUT REGARD TO WHETHER THE TRIER OF FACT WOULD INDEPENDENTLY ACCORD THE SAME WEIGHT TO THE BUSINESS REASONS, AND WITHOUT REGARD TO WHETHER SUCH DISCRETION OR JUDGMENT IS EXERCISED IN THE BEST INTERESTS OF DEVELOPER.

15.4 No Waiver. Either party's failure to exercise any right or remedy or to enforce any obligation, covenant or agreement herein shall not constitute a waiver by, or estoppel of, such party's right to enforce strict compliance with any such obligation, covenant, or agreement. No custom or practice shall modify or amend this Agreement. Either party's waiver of, or failure or inability to enforce, any right or remedy shall not impair such party's rights or remedies with respect to subsequent default of the same, similar or different nature. Acceptance of any payment shall not waive any default.

15.5 Severability. If all or any portion of any covenant contained herein are held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Developer and Developer's Principals expressly agree to be bound by any lesser covenant subsumed within the terms of the covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement. Notwithstanding the above, should any term, covenant, or provision hereof, or the application thereof, be determined by a valid, final, non-appealable order to be invalid or unenforceable, this Agreement shall be deemed amended to delete therefrom the term or provision so held to be invalid or unenforceable and all of the remaining terms, covenants, or provisions hereof shall continue in full force and effect without regard to the invalid or unenforceable provision. In such event, such term, covenant, or provision shall be deemed modified to impose the maximum duty permitted by law and such term, covenant, or provision shall be valid and enforceable in such modified form as if separately stated in and made a part of this Agreement. Notwithstanding the foregoing, if any term hereof is so determined to be invalid or unenforceable and such determination adversely affects, in Franchisor's absolute discretion, Franchisor's ability to preserve its rights in, or the goodwill underlying, the Proprietary Marks, the System, and/or the Confidential Information, or materially affects Franchisor's other rights hereunder or its ability to receive and enjoy the economic benefits of this Agreement (including those provisions requiring the payment by Developer of liquidated damages or interest on past due payments or amounts under the indemnity provided by Developer) or to protect the System or the Proprietary Marks (including the covenants regarding non-competition and confidentiality), Franchisor may terminate this Agreement immediately upon notice to Developer without need of a judicial declaration to that effect and without prejudice to the corresponding collection of damages.

15.6 Notice. All notices required or desired to be given hereunder shall be in writing and shall be sent by electronic mail, personal delivery, or expedited delivery service, to the following addresses or such other addresses as designated by Franchisor or Developer in writing pursuant to this Section:

Notices to Franchisor:	Kona Grill, Inc. 15059 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85254 Attn: Carlos de Leon Vice President – International Development Tel: 480-922-8100 Email: deleon@konagrill.com
With an electronic copy to:	Tracy Durchslag, Esq. Tel: 602-740-0291 Email: tracy@durchslaglaw.com
Notices to Developer:	[●] Tel. [●] Email: [●]

Notices posted by personal delivery or electronic mail shall be deemed given upon receipt. Notice to Developer shall constitute notice to Developer's Principals.

15.7 Counterparts. This Agreement may be executed in any number of counterparts each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument.

15.8 Headings. The section headings in this Agreement are for convenient reference only and shall be given no substantive or interpretive effect.

15.9 Further Assurances. Franchisor and Developer shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties hereto.

15.10 Compliance with Laws. Developer agrees to comply at its sole expense with all laws and regulations applicable to this Agreement and the operation of the Franchised Restaurants.

15.11 Force Majeure. Neither Franchisor nor Developer shall be liable for loss or damage or deemed to be in breach of this Agreement if its failure to perform its obligations results from acts or circumstances which are beyond such party's control including fire, storm, flood, earthquake, explosion, or accident; acts of war or terrorism, rebellion, insurrection, or sabotage; epidemic; failures or delays of transportation; and strikes, provided that (each an event of "Force Majeure"), provided that (i) nothing herein shall excuse or permit any delay or failure to remit any amount payable hereunder on the applicable date due; (ii) financial inability, insolvency, currency fluctuations, currency devaluations or inflation shall never be deemed an act of God or other cause beyond a party's control; (iii) no such cause shall excuse or permit any delay or failure to perform for more than 90 calendar days, (iv) the non-performing party provides written notice to the other party of the Force Majeure event within three calendar days of the occurrence of such event, (v) the non-performing party is without fault and the delay or failure could not have been prevented by reasonable precautions by the non-performing party, (vi) such acts or circumstances cause a demonstrable, material and adverse impact on the non-performing party's business or obligations under this Agreement, and, (vii) if Developer is the non-performing party, the acts or circumstances cause a demonstrable, material, and adverse impact on the casual dining market in the Territory. Any delay resulting from any of such causes shall extend performance accordingly, as may be reasonable (but not to exceed ninety (90) calendar days after the cause of the event ceased), so long as the non-performing party continues to use its best efforts to re-commence performance and mitigate the impact of its non-performance. If a Force Majeure event continues for a period which exceeds 90 calendar days, Franchisor may terminate this Agreement, effective upon delivery of notice thereof to Developer, without need of judicial declaration to that effect and without prejudice to the corresponding collection of damages.

16. ACKNOWLEDGMENTS

16.1 Independent Investigation. Developer and Developer's Principals acknowledge that they have conducted an independent investigation of the business venture contemplated by this Agreement and recognize that the success of this business venture involves substantial business risks and will largely depend upon the ability of Developer. Franchisor expressly disclaims making, and Developer and Developer's Principals acknowledge that they have not received or relied on, any warranty or guaranty, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

Developer's Principals' Initials,
individually and on behalf of
Developer ______________

16.2 Opportunity to Assess Risks. Developer and Developer's Principals acknowledge that Developer has received, read, and understands this Agreement and the related Attachments and agreements and that Franchisor has afforded Developer sufficient time and opportunity to consult with advisors selected by Developer about the potential benefits and risks entering into this Agreement.

Developer's Principals' Initials,
individually and on behalf of
Developer _____________

16.3 No Extraneous Promises. Developer and Developer's Principals confirm and acknowledge that no written or oral agreements, promises, commitments, undertakings, or understandings were made to or with Developer that are not expressly set forth in this Agreement and any duly executed amendment or addendum attached to this Agreement. Notwithstanding the foregoing, nothing in these acknowledgements or otherwise in this Agreement disclaims or requires Developer to waive reliance on any representation Franchisor made in the franchise disclosure document (including its exhibits and amendments) that Franchisor delivered to Developer in connection with this franchise offering, unless Franchisor was exempt from providing such disclosure document.

Developer's Principals' Initials,
individually and on behalf of
Developer _____________

16.4 No Extraneous Inducements. Developer and Developer's Principals confirm and acknowledge that no representation, warranty, guaranty, or promise, other than those expressly set forth in this Agreement, was made by Franchisor or any other person to induce Developer to sign this Agreement. Developer and Developer's Principals recognize that neither Franchisor nor any other party can guarantee Developer's business success or state the exact costs of operating Developer's Business, and that such success and costs will depend primarily upon Developer's own efforts and business ability. Developer and Developer's Principals also recognize that any new business venture is speculative.

Developer's Principals' Initials,
individually and on behalf of
Developer _____________

16.5 Commercial Relationship. Developer and Developer's Principals acknowledge that this Agreement creates an arm's length commercial relationship that cannot and will not be transformed into a fiduciary or other "special" relationship by course of dealing, by any special indulgences or benefits that Franchisor bestows on Developer, or by inference from a party's conduct.

Developer's Principals' Initials,
individually and on behalf of
Developer _____________

16.6 Compliance with Anti-Terrorism Laws. Developer and Developer's Principals represent, covenant, and warrant to Franchisor that, to the best of their knowledge, neither Developer nor any of Developer's Principals or managerial employees thereof is identified, either by name or an alias, pseudonym, or nickname, on the lists of "Specially Designated Nationals" or "Blocked Persons" maintained by the U.S. Treasury Department's Office of Foreign Assets Control (texts currently available at www.treas.gov/offices/enforcement/ofac/). Further, Developer and Developer's Principals represent, covenant, and warrant that, to the best of their knowledge, they have not violated and agree that they will not violate, any law (in effect now or which may become effective in the future) prohibiting corrupt business practices, money laundering, or the aid or support of persons or entities who conspire to commit acts of terror against any person or government, including acts prohibited by the U.S. Patriot Act, Public Law No. 107-56 (text currently available at http.//www.epic.org/privacy/terrorism /hr3162.html), U.S. Executive Order 13224 (text currently available at http://www.state.gov/s/ct/rls/other/des/122570.htm), or similar law. The foregoing constitute continuing representations and warranties, and Developer shall notify Franchisor immediately in writing of the occurrence of any event or the development of any circumstance that might render the foregoing representation and warranty false, inaccurate, or misleading.

16.7 Compliance with Anti-Corruption Laws.

Developer will, and will cause all of its employees, consultants, contractors, sub-contractors, and all other persons under its supervision to, conduct all activities under this Agreement and in connection with the development, ownership, and operation of the Franchised Restaurants in compliance with the U.S. Foreign Corrupt Practices Act (a copy of which can be found at <http://www.usdoj.gov/criminal/fraud/fcpa/>), and all other comparable Anti-Corruption Laws (as defined below) or regulations in the Territory, as well as any international conventions that outlaw bribery and corrupt practices (including for example the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), and all Franchisor policies relating to anti-corruption.

Developer represents, warrants, and covenants to Franchisor that:

(a) Developer has not, and will not, in connection with its performance under this Agreement, or in connection with any other business transactions involving Franchisor, make, offer, give, or promise to make, offer, or give, directly or indirectly, any payment (in currency, property, or other thing of value): (i) to any Government Official (as defined below) or to an intermediary for payment to any Government Official; or (ii) to any political party if that payment or transfer would violate any applicable law. It is the intent of the parties that no payments or transfers of value be made that have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business. This does not, however, prohibit normal and customary business entertainment or the giving of business mementos of nominal value in connection with Developer's performance under this Agreement, provided the entertainment or giving of the memento is otherwise legal under local law and does not violate or exceed Franchisor's or the recipient's rules, policies, or other ethical standards.

(b) If Developer learns or has reason to know of: (i) any payment, offer, or agreement to make a payment to a Government Official or political party for the purpose of obtaining or retaining business or securing any improper advantage for Franchisor under this Agreement or otherwise, or (ii) any other development during the Term that in any way makes inaccurate or incomplete Developer's anti-corruption related representations, warranties, or certifications at any time during the Term, Developer will immediately advise Franchisor in writing of the knowledge or suspicion and the basis therefor.

(c) Developer understands that Franchisor has the right to monitor compliance with its policies, including to verify compliance with the representations in this Section. Franchisor's right to monitor includes the right to conduct, or have its designee conduct, unannounced inspections of Developer's facilities and records. Developer will cooperate fully with any investigation, the scope, method, nature, and duration of which is determined at the sole reasonable discretion of Franchisor.

(d) None of Developer's Personnel (as defined below) and none of those Personnel's Family Members (as defined below) are Government Officials. If any of Developer's Personnel or their Family Members become a Government Official, Developer shall immediately notify Franchisor in writing.

Developer hereby acknowledges and agrees to these representations and agrees that at any time during the Term when requested by Franchisor, Developer will provide to Franchisor a certification in the form required by Franchisor.

As stated in Section 11.3, if Franchisor believes, in good faith, that Developer has acted in any way that may subject Franchisor to liability under any Anti-Corruption Law, or has otherwise failed to comply with the terms of this Section, Franchisor may terminate this Agreement immediately upon notice to Developer.

Developer agrees that Franchisor may make full disclosure of information relating to any possible violation of any Anti-Corruption Law or any related offenses to the U.S. government and its agencies, and to any other public or private person or entity that Franchisor determines has a legitimate need to know.

For purposes of this Section 15.7, the following terms have the meanings set forth below:

"Anti-Corruption Laws" are those laws or regulations that make it unlawful to offer, pay, promise, or authorize to pay any money, gift, or anything of value (including bribes, entertainment, kickbacks, or any benefit), directly or indirectly, (a) to any Government Official or any political party in order to assist with obtaining, retaining or securing an improper business advantage, or (b) to any other person, with the intention of inducing or rewarding improper performance of a relevant function or activity.

"Government Official" means any (i) any officer or employee of any agency, instrumentality, subdivision, or other body of national, regional, or municipal government; (ii) any commercial or similar entity that the government controls or owns, including state-owned and state-operated companies or enterprises; (iii) any public international organization (e.g. United Nations, World Bank); (iv) any political party or official thereof; or (v) any candidate for political office.

"Family Member" means a person's spouse/domestic partner, children, stepchildren, grandchildren, parents, stepparents, siblings, mother/father–in-law, son/daughter-in-law, brother/sister-in-law, and/or first- or second-cousins.

"Personnel" means owners, shareholders, partners or members as well as officers, directors, executives, and employees, as well as any of their Family Members.

Developer's Principals' Initials,
individually and on behalf of
Developer ______________

16.8 No Claims. Developer and Developer's Principals represent, covenant, and warrant to Franchisor that, to the best of their knowledge, neither they nor any of their Affiliates hold or are due, as applicable, any claims, debts, liabilities, demands, obligations, expenses, actions, or causes of action of any nature, character, or description related to this Agreement against Franchisor, and its Affiliates and each of their respective successors, partners, and the partners, shareholders, representatives, assigns, agents, servants, employees, independent contractors, officers, and directors of each of them, in their corporate and individual capacities.

Developer's Principals' Initials,
individually and on behalf of
Developer ______________

(Signature page is the next page.)

IN WITNESS WHEREOF, the parties hereto have fully executed and delivered this Agreement on the day and year first above written.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: ______________________________
Name:
Title:

DEVELOPER:

[●], a [●]

By: ______________________________
Name:
Title:

SCHEDULE 1

TERRITORY

SCHEDULE 2

STATEMENT OF OWNERSHIP AND INTERESTS OF DEVELOPER'S PRINCIPALS

Below is a list of all Persons holding an Equity Interest in Developer and a description of the nature and percentage of such Equity Interest. All such individuals and entities are hereby deemed to be "Developer's Principals" described in and designated pursuant to this Agreement, each of whom will execute the Agreement and Guaranty of Developer's Principals attached hereto as Attachment A. If any Person listed below is a legal entity, all Persons holding an Equity Interest in such legal entity must also be listed below together with a description of the nature and percentage of such Equity Interest.

Name	Percentage/Nature of Equity Interest[1]

The initial Brand Director is: ____

The initial Director of Operations is: ____

[1] All Equity Interests in Developer and Developer's Principals (if an entity) are held in nominative form only and no bearer shares have been issued or will be issued.

SCHEDULE 3

DEVELOPMENT SCHEDULE

City	**Site Approval** *9 months before open*	**Start Construction** *6 months before open*	**Execute Franchise Agreement** *3 months before open*	**Open**	**Cumulative Restaurants to be Operational**

ATTACHMENT A

AGREEMENT AND GUARANTY OF DEVELOPER'S PRINCIPALS

Each of the undersigned acknowledges and agrees as follows:

(1) Each has read the terms and conditions of that certain International Development Agreement, entered into as of the [●] day of [●],[●] ("Development Agreement"), by and between KONA GRILL, INC., a Delaware corporation ("Franchisor"), and [●], a [●] ("Developer") and acknowledges that the execution of this Guaranty and the undertakings of the Developer's Principals in the Development Agreement are in partial consideration for, and a condition to, the granting of the rights contracted in the Development Agreement, and that Franchisor would not have granted the rights contained in the Development Agreement without the execution of this Guaranty and the other undertakings by each of the undersigned;

(2) Each is included in the term "Developer's Principals";

(3) Each individually, jointly, and severally, makes all of the covenants, representations, warranties and agreements of Developer's Principals set forth in the Development Agreement and is obligated to perform thereunder; and

(4) Each individually, jointly and severally, unconditionally, and irrevocably guarantees to Franchisor and its successors and assigns that all of Developer's obligations under the Development Agreement will be punctually paid and performed. Upon default by Developer's or upon notice from Franchisor, each will immediately make each payment and perform each obligation required of Developer under the Development Agreement.

(5) Without affecting the obligations of any of Developer's Principals under this Guaranty, Franchisor may, without notice to the Developer's Principals, waive, renew, extend, modify, amend, or release any indebtedness or obligation of Developer or settle, adjust, or compromise any claims that Franchisor may have against Developer.

(6) Each of the Developer's Principals waives all demands and notices of every kind with respect to the enforcement of this Guaranty, including notices of presentment, demand for payment or performance by Developer, any default by Developer or any guarantor, and any release of any guarantor or other security for this Guaranty or the obligations of Developer.

(7) Franchisor may pursue its rights against any of Developer's Principals without first exhausting its remedies against Developer and without joining any other guarantor and no delay on the part of Franchisor in the exercise of any right or remedy will operate as a waiver of the right or remedy, and no single or partial exercise by Franchisor of any right or remedy will preclude the further exercise of that or any other right or remedy.

(8) Upon receipt by Franchisor of notice of the death of any of Developer's Principals, the estate of the deceased will be bound by the foregoing Guaranty, but only for defaults and obligations under the Development Agreement existing at the time of death, and in that event, the obligations of the remaining Developer's Principals will continue in full force and effect.

(9) Capitalized terms used herein but not defined herein shall have the meaning ascribed to them in the Development Agreement. As used herein, the term "Development Agreement" will include any extensions, renewals, amendments or restatements of the

Development Agreement, made with or without the consent of Developer's Principals, from time to time.

IN WITNESS WHEREOF, the undersigned have entered into this Guaranty as witnessed by their signatures below.

ATTEST: DEVELOPER'S PRINCIPALS

____
Printed Name:

____
Printed Name:

ATTACHMENT B
CONFIDENTIALITY AND NON-COMPETITION AGREEMENT

This Confidentiality and Non-Competition Agreement ("Agreement") is made and entered into this [●] day of [●], [●], by and between Kona Grill, Inc., a Delaware corporation ("Franchisor"), and [●], a [●] ("Developer"), and [●] ("Covenantor").

RECITALS

WHEREAS, Franchisor and Developer have entered into a development agreement dated [●] ("Development Agreement"), pursuant to which Franchisor has granted Developer the right to develop Franchised Restaurants using the System solely in connection therewith; and

WHEREAS, Franchisor has provided, or will provide to Developer, a confidential operations manual and such other written or printed material to explain the operation of the System and aid in its use ("Documentation") and certain confidential information, knowledge, and know-how concerning the construction and methods of operation of the Franchised Restaurants relating to the System, including the Documentation, drawing, materials, equipment, techniques, products, recipes, and other data of Franchisor ("Trade Secrets"); and

WHEREAS, the Proprietary Marks and Trade Secrets provide economic advantages to Franchisor and the Trade Secrets are not generally known to, and are not readily ascertainable by proper means by, Franchisor's competitors who could obtain economic value from knowledge and use of the Trade Secrets; and

WHEREAS, Covenantor acknowledges that receipt of and the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises, and covenants made by Covenantor herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

Confidentiality Agreement

1. Franchisor and Developer shall disclose to Covenantor some or all of the Trade Secrets. All information and materials, including, without limitation, the Documentation, which Franchisor provides to Developer and/or Covenantor shall be deemed confidential Trade Secrets for purposes of this Agreement.

2. Covenantor shall at all times treat as confidential, and shall not at any time disclose, distribute, copy, duplicate, record, or otherwise reproduce, in whole or in part, or otherwise make available to any person or source or otherwise use in any manner except for the operation of the Franchised Restaurants, the contents of the Trade Secrets without the prior written consent of Franchisor.

3. Covenantor agrees that any goodwill that may arise from Covenantor's use of the Trade Secrets shall at all times remain the sole and exclusive property of Franchisor and shall inure to the sole benefit of Franchisor.

4. Covenantor agrees to notify Franchisor and Developer promptly in writing of any loss, theft, or unauthorized disclosure or use of any of the Trade Secrets of which Covenantor has knowledge.

5. Covenantor shall surrender any material containing some or all of the Trade Secrets, including the Documentation, to Developer or Franchisor, upon request, or upon termination of employment by Developer, or upon conclusion of the use for which such information or material may have been furnished to Covenantor.

Covenants Not to Compete

1. Covenantor specifically acknowledges that, pursuant to Covenantor's employment or association with Developer, Covenantor will receive valuable, specialized training or confidential information. In consideration for the disclosure of the Trade Secrets, Covenantor covenants that during Covenantor's employment or association with Developer, and for one year following the earlier of: (a) the expiration, termination, or transfer of all of Developer's interest in the Development Agreement or (b) the termination of Covenantor's association with or employment by Developer, except as otherwise approved in writing by Franchisor, Covenantor shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with, any person or legal entity:

(a) Divert or attempt to divert any business or customer of the Franchised Restaurants to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks or the System;

(b) Employ or seek to employ any person who is at that time employed by Franchisor, Developer, or by any principal of Developer, or otherwise directly or indirectly induce such person to leave his or her employment; or

(c) Own, maintain, operate, engage in, be employed by, provide any assistance to, or have any interest in (as owner or otherwise) (a) any full-service restaurant or business whose (i) menu offerings contain Competing Food Items representing either: (A) 15% or more of the total menu items (excluding alcoholic and non-alcoholic beverages and desserts); or (B) 15% or more of revenues; or (ii) menu offerings that include 10 or more Competing Food Items; or (b) any full-service restaurant or business offering sushi or sushi rolls, regardless of the number of menu items or the amount of revenue such restaurant or business derives from sushi sales; or (c) the following restaurants: Benihana, BJ's, Bonefish Grill, Brio, Del Frisco's Grille, Joe's Crab Shack, Outback Steakhouse, P.F. Chang's, Seasons 52, and The Cheesecake Factory; provided however, that this provision shall not apply to the operation by Covenantor of any license or franchise which may be granted by Franchisor to Covenantor; and provided, further, that this provision shall not apply to any ownership by Covenantor, of less than 5% of the outstanding equity securities in any publicly-held corporation. "Competing Food Items" means sushi, seafood, and/or Asian-inspired entrees, including without limitation, Japanese, Thai, and Chinese cuisine; or any item that includes in the name of the menu item or its description any of the preceding countries or any city or region within such country(ies).

(d) Covenantor understands and acknowledges that Franchisor will have the right, in its sole discretion, to reduce the scope of any non-competition covenant set forth above, or any portion thereof, without its consent, effective immediately upon notice to Covenantor; and Covenantor agrees that he or she will comply with any covenant as so modified, which will be fully enforceable notwithstanding the provisions of Section 4 under the heading entitled "Miscellaneous."

Miscellaneous

1. Developer and Covenantor agree that in the event of a breach of this Agreement, Franchisor and/or Developer shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies which are made available to it at law or in equity, to a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security.

2. Covenantor will pay all expenses (including court costs and reasonable attorneys' fees) incurred by Franchisor and Developer in enforcing this Agreement.

3. THIS AGREEMENT SHALL BE INTERPRETED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF ARIZONA, WITHOUT REFERENCE TO ARIZONA CHOICE OF LAW PRINCIPLES.

4. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

5. Capitalized terms used in this Agreement but not defined herein shall have the meanings given to them in the Development Agreement.

6. Any and all notices required or permitted under this Agreement shall be in writing and shall be sent via by electronic mail, personal delivery, or expedited delivery service, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:	Kona Grill, Inc. 15059 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85254 Attn: Carlos de Leon Vice President – International Development Tel. 480-922-8100 Email: deleon@konagrill.com
With an electronic copy to:	Tracy Durchslag, Esq. Tel: 602-740-0291 Email: tracy@durchslaglaw.com
Notices to Developer:	[●] Tel. [●] Email: [●]
Notices to Covenantor:	[●] Tel. [●] Email: [●]

Notices posted by personal delivery, express delivery service, or electronic mail shall be deemed given upon receipt.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

FRANCHISOR:
Kona Grill, Inc.
a Delaware corporation

By: ____________________________
Name:
Title:

DEVELOPER:

[●], a [●]

By: ____________________________
Name:
Title:

COVENANTOR:
[●]
By: ____________________________
Name:

**CALIFORNIA AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT**

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The California Department of Business Oversight requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. CORP. CODE Section 31000 *et seq*., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 *et seq*. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

   a. California Business and Professions Code Sections 20000 through 20043 provides rights to Franchisee concerning termination, transfer, or non-renewal of a franchise. If the Agreement contains a provision that is inconsistent with California law, California law will control.

   b. The Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 *et seq*.).

   c. The Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

   d. The Agreement requires application of the laws of the State of Arizona. This provision may not be enforceable under California law.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**DEVELOPER:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

ILLINOIS AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Illinois Attorney General's Office requires that certain provisions contained in franchise documents be amended to be consistent with Illinois law, including the Franchise Disclosure Act of 1987, 815 ILCS 705/1 *et seq* ("**Act**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. Paragraphs 705/19 and 705/20 of the Act provide rights to you concerning nonrenewal and termination of this Agreement. If this Agreement contains a provision that is inconsistent with the Act, the Act will control.

b. Any release of claims or acknowledgments of fact contained in the Agreement that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Act, or a rule or order under the Act, will be void and are hereby deleted with respect to claims under the Act.

c. If the Agreement requires litigation to be conducted in a forum other than the State of Illinois, the requirement is void with respect to claims under the Act.

d. If the Agreement requires that it be governed by a state's law, other than the state of Illinois, to the extent that such law conflicts with the Act, the Act will control.

e. Section 41 of the Act provides that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Act or any other law of Illinois is void.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR: Kona Grill, Inc. a Delaware corporation	**DEVELOPER:** **[●]** a **[●]**
By: ____________________	By: ____________________
Name: ____________________	Name: ____________________
Title: ____________________	Title: ____________________
Date: ____________________	Date: ____________________

MARYLAND AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Maryland Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Maryland law, including the Maryland Franchise Registration and Disclosure Law, MD. BUS. REG. CODE ANN. §§ 14-201 *et seq.* (2015 Repl. Vol.) ("**Law**"). To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. Any release required as part of the Agreement or as a condition of the sale, renewal, assignment, or transfer of the franchise will not apply to any liability under the Law.

b. Any acknowledgments or representations of Franchisee made in the Agreement which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Law are not intended to nor will they act as a release, estoppel, or waiver of any liability incurred under the Law.

c. Any requirement that litigation be conducted in a forum other than the State of Maryland will not be interpreted to limit any rights Franchisee may have under the Law to bring suit in the State of Maryland.

d. The limitation on the period of time mediation and/or litigation claims must be brought will not act to reduce the 3-year statute of limitations afforded Franchisee for bringing a claim arising under the Law. Any claims arising under the Law must be brought within 3 years after the grant of the franchise.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR: Kona Grill, Inc. a Delaware corporation	**DEVELOPER:** **[●]** a **[●]**
By: ______________________________	By: ______________________________
Name: ____________________________	Name: ____________________________
Title: _____________________________	Title: _____________________________
Date: _____________________________	Date: _____________________________

MINNESOTA AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Commissioner of Commerce for the State of Minnesota requires that certain provisions contained in franchise documents be amended to be consistent with Minnesota Franchise Act, Minn. Stat. Section 80C.01 *et seq*., and with the rules and regulations promulgated thereunder (collectively, "**Franchise Act**"). To the extent the Agreement/and or disclosure document contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The Minnesota Department of Commerce requires that franchisors indemnify Minnesota franchisees against liability to third parties resulting from claims by third parties that the franchisee's use of the franchisor's proprietary marks infringes trademark rights of the third party.

b. Minn. Stat. Sec. 80C.14, Subds. 3, 4, and 5 require, except in certain specified cases, that a franchisee be given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the franchise agreement. If the Agreement contains a provision that is inconsistent with the Franchise Act, the provisions of the Agreement will be superseded by the Franchise Act's requirements and will have no force or effect.

c. If Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Franchise Act, such release will exclude claims arising under the Franchise Act, and such acknowledgments will be void with respect to claims under the Franchise Act.

d. If the Agreement requires that it be governed by the laws of a state other than the state of Minnesota, or if the Agreement requires arbitration or mediation, those provisions will not in any way abrogate or reduce any rights of the franchisee, as provided for in the Franchise Act, including the right to submit matters to the jurisdiction of the courts of Minnesota.

e. Any provision that requires the franchisee to consent to a claims period that differs from the applicable statute of limitations period under Minn. Stat § 80C.17, Subd. 5. may not be enforceable under Minnesota.

2. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit Franchisor from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or Agreement can abrogate or reduce any of Franchisee's rights as provided for in Minnesota Statutes, Chapter 80C, including Franchisee's rights to any procedure, forum, or remedies provided for in such law.

3. The Agreement/and or disclosure document is hereby amended to delete all references to liquidated damages (as defined in the Agreement) that are in violation of Minnesota law; provided that no such deletion will excuse the franchisee from liability for actual or other damages, and the formula for liquidated damages in the Agreement/and or disclosure document will be admissible as evidence of actual damages.

4. To the extent required by Minnesota law, the Agreement/and or disclosure document is amended to delete all references to a waiver of jury trial.

5. All sections of the Agreement/and or disclosure document referencing Franchisor's <u>right to obtain</u> injunctive relief are hereby amended to refer to Franchisor's right to <u>seek to obtain</u>.

6. Each provision of this Agreement is effective only to the extent that the jurisdictional requirements of Minnesota law applicable to the provision are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR: Kona Grill, Inc. a Delaware corporation	**DEVELOPER:** **[●]** a **[●]**
By: ______________________________	By: ______________________________
Name: ____________________________	Name: ____________________________
Title: _____________________________	Title: _____________________________
Date: _____________________________	Date: _____________________________

NEW YORK AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The New York Department of Law requires that certain provisions contained in franchise documents be amended to be consistent with New York law, including the General Business Law, Article 33, Sections 680 through 695 ("**Law**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

   a. If franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Law, regulation, rule, or order under the Law, such release will exclude claims arising under the Law and the regulations promulgated thereunder, and such acknowledgments will be void. It is the intent of this provision that non-waiver provisions of Sections 687.4 and 687.5 of the General Business Law be satisfied.

   b. If the Agreement requires that it be governed by the law of a state, other than the state of New York, the choice of law provision will not be considered to waive any rights conferred upon franchisee under the Law.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**DEVELOPER:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ____________________	Name: ____________________
Title: _____________________	Title: _____________________
Date: _____________________	Date: _____________________

NORTH DAKOTA AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The North Dakota Securities Commissioner requires that certain provisions contained in franchise documents be amended to be consistent with North Dakota law, including the North Dakota Franchise Investment Law, North Dakota Century Code Annotated Chapter 51-19, Sections 51-19-01 through 51-19-17. To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. If the Franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Law, or a rule or order under the Law, such release shall exclude claims arising under the North Dakota Franchise Investment Law, and such acknowledgments shall be void with respect to claims under the Law.

b. Covenants not to compete during the term of and upon termination or expiration of the Agreement are enforceable only under certain conditions according to North Dakota Law. If the Agreement contains a covenant not to compete which is inconsistent with North Dakota Law, the covenant may be unenforceable.

c. If the Agreement requires litigation to be conducted in a forum other than the State of North Dakota, the requirement is void with respect to claims under the North Dakota Franchise Investment Law.

d. If the Agreement requires that it be governed by the law of a state, other than the State of North Dakota, to the extent that such law conflicts with North Dakota Law, North Dakota Law will control.

e. If the Agreement requires mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the arbitration or if the parties cannot agree on a location, the location will be determined by the arbitrator.

f. If the Agreement requires payment of a termination penalty, the requirement may be unenforceable under the North Dakota Franchise Investment Law.

g. Any provision that provides that the parties waive their right to a jury trial may not be enforceable under North Dakota law.

h. Any provision that provides that the franchisee consent to a waiver of punitive and exemplary damages may not be enforceable under North Dakota Law.

i. Any provision that requires the franchisee to consent to a claims period that differs from the applicable statute of limitations period under North Dakota Law may not be enforceable under North Dakota Law.

j. If the Agreement requires the franchisee to consent to a limitation of claims, the statute of limitations period under North Dakota law applies.

k. If the Agreement requires the franchisee to pay all costs and expenses incurred by Franchisor in enforcing the agreement, the prevailing party in any enforcement action is entitled to recover all costs and expenses, including attorneys' fees.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the North Dakota Franchise Investment Law, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR: Kona Grill, Inc. a Delaware corporation	**DEVELOPER:** **[●]** a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

**RHODE ISLAND AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT**

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Rhode Island Securities Division requires that certain provisions contained in franchise documents be amended to be consistent with Rhode Island law, including the Franchise Investment Act, R.I. Gen. Law. §§ 19-28.1-1 to 19-28.1-34 ("**Act**"). To the extent that this Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

   a. If the Agreement requires litigation to be conducted in a forum other than the State of Rhode Island, the requirement is void with respect to any claims brought under the Act.

   b. If this Agreement requires that it be governed by a state's law, other than the State of Rhode Island, to the extent that such law conflicts with the Act, such law is void.

   c. If the franchisee is required in the Agreement to execute a release of claims or to acknowledge facts that would negate or remove from judicial review any statement, misrepresentation, or action that would violate the Act, or a rule or order under the Act, such release will exclude claims arising under the Act, and such acknowledgments will be void with respect to claims under the Act.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Rhode Island Franchise Investment Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**DEVELOPER:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

WASHINGTON AMENDMENT TO KONA GRILL, INC.
DEVELOPMENT AGREEMENT

The Kona Grill, Inc. Development Agreement between Kona Grill, Inc. ("**Franchisor**") and the undersigned ("**Agreement**") is hereby amended by the addition of the following language, which will be considered an integral part of the Agreement ("**Amendment**"):

1. The Director of the Washington Department of Financial Institutions requires that certain provisions contained in franchise documents be amended to be consistent with Washington law, including the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 to 19.100.940 ("**Act**"). To the extent that the Agreement contains provisions that are inconsistent with the following, such provisions are hereby amended:

a. The Act provides rights to Franchisee concerning nonrenewal and termination of the Agreement. If the Agreement contains a provision that is inconsistent with the Act, the Act will control.

b. If Franchisee is required in the Agreement to execute a release of claims, such release will exclude claims arising under the Act; except when the release is executed under a negotiated settlement after the Agreement is in effect and where the parties are represented by independent counsel.

c. If there are provisions in the Agreement that unreasonably restrict or limit the statute of limitations period for claims brought under the Act, or other rights or remedies under the Act, those provisions may be unenforceable.

d. If the Agreement requires litigation, arbitration, or mediation to be conducted in a forum other than the state of Washington, the requirement may be unenforceable under Washington law. Arbitration involving a franchise purchased in the state of Washington, must either be held in the state of Washington or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

e. If the Agreement requires that it be governed by the law of a state, other than the state of Washington, and if there is a conflict between the law and the Act, the Act will control.

f. Transfer fees are collectable to the extent they reflect Franchisor's reasonable estimated or actual costs in effecting a transfer.

2. Each provision of this Amendment is effective only to the extent that the jurisdictional requirements of the Washington Franchise Investment Protection Act, with respect to each such provision, are met independent of this Amendment. This Amendment will have no force or effect if such jurisdictional requirements are not met.

The parties hereto have duly executed and delivered this Amendment to the Agreement on the dates set forth below.

FRANCHISOR:	**DEVELOPER:**
Kona Grill, Inc.	**[●]**
a Delaware corporation	a **[●]**
By: ______________________	By: ______________________
Name: ______________________	Name: ______________________
Title: ______________________	Title: ______________________
Date: ______________________	Date: ______________________

EXHIBIT D

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

GENERAL RELEASE

KONA GRILL, INC.
GENERAL RELEASE AGREEMENT

("Agreement")

1. **Release of Claims**. Franchisee and its Principals and their respective assigns, heirs, representatives, agents, family members, and all other persons acting on their behalf or claiming under them (collectively, "**Franchisee Related Parties**") irrevocably and unconditionally release and forever discharge Franchisor, its predecessors, subsidiaries, affiliates and their respective owners, officers, directors, agents, independent contractors, servants, employees, representatives, attorneys, successors and assigns and all persons acting by, through, under or in concert with any of them (collectively, "**Releasees**"), from all actions, causes of action, suits, debts, liens, contracts, agreements, obligations, promises, liabilities, claims, rights, demands, damages, controversies, losses, costs, and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent ("**Claim**" or "**Claims**"), which they now have or claim to have or at any time heretofore have had or claimed to have against each or any of the Releasees, including, without limitation, any and all such Claims arising from, based upon, or related to the Franchise Agreement.

[For California franchisees, add: Each of the Franchisee Related Parties expressly waives and relinquishes all rights and benefits which either may now have or in the future have under and by virtue of California Civil Code Section 1542. The Franchisee Related Parties do so understanding the significance and consequence of such specific waiver. Section 1542 provides that "[a] general release does not extend to claims which the creditor does not know or suspect exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." For the purpose of implementing a general release and discharge as described in Section 1. above, the Franchisee Related Parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all claims described in Section 1. above, which the Franchisee Related Parties do not know or suspect to exist in their favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claims.]

2. **Unknown Claims**.

(a) Franchisee acknowledges for itself and the Franchisee Related Parties that there is a risk that subsequent to the execution of this Agreement, it will discover, incur or suffer Claims which are unknown or unanticipated at the time this Agreement is executed, including, without limitation, unknown or unanticipated Claims which arose from, are based upon or are related to the Franchise Agreement or some part or aspect thereof, which if known by Franchisee on the date this Agreement is being executed may have materially affected its decision to execute this Agreement.

(b) Franchisee acknowledges and agrees for itself and the Franchisee Related Parties that by reason of the release contained in Section 1. above, it is assuming the risk of such unknown and unanticipated Claims and agrees that its release of the Releasees contained in this Agreement applies thereto.

3. **Covenant Not to Sue**. Franchisee covenants and agrees for itself and for the Franchisee Related Parties not to bring or allow to be brought on behalf of itself or any Franchisee Related Party, any action, cause of action, suit, or other proceeding of any kind, which has accrued or which may ever accrue, whether based in the Constitution, common law or statute, contract, tort, or in equity, for actual or punitive damages or other relief, against Franchisor and the Releasees arising out of, resulting from, or in any manner related to the matters referenced in Section 1.

4. **No Assignment of Claims**. Franchisee represents and warrants for itself and the Franchisee Related Parties that it has not assigned or transferred, or purported to assign or transfer, to any person or entity, any Claims released under Section 1. of this Agreement and agrees to indemnify, defend and hold the Releasees harmless from and against any and all Claims, based on or arising out of any such assignment or transfer, or purported assignment or transfer, of any Claims, or any portion thereof or interest therein. Franchisee represents and warrants that since the date of the Franchise Agreement, there has been no assignment or transfer, and no purported assignment or transfer, to any person or entity of the Franchise, the Franchise Agreement, or any rights or interests therein or in the Franchisee.

5. **Full and Independent Knowledge**. Franchisee represents that it has been represented by an attorney in connection with the preparation and review of this Agreement, that it has specifically discussed with its attorney the meaning and effect of this Agreement, and that it has carefully read and understands the scope and effect of each provision contained herein. Franchisee further represents that it does not rely and has not relied upon any representation or statement made by the Franchisor, any of the Releasees, or any of their representatives with regard to the subject matter, basis, or effect of this Agreement.

6. **Compromise**. Franchisee agrees for itself and the Franchisee Related Parties that the releases contained herein are the result of a compromise and will never at any time for any purpose be considered as an admission of liability or responsibility on the part of Franchisor or the Releasees regarding any matter.

7. **General Provisions**.

(a) Entire Agreement. This Agreement, when fully executed, supersedes all previous negotiations, representations, and discussions by the parties hereto concerning the subject matter hereof and integrates the whole of all of their agreements and understandings concerning the subject matter hereof. No oral representations or undertakings concerning the subject matter hereof shall operate to amend, supersede, or replace any of the terms or conditions set forth herein.

(b) Authority. By their signatures below, the parties hereto represent and warrant to each other that they have all necessary authority to enter into this Agreement. Each party hereto represents and warrants that the party is entering into this Agreement solely for the purposes and consideration set forth herein.

(c) Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original.

(d) Survival. All covenants, representations, warranties, and agreements of the parties will survive execution and delivery of this Agreement and will continue until such time as all the obligations of the parties hereto have lapsed in accordance with their respective terms or have been discharged in full.

(e) Further Assurance. The parties hereto covenant and agree that they will execute such other and further instruments and documents as are or may become necessary or convenient to effectuate and carry out the intent of this Agreement.

(f) Complete Defense. Franchisee acknowledges that this Agreement will be a complete defense to any claim released under the terms of Section 1. of this Agreement and hereby consents to the entry of a temporary or permanent injunction to end the assertion of any such claim.

(g) Attorneys' Fees. In the event that Franchisor institutes legal proceedings of any kind to enforce this Agreement, Franchisee will pay all costs and expenses associated therewith, including, but not limited to, all attorneys' fees.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative as of the date indicated below.

FRANCHISEE:

By: ___________________________________

Name: _________________________________

Title: __________________________________

Date: __________________________________

PRINCIPALS:

____

Date: __________________________________

____

Date: __________________________________

____

Date: __________________________________

(This General Release will be modified as necessary for consistency with any state law regulating franchising.)

EXHIBIT E

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

LIST OF FRANCHISEES

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

FRANCHISEES WITH OUTLETS OPEN AS OF DECEMBER 31, 2017

None.

FRANCHISEES WITH AGREEMENTS SIGNED BUT OUTLETS NOT OPEN AS OF DECEMBER 31, 2017

None.

EXHIBIT F

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

OPERATIONS MANUAL TABLE OF CONTENTS

KONA GRILL, INC.

OPERATIONS MANUAL TABLE OF CONTENTS

Operation Procedure & Training Materials

EXHIBIT G

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

LIST OF STATE ADMINISTRATORS

LIST OF STATE ADMINISTRATORS

California
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013
(866) 275-2677

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

Illinois
Office of Attorney General
500 S. Second Street
Springfield, Illinois 62706
(217) 782-4465

Indiana
Franchise Section
Securities Division
302 W. Washington St., Room E-111
Indianapolis, Indiana 46204
(317) 232-6681

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

Michigan
Michigan Attorney General's Office
Consumer Protection Division
Attention: Franchise Section
G. Mennen Williams Bldg., 1st Floor
525 W. Ottawa St.
Lansing, Michigan 48933
(517) 373-7117

Minnesota
Department of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
(651) 296-4026

New York
Bureau of Investor Protection and Securities
Department of Law
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8211

North Dakota
Franchise Examiner
North Dakota Securities Department
600 East Boulevard Avenue
State Capitol – 5th Floor, Dept. 414
Bismarck, North Dakota 58505-0510

Rhode Island
Securities Division
Department of Business Regulation
1511 Pontiac Avenue, Building 69-1
Cranston, Rhode Island 02920

South Dakota
Department of Labor and Regulation
Division of Securities
124 S. Euclid, Suite 104
Pierre, South Dakota 57501
(605) 773-4823

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

Washington
Administrator
Department of Financial Institutions
Securities Division
150 Israel Road S.W.
Tumwater, Washington 98501

Wisconsin
Franchise Administrator
Division of Securities
Department of Financial Institutions
345 West Washington Avenue
Madison, Wisconsin 53703

EXHIBIT H

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

AGENTS FOR SERVICE OF PROCESS

AGENTS FOR SERVICE OF PROCESS

California
Commissioner of Business Oversight
320 West Fourth Street, Suite 750
Los Angeles, California 90013-2344

Hawaii
Commissioner of Securities of the State of Hawaii
Department of Commerce and Consumer Affairs
Business Registration Division
335 Merchant Street, Room 203
Honolulu, Hawaii 96813

Illinois
Illinois Attorney General
500 South Second Street
Springfield, Illinois 62706

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

Maryland
Maryland Securities Commissioner
200 St. Paul Place
Baltimore, Maryland 21202-2020

Michigan
Michigan Department of Commerce
Corporations and securities Bureau
Attention: Franchise Section
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933

Minnesota
Commissioner of Commerce
85 7th Place East, Suite 500
St. Paul, Minnesota 55101

New York
Secretary of State of the State of New York
99 Washington Avenue
Albany, New York 12231

North Dakota
The Securities Commissioner
North Dakota Securities Department
600 East Boulevard Avenue
State Capitol – 5th Floor, Dept. 414
Bismarck, North Dakota 58505-0510

Rhodes Island
Securities Division
Department of Business Regulation
1511 Pontiac Avenue
John O. Pastore Complex – Building 69-1
Cranston, Rhode Island 02920

South Dakota
Director
Department of Labor and Regulation
Division of Securities
124 S. Euclid, Suite 104
Pierre, South Dakota 57501

Texas
Ron M. Schoenbrun – Registered Agent
Starr Schoenbrun & Comte PLLC
110 North College Avenue, Suite 1700
Tyler, Texas 75702

Virginia
Clerk of the State Corporation Commission
1300 East Main Street, 1st Floor
Richmond, Virginia 23219

Washington
Director of Department of Financial Institutions
Securities Division - 3rd Floor
150 Israel Road, S.W.
Tumwater, Washington 98501

Wisconsin
Commissioner of Securities
Wisconsin Securities Commission
201 West Washington Avenue, Suite 300
Madison, Wisconsin 53703

EXHIBIT I

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

<u>STATE-SPECIFIC ADDENDA</u>

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF CALIFORNIA

The California Department of Business Oversight requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. CORP. CODE Section 31000 *et seq*., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 *et seq*. To the extent that the disclosure document/and or Development Agreement and/or Franchise Agreement contain provisions that are inconsistent with the following, such provisions are hereby amended:

1. Item 3 of the disclosure document is supplemented by the following language:

   Neither we nor any person or franchise broker in Item 2 of the Franchise Disclosure Document is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., suspending or expelling such persons from membership in such association or exchange.

2. Item 17 of the disclosure document is supplemented by the following language:

   a. California Business and Professions Code Sections 20000 through 20043 provides rights to the franchisee concerning termination, transfer, or non-renewal of a franchise. If the franchise agreement contains a provision that is inconsistent with the law, the law will control.

   b. The franchise agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).

   c. The franchise agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

   d. The franchise agreement requires application of the laws of the state of Arizona.

3. Item 19 is amended by the addition of the following language:

   The earnings claims figures do not reflect the cost of sales, operating expenses, or other costs or expenses that must be deducted from the gross revenue or gross sales figures to obtain your net income or profit. You should conduct an independent investigation of the costs and expenses you will incur in operating your franchised business. Franchisees or former franchisees, listed in the offering circular, may be one source of this information.

4. OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT www.dbo.ca.gov.

5. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH A COPY OF THE DISCLOSURE DOCUMENT.

6. Corporations Code 31512 provides that: “Any conditions, stipulation or provision purporting to bind any person acquiring a franchise to waive compliance with any provision of this law or any rule or

order hereunder is void." The franchise agreement requires a shortened statute of limitations period. Pursuant to Corporations Code Section 31512, this provision is void, to the extent that it is inconsistent with the provisions of Corporations Code Sections 31303 and 31304.

7. You must sign a general release if you renew or transfer your franchise. California Corporations Code Section 31512 voids a waiver of your rights under the Franchise Investment Law (California Corporations Code Sections 31000 through 31516). Business and Professions Code Section 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code Sections 20000 through 20043).

8. 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.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF HAWAII

HAWAII

1. THESE FRANCHISES WILL BE/HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE FRANCHISE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS FRANCHISE DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

2. Section 482E-(3), Hawaii Revised Statutes, provides that franchisee may be entitled to certain compensation upon termination or refusal to renew the franchise. To the extent such Section is applicable, the franchisee shall have an interest in the franchise upon termination or refusal to renew as specified therein.

3. No release language set forth in the Development Agreement or Franchise Agreement shall relieve Franchisor or any other person, directly or indirectly, from liability imposed by the laws concerning franchising in the State of Hawaii.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF ILLINOIS

1. Illinois law governs the agreements between the parties to this franchise.

2. Section 4 of the Illinois Franchise Disclosure Act provides that any provision in a franchise agreement that designates jurisdiction and venue in a forum outside the State of Illinois is void. However, a franchise agreement may provide for arbitration to take place outside of Illinois.

3. Section 41 of the Illinois Franchise Disclosure Act provides that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with the Illinois Franchise Disclosure Act or any other law or Illinois is void.

4. Your rights upon termination and non-renewal of a Franchise Agreement are set forth in Sections 19 and 20 of the Illinois Franchise Disclosure act.

5. Payment of Initial Franchise Fees will be deferred until Franchisor has met all of its initial obligations to franchisee and franchisee has commenced doing business. This financial assurance requirement was imposed by the Illinois Attorney General's Office due to Franchisor's financial status.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF MARYLAND

1. Item 17.h. of this disclosure document is amended to include the following sentence:

   A provision in the Franchise Agreement that provides for termination on your bankruptcy may not be enforceable under federal bankruptcy law (11 U.S.C. Section 101 et seq.).

2. Items 17.c. and 17.m. are revised to provide that we cannot, as a condition to renewal or consent to assignment, require you to release any claims under the Maryland Franchise Registration and Disclosure Law.

3. Item 17.v. is revised to provide you may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within three years after the grant of the franchise.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF MINNESOTA

1. The following is added to Item 13 of the disclosure document:

   We will protect your right to use the trademarks, service marks, trade names, logos, or other commercial symbols or will indemnify you from any loss, costs, or expenses arising out of any claim, suit, or demand regarding the use of the marks to the extent required by Minnesota law.

2. The following is added to Item 17 of the disclosure document:

   Under Minnesota law, and except in certain specified cases, we must give you 90 days notice of termination with 60 days to cure and 180 days for notice for non-renewal of the Franchise Agreement. To the extent that the Franchise Agreement or Development Agreement is inconsistent with the Minnesota law, the Minnesota law will control.

3. The following is added to Item 17 of the disclosure document:

   Minnesota law prohibits us from requiring you to consent to a general release.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF NEW YORK

1. Item 3 is hereby deleted in its entirety and is replaced by the following language:

   a. Neither we, any predecessor, any person identified in Item 2 above, nor any affiliate offering franchises under our principal trademark has pending any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) alleging a violation of any franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, or comparable allegations.

   b. Neither we, any predecessor, any person identified in Item 2 above, nor any affiliate offering franchises under our principal trademark has been convicted of a felony or pleaded *nolo contendere* to a felony charge or, within the ten-year period immediately preceding the date of this disclosure document, has been convicted of a misdemeanor or pleaded *nolo contendere* to a misdemeanor charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding if such misdemeanor conviction or charge or civil action, complaint or other legal proceeding involved a violation of any franchise, anti fraud or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices, misappropriation of property or comparable allegations.

   c. Neither we, any predecessor any person identified in Item 2 above, nor any affiliate offering franchises under our principal trademark is subject to any currently effective injunctive or restrictive order or decree relating to franchises or under any Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency, 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."

2. Item 4 is hereby deleted in its entirety and is replaced by the following language:

   Neither we, nor any affiliate or predecessor or current officer or general partner have during the 10 year period immediately before the date of this disclosure document (a) filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; (b) obtained a discharge of its debts under the Bankruptcy Code; or (c) was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within one year after the officer or general partner of F45 Training Incorporated held this position with the company or partnership.

3. Item 17, “Renewal, Termination, Transfer, and Dispute Resolution” is amended as follows:

a. By adding the following in the “Summary” column opposite category d., “Termination by you”:

> To the extent required by the New York General Business Law, you may terminate the Agreement on any grounds available by law.

b. By adding the following in the “Summary” column opposite category w., “Choice of law”:

> The foregoing choice of law should not be considered a waiver of any right conferred upon you by the General Business Law of the State of New York, Article 33.

4. This disclosure document is amended by the addition of the following sentence:

> Franchisor represents that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

New York Insert

This disclosure document is amended by the addition of the following sentence:

Franchisor represents that this prospectus does not knowingly omit any material fact or contain any untrue statement of a material fact.

**ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF NORTH DAKOTA**

1. The State of North Dakota has determined that the following types of provisions are deemed to be contrary to North Dakota law:

   a. A provision requiring a North Dakota franchisee to sign a general release upon renewal of the franchise agreement;

   b. A provision requiring a North Dakota franchisee to consent to termination penalties or liquidated damages;

   c. A provision requiring a North Dakota franchisee to consent to the jurisdiction of courts outside the state of North Dakota;

   d. A provision restricting the time in which a North Dakota franchisee may make a claim to less than the applicable North Dakota statute of limitations;

   e. A provision calling for the waiver by a North Dakota franchisee of the right to trial by jury;

   f. A provision requiring a North Dakota franchisee to consent to a waiver of exemplary and punitive damages.

2. North Dakota Century Code Section 9-08-06 subjects covenants not to compete to the provisions of that statute. The covenants not to compete contained in the Development Agreement and/or Franchise Agreement are subject to Section 9-08-06 and may be unenforceable under North Dakota law.

3. If the Development Agreement or Franchise Agreement requires mediation or arbitration to be conducted in a forum other than the State of North Dakota, the requirement may be unenforceable under the North Dakota Franchise Investment Law. Mediation or arbitration involving a franchise purchased in the State of North Dakota must be held either in a location mutually agreed upon prior to the mediation or arbitration, or if the parties cannot agree on a location, the location will be determined by the mediator or the arbitrator.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF RHODE ISLAND

Item 17, "Renewal, Termination, Transfer, and Dispute Resolution" is amended by adding the following in the "Summary" column opposite category w., "Choice of law":

> Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction and venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF VIRGINIA

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, Item 17.h. is supplemented by the following:

> Under Section 13.1-564 of the Virginia Retail Franchising Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute "reasonable cause," as that term may be defined in the Virginia Retail Franchising Act or the laws of Virginia, that provision may not be enforceable.

ADDENDUM TO KONA GRILL, INC.
DISCLOSURE DOCUMENT
FOR THE STATE OF WASHINGTON

1. RCW § 19.100.180 and court decisions may supersede the Franchise Agreement or Development Agreement in your relationship with us, including in the areas of termination and renewal of your Franchise Agreement.

2. In the event of a conflict between the Washington Franchise Investment Protection Act and the law chosen in the Franchise Agreement or Development Agreement, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW, will prevail.

3. A release or waiver of rights executed by a franchisee will not include rights under the Washington Franchise Investment Protection Act, except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act, such as a right to a jury trial, may not be enforceable in Washington.

4. Transfer fees are collectable to the extent that they reflect our reasonable estimated or actual costs in effecting a transfer.

5. In any arbitration involving a franchise purchased in Washington, the arbitration site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator. In the event of a conflict of state laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.

Each provision of this addendum is effective only to the extent that the jurisdictional requirements of the laws described above, with respect to each provision of the law, are met independent of this addendum. This addendum will have no force or effect if such jurisdictional requirements are not met.

EXHIBIT J

KONA GRILL, INC.
FRANCHISE DISCLOSURE DOCUMENT

RECEIPTS

RECEIPT

This Franchise Disclosure Document summarizes certain provisions of the Franchise Agreement and other information in plain language. Read this Franchise Disclosure Document and all agreements carefully.

If Kona Grill, Inc. offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale, or sooner if required by applicable state law. Applicable state laws in (a) Connecticut and Michigan require us to provide you the disclosure document at least 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale; (b) New York requires us to provide you the disclosure document at the earlier of the first personal meeting or 10 business days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale; and (c) Iowa and Maine require us to provide you the disclosure document at the earlier of the first personal meeting or 14 days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If Kona Grill, Inc. does not deliver this Franchise Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580, and the appropriate state administrator listed in Exhibit G. Kona Grill, Inc.'s agents for service of process are listed in Exhibit H.

Issuance Date: April 16, 2018

The name, principal business address, and telephone number of the franchise seller offering the franchise is:

Name	Principal Business Address	Telephone Number
Carlos De Leon	15059 North Scottsdale Road, Suite 300, Scottsdale, Arizona 85254	480-922-8100

I received a Franchise Disclosure Document dated April 16, 2018. This Franchise Disclosure Document included the following Exhibits and Attachments:

Exhibit A Financial Statements
Exhibit B Franchise Agreement (with all attachments)
Exhibit C Development Agreement (with all attachments)
Exhibit D General Release (sample form)
Exhibit E List of Franchisees
Exhibit F Operations Manual Table of Contents
Exhibit G List of State Administrators
Exhibit H Agents for Service of Process
Exhibit I State-specific Addenda
Exhibit J Receipts

Date:________________________ ____

Signature

____

Printed Name, Individually

____

Printed Name, Officer, Title

of____

(a ________________________________ Corporation)

(a ________________________________ Partnership)

(a ________________________________ limited liability company)

(Keep this page for your records.)

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If Kona Grill, Inc. does not deliver this Franchise Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580, and the appropriate state administrator listed in Exhibit G. Kona Grill, Inc.'s agents for service of process are listed in Exhibit H.

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Exhibit J	Receipts

Date:________________________

____
Signature

____
Printed Name, Individually

____
Printed Name, Officer, Title

of____

(a _________________________________ Corporation)

(a _________________________________ Partnership)

(a _________________________________ limited liability company)

(Return this page to us.)