

FRANCHISE DISCLOSURE DOCUMENT



Einstein Bros. Bagels Franchise Corporation
a Colorado corporation
1720 S. Bellaire Street, Suite Skybox
Denver, Colorado 80222
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The franchisee will operate a “Noah’s New York Bagels” business (a “**Noah’s Restaurant**”) that specializes in the sale of fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, baked sweets and snacks, and creative lunch items, among other things.

The total investment necessary to begin operation of a Noah’s Bagels Traditional Restaurant under a Franchise Agreement ranges from \$961,00 to \$1,587,500. This includes \$41,000 to \$47,000 that you must pay to us before you open. The total investment necessary to begin operation of a Noah’s Bagels Small Footprint Restaurant under a Franchise Agreement ranges from \$866,300 to \$1,426,000. This includes \$41,000 to \$47,000 that you must pay to us before you open.

If you enter into an Area Development Agreement, the development fee will be \$10,000 for each Noah’s Restaurant to be opened under that agreement. The number of Restaurants that you will develop under the area development agreement is determined by a mutual agreement between you and us, but it must be a minimum of two.

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 Patricia Perry, Senior Vice President Franchise & License, at Einstein Bros. Bagels Franchise Corporation, 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (303.568.8000).

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

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

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

The issuance date of this Franchise Disclosure Document is October 25, 2023.

HOW TO USE THIS FRANCHISE DISCLOSURE DOCUMENT

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

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

WHAT YOU NEED TO KNOW ABOUT FRANCHISING GENERALLY

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

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

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

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

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

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

When your franchise ends. The franchise agreement may prohibit you from operating a similar business after your franchise ends even if you still have obligations to your landlord or other creditors.

Some States Require Registration

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

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

SPECIAL RISKS TO CONSIDER ABOUT *THIS* FRANCHISE

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

Out-of-State Dispute Resolution. The franchise agreement and area development agreement require you to resolve disputes with us by mediation and litigation in Colorado. Out of state mediation and litigation may force you to accept a less favorable settlement for disputes. It may also cost more to mediate and litigate in Colorado than in your own state.

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

NOAH'S NEW YORK BAGELS FRANCHISE DISCLOSURE DOCUMENT

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ITEM 1

THE FRANCHISOR AND ANY PARENTS, PREDECESSORS, AND AFFILIATES

The Franchisor

Einstein Bros. Bagels Franchise Corporation (“us,” “our,” or “we”) is the franchisor. We are a Colorado corporation, incorporated on February 8, 2016.

We maintain our principal place of business at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (303.568.8000). We do not maintain sales offices at any location other than our principal place of business. We do not use any sales brokers or other sales organizations. We conduct business under the name and mark “Noah’s New York Bagels” and “Noah’s Bagels” and under the “Einstein Bros. Bagels” names and marks. We do not conduct business under any other name.

In this disclosure document, we franchise the right to operate a “Noah’s New York Bagels” restaurant (the “**Restaurant**”). We (along with our predecessor, ENC, described below) have offered franchises for Noah’s Bagels Restaurants since the third quarter of 2023, and for “Einstein Bros. Bagels” Restaurants since 2006. Otherwise, we have never offered any franchise, and we have never engaged in any business activity other than such franchising activities and the operation of restaurants using the “Noah’s Bagels” and “Einstein Bros. Bagels” name and marks, bagel dough production and wholesale product sales. As of December 27, 2022 (which was the end of last fiscal year), there were 0 franchised and 56 company-owned “Noah’s Bagels” retail stores, and there were 56 franchised, 319 licensed, and 323 company-owned “Einstein Bros. Bagels” retail stores.

Our agents for service of process are listed in Exhibit C to this disclosure document.

Our Corporate Parent

Our corporate parent company is Einstein Noah Restaurant Group, Inc. (“**ENRG**”), a Delaware corporation, whose principal place of business is also at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (303.568.8000). ENRG was incorporated on October 21, 1992 as World Coffee, Inc. Later, ENRG’s name was changed to New World Coffee, Inc., New World Coffee & Bagels, Inc., New World Coffee-Manhattan Bagel, Inc., New World Restaurant Group, Inc., and, in 2007, to Einstein Noah Restaurant Group, Inc. ENRG offered franchises for “New World Coffee” and “New World Coffee & Bagel” restaurants, featuring coffee and related menu items, from 1992 to 2005. Other than that, ENRG has never offered franchises in any line of business.

In addition to owning our company, our corporate parent, ENRG also owns, franchises, and operates directly and indirectly company-owned, franchised and licensed retail restaurants. Its retail locations operate under tradenames and trademarks other than ours, including “Manhattan Bagel Company.” As of our last fiscal year end, on December 27, 2022, there were 62 franchised and no licensed or company-owned “Manhattan Bagel” retail stores. (This disclosure document does not provide for the offer of franchises under the “Manhattan Bagel,” marks and franchise system. Information about that system, to the extent that it is currently engaged in the offer and sale of franchises, can be found in another disclosure document for that system, which we will make available to you upon request.) In addition, ENRG may directly and indirectly sell products under the name “Manhattan Bagel” in other settings such as supermarkets and over the internet. Chesapeake Bagel Franchise Corp., a N.J. corporation (a subsidiary of ENRG

whose offices are the same as ours) franchised restaurants under the “Chesapeake Bagels” name and marks from 1999 until 2009.

Predecessors and History of Operations

Einstein/Noah Bagel Corp. (“**ENBC**”) and its affiliates, Einstein/Noah Bagel Partners, L.P. (“**ENBP**”) and Einstein/Noah Bagel Partners, Inc. (“**ENBPI**”), were the predecessor entities that owned the marks and restaurants that operated using the “Einstein Bros.”, “Noah’s New York Bagel” and “Noah’s Bagels” names (together, the “**Einstein and Noah Restaurant System**”).

ENRG formed Einstein and Noah Corp. (“**ENC**”) (as Einstein Acquisition Corp.) and an affiliated entity, Greenlight New World, LLC, for the purpose of seeking to acquire the Einstein and Noah Restaurant System from ENBC, ENBP and ENBPI. In connection with the Acquisition, described below, Greenlight New World, LLC, assigned to ENC all of its acquisition-related rights with respect to the Einstein and Noah Restaurant System.

On June 19, 2001, Einstein Acquisition Corp. successfully completed its acquisition of the Einstein and Noah Restaurant System (the “**Acquisition**”). As explained below, ENC (Einstein Acquisition Corp.) changed its name to “Einstein and Noah Corp.” on November 2, 2001.

Before the Acquisition, the Einstein and Noah Restaurant System was operated by ENBC, ENBP and ENBPI, and their respective predecessors, dating back to before 1995. ENBC operated “Einstein Bros.” restaurants from August 1995 through June 19, 2001. In 1996, ENBC acquired the rights to operate other restaurants, including those in the States of California and Washington under the name “Noah’s New York Bagels”. In December 1997, ENBC licensed and granted development rights to ENBP to operate the restaurants which comprised the Einstein and Noah Restaurant System. ENBC offered franchises for Noah’s Restaurants and for Noah’s New York Bagel Restaurants from 1995 to 1997, but did not engage in any other line of business.

Among the assets that ENC acquired in the Acquisition were the rights to the name “Einstein Bros.” and the related intellectual property. ENC also acquired ENBC’s rights under a co-existence agreement that it had entered into with the Estate of Albert Einstein, which in turn is owned by the Hebrew University of Jerusalem (“**HUJ**”) (the “**HUJ Co-Existence Agreement**”). Under the HUJ Co-Existence Agreement, ENBC and HUJ agreed on the terms under which ENBC (and now, we) could use the name Einstein Bros. and the terms under which HUJ could use the name and likenesses associated with the Estate of Albert Einstein.

ENC is a Delaware corporation, originally incorporated on May 11, 2001 as “Einstein Acquisition Corp.” ENC changed its name to Einstein and Noah Corp. on November 2, 2001. ENC’s principal place of business is the same as ours at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222. ENC has operated the restaurants comprising the Einstein and Noah Restaurant System since the date of the Acquisition, June 19, 2001. ENC also operates a bagel dough manufacturing facility that sells products to its company-owned, franchised and licensed restaurants, as well as third parties. ENC offered Einstein Bros. Bagels from 2006 until 2016, but did not offer franchises in any other line of business during that time. ENC no longer offers franchises in any line of business.

ENC is currently the franchisor for each of the Einstein Bros. Bagels franchisees under the System in existence prior to 2016, and is the operator of the company-owned Einstein Bros. Bagels Restaurants. Upon renewal of each of ENC's franchise agreements, ENC will assign to us its rights in and to those franchise agreements.

On November 5, 2014, JAB Holding Company ("**JAB**") acquired ENRG and its subsidiaries, including us. JAB is a member of the Joh. A Benckiser Group, a German-based firm. JAB also owns majority interests in Caribou Coffee Company, Inc. ("**CCC**," the franchisor of the "Caribou Coffee" brand), Peet's Coffee, Inc. ("**Peet's Coffee**," the franchisor of the "Peet's Coffee" brand), Pret Intermediate Company, Inc. ("**Pret**," the franchisor of the "Pret A Manger" brand), as well as other consumer products companies. CCC is ENRG's direct corporate parent.

JAB Holdings B.V. is the indirect majority holder of Panera Brands, Inc., a Delaware Corporation ("**Panera Brands**"). Panera Brands indirectly owns all of the equity interest in PBC (defined below).

Our Affiliates

Our affiliates are described below. We do not offer franchises for our affiliates' other concepts. Additional information concerning those systems, including the location of their units, may be available from ENRG's corporate offices, on the affiliates' website, or through a separate disclosure document.

Noah's New York Bagels Company. Our affiliate, Noah's New York Bagels Company, a Minnesota corporation ("**NNYBC**"), operates company-owned restaurants under the "Noah's New York Bagel" and "Noah's Bagel" marks and system. NNYBC is also the owner of the Proprietary Marks (defined below) and has licensed to us the right to use the Proprietary Marks in the manner described in Item 13 below. NNYBC's principal place of business is the same as ours at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222. As of December 27, 2022 (which was the end of last fiscal year), there were no franchised or licensed, and 56 company-owned, "Noah's New York Bagels" or "Noah's Bagels" retail stores.

Manhattan Bagel Company, Inc. ENRG owns all of the stock of Manhattan Bagel Company, Inc. ("**MBC**"), a New Jersey corporation. MBC in turn owns and franchises restaurants under the "Manhattan Bagel" marks and franchise system. ENRG acquired the MBC stock and its assets on November 24, 1998. MBC has operated, and offered franchises to others to operate, "Manhattan Bagel" restaurants since 1987. "Manhattan Bagel" restaurants feature bagels and cream cheese, coffee, soups, salads, sandwiches, sweets, and related menu items as part of their core menu offerings.

Caribou Coffee Company, Inc. CCC is a Minnesota corporation with its principal address at 3900 Lakebreeze Avenue, Minneapolis, Minnesota 55429. CCC has operated coffeehouses in the United States since 1992. Between May 2004 and July 2006, CCC granted several licenses in the United States for airport-based "Caribou Coffee" coffeehouses to several sophisticated, experienced national or regional multi-brand foodservice operators who previously had operated and/or then were operating other coffeehouse concepts as part of their multi-brand foodservice operations. CCC also granted one international master license in 2004, and since 2005 has granted to that same international master licensee or its affiliates approximately 270 international unit licenses as of December 27, 2022. CCC no longer grants franchises or licenses for coffeehouses in the United States, although CCC may continue granting international unit licenses to its international master licensee, or that master licensee's affiliates,

until the time (to be determined) when CCC formally assigns its rights under the international master license agreement and the international unit licenses to CCDC (defined below). In addition, CCC supplies certain Caribou Trade Secret Products and Caribou Branded Products to franchisees (as noted in Item 8 below). As of December 27, 2022, there were 145 franchised or licensed Caribou coffeehouses in the United States, and 339 coffeehouses operated by CCC's affiliate, Caribou Coffee Operating Company, Inc. in the United States. From 2016 to 2018, CCC also offered franchises (by exemption) or licenses for coffee and bagel restaurants co-branded under the "Caribou Coffee" and "Einstein Bros." marks. CCC has not offered franchises or licenses in any other line of business.

Peet's Coffee, Inc. Peet's Coffee, Inc., a Virginia corporation ("**Peet's Coffee**"), owns and operates "Peet's Coffee" retail coffee stores in the U.S., a business it has operated since 1966. Since 2001, it also has licensed or franchised (by exemption) the use of the "Peet's Coffee" marks to third parties that sell its products through retail stores. Peet's Coffee's principal place of business is 1400 Park Avenue, Emeryville, California 94608. As of December 31, 2022, Peet's Coffee had 204 company or affiliate owned Stores and 56 licensed or franchised stores. In addition, Peet's distributes Peet's Coffee & Tea products through grocery stores and other chains of distribution. Peet's Coffee & Tea stores sell coffee, tea, blended, iced and other beverages and café and bakery foods. In 2015, Peet's also acquired a controlling interest in (i) Stumptown Coffee Corp., the owner and operator of nine Stumptown Coffee Roasters retail coffee stores and two licensed stores as of December 31, 2022, and (ii) Intelligentsia Coffee Inc., the owner and operator of 14 Intelligentsia retail coffee stores and no licensed stores as of December 31, 2022. The principal business address of Stumptown Coffee Corp. is 100 SE Salmon, Portland, Oregon 97214. The principal business address of Intelligentsia Coffee Inc. is 1850 West Fulton Street, Chicago, Illinois 60612. Peet's Coffee has not offered licenses or franchises in any other line of business.

Jacobs Douwe Egberts BR Comercialização de Cafés Ltda., a Brazilian entity ("**JDE Brazil**"), franchises "Café do Ponto" and "Casa Pilao" retail coffee stores through a master franchise agreement in Brazil. These stores sell coffees, teas, baked goods, sandwiches, and other beverages and food products. The principal business address of JDE Brazil is Av. Dr. Marcos Penteado de Ulhoa Rodrigues, 939, 2nd floor, Cond. Castelo Branco Office Park, 06460-040, Barueri, Brazil. According to information publicly available online, as of December 31, 2022, there were approximately 40 subfranchised "Café do Ponto" locations and approximately 18 "Casa Pilao" subfranchised locations in operation in Brazil. JDE Brazil began operating and franchising "Café do Ponto" stores franchises in 1998, although it no longer operates any "Café do Ponto" and "Casa Pilao" coffee stores and only grants unit franchises through its sole master franchisee. JDE Brazil has not sold franchises in any other line of business.

Krispy Kreme Doughnut Corporation ("KKDC"), a North Carolina corporation, is a franchisor and operator of "Krispy Kreme" shops, which offer a variety of doughnuts, beverages and other related products and services, and "doughnut factories," which are manufacturing facilities that supply doughnuts and other products to Krispy Kreme shops, and to grocery and convenience stores for resale. "Krispy Kreme" was founded in 1937 and has been in the doughnut and coffee business continuously in various corporate forms since that time. KKDC, directly or through its predecessors, has offered "Krispy Kreme" franchises since the 1950's. The principal place of business for KKDC is 370 Knollwood Street, Winston-Salem, North Carolina. As of December 31, 2022, KKDC had 242 company owned shops and doughnut factories and 118 franchised stores in the U.S. KKDC or its affiliates may directly or indirectly sell products under the name Krispy Kreme or related marks in other channels such as supermarkets, warehouse stores, over

the internet and through other channels of distribution. KKDC has not sold franchises in any other line of business.

Panera Bread Company (“PBC”). On July 20, 2017, JAB acquired PBC, a Delaware limited liability company. PBC’s wholly owned subsidiary, Panera, LLC, a Delaware limited liability company, is a franchisor and operator of Panera Bread Bakery-Cafe stores, which offer a variety of fresh bakery goods, sandwiches, soups, salads, pasta dishes, custom-roasted coffee and other café beverages, and other items, including bagels. Panera, LLC has been franchising and operating company-owned Panera Bread Bakery-Cafes since December 1993. All Panera Bread Bakery-Cafes operate under the “Panera Bread” name except for company owned bakery-cafes located in the St. Louis, Missouri market area, which do business under the name “Saint Louis Bread Company.” The principal place of business for PBC and Panera, LLC is 3630 South Geyer Road, Suite 100, St. Louis, Missouri 63127. According to its franchise disclosure document, as of December 27, 2022, Panera, LLC had 1,089 franchised stores in the U.S. and 1,019 company owned stores.

Bruegger’s Enterprises, Inc. (“BEI”). On October 5, 2017, CCC acquired Bruegger’s Enterprises, Inc. (“BEI”). BEI does business under the “Bruegger’s” and “Bruegger’s Bagels” brands. Its retail stores sell bagels, coffee, tea and other café and bakery products and beverages. BEI is a Delaware corporation which has been franchising or operating company owned outlets since 2003. Bruegger’s Franchise Corporation is the franchisor for BEI and as of December 27, 2022, there were 53 franchised and 136 company owned “Bruegger’s Bagels” stores in the U.S. Its principal place of business is 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222.

Pret Intermediate Company, Inc. (“Pret”). Pret, a Delaware corporation, is the parent company for the Pret group, for which Pret A Manger (Europe) Ltd, a UK company, is the main operating entity. Pret operates fresh food and coffee retail shops in nine markets around the world, primarily under the “Pret A Manger” and “Pret” brands as well as limited numbers of Veggie Pret and Petit Pret shop formats. The business was founded in 1986 in the UK. In addition to company owned shops, Pret has franchised the use of the “Pret A Manger” marks to third parties that sell its products through retail stores. Pret’s principal place of business is 75B, 10 Bressenden Place, London, SW1E 5DH, United Kingdom. Pret operates in ten markets (UK, US, France, China, Hong Kong, United Arab Emirates, Denmark, Germany, Netherlands and Singapore), and as of March 23, 2023, Pret operated 587 company owned shops and had 23 franchised shops throughout these markets, according to information publicly available online.

None of the affiliated franchisors are obligated to provide products or services to you; however, you may have the option to (or we may require that you) purchase products or services from these affiliates. Except as described above, we have no other parents, predecessors or affiliates that must be included in this Item.

The Franchises Offered

We offer two types of franchises under a franchise agreement (“Franchise Agreement”) for the operation of Restaurants at agreed-upon locations: (1) **“Traditional Restaurants”** that are operated at stand-alone or more traditional locations and that offer dining areas and include a full equipment set and may include a drive-thru window, and (2) **“Small Footprint Restaurants”** that require less baking equipment and may require less staffing than a Traditional Restaurant, to allow customers to quickly place and pick up orders to go.

Area Development Agreement

We offer to qualified individuals and companies (a “**Developer**” or “**you**”) the right (and the Developer accepts the obligation) to develop an agreed-upon number of Restaurants within a specific geographic area (“**Development Area**”) under our area development agreement (the “**Area Development Agreement**”) (a copy can be found at Exhibit A-2 to this disclosure document). Under an Area Development Agreement, you will be required to establish an agreed-upon number of Restaurants (minimum of two) within the Development Area, at specific locations (to be specified in separate Franchise Agreements) (as explained below). The developer will sign a Franchise Agreement for each Restaurant, which will set out the area under which that Restaurant will be operated. Typically, the Franchise Agreement will be signed after the developer secures an approved site for the Restaurant (such as by lease or sublease). An important part of the Area Development Agreement is a development schedule (the “**Development Schedule**”), which spells out the number of Restaurants that you agree to have established by certain benchmark dates.

The Franchise Agreement for the first Restaurant to be developed under an Area Development Agreement will be in the form that is attached to the Area Development Agreement, and the Franchise Agreement for each additional Restaurant to be developed under an Area Development Agreement will be the then-current form of franchise agreement that we are generally offering when the Franchise Agreement is to be signed. The then-current form of Franchise Agreement may differ from the form of Franchise Agreement attached to this disclosure document.

Franchise Agreement

We offer to enter into “**Franchise Agreements**” with qualified individuals and companies (“**you**”) that wish to establish and operate Restaurants (“**Franchised Restaurants**”). A copy of the Franchise Agreement can be found at Exhibit A-1 to this disclosure document. (In this disclosure document, “you” means the person or legal entity with whom we enter into an agreement. The term “**you**” also refers to the direct and indirect owners of a corporation, partnership, limited liability company, limited liability partnership, or other entity that signs a Franchise Agreement as the “franchisee” or an Area Development Agreement as the “developer.”)

Under a Franchise Agreement, we will grant you the right (and you will accept the obligation) to operate one Traditional Restaurant or Small Footprint Restaurant at an agreed-upon specified location (the “**Approved Location**”). Unless otherwise designated in this disclosure document, the term Restaurant shall refer to both a Traditional Restaurant and a Small Footprint Restaurant.

Noah’s Restaurants

Restaurants are characterized by our system (the “**System**”). Some of the features of our System are a specially-designed building or facility, with specially developed equipment, equipment layouts, signage, distinctive interior and exterior design and accessories, Products, procedures for operations; quality and uniformity of products and services offered; procedures for management and inventory control; training and assistance; and marketing and promotional programs. We may periodically change, update, improve, and even eliminate parts of the System.

Restaurants operate in a building that bears our trade dress (interior, exterior, or both). A Restaurant specializes in the sale of Proprietary Items, including fresh-baked bagels, cream cheese and other spreads, coffees, teas, sweets, and creative lunch items, and other products that we may occasionally specify, as well as non-proprietary Items (like sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption) (all together, the **"Products"**).

You must operate your Restaurant in accordance with our standards and procedures, as set out in our Confidential Operating Manuals (the **"Manuals"**). We will lend you a copy of the Manuals for the duration of the Franchise Agreement. In addition, we will grant you the right to use our marks, including the mark "Einstein Bros." and any other trade names and marks that we designate in writing for use with the System (the **"Proprietary Marks"**).

Restaurants will be operated from an indoor structure that need not be free-standing. Restaurants range from approximately 1,500 to 2,500 square feet in size. Restaurants are decorated to meet our specifications (including the use of our trade dress, trademarks, and design).

Industry-Specific Regulations

You must comply with all local, state, and federal laws that apply to your Restaurant operations, including, for example, zoning, building code, health, sanitation, no-smoking, EEOC, OSHA, discrimination, employment, sexual harassment, and tax laws. The Americans with Disability Act of 1990 and state equivalents require readily accessible accommodation for disabled persons and therefore may affect your building construction, site elements, entrance ramps, doors, seating, bathrooms, drinking facilities, etc. For example, you must obtain permits for your building, construction, outdoor patio, and zoning, as well as operational licenses. There are also regulations that pertain to sanitation, food and menu labeling (such as nutritional and caloric information), food preparation, food handling, food content (such as on trans fats), and food service. You must comply with all applicable federal, state, and local laws and regulations during the operation of your Restaurant. You should consult with your attorney concerning those and other local laws and ordinances that may affect your Restaurant's operation.

Competition

You can expect to compete in your market with locally-owned businesses, as well as with national and regional chains that offer bagels, coffee, breads, sandwiches, breakfast items, lunch items, and related products, and which may compete with the products offered at a Restaurant. The market for these items is well-established and very highly competitive. Bagel and coffee restaurants, and breakfast and lunch businesses, compete on the basis of many factors, such as price, service, location, product offerings and quality, speed of service, hospitality, customer experience, and store promotions and marketing programs. These businesses are often affected by other factors as well, such as changes in consumer taste, economic conditions, seasonal population fluctuation, and traffic patterns. To the extent that customers may be able to buy "Noah's Bagels" brand products from other sources (for example, from other restaurants, our website, club stores, supermarkets), and to the extent that other restaurants operating under the System deliver products in your area, you may appear to, or actually, compete with other sellers of those branded products. In addition, to the extent that customers may be able to buy bagels, coffee, and other products under the "Bruegger's," "Caribou," "Einstein Bros. Bagels" and "Manhattan Bagel" names, you may appear to, or actually, compete with sellers of these products.

ITEM 2

BUSINESS EXPERIENCE

President and Chief Executive Officer: **Jose Duenas**

Mr. Duenas has been our President and Chief Executive Officer since January 2019. He is also currently, and has been since January 2019, Chief Executive Officer of MBC and BEI. Mr. Duenas previously served as Executive Vice President and Chief Brand Officer for Sonic Franchising, LLC and Sonic Industries Services, Inc. in Oklahoma City, Oklahoma from August 2017 until December 2018. Mr. Duenas served as Executive Vice President and Chief Marketing Officer for Olive Garden, Darden Restaurant Inc. in Orlando, Florida from November 2014 to August 2017, and was its Senior Vice President of Brand Marketing from June 2012 to October 2014. Mr. Duenas served in several progressive positions with Kellogg Company in Battle Creek, Michigan from July 2003 to May 2012, the most recent of which was Vice President and General Manager of the toaster pastry business.

Chief Financial Officer and Director: **Jessica DePetro**

Ms DePetro has been our Chief Financial Officer since August 2022. Before that, she was Vice President of Finance at Vail Resorts in Broomfield, Colorado from May 2021 to August 2022. Ms. DePetro was Executive Vice President of Finance at Life Time the Healthy Way of Life Company in Chanhassen, Minnesota from May 2016 to May 2021.

Chief Technology Officer: **Markus Lonnquist**

Mr. Lonnquist has been our Chief Technology Officer since March 2021. He is also currently, and has been since March 2021, Chief Information Officer for MBC and BEI. From August 2018 to March 2021, he was owner of LMI Consulting, LLC in Highlands Ranch, Colorado. Mr. Lonnquist was a Principal of People Before Things, LLC in Parker, Colorado from January 2017 to August 2018. He was Business Relationship Director – Finance & Real Estate and Director of IT Transformation for Red Robin Gourmet Burgers in Greenwood Village, Colorado from November 2014 to December 2016.

Chief Legal Officer, and Director: **Michael W. Davis**

Mr. Davis has been our Chief Legal Officer since February 2021. Before that, he served as our Senior Vice President, General Counsel from May 2018 to February 2021. Mr. Davis has been a Member of our Board of Directors since May 2018. He also currently serves as Chief Legal Officer and Secretary of MBC, BEI and CCDC since February 2021. From May 2018 until February 2021, Mr. Davis was Senior Vice President, General Counsel and Secretary of MBC, BEI and CCDC. He was our Vice President, General Counsel and Secretary from March 2018 until May 2018, and served as Vice President, Associate General Counsel and Assistant Secretary or Corporate Counsel for ENC from January 2014 to March 2018.

Senior Vice President, Franchise & License: **Patricia Perry**

Ms. Perry has been our Senior Vice President, Franchise & License since May 2022. Before that, she was Vice President, Franchise Sales & Development at Edible Arrangements LLC in Atlanta, Georgia from February 2019 to May 2022. Ms. Perry was Vice President of Franchise Development at Blank Fitness in New York, New York from October 2016 to May 2019.

Senior Manager, Franchise Sales & Development: **Kade MacKey**

Ms. MacKey has been our Senior Manager, Franchise Sales & Development since February 2023. Before that, she was with Edible Arrangements LLC in Atlanta, Georgia as Director,

Franchise Sales from July 2022 to October 2022; Senior Manager, Franchise Sales & Development from October 2020 to July 2022; and as Franchise Development Consultant from November 2019 to October 2020. Ms. MacKey was Technology Operations Manager for Netsolace Inc. in Atlanta, Georgia from September 2018 to November 2019, and was Operations Manager at VVC Enterprises in Dunwoody, Georgia from September 2017 to September 2018.

Senior Director, Business Development:

Tina Welch

Ms. Welch has been our Senior Director, Business Development since April 2022. Before that, she was Senior Manager, Franchise Sales for Doctor's Associates, Inc. in Louisville, Kentucky from August 2020 to April 2022. Ms. Welch was our and MBC's Senior Director, Business Development from June 2014 to August 2020 (and for BEI since 2017).

Senior Director, Franchise and License Operations:

Tina D'Ottavio

Ms. D'Ottavio has been our Senior Director, Franchise and License Operations since January 2008. Ms. Ottavio is also Senior Director, Franchise and License Operations for MBC and BEI.

Vice President, Controller:

Mike Peterson

Mr. Peterson has been our Vice President and Controller since November 2014, and also currently serves as Vice President, Controller for CCDC since May 1997.

Unless otherwise indicated above, the location of the employer is Denver, Colorado or Brooklyn Center, Minnesota.

ITEM 3
LITIGATION

No litigation is required to be disclosed in this Item.

ITEM 4
BANKRUPTCY

No bankruptcy is required to be disclosed in this Item.

ITEM 5
INITIAL FEES

Area Development Fee

If you are going to be a Developer, then you will sign an Area Development Agreement and pay us a non-refundable area development fee in the amount of \$10,000 for each Restaurant to be opened under the Area Development Agreement. The number of Restaurants that you will develop under the Area Development Agreement is determined by a mutual agreement between you and us, and will vary depending on a number of factors, such as: (1) the existing population and anticipated population growth within the Development Area; (2) competition within the Development Area; (3) the availability of acceptable locations within the Development Area; and (4) the number of Restaurants we estimate can be developed within the Development

Area. There is no minimum number of Restaurants that you must develop, but we generally will not enter into an Area Development Agreement for fewer than two Restaurants.

The area development fee will be due in a lump sum upon the signing of an Area Development Agreement. Payment of the area development fee will be in addition to the payment of initial franchise fees upon the execution of Franchise Agreements for the Restaurants developed under the Area Development Agreement and, as described below, we will credit you \$10,000 from the area development fee toward the initial franchise fee required under the Franchise Agreement for each Restaurant that you timely open according to the Development Schedule (so long as you have met your obligations under the Area Development Agreement and any Franchise Agreements already in effect). The total of the credits available to be applied to your initial franchise fees will be the total that you have paid to us in area development fees.

The area development fee is calculated in a uniform manner, but may not be the same absolute number for all developers, because of differences in how many Restaurants a developer may agree to develop in a particular Development Area.

If you enter into an Area Development Agreement, and regardless of the language noted below regarding the amount of the initial franchise fee:

For each Restaurant required to be opened under the Area Development Agreement, the initial franchise fee will be:

- (a) \$25,000 if that Restaurant is opened thirty or more days before the date required under the Development Schedule; and
- (b) \$35,000 if that Restaurant is opened twenty-nine days before, on, or any time after the date required under the Development Schedule.

If you have paid the initial franchise fee when the Franchise Agreement is signed, but the initial franchise fee later changes as noted above, then: (i) if there is a reduction in the initial franchise fee, we will send the amount of the reduction to you within 30 days after the Restaurant opens for business; or (ii) if the initial franchise fee increases, you must send the amount of the increase to us within 30 days after the Restaurant opens for business. If you do not meet your obligations under the Area Development Agreement (including the Development Schedule), then nothing prevents us from exercising our right to terminate that agreement.

Franchise Agreement.

As explained on the cover page of this franchise disclosure document, when you sign your Franchise Agreement (or shortly after then), you must pay us \$41,000 to \$47,000 before you open. Those amounts consist of: (1) the initial franchise fee; (2) the design review fee; and (3) optional product purchases, as explained below. Except as noted below, these amounts are uniformly applied.

- **Initial Franchise Fee**

The initial franchise fee under a Franchise Agreement is \$35,000, and must be paid in full when the Franchise Agreement is signed. If there is a credit available from your area development fee (as described above), then that credit will be applied to reduce your payment. The initial franchise fee will be fully earned when paid, must be paid in one lump-sum amount, excluding

any required deposits, and will not be refundable. In our past fiscal year, developers signing a Franchise Agreement in advance of the date required under their Development Schedule paid a reduced initial franchise fee of \$25,000.

- Design Review Fee

Before we begin our review of your proposed drawings and plans for the Franchised Business, you must pay us a Design Review Fee in the amount of \$2,000 if you select a previously unapproved architect or contractor to prepare drawings for the Restaurant.

- Product Purchases

In addition to the fees described above, you may also choose to buy some items from us or from our affiliates, directly or indirectly (for example, through distributors). These may include equipment, your opening inventory of proprietary products, and marketing materials. Your purchases of these items are likely to total approximately \$4,000 to \$10,000. There are additional items that you will have to buy as part of your initial outlays, as described in Item 7 below.

Application of Payments

Proceeds from the initial franchise fees, initial license fees and development fees go into our general fund and, in part, compensate us for the lost or deferred opportunity to franchise others and, in part, is used to pay or defray some of the costs we may incur as a result of: (1) screening and approving prospective franchisees; (2) providing advice and assistance to franchisees; (3) incurring legal fees, accounting fees, and other costs to comply with the federal and state laws governing this offering; (4) developing, registering, and protecting the Proprietary Marks; (5) prior research and development relating to the System; (6) prior development of our training programs, new restaurant training, or on-going training; and (7) marketing and general administrative expenses.

ITEM 6 **OTHER FEES**

(Please review this table together with the notes that follow.)

Type of Fee (Note 1)	Amount	Due Date	Remarks
Royalty	5% of Gross Sales under the Franchise Agreement	Franchise Agreement: Weekly, on or before Friday of each Week, calculated on the Gross Sales for the prior Week.	See Note 2 for definition of "Gross Sales."
Marketing Contribution	4% of Gross Sales under the Franchise Agreement (Note 3)	Same as Royalty	See the description of "Gross Sales" above.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Grand Opening Marketing Program	\$10,000 under the Franchise Agreement	Within 6 months after you open your Franchised Restaurant	Spent to promote the grand opening of your restaurant. You must submit a marketing plan for our review and approval. We may require you to deposit the funds with us to distribute as needed to conduct the Grand Opening Marketing Program.
Transfer Fee	Franchise Agreement: 50% of our then-current initial franchise fee.	At time of transfer	Only due if you make a transfer (as defined in the agreement), which includes the sale of your franchise or license, your company, or any party's interest in your company. There are some exceptions under the Franchise Agreement, as explained in Note 4.
Interest on Overdue Amounts	1.5% per month on the underpayment (Note 5)	Upon demand	Only due if you don't pay us the amounts you owe on time. Interest will be charged only on overdue amounts and will start to accrue on the date when the payment was originally due.
Costs and Attorneys' Fees	Will vary under circumstances	Upon demand	Only if you are in default under the Franchise Agreement, in which case you must reimburse us for the expenses we incur (including reasonable attorneys' fees) as a result of your default and to enforce and terminate the agreement.
Supplier Testing	Will vary (Note 6)	Upon demand, if incurred	Only payable if you propose a new supplier, and we inspect the supplier or test the supplier's products, in which case we may charge you or the supplier for our costs in conducting those inspections or running those tests.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Audit Costs	All costs and expenses associated with the audit, reasonable accounting and legal costs.	Upon demand	Only payable if we audit because you did not submit sales statements or keep books and records, or if you underreport your sales or underpay your royalties by 2% or more. (You will also have to pay interest on the underpayment (see "interest" above and Note 5).)
Indemnity	Will vary under circumstances	As incurred	You must indemnify us, and reimburse us for our costs (including our attorneys' fees): (a) if we are sued or held liable in any case having anything to do with your business operations; (b) for any securities offering you propose or undertake; or (c) if we have to defend against a claim or pay damages because you made unauthorized or improper use of the Proprietary Marks.
Reinspection Fee	An amount not to exceed \$1,500	As incurred	If we inspect the Restaurant and determine that it is not operating in compliance with the Franchise Agreement and all System standards, and we must re-inspect to determine whether you have corrected the operating deficiencies, we may require you to pay us this fee for each re-inspection of the Restaurant.
Securities Offering Fee	Under the Franchise Agreement, \$7,500 or our actual expenses, whichever is more.	Upon demand	Only payable if you make a public or private securities offering, in which case you must reimburse us for our reasonable costs and expenses (including legal and accounting fees) to evaluate your proposed offering and you also must indemnify us (see above).

Type of Fee (Note 1)	Amount	Due Date	Remarks
Additional training and Onsite Assistance (Note 7)	\$350 per trainer per day, plus our per-diem charges and our out-of-pocket costs	Upon demand	Only payable if you ask that we send trainers to your restaurant for additional training or request onsite assistance, and we do so, then you will have to pay our trainers' expenses and our then-current fee for such services.
Additional and Replacement Certified Manager Personnel Training	\$1,600 for each additional individual to be trained	Before training begins	We will train, at our expense, up to two Certified Managers (defined in Item 12 below). If you want to send additional individuals to the Certified Manager initial training program, the training fee will be \$1,600 for each additional individual to be trained. Also, if you ask to send more than three Certified Managers to a replacement training session, or if you request more than two replacement training sessions during the term of the Franchise Agreement, then you must pay us this same amount for each person to be trained. You will be responsible for paying for all of your employees' costs and expenses.

Type of Fee (Note 1)	Amount	Due Date	Remarks
Renewal Fee	Franchise Agreement: 10% of the then-current initial franchise fee.	Before renewal	Only payable if you decide to renew the franchise on the terms that are described in the agreement. The renewal fee is instead of a new initial franchise fee.
Lost Future Royalties	Will vary, but is calculated based on the average of your monthly Royalty Fees for the previous 12 months, multiplied by the lesser of 36 or the number of months remaining in the Franchise Agreement.	As incurred	If we terminate the Franchise Agreement based on your default, or if you abandon or otherwise cease to operate the Franchised Business, you must pay us lost future royalties.
System Support Fees and Approved Software Fees for legacy POS system (Note 8)	\$300 - \$500 per Month	As incurred	We have the right to develop ourselves, have developed for us, or designate certain third party computer software programs and web-based programs and applications that you must use in connection with the operation of your Restaurant (" Approved Software "), and you may be required to pay initial and ongoing fees in order to install and continue to use the Approved Software. This also includes the fees and costs associated with the Catering Program (defined in Item 12 below) if we establish that program.

Type of Fee (Note 1)	Amount	Due Date	Remarks
System Support Fees for subscription-based system	\$200 - \$300 per Month		For franchised Restaurants that have migrated to our new POS subscription model (see Note 8) that leverages a mobile order platform. These fees support the cost of our service desk, ongoing maintenance of the POS menu database and back office system databases, ongoing maintenance and development of our mobile application, as well as franchise reporting software and vendor management.

Notes:

1. All fees are payable to us, uniformly applied to new system franchisees, and non-refundable. However, in some instances in which it was appropriate to do so, we have waived some or all of these fees for a particular franchisee.

2. You must pay your royalties, marketing fund contributions, and system support fees by electronic fund transfer withdrawal or other means we specify, when due. The term "**Week**" means the seven-day period starting each Wednesday at 12:00:00 AM through the following Tuesday at one second after 11:59 PM, or another seven day calendar period that we may periodically designate.

"**Gross Sales**" means all revenue that you derive from operating the Restaurant, whether from cash, check, credit and debit card, or otherwise, but excluding all taxes actually collected from customers and paid to the appropriate taxing authority, revenue derived from selling or issuing gift or loyalty cards (but not revenue received from selling products to customers who use such cards for payment), and refunds and credits you in good faith give to Restaurant customers (if those amounts originally were included in calculating Gross Sales).

3. The Marketing Contribution will be due under the Franchise Agreement only, and is paid to the Einstein Bros. marketing fund (the "**Systemwide Marketing Fund**") or spent on local store marketing in the proportions we may periodically designate. We may require different kinds of marketing and promotional efforts depending upon where you will operate your Restaurant (for example, in a city, a suburban area, or in a resort community). Additional details about the applicable marketing and promotional requirements can be found in Item 11, under the subheading "Marketing."

4. Under the Franchise Agreement, we will not charge the full transfer fee in certain circumstances:

a. If you and one or more affiliates are transferring more than one franchise agreement to the same buyer, as part of the same transaction, then our transfer fee for all of those transfers will be capped at \$50,000 or our reasonable out-of-pocket costs, if they are higher.

b. If the transferee is a spouse, son, or daughter of the transferor and the transfer is for estate-planning purposes, we will not require you to pay a transfer fee, but you will instead have to reimburse us only for the out-of-pocket expenses (including attorneys' fees) that we incur in connection with reviewing and approving the transfer.

c. If the transfer is upon the death or incapacity of the franchisee or its principal, then we will not require payment of a transfer fee, but the transferor must reimburse us only for the out-of-pocket expenses (including attorneys' fees) that we incur in connection with reviewing and approving the transfer.

5. Interest starts to accrue when your payment was initially due. Interest rates will not exceed any maximum rate that may apply (if imposed under applicable law).

6. We require you to use approved and qualified suppliers and vendors to maintain brand integrity and consistency. If you request to use a supplier that we have not previously approved, then we can charge you a fee to evaluate the new supplier. For proposed new suppliers of products and supplies for the Restaurant, our fee for this evaluation will vary depending on the product(s) and supply(ies) at issue. If you wish to use an architect, engineer, a general contractor, an exterior sign manufacturer, an equipment consolidator, source your own equipment that meets our specifications, and/or a millwork manufacturer that we have not previously qualified, we may charge you a fee to for us to evaluate the proposed services from these vendors. Currently, that fee is in the amount of \$2,000 for each proposed vendor.

7. This fee will be charged if, after we trained you and your original Restaurant Manager, you are unable to train replacement Restaurant Managers and other Restaurant personnel on your own and you ask that we conduct that training at the location of your Restaurant, or if you ask that we provide additional onsite assistance to you. If that occurs, we will retrain you and train your new Restaurant Manager (or other Restaurant personnel) at your Restaurant and/or provide the requested onsite assistance, and you will have to pay us the fee indicated.

8. The systems support fee and software license fees presently range from \$300-\$500 for each Month. These costs are reduced to \$200-\$300 per Month upon enrollment in our subscription model in which franchisees may enter a direct agreement with NCR. The cost per Restaurant may fluctuate based on the number of Restaurants open and operating under the System. Our present policy is to have the systems support fee cover the cost of our software, support desk (which presently operates 7 days a week, 14 hours a day), as well as remote installation of software upgrades that are provided by the vendor (provided your computer conforms to our standards and communication specifications). The systems support fee will also include the fees and costs associated with the Catering Program. We currently make the same systems support fee payments for each of our Restaurants as our franchisees will do for each of their Restaurants, but we are not contractually obligated to do so.

ITEM 7
ESTIMATED INITIAL INVESTMENT

YOUR ESTIMATED INITIAL INVESTMENT:
CHART 1/TRADITIONAL RESTAURANT

Development Costs – Traditional Restaurant

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Construction Costs (Note 1)	\$400,000	\$750,000	As incurred	Progress payments during construction	General Contractors and suppliers
Computer Equipment & Electronics (Note 2)	\$33,000	\$55,000	Lump sum	Payment terms with suppliers	Suppliers and Us
Furniture, Fixtures & Equipment (Note 3)	\$265,000	\$315,000	Lump sum	Payment terms with suppliers	Suppliers
Signage & Graphics (Note 4)	\$65,000	\$85,000	Lump sum	Payment terms with suppliers	Suppliers
Professional Fees (incl. architectural or engineering fees and permit and impact fees) (Note 5)	\$35,000	\$50,000	As Incurred	Monthly billing cycle	Service Providers; Architects or Engineers; Government Agencies
Sub-Total Development Costs for Franchised Restaurant	\$799,000	\$1,255,000			

Pre-Opening Costs – Traditional Restaurant

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee (Note 6)	\$35,000	\$35,000	Lump sum	Upon signing Franchise Agreement	Us

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Design Review Fee (Note 7)	\$2,000	\$2,000	Lump Sum	Before we review your proposed plans for the site	Us
Real Estate Leasing (Note 8)	\$25,000	\$162,500	As Incurred	As agreed	Landlord or land owner
Opening Inventory, Smallwares and Supplies (Note 9)	\$20,000	\$45,000	Lump sum	Payment terms with suppliers	Us and suppliers
Initial Marketing and Promotion (Note 10)	\$10,000	\$10,000	As incurred	As incurred	Suppliers
Insurance (Note 11)	\$10,000	\$25,000	As incurred	As incurred	Insurance Providers
Training Expenses (Note 12)	\$2,000	\$22,000	As incurred	Payment terms with suppliers and employees	Suppliers and employees
Miscellaneous Opening Costs (Note 13)	\$1,200	\$5,0	As incurred	Payment terms with suppliers and employees	Suppliers and employees
Business Licenses (Note 14)	\$1,800	\$5,000	As incurred	As Incurred	Government Agencies
Security Deposits (Note 15)	\$5,000	\$18,000	As Arranged	As Arranged	As Negotiated
Additional Funds (three months) (Note 16)	\$50,000	\$80,000	As incurred	As incurred	Us, suppliers, employees and other creditors
Sub-Total Pre-Opening Costs for Traditional Restaurant	\$162,000	\$332,500			

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Sub-Total Development Costs for Traditional Restaurant (from above)	\$799,000	\$1,255,000			
TOTAL ESTIMATED INITIAL INVESTMENT FOR TRADITIONAL RESTAURANT (Note 17)	\$961,00	\$1,587,500			

YOUR ESTIMATED INITIAL INVESTMENT:
CHART 2/SMALL FOOTPRINT RESTAURANT

Development Costs – Small Footprint Restaurant

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Construction Costs (Note 1)	\$360,000	\$650,000	As incurred	Progress payments during construction	General Contractors and suppliers
Computer Equipment & Electronics (Note 2)	\$33,000	\$55,000	Lump sum	Payment terms with suppliers	Suppliers and Us
Furniture, Fixtures & Equipment (Note 3)	\$265,000	\$ 315,000	Lump sum	Payment terms with suppliers	Suppliers
Signage & Graphics (Note 4)	\$65,000	\$85,000	Lump sum	Payment terms with suppliers	Suppliers
Professional Fees (incl. architectural or engineering fees and permit and impact fees) (Note 5)	\$35,000	\$54,000	As Incurred	Monthly billing cycle	Service Providers; Architects or Engineers; Government Agencies
Sub-Total Development Costs for Small Footprint Restaurant	\$758,000	\$1,104,000			

Pre-Opening Costs – Small Footprint Restaurant

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Initial Franchise Fee (Note 6)	\$35,000	\$35,000	Lump sum	Upon signing Franchise Agreement	Us
Design Review Fee (Note 7)	\$2,000	\$2,000	Lump Sum	Before we review your proposed plans for the site	Us
Real Estate Leasing (Note 8)	\$20,000	\$117,000	As Incurred	As agreed	Landlord or land owner
Opening Inventory, Smallwares and Supplies (Note 9)	\$20,000	\$45,000	Lump sum	Payment terms with suppliers	Us and suppliers
Initial Marketing and Promotion (Note 10)	\$2,500	\$10,000	As incurred	As incurred	Suppliers
Insurance (Note 11)	\$10,00	\$25,000	As incurred	As incurred	Insurance Providers
Training Expenses (Note 12)	\$2,000	\$22,000	As incurred	Payment terms with suppliers and employees	Suppliers and employees
Miscellaneous Opening Costs (Note 13)	\$1,000	\$5,000	As incurred	Payment terms with suppliers and employees	Suppliers and employees
Business Licenses (Note 14)	\$1,800	\$5,000	As incurred	As Incurred	Government Agencies
Security Deposits (Note 15)	\$4,000	\$16,000	As Arranged	As Arranged	As Negotiated
Additional Funds (three months) (Note 16)	\$20,000	\$40,000	As incurred	As incurred	Us, suppliers, employees and other creditors
Sub-Total Pre-Opening Costs for Small Footprint Restaurant	\$108,000	\$322,000			

Type of Expenditure	Amount (Low Range)	Amount (High Range)	Method Of Payment	When Due	To Whom Payment is to be Made
Sub-Total Development Costs for Small Footprint Restaurant (from above)	\$758,000	\$1,104,000			
TOTAL ESTIMATED INITIAL INVESTMENT FOR SMALL FOOTPRINT RESTAURANT (Note 17)	\$866,300	\$1,426,000			

Notes to Item 7 Tables:

Please note that we do not offer direct or indirect financing to you for any items. The availability and terms of financing from other sources will likely depend on factors such as the availability of financing generally, your creditworthiness, and the policies of lending institutions. Unless otherwise indicated, none of these amounts are refundable.

1. **CONSTRUCTION.** You will need to construct improvements, or “build out,” the premises at which you will operate the Restaurant. Generally, you will take the premises in a “warm vanilla box” condition (that is, a heated and air conditioned space with primed drywall ready to be painted, but without improvements). Among other things, you will need to arrange for proper wiring and plumbing, floor covering, wall covering, partitions, heat, air conditioning, lighting installation, storefront modifications, painting, cabinetry, bathroom facilities, etc. The HVAC system may not have been designed for a restaurant use, so it may have to be enhanced for your use. You will need to hire a qualified architect and qualified licensed builder. Costs are likely to vary and may be much higher if you wish to establish your Restaurant in an area where special requirements of any kind will apply (such as historical, architectural, or preservation requirements). Landlords sometimes provide tenant improvement allowances. Tenant improvement allowances are not included in the Item 7 chart because if they are offered, the terms vary widely. These estimates are for traditional locations, primarily in strip type shopping center end cap locations. If you develop a Restaurant in a free-standing building with extensive parking areas, a Drive-Thru window and landscaping, you may experience significantly increased construction costs. Some projects developed at municipal or government facilities (and elsewhere) may require compliance with labor standards that could increase your costs.

2. **COMPUTER EQUIPMENT AND ELECTRONICS.** The estimate is for the electronic equipment you will need to operate a Franchised Restaurant, such as a point-of-sale (POS) system, software, phone system and music system. NCR/Aloha is the approved Point of Sale (POS) and Back Office System vendor for our Stores. The amount spent for equipment will vary for each Restaurant depending upon the Restaurant’s size, style, whether the store has a Drive-Thru window, the volume of products to be offered in the Restaurant, and whether or not franchisees purchase equipment, in which case the “high” estimated amount includes the additional POS system equipment and software, costing from \$7,000 to \$20,000, necessary for a Restaurant with a Drive Thru window. We have negotiated a subscription model through NCR in which franchisees may enter into a direct agreement with NCR and pay monthly subscription

fees ranging from \$200/month to \$600/month, depending on the Restaurant size and the amount of terminals used.

3. FURNITURE, FIXTURES & EQUIPMENT. The estimate is for the furniture, fixtures and equipment you will need to operate the Restaurant such as baking equipment, proofers, refrigeration, freezers, sandwich lines, and lighting. You will need to obtain these items and other fixed assets from sources that we designate as qualified or designated vendors (where there are designated vendors). The amount spent for furniture, fixtures and equipment will vary for each Restaurant depending upon the Restaurant's size, style, and the volume of products to be offered in the Restaurant. This includes whether the Restaurant will be a Traditional Restaurant or Small Footprint Restaurant. You will pay suppliers directly for equipment and other fixed assets.

4. SIGNAGE & GRAPHICS. The cost of signage and graphics will vary from location to location depending on lease requirements, local ordinances and restrictions, store frontage, and related factors. In addition, other considerations – such as zoning ordinances, as well as historical and architectural design standards – may affect your costs (both in terms of materials as well as professional fees that you will incur to get approval of your proposed signs). You will need to obtain these items and other fixed assets from sources that we designate as qualified or designated vendors (where there are designated vendors). We will assist you in designing your signs, and the final proposed design must be submitted to us for our review and prior written approval. You will pay suppliers directly for these items.

5. PROFESSIONAL FEES. The estimate is for legal, accounting, administrative, permitting, traffic studies, demographic studies, brokerage and miscellaneous other professional fees that you may incur before you open for business, including (among other things) to assist you in reviewing the Franchise Agreement. Your actual costs may vary, for example, depending on the degree to which you rely upon your advisors.

6. INITIAL FRANCHISE FEE. These amounts are discussed in detail in Item 5. The franchise fee must be paid when the Franchise Agreement is signed. Please see the information provided above in Item 5 regarding the Development Agreement. If you have also signed a Development Agreement, and you are in compliance with your obligations under the Development Agreement and all of your Franchise Agreements, then we will apply a credit from your development fee toward the initial franchise fee. The amount of the credit will be \$10,000 for each Restaurant, so long as the total amount of the credits that we extend to you does not exceed the amount that you paid us as a development fee under the Development Agreement. See Item 5 for more details.

7. DESIGN REVIEW FEE. You must pay us a design review fee if you select a previously unapproved architect or contractor to prepare drawings for the Restaurant.

8. REAL ESTATE LEASING. If you do not own a location for your Restaurant, you must purchase or lease a space approved by us. You will probably need to lease a space at least four months in advance; however, you may attempt to negotiate an abatement from the landlord. In general, we attempt to negotiate the payment of our leases to coincide with the start of operations so no material pre-opening occupancy expenses are incurred. However, in some cases it may be necessary to begin lease payments before opening in order to secure a particular location, or to accommodate the optimal timing of a new store opening. Restaurant locations and sizes vary. Locations for Restaurants are those that are typically described as

“prime retail.” Traditional Restaurant sizes vary from 1,500 square feet to 2,500 square feet, and Small Footprint Restaurant sizes vary from 1,200 to 1,800 square feet.

The figures in the estimate in Chart 1 for a Traditional Restaurant are calculated on the following assumptions: (a) you will have to pay six months' rent (made up of one month's rent before you open, three months' rent after you open, one month's rent as a security deposit, as well as payment of the last month's rent); (b) for space in the range of 2,000-2,500 sq. ft.; (c) at \$25 to \$65 per square foot per year.

The figures in the estimate in Chart 2 for a Small Footprint Restaurant are calculated on the following assumptions: (a) you will have to pay six months' rent (made up of one month's rent before you open, three months' rent after you open, one month's rent as a security deposit, as well as payment of the last month's rent); (b) for space in the range of 1,200-1,800 sq. ft.; (c) at \$25 to \$65 per square foot per year.

If the site you choose is larger, has a higher rental cost, or if you cannot negotiate a pre-opening abatement of rent down to one month, then your costs will be higher than those in the chart. Rent varies considerably from market to market, and from location to location within each market. Rents may vary beyond the range that we have provided, based on factors such as market conditions in the relevant area, the type and nature of improvements needed to the premises, the size of the Restaurant, the terms of the lease, and the desirability of the location. If you decide to purchase the property for the location of your Restaurant, you will incur additional costs that we cannot estimate.

9. OPENING INVENTORY, SMALLWARES & SUPPLIES. Items of inventory, smallwares and supplies which you are required to obtain from us or from our designated sources of supply are paid for at standard prices and terms. All items of inventory which you obtain from sources of your own choosing are paid for directly to the supplier of those inventory items at prices agreed upon by you and the supplier. Start-up inventory of products, smallwares and supplies will vary based on expected volume of business and size of storage areas in the building. This estimate is for the initial inventory only.

10. INITIAL MARKETING AND PROMOTION. We will assist you in tailoring a marketing plan appropriate to your market. The amount in the table is for the initial promotion and marketing efforts you are required to make under the Franchise Agreement. Additional details regarding marketing and promotion can be found in Item 11, under the subheading “Marketing.”

11. INSURANCE. The estimate is for the annual premium for the policies required under the Franchise Agreement. Insurance costs will vary depending upon factors such as the size and location of the Restaurant. You must obtain general liability insurance and product liability insurance with minimum limits of \$1 million per occurrence, and an umbrella liability policy with minimum limits of \$5 million per occurrence, as well as workers' compensation insurance as required by local and state laws, all of which you will have to obtain through third parties such as your own insurance agent. Your insurance obligations are more fully described in Item 8.

12. TRAINING EXPENSES. For the initial training period, the “low” estimate assumes that you are located within commuting distance of our training facilities and that you do not incur *per diem* expenses. The “high” estimate assumes travel, meals, auto and lodging for two individuals, for eight weeks (1 at the Bagel Academy in Colorado (or another approved training site) and up to seven weeks at your Restaurant or another local training store). The cost you incur will vary depending upon factors such as the distance traveled, mode of transportation,

travel preferences (such as air travel or ground transportation), nature of accommodations, *per diem* expenses actually incurred, and the number of persons who will attend training. If you send more than two persons to attend training, we estimate that the additional cost, on a per person basis, will range from \$1,600 to \$6,000 per person for a Franchised Restaurant.

13. MISCELLANEOUS OPENING COSTS. These include things such as office supplies, first aid kits, fire extinguishers, and similar items.

14. BUSINESS LICENSES. Local, municipal, county, and state regulations vary on what licenses and permits are required by you to operate. These fees are paid to governmental authorities before starting business.

15. SECURITY DEPOSITS. The figure is the estimated cost of telephone and utility deposits.

16. ADDITIONAL FUNDS. You will need additional capital to support on-going expenses, such as payroll and utilities, to the extent that these costs are not covered by sales revenue. New businesses often generate a negative cash flow. We estimate that the amount given will be sufficient to cover on-going expenses for the start-up phase of the business, which we calculate to be three months. This is only an estimate, however, and there is no assurance that additional working capital will not be necessary during this start-up phase or after. Our estimate is based on our experience with company-owned Restaurants.

Your credit history could impact the amount (and cost) of funds needed during the start-up phase. If you have no credit history or a weak credit history suppliers may give you less favorable lending and payment terms, which might increase the amount of funds you will need during this period. You will need to have staff on-hand before opening to prepare the Restaurant for opening, for training, orientation, and related purposes. The estimate assumes that you will need approximately 500 hours of staff time, at \$7.25 per hour (or more, if the minimum wage is higher in your state), to get ready for your opening.

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

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

17. TOTAL. We relied on our own experience when preparing these figures.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

General

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

At all times during the term of the Franchise Agreement, you must:

- offer for sale only those Products for which we have given our written approval;
- sell or offer for sale all of the Products that we require;
- use the ingredients and employ only the preparation standards and techniques that we specify;
- not deviate from our standards and specifications, including our requirements concerning Product preparation, unless you have received our prior written consent; and
- stop selling and offering for sale any Products that we have later disapproved.

If you deviate (or propose to deviate) from our standards and specifications, whether or not we have approved, the deviation will become our exclusive property.

You must buy all Proprietary Items, Products, ingredients, supplies, materials, and other products used or offered for sale at the Restaurant only from suppliers (including manufacturers, distributors, and other sources) that we have approved in writing. When considering whether to approve any particular possible supplier, we will consider (among others) the following factors: whether the supplier can show, to our reasonable satisfaction, the ability to meet our then-current standards and specifications; whether the supplier has adequate quality controls and capacity to supply the System's needs promptly and reliably; and whether the supplier's approval would enable the System, in our sole opinion, to take advantage of marketplace efficiencies. You may not buy items from any supplier that we have not yet approved in writing, and you must stop buying items from any supplier who we approve, but later disapprove. As explained above, we have the right to designate only one supplier for certain items (such as distribution of products, soft drinks, etc.) in order to take advantage of marketplace efficiencies.

If you want to buy any Products or any other items (except for Proprietary Items, which are discussed below) from an unapproved supplier, you first must submit to us a written request asking for our approval to do so. You may not purchase from any proposed new supplier until we have reviewed and, if we think it is appropriate, approved in writing the proposed new supplier. Among other things, we will have the right to require that our representatives be permitted to inspect the proposed new supplier's facilities, and that samples from that supplier be delivered either to us or to an independent laboratory that we designate for testing. Either you or the proposed new supplier must pay us a charge (which will not exceed the reasonable cost of the inspection and the actual cost of the tests). We also may require that the proposed new supplier comply with certain other requirements that we may deem appropriate, including for example payment of reasonable continuing inspection fees and administrative costs, or other payment to us by the supplier on account of their dealings with you or other franchisees, for use, without restriction (unless otherwise instructed by the supplier) and for services that we may render to our suppliers. We reserve the right, at our option, to periodically re-inspect the

facilities and products of any approved supplier and to revoke our approval if the supplier does not continue to meet any of our then-current criteria.

Although the Franchise Agreement does not require that we notify you of our approval or disapproval of a supplier within a specified time, we estimate that we will usually be able to notify you of approval or disapproval within 30 days after receipt of your written request. This is only an estimate and the actual approval time may be shorter or longer than 30 days. Similarly, we estimate that the charge associated with our approval of a typical proposed supplier will range from \$1,000 to \$5,000.

Under the Franchise Agreement, we currently require you to subscribe and install at your Restaurant our approved point of sale (POS) and back office system, as well as accompanying software.

The Franchise Agreement provides that you may not use any item bearing our trademarks without our prior written approval as to those items.

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

We estimate that your product purchases from approved suppliers and according to our specifications will represent approximately 100% of your total product purchases in establishing the Restaurant, and approximately 100% in the continuing operation of the Restaurant. We also estimate that your product purchases from designated suppliers will represent approximately 100% of your total product purchases in establishing the Restaurant, and approximately 100% of your total product purchases in the continuing operation of the Restaurant. This estimate does not account for service purchases, such as insurance, pest control, bulk CO₂, equipment maintenance, landscaping, and the like.

You must allow us or our agents, at any reasonable time, to remove samples of Products offered in your Restaurant, without payment, in amounts reasonably necessary for testing by us or an independent laboratory to determine whether those samples meet our then-current standards and specifications. We may require you to bear the cost of that testing if we did not previously approve in writing the supplier of the item or if the sample that we take from your Restaurant fails to conform to our specifications.

You will not be permitted to offer or sell, or allow anyone else to offer or sell, beer, wine, or any form of liquor, unless we have given you our advance written approval (which we will have the right to withhold).

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

We may on some occasions pay vendors directly on your behalf for items you purchase because the vendor prefers payment in that manner; if so, we will advance the funds and charge you on a pass-through basis.

We reserve the right to collect and retain certain manufacturing allowances, marketing allowances, rebates, credits, monies, payments and benefits (collectively, “**Allowances**”) offered to us or to our affiliates by manufacturers, suppliers and distributors based upon your purchases of Products and other goods and services.

Proprietary Items

You must buy all of your requirements for bagels, sweets and baked goods, shakes, blended drinks, cookies, cream cheese, cream cheese spreads, coffee, coffee beans, and paper and plastic goods bearing the Proprietary Marks (“**Proprietary Items**”) only from us, our affiliate, our parent company, or from our designee(s), as described below. We will have the right to periodically introduce additional Proprietary Items. Proprietary Items are considered integral components of the Einstein Bros. franchise and are inextricably interrelated with the Proprietary Marks and the System.

The Proprietary Items that are offered and sold in Restaurants are manufactured in accordance with the secret blends, standards, and specifications that we or our affiliates own. In order to maintain the high standards of quality, taste, and uniformity associated with Proprietary Items sold at all Restaurants in the System, you must purchase Proprietary Items only from us, our affiliate, our parent company, or our designees, and you may not offer or sell any Proprietary Item that has not been purchased from us, our affiliate, our parent company, or our designated supplier at or from the Restaurant. We estimate that your purchases of Proprietary Items will represent approximately 1.0% percent of your total purchases in establishing the Restaurant, and approximately 25% of your total purchases in the continuing operation of the Restaurant (on an average weekly basis). The prices charged for Proprietary Items may vary by geographic area.

During our fiscal year ended December 27, 2022, we did not have any Noah’s Bagels franchisees and did not receive any revenue from the sale of products or services to franchisees.

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

None of our officers owns an interest in any companies that are vendors or suppliers to the Noah’s Restaurant franchises.

Computer System

You must buy (or lease) and maintain a computer system. More detailed information concerning the computer system can be found in Item 11 of this disclosure document under the heading “Electronic Point-Of-Sale and Computer Systems.” In general terms, you will be required to obtain a computer system that will consist of certain hardware and software items and peripheral devices (such as printers). Among other things, you will be required to meet our requirements concerning: (a) back office and point of sale systems; (b) POS systems; (c) security systems; (d) printers and other peripheral devices; (e) archive and back-up systems; (f) internet access mode (for example, broadband) and speed; (g) front-of-the-house WiFi and other internet service for customers; and (h) processing gift and loyalty cards.

Insurance

Under the Franchise Agreement, you must obtain and maintain the following insurance:

- comprehensive general liability insurance, written on an occurrence basis, extended to include contractual liability, products and completed operations, liquor liability, and personal and advertising injury, with a combined bodily injury and property damage limit of at least \$3,000,000 in the aggregate and \$2,000,000 per occurrence;
- statutory workers' compensation insurance and employers' liability insurance as required by the law of the state in which the Restaurant is located, including statutory workers' compensation limits and employers' liability limits of at least \$1,000,000;
- commercial umbrella liability insurance with total liability limit of at least \$5,000,000;
- Food Borne Illness, Accidental & Malicious Contamination coverage, with minimum coverage of at least \$1,000,000;
- property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils, including the perils of flood and earthquake that values property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than 90% of the full replacement value of the Franchised Business, its furniture, fixtures, equipment, and stock (real and personal property);
- products liability insurance with coverage of at least \$2,000,000;
- business interruption insurance to cover at least your obligations with respect to leases, royalties, marketing fund obligations, fixed costs, and other recurring expenses for a period of not less than six months following an interruption to the Franchised Business' operation;
- fire, lightning, vandalism, theft, malicious mischief, flood (if in a special flood-hazard area), sprinkler damage, and the perils described in extended-coverage insurance with primary and excess limits of not less than the full-replacement value of the supplies, furniture, fixtures, equipment, machinery, inventory, and plate glass having a deductible of not more than \$1,000 and naming us as loss payee;
- automobile liability insurance, including coverage of vehicles not owned by you, but used by employees in connection with the Franchised Business, with a combination of primary and excess limits of at least \$1,000,000;
- commercial blanket bond in the amount of at least \$100,000; and
- any other insurance coverage that is required by federal, state, or municipal law.

Each insurance policy required under the Franchise Agreement must be primary and noncontributory and must be issued by an issuer we approve, who must have a rating of at least "A-" in the most recent *Key Rating Guide* published by the A.M. Best Company (or another rating that we reasonably designate if A.M. Best Company no longer publishes the Key Rating Guide) and must be licensed to do business in the state in which the Restaurant is located. All liability and property damage policies must name us as additional insureds and must provide that each policy cannot be cancelled unless we are given thirty days' prior written notice. We

may periodically increase required coverage limits or require additional or different coverage to reflect inflation, identification of new risks, changes in the law or standards of liability, higher damage awards and other relevant changes in circumstances. You must deliver to us (and in the future maintain on file with us) valid and current certificates of insurance showing that all required insurance is in full force and effect.

ITEM 9 **FRANCHISEE'S OBLIGATIONS**

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

Obligation	Section in Agreement	Disclosure Document Item
a. Site selection and acquisition/lease	§ 1 in Franchise Agreement; §§ 5.1.1 and 5.1.2 in Area Development Agreement	8 and 11
b. Pre-opening purchases/leases	§ 5 in Franchise Agreement; not applicable in Area Development Agreement	5, 7, and 8
c. Site development and other pre-opening requirements	§§ 3.2, 3.3, 5, and 13.8 in Franchise Agreement; §§ 3, 5.1.2, and Ex. A in Area Development Agreement	8 and 11
d. Initial and ongoing training	§§ 3.1, 6 and 16.5.7 in Franchise Agreement; not applicable in Area Development Agreement;	11
e. Opening	§§ 5.1 and 5.8 in Franchise Agreement; not applicable in Area Development Agreement	11
f. Fees	§§ 2.2.6, 4, 13.1, and 16.5.9 in Franchise Agreement; §§ 2 and 3.1.1 in Area Development Agreement	5 and 6
g. Compliance with standards and policies / Operating Manual	§§ 1.4, 3.4, 5, 8, and 10 in Franchise Agreement; § 6.3 in Area Development Agreement	8, 11, and 14
h. Trademarks and proprietary information	§§ 1.1 and 9 in Franchise Agreement; § 1.6 in Area Development Agreement	13 and 14
i. Restrictions on products/services offered	§§ 1.4, 7.1, 7.2 and 8.8 in Franchise Agreement; not applicable in Area Development Agreement	5, 8, and 16
j. Warranty and customer service requirements	§ 8.7 in Franchise Agreement; not applicable in Area Development Agreement	16

Obligation		Section in Agreement	Disclosure Document Item
k.	Territorial development	§ 1.3, 1.4, and 1.6 in Franchise Agreement; § 1.1 in Area Development Agreement	12
l.	Ongoing product/service purchases	§ 7 in Franchise Agreement; not applicable in Area Development Agreement	8
m.	Maintenance, appearance and remodeling requirements	§§ 2.2.2, 5, 8.6 and 16.5.5 in Franchise Agreement; not applicable in Area Development Agreement	8
n.	Insurance	§ 15 in Franchise Agreement; not applicable in Area Development Agreement	7 and 8
o.	Marketing	§§ 8 and 13 in Franchise Agreement; not applicable in Area Development Agreement	6, 8, and 11
p.	Indemnification	§ 21.4 and Ex. A in Franchise Agreement; § 11 in Area Development Agreement	Not Applicable
q.	Owner's participation/management/staffing	§§ 8.7, 8.10, and 19.1 in Franchise Agreement; § 5.2.5 in Area Development Agreement	15
r.	Records/reports	§§ 4.2 and 12 in Franchise Agreement; § 3.2 in Area Development Agreement	6
s.	Inspection/audits	§§ 3.8, 7.1.3, 8.11, and 12 in Franchise Agreement; not applicable in Area Development Agreement	6 and 11
t.	Transfer	§§ 8.10 and 16 in Franchise Agreement; § 7 in Area Development Agreement	17
u.	Renewal	§ 2.2 in Franchise Agreement; not applicable in Area Development Agreement	17
v.	Post-termination obligations	§ 18 in Franchise Agreement; § 6.4 in Area Development Agreement	17
w.	Non-competition covenants	§ 19 in Franchise Agreement; § 8 in Area Development Agreement	17
x.	Dispute resolution	§ 27 in Franchise Agreement; § 15.2 in Area Development Agreement	17
y.	Taxes/permits	§§ 5.4.2 and 20 in Franchise Agreement; § 10 in Area Development Agreement	1
z.	Other (Personal Guarantee)	Exhibit A to the Franchise Agreement; Exhibit B to the Area Development Agreement	15

ITEM 10 **FINANCING**

Neither we nor any agent or affiliate offers direct or indirect financing to you, guarantees any note, lease or obligation of yours.

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

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

Pre-opening Obligations

We are required by the Franchise Agreement to provide certain assistance and service to you.

Before you open your Franchised Restaurant:

- (1) Before your Restaurant opens, we will provide to you (or to your Operating Partner (defined below)), as well as the Store Manager (defined below), our standard Certified Manager training program at our Denver, Colorado support center or an approved training Restaurant. We will make this training available for up to two individuals. You may send more, but at your own expense. Periodically we will provide ongoing training. (Training is also discussed below in this Item 11 under the subheading "Training.") We will be responsible for our cost of instruction and materials, subject to the terms stated in the Franchise Agreement (among others, this means that you will be responsible for your own out-of-pocket costs to attend training, as well as the cost of third party training and certifications). (*Franchise Agreement, Sections 3.1, 6*)
- (2) We may provide, at no charge to you, prototype plans and specifications for the construction of the Restaurant and for the exterior and interior design and layout, fixtures, equipment, furnishings, and signs. You will be responsible for hiring your own architect to adapt the plans to your site, with our approval, and for hiring a contractor to build the Restaurant according to those approved plans. You are also responsible for compliance with all local and other requirements for the plans, including for example, zoning, code, and compliance with the Americans with Disabilities Act. (*Franchise Agreement, Section 3.2*)
- (3) We have the right to inspect and approve the Restaurant for opening before the initial opening. You may not start operation of your Restaurant until receiving our approval to do so. (*Franchise Agreement, Section 3.8*)
- (4) You may request, or we may require you to have, one or more members of our operations and/or training staff to assist you in the Restaurant's staff training process. Our representatives will conduct the staff training program in coordination with the Restaurant's management team. (*Franchise Agreement, Section 3.3*)
- (5) We will provide you with access, during the term of the Franchise Agreement, to our Manuals (which is more fully described in Item 14 below). (*Franchise Agreement, Section 3.4*)

(6) We will assist you in developing the Grand Opening Marketing Program (which is more fully described in Item 6 of this disclosure document); you will be responsible for the cost of this program. (*Franchise Agreement, Section 3.7*)

We are not required by the Franchise Agreement to furnish any other service or assistance to you before the opening of your Franchised Business.

Continuing Obligations

We are required by the Franchise Agreement to provide certain assistance and service to you.

During the operation of your Franchised Restaurant:

(1) We may conduct additional training programs if we think your Restaurant will benefit from that. (*Franchise Agreement, Section 5.5*)

(2) We will give you periodic and continuing advisory assistance as to the operation and promotion of the Restaurant, as we deem advisable. (*Franchise Agreement, Section 3.9*)

(3) We will administer the Systemwide Marketing Fund as stated in the Franchise Agreement and as described below in this Item 11. (*Franchise Agreement, Section 3.6*)

Neither the Franchise Agreement nor any other agreement, requires us to provide any other assistance or services to you during the operation of the Restaurant.

Site Selection

There are no site selection requirements under a Franchise Agreement. The Franchise Agreement will be signed only after you have found a location for the Restaurant. We will approve a proposed location only if it meets our standards and is otherwise acceptable to us. However, you will be solely responsible for the choice of a location.

We estimate that the time period between the signing of the Franchise Agreement and the start of operations will be approximately four to nine months. The following factors may affect the length of time between signing the Franchise Agreement and opening the Restaurant: financing; building permits; weather conditions; local ordinances; shell construction delays; and construction build-out delays. Under the Franchise Agreement, you must open the Restaurant within six months after securing the necessary authorization and approval for permits and certificates.

Under an Area Development Agreement, we must approve the locations for each of the Restaurants to be developed, and our then-current standards for sites will apply. The factors we will evaluate in considering whether to approve a site include: general location and neighborhood; pedestrian traffic volume and patterns; demographics, including daytime population; psychographics; automobile traffic patterns, volume, and speed; size and ease of access to the proposed site; location of the site in relation to other complimentary retail businesses; availability of utilities; the proposed lease or sublease; ingress and egress; utilities; and zoning issues.

Training

Under the Franchise Agreement, if you are a corporation, partnership, limited liability company, or limited liability partnership, you must designate one of your principals with an ownership interest and who we have previously approved to supervise the operation of the Restaurant as an “**Operating Partner**”. Before you open the Restaurant, you or your Operating Partner, and up to one additional one full-time general manager responsible for the day to day operation of the franchise (the “**Store Manager**”) or additional manager must attend and successfully complete, to our satisfaction, the initial training program we offer.

The Restaurant must at all times be under the active full-time management of you, your Operating Partner, Store Manager, or additional managers who have passed operations and proficiency tests and successfully completed the applicable training program to graduate from the program as a “**Certified Manager**.” At your option, we will also provide our training program for additional Certified Managers or shift supervisors for a fee. All training will take place at a certified training location as we may select. The Store Manager must have at least three years of experience working in a management capacity in a quick service restaurant or fast casual restaurant, and the Store Manager may serve as the Operating Partner regardless of the equity interest the Store Manager holds in the franchisee entity.

In addition to attending our initial training program, the Certified Managers must obtain such food service safety certifications, such as “ServSafe,” that we periodically designate. You are required to pay all costs and expenses incurred in connection with obtaining any required third party food safety certifications. All training and certification requirements must be met before your Restaurant opens.

If you (or the Operating Partner) or any Certified Manager ceases active management or employment at the Restaurant, then you must train a qualified replacement (who must be reasonably acceptable to us) not more than 30 days after the end of the former person’s full-time employment or management responsibilities. The replacement must successfully complete the initial training program, to our reasonable satisfaction, as soon as it is practical to do so.

We may require that any or all of the Certified Managers attend refresher courses, seminars, and other training programs periodically.

We will bear the cost of all initial training (instruction and required materials) for training up to two individuals. If you request that we provide initial training to more than two individuals, you will pay our current charge for this training (specified in the Manuals and discussed in Item 6 above). You will bear all other expenses incurred in attending training, such as the costs of transportation, lodging, meals, wages, benefits, and worker’s compensation insurance (see Items 6 and 7 of this disclosure document).

If you ask that we provide additional on-site training, and we are able to do so, then you will pay us \$350 per person to be trained per day plus our then-current per diem charges and out-of-pocket expenses. Our per diem charges will be specified in our Manuals, and the current amount is described in Item 6 of this disclosure document.

Additional training materials will be provided to you periodically by electronic means, and you will bear the cost of printing and lamination. We anticipate issuing new training materials at

various times, such as when we launch new products, develop or introduce new menus, and when we introduce limited-time offerings.

The subjects covered in the initial training program are described below.

TRAINING PROGRAM

Subject	Hours in classroom	Hours of On-the-Job training	Location
Orientation	20	0	Certified Training Location
Sandwich Maker Position Training	1	40	"
Baker/Prep Position Training	2	90	"
Greeter/Cashier Position Training	1	40	"
Barista Position Training	1	20	"
Shift, Open, Close Management	2	30	"
Ordering/Receiving/Pars	1	16	"
Inventory	1	8	"
Building Sales & Profits	1	ongoing	"
Cash Management	0	4	"
Scheduling	1	10	"
Catering	1	ongoing	"
Sales & Profit	5	ongoing	"
P & L Reconciliation	5	5	"
Recruiting & Interviewing	6	ongoing	"
Equipment	0	ongoing	"
Marketing /Merchandising	0	5	"
Guest Experience	2	ongoing	"
Crew Development	2	ongoing	"
Quality of Operations Assessment	0	ongoing	"
Hospitality	2	ongoing	"
Totals	50	268	

Training will be conducted over an approximately four-week period at training restaurants of our choosing across the U.S. Training is conducted as frequently as we determine it necessary in order to hold a training class.

Tina D'Ottavio, our Senior Director of License Operations, currently supervises the initial training programs. Mrs. D'Ottavio has been with us since January 2008, and has more than 30 years of experience with the subjects taught.

Our instructional materials for our training program include the Manuals.

Marketing

As described in Item 6 above, for each “Week” during the term of the Franchise Agreement, you will be required to make a Marketing Contribution. The Marketing Contribution will be 4% of the Gross Sales of your Franchised Restaurant during the preceding Week. (See Item 6, note 2, for the definition of the term “Week.”) We will require you to pay your Marketing Contribution by ACH.

The Marketing Contribution will be paid to the Systemwide Marketing Fund, any Market Co-op Fund (defined below), or spent on local store marketing in the proportions that we will periodically designate. We reserve the right to collect and hold local store marketing funds, and seek your guidance on how those funds are to be spent; however, if you do not provide timely guidance, we have the right to direct the expenditure of local store marketing funds. There are different marketing needs in different types of markets. For example, Restaurants that operate in resort or vacation areas may need a different kind and volume of marketing than do Restaurants that operate in suburban areas or in cities.

Although this is likely to change, our current allocation of the Marketing Contribution is as follows:

This amount	Into this fund:
60% of the Marketing Contribution (that is, 2.4% of your Gross Sales)	Systemwide Marketing Fund
40% of the Marketing Contribution (that is, 1.6% of your Gross Sales)	Local store marketing

The Systemwide Marketing Fund

We have established the Systemwide Marketing Fund for the System. The Systemwide Marketing Fund, all contributions to and earnings from the Systemwide Marketing Fund, will be used only (except as otherwise provided below) to meet the franchise system’s pro rata portion of any and all costs of maintaining, administering, directing, creating, conducting, and preparing marketing, marketing, public relations and promotional programs and materials, engaging media placement agencies, and conducting any other activities that we believe will enhance the image of the System. This includes, among other things, the costs of preparing and conducting media marketing campaigns; direct mail marketing; marketing research; public relations activities; developing and maintaining our Website (except for the portion, if any, specifically for soliciting franchisees); employing marketing or public relations agencies; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services to the Restaurants operated under the System. We may also use the Systemwide Marketing Fund to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, that we have approved in advance (we will have the right to determine which expenditures will appropriately promote general public awareness and favorable support for the System). We will have the sole right to decide how the Systemwide Marketing Fund creates,

places, and pays for marketing. We (or our designee, which might be a corporate subsidiary or an advertising agency) will maintain and administer the Systemwide Marketing Fund, as follows:

(a) We (or our designee) will direct all marketing programs, with the sole right to decide the concepts, materials, and media used in these programs and the placement and allocation of the programs. The source(s) for marketing materials used by the Systemwide Marketing Fund will be both in-house and regional or national advertising agencies. The Systemwide Marketing Fund is intended to maximize general public recognition, acceptance, and use of the System. Neither we nor our designee will be obligated to make expenditures for you that are equivalent or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or *pro rata* from expenditures by the Systemwide Marketing Fund.

(b) The Systemwide Marketing Fund, and all contributions to and earnings from the Systemwide Marketing Fund, will be used exclusively to meet the costs of marketing and any other activities that we believe will enhance the System's image and, in our sole discretion, promote general public awareness of and favorable support for the System.

(c) You must contribute to the Systemwide Marketing Fund by EFT (electronic fund transfer, see also Item 6, note 2). All sums you pay to the Systemwide Marketing Fund will be maintained in an account separate from our other monies.

(d) We will have the right to charge the Systemwide Marketing Fund for the reasonable administrative costs and overhead that we incur in activities reasonably related to the direction and implementation of the Systemwide Marketing Fund and marketing programs for you and the System (for example, costs of personnel for creating and implementing, associated overhead, marketing, merchandising, promotional and marketing programs). The Systemwide Marketing Fund and its earnings will not otherwise inure to our benefit or be used to solicit the sale of franchises. We or our designee will maintain separate bookkeeping accounts for the Systemwide Marketing Fund. We do not currently prepare an annual audited financial statement for the Systemwide Marketing Fund, but we may do so in the future. Upon request, we will provide you with an accounting of the Systemwide Marketing Fund.

(e) The Systemwide Marketing Fund is not and will not be our asset.

(f) Although the Systemwide Marketing Fund is intended to be of perpetual duration, we maintain the right to terminate the Systemwide Marketing Fund. The Systemwide Marketing Fund will not be terminated, however, until all monies in the Systemwide Marketing Fund have been spent for marketing or promotional purposes, or until there are no longer any franchisees in the System.

Our current policy is that company-owned Restaurants do not contribute to the Systemwide Marketing Fund. However, our current policy is that certain company-owned Restaurants situated in the same markets as franchised restaurants may contribute to the Systemwide Marketing Fund. Those certain company-owned Restaurants would likely contribute to that portion of the Systemwide Marketing Fund, if any, designated for that particular market on an equal basis. If we elect to have any of our Restaurants contribute to the Systemwide Marketing Fund, we will have the same rights for our contributing Restaurants as our franchisees have for their Restaurants. We reserve the right to change our policy at any time.

None of the amounts collected or held by the Systemwide Marketing Fund will be used for marketing that is principally a solicitation for the sale of franchises. We may receive payment for

providing goods and services to the Systemwide Marketing Fund, such as personnel, staff, office space, supplies, and other general and administrative costs that we incur on the Systemwide Marketing Fund's behalf. A statement of the Systemwide Marketing Fund's operations, as shown on our books, will be prepared annually, and that statement will be made available to you upon request. We have not formed a marketing council or other advisory body composed of franchisees to assist us on marketing policies, but we reserve the right to do so in the future. We are not required to spend any particular amount on marketing in the area where your Restaurant is located. If amounts are unspent in the Systemwide Marketing Fund at fiscal year-end, those amounts will be carried over by the Fund for expenditure in the following year(s).

During our last fiscal year ended December 27, 2022, we did not have any franchisees and the Systemwide Marketing Fund did not make any expenditures.

Market Co-op Fund

We will have the right, as we see fit, to establish a Market Co-op Fund for your region if you are operating a Franchised Restaurant under a Franchise Agreement. The purpose of a Market Co-op Fund is to conduct advertising campaigns for the Franchised Restaurants located in that region.

You will not be required to contribute to more than one Market Co-op Fund. The following provisions will apply to each Market Co-op Fund (if and when organized):

- (a) Market Co-op Funds will be established in the form and manner that we have approved in advance.
- (b) Market Co-op Funds will be for the exclusive purpose of executing regional and market-wide advertising programs and developing (subject to our approval) standardized promotional materials for use by the members in local advertising and promotion.
- (c) Market Co-op Funds may not use advertising, promotional plans, or materials without our prior written approval, as described below.
- (d) You must make any required contributions to a Market Co-op Fund according to the allocation of the Marketing Contribution, as described above.
- (e) Although each Market Co-op Fund is intended to be of perpetual duration, we maintain the right to terminate any Market Co-op Fund. A Market Co-op Fund will not be terminated, however, until all monies in that Market Co-op Fund have been expended for advertising or promotional purposes. If all Restaurants contributing to a Market Co-op Fund are closed, any balance remaining in that Market Co-op Fund will be transferred to the Systemwide Marketing Fund.
- (f) We have the right to change or merge any Market Co-op Funds.

Local store marketing

Certain criteria will apply to any local store marketing that you conduct. All of your local store marketing must be dignified, must conform to our standards and requirements, and must be conducted in the media, type, and format that we have approved. You may not use any

marketing or promotional plans that we have not approved in writing. You must submit to us samples of all proposed plans and materials (unless, within the previous six months, we prepared or already approved the plans or materials). We will ordinarily provide you with our response (whether approval or disapproval) to the proposed plans or materials within two months; but if we do not give our approval within fourteen days, we will have been deemed to disapprove the plans or materials.

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

You must participate in gift card, customer loyalty, and similar programs we designate for use by our Restaurants, unless you are restricted from doing so by your lease or other third party contract related to the location in which you operate your Restaurant (in which case you must notify us, in writing, of such restriction).

Under the Franchise Agreement, and as discussed in Items 6 and 7, in addition to (and not in place of) the Marketing Contribution, you must spend at least \$10,000 on local store marketing conducted for the Restaurant's grand opening marketing program (the "**Grand Opening Marketing Program**"), according to our specifications for that program. You must complete the Grand Opening Marketing Program no later than three months after the Restaurant first opens for business. All materials used in the Grand Opening Marketing Program will be subject to our prior written approval, as described above. The Grand Opening Marketing Program is considered "local store marketing" and is therefore subject to the restrictions described below. We will work with you to tailor your Grand Opening Marketing Program to your market. We reserve the right to require you to deposit with us the funds for the Grand Opening Marketing Program so that we may distribute the funds for the Grand Opening Marketing Program, and if so, and funds not spent within six months after your Restaurant opening will be deposited in the Systemwide Marketing Fund.

In addition to the plans and promotions that we otherwise provide to you under the Franchise Agreement, we will periodically make available to you, for purchase, certain marketing plans and promotional materials for your use in local store marketing.

As used in the Franchise Agreement, the term "**local store marketing**" refers to only the direct costs of purchasing and producing marketing materials (such as camera-ready marketing and point of sale materials), media (space or time), promotion, and your direct out-of-pocket expenses related to costs of marketing and sales promotion in your local market or area. Local store marketing also includes associated advertising agency fees and expenses, postage, shipping, telephone, and photocopying costs. "Marketing and sales promotion" does not, however, include any of the following:

- (a) Salaries, incentives or discounts offered to your employees, and your employees expenses;
- (b) Charitable, political, or other contributions or donations;
- (c) The value of discounts given to consumers; and
- (d) The cost of food items.

Online Sites (as defined below) are considered as “marketing” under the Franchise Agreement, and are subject (among other things) to our review and prior written approval before they may be used (as described above). The term “**Online Site**” means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including, for example, the Internet, World Wide Web, webpages, microsites, social networking sites (e.g., Facebook, Twitter, LinkedIn, You Tube, Google Plus, Pinterest, etc.), blogs, vlogs, applications to be installed on mobile devices (e.g., iOS or Android apps), and other applications, etc., and that refers to the Restaurant, Proprietary Marks, us, or the System. In connection with any Online Site, the Franchise Agreement provides that you may not establish an Online Site, nor may you offer, promote, or sell any products or services, or make any use of the Proprietary Marks, through the Internet without our prior written approval. As a condition to granting consent, we will have the right to establish any requirement that we deem appropriate, including for example a requirement that your only presence on the Internet will be through one or more webpages that we establish on our website.

Electronic Point-Of-Sale and Computer Systems

At this time, we require our franchisees to buy or subscribe to an approved computer hardware and software point of sale (POS) system. As noted in Item 7 above, NCR/Aloha is the approved POS and back office system vendor for our Stores. You must purchase or subscribe to these items directly from the vendor. The POS and computer system will be required to use our approved interface (high speed telecommunication connection) to communicate electronically with our own system.

The cost of purchasing or leasing computer hardware and software for the Restaurant will vary for each Restaurant depending upon the Restaurant's size, style and the volume of products to be offered in the Restaurant. For example, a Restaurant with a drive-thru window will require an additional POS terminal. We currently estimate the cost of purchasing or leasing the required POS system and computer hardware and software to range from \$26,000 to \$54,000 if purchased or \$2,400 to \$7,200 per year if leasing and subscribing.

Some of the hardware and software that you will use is the proprietary property of third parties. We have not approved any hardware or software in place of these systems and programs, although we reserve the right to do so in the future. We have the right to specify the brands, types, makes, and models of your computer system. You will have to abide by our requirements concerning the computer system, including, among other things: (a) back office and point of sale systems; (b) POS systems; (c) security systems; (d) printers and other peripheral devices; (e) archive and back-up systems; (f) internet access mode (for example, broadband) and speed; (g) front-of-the-house WiFi and other internet service for customers; and (h) processing gift and loyalty cards.

We reserve the right to have independent access to your computer for the purpose of downloading sales and other data. There is no contractual limitation on our right to receive this information. We reserve the right to require you to bring any computer hardware and software, related peripheral equipment, communications systems, as well as the cash register system, into conformity with our then-current standards for new Restaurants. Except as described above regarding the acquisition and maintenance of the POS system for a Franchised Restaurant, we have no obligation to assist you in obtaining hardware, software or related services and there are no contractual limits on the frequency or cost of your obligations to obtain these upgrades. (See Sections 2.2.2, 8.6 and 14 of the Franchise Agreement.) We currently

estimate the annual cost of maintaining, updating, upgrading your computer system, and obtaining support, to range from \$4,800 to \$7,200 per year.

Manuals

The table of contents of the Manuals is attached as Exhibit G. There are 972 pages in our Manuals.

ITEM 12 **TERRITORY**

Franchise Agreement

During the term of the Franchise Agreement, so long as you remain in compliance with the terms of the Franchise Agreement, we will not establish or franchise anyone else to establish, another Noah's Restaurant at any location within the "Protected Territory" that is designated in your Franchise Agreement (except as noted below with respect to Non-Traditional Facilities or Captive Market Locations). The Protected Territory will typically be a circle, the center of which will be the front door of the Restaurant, and that circle will have a radius that is specified in your Franchise Agreement (typically two miles, except in dense urban centers, where it could be less), except as explained below. We (and our affiliates) retain all other rights. Accordingly, we will have the right (among other things), on any terms and conditions that we deem advisable, and without granting you any rights, to do any or all of the following:

- establish, and franchise others to establish, Restaurants at any location outside the Protected Territory despite their proximity to the Protected Territory or the Approved Location or its actual or threatened impact on sales at your Restaurant;
- establish, and license others to establish, Restaurants at any Non-Traditional Facility or Captive Market Location (as those terms are defined below) within or outside the Protected Territory, despite these Restaurants' proximity to the Approved Location or their actual or threatened impact on sales at your Restaurant;
- establish, and license others to establish, restaurants under other systems or other proprietary marks, which restaurants may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which restaurants may be located within or outside the Protected Territory, despite these restaurants' proximity to the Approved Location or their actual or threatened impact on sales at your Restaurant;
- acquire (or be acquired) and operate any business or store of any kind, whether located within or outside the Protected Territory despite these business' or restaurants' proximity to the Approved Location or its actual or threatened impact on sales at your Restaurant; and
- sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products in ready-to-prepare or bulk packaged form (as compared to single-serving ready-to-consume form), from any location or to any purchaser, from any

location or to any purchaser (including, among other methods, sales made at retail locations and wholesale sales), as long as these sales are not conducted from a Restaurant operated from a location inside the Protected Territory (excluding Non-Traditional Facilities or Captive Market Locations). (Unless otherwise noted, the term "Products" includes Proprietary Items.)

The term "**Captive Market Location**" includes, among other things, non-foodservice businesses of any sort within which a Restaurant or an "Einstein Bros. Bagels" branded facility is established and operated (including, for example, hotels and resorts), as well as branded locations that serve only our brand of coffee.

The term "**Non-Traditional Facility**" includes, among other things, college campuses, schools, hotels, casinos, airports and other travel facilities; federal, state, or local government facilities (including military bases); theme and amusement parks; recreational facilities; seasonal facilities; shopping malls; theaters; and sporting event arenas and centers.

You therefore 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.

You may offer and sell Products only from the Restaurant, only according to the requirements of the Franchise Agreement and the Manuals, and only to retail customers for consumption on the Restaurant's premises or for personal, carry-out consumption. Without our prior written consent, you may not solicit customers or provide services outside the Protected Territory. You will not have any options, rights of first refusal, or similar rights to acquire additional franchises or other rights under the Franchise Agreement. Continuation of your rights regarding the Protected Territory are not contingent upon your having met any particular sales volume, market penetration, or any other contingency, and we don't have any right to alter the Protected Territory provided under your Franchise Agreement.

The Approved Location for the Restaurant will be specified in the Franchise Agreement. You may not relocate the Restaurant without our prior written approval. If you ask to relocate the Restaurant, we will evaluate your request on the basis of the same standards that we apply to reviewing the proposed location of a Restaurant for a new franchisee.

We have the right to approve or disapprove any activity(ies) proposed to take place outside the Restaurant, including delivery and catering activities. We will consider various factors in determining whether to permit you to provide delivery or catering services from the Franchised Business, including the period of time you have been operating your Franchised Business, your sales volume, whether you have met certain quality standards and other benchmarks, and other standards that we may determine. In addition:

- You may not engage in delivery and/or catering services, whether inside or outside of the Protected Territory, without our prior written consent.
- All delivery or catering activities that you undertake must be conducted according to the procedures we specify.
- We may (but are not required to) establish a catering program that will include online and telephone ordering features, on our own or in conjunction with one or more outside vendors (the "**Catering Program**"). If we establish a Catering Program, you must

participate and pay the fees and costs associated with doing so. To participate in the Catering Program, you must also implement certain credit card processing programs.

* * *

As noted in Item 1, our affiliate ENC operates restaurants under the “Einstein Bros. Bagels” marks, and our affiliate, MBC, owns and operates, as well as franchises, restaurants under the “Manhattan Bagel” marks, which offer bagels, sandwiches and other products similar to those offered in our “Noah’s Bagels” restaurants. ENC and MBC operate from our corporate offices and do not maintain separate offices or training facilities. You will have no rights regarding any other business that we (or our affiliates) operate, including for example, operations under the Einstein Bros. Bagels and Manhattan Bagel brands, or any brands that JAB’s affiliates operate, including brands such as “Caribou Coffee”, “Peet’s Coffee”, “CoffeeCompany”, “Café do Ponto”, “Casa Pilao”, “Baresso”, “Krispy Kreme”, “Panera Bread”, “Pret A Manger” and “Bruegger’s Bagels” (the “**Other Brands**”). We (and our affiliates) will have the right to operate and license others to operate businesses under the Other Brands at any location whatsoever, even though those businesses (such as restaurants) may be near the Approved Location of your Restaurant or may operate within the Protected Territory under your Franchise Agreement (or the Development Area under your Development Agreement), and even though those restaurants may appear to (or actually) have an impact on sales at your Restaurant.

Development Agreement

Under the Development Agreement, and as described in Item 1, if you sign a Development Agreement, you will receive a Development Area in which you must develop Restaurants. If you are in compliance with your obligations under the Development Agreement and all other Franchise Agreements between you and us, then we will not establish, nor license anyone other than you to establish, a Restaurant in the Development Area until the last date specified in the Development Schedule, except as otherwise provided below. We will retain all other rights, and therefore retain the right (among others), and without granting to you any rights, to:

- establish, and license others to establish, Restaurant at any location outside the Development Area notwithstanding their proximity to any Restaurants you may operate within the Development Area, or their actual or threatened impact on sales at those Restaurants;
- establish, and license others to establish, Restaurants at any Non-Traditional Facility or Captive Market Location, within or outside the Development Area, notwithstanding such Restaurants’ proximity to any Restaurant you operate;
- establish, and license others to establish, stores under other systems or other proprietary marks, which stores may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which stores may be located within or outside the Development Area, notwithstanding such stores’ proximity to any Restaurant you operate;
- acquire (and be acquired) and operate any business or store of any kind, whether located within or outside the Development Area (excluding Restaurants operated under the System within the Development Area), notwithstanding such the proximity of any such businesses or stores to any Restaurant you operate; and/or
- sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products from any location or to any purchaser (including, but not limited

to, sales made at retail locations, wholesale sales, etc.), so long as the sales are not conducted from a retail Restaurant operated from a location inside the Development Area.

We must approve the locations and territories for each of the Restaurants to be developed under the Development Agreement, and our then-current standards for those locations and territories will apply.

You will not have any options, rights of first refusal, or similar rights to acquire additional franchises, development rights, or other rights under the Development Agreement. Other than your obligation to meet the development schedule provided under the Development Agreement, continuation of your rights regarding the Development Area are not contingent upon your having met any particular sales volume, market penetration, or any other contingency, and we don't have any right to alter the Development Area provided under your Development Agreement.

ITEM 13 **TRADEMARKS**

We grant you the right to use certain Proprietary Marks under the Franchise Agreement. NNYBC registered (and has licensed to us) the following Proprietary Marks with the U.S. Patent and Trademark Office (the "**USPTO**") on its Principal Register:

Name or Mark	Registration Number	Class	Registration Date
NOAH'S NEW YORK BAGELS	2143901	42	March 17, 1998
NOAH'S NEW YORK BAGELS	1961823	42	March 12, 1996
NOAH'S BAGELS	1841045	42	June 21, 1994
NOAH'S	2591900	30	July 9, 2002

NNYBC filed, and intends to file when due, an affidavit of use and an affidavit of incontestability, as well as a renewal application, for the registrations listed above.

On September 8, 2023, we entered into a license agreement with NNYBC that licensed to us the use of the Proprietary Marks (the "**License Agreement**"). Under the License Agreement, NNYBC granted us a non-exclusive, royalty-free right to use, and to license others to use, the Proprietary Marks for the purpose of operating and franchising Noah's Bagels Restaurants. The License Agreement is for a term of 50 years with three renewal terms of 10 years each, but is terminable by either party for breach. If the License Agreement is terminated, we may not be able to continue to use (and if that happens, you may no longer have the right to use) the Proprietary Marks.

Your right to use the Proprietary Marks is limited to the uses that are authorized under the Franchise Agreement, and any unauthorized use of the Proprietary Marks will infringe upon our rights. You may not use any Proprietary Mark: (1) as part of any corporate name or other business name; (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols,

or in any modified form; (3) in connection with performing or selling any unauthorized services or products; (4) as part of any domain name, electronic address or search engine or in any other manner in connection with an Online Site without our prior written approval; or (5) in any other manner that we do not expressly authorize in writing. You must identify yourself as the independent owner and operator of your business and Restaurants in the manner we specify (such as on invoices, order forms, receipts, and contracts). You must also give the trademark registration notices that we designate, and obtain any assumed business name registrations that applicable law requires.

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceeding, or any pending material litigation, involving the Proprietary Marks. Except as described above in this Item 13, no agreement significantly limits our rights to use or license the Proprietary Marks in any state in a manner material to the franchise, and we know of no superior prior rights or infringing uses that could materially affect your use of the Proprietary Marks in any state.

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

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

ITEM 14
PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION

Patents

No patents are material to the operation of your Restaurant, although we own a patent on our bagel production process.

Copyrights

We (or our affiliates, in some cases) claim copyright protection covering various materials used in our business and the development and operation of Noah's Restaurants, including the Manuals, marketing and promotional materials, and similar materials. We have not registered these materials with the United States Registrar of Copyrights but we are not required to do so.

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

Confidential Information

Except for the purpose of operating the Restaurant under the Franchise Agreement, you may never (during the Franchise Agreement's term or later) communicate, disclose, or use for any person's benefit any of the confidential information, knowledge, or know-how concerning the operation of the Restaurant that may be communicated to you or that you may learn by virtue of your operation of a Restaurant. You may divulge confidential information only to those of your employees who must have access to it in order to operate the Restaurant. Any and all information, knowledge, know-how, and techniques that we designate as confidential will be deemed confidential for purposes of the Franchise Agreement. However, this will not include information that you can show came to your attention before we disclosed it to you; or that at any time became a part of the public domain, through publication or communication by others having the right to do so.

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

Confidential Manuals

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

You must always treat in a confidential manner the Manuals, any other manuals we create (or that we approve) for use with the Restaurant, and the information contained in the Manuals. You must use best efforts to maintain this information as secret and confidential. You may not copy, duplicate, record, or otherwise reproduce the Manuals and the related materials, or any part (except for the parts of the Manuals that are meant for you to copy, which we will clearly mark), nor may you otherwise let any unauthorized person have access to these materials. The Manuals will always be our sole property. You must always keep the Manuals in a secure place at the Restaurant's premises.

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

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

The Franchise Agreement does not require you to participate personally in the direct operation of the Restaurant, although we encourage and recommend active participation by you. We do, however, require that you and/or your Certified Manager(s) devote full time, energy, and best efforts to the management of the Restaurant.

If you are a corporation, partnership, or other entity, we require all of your owners to sign a personal guarantee (in the form attached to the Franchise Agreement as Exhibit A) of the performance of your obligations under the Franchise Agreement.

If you are a corporation or a partnership, an Operating Partner must supervise the operation of the Restaurant and must be approved by us. The Certified Manager must also be approved by us. Our approval will be based on whether the proposed Operating Partner and Store Manager have a good business reputation in the restaurant industry with multi-unit experience (for Operating Partner) or single site general management experience (for a Store Manager), are not competitors of ours, and whether they can successfully complete our training program. Operating Partners, Store Managers and Certified Managers must be able to speak the English language to attend and complete our training course. All persons that subsequently serve in the positions of Operating Partner and Store Manager must be approved by us and must attend and successfully complete our manager training program which is described in Item 11 of this disclosure document.

We require your principals (including the Operating Partner), Store Managers, Certified Managers, supervisors and other managers to sign a non-disclosure and non-competition agreement, the form of which is attached to the Franchise Agreement as Exhibit F. We do not impose any other restrictions on your managers.

ITEM 16
RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

You may sell and provide only products and services that conform to our standards and specifications (which are described in Item 8 above). You also will have certain obligations to offer for sale particular items. We have the right, without limit, to change the types of authorized products and services.

As noted above in Item 12, you may only offer and sell products to retail customers for consumption on the Restaurant's premises, for personal carry-out consumption, and, under the Franchise Agreement, for delivery service (catering) in a manner that complies with our standards. You may also sell products to end-users and other entities that do not resell the products. You may not sell products to gift shops and similar type stores. We will have the right to review and approve (or not approve) any proposed sale of the products to a hotel or a restaurant (which may be required to comply with our standards in order to feature or give away Einstein Bros. brand products). All sales will be counted in "Gross Sales."

The Approved Location for the Restaurant will be specified in the Franchise Agreement. You may not relocate the Restaurant without our prior written approval.

ITEM 17
RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document. Please also read the notes that follow this table.

THE FRANCHISE RELATIONSHIP			
	Provision	Section in Agreement	Summary (please see note 1)
a.	Length of the franchise term	§ 2.1 of Franchise Agreement; § 4 in Area Development Agreement	The term under the Franchise Agreement is the earlier of 10 years from the date the Restaurant opens, or 11 years from the effective date of the agreement.
b.	Renewal or extension of the term	§ 2.2 of Franchise Agreement; not applicable in Area Development Agreement	Franchise Agreement: one additional 10-year term.

THE FRANCHISE RELATIONSHIP		
Provision	Section in Agreement	Summary (please see note 1)
c. Requirements for you to renew or extend	§§ 2.2.1 - 2.2.8 of Franchise Agreement; not applicable in Area Development Agreement	Notice, satisfaction of monetary obligations, compliance with Franchise Agreement, release, pay fee, sign new Franchise Agreement, and others; see §§ 2.2.1 - 2.2.8 in Franchise Agreement If you seek to renew your franchise at the expiration of the initial term, you may be asked to sign a new form of franchise agreement that contains terms and conditions materially different from those in your original franchise agreement, such as different fee requirements and territorial rights.
d. Termination by you	Not Applicable in Franchise Agreement and Area Development Agreement	None under the Franchise Agreement and the Area Development Agreement.
e. Termination by us without cause	Not Applicable	Default or termination of the Area Development Agreement does not constitute a default under any Franchise Agreements entered into under the Area Development Agreement.
f. Termination by us with cause	§ 17 of Franchise Agreement; § 6 in Area Development Agreement	Default under the Franchise Agreement or Development Agreement, bankruptcy, abandonment, and other grounds; see § 17 of the Franchise Agreement, and § 6 of the Area Development Agreement. (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.)
g. "Cause" defined – curable defaults	§ 17.3 of Franchise Agreement; § 6.3 in Area Development Agreement	All other defaults not specified in §§ 17.1 and 17.2 of the Franchise Agreement; and the defaults in § 6.3 of the Development Agreement. A default under a Franchise Agreement is a default under the Development Agreement for that Franchise Agreement.
h. "Cause" defined - non-curable defaults	§§ 17.1 and 17.2 of Franchise Agreement; §§ 6.1 and 6.2 in Area Development Agreement	Bankruptcy, abandonment, conviction of felony, and others; see § 17.2 of the Franchise Agreement, and Section §§ 6.1 and 6.2 of the Development Agreement. (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.)

THE FRANCHISE RELATIONSHIP		
Provision	Section in Agreement	Summary (please see note 1)
i. Your obligations on termination/nonrenewal	§ 18 of Franchise Agreement; § 6.4 in Area Development Agreement	Stop operating the Restaurant, pay amounts due, pay lost future royalties (Franchise Agreement only), and others; see §§ 18.1 - 18.9 of the Franchise Agreement.
j. Assignment of contract by us	§ 16.1 of Franchise Agreement; § 7.1 in Area Development Agreement	There are no limits on our right to assign the Franchise Agreement or Area Development Agreement.
k. "Transfer" by you - defined	§§ 16.4.1 - 16.4.4 of Franchise Agreement; §§ 7.4.1 – 7.4.4 in Area Development Agreement	Includes transfer of any interest.
l. Our approval of transfer by you	§ 16.4 of Franchise Agreement; § 7.4 in Area Development Agreement	We have the right to approve transfers.
m. Conditions for our approval of transfer	§ 16.5 of Franchise Agreement; § 7.5 in Area Development Agreement	Your compliance with the existing franchise agreement, a release, the buyer's signature of a new agreement, the payment of transfer fee, and others; see §§ 16.5.1 - 16.5.10 of the Franchise Agreement.
n. Our right of first refusal to acquire your business	§ 16.6 of Franchise Agreement; § 7.6 in Area Development Agreement	We can match any offer.
o. Our option to purchase your business	§§ 18.4 and 18.5 of Franchise Agreement; not applicable in Area Development Agreement	We can acquire any interest which you have in any lease or sublease for the premises and purchase your furnishings, equipment, material, or inventory at cost or fair market value upon expiration, termination, or default of the Franchise Agreement and/or default under the lease/sublease.
p. Your death or disability	§§ 16.7 of Franchise Agreement; §§ 7.7, 7.8 and 7.9 in Area Development Agreement	Your estate must transfer your interest in the business to a third party we have approved, within a year after death or six months after the onset of disability.

THE FRANCHISE RELATIONSHIP		
Provision	Section in Agreement	Summary (please see note 1)
q. Non-competition covenants during the term of the franchise	§§ 19.2, 19.3 and 19.4 of Franchise Agreement; §§ 8.2, 8.3 and 8.4 in Area Development Agreement	Under Franchise Agreement, includes prohibition on engaging in a “Competitive Business,” which is a retail business selling or offering bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute 30% or more of that business’ gross revenues at any one or more retail location(s); see §§ 19.2 - 19.4 of the Franchise Agreement.
r. Non-competition covenants after the franchise is terminated or expires	§§ 19.2, 19.3, 19.4 and 19.5 of Franchise Agreement; §§ 8.3 and 8.4 in Area Development Agreement	Includes a prohibition similar to “q” (above), for two years under the Franchise Agreement. In the Franchise Agreement, this applies within the Protected Territory, or within 10 miles of any other Restaurant then-operating under the System.
s. Modification of the agreement	§ 25 of Franchise Agreement; § 13 in Area Development Agreement	Must be in writing signed by both parties.
t. Integration/merger clause	§ 25 of Franchise Agreement; § 13 in Area Development Agreement	Only the final written terms of the Franchise Agreement and Area Development Agreement are binding (subject to state law), but this provision does not disclaim any representation made in this Disclosure Document. Any representations or promises outside of the disclosure document and agreements may not be enforceable.
u. Dispute resolution by arbitration or mediation	§ 27.3 of Franchise Agreement; § 15.3 in Area Development Agreement	Before bringing an action in court, the parties must first submit the dispute to non-binding mediation (except for injunctive relief) in Colorado. The Franchise Agreement and Area Development Agreement contain several provisions that may affect your legal rights, including a waiver of a jury trial, waiver of punitive or exemplary damages, and limitations on when claims may be raised. See Sections 27.6, 27.7 and 27.8 in the Franchise Agreement and Sections 15.6 and 15.7 in the Area Development Agreement. Exhibits H and I to this disclosure document include for state-specific information and amendments that may apply.

THE FRANCHISE RELATIONSHIP		
Provision	Section in Agreement	Summary (please see note 1)
v. Choice of forum	§ 27.2 of Franchise Agreement; § 15.2 in Area Development Agreement	If we ever litigate, you must do so in the state and judicial district where we maintain our principal place of business (currently, Denver, Colorado) (subject to applicable state law).
w. Choice of law	§ 27.1 of Franchise Agreement; § 15.1 in Area Development Agreement	Colorado (subject to applicable state law).

ITEM 18 **PUBLIC FIGURES**

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

ITEM 19 **FINANCIAL PERFORMANCE REPRESENTATIONS**

The FTC's Franchise Rule permits a franchisor to disclose 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 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 performance at a particular location or under particular circumstances.

We do not make any financial performance representations for Restaurants. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Patricia Perry at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (303-568-8000), the Federal Trade Commission, and the appropriate state regulatory agencies.

ITEM 20 **OUTLETS AND FRANCHISEE INFORMATION**

Table 1:
Systemwide Noah's Bagels Franchised Restaurant Outlet Summary
For Years 2020 to 2022

Outlet Type	Year	Outlets at the Start of the Year	Outlets at the End of the Year	Net Change
Franchised	2020	0	0	0
	2021	0	0	0
	2022	0	0	0
Company Owned	2020	58	58	0
	2021	58	56	-2
	2022	56	56	0
Total Outlets	2020	58	58	0
	2021	58	56	-2
	2022	56	55	-1

Table 2:
Transfers of Noah's Bagels Franchised Restaurants from Franchisees to New Owners
(other than Franchisor)
For Years 2020 to 2022

State	Year	Number of Transfers
Any State	2020	0
	2021	0
	2022	0
Total	2020	0
	2021	0
	2022	0

Table 3:
Status of Noah's Bagels Franchised Restaurant Outlets for Years 2020 to 2022

State	Year	Outlets at Start of Year	Outlets Opened	Terminations	Non-Renewals	Re-acquired by Franchisor	Ceased Operations Other Reasons	Outlets at End of the Year
Any State	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0
Totals	2020	0	0	0	0	0	0	0
	2021	0	0	0	0	0	0	0
	2022	0	0	0	0	0	0	0

Table 4:
Status of Company Owned Noah's Bagels Restaurant Outlets for Years 2020-2022

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisees	Outlets Closed	Outlets Sold to Franchisees	Outlets at End of the Year
CA	2020	58	0	0	0	0	58
	2021	58	0	0	2	0	56
	2022	56	0	0	1	0	55
Totals	2020	58	0	0	0	0	58
	2021	58	0	0	2	0	56
	2022	56	0	0	1	0	55

Table 5:
Projected Noah's Bagels Franchised Restaurant Openings as of January 1, 2023, for Fiscal Year 2023

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlets in the Next Fiscal Year	Projected New Company-Owned Outlets In the Next Fiscal Year (Note 1)
Any State	0	0	0
Total	0	0	0

The company-owned outlets are operated by our affiliate, Noah's New York Bagels Company. The names, addresses, and telephone numbers of our franchisees and developers as of December 27, 2022 are listed in Exhibit D. There are none.

The name and last known home address and telephone number of every one of our franchisees and area developers who had an agreement terminated, canceled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business during the period from December 29, 2021 to December 27, 2022, or who has not communicated with us within ten weeks of the date of this disclosure document are also listed in Exhibit D. 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, we have not signed any confidentiality clauses with current or former franchisees which would restrict them from speaking openly with you about their experience with us.

As of the date of this franchise disclosure document, there are no “Noah’s Bagels” franchisee associations in existence regardless of whether they use our trademark or not.

ITEM 21 **FINANCIAL STATEMENTS**

The financial statements listed below are attached to this disclosure document as Exhibit F:

CCC’s audited financial statements for the fiscal years ended December 27, 2022 and December 28, 2021 and for each of the three years ended December 27, 2022, December 28, 2021, and December 29, 2020.

CCC’s unaudited financial statements for the period ended August 22, 2023.

* CCC guarantees our obligations to our franchisees, and a copy of that guarantee is attached at Exhibit F. CCC’s fiscal year ends on the Tuesday closest to December 31 each year.

ITEM 22 **CONTRACTS**

Exhibit A to this disclosure document contains a copy of the following agreements:

Exhibit A-1 Franchise Agreement and Exhibits; Electronic Debit Agreement; and Confidentiality Agreement; and

Exhibit A-2 Area Development Agreement.

Exhibit J Our current General Release language is included in this disclosure document as Exhibit J.

ITEM 23 **RECEIPT**

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

EXHIBIT A

A-1Franchise Agreement; Electronic Debit Agreement; Non-Disclosure
and Non-Competition Agreement

A-2Area Development Agreement



Noah's New York Bagels

Franchise Agreement

Noah's New York Bagels Franchise Agreement

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- | | |
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| <p>A Data Addendum</p> <p>B Guarantee, Indemnification, and Acknowledgement</p> <p>C List of Principals</p> | <p>D Electronic Fund Transfer Withdrawal Form (Direct Debits)</p> <p>E ADA Certification</p> <p>F Sample Form of Non-Disclosure and Non-Competition Agreement</p> |
|---|---|

Noah's New York Bagels Franchise Agreement

THIS FRANCHISE AGREEMENT (the "**Agreement**") is made and entered into as of the date that we have indicated on the signature page of this Agreement (the "**Effective Date**") by and between:

- Einstein Bros. Bagels Franchise Corporation, a Colorado corporation, with its principal place of business at 1720 Bellaire Street, Suite Skybox, Denver, Colorado 80222 ("**we**," "**us**," or "**our**"); and
- _____ a [resident of] _____ [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**you**" or the "**Franchisee**").

Introduction

*We own a format and system relating to the establishment and operation of "Noah's New York Bagels Restaurants" (which are businesses operating under our Proprietary Marks in buildings that bear our interior and/or exterior trade dress, each one of which is referred to as a "**Restaurant**"). A Restaurant specializes in the sale of Proprietary Items (which include items such as fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products that we may periodically specify), as well as non Proprietary Items (such as sandwiches, salads, soups, and other beverage items) for on premises and carry out consumption (collectively, the "**Products**").*

*Among the distinguishing characteristics of a Restaurant are that it operates under our "Noah's New York Bagels" "System." Our System includes (among other things): Products; equipment layouts; signage; distinctive interior and exterior design and accessories; operational procedures; quality and uniformity of products and services offered; recipes, procedures for management and inventory control; training and assistance; and marketing programs; all of which we may periodically change, improve, and further develop (together, the "**System**").*

*We identify the System by means of our Proprietary Marks. Our proprietary marks include certain trade names (for example, the "NOAH'S NEW YORK BAGELS" mark and logo), service marks, trademarks, logos, emblems, and indicia of origin, as well as other trade names, service marks, and trademarks that we may periodically specify in writing for use in connection with the System (all of these are referred to as our "**Proprietary Marks**"). We continue to develop, use, and control the use of our Proprietary Marks in order to identify for the public the source of services and products marketed under those marks and under the System, and to represent the System's high standards of quality, appearance, and service.*

You have asked to enter into the business of operating a Restaurant under our System and wish to obtain a franchise from us for that purpose, as well as to receive the training and other assistance we provide as described in this Agreement. You also understand and acknowledge

the importance of our high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised hereunder in conformity with our standards and specifications.

In recognition of all of the details noted above, the parties have decided to enter into this Agreement, taking into account all of the promises and commitments that they are each making to one another in this contract, and they agree as follows:

1 GRANT

1.1 *Rights and Obligations.* We grant you the right, and you accept the obligation, all according to the terms and conditions of this Agreement, to:

- 1.1.1 operate a Restaurant under the System (the “**Franchised Business**”);
- 1.1.2 use the Proprietary Marks and the System, but only in connection with the Franchised Business (recognizing that we may periodically change or improve the Proprietary Marks and the System); and
- 1.1.3 do all of these things at the Approved Location (which is defined in Section 1.2 below) and only at the Approved Location.

1.2 *Approved Location.* The street address of the location for the Franchised Business approved under this Agreement is specified in Exhibit A to this Agreement, and is referred to as the “**Approved Location**.”

- 1.2.1 We have the right to grant or withhold approval of the Approved Location under this Section 1.2. You understand, acknowledge, and agree that our review and approval of your proposed location, under this Section 1.2 does not constitute our assurance, representation, or warranty of any kind that your Franchised Business at the Approved Location will be profitable or successful.
- 1.2.2 You agree not to relocate the Franchised Business without our prior written consent. Any proposed relocation will be subject to our review of the new site under our then-current standards for site selection, except that we will also have the right to take into consideration any commitments we have given to other franchisees, licensees, landlords, and other parties relating to the proximity of a new restaurant to their establishment. In addition, and instead of a new franchise fee, you agree to reimburse us for the out-of-pocket costs that we incur in connection with reviewing and approving your proposed relocation, any related lease matters, and any necessary amendments to this Agreement (including our attorneys’ fees).

1.3 *Protected Territory and Exclusions.* During the term of this Agreement, we agree not to establish, and not to franchise any other person to establish, another Restaurant at any location within the “Protected Territory” (the area that we have designated in Exhibit A is referred to as the “**Protected Territory**”), except as otherwise provided in this Agreement (including for example, the provisions in Sections 1.3.1–1.3.5 below). Your Protected Territory does not include Captive Market Locations or Non-Traditional Facilities (defined below). We retain all other rights. We have the exclusive right,

among other things, on any terms and conditions we deem advisable, and without granting you any rights in these matters, to do any or all of the following:

- 1.3.1 We have the right to establish, and franchise others to establish, Restaurants at any location outside the Protected Territory, despite their proximity to the Protected Territory or the Approved Location or their actual or threatened impact on sales at the Franchised Business.
- 1.3.2 We have the right to establish, and license others to establish, Restaurants at any Non-Traditional Facility or Captive Market Location (as defined below) inside or outside the Protected Territory, despite such Restaurants' proximity to the Approved Location or their actual or threatened impact on sales at the Franchised Business.
- 1.3.3 We have the right to establish, and license others to establish, businesses that are not operated under the System and that do not use the Proprietary Marks licensed to you under this Agreement, even if those businesses offer or sell products that are the same as or similar to the Products offered from the Franchised Business, whether those businesses are located inside or outside the Protected Territory, despite such businesses' proximity to the Approved Location or their actual or threatened impact on sales at the Franchised Business (so long as those businesses are not Restaurants operated within the Protected Territory).
- 1.3.4 We have the right to acquire (or be acquired) and then operate any business of any kind, whether located inside or outside the Protected Territory, despite such businesses' proximity to the Approved Location or its actual or threatened impact on sales at the Franchised Business (so long as those businesses are not Restaurants operated within the Protected Territory).
- 1.3.5 We have the right to sell and distribute, or license others to sell and distribute, directly or indirectly, any Products or Proprietary Items in ready-to-prepare or bulk packaged form (as compared to single-serving ready-to-consume form), from any location or to any purchaser (including, but not limited, the sale of items at wholesale and to purchasers in the Protected Territory through supermarkets, gourmet shops, mail order, and on the Internet, under our Proprietary Marks or as private-labeled items), so long as these sales are not made from a Restaurant operated inside the Protected Territory (excluding a Captive Market Location or Non-Traditional Facility).
- 1.3.6 Definitions.
 - 1.3.6.1 The term "**Captive Market Location**" is agreed to include, among other things, non-foodservice businesses of any sort within which a Restaurant or an "Noah's New York Bagels" branded facility is established and operated (including, for example, hotels and resorts), as well as branded locations that serve only our brand of coffee.
 - 1.3.6.2 The term "**Non-Traditional Facility**" includes, among other things, college campuses, schools, hotels, casinos, airports and other travel facilities; federal, state, or local government facilities (including military

bases); theme and amusement parks; recreational facilities; seasonal facilities; shopping malls; theaters; and sporting event arenas and centers.

- 1.4 *Limits on Where You May Sell.* You may only offer and sell Products (unless otherwise identified in this Agreement, the term “Products” includes Proprietary Items) from the Franchised Business, only in accordance with the requirements of this Agreement and the procedures set forth in the Manual, and only to retail customers for consumption on the Franchised Business’s premises or for personal, carry-out consumption of food products. You agree not to offer or sell Products through any means other than through the Franchised Business as provided in this Section 1.4; and therefore, for example, you agree not to offer or sell Products from satellite locations, temporary locations, carts or kiosks, by use of catalogs, the Internet, or through any other electronic or print media. You must request and receive our prior written approval in order to offer and sell Products by delivery, or through catering, from the Restaurant. You also may not operate (nor authorize any other party to operate) a remote food preparation facility and/or kitchen (including cloud kitchens, dark kitchens, ghost kitchens, and otherwise): (a) inside your Restaurant; and/or (b) away from the premises of your Restaurant.
- 1.5 *Delivery and Catering.* You acknowledge and agree that Restaurants are primarily dine-in restaurants, and that we have the right to approve or disapprove any activity(ies) proposed to take place outside the Restaurant, including, without limitation, delivery and catering activities. We will consider various factors in determining whether to permit you to provide delivery or catering services from the Franchised Business, including, without limitation, the period of time you have been operating your Franchised Business, your sales volume, whether you have met certain quality standards and other benchmarks, and other standards that we may determine. In addition:
- 1.5.1 You agree not to engage in delivery and/or catering services, whether inside or outside of the Protected Territory, unless you have obtained our prior written consent as to each proposed delivery and/or catering order.
 - 1.5.2 Any delivery or catering activities that you undertake must be conducted in accordance with the procedures that we specify in the Manual or otherwise in writing. By granting approval to any one or more proposals to cater or deliver, we will not be deemed to have given our approval, or waived our right to disapprove, any ongoing or additional catering or delivery activities.
 - 1.5.3 We have the right (but not the obligation) to establish a catering program that may include online and telephone ordering features, on our own or in conjunction with one or more outside vendors (the “**Catering Program**”). If we establish a Catering Program, you agree to participate and to pay the fees and costs associated with doing so.
 - 1.5.4 We have the right to require that you execute delivery through Restaurant staff and/or through approved third-party delivery vendors. We will have the right at all times to approve or disapprove of any such delivery services, including the arrangements that you propose to make with any third-party delivery vendor.
 - 1.5.5 All delivery and catering sales will be considered as part of the Gross Sales (see Section 4.2.2 below) of your Franchised Business.

- 1.6 *Other Brands.* We operate businesses under brands other than the *Noah's New York Bagels* brand. You acknowledge and agree that: **(a)** this Agreement does not grant you any rights with respect to any other business that we and/or our affiliates operate, including but not limited to, the businesses that license and/or operate under the brands *Einstein Bros. Bagels* and *Manhattan Bagel* (the "**Other Brands**"); and **(b)** we will have the right to operate and license others to operate businesses under the Other Brands at any location whatsoever, whether inside or outside the Protected Territory.

2 TERM AND RENEWAL

- 2.1 *Term.* The term of this Agreement shall start on the Effective Date and, unless this Agreement is earlier terminated in accordance with its provisions, shall expire upon the earlier of: **(a)** ten (10) years from the date upon which the Restaurant opens for business; or **(b)** eleven (11) years from the Effective Date.
- 2.2 *Renewal.* You will have the right to renew this Agreement for one (1) additional ten-year term, subject to your having satisfied all of the following conditions before renewal:
- 2.2.1 You must give us written notice of your election to renew at least nine (9) months before the end of the term of this Agreement (but not more than one (1) year before the term expires).
- 2.2.2 You must remodel and refurbish the Franchised Business to comply with our then-current standards in effect for new Restaurants (as well as the provisions of Sections 5.4.4 and 8.6 below).
- 2.2.3 At the time of renewal, you must be in material compliance with the provisions of this Agreement (including any amendment to this Agreement), any successor to this Agreement, and/or any other agreement between you (and your affiliates) and us (and our affiliates) (and in our reasonable judgment, you must have been in material compliance during the term of this Agreement), even if we did not issue a notice of default or exercise our right to terminate this Agreement if you did not meet your obligations.
- 2.2.4 You must have timely met all of your financial obligations to us, our affiliates, the System Marketing Fund, and/or the Market Co-op Fund, as well as your vendors, throughout the term of this Agreement (even if we did not issue a notice of default or exercise our right to terminate this Agreement if you did not meet your obligations).
- 2.2.5 You must sign our then-current form of franchise agreement, which will supersede this Agreement in all respects (except with respect to the renewal provisions of the new franchise agreement, which shall not supersede this Section 2), and which you acknowledge may contain terms, conditions, obligations, rights, and other provisions that are substantially and materially different from those spelled out in this Agreement (including, for example, a higher percentage royalty fee and marketing contribution). If you are an entity (in this Agreement, the term "**entity**" includes (among other things) a corporation, limited liability company, partnership, and a limited liability partnership), then your

direct and indirect owners must sign and deliver to us a personal guarantee of your obligations under the renewal form of franchise agreement.

- 2.2.6 Instead of a new initial franchise fee, you must pay us a renewal fee equal to ten percent (10%) of our then-current initial franchise fee for a new Franchised Business.
- 2.2.7 You agree to also sign and deliver to us a renewal amendment to your new franchise agreement, which will include (among other things) a mutual general release (which will include limited exclusions) in a form that we will reasonably provide. Your affiliates and your respective direct and indirect owners (and any other parties that we reasonably request) must also sign and deliver that renewal agreement and mutual release.
- 2.2.8 You and your personnel must meet our then-current qualification and training requirements.
- 2.2.9 You must be current with respect to your financial and other obligations to your lessor, suppliers, and any other parties with whom you do business.

3 OUR DUTIES

- 3.1 *Training.* We will provide you with the training specified in Section 6 below.
- 3.2 *Standard Layout.* We may make available, at no charge to you, a standard layout plan for the construction of a Restaurant and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs. We may also provide the site selection and lease review assistance called for under Section 5.3 below.
- 3.3 *Additional Assistance.* You may request, or we may require you to have, one or more members of our operations and/or training staff to be present at the opening of the Franchised Business. We will provide such additional on-site pre-opening and opening supervision and assistance that we think is advisable, and as may be described in the Manual (defined below).
- 3.4 *Manual.* During the term of this Agreement, we will provide you with access to our confidential operations manuals and other written instructions relating to the operation of a Restaurant (the "**Manual**"), in the manner and as described in Section 10 below.
- 3.5 *Marketing Materials.* We will review and shall have the right to approve or disapprove all marketing and promotional materials that you propose to use, pursuant to Section 13 below.
- 3.6 *Marketing Funds.* We will administer the Systemwide Marketing Fund or Market Co-Op Fund (as defined in Section 13 below), if such funds exist or are created, as set forth in Section 13 below.
- 3.7 *Grand Opening Marketing Program.* We will assist you in developing and conducting the Grand Opening Marketing Program (as described in Section 13.8 below), which program shall be conducted at your expense.

- 3.8 *Inspection Before Opening.* We will evaluate the Franchised Business before it first opens for business. You must not open the Franchised Business or otherwise start operations until you have received our prior written approval.
- 3.9 *Periodic Assistance.* We will provide you periodic assistance in the marketing, management, and operation of the Franchised Business at the times and in the manner that we determine. We will periodically offer you the services of certain of our representatives, such as an accounting manager, and these representatives will periodically visit your Franchised Business and offer advice regarding your operations.
- 3.10 *Services Performed.* You acknowledge and agree that any of our designees, employees, agents, or independent contractors (such as an “area developer”) may perform any duty or obligation imposed on us by the Agreement, as we may direct (if so, we will, nonetheless, remain responsible to you for the performance of these obligations).
- 3.11 *Our Decision-Making.* In fulfilling our obligations under this Agreement, and in conducting any activities or exercising our rights pursuant to this Agreement, we (and our affiliates) will always have the right: **(a)** to take into account, as we see fit, the effect on, and the interests of, other franchised businesses and systems in which we have an interest and on our activities (and those of our affiliates’); **(b)** to share market and product research, and other proprietary and non-proprietary business information, with other franchised businesses and systems in which we (or our affiliates) have an interest, and/or with our affiliates; **(c)** to introduce Proprietary Items and non-proprietary items or operational equipment used by the System into other franchised systems in which we have an interest; and/or **(d)** to allocate resources and new developments between and among systems, and/or our affiliates, as we see fit. You understand and agree that all of our obligations under this Agreement are subject to this Section 3.11, and that nothing in this Section 3.11 shall in any way affect your obligations under this Agreement.
- 3.12 *Confirmation of Performance.* After we have performed our pre-opening obligations to you under this Agreement, we may ask that you execute and deliver to us a confirmation (the “**Confirmation of Performance**”), in a form we reasonably request, confirming that we have performed those obligations. If we ask you to provide us with such a certificate, you must execute and deliver the Confirmation of Performance to us within three (3) business days after our request. However, if you do not reasonably believe that we have performed all of our pre-opening obligations, you must, within that same three (3) day period, provide us with written notice specifically describing the obligations that we have not performed. Not later than three (3) business days after we complete all the obligations that you specified in that notice, you must execute and deliver the Confirmation of Performance to us. You must do so even if we performed such obligations after the time performance was due under this Agreement. The term “pre-opening obligations” means the obligations we have to you under this Agreement that must be performed before the date when your Franchised Business starts its operations.

4 ROYALTY FEES; SALES REPORTING

- 4.1 *Initial Franchise Fee.* You agree to pay us an initial franchise fee of Thirty-Five Thousand Dollars (\$35,000) (the “**Initial Franchise Fee**”). The Initial Franchise Fee is due and payable to us on the day that you sign this Agreement. The Initial Franchise

Fee is not refundable in consideration of administrative and other expenses that we incur in granting this franchise and for our lost or deferred opportunity to grant a franchise to other parties.

- 4.2 *Royalty Fee and Sales Reports.* For each Week during the term of this Agreement, you agree to: **(a)** pay us a continuing royalty fee in an amount equal to five percent (5%) of the Gross Sales of the Franchised Business ("**Royalty Fees**"); and **(b)** report to us in writing (or, at our option, electronically) your Gross Sales (a "**Sales Report**"). You must also provide to us monthly Gross Sales reports on or before the close of business of the first Friday of each month based on the prior month's Gross Sales. As used in this Agreement:
- 4.2.1 the term "**Week**" means Wednesday from 12:00:00 AM to Tuesday at 11:59:59 PM, or such other seven (7) day period that we may periodically designate;
- 4.2.2 the term "**Gross Sales**" means all revenue from the sale of all Products, services and Proprietary Items, and all other income of every kind and nature related to, derived from, or originating from the Franchised Business, including without limitation proceeds of any business interruption insurance policies, and sales from catering and delivery if permitted; whether such sales are made at retail or wholesale (whether permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit. However, Gross Sales excludes customer refunds and ordinary discounts, as well as sales taxes and/or other taxes that you directly collect from customers and actually transmit to the appropriate taxing authorities.
- 4.3 *Alternative Royalty Fees and Other Payments.* If applicable law (state or local) prohibits or restricts in any way your ability to pay (or our ability to collect) Royalty Fees or other amounts based on Gross Sales derived from the sale of alcoholic beverages at the Franchised Business, then the parties will renegotiate and agree (in writing) on a new structure for the Royalty Fees and other provisions so as to provide the same basic economic effect to both parties, as otherwise provided in this Agreement, with a corresponding change to the definition of Gross Sales.
- 4.4 *Due Date.* All payments required by Section 4.2 above and Section 13 below, and the Sales Report required by Section 4.2, must be paid and submitted so that they are received by us, in our offices, by close of business on Friday of each Week, based on the Gross Sales of the previous Week just ended. In addition, you agree to all of the following:
- 4.4.1 You agree to deliver to us all of the reports, statements, and/or other information that is required under Section 12.3 below, at the time and in the format that we reasonably request.
- 4.4.2 You agree to establish an arrangement for electronic funds transfer to us, or electronic deposit to us of any payments required under Sections 4 or 13 of this Agreement. Among other things, to implement this point, you agree to sign and return to us our current form of "ACH - Authorization Agreement for Prearranged Payments (Direct Debits)," a copy of which is attached to this Agreement as Exhibit D (and any replacements for that form that we deem to be periodically needed to implement this Section 4.4.2), and you agree to comply with the

payment and reporting procedures that we may specify in the Manual or otherwise in writing.

- 4.4.3 You acknowledge and agree that your obligation to make full and timely payment of Royalty Fees and Marketing Contributions (and all other sums due to us) are absolute, unconditional, fully earned, and due when you have generated and received Gross Sales.
- 4.4.4 You agree that you will not, for any reason, delay or withhold the payment of any amount due to us under this Agreement; put into escrow any payment due to us; set -off payments due to us against any claims or alleged claims that you may allege against us, the System Marketing Fund, the Market Co-op Fund or others.
- 4.4.5 You agree that if you do not provide us, as requested, with access to your computer system to obtain sales information or, if we permit, printed and signed sales reports, then we will have the right to impute your sales for any period using (among other things) your sales figures from any Week(s) that we choose, including but not limited to those with your highest grossing sales; and that you must pay the royalties on that amount (whether by check or by our deduction of that amount from your direct debit account).
- 4.4.6 You agree that you will not, whether on grounds of alleged non-performance by us or others, withhold payment of any fee, including, without limitation, Royalty Fees or Marketing Contributions, nor withhold or delay submission of any reports due under this Agreement including, without limitation, Sales Reports.
- 4.5 *No Subordination.* You agree not to subordinate to any other obligation your obligation to pay us the royalty fee and/or any other amount payable to us, whether under this Agreement or otherwise, and that any such subordination commitment that you may give without our prior written consent shall be null and void.
- 4.6 *Late Payment.* Any payment that we (or the appropriate marketing fund) do not receive on or before the due date shall be deemed overdue. Any report that we do not receive on or before the due date shall also be deemed overdue. If any payment is overdue, then you agree to pay us, in addition to the overdue amount, interest on the overdue amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month (but not to exceed any maximum rate permitted by law, if any). Our entitlement to such interest shall be in addition to any other remedies we may have.
- 4.7 *Other Funds Due.* You agree to pay us, within ten (10) days of our written request (which is accompanied by reasonable substantiating material), any monies that we have paid, or that we have become obligated to pay, on your behalf, by consent or otherwise under this Agreement.
- 4.8 *Index.* We have the right to adjust, for inflation, all fixed dollar amounts under this Agreement (except for the Initial Franchise Fee) once a year to reflect changes in the Index. For the purpose of this Section 4.8, the term "**Index**" means the Consumer Price Index (1982-84=100; all items; CPI-U; all urban consumers) as published by the U.S. Bureau of Labor Statistics ("**BLS**"). If the BLS no longer publishes the Index, then we will have the right to designate a reasonable alternative measure of inflation.

- 4.9 *Systems Support Fee.* You must pay us (or our affiliate or designee) a systems support fee for each month in such reasonable amount as we may periodically designate. (You acknowledge that upon execution of this Agreement, the systems support fee is approximately \$400-600 per month.)

5 FRANCHISED BUSINESS LOCATION, CONSTRUCTION AND RENOVATION

- 5.1 *Opening the Franchised Business.* You are responsible for purchasing, leasing, or subleasing a suitable site for the Franchised Business. You must establish the Franchised Business and have it open and in operation within two hundred seventy (270) days after the Effective Date of this Agreement. Time is of the essence. You acknowledge and agree that any site selection assistance or approval that we provide will not be construed or interpreted as a guarantee of success for the approved location (or any other site), nor shall any location recommendation or approval we make be deemed a representation that any particular location is available or suitable for use as a Franchised Business.
- 5.2 *Lease Conditions.* Our approval of the lease or purchase agreement shall be conditioned upon the inclusion in the lease or purchase agreement of terms acceptable to us. We will have the right to require inclusion in the lease of any or all of the following provisions, which will:
- 5.2.1 Allow us the right to elect to take an assignment of the leasehold interest upon termination or expiration of your rights under this Agreement, or upon the termination or expiration of your rights under the lease;
 - 5.2.2 Require the lessor to provide us with a copy of any notice of deficiency under the lease sent to you, at the same time as notice is given to you (as the lessee under the lease), and which grants us the right (but not obligation) to cure any of your deficiencies under the lease within fifteen (15) business days after the expiration of the period in which you had to cure any such default should you fail to do so;
 - 5.2.3 Recognize your right to display and use the Proprietary Marks in accordance with the specifications required by the Manual, subject only to the provisions of applicable law;
 - 5.2.4 Require that the premises be used solely for the operation of a "Noah's New York Bagels" restaurant business;
 - 5.2.5 Upon our request, require you to de-identify the premises as a Restaurant and to promptly remove all Proprietary Marks, signs, decor and other items which we reasonably request be removed as being distinctive and indicative of a Restaurant and the System (or, if you fail to do the foregoing things, then the lease must permit us to have sufficient access to the interior and exterior of the premises so that we may de-identify the premises, as provided above, at your cost); and

- 5.2.6 State that any default under the lease shall also constitute a default under this Agreement, and any default under this Agreement shall also constitute a default under the lease.
- 5.3 *Review.* Any reviews that we conduct under this Section 5 are only for our benefit. You also acknowledge and agree to all of the following:
- 5.3.1 You acknowledge and agree that our review and approval of a site, lease, sublease, design plans or renovation plans for the Store do not constitute a recommendation, endorsement, or guarantee of the suitability of that location or the terms of the lease, or sublease, or purchase agreement. You agree that you will take all steps necessary to determine for yourself whether a particular location and the terms of any lease, sublease, or purchase agreement for the site are beneficial and acceptable to you.
- 5.3.2 You also acknowledge and agree that no matter to what extent (if any) that we participate in lease negotiations, discussions with the landlord, and/or otherwise in connection with reviewing the lease, you have to make the final decision as to whether or not the lease is sensible for your business, and the final decision as to whether or not to sign the lease is yours, and you agree not hold us responsible with respect to the terms and conditions of your lease.
- 5.3.3 Additionally, with respect to any review of your design plans and construction or renovation plans, or other federal, state, or local health regulations, we will not review whether you are in compliance with federal, state, or local laws and regulations, including the ADA (defined below), and you acknowledge and agree that: **(a)** you are solely responsible for compliance with all such laws and regulations; and **(b)** our approval is not, and will not be deemed to be, an assessment as to whether or not you have complied with those laws and regulations.
- 5.4 *Preparing the Site.* You agree that, promptly after obtaining possession of the approved site for the Franchised Business, you shall do all of the following things:
- 5.4.1 cause to be prepared and submit for our approval a description of any modifications to our specifications for a Franchised Business (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating materials) required for the development of a Franchised Business at the site leased or purchased for that purpose, provided that you may modify our specifications only to the extent required to comply with all applicable ordinances, building codes and permit requirements (with prior notification to and written approval from us);
- 5.4.2 obtain all required zoning permits, liquor licenses, all required building, utility, health, sign permits and licenses, and any other required permits and licenses;
- 5.4.3 purchase or lease equipment, fixtures, furniture and signs as required under this Agreement (including but not limited to the specifications we have provided in writing, whether in the Manual or otherwise);

- 5.4.4 complete the construction and/or remodeling, equipment, fixture, furniture and sign installation and decorating of the Franchised Business in full and strict compliance with plans and specifications for the Franchised Business that we have approved in writing, as well as all applicable ordinances, building codes and permit requirements;
 - 5.4.5 obtain all customary contractors' sworn statements and partial and final waivers of lien for construction, remodeling, decorating and installation services; and
 - 5.4.6 otherwise complete development of and have the Franchised Business ready to open and commence the conduct of its business in accordance with Section 5.1 above.
- 5.5 *Use of the Premises.* You may use the Approved Location only for the purpose of operating the Franchised Business and for no other purpose. You agree not to co-brand or permit any other business to operate at the Approved Location without our prior written approval.
- 5.6 *Relocation.* You agree not to relocate the Franchised Business without our prior written consent. We will have the right to grant or to withhold our approval of any proposed location or relocation and, if our approval is granted, you understand that our approval will not be deemed to be our guarantee, representation, or assurance that your Franchised Business shall be profitable or successful at that location or elsewhere.
- 5.7 *Construction or Renovation.* In connection with any construction or renovation of the Franchised Business, and before starting any such construction or renovation, you agree to comply, at your expense, with all of the following requirements, which you must satisfy to our reasonable satisfaction:
- 5.7.1 You agree to employ a qualified, licensed architect or engineer who is reasonably acceptable to us to prepare, for our approval, preliminary plans and specifications for site improvement and construction of the Franchised Business based upon prototype design and image specifications we will furnish in the Manual (depending on whether your Franchised Business will be operated in a stand-alone facility, and end-cap, or as a retro-fit of an existing building). Our approval shall be limited to conformance with our standard image specifications and layout, and shall not relate to your obligations with respect to any federal, state and local laws, codes and regulations including the applicable provisions of the Americans with Disabilities Act (the "**ADA**") regarding the construction, design and operation of the Franchised Business, which subjects shall be your sole responsibility.
 - 5.7.2 You agree to comply with all federal, state, and local laws, codes and regulations, including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Franchised Business. If you receive any complaint, claim, or other notice alleging a failure to comply with the ADA, you agree to provide us with a copy of that notice within five (5) days after you have received the notice.
 - 5.7.3 In connection with any standard layout and equipment plans that we provide to you, you acknowledge that such specifications do not meet and are not meant to

address the requirements of any federal, state or local law, code or regulation (including those concerning the ADA and/or similar rules governing public accommodations or commercial facilities for persons with disabilities), nor shall such plans contain the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Franchised Business, compliance with all of which shall be your responsibility and at your expense. In addition:

5.7.3.1 You agree to adapt, at your expense, the standard specifications to the Franchised Business location, subject to our approval, as provided in above in Section 5.7.1, which we will not unreasonably withhold, provided that such plans and specifications conform to our general criteria.

5.7.3.2 If you select an architect or contractor as to whom we have not already given our written approval to prepare drawings for your proposed Restaurant, then you agree to pay us a design review fee in the amount of Two Thousand Dollars (\$2,000) to review your proposed drawings and plans for the Franchised Business; which amount will be due before we begin our review.

5.7.3.3 You understand and acknowledge that we have the right to modify the prototype architectural plans and specifications as we deem appropriate from time to time (however, we will not modify the prototype architectural plans and specifications for the Franchised Business developed pursuant to this Agreement once those prototype architectural plans and specifications have been given to you).

5.7.4 You will be responsible for obtaining all zoning classifications and clearances which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to your location. After having obtained such approvals and clearances, you must submit to us, for our prior written approval, final plans for construction based upon the preliminary plans and specifications. Our review and approval of plans shall be limited to review of such plans to assess compliance with our design standards for Restaurants, including such items as trade dress, presentation of Proprietary Marks, and the provision to the potential customer of certain products and services that are central to the purpose, atmosphere, and functioning of Noah's New York Bagels Restaurants. We will not review nor shall any approval be deemed to include your compliance with federal, state, or local laws and regulations, including the ADA, and you acknowledge and agree that compliance with such laws is and shall be your sole responsibility. Once we have approved those final plans, you cannot later change or modify the plans without our prior written consent. Any such change made without our prior written permission shall constitute a material default under this Agreement and we may withhold our authorization to open the Franchised Business (or if the Franchised Business is already open and operational we may require you to close the Franchised Business) for business until the unauthorized change is rectified (or reversed) to our reasonable satisfaction.

- 5.7.5 You agree to obtain all permits and certifications required for the lawful construction and operation of the Franchised Business and certify in writing to us that all such permits and certifications have been obtained.
 - 5.7.6 You agree to employ a qualified licensed general contractor who is reasonably acceptable to us to construct the Franchised Business and to complete all improvements.
 - 5.7.7 You agree to obtain and maintain in force during the entire period of construction the insurance required under Section 15 below; and you must deliver to us such proof of such insurance as we may require.
 - 5.7.8 You acknowledge that any site selection assistance or approval that we provide is not to be construed or interpreted as our guarantee of success for said location, nor shall any location that we recommend, or approval that we give, be deemed as our representation that the location is available or suitable for your use as a Franchised Business.
- 5.8 *Pre-Opening.* Before opening for business, you agree to meet all of the pre-opening requirements specified in this Agreement (including those with respect to the Grand Opening Marketing Program), the Manual, and/or that we may otherwise specify in writing. Within ninety (90) days after the Franchised Business first opens for business, you must give us a full written breakdown of all costs associated with the development and construction of the Franchised Business, in the form that we may reasonably find acceptable or that we may otherwise require. Additionally, before opening the Franchised Business, and after any renovation, you must execute and deliver to us an ADA Certification in the form attached to this Agreement as Exhibit E, to certify that the Franchised Business and any proposed renovations comply with the ADA.

6 TRAINING AND PERSONNEL

- 6.1 *We Will Provide Training.* Before the opening of your Franchised Business, we will provide to you, and to your Store Manager (defined below), the initial training programs that we designate for new System franchisees (the “**Initial Training Program**”). We will also provide the ongoing training that we periodically deem appropriate, at such places and times that we deem proper. Our training programs will be conducted in the English language. We will be responsible for the cost of instruction and materials (except as set forth in Section 6.2.4 below), as provided in Section 6.2.9 below.
- 6.2 *Your Training and Personnel Obligations.* Before opening the Franchised Business, you (or, if you are an entity, your controlling principal who is also designated to serve as your general manager who we have previously approved to serve in that role (the “**Operating Partner**”)) and up to one full-time general manager responsible for the day-to-day operation of the Franchised Business (the “**Store Manager**”) must attend and successfully complete, to our satisfaction, the initial training program we offer.
- 6.2.1 The term “**Certified Manager**” is agreed to mean: **(a)** you (or the Operating Partner); **(b)** the Store Manager; and **(c)** additional managers of the Franchised Business who have successfully completed (to our satisfaction) our initial training program. The Store Manager must have at least three (3) years of experience

working in a management capacity in a quick service restaurant or fast casual restaurant, and the Store Manager may serve as the Operating Partner.

- 6.2.2 You may send up to two (2) individuals (including the Certified Managers) to the initial training program. If you ask to send more than two (2) individuals to the initial training program, then you agree to pay us a training fee in the amount of One Thousand Six Hundred Dollars (\$1,600) for each additional individual that will attend the initial training program, with payment to be made in full before initial training starts.
- 6.2.3 The Franchised Business must be under the active full-time management of either you or the Operating Partner or a Certified Manager. For the purpose of this Section 6.2, the Operating Partner must be a person who has at least a ten percent (10%) ownership interest in Franchisee, and who has executed the Guarantee, Indemnification, and Acknowledgement attached to this Agreement as Exhibit B.
- 6.2.4 If any of the Certified Managers cease active management or employment at the Franchised Business, or if we disapprove of any of the Certified Managers, then you agree to enroll a qualified replacement (who must be reasonably acceptable to us) in our initial training program within thirty (30) days after the Certified Manager ended his/her full-time employment and/or management responsibilities. The replacement must attend and successfully complete the basic management training program, to our reasonable satisfaction, as soon as it is practical to do so. We will provide you with two (2) replacement training sessions during the term of this Agreement, for up to a total of three (3) individuals during each such session. If you ask to send more than three (3) individuals to a replacement training session, or if you request more than two (2) replacement training sessions, then you agree to pay us a training fee in the amount of One Thousand, Six Hundred Dollars (\$1,600) for each additional individual to be trained, with payment to be made in full before the replacement training starts, plus all other expenses we incur in connection with such training (including the costs of transportation, lodging, and meals).
- 6.2.5 Your Certified Managers may also be required to attend such refresher courses, seminars, and other training programs as we may reasonably specify from time to time.
- 6.2.6 We will have the right to require that your trainees execute and deliver to us a personal covenant of confidentiality and non-competition in substantially the form appended hereto as Exhibit F.
- 6.2.7 You and your staff must, at all times, cooperate with us and with our representatives.
- 6.2.8 We have the right to require that you cover your trainees under insurance policies, as specified below in this Agreement, at all times including but not limited to the training program.
- 6.2.9 We will bear the cost of all training (instruction and required materials, except as otherwise provided above in Section 6.2.4), and you will bear all other expenses

incurred in connection with any training (including the costs of transportation, lodging, meals, wages, benefits, and worker's compensation insurance).

- 6.2.10 You may ask us to provide on-site training in addition to that which we will provide to you in connection with the initial training program and/or the opening of the Franchised Business, and if we are able to do so, then you agree to pay us our then-current per diem training charges as well as our out-of-pocket expenses.

7 PRODUCT AND SUPPLY

- 7.1 *Supplies.* You agree to buy all Products, ingredients, supplies, materials, and other products used or offered for sale at the Franchised Business only from suppliers that we have approved in writing (and whom we have not subsequently disapproved). In determining whether we will approve any particular supplier, we will consider various factors, including but not limited to: **(a)** whether the supplier can demonstrate, to our continuing reasonable satisfaction, the ability to meet our then-current standards and specifications for such items; **(b)** whether the supplier has adequate quality controls and capacity to supply your needs promptly and reliably; **(c)** whether approval of the supplier would enable the System, in our sole opinion, to take advantage of marketplace efficiencies; and **(d)** whether the supplier will sign a confidentiality agreement and a license agreement in the form that we may require (which may include a royalty fee for the right to use our Proprietary Marks and any other proprietary rights, recipes, and/or formulae). For the purpose of this Agreement, the term “**supplier**” includes, but is not limited to, manufacturers, distributors, resellers, and other vendors. You also recognize and agree that we have the right to appoint only one manufacturer, distributor, reseller, and/or other vendor for any particular item (including but not limited to distribution of products to Restaurants, soft drinks, and similar items), which may be us or one of our affiliates.

- 7.1.1 Notwithstanding anything to the contrary in this Agreement, you agree to buy all of your requirements for any Proprietary Items only from us or from our designee(s), as provided in Section 7.2 below (possibly through one or more distributors that we designate in writing). We have the right, but not the obligation, to introduce additional Proprietary Items periodically.

- 7.1.2 We have the right (directly, through our affiliates, and/or our designees) to establish food commissaries and distribution facilities, and we have the right to designate these as approved or required manufacturers, suppliers or distributors.

- 7.1.3 If you want to buy any Products or any items (except for Proprietary Items) from an unapproved supplier, you must first submit a written request to us asking for our prior written approval. You agree not to buy from any such supplier unless and until we have given you our prior written consent to do so. We have the right to require that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to us or to an independent laboratory that we have designated for testing. You (or the supplier) may be required to pay a charge, not to exceed the reasonable cost of the inspection, as well as the actual cost of the test. We have the right to also require that the supplier comply with such other requirements that we have the

right to designate, including but not limited to payment of reasonable continuing inspection fees and administrative costs and/or other payment to us by the supplier on account of their dealings with you or other franchisees, for use of our trademarks, and for services that we may render to such suppliers. We also reserve the right, at our option, to periodically re-inspect the facilities and products of any such approved supplier and to revoke our approval if the supplier does not continue to meet any of our then-current criteria.

- 7.1.4 Nothing in the other provisions of this Agreement shall be construed to require us to approve any particular supplier, nor to require that we make available to prospective suppliers, standards and specifications for formulas, which we have the right to deem confidential.
- 7.1.5 Notwithstanding anything to the contrary contained in this Agreement, you acknowledge and agree we have the right to establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers that are willing to supply all or some Restaurants with some or all of the products and/or services that we require for use and/or sale in the development and/or operation of Restaurants. In this event, we may limit the number of approved suppliers with whom you may deal, designate sources that you must use for some or all Products, Proprietary Items, and other products and services, and/or refuse any of your requests if we believe that this action is in the best interests of the System or the network of Restaurants. We have the right to approve or disapprove of the suppliers who may be permitted to sell Products to you.
- 7.1.6 You agree that we have the right to collect and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments or benefits (collectively, "**Allowances**") offered by suppliers to you or to us (or our affiliates) based upon your purchases of Products, Proprietary Items, and other goods and services. These Allowances include those based on System-wide purchases of beverages, food, paper goods, and other items. You assign to us or our designee all of your right, title and interest in and to any and all such Allowances and authorize us (or our designee) to collect and retain any or all such Allowances without restriction.
- 7.2 *Proprietary Items.* You agree that the Proprietary Items we may specify for sale at the Franchised Business are manufactured in accordance with our secret blends, standards, and specifications, and are Proprietary Items of ours and/or our affiliates. In order to maintain the high standards of quality, taste, and uniformity associated with any Proprietary Items sold under the System, you agree to purchase Proprietary Items only from us or from our designee(s), and not to offer or sell any items that are similar to (but not the same as) Proprietary Items at or from the Franchised Business. In connection with the handling, storage, transport and delivery of any Proprietary Items that you buy from us, our affiliates or designee(s), you agree that any action (or inaction) by a third party (e.g., an independent carrier) in connection with the handling, storage, transport and delivery of the Proprietary Items shall not be attributable to us, nor constitute negligence on our part.

- 7.3 *Employee Attire and Personal Appearance.* Your employees must comply with such dress code or standards as we may require, which may include use of branded (or other “**uniform**”) apparel, and otherwise identify themselves with the Proprietary Marks at all times in the manner we specify (whether in the Manual or otherwise in writing) while on a job for the Franchised Business. We may also require that you and your employees comply with personal appearance standards (including but not limited to dress code, shoes, hair color, body art, piercing, sanitation and personal hygiene, foundation garments, personal displays at work stations, etc.).

8 YOUR DUTIES

In addition to all of the other duties specified in this Agreement, you agree to all of the following:

- 8.1 *Importance of Following Standards.* You understand and acknowledge that every detail of the Franchised Business is important to you, to us, and to other franchisees in order to develop and maintain high operating standards, to increase the demand for the Products, Proprietary Items, and services sold by all franchisees, and to protect our reputation and goodwill.
- 8.2 *Opening.* In connection with the opening of the Franchised Business:
- 8.2.1 You agree to conduct, at your expense, such grand opening promotional and marketing activities as we may require, as set forth in Section 13 below.
- 8.2.2 You agree to open the Franchised Business by the date specified in Section 5.1 above. You agree to give us written notice at least fourteen (14) days before the date on which you propose to first open the Franchised Business for business. We reserve the right to have our representative(s) present at the opening of the Franchised Business, and if we so require, you shall not open the Franchised Business without the on-site presence of the representative(s) we select; however, we agree not to unreasonably delay the opening of the Franchised Business.
- 8.2.3 You will not open the Franchised Business until we have determined that all construction has been substantially completed, and that such construction conforms to our standards including, but not limited, to materials, quality of work, signage, decor, paint, and equipment, and we have given you our prior written approval to open, which we will not unreasonably withhold.
- 8.2.4 You agree not to open the Franchised Business until the Certified Managers have successfully completed all training that we require, and not until you have hired and trained to our standards a sufficient number of employees to service the anticipated level of the Franchised Business's customers.
- 8.2.5 In addition, you agree not to open the Franchised Business until the Initial Franchise Fee and any other amounts due to us (and our affiliates) under this Agreement or any other agreements have been paid.
- 8.3 *Health Standards.* You agree to meet and maintain the highest health standards and ratings applicable to the operation of the Franchised Business. You must furnish to us,

within five (5) days of your receipt, a copy of all inspection reports, warnings, citations, certificates, and/or ratings resulting from inspections conducted by any federal, state or municipal agency with jurisdiction over the Franchised Business.

8.4 *Use of the Premises.*

8.4.1 You may use the Approved Location only for the purpose of operating the Franchised Business and for no other and for no other purpose. This includes your agreement not to : (a) co brand or permit any other business to operate at the Approved Location; (b) permit any other party to use your Approved Location as a food preparation facility and/or kitchen (including cloud kitchens, dark kitchens, ghost kitchens, and otherwise); and/or (c) permit any of the staff (including management) that work in your Franchised Business to also work in another foodservice business operated in the same facility and/or a contiguous setting.

8.4.2 You agree to keep the Franchised Business open and in normal operation for the hours and days that we may periodically specify in the Manual or as we may otherwise approve in writing.

8.5 *Franchised Business Condition and Maintenance.* You agree that you will, at all times, maintain the Franchised Business in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without our prior written consent) as may be required for that purpose (including but not limited to the periodic repainting or replacement of obsolete signs, furnishings, equipment, and decor that we may reasonably require). You also agree to obtain maintenance services from qualified vendors for all major items of equipment used in the Franchised Business and maintain those service agreements at all times.

8.6 *Remodeling.* You agree to refurbish the Franchised Business at your expense to conform to our then-current building design, exterior facade, trade dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the then-current image for new Restaurants, including but not limited to remodeling, redecoration, and modifications to existing improvements, all of which we may require in writing (collectively, "**Facilities Remodeling**"). In this regard, the parties agree that:

8.6.1 You will not have to engage in Facilities Remodeling more than once every five (5) years during the term of this Agreement (and not in an economically unreasonable amount); provided, however, that we may require Facilities Remodeling more often if Facilities Remodeling is required as a pre-condition to renewal (as described in Section 2.2.2 above); and

8.6.2 You will have six (6) months after you receive our written notice within which to complete Facilities Remodeling.

8.7 *Staffing.* You agree to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including at least one (1) manager on duty at all times, and to take such steps as are necessary to ensure that your employees preserve good customer relations and comply with such dress code as we may prescribe.

- 8.8 To insure that the highest degree of quality and service is maintained, you agree to operate your Franchised Business in strict conformity with such methods, standards, and specifications that we may periodically require in the Manual or otherwise in writing. In this regard, you agree to do all of the following:
- 8.8.1 You agree to maintain in sufficient supply, and to use and/or sell at all times only the Products, ingredients, materials, supplies, and paper goods that meet our written standards and specifications, and you also agree not to deviate from our standards and specifications by using or offering any non-conforming items without our specific prior written consent.
 - 8.8.2 You agree: **(a)** to sell or offer for sale only those Products and services that we have approved in writing for you to sell at your Franchised Business; **(b)** to sell or offer for sale all those Products, utilizing the ingredients and employing the preparation standards and techniques that we specify in writing; **(c)** not to deviate from our standards and specifications, including manner of preparation of Products; **(d)** to stop selling and offering for sale any Products or services that we at any time disapprove in writing (recognizing that we have the right to do so at any time); and **(e)** that if you propose to deviate (or if you do deviate) from our standards and specifications, whether or not we have approved the deviation, that deviation shall become our property.
 - 8.8.3 You agree to permit us, or our agents, at any reasonable time, to remove samples of Products, without payment, in amounts reasonably necessary for testing by us or an independent laboratory to determine whether those samples meet our then-current standards and specifications. In addition to any other remedies we may have under this Agreement, we may require you to bear the cost of such testing if we had not previously approved the supplier of the item or if the sample fails to conform to our specifications.
 - 8.8.4 You agree to buy and install, at your expense, all fixtures, furnishings, equipment, decor, and signs as we may specify.
 - 8.8.5 You agree not to install or permit to be installed on or about the premises of the Franchised Business, without our prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items that we have not previously in writing approved as meeting our standards and specifications.
 - 8.8.6 You agree not to install or permit anyone else to install any vending machine, game or coin-operated (or electronic counterpart) device without our prior written consent to do so.
 - 8.8.7 You agree not to offer mobile carts, bulk orders, or call-ahead orders. You agree not to offer catering or delivery services except as permitted under Section 1.5 above.
 - 8.8.8 You agree to fully and faithfully comply with all laws and regulations applicable to your Franchised Business. You agree that you will immediately suspend operation of (and close) the Franchised Business if: **(a)** any Products sold at the Franchised Business appears to have been adulterated or otherwise deviate from our standards for Products; **(b)** any Products sold at the Franchised

Business fail to comply with applicable laws or regulations; and/or **(c)** you fail to maintain the Products, Franchised Business premises, equipment, personnel, or operation of the Franchised Business in accordance with any applicable law or regulations. In the event of such closing, you agree to immediately notify us, in writing, and also destroy all contaminated or adulterated products, eliminate the source of those products, and remedy any unsanitary, unsafe, or other condition or other violation of the applicable law or regulation. You agree not to reopen the Franchised Business until after we have inspected the Franchised Business premises, and we have determined that you have corrected the condition and that all Products sold at the Franchised Business comply with our standards.

8.9 *Use of the Marks.* You will require all marketing and promotional materials, signs, decorations, merchandise, paper and plastic (for example, disposable) goods, any and all replacement trade dress products, and other items that we may designate to bear our then-current Proprietary Marks and logos in the form, color, location, and manner that we have then-prescribed.

8.10 *If You Are an Entity:*

8.10.1 *Corporate Franchisee.* If you are a corporation, then you agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** maintain stop transfer instructions on your records against the transfer of any equity securities and shall only issue securities upon the face of which a legend, in a form satisfactory to us, appears which references the transfer restrictions imposed by this Agreement; **(c)** not issue any voting securities or securities convertible into voting securities; and **(d)** maintain a current list of all owners of record and all beneficial owners of any class of voting stock of your company and furnish the list to us upon request.

8.10.2 *Partnership/LLP Franchisee.* If you are a partnership or a limited liability partnership (LLP), then you agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** furnish us with a copy of your partnership agreement as well as such other documents as we may reasonably request, and any amendments thereto; **(c)** prepare and furnish to us, upon request, a current list of all of your general and limited partners; and **(d)** consistent with the transfer restrictions set out in this Agreement, maintain instructions against the transfer of any partnership interests without our prior written approval.

8.10.3 *LLC Franchisee.* If you are a limited liability company (LLC), then you agree to: **(a)** confine your activities, and your governing documents shall at all times provide that your activities are confined, exclusively to operating the Franchised Business; **(b)** furnish us with a copy of your articles of organization and operating agreement, as well as such other documents as we may reasonably request, and any amendments thereto; **(c)** prepare and furnish to us, upon request, a current list of all members and managers in your LLC; and **(d)** maintain stop transfer instructions on your records against the transfer of equity securities and shall

only issue securities upon the face of which bear a legend, in a form satisfactory to us, which references the transfer restrictions imposed by this Agreement.

- 8.10.4 *Guarantees.* Each present and future: **(a)** shareholder of a corporate Franchisee; **(b)** member of a limited liability company Franchisee; **(c)** partner of a partnership Franchisee; and/or **(d)** partner of a limited liability partnership Franchisee; must jointly and severally guarantee your performance of each and every provision of this Agreement by executing the Guarantee, Indemnification, And Acknowledgment in the form attached to this Agreement as Exhibit B.
- 8.11 *Quality-Control and Guest Survey Programs.* We may, from time to time, designate an independent evaluation service to conduct a “mystery shopper,” “guest survey,” and/or similar type, quality-control and evaluation program with respect to Restaurants operating in the System. You must participate in such programs as we require, and promptly pay the then-current charges of the evaluation service. If you receive an unsatisfactory or failing report in connection with any such program, you must immediately implement any remedial actions we require, and if we then must re-inspect the Restaurant to determine whether you have corrected the operating deficiencies, we may require you to pay us an amount not to exceed One Thousand Five Hundred Dollars (\$1,500) for each re-inspection of the Restaurant.
- 8.12 *Prices.* You agree that we may set reasonable restrictions on the maximum and minimum prices you may charge for the menu items, products and services offered and sold under this Agreement. With respect to the sale of all such menu items, products, or services, you will have sole discretion as to the prices to be charged to customers; provided, however, that we will have the right to set maximum or minimum prices on such menu items, products, and services (subject to applicable law). If we impose a maximum price on a particular menu item, product, or service, then you may charge any price for that menu item, product, or service, up to and including the maximum price we have set. If we impose a minimum price on a particular menu item, product, or service, then you may charge any price for that menu item, product, or service, down to and including the minimum price that we have set.
- 8.13 *Environmental Matters.* We are committed to working to attain optimal performance of Restaurants with respect to environmental, sustainability, and energy performance. We each recognize and agree that there are changing standards in this area in terms of applicable law, competitors’ actions, consumer expectations, obtaining a market advantage, available and affordable solutions, and other relevant considerations. In view of those and other considerations, as well as the long-term nature of this Agreement, you agree that we have the right to periodically set reasonable standards with respect to environmental, sustainability, and energy for the System through the Manual, and you agree to abide by those standards.
- 8.14 *Innovations.* You agree to disclose to us all ideas, concepts, methods, techniques and products conceived or developed by you, your affiliates, owners and/or employees during the term of this Agreement relating to the development and/or operation of the Restaurants. All such products, services, concepts, methods, techniques, and new information will be deemed to be our sole and exclusive property and works made-for-hire for us. You hereby grant to us (and agree to obtain from your affiliates, owners, employees, and/or contractors), a perpetual, non-exclusive, and worldwide right to use

any such ideas, concepts, methods, techniques and products in all bar, food service, and entertainment businesses that we and/or our affiliates, franchisees and designees operate. We will have the right to use those ideas, concepts, methods, techniques, and/or products without making payment to you. You agree not to use or allow any other person or entity to use any such concept, method, technique or product without obtaining our prior written approval.

8.15 *Crisis Situation.* In addition to the other requirements of this Agreement:

8.15.1 If an event occurs at the Franchised Business that has or reasonably may cause harm or injury to customers, guests, and/or employees (for example, food spoilage/poisoning, food tampering/sabotage, slip and fall injuries, natural disasters, robberies, shootings, data breach, etc.) or may damage the Proprietary Marks, the System, and/or our reputation (collectively a "**Crisis Situation**"), then you agree to: **(a)** immediately contact appropriate emergency care providers to assist in curing the harm or injury; and **(b)** immediately inform us by telephone and in writing of the Crisis Situation. You must refrain from making any internal or external announcements (that is, no communication with the news media) regarding the Crisis Situation (unless otherwise directed by us or public health officials).

8.15.2 We will have the right (but not the obligation) to control the manner in which the Crisis Situation is handled by the parties, including conducting all communication with the news media, providing care for injured persons, and/or temporarily closing the Franchised Business. You agree that, in directing the management of any Crisis Situation, we or our designee will have the right to engage the services of attorneys, experts, doctors, testing laboratories, public relations firms, and other professionals that we deem appropriate, and you agree to reimburse us for our costs if we exercise any of these rights. You and your employees must cooperate fully with us or our designee in our efforts and activities in this regard and will be bound by all further Crisis Situation procedures developed by us from time to time hereafter. The indemnification obligations under Section 21.4 will include all losses and expenses that may result from our exercise of the rights granted in this Section 8.15.

9 PROPRIETARY MARKS

9.1 *Our Representations.* We represent to you that we own (or have an appropriate license to) all right, title, and interest in and to the Proprietary Marks, and that we have taken (and will take) all steps reasonably necessary to preserve and protect the ownership and validity in, and of, the Proprietary Marks.

9.2 *Your Agreement.* With respect to your use of the Proprietary Marks, you agree that:

9.2.1 You will use only the Proprietary Marks that we have designated in writing, and you will use them only in the manner we have authorized and permitted in writing; and all items bearing the Proprietary Marks must bear the then-current logo.

9.2.2 You will use the Proprietary Marks only for the operation of the business franchised under this Agreement and only at the location authorized under this Agreement, or in franchisor-approved marketing for the business conducted at or from that location (subject to the other provisions of this Agreement).

- 9.2.3 Unless we otherwise direct you in writing to do so, you agree to operate and advertise the Franchised Business only under the name "Noah's New York Bagels" without prefix or suffix.
- 9.2.4 During the term of this Agreement and any renewal of this Agreement, you will identify yourself (in a manner reasonably acceptable to us) as the owner of the Franchised Business in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Franchised Business as we may designate in writing.
- 9.2.5 Your right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of our rights.
- 9.2.6 You agree not to use the Proprietary Marks to incur any obligation or indebtedness on our behalf.
- 9.2.7 You agree not to use the Proprietary Marks:
 - 9.2.7.1 as part of your corporate or other legal name;
 - 9.2.7.2 as part of any e-mail address, domain name, social networking site page, or other identification of you in any electronic medium (except as otherwise provided in Section 14.12.3 below); and/or
 - 9.2.7.3 in any human resources (HR) document or materials, including but not limited to job applications, employment agreements, pay checks, pay stubs, and the like.
- 9.2.8 You agree to: **(a)** comply with our instructions in filing and maintaining requisite trade name or fictitious name (for example, "dba") registrations; and **(b)** execute any documents that we (or our affiliates) deem necessary to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability, including any additional license agreements we may require for use of the Proprietary Marks on the Internet or in other marketing.
- 9.2.9 With respect to litigation involving the Proprietary Marks, the parties agree that:
 - 9.2.9.1 You agree to promptly notify us of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to our ownership of, or your right to use, the Proprietary Marks licensed under this Agreement. You acknowledge that we will have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. We will also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.
 - 9.2.9.2 If you have used the Proprietary Marks in accordance with this

Agreement, then we will defend you at our expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of your use thereof. If you have used the Proprietary Marks but not in accordance with this Agreement, then we will still defend you, but at your expense, against such third party claims, suits, or demands.

9.2.9.3 Except to the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, we agree to reimburse you for your out-of-pocket litigation costs in doing such acts and things, except that you will bear the salary costs of your employees, and we will bear the costs of any judgment or settlement.

9.2.9.4 To the extent that such litigation is the result of your use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, then you agree to reimburse us for the cost of such litigation (or, upon our written request, pay our legal fees directly), including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses, as well as the cost of any judgment or settlement.

9.2.9.5 If we undertake the defense or prosecution of any litigation or other similar proceeding relating to the Proprietary Marks, you agree to sign any and all documents, and do those acts and things that may, in our counsel's opinion, be necessary to carry out the defense or prosecution of that matter (including but not limited to becoming a nominal party to any legal action).

9.3 *Your Acknowledgements.* You expressly understand and acknowledge that:

9.3.1 We own all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them.

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

9.3.3 Neither you nor any of your owners, principals, or other persons acting on your behalf will directly or indirectly contest the validity or our ownership of the Proprietary Marks, nor will you, directly or indirectly, seek to register the Proprietary Marks with any government agency (unless we have given you our express prior written consent to do so).

9.3.4 Your use of the Proprietary Marks does not give you any ownership interest or other interest in or to the Proprietary Marks, except the license granted by this Agreement.

9.3.5 Any and all goodwill arising from your use of the Proprietary Marks shall inure solely and exclusively to our benefit, and upon expiration or termination of this Agreement and the license granted as part of this Agreement, there will be no monetary amount assigned as attributable to any goodwill associated with your use of our System or of our Proprietary Marks.

9.3.6 The right and license of the Proprietary Marks that we have granted to you under this Agreement is non-exclusive, and we therefore have the right, among other things:

9.3.6.1 To use the Proprietary Marks ourselves in connection with selling Products and services;

9.3.6.2 To grant other licenses for the Proprietary Marks, in addition to licenses we may have already granted to existing franchisees; and

9.3.6.3 To develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises for those other marks without giving you any rights to those other marks.

9.4 *Change to Marks.* We reserve the right to substitute different Proprietary Marks for use in identifying the System and the businesses operating as part of the System if our currently owned Proprietary Marks no longer can be used, or if we determine, exercising our right to do so, that substitution of different Proprietary Marks will be beneficial to the System. In such circumstances, your right to use the substituted proprietary marks shall be governed by (and pursuant to) the terms of this Agreement.

10 CONFIDENTIAL OPERATING MANUALS

10.1 *You Agree to Abide by the Manual.* In order to protect our reputation and goodwill and to maintain high standards of operation under our Proprietary Marks, you agree to conduct your business in accordance with the written instructions that we provide, including the Manual. We will lend to you (or permit you to have access to) one (1) copy of our Manual, only for the term of this Agreement, and only for your use in connection with operating the Franchised Business during the term of this Agreement.

10.2 *Format of the Manual.* We will have the right to provide the Manual in any format we determine is appropriate (including but not limited to paper format and/or by making some or all of the Manual available to you in electronic form, such as through an internet website or an extranet). If at any time we choose to provide the Manual electronically, you agree to immediately return to us any and all physical copies of the Manual that we have previously provided to you.

10.3 *We Own the Manual.* The Manual shall at all times remain our sole property and you agree to promptly return the Manual when this Agreement expires or if it is terminated.

10.4 *Confidentiality and Use of the Manual.* The Manual contains our proprietary information and you agree to keep the Manual confidential both during the term of this Agreement and after this Agreement expires and/or is terminated. You agree that, at all times, you will insure that your copy of the Manual will be available at the Franchised Business premises in a current and up-to-date manner. You agree not to make any unauthorized use, disclosure or duplication of any portion of the Manual. Whenever the Manual is not in use by authorized personnel, you agree to maintain the Manual in a locked receptacle at the premises of the Franchised Business, and you agree to grant only authorized

personnel (as defined in the Manual) access to the key or lock combination of that receptacle.

- 10.5 *You Agree to Treat Manual as Confidential.* You agree that at all times, you will treat the Manual, any other manuals that we create (or approve) for use in the operation of the Franchised Business, and the information contained in those materials, as confidential, and you also agree to use your best efforts to maintain such information as secret and confidential. You agree that you will never copy, duplicate, record, or otherwise reproduce those materials, in whole or in part, nor will you otherwise make those materials available to any unauthorized person.
- 10.6 *Which Copy of the Manual Controls.* You agree to keep your copy of the Manual only at the Franchised Business (and as provided in Section 10.4 above) and also to insure that the Manual are kept current and up to date. You also agree that if there is any dispute as to the contents of the Manual, the terms of the master copy of the Manual that we maintain in our home office will be controlling. Access to any electronic version of the Manual shall also be subject to our reasonable requirements with respect to security and other matters, as described in Section 14 below.
- 10.7 *Revisions to the Manual.* We have the right to revise the contents of the Manual whenever we deem it appropriate to do so, and you agree to make corresponding revisions to your copy of the Manual and to comply with each new or changed standard.
- 10.8 *Modifications to the System.* You recognize and agree that we may periodically change or modify the System and you agree to accept and use for the purpose of this Agreement any such change in the System (which may include, among other things, new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment or new techniques, as if they were part of this Agreement at the time when you and we signed this Agreement; provided the financial burden placed upon you is not substantial). You agree to make such expenditures and such changes or modifications as we may reasonably require pursuant to this Section and otherwise in this Agreement.

11 CONFIDENTIAL INFORMATION

11.1 Confidentiality.

- 11.1.1 You shall not, during the term of this Agreement or at any time thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any Confidential Information that may be communicated to you or of which you may be apprised by virtue of your operation under the terms of this Agreement. You may divulge our Confidential Information only to those of your employees as must have access to it in order to operate the Franchised Business.
- 11.1.2 Any and all information, knowledge, know-how, and techniques that we designate as confidential shall be deemed Confidential Information for purposes of this Agreement, except information that you can demonstrate came to your attention before disclosure of that information by us; or which, at or after the time

of our disclosure to you, had become or later becomes a part of the public domain, through publication or communication by others.

11.1.3 Any employee who may have access to any Confidential Information regarding the Franchised Business shall execute a covenant that s/he will maintain the confidentiality of information they receive in connection with their association with you. Such covenants shall be on a form that we provide, which form shall, among other things, designate us as a third party beneficiary of such covenants with the independent right to enforce them.

11.1.4 As used in this Agreement, the term “**Confidential Information**” includes our business concepts and plans, recipes, food preparation methods, equipment, operating techniques, marketing methods, processes, formulae, manufacturing and vendor information, results of operations and quality control information, financial information, demographic and trade area information, prospective site locations, market penetration techniques, plans, or schedules, the Manuals, customer profiles, preferences, or statistics, menu breakdowns, itemized costs, franchisee composition, territories, and development plans, and all related trade secrets or other confidential or proprietary information treated as such by us, whether by course of conduct, by letter or report, or by the use of any appropriate proprietary stamp or legend designating such information or item to be confidential or proprietary, by any communication to such effect made prior to or at the time any Confidential Information is disclosed to you.

11.2 *Consequences of Breach.* You acknowledge that any failure to comply with the requirements of this Section 11 will cause us irreparable injury, and you agree to pay all costs (including reasonable attorneys’ fees, court costs, discovery costs, and all other related expenses) that we incur in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 11.

12 ACCOUNTING, FINANCIAL AND OTHER RECORDS, AND INSPECTIONS

12.1 *Accounting Records.*

12.1.1 With respect to the operation and financial condition of the Franchised Business, we will have the right to designate, and you agree to adopt, the fiscal year and interim fiscal periods that we decide are appropriate for the System.

12.1.2 With respect to the Franchised Business, you agree to maintain for at least three (3) years during (as well as after) the term of this Agreement (and also after any termination and/or transfer), full, complete, and accurate books, records, and accounts prepared in accordance with generally accepted accounting principles and in the form and manner we have prescribed from time to time in the Manual or otherwise in writing, including but not limited to: **(a)** daily cash reports; **(b)** cash receipts journal and general ledger; **(c)** cash disbursements and weekly payroll journal and schedule; **(d)** monthly bank statements, daily deposit slips and cancelled checks; **(e)** all tax returns; **(f)** supplier’s invoices (paid and unpaid); **(g)** dated daily and weekly cash register journals and POS reports in accordance with our standards; **(h)** semi-annual fiscal period balance sheets and fiscal period profit and loss statements; **(i)** operational schedules and weekly inventory

records; **(j)** records of promotion and coupon redemption; and **(k)** such other records as we may from time to time request.

12.1.3 We have the right to specify a common chart of accounts, and, if we do so, you agree to use that chart of accounts (and require your bookkeeper and accountant to do so) in preparing and submitting your financial statements to us.

12.1.4 All of the records required under this Section 12.1 and in Sections 12.2 and 12.3 below must be maintained in digital form, accessible to us and/or or designee (for example, our accountants) remotely and in that digital form, and using a software program or online site (such as "QuickBooks") that we approve, so that the data can be reviewed and/or downloaded to our computer system in a compatible and comparable manner.

12.2 *Financial Statements.*

12.2.1 You agree to provide us, at your expense, and in a format that we have specified, a complete annual financial statement prepared on a review basis by an independent certified public accountant (as to whom we do not have a reasonable objection) within ninety (90) days after the end of each fiscal year of the Franchised Business during the term of this Agreement. Your financial statement must be prepared according to generally accepted accounting principles, include a fiscal year-end balance sheet, an income statement of the Franchised Business for that fiscal year reflecting all year-end adjustments, and a statement of changes in your cash flow reflecting the results of operations of the Franchised Business during the most recently completed fiscal year.

12.2.2 In addition, no later than the fifteenth (15th) day after each fiscal quarter (or, if we elect, each fiscal month or other periodic time period) during the term of this Agreement after the opening of the Franchised Business, you will submit to us, in a format acceptable to us (or, at our election, in a form that we have specified): **(a)** a fiscal period and fiscal year-to-date profit and loss statement and a quarterly balance sheet (which may be unaudited) for the Franchised Business; **(b)** reports of those income and expense items of the Franchised Business that we periodically specify for use in any revenue, earnings, and/or cost summary we choose to furnish to prospective franchisees (provided that we will not identify to prospective franchisees the specific financial results of the Franchised Business); and **(c)** copies of all state sales tax returns for the Franchised Business. You must certify as correct and true all reports and information that you submit to us pursuant to this Section 12.2.

12.3 *Additional Information.* You also agree to submit to us (in addition to the Sales Reports required pursuant to Section 4.2 above), for review or auditing, such other forms, reports, records, information, and data as and when we may reasonably designate, in the form and format, and at the times and places as we may reasonably require, upon request and as specified from time to time in the Manual or otherwise in writing, including but not limited to: **(a)** information in electronic format; **(b)** restated in accordance with our financial reporting periods; **(c)** consistent with our then-current financial reporting periods and accounting practices and standards; and/or **(d)** as necessary so that we can comply with reporting obligations imposed upon us by tax authorities with jurisdiction over the Franchised Business and/or our company. The

reporting requirements of this Section 12.3 shall be in addition to, and not in lieu of, the electronic reporting required under Section 14 below.

12.4 *PCI Compliance and Credit Cards.* With respect to your acceptance and processing of customer payments by credit and debit cards, you agree to do all of the following:

12.4.1 You agree to maintain, at all times, credit-card relationships with the credit- and debit-card issuers or sponsors, check or credit verification services, financial-center services, merchant service providers, and electronic-fund-transfer systems (together, "**Payment Card Vendors**") that we may periodically designate as mandatory. The term "Payment Card Vendors" includes, among other things, companies that provide services for electronic payment, such as contactless and other near field communication vendors (for example, "Apple Pay" and "Google Wallet"). The obligations specified in this Section include your agreement to pay the applicable charges imposed by the Payment Card Vendors for participation in, and transactions conducted through, those methods.

12.4.2 You agree not to use any Payment Card Vendor for which we have not given you our prior written approval or as to which we have revoked our earlier approval.

12.4.3 We have the right to modify our requirements and designate additional approved or required methods of payment and vendors for processing such payments, and to revoke our approval of any service provider.

12.4.4 You agree to comply with all of our policies regarding acceptance of payment by credit and/or debit cards, including for example minimum purchase requirements for a customer's use of a credit card (we may set these requirements in the Manual).

12.4.5 You agree to comply with our requirements concerning data collection and protection, as specified in Section 14.3 below.

12.4.6 You agree to comply with the then-current Payment Card Industry Data Security Standards as those standards may be revised and modified by the PCI Security Standards Council, LLC (see www.pcisecuritystandards.org), or any successor organization or standards that we may reasonably specify. Among other things, you agree to implement the enhancements, security requirements, and other standards that the PCI Security Standards Council (or its successor) requires of a merchant that accepts payment by credit and/or debit cards.

12.5 *Gift Cards and Incentive Programs.* You agree to offer for sale, participate in, and honor for purchases by customers, all gift cards and other incentive or convenience programs that we may periodically institute (including loyalty programs that we or a third party vendor operate, as well as mobile apps, mobile payment, and/or other customer affinity applications; together, "**Customer Apps**"); and you agree to do all of those things in compliance with our standards and procedures for such programs (which may be set out in the Manual or otherwise in writing). You agree to abide by our written standards with respect to gift card residual value. For this purpose, you must purchase the software, hardware, and other items needed to participate in, sell, and process Customer Apps, and to contact with Customer App vendors (including suppliers of gift cards and gift card processing services), as we may specify in writing in the Manual or otherwise. You must

also pay the annual and per-transaction fees as may be required by the vendors of the gift card system. You agree not to sell, issue, or redeem coupons, gift certificates and gift cards other than gift cards that we have approved in writing.

- 12.6 *Our Right to Inspect Your Books and Records.* We shall have the right at all reasonable times to examine, copy, and/or personally review or audit (at our expense) all of your books, records, and sales and income tax returns in person or through electronic access (at our option). We will also have the right, at any time, to have an independent audit made of your books and records. You agree to cooperate with us and our auditors and provide the access and assistance that they may reasonably need in order to implement this Section 12.6. If an inspection should reveal that you have understated any payments in any report to us, then this shall constitute a default under this Agreement, and you must immediately pay us the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month (but not more than the maximum rate permitted by law, if any). If we conduct an inspection because you did not timely provide Sales Reports to us, or if an inspection discloses that you understated your sales, in any report to us, by two percent (2%) or more, then you agree (in addition to paying us the overdue amount and interest) to reimburse us for any and all costs and expenses we incur in connected with the inspection (including but not limited to travel, lodging and wages expenses, and reasonable accounting and legal costs). These remedies shall be in addition to any other remedies we may have. We may exercise our rights under this Section 12 directly or by engaging outside professional advisors (for example, a CPA) to represent us.
- 12.7 *Inspections.* In addition to the provisions of Section 12.4 above, you also grant to us and our agents the right to enter upon the Franchised Business premises at any reasonable time for the purpose of conducting inspections, for among other purposes, preserving the validity of the Proprietary Marks, and verifying your compliance with this Agreement and the policies and procedures outlined in the Manual. You agree to cooperate with our representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from us or from our agents (and without limiting our other rights under this Agreement), you agree to take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection.

13 **MARKETING**

- 13.1 *Marketing Contribution.* For each Week during the term of this Agreement, you agree to contribute an amount equal to four percent (4.0%) of your Franchised Business' Gross Sales during the preceding Week (the "**Marketing Contribution**"), allocated as provided in Section 13.2 below. You agree to pay the Marketing Contribution in the manner and at the times required under Section 4.4 above (and as otherwise provided in this Section 13). In addition to the Marketing Contribution, you agree to spend a minimum of Ten Thousand Dollars (\$10,000) to conduct the Grand Opening Marketing Program described in Section 13.8 below.
- 13.2 *Allocation and Collection.*
- 13.2.1 We will have the right to allocate your Marketing Contribution in the proportion that we designate among the following: **(a)** our system-wide marketing fund (the "**Systemwide Marketing Fund**"), once it has been established; **(b)** any Market

Co-op Fund established for your area, as provided in Section 13.4 below (but we are not required to establish a Market Co-op Fund for your area); and **(c)** the local store marketing ("**LSM**") fund.

- 13.2.2 Subject to Section 13.2.2 below, our current allocation of the Marketing Contribution is as follows:

This amount	Into this fund:
Sixty percent (60%) of the Marketing Contribution (that is, 2.4% of your Gross Sales)	Systemwide Marketing Fund
Forty percent (40%) of the Marketing Contribution (that is, 1.6% of your Gross Sales)	LSM

- 13.2.3 We have the right to periodically make changes to the allocation of the Marketing Contribution as specified in Section 13.2.2 among those funds and/or a Market Coop Fund, by giving you written notice of the change, and those changes will take effect at the end of that month.
- 13.2.4 We reserve the right to collect and hold LSM funds, and seek your guidance on how LSM funds are to be spent; however, if you do not provide timely guidance, we reserve the right to direct the expenditure of LSM funds.
- 13.2.5 No part of the Marketing Contribution (whether deposited in Marketing Fund, a Market Co-Op Fund, or as LSM funds) shall be subject to refund or repayment under any circumstances.
- 13.3 *Systemwide Marketing Fund.* Once it is established, we (or our designee) will maintain and administer the Systemwide Marketing Fund as follows:
- 13.3.1 We or our designee shall have the right to direct all marketing programs, as well as all aspects thereof, including the concepts, materials, and media used in such programs and the placement and allocation thereof. You acknowledge and agree that the Systemwide Marketing Fund is intended to maximize general public recognition, acceptance, and use of the System; and that we and our designee are not obligated, in administering the Systemwide Marketing Fund, to make expenditures for you that are equivalent or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or pro rata from expenditures by the Systemwide Marketing Fund.
- 13.3.2 The Systemwide Marketing Fund, all contributions to that fund, and any of that fund's earnings, shall be used exclusively (except as otherwise provided in this Section 13.3) to meet any and all costs of maintaining, administering, directing, conducting, creating and/or otherwise preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities that we believe will enhance the image of the System (including but not limited to the costs of preparing and conducting: media advertising campaigns; marketing via direct mail and other print and electronic media; marketing surveys and other public relations activities; employing marketing personnel, as well as advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other

merchandising programs; and providing promotional and other marketing materials and services to the Restaurants operated under the System). The Systemwide Marketing Fund may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, so long as we have given our prior written approval, which products, services, or improvements; and we will have the right to determine what methods to use in order to promote general public awareness of, and favorable support for, the System.

- 13.3.3 You agree to make your Marketing Contribution to the Systemwide Marketing Fund in the manner specified in Section 4.4 above. We will maintain all sums in the Systemwide Marketing Fund in an account separate from our other monies. We will have the right to charge the Systemwide Marketing Fund for the reasonable administrative costs and overhead that we incur in activities reasonably related to the direction and implementation of the Systemwide Marketing Fund and marketing programs for franchisees and the System (including but not limited to costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs). The Systemwide Marketing Fund and its earnings shall not otherwise inure to our benefit. We or our designee will maintain separate bookkeeping accounts for the Systemwide Marketing Fund.
- 13.3.4 No part of your Marketing Contribution (whether deposited in the Systemwide Marketing Fund, a Market Co-Op Fund, or as LSM funds) shall be deemed an asset of ours, nor a trust, and we do not assume any fiduciary obligation to you for maintaining, directing or administering said funds or for any other reason. We will prepare a statement of the operations of the Marketing Fund, Market Co-Op Funds, and LSM funds that you have deposited, as shown on our books, annually, and make that report available to you.
- 13.3.5 Although the Systemwide Marketing Fund is intended to be of perpetual duration, we maintain the right to terminate the Systemwide Marketing Fund. The Systemwide Marketing Fund shall not be terminated, however, until all monies in the Systemwide Marketing Fund have been expended for marketing and/or promotional purposes.
- 13.4 *Market Co-op Fund.* We will have the right to designate any geographical area for purposes of establishing a cooperative market marketing fund ("**Market Co-op Fund**"). If a Market Co-op Fund for the geographic area in which the Franchised Business is located has been established at the time you start to operate under this Agreement, you will immediately become a member of such Market Co-op Fund. If a Market Co-op Fund for the geographic area in which the Franchised Business is located is established during the term of this Agreement, you will become a member of that Market Co-op Fund within thirty (30) days after the date on which the Market Co-op Fund commences operation. (However, you will not be required under any circumstances to be a member of more than one Market Co-op Fund.) The following provisions shall apply to each Market Co-op Fund:
- 13.4.1 Each Market Co-op Fund shall be organized (including but not limited to bylaws and other organic documents) and governed in a form and manner, and shall

commence operations on a date, which we must have approved in advance in writing. The activities carried on by each Market Co-op Fund shall be decided by a majority vote of its members (unless we specify otherwise in writing). Any Restaurants that we operate in the region shall have the same voting rights as Restaurants owned by franchisees. Each Franchised Business owner shall be entitled to cast one (1) vote for each Franchised Business owned.

- 13.4.2 Each Market Co-op Fund shall be organized for the exclusive purpose of administering regional marketing programs and developing, subject to our approval, standardized promotional materials for use by the members in local store marketing.
- 13.4.3 No advertising, marketing, or promotional plans or materials may be used by a Market Co-op Fund or furnished to its members without our prior written approval as specified in Section 13.7 below.
- 13.4.4 You agree to make your required contribution to a Market Co-op Fund pursuant to the allocation that we specify, as described in Section 13.2 above.
- 13.4.5 Although once established, each Market Co-op Fund is intended to be of perpetual duration, we maintain the right to terminate any Market Co-op Fund. A Market Co-op Fund shall not be terminated, however, until all monies in that Market Co-op Fund have been expended for marketing and/or promotional purposes.
- 13.5 *Standards.* All of your local store marketing must: **(a)** be in the media, and of the type and format, that we may approve; **(b)** be conducted in a dignified manner; and **(c)** conform to the standards and requirements that we may specify. You agree not to use any advertising, marketing materials, and/or promotional plans unless and until you have received our prior written approval, as specified in Section 13.7 below.
- 13.6 *Materials Available for Purchase.* We will make available to you from time to time, at your expense, marketing plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar marketing and promotional materials for use in local store marketing.
- 13.7 *Our Review and Right to Approve All Proposed Marketing.* For all proposed advertising, marketing, and promotional plans, you (or the Market Co-op Fund, where applicable) shall submit to us samples of such plans and materials (by means described in Section 24 below), for our review and prior written approval. If you (or the Market Co-op Fund) have not received our written approval within fourteen (14) days after we have received those proposed samples or materials, then we will be deemed to have disapproved them. You acknowledge and agree that any and all copyright in and to advertising, marketing materials, and promotional plans developed by or on behalf of you will be our sole property, and you agree to sign such documents (and, if necessary, require your employees and independent contractors to sign such documents) that we deem reasonably necessary to give effect to this provision.
- 13.8 *Grand Opening Marketing Program.* In addition to and not instead of the Marketing Contribution, you agree to spend a minimum of Ten Thousand Dollars (\$10,000) for

grand opening marketing and promotional programs in conjunction with the Franchised Business's initial grand opening, pursuant to a grand opening marketing plan that you develop and that we approve in writing (the "**Grand Opening Marketing Program**"). The Grand Opening Marketing Program shall be executed and completed during the period fifteen (15) days prior to opening of the Franchised Business until fifteen (15) days after the Franchised Business commences operation, and is subject to the provisions of Section 13.7 above. For the purpose of this Agreement, the Grand Opening Marketing Program shall be considered local store marketing, as provided under Section 13.10 below. We reserve the right to require you to deposit the funds required under this Section 13.8 with us, for us to distribute as may be necessary in order to conduct the Grand Opening Marketing Program.

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

13.10 *Local Store Marketing.* We will have the right to require you to independently spend all or a portion of the Marketing Contribution on local store marketing within the Protected Territory (to the extent that we do not require it to be deposited with us as specified above in Section 13.2.4). At our request, you must submit appropriate documentation to verify compliance with any local marketing and advertising spending obligations. We have the right to periodically designate in the Manual the types of expenditures that will or will not count toward your minimum spending requirement. You must advertise the Franchised Business in all major directories in your Protected Territory, including local online directories, as prescribed in the Manual. If you advertise jointly with other franchisees, your share of the cost will count toward your local spending requirement under this Section 13.10. As used in this Agreement, the term "**local store marketing**" shall consist only of the direct costs of purchasing and producing marketing materials (including, but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of marketing and sales promotion that you spend in your local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying; however, the parties expressly agree that local store marketing shall not include costs or expenses that you incur or that are spent on your behalf in connection with any of the following:

13.10.1 Salaries and expenses of your employees, including salaries or expenses for attendance at marketing meetings or activities, or incentives provided or offered to such employees, including discount coupons;

13.10.2 Political donations;

13.10.3 The value of discounts provided to consumers; and/or

13.10.4 The cost of food, beverage, and merchandise items.

13.11 *Rebates.* You acknowledge that periodic rebates, give-aways and other promotions and programs will, if and when we adopt them, be an integral part of the System. Accordingly, you agree to honor and participate (at your expense) in reasonable rebates, give-aways, marketing programs, and other promotions that we establish and/or that

other franchisees sponsor, so long as they do not violate regulations and laws of appropriate governmental authorities.

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

14 TECHNOLOGY

- 14.1 *Computer Systems and Required Software.* With respect to computer systems and required software:

14.1.1 We have the right to specify or require that certain brands, types, makes, and/or models of communications, computer systems, and hardware to be used by, between, or among Restaurants, and in accordance with our standards, including: **(a)** back office and point of sale systems, data, audio, video (including managed video security surveillance), telephone, voice messaging, retrieval, and transmission systems for use at Restaurants, between or among Restaurants, and between and among the Franchised Business, and you, and us; **(b)** POS Systems (defined in Section 14.7 below); **(c)** physical, electronic, and other security systems and measures; **(d)** printers and other peripheral devices (e.g., digital menu boards); **(e)** archival back-up systems; **(f)** internet access mode (e.g., form of telecommunications connection) and speed; and **(g)** front-of-the-house WiFi and other internet service for customers; and **(h)** consumer-marketing oriented technology (including Customer Apps, affinity and rewards hardware and software, facial and other customer-recognition technology, and approved social media/networking sites) (collectively, all of the above are referred to as the “**Computer System**”).

14.1.2 We will have the right, but not the obligation, to develop or have developed for us, or to designate: **(a)** computer software programs and accounting system software that you must use in connection with the Computer System (“**Required Software**”), which you must install; **(b)** updates, supplements, modifications, or enhancements to the Required Software, which you must install; **(c)** the tangible media upon which you must record data; and **(d)** the database file structure of your Computer System. If we require you to use any of all of the above items, then you agree that you will do so. The term “Required Software” also includes the affinity program cards that are required under Section 12.5 above.

14.1.3 You agree to install, use, maintain, update and replace (as needed) all elements of the Computer System and Required Software at your sole expense. You

agree to pay us or third party vendors, as the case may be, initial and ongoing fees in order to install and continue to use the Required Software, hardware, and other elements of the Computer System.

- 14.1.4 You must implement and periodically make upgrades and other changes at your expense to the Computer System and Required Software as we may reasonably request in writing (collectively, "**Computer Upgrades**").
- 14.1.5 You must comply with all specifications that we issue with respect to the Computer System and the Required Software, and with respect to Computer Upgrades, at your expense. You must also afford us unimpeded access to your Computer System and Required Software, including all information and data maintained thereon, in the manner, form, and at the times that we request.
- 14.1.6 You must pay the system support fee in the amount that we periodically specify, as described in Section 4.9 above.

14.2 *Data.*

- 14.2.1 All data you collect, create, provide, or otherwise develop on your Computer System, whether or not uploaded to our system from your system, and/or downloaded from your system to our system, is and will be owned exclusively by us, and we will have the right to access, download, and use such data in any manner that we deem appropriate without compensation to you.
- 14.2.2 All other data that you create or collect in connection with the System, and in connection with your operation of the Franchised Business (including but not limited to customer and transaction data), is and will be owned exclusively by us during the term of, and following termination or expiration of, this Agreement.
- 14.2.3 You agree to transfer to us all data that we do not automatically collect upon our request.
- 14.2.4 We hereby license use of such data back to you, at no additional cost, solely for the term of this Agreement and solely for your use in connection with operating the Franchised Business under the System. You acknowledge and agree that except for the right to use the data under this clause, you will not develop or have any ownership rights in or to the data.
- 14.2.5 Upon termination, expiration, and/or transfer of this Agreement and/or the Franchised Business, you agree to provide us with all data (in the digital machine-readable format that we specify, and/or printed copies, and/or originals) promptly upon our request.
- 14.2.6 For the limited purpose of this Section 14.2, references to "data" exclude consumers' credit card and/or other payment information.

- 14.3 *Data Requirements and Usage.* We may periodically specify in the Manual or otherwise in writing the information that you must collect and maintain on the Computer System installed at the Franchised Business, and you must provide to us such reports as we may reasonably request from the data so collected and maintained. All data pertaining

to or derived from the Franchised Business (including data pertaining to or otherwise about Franchised Business customers) is and shall be our exclusive property, and we hereby grant a royalty-free non-exclusive license to you to use such data during the term of this Agreement.

- 14.3.1 You agree to abide by all applicable laws pertaining to the data (including those pertaining to the collection, use, maintenance, disposition, and/or privacy of consumer, employee, vendor, and transactional information) ("**Privacy Laws**").
- 14.3.2 You must comply with our standards and policies pertaining to the privacy of consumer, employee, and transactional information. If you become aware (and/or if you should be aware) that there is a conflict between our standards and policies and Privacy Laws, then you agree to: **(a)** comply with the requirements of the Privacy Laws; **(b)** immediately give us written notice of that conflict; and **(c)** promptly and fully cooperate with us and our counsel in determining the most effective way, if any, to meet our standards and policies pertaining to privacy within the bounds of Privacy Laws.
- 14.3.3 You must not publish, disseminate, implement, revise, or rescind a data privacy policy without our prior written consent as to such policy.
- 14.4 *Portal.* You agree to comply with our requirements (as set forth in the Manual or otherwise in writing) with respect to establishing and maintaining telecommunications connections between your Computer System and our Portal and/or such other computer systems as we may reasonably require. The term "**Portal**" means a private network based upon Internet protocols that will allow users inside and outside of our headquarters to access certain parts of our computer network via the Internet. We may establish a Portal (but are not required to do so or to maintain a Portal). The Portal may include, among other things, the Manual, training and other assistance materials, and management reporting solutions (both upstream and downstream, as we may direct). You agree to purchase and maintain such computer software and hardware (including telecommunications capacity) as may be required to connect to and utilize the Portal. You agree to execute and deliver to us such documents as we may deem reasonably necessary to permit you to access the Portal.
- 14.5 *Online Ordering System.* You agree to participate in our online ordering system, on such terms and conditions that we may specify in the Manual, and to pay the fees for such online ordering system that we and/or our vendor reasonably specify.
- 14.6 *No Separate Digital Sites.* Unless we have otherwise approved in writing, you agree to neither establish nor permit any other party to establish a Digital Site relating in any manner whatsoever to the Franchised Business or referring to the Proprietary Marks. We will have the right, but not the obligation, to provide one or more references or webpage(s), as we may periodically designate, within our Digital Site. The term "**Digital Site**" means one or more related documents, designs, pages, or other communications that can be accessed through electronic means, including the Internet, World Wide Web, webpages, microsites, social media and networking sites (including Facebook, Twitter, LinkedIn, YouTube, TikTok, Snapchat, Pinterest, Instagram, etc.), blogs, vlogs, podcasts, applications to be used on mobile devices (e.g., iOS or Android apps), and other applications, etc. (whether they are now in existence or developed at some point in

the future). However, if we give you our prior written consent to have some form of separate Digital Site (which we are not obligated to approve), then each of the following provisions will apply:

- 14.6.1 You agree neither to establish nor use any Digital Site without our prior written approval.
 - 14.6.2 Any Digital Site that you own or that is maintained by or for your benefit will be deemed "marketing" under this Agreement, and will be subject to (among other things) our right of review and prior approval under Section 13.8 above.
 - 14.6.3 Before establishing any Digital Site, you agree to submit to us, for our prior written approval, a sample of the proposed Digital Site domain name, format, visible content (including, proposed screen shots, links, and other content), and non-visible content (including, meta tags, cookies, and other electronic tags) in the form and manner we may reasonably require.
 - 14.6.4 You may not use or modify such Digital Site without our prior written approval as to such proposed use or modification.
 - 14.6.5 In addition to any other applicable requirements, you agree to comply with the standards and specifications for Digital Sites that we may periodically prescribe in the Brand Manual or otherwise in writing (including requirements pertaining to designating us as the sole administrator or co-administrator of the Digital Site).
 - 14.6.6 If we require, you agree to establish such hyperlinks to our Digital Site and others as we may request in writing.
 - 14.6.7 If we require you to do so, you agree to make weekly or other periodic updates to the Digital Site to reflect information regarding specials and other promotions at your Franchised Business.
 - 14.6.8 We may require you to make us the sole administrator (or co-administrator) of any social networking pages that you maintain or that are maintained on your behalf, and we will have the right (but not the obligation) to exercise all of the rights and privileges that an administrator may exercise.
- 14.7 *POS Systems.* You must record all sales on computer-based point of sale systems we approve or on such other types of cash registers as we may designate in the Manual or otherwise in writing ("**POS Systems**"), which shall be deemed part of your Computer System. You must utilize POS Systems that are fully compatible with any program, software program, and/or system which we, in our discretion, may employ (including mobile or remote device, application and payment systems), and you must record all Gross Revenues and all sales information on such equipment. We may designate one or more third party suppliers or servicers to provide installation, maintenance, and/or support for the POS System, and you must enter into and maintain such agreements (including making such payments) as we or the third party suppliers and/or servicers require in connection with the installation, maintenance, and/or support for the POS System. The POS System is part of the Computer System. You must at all times maintain a continuous high-speed cabled (not wireless) connection to the Internet to

send and receive POS data to us. Wireless connections to the Internet are not currently authorized or supported for the POS System.

14.8 *Electronic Identifiers; E-Mail.*

14.8.1 You agree not to use the Proprietary Marks or any abbreviation or other name associated with us and/or the System as part of any e-mail address, domain name, social network or social media name or address, and/or any other identification of you and/or your business in any electronic medium.

14.8.2 You agree not to transmit or cause any other party to transmit advertisements or solicitations by e-mail, text message, and/or other electronic media without first obtaining our written consent as to: **(a)** the content of such electronic advertisements or solicitations; and **(b)** your plan for transmitting such advertisements. In addition to any other provision of this Agreement, you will be solely responsible for compliance with any laws pertaining to sending electronic communication including, but not limited to, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (known as the "CAN-SPAM Act of 2003") and the Federal Telephone Consumer Protection Act. (As used in this Agreement, the term "electronic communication" is agreed to include all methods for sending communication electronically, whether or not currently invented or used, including e-mails, text messages, apps and/or internet-based communication and faxes.)

14.9 *Outsourcing.* You agree not to hire third party or outside vendors to perform any services or obligations in connection with the Computer System, Required Software, and/or any other of your obligations, without our prior written approval. Our consideration of any proposed outsourcing vendor(s) may be conditioned upon, among other things, such third party or outside vendor's entry into a confidentiality agreement with us and you in a form that we may reasonably provide and the third party or outside vendor's agreement to pay for all initial and ongoing costs related to interfaces with our computer systems. The provisions of this section are in addition to and not instead of any other provision of this Agreement. You agree not to install (and/or remove) any software or firmware from the Computer System without our prior written consent. You also agree not to implement, use, or otherwise engage with AI Sources without our prior written consent. The term "AI Source" means any resource, online or otherwise, that is for the purpose of gathering, implementing, or otherwise using information from you using artificial intelligence technology, including ChatGPT and other sources.

14.10 *Telephone Service.* You agree to use the telephone service for the Store that we may require, which may be one or more centralized vendors that we designate for that purpose. You agree that we may designate, and own, the telephone numbers for your Franchised Business.

14.11 *Changes.* You agree that changes to technology are dynamic and likely to occur during the term of this Agreement. In order to provide for inevitable but unpredictable changes to technological needs and opportunities, you agree that we will have the right to establish, in writing, reasonable new standards for the implementation of technology in the System; and you agree to abide by those reasonable new standards as if this Section 14 were periodically revised by us for that purpose, and you also agree to pay

vendors' charges for those new items and services. You agree that the terms of this Section 14 apply to all technologies, whether currently available, in some stage of development, or to be invented after the date of this Agreement.

- 14.12 *Electronic Communication – Including E-Mail, Fax, Texts and other Messaging.* You acknowledge and agree that exchanging information with us by electronic media is an important way to enable quick, effective, and efficient communication, and that we are entitled to rely upon your use of e-mail and faxes for communicating as part of the economic bargain underlying this Agreement. To facilitate the use of electronic communication to exchange information, you authorize the transmission of those electronic communications by us and our employees, vendors, and affiliates (on matters pertaining to the business contemplated hereunder) (together, “**Official Senders**”) to you during the term of this Agreement.

14.12.1 In order to implement the terms of this Section 14.12, you agree that: **(a)** Official Senders are authorized to send electronic communications to those of your employees as you may occasionally designate for the purpose of communicating with us and others; **(b)** you will cause your officers, directors, members, managers, and employees (as a condition of their employment or position with you) to give their consent (in an electronic communication or in a pen-and-paper writing, as we may reasonably require) to Official Senders' transmission of electronic communication to those persons, and that such persons shall not opt-out, or otherwise ask to no longer receive electronic communication, from Official Senders during the time that such person works for or is affiliated with you; and **(c)** you will not opt-out, or otherwise ask to no longer receive electronic communications, from Official Senders during the term of this Agreement.

14.12.2 The consent given in this Section 14.12 shall not apply to the provision of notices by either party under this Agreement using e-mail unless the parties otherwise agree in a pen-and-paper writing signed by both parties.

14.12.3 We may permit or require you to use a specific e-mail address (that is, one that will contain a Top Level Domain Name that we designate, such as jane.smith@noahs.com or “john.jones@noahsfranchisee.com”) (the “**Noahs e-mail address**”) in connection with the operation of the Franchised Business. You will be required to sign our current form of E-Mail Authorization Letter and Extranet Agreement for this purpose. If we assign you a Noahs e-mail address, then you agree that you (and your employees) will use only that e-mail account for all official business associated with your Franchised Business.

15 INSURANCE

- 15.1 *Required Insurance Coverage.* Before starting any activities or operations under this Agreement, you agree to procure and maintain in full force and effect during the term of this Agreement (and for such period thereafter as is necessary to provide the coverages required under this Agreement for events having occurred during the Term of this Agreement), at your expense, the following insurance policy or policies in connection with the Franchised Business or other facilities on premises, or by reason of the construction, operation, or occupancy of the Franchised Business or other facilities on

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

- 15.1.1 Comprehensive general liability insurance, written on an occurrence basis, extended to include contractual liability, products and completed operations, liquor liability, and personal and advertising injury, with a combined bodily injury and property damage limit of not less than Three Million Dollars (\$3,000,000) in the aggregate and Two Million Dollars (\$2,000,000) per occurrence.
- 15.1.2 Statutory workers' compensation insurance and employer's liability insurance for a minimum limit of at least One Million Dollars (\$1,000,000), as well as such other disability benefits type insurance as may be required by statute or rule of the state in which the Franchised Business is located. Such policy shall contain an "Alternate Employer Endorsement" including us as the "alternate employer."
- 15.1.3 Commercial umbrella liability insurance with limits which bring the total of all primary underlying coverages (including comprehensive general liability (including liquor liability), workers' compensation, and property insurance) to not less than Five Million Dollars (\$5,000,000) total limit of liability. Such umbrella liability will provide at a minimum those coverages and endorsements required in the underlying policies described in this Section 15.1.
- 15.1.4 Food Borne Illness, Accidental & Malicious Contamination coverage, with minimum coverage of at least One Million Dollars (\$1,000,000).
- 15.1.5 Property insurance providing coverage for direct physical loss or damage to real and personal property for all-risk perils, including the perils of flood and earthquake. Appropriate coverage shall also be provided for boiler and machinery exposures and business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement value of the Franchised Business, its furniture, fixtures, equipment, and stock (real and personal property). Any deductibles contained in such policy shall be subject to review and our approval.
- 15.1.6 Products liability insurance in an amount not less than Two Million Dollars (\$2,000,000), which policy shall be considered primary.
- 15.1.7 Business interruption insurance to cover at least your obligations with respect to leases, royalties, marketing fund obligations, fixed costs, and other recurring expenses for a period of not less than six (6) months following an interruption to the Franchised Business' operation.

- 15.1.8 Fire, lightning, vandalism, theft, malicious mischief, flood (if in a special flood-hazard area), sprinkler damage, and the perils described in extended-coverage insurance with primary and excess limits of not less than the full-replacement value of the supplies, furniture, fixtures, equipment, machinery, inventory, and plate glass having a deductible of not more than One Thousand Dollars (\$1,000) and naming us as loss payee.
- 15.1.9 Automobile liability insurance, including coverage of vehicles not owned by you, but used by employees in connection with the Franchised Business, with a combination of primary and excess limits of not less than One Million Dollars (\$1,000,000).
- 15.1.10 Commercial blanket bond in the amount of \$100,000.
- 15.1.11 Any other insurance coverage that is required by federal, state, or municipal law.
- 15.2 *Endorsements.* All policies listed in Section 15.1 above (unless otherwise noted below) shall contain such endorsements as shall, from time to time, be provided in the Manual. All policies shall waive subrogation as between us (and our insurance carriers) and you (and your insurance carriers).
- 15.3 *Notices to us.* In the event of cancellation, material change, or non-renewal of any policy, sixty (60) days' advance written notice must be provided to us in the manner provided in Section 24 below.
- 15.4 *Construction Coverages.* In connection with all significant construction, reconstruction, or remodeling of the Franchised Business during the term of this Agreement, you must require the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manual, all written by insurance or bonding companies that we have approved, having a rating as set forth in Section 15.1 above.
- 15.5 *Other Insurance Does Not Impact your Obligation.* Your obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance that we may maintain, nor shall your performance of that obligation relieve you of liability under the indemnity provisions set forth in Section 21.4 below. Additionally, the requirements of this Section 15 shall not be reduced, diminished, eroded, or otherwise affected by insurance that you carry (and/or claims made under that insurance) for other businesses, including, but not limited to, other Restaurants operated by you (and/or your affiliates) under the System.
- 15.6 *Additional Named Insured.* All public liability and property damage policies shall list us as an additional named insured, and shall also contain a provision that we, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to us or our servants, agents, or employees by reason of the negligence of you or your servants, agents, or employees.
- 15.7 *Certificates of Insurance.* At least thirty (30) days before the time you are first required to carry any insurance under this Agreement, and from then on, at least thirty (30) days before the expiration of any such policy, you agree to deliver to us certificates of

insurance evidencing the proper coverage with limits not less than those required under this Agreement. All certificates shall expressly provide that we will receive at least thirty (30) days' prior written notice if there is a material alteration to, cancellation, or non-renewal of the coverages evidenced by such certificates. Additional certificates evidencing the insurance required by Section 15.1 above must name us, and each of our affiliates, directors, agents, and employees, as additional insured parties, and shall expressly provide that any interest of same therein shall not be affected by any breach by you of any policy provisions for which such certificates evidence coverage.

- 15.8 *Proof of Coverage.* In addition to your obligations under Section 15.7 above, on the first anniversary of the Effective Date, and on each subsequent anniversary of the Effective Date, you agree to provide us with proof of insurance evidencing the proper coverage with limits not less than those required under this Agreement, in such form as we may reasonably require.
- 15.9 *Changes.* We will have the right, from time to time, to make such changes in minimum policy limits and endorsements as we may determine are necessary or appropriate; provided, however, all changes shall apply to all of our franchisees who are similarly situated.

16 TRANSFER OF INTEREST

- 16.1 *By Us.* We will have the right to transfer or assign this Agreement and/or all or any part of our rights or obligations under this Agreement to any person or legal entity, and any assignee of us, and that assignee will become solely responsible for all of our transferred obligations under this Agreement as of the date of assignment.
- 16.2 *Your Principals.* Each party that holds any interest whatsoever in you (whether directly, indirectly, and/or beneficially) (each, a "**Principal**"), and the interest that each Principal holds in you (directly, indirectly, or beneficially), is identified in Exhibit C to this Agreement. You represent and warrant to us that your owners are accurately set forth on Exhibit C to this Agreement, and you also agree not to permit the identity of those owners, and/or their respective interests in you, to change without complying with this Agreement. We will have the right to designate any person or entity which owns a direct, indirect, and/or beneficial interest in you as a Principal, and Exhibit C shall be so amended automatically upon written notice thereof to you.
- 16.3 *Principals.* We will have a continuing right to designate as a Principal any party that owns a direct or indirect interest in you.
- 16.4 *By You.* You understand and acknowledge that the rights and duties set forth in this Agreement are personal to you, and that we have granted this franchise in reliance on your (or your Principals') business skill, financial capacity, and personal character. Accordingly:
- 16.4.1 Without our prior written consent, neither you (nor any successor to any part of your interest in this Agreement) nor any Principal, nor any other party that directly or indirectly owns any interest in this Agreement, in you, and/or in the Franchised Business, may sell, assign, transfer, convey, pledge, encumber, merge, create a security interest in, and/or give away (collectively, "**transfer**") any direct or

indirect interest in: **(a)** this Agreement; **(b)** you; **(c)** any or all of your rights or obligations under this Agreement; and/or **(d)** all or substantially all of the assets of the Franchised Business. Any purported assignment or transfer not having our prior written consent as required by this Section 16 shall be null and void and shall also constitute a material breach of this Agreement, for which we may immediately terminate this Agreement without opportunity to cure, pursuant to Section 17.2.5 below.

- 16.4.2 If you are an entity (other than a partnership or a limited liability partnership), then you agree that: **(a)** without our prior written approval, you will not issue any voting securities or interests, or securities or interests convertible into voting securities; and **(b)** the recipient of any such securities shall become a Principal under this Agreement, if we designate them as such.
- 16.4.3 If you are a partnership or limited liability partnership, then the partners of that partnership shall not, without our prior written consent, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner in such a partnership shall automatically be deemed to be a Principal.
- 16.4.4 Principals shall not, without our prior written consent, transfer, pledge or otherwise encumber their interest in you. Any such transaction shall also be deemed a "transfer" under this Agreement.
- 16.4.5 You also agree that in the case of any proposed transfer, you authorize us to truthfully answer questions posed to us by the proposed transferee, including providing that party with information relating to your Restaurant (such as sales reports) (although we will have the right not to provide any or all such information).
- 16.5 *Transfer Conditions.* We will not unreasonably withhold any consent required by Section 16.4 above; provided, that if you propose to transfer your obligations under this Agreement or any material asset, or if any party proposes to transfer any direct or indirect interest in you, then we will have the right to require that you satisfy any or all of the following conditions (and any other conditions that we may reasonably require) in addition to signing a Transfer Agreement (which will include releases), before we grant our approval to the proposed transfer:
- 16.5.1 The transferor must have executed a general release, in a form satisfactory to us, of any and all claims against us and our affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including claims arising under this Agreement, any other agreement between you and us, and/or our respective affiliates, and federal, state, and local laws and rules.
- 16.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to us, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in you; and, if

your obligations were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to us

- 16.5.3 The proposed new Principals (after the transfer) must meet our educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the Franchised Business, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the Franchised Business.
- 16.5.4 We will have the right to require that you execute, for a term ending on the expiration date of this Agreement, the form of franchise agreement that we are then offering to new System franchisees, and such other ancillary agreements that we may require for the business franchised under this Agreement, and those agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including a higher royalty and marketing fee. You also agree to sign (and cause your principals to sign) a transfer agreement in the form that we reasonably provide, which will include general releases.
- 16.5.5 If we so request, then you, at your expense, must conduct Facilities Remodeling to conform to the then-current standards and specifications of new Restaurants then-being established in the System, and you must complete the upgrading and other requirements specified above in Section 8.6 within the time period that we specify;.
- 16.5.6 You must pay in full all of your monetary obligations to us and our affiliates, whether under this Agreement or otherwise, and you must not be otherwise in default of any of your obligations under this Agreement (including but not limited to your reporting obligations).
- 16.5.7 The transferor shall remain liable for all of the obligations to us in connection with the Franchised Business that arose before the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments that we reasonably request to evidence such liability.
- 16.5.8 A Principal of the transferee whom we designate to be a new Operating Partner, and those of the transferee's Certified Managers as we may require, shall successfully complete (to our satisfaction) all training programs that we require upon such terms and conditions as we may reasonably require (and while we will not charge a fee for attendance at such training programs, the transferee shall be responsible for the salary and all expenses of the person(s) that attend training).
- 16.5.9 You agree to pay us a transfer fee to compensate us for our legal, accounting, training, and other expenses incurred in connection with the transfer in the amount fifty percent (50%) of our then-current initial franchise fee; however:
 - 16.5.9.1 If you and one or more affiliates are transferring more than one franchise agreement to the same buyer, as part of the same

transaction, then our transfer fee for all such transfers will be capped at \$50,000 or our reasonable out-of-pocket costs, if they are higher.

16.5.9.2 If the transferee is a spouse, son, or daughter of the transferor and the transfer is for estate-planning purposes, we will not require the payment of a transfer fee, but the transferor must reimburse us for our out-of-pocket expenses (including attorneys' fees) we incur in connection with reviewing and approving the transfer.

16.5.9.3 If the transferee is upon death or incapacity as provided in Section 16.7 below, then we will not require the payment of a transfer fee, but the transferor must reimburse us for our out-of-pocket expenses (including attorneys' fees) we incur in connection with reviewing and approving the transfer.

16.5.10 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Sections 19.3 – 19.5 below.

16.6 *Right of First Refusal.* If you or any of your Principals wish to accept any *bona fide* offer from a third party to purchase you, any of your material assets, or any direct or indirect interest in you, then all of the following shall apply:

16.6.1 You (or the Principal who proposes to sell his/her interest) shall promptly notify us in writing of the offer and provide to us the information and documentation relating to the offer that we may require. We will have the right and option, exercisable within thirty (30) days after we have received all such information that we have requested, to send written notice to the seller that we intend to purchase the seller's interest on the same economic terms and conditions offered by the third party. After exercising our right, we will also have the right to conduct additional reasonable due diligence and to require the seller to enter into a purchase agreement in a form mutually acceptable to us and to the seller. If we elect to purchase the seller's interest, then the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by us.

16.6.2 Any material change in the terms of the offer before closing shall constitute a new offer subject to our same rights of first refusal (as set forth in this Section 16.6) as in the case of the third party's initial offer. If we do not exercise the option afforded by this Section 16.6, that shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 16, with respect to a proposed transfer.

16.6.3 If the consideration, terms, and/or conditions offered by a third party are such that we may not reasonably be required to furnish the same consideration, terms, and/or conditions, then we may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one (1) independent appraiser, then we shall promptly designate an independent appraiser and you shall promptly designate another

independent appraiser and those two (2) appraisers shall, in turn, promptly designate a third appraiser; and all three (3) appraisers shall promptly confer and reach a single determination (or, if unable to reach a single determination, a valuation determined by a majority vote of those appraisers), which determination shall be binding upon both you and us. The cost of any such appraisal shall be shared equally by both parties.

- 16.6.4 If we exercise our rights under this Section 16.6, then we will have the right to set off all amounts due from you, including but not limited to one-half (½) of the cost of the appraisal, if any, specified above in Section 16.6.3 against any payment to you.
- 16.7 *Death or Incapacity.* If you or any Principal dies, becomes incapacitated, or enters bankruptcy proceedings, that person's executor, administrator, personal representative, or trustee must promptly notify us of the circumstances, and apply to us in writing within three (3) months after the event (death, declaration of incapacity, or filing of a bankruptcy petition) for consent to transfer the person's interest. The transfer will be subject to the provisions of this Section 16, as applicable; however, we will not impose a transfer fee for such a transfer, so long as you reimburse us for any out-of-pocket expenses that we incur in reviewing and/or documenting a transfer under this Section 16.7).
- 16.7.1 In addition, if the deceased or incapacitated person is the Operating Partner, we will have the right (but not the obligation) to take over operation of the Franchised Business until the transfer is completed and to charge a reasonable management fee for our services.
- 16.7.2 For purposes of this section, "**incapacity**" means any physical or mental infirmity that will prevent the person from performing his or her obligations under this Agreement: **(a)** for a period of thirty (30) or more consecutive days; or **(b)** for sixty (60) or more total days during a calendar year. In the case of transfer by bequest or by intestate succession, if the heirs or beneficiaries are unable to meet the conditions of Section 16.3, the executor may transfer the decedent's interest to another successor that we have approved, subject to all of the terms and conditions for transfers contained in this Agreement.
- 16.7.3 If an interest is not disposed of under this section within six (6) months after the date of death or appointment of a personal representative or trustee, we may terminate this Agreement under Section 17.2 below.
- 16.8 *Consent to Transfer.* Our consent to a transfer that is the subject of this Section 16 shall not constitute a waiver of any claims that we may have against the transferring party, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.
- 16.9 *No Transfers to a Non-Franchisee Party to Operate a Similar Business.* You agree that neither you nor any Principal of yours will transfer or attempt to transfer any or all of your Franchised Business to a third party who will operate a similar business at the Approved Location but not under the System and the Proprietary Marks, and not under a franchise agreement with us.

- 16.10 *Bankruptcy Issues.* If you or any person holding any interest (direct or indirect) in you become a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of you, your obligations, and/or rights under this Agreement, any material assets of yours, and/or any indirect or direct interest in you will be subject to all of the terms of this Section 16, including the terms of Sections 16.4, 16.5, and 16.6 above.
- 16.11 *Securities Offers.* All materials for an offering of stock, ownership, and/or partnership interests in you or any of your affiliates that are required by federal or state law must be submitted to us for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering must be submitted to us for such review before their use.
- 16.11.1 You agree that: (a) no offering by you or any of your affiliates may imply (by use of the Proprietary Marks or otherwise) that we are participating in an underwriting, issuance, or offering of your securities or your affiliates; (b) our review of any offering will be limited solely to the relationship between you and us (and, if applicable, any of your affiliates and us); and (c) we will have the right, but not obligation, to require that the offering materials contain a written statement that we require concerning the limitations stated above.
- 16.11.2 You (and the offeror if you are not the offering party), your Principals, and all other participants in the offering must fully indemnify us and all of the Noah's New York Bagels Parties (as defined in Section 21.5.2 below) in connection with the offering.
- 16.11.3 For each proposed offering, you agree to pay us a non-refundable fee of Ten Thousand Dollars (\$10,000) or such greater amount as is necessary to reimburse us for our reasonable costs and expenses (including legal and accounting fees) for reviewing, documenting, and discussing the proposed offering with you and your representatives.
- 16.11.4 You agree to give us written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 16.11 commences. Any such offering will be subject to all of the other provisions of this Section 16, including the terms set forth in Sections 16.4, 16.5, 16.6; and further, without limiting the foregoing, it is agreed that any such offering will be subject to our approval as to the structure and voting control of the offeror (and you, if you are not the offeror) after the financing is completed.
- 16.11.5 You must also, for the remainder of the term of the Agreement, submit to us for our review and prior written approval all additional securities documents you are required to prepare and file (or use) in connection with any offering of stock, ownership, and/or partnership interests. You must reimburse us for our reasonable costs and expenses we incur in connection with our review of those materials.

17 DEFAULT AND TERMINATION

- 17.1 *Automatic.* If any one or more of the following events take place, then you will be deemed to be in default under this Agreement, and all rights granted in this Agreement shall automatically terminate without notice to you: **(a)** if you will become insolvent or makes a general assignment for the benefit of creditors; **(b)** if you file a petition in bankruptcy or such a petition is filed against and not opposed by you (to the extent permitted under the U.S. Bankruptcy Code); **(c)** if you are adjudicated bankrupt or insolvent (to the extent permitted under the U.S. Bankruptcy Code); **(d)** if a bill in equity or other proceeding for the appointment of a receiver for you or another custodian for your business or assets is filed and consented to by you; **(e)** if a receiver or other custodian (permanent or temporary) of your assets or property, or any part thereof, is appointed by any court of competent jurisdiction; **(f)** if proceedings for a composition with creditors under any state or federal law is instituted by or against you; **(g)** if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless appealed or a supersedeas bond is filed); **(h)** if you are dissolved; or if execution is levied against your business or property; **(i)** if suit to foreclose any lien or mortgage against the Franchised Business premises or equipment is instituted against you and not dismissed within thirty (30) days; and/or **(j)** if the real or personal property of your Franchised Business shall be sold after levy thereupon by any sheriff, marshal, or constable.
- 17.2 *With Notice.* If any one or more of the following events take place, then you will be deemed to be in default under this Agreement, and we will have the right to terminate this Agreement and all rights granted under this Agreement, without affording you any opportunity to cure the default, effective immediately upon the delivery of our written notice to you (in the manner set forth under Section 24 below):
- 17.2.1 If you fail to construct and open the Franchised Business within the time limits provided in Sections 5.1 and 8.2 above, and within the requirements stated in Sections 5 and 8.2 above;
- 17.2.2 If you at any time cease to operate or otherwise abandon the Franchised Business for two (2) consecutive business days (during which you are otherwise required to be open, and without our prior written consent to do so), or lose the right to possession of the premises, or otherwise forfeit the right to do or transact business in the jurisdiction where the Franchised Business is located (however, if through no fault of yours, the premises are damaged or destroyed by an event such that you cannot complete repairs or reconstruction within ninety (90) days thereafter, then you will have thirty (30) days after such event in which to apply for our approval to relocate and/or reconstruct the premises, which approval we shall not unreasonably withhold);
- 17.2.3 If you or any of your Principals are charged with or convicted of a felony, a crime involving moral turpitude, or any other crime or offense that we believe is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or our interest therein;
- 17.2.4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Franchised Business and/or if you fail to comply with the requirements of Section 8.15 above;

- 17.2.5 If you or any of your Principals purport to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 16 above;
- 17.2.6 If you fail to comply with the requirements of Section 19 below;
- 17.2.7 If, contrary to the terms of Sections 10 or 11 above, you disclose or divulge the contents of the Manual or other confidential information that we provide to you;
- 17.2.8 If an approved transfer of an interest in you is not completed within a reasonable time, as required by Section 16.7 above;
- 17.2.9 If you knowingly maintain false books or records, or submit any false reports (including, but not limited to, information provided as part of your application for this franchise) to us;
- 17.2.10 If you commit three (3) or more defaults under this Agreement in any fifty-two (52) week period, whether or not each such default has been cured after notice;
- 17.2.11 If you sell products that we have not previously approved, or purchase any product from a supplier that we have not previously approved, or if you sell any Proprietary Items anywhere other than from the Restaurant (except as permitted under Section 1.5 above) or sell any Proprietary Items that are not authorized for sale at retail;
- 17.2.12 If you engage in any conduct or practice that is fraudulent, unfair, unethical, or a deceptive practice
- 17.2.13 If you engage in delivery and/or catering services from the Franchised Business without having first obtained our prior written consent; and/or
- 17.2.14 If you make any unauthorized or improper use of the Proprietary Marks, or if you or any of your Principals use the Proprietary Marks in a manner that we do not permit (whether under this Agreement and/or otherwise) or that is inconsistent with our direction, or if you or any of your Principals directly or indirectly contest the validity of our ownership of the Proprietary Marks, our right to use and to license others to use the Proprietary Marks, or seek to (or actually do) register any of our Proprietary Marks with any agency (public or private) for any purpose without our prior written consent to do so.

17.3 *With Notice and Opportunity to Cure.*

- 17.3.1 Except as otherwise provided above in Sections 17.1 and 17.2 above, if you are in default of your obligations under this Agreement, we may only terminate this Agreement by giving you written notice of termination (in the manner set forth under Section 24 below) stating the nature of the default at least thirty (30) days before the effective date of termination; provided, however, that you may avoid termination by immediately initiating a remedy to cure such default, curing it to our satisfaction, and by promptly providing proof of the cure to us, all within the thirty (30) day period. If any such default is not cured within the specified time (or such longer period as applicable law may require), then this Agreement shall

terminate without further notice to you effective immediately upon the expiration of the thirty (30) day period or such longer period as applicable law may require.

- 17.3.2 If you are in default under the terms of any other franchise agreement or other contract between you (and/or your affiliates) and us (and/or our affiliates), that will also constitute a default under Section 17.3.1 above.
- 17.4 *Bankruptcy.* If, for any reason, this Agreement is not terminated pursuant to this Section 17, and the Agreement is assumed, or assignment of the same to any person or entity who has made a *bona fide* offer to accept an assignment of the Agreement is contemplated, pursuant to the U.S. Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth: **(i)** the name and address of the proposed assignee; and **(ii)** all of the terms and conditions of the proposed assignment and assumption; shall be given to us within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of the Agreement; and, in any event, within ten (10) days before the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption. We will thereupon have the prior right and option, to be exercised by notice given at any time before the effective date of such proposed assignment and assumption, to accept an assignment of the Agreement to us upon the same terms and conditions, and for the same consideration, if any, as in the *bona fide* offer made by the proposed assignee, less any brokerage commissions which may be payable by you out of the consideration to be paid by such assignee for the assignment of the Agreement.
- 17.5 *Our Rights Instead of Termination.* If we are entitled to terminate this Agreement in accordance with Sections 17.2 or 17.3 above, we will also have the right to take any lesser action instead of terminating this Agreement, including but not limited to terminating, modifying, or eliminating completely, the Protected Territory described in Section 1.3 above.
- 17.6 *Reservation of Rights under Section 17.5.* If any rights, options, arrangements, or areas are terminated or modified in accordance with Section 17.5 above, such action shall be without prejudice to our right to terminate this Agreement in accordance with Sections 17.2 or 17.3 above, and/or to terminate any other rights, options or arrangements under this Agreement at any time thereafter for the same default or as a result of any additional defaults of the terms of this Agreement.
- 17.7 *Damages.* You will pay us all damages, costs, and expenses (including but not limited to reasonable attorneys' fees, court costs, discovery costs, and all other related expenses), that we incur as a result of any default by you under this Agreement and any other agreement between the parties (and their respective affiliates) (in addition to other remedies that we may have).

18 OBLIGATIONS UPON TERMINATION OR EXPIRATION

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

- 18.1 *Cease Operation.* You agree to: **(a)** immediately stop operating the Franchised Business; and **(b)** never directly or indirectly represent to the public that you are a present or former franchisee of ours.
- 18.2 *Stop Using Marks and Intellectual Property.* You agree to immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the mark "Noah's New York Bagels" and any and all other Proprietary Marks, distinctive forms, slogans, signs, symbols, and devices associated with the System, and any and all other intellectual property associated with the System. Without limiting the foregoing, you agree to stop making any further use of any and all signs, marketing materials, displays, stationery, forms, and any other articles that display the Proprietary Marks.
- 18.3 *Cancel Assumed Names.* You agree to take such action as may be necessary to cancel any assumed name or equivalent registration which contains the mark "Noah's New York Bagels" and any and all other Proprietary Marks, and/or any other service mark or trademark of ours, and you will give us evidence that we deem satisfactory to provide that you have complied with this obligation within five (5) days after termination or expiration of this Agreement.
- 18.4 *Premises.* We will have the right (but not the obligation) to require you to assign to us any interest that you (and/or your affiliates) may have in the lease or sublease for the ground upon which the Restaurant is operated and/or for the building in which the Restaurant is operated.
 - 18.4.1 If we do not elect or if we are unable to exercise any option we may have to acquire the lease or sublease for the premises of the Franchised Business, or otherwise acquire the right to occupy the premises, you **(a)** will make such modifications or alterations to the premises operated under this Agreement (including the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other Restaurants, **(b)** shall make such specific additional changes thereto as we may reasonably request for that purpose, and **(c)** must provide to us within fifteen (15) days after termination or expiration of this Agreement with photographic proof and other evidence, in such form as we may reasonably request, that you have done all of the above acts and things.
 - 18.4.2 In addition, you agree to immediately stop use of (and transfer to us) all telephone numbers and any domain names, websites, e-mail addresses, social media/network names, and any other print and online identifiers (together, "**Identifiers**"), whether or not authorized by us, that you have used (or that you have authorized others to use) while operating the Franchised Business, and you must promptly sign such documents or take such steps as necessary to remove reference to the Franchised Business from all trade or business directories, including online directories, or at our request transfer same to us.

- 18.4.3 You agree that whether or not we exercise our rights under Section 18.4.4 below, you will be responsible for any other party's use of the premises and/or any of the Identifiers if you do not comply with all of the requirements of this Section 18.4.
- 18.4.4 If you fail or refuse to comply with all of the requirements of this Section 18.4, then we (or our designee) shall have the right to enter upon the premises of the Franchised Business, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at your cost, which expense you agree to pay upon demand.
- 18.5 *Our Option to Buy Your Assets.* We will have the right (but not the obligation), which we may exercise at any time within thirty (30) days after expiration, termination, or default under this Agreement and/or default under your lease/sublease for the premises, to buy from you (and/or your affiliates) any or all of your furnishings, equipment, signs, fixtures, supplies, or inventory related to the operation of the Franchised Business (the "**Operating Assets**"), at the lesser of your cost or fair market value. The parties agree that "fair market value" will be determined based upon a five (5) year straight line depreciation of original costs. For equipment and fixtures that are five (5) or more years old, the parties agree that fair market value is deemed to be ten percent (10%) of the equipment's original cost. We also have the right to require that you return to us, at our cost, any signage that we specify. If we elect to exercise any option to purchase the Operating Assets as provided above, then we will have the right to set off all amounts due from you. You agree to pay off and liquidate all liens against the Operating Assets before we exercise our right to take the assignment as specified above.
- 18.6 *No Use of the Marks in Other Businesses.* You agree, if you continue to operate or subsequently begin to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute our rights in and to the Proprietary Marks. You further agree not to use, in any manner whatsoever, any designation of origin, description, trademark, service mark, or representation that suggests or implies a past or present association or connection with us, the System, the Products, and/or the Proprietary Marks.
- 18.7 *Pay All Sums Due.* You agree to promptly pay all sums owing to us and our affiliates (regardless of whether those obligations arise under this Agreement or otherwise). In the event of termination for any of your defaults, those sums shall include all damages, costs, and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses), that we incur as a result of the default.
- 18.8 *Pay Damages.* You agree to pay us all damages, costs, and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) that we incur as a result of your default under this Agreement and/or subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 18.
- 18.9 *Return Confidential Information.* You agree to immediately return to us the Manual and all other manuals, records, and instructions containing confidential information (including

any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be our property.

- 18.10 *Right to Enter and Continue Operations.* In order to preserve the goodwill of the System following termination, we (or our designee) shall have the right to enter the Franchised Business (without liability to you, your Principals, or otherwise) for the purpose continuing the Franchised Business's operation and maintaining the goodwill of the business.
- 18.11 *Lost Future Royalties.* If we terminate this Agreement based on your default, or if you abandon or otherwise cease to operate the Franchised Business, you agree to pay to us, as liquidated damages, an amount calculated as follows: **(a)** the average of your monthly Royalty Fees that are due under this Agreement for the twelve (12) months immediately before your abandonment or our delivery of the notice of default (or, if you have been operating for less than 12 months, the average of your monthly Royalty Fees for the number of months you have operated the Restaurant); **(b)** multiplied by the lesser of 36 or the number of months remaining in the then-current term of this Agreement under Section 2. The parties agree that the above requirements are a reasonable estimate of the potential damage that will result from the breach and not meant as a penalty. You agree to pay this sum to us upon our request for payment. You also agree that our right to collect liquidated damages under this Section 18.11 is not instead of, nor does it limit us from exercising, any our other rights (whether arising under this Agreement, at law, and/or in equity).
- 18.12 *Our Rights.* You agree not to do anything that would potentially interfere with or impede the exercise of our rights under this Section 18.

19 COVENANTS

- 19.1 *Full Time Efforts.* You agree that during the term of this Agreement, except as we have otherwise approved in writing, you (or the Operating Partner) shall devote full time, energy, and best efforts to the management and operation of the Franchised Business.
- 19.2 *Understandings.*
- 19.2.1 You acknowledge and agree that: **(a)** pursuant to this Agreement, you will have access to valuable trade secrets, specialized training and Confidential Information from us and our affiliates regarding the development, operation, management, purchasing, sales and marketing methods and techniques of the System; **(b)** the System and the opportunities, associations and experience we have established and that you will have access to under this Agreement are of substantial and material value; **(c)** in developing the System, we and our affiliates have made and continue to make substantial investments of time, technical and commercial research, and money; **(d)** we would be unable to adequately protect the System and its trade secrets and Confidential Information against unauthorized use or disclosure and would be unable to adequately encourage a free exchange of ideas and information among franchisees in our system if franchisees were permitted to hold interests in Competitive Businesses (as defined below); and **(e)** restrictions on your right to hold interests in, or perform

services for, Competitive Businesses will not unreasonably or unnecessarily hinder your activities.

- 19.2.2 As used in this Section 19, the term “**Competitive Business**” is agreed to mean a retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business’ gross revenues at any one or more retail location(s).
- 19.3 *Covenant Not to Compete or Engage in Injurious Conduct.* Accordingly, you covenant and agree that, during the term of this Agreement and for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you shall not directly, indirectly, for yourself, or through, on behalf of, or in conjunction with any party, in any manner whatsoever, do any of the following:
- 19.3.1 Divert or attempt to divert any actual or potential business or customer of any Noah’s New York Bagels Restaurant to any competitor or otherwise take any action injurious or prejudicial to the goodwill associated with the Marks and the System.
- 19.3.2 Own, maintain, develop, operate, engage in, franchise or license, make loans to, lease real or personal property to, and/or have any whatsoever interest in, or render services or give advice to, any Competitive Business.
- 19.4 *Where Restrictions Apply.* During the term of this Agreement, there is no geographical limitation on the restrictions set forth in Section 19.3 above. During the two-year period following the expiration or earlier termination of this Agreement, or a transfer as contemplated under Section 16 above, these restrictions shall apply only within the Protected Territory and also within ten (10) miles of any then-existing Noah’s New York Bagels Restaurant, except as we may otherwise approve in writing. These restrictions shall not apply to restaurants that you operate that we (or our affiliates) have franchised to you pursuant to a valid franchise agreement.
- 19.5 *Application to Transfers.* You further covenant and agree that, for a continuous period of two (2) years after the expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you will not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person, firm, partnership, corporation, or other entity, sell, assign, lease or transfer the Approved Location to any person, firm, partnership, corporation, or other entity that you know, or have reason to know, intends to operate a Competitive Business at the Approved Location. You, by the terms of any conveyance selling, assigning, leasing or transferring your interest in the Approved Location, shall include these restrictive covenants as are necessary to ensure that a Competitive Business that would violate this Section is not operated at the Approved Location for this two-year period, and you shall take all steps necessary to ensure that these restrictive covenants become a matter of public record.
- 19.6 *Periods of Non-Compliance.* If, at any time during the two-year period following expiration or termination of this Agreement, and/or a transfer as contemplated in Section 16 above, you fail to comply with your obligations under this Section 19, then that period

of noncompliance will not be credited toward your satisfaction of the two-year obligation specified above.

- 19.7 *Publicly-Held Entities.* Section 19.3.3 above shall not apply to your ownership of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term “publicly-held corporation” shall be deemed to refer to a corporation which has securities that have been registered under the Securities Exchange Act of 1934.
- 19.8 *Personal Covenants.* You agree to require and obtain execution of covenants similar to those set forth in Sections 9.3, 11, 16, 18 above, and this Section 19 (as modified to apply to an individual), from your Certified Managers and other employees, supervisors, and Principals. The covenants required by this section shall be in the form provided in Exhibit F to this Agreement. If you do not obtain execution of a covenant required by this section and deliver to us those signed covenants, that shall constitute a default under Section 17.2.6 above.
- 19.9 *Construction.* The parties agree that each of the foregoing covenants will be construed as independent of any other covenant or provision of this Agreement. We have the right to reduce in writing the scope of any part of this Section 19 and, if we do so, you agree to comply with the obligations as we have reduced them.
- 19.10 *Claims Not a Defense.* You agree that the existence of any claims you may have against us, whether or not arising from this Agreement, shall not constitute a defense to our enforcement of the covenants in this Section 19. You agree to pay all costs and expenses (including reasonable attorneys’ fees, court costs, discovery costs, and all other related expenses) that we incur in connection with the enforcement of this Section 19.
- 19.11 *Covenant as to Anti-Terrorism Laws.* You and the owners of your business (“**Owners**”) agree to comply with and/or to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, you and the Owners certify, represent, and warrant that none of their respective property or interests are “blocked” under any of the Anti-Terrorism Laws and that neither you nor any of the Owners are in violation of any of the Anti-Terrorism Laws. You also agree not to knowingly hire or do business with (or continue to employ or do business with) any party who is blocked under any of the Anti-Terrorism Laws. The term “**Anti-Terrorism Laws**” means Executive Order 13224 issued by the President of the United States, as supplemented, the USA PATRIOT Act, and all other laws and regulations addressing or in any way relating to terrorist acts and/or acts of war.
- 19.12 *Defaults.* You acknowledge that your violation of the terms of this Section 19 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly consent to the issuance of an injunction prohibiting any conduct in violation of the terms of this Section 19.

20 TAXES, PERMITS, AND INDEBTEDNESS

- 20.1 *Payment of Taxes.* You agree to promptly pay when due all taxes levied or assessed, including unemployment and sales taxes, and all accounts and other indebtedness of

every kind that you incur in the conduct of the business franchised under this Agreement. You agree to pay us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on us with respect to any payments that you make to us as required under this Agreement, unless the tax is credited against income tax that we otherwise pay to a state or federal authority.

- 20.2 *Payment of Trade Creditors.* You agree to promptly pay when due all trade creditors and vendors (including but not limited to any that are affiliated with us) that supply goods or services to you and/or the Franchised Business (including for example the landlord for the premises of your Restaurant). If you do not pay your vendors on time and in full, then we will have the right (but not the obligation) to make payments to those vendors on your behalf, and, if we do so, you agree to reimburse us on demand for those payments plus our reasonable expenses. We will have the right to collect these funds using the methods specified in Section 4.4.2 above.
- 20.3 *Your Right to Contest Liabilities.* If there is a bona fide dispute as to your liability for taxes assessed or other indebtedness, you may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event will you permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Franchised Business, or any improvements thereon.
- 20.4 *Compliance with Law.* You agree to comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement, including licenses to do business, health certificates, liquor licenses, food handler's permits, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of any such laws are in conflict with the terms of this Agreement, the Manual, or our other instructions, you agree to: **(a)** comply with said laws; **(b)** immediately provide us with written notice describing the nature of the conflict; and **(c)** cooperate with us and our counsel in developing a way to comply with the terms of this Agreement, as well as applicable law, to the extent that it is possible to do so.
- 20.5 *Notice of Violations and Actions.* You agree to notify us in writing within five (5) days after you receive notice of any health or safety violation, the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, or within five (5) days occurrence of any accident or injury which may adversely affect the operation of the Franchised Business or your financial condition, or give rise to liability or a claim against either party to this Agreement.

21 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

- 21.1 *Independent Contractor Relationship.* The parties acknowledge and agree that:
- 21.1.1 this Agreement does not create a fiduciary relationship between them;
- 21.1.2 that you will be an independent contractor;

- 21.1.3 you are the only party that is in day-to-day control of your franchised business, even though we will share the brand and Proprietary Marks as specified in this Agreement, and neither this Agreement nor any of the systems, guidance, processes, or requirements under which you operate alter that basic fact;
- 21.1.4 nothing in this Agreement is intended to make either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever; and
- 21.1.5 neither this Agreement nor our course of conduct is intended, nor may anything in this Agreement (nor our course of conduct) be construed, to state or imply that we are the employer of your employees and/or independent contractors, nor vice versa.
- 21.2 *Notice of Status.* At all times during the term of this Agreement and any extensions hereof, you will hold yourself out to the public as an independent contractor operating the business pursuant to a franchise from us. You agree to take such action as may be necessary to do so, including exhibiting a notice of that fact in a conspicuous place at the Approved Location, the content of which we reserve the right to specify.
- 21.3 *No Contracts in our Name.* It is understood and agreed that nothing in this Agreement authorizes you to make any contract, agreement, warranty, or representation on our behalf, or to incur any debt or other obligation in our name; and that we will in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action; nor shall we be liable by reason of any act or omission in your conduct of the Franchised Business or for any claim or judgment arising therefrom against either party to this Agreement.
- 21.4 *Indemnification.* You agree to indemnify, defend, and hold harmless each of the Noah's New York Bagels Parties harmless against any and all Damages arising directly or indirectly from any Asserted Claim as well as from your breach of this Agreement. Your indemnity obligations shall survive the expiration or termination of this Agreement, and shall not be affected by the presence of any applicable insurance policies and coverages that we may maintain.
- 21.5 *Definitions.* As used in Section 21.4 above, the parties agree that the following terms shall have the following meanings:
- 21.5.1 **"Asserted Claim"** means any allegation, cause of action, and/or complaint that is the result of, or in connection with, your exercise of your rights and/or carrying out of your obligations under this Agreement (including, but not limited to, any claim associated with your operation of the Franchised Business or otherwise), or any default by you under this Agreement, notwithstanding any claim that any Noah's New York Bagels Party was or may have been negligent.
- 21.5.2 **"Noah's New York Bagels Parties"** means us, our shareholders, parents, subsidiaries, and affiliates, and their respective officers, directors, employees, and agents.
- 21.5.3 **"Damages"** means all claims, demands, causes of action, suits, damages, liabilities, fines, penalties, assessments, judgments, losses, and expenses

(including expenses, costs and lawyers' fees incurred for any indemnified party's primary defense or for enforcement of its indemnification rights).

22 FORCE MAJEURE

- 22.1 *Impact.* Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: **(a)** acts of nature; **(b)** acts of war, terrorism, or insurrection; **(c)** public health emergencies, epidemics, pandemics, strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; and/or **(d)** our inability (and that of our affiliates and/or suppliers) to manufacture, purchase, and/or cause delivery of any Products used in the operation of the Franchised Business.
- 22.2 *Transmittal of Funds.* The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 22.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that you will remain obligated to promptly pay all fees owing and due to us under this Agreement, without any such delay or extension.

23 APPROVALS AND WAIVERS

- 23.1 *Request for Approval.* Whenever this Agreement requires our prior approval, acceptance, and/or consent, you agree to make a timely written request to us therefor, and in each instance, our approval, acceptance, or consent will be valid only if it is provided in writing.
- 23.2 *No Warranties or Guarantees.* You acknowledge and agree that we make no warranties or guarantees upon which you may rely, and that we assume no liability or obligation to you, by providing any waiver, approval, consent, or suggestion to you in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.
- 23.3 *No Waivers.* No delay, waiver, omission, or forbearance on our part to exercise any right, option, duty, or power arising out of any breach or default by you or any other franchisee under any of the terms, provisions, covenants, or conditions of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute our waiver of our right to enforce any such right, option, duty, or power as against you, or as to subsequent breach or default by you. If we accept late payments from you or any payments due, that shall not be deemed to be our waiver of any earlier or later breach by you of any terms, provisions, covenants, or conditions of this Agreement. No course of dealings or course of conduct will be effective to amend the terms of this Agreement.

24 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by certified U.S. mail, or by other means that affords the sender with

evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, rejected delivery, or delivery not possible because the recipient has moved and left no forwarding address shall be deemed to have been given at the date and time of receipt, rejected, and/or attempted delivery. The Manual, any changes that we make to the Manual, and/or any other written instructions that we provide relating to operational matters, are not considered to be "notices" for the purpose of the delivery requirements in this Section 24.

25 ENTIRE AGREEMENT AND AMENDMENT

- 25.1 *Entire Agreement.* This Agreement and the exhibits referred to in this Agreement constitute the entire, full, and complete Agreement between the parties to this Agreement concerning the subject matter hereof, and supersede all prior agreements. The parties confirm that: (a) they were not induced by (nor did they rely upon) any other representations other than the words of this Agreement (and the FDD) before deciding whether to sign this Agreement; and (b) they relied only on the words printed in this Agreement in deciding whether to enter into this Agreement. However, nothing in this Agreement or in any other contract is intended as, nor shall it be interpreted to be, a disclaimer by us of any representation made in our Franchise Disclosure Document ("FDD"), including the exhibits and any amendments to the FDD.
- 25.2 *Amendment.* Except for those changes that we are permitted to make unilaterally under this Agreement, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

26 SEVERABILITY AND CONSTRUCTION

- 26.1 *Introductory Paragraphs.* The parties agree that the introductory paragraphs of this Agreement, under the heading "Background," are accurate, and the parties agree to incorporate those paragraphs into the text of this Agreement as if they were printed here.
- 26.2 *Severability.* Except as expressly provided to the contrary in this Agreement, each portion, section, part, term, and/or provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.
- 26.3 *No Third Party Rights.* Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than you, we, and such of our respective successors and assigns as may be contemplated (and, as to you, permitted) by Section 16.4 above, any rights or remedies under or by reason of this Agreement.

- 26.4 *Captions Don't Amend Terms.* All captions in this Agreement are intended solely for the convenience of the parties, and no caption shall be deemed to affect the meaning or construction of any provision hereof.
- 26.5 *Including.* The parties agree that when used in this Agreement, the terms "includes" and "including" are intended to mean "including but not limited to".
- 26.6 *Survival.* All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.
- 26.7 *How We Exercise Our Rights.* Although we may exercise any of our rights, carry out any of our obligations, or otherwise discharge any of our duties under this Agreement directly, through the use of employees, independent contractors, professional advisors (for example, a CPA), or otherwise, we will still remain responsible for the proper performance of our obligations to you under this Agreement. You agree that in any instance in which we have a right as set out in this Agreement, we may exercise that right (unless otherwise provided) once and/or at any additional times that we deem it appropriate to do so.
- 26.8 *Expenses.* Each party shall bear all of the costs of exercising its rights and carrying out its responsibilities under this Agreement, except as otherwise provided.
- 26.9 *Counterparts.* This Agreement may be signed in counterparts, and signature pages may be exchanged by electronic methods, and each such counterpart, when taken together with all other identical copies of this Agreement also signed in counterpart, shall be considered as one complete Agreement.

27 APPLICABLE LAW AND DISPUTE RESOLUTION

- 27.1 *Choice of Law.* This Agreement takes effect when we accept and sign this document. This Agreement shall be interpreted and construed exclusively under the laws of the State of Colorado, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Colorado choice-of-law rules); provided, however, that the covenants in Section 19 of this Agreement shall be interpreted and construed under the laws of the state in which the Franchised Business is located. Nothing in this Section 27.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Colorado to which this Agreement would not otherwise be subject.
- 27.2 *Choice of Venue.* Subject to Section 27.3 below, the parties agree that any action that you bring against us, in any court, whether federal or state, must be brought only within such state and in the judicial district in which we have our principal place of business. Any action brought by us against you in any court, whether federal or state, may be brought within the state and judicial district in which we maintain our principal place of business.
- 27.2.1 The parties agree that this Section 27.2 shall not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue shall be as set forth above.

- 27.2.2 The parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.
- 27.2.3 Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.
- 27.3 *Mediation.* Before any party may bring an action in court against the other, the parties agree that they must first meet to mediate the dispute (except as otherwise provided in Section 27.5 below). Any such mediation shall be non-binding and shall be conducted in accordance with the then-current rules for mediation of commercial disputes of Judicial Arbitration and Mediation Services, Inc. (JAMS) at its location nearest to our principal place of business. Notwithstanding anything to the contrary, this Section 27.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.
- 27.4 *Parties Rights Are Cumulative.* No right or remedy conferred upon or reserved to us or you by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.
- 27.5 *Injunctions.* Nothing contained in this Agreement shall bar our right to obtain injunctive relief against threatened conduct that will cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.
- 27.6 **WAIVER OF JURY TRIALS. EACH PARTY TO THIS AGREEMENT IRREVOCABLY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER OF THEM AGAINST THE OTHER, WHETHER OR NOT THERE ARE OTHER PARTIES IN SUCH ACTION OR PROCEEDING.**
- 27.7 **MUST BRING CLAIMS WITHIN ONE YEAR. EACH PARTY TO THIS AGREEMENT AGREES THAT ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP, AND/OR YOUR OPERATION OF THE FRANCHISED BUSINESS, BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER, SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE FACTS GIVING RISE TO SUCH CLAIM OR ACTION, OR, IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY ALL PARTIES, SUCH CLAIM OR ACTION SHALL BE IRREVOCABLY BARRED. THIS SECTION 27.7 DOES NOT APPLY TO CLAIMS FOR INDEMNIFICATION UNDER THIS AGREEMENT.**
- 27.8 **WAIVER OF PUNITIVE DAMAGES. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO OR CLAIM OF ANY PUNITIVE OR EXEMPLARY DAMAGES AGAINST THE OTHER, AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH SHALL BE LIMITED TO THE RECOVERY OF ANY ACTUAL DAMAGES IT HAS SUSTAINED (THE PARTIES AGREE THAT THE PROVISIONS OF SECTION 18.11 ARE CONSISTENT WITH THIS PROVISION AND SHALL BE ENFORCED NOTWITHSTANDING THE WAIVER IN THIS SECTION 27.8).**
- 27.9 *Payment of Legal Fees.* You agree to pay us all damages, costs and expenses (including reasonable attorneys' fees, court costs, discovery costs, and all other related

expenses) that we incur in: **(a)** obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including Sections 9 and 17 above); and/or **(b)** successfully defending a claim from you that we misrepresented the terms of this Agreement, fraudulently induced you to sign this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement (as it may be amended by its terms) do not exclusively govern the parties' relationship.

28 ACKNOWLEDGMENTS

- 28.1 *Your Investigation of the Business Possibilities.* You acknowledge that you have conducted an independent investigation of the business franchised under this Agreement, recognize that this business venture involves business risks, and that your success will be largely dependent upon your ability (or, if you are an entity, your owners as independent businesspersons).
- 28.2 *No Warranties or Guarantees.* We expressly disclaim the making of, and you acknowledge that you have not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.
- 28.3 *Receipt of FDD and Complete Agreement.* You acknowledge receipt of a copy of this Agreement, the exhibit(s), and agreements relating to this Agreement (if any), with all of the blank lines filled in, with ample time within which to review with applicable advisors. You also acknowledge that you received the FDD at least fourteen (14) days before the date on which this Agreement was signed, or as otherwise provided under applicable state law.
- 28.4 *You Have Read the Agreement.* You acknowledge and agree that you have read and understood the FDD, this Agreement, and the exhibits to this Agreement.
- 28.5 *Your Advisors.* You acknowledge that we have recommended that you seek advice from advisors of your own choosing (including a lawyer and an accountant) about the potential benefits and risks of entering into this Agreement, and that you have had sufficient time and opportunity to consult with those advisors.
- 28.6 *No Conflicting Obligations.* Each party represents and warrants to the others that there are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: **(a)** negotiating and entering into this Agreement; **(b)** exercising its rights under this Agreement; and/or **(c)** fulfilling its responsibilities under this Agreement.
- 28.7 *Your Responsibility for the Choice of the Approved Location.* You acknowledge that you have sole and complete responsibility for the choice of the Approved Location; that we have not (and shall not be deemed to have, even by our approval of the site that is the Approved Location) given any representation, promise, or guarantee of your success at the Approved Location; and that you will be solely responsible for your own success at the Approved Location.

- 28.8 *Your Responsibility for Operation of the Franchised Business.* Although we retain the right to establish and periodically modify System standards, which you have agreed to maintain in the operation of your franchised Restaurant, you retain the right and sole responsibility for the day-to-day management and operation of the Franchised Business and the implementation and maintenance of system standards at the Franchised Business.
- 28.9 *Different Franchise Offerings to Others.* You acknowledge and agree that we may modify the terms under which we will offer franchises to other parties in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.
- 28.10 *Our Advice.* You acknowledge and agree that our advice is just that; that our advice is not a guarantee of success; and that you are the party that must reach and implement your own decisions about how to operate your Franchised Business on a day-to-day basis under the System.
- 28.11 *Your Independence.* You acknowledge and agree that:
- 28.11.1 you are the only party that employs your employees (even though we may provide you with advice, guidance, and training);
 - 28.11.2 we are not the employer of any of your employees, and we will not play any role in decisions regarding their employment (including but not limited to matters such as recruitment, hiring, compensation, scheduling, employee relations, labor matters, review, discipline, and/or dismissal);
 - 28.11.3 the guidance that we provide, and requirements under which you will operate, are intended to promote and protect the value of the brand and the Proprietary Marks;
 - 28.11.4 when forming and in operating your business, you had to adopt standards to operate that business, and that instead of developing and implementing your own standards (or those of another party), you chose to adopt and implement our standards for your business (including but not limited to our System and the requirements under this Agreement); and
 - 28.11.5 you have made (and will remain responsible at all times for) all of the organizational and basic decisions about establishing and forming your entity, operating your business (including but not limited to adopting our standards as your standards), and hiring employees and employment matters (including but not limited to matters such as recruitment, hiring, compensation, scheduling, employee relations, labor matters, review, discipline, and/or dismissal), engaging professional advisors, and all other facets of your operation.
- 28.12 *Success Depends on You.* You acknowledge that the success of the business venture contemplated under this Agreement is speculative and depends, to a large extent, upon your ability as an independent businessperson, your active participation in the daily affairs of the business, market conditions, area competition, availability of product, quality of services provided as well as other factors. We do not make any representation

or warranty express or implied as to the potential success of the business venture contemplated hereby.

- 28.13 *General Release.* If this Agreement is not the first contract between you (and your affiliates) and us (and our affiliates), then you agree to the following:

*You (on behalf of yourself and your parent, subsidiaries and affiliates and their respective past and present members, officers, directors, shareholders, agents and employees, in their corporate and individual capacities) and all guarantors of your obligations under this Agreement (collectively, "**Releasors**") freely and without any influence forever release and covenant not to sue us, our parent, subsidiaries and affiliates and their respective past and present officers, directors, shareholders, agents and employees, in their corporate and individual capacities (collectively "**Releasees**"), with respect to any and all claims, demands, liabilities and causes of action of whatever kind or nature, whether known or unknown, vested or contingent, suspected or unsuspected (collectively, "**claims**"), which any Releasor now owns or holds or may at any time have owned or held, including claims arising under federal, state and local laws, rules and ordinances and claims arising out of, or relating to this Agreement and all other agreements between any Releasor and any Releasee, the sale of any franchise to any Releasor, the development and operation of the Restaurants and the development and operation of all other restaurants operated by any Releasor that are franchised by any Releasee. You expressly agree that fair consideration has been given by us for this General Release and you fully understand that this is a negotiated, complete and final release of all claims. This General Release does not release any claims arising from representations made in our Franchise Disclosure Document and its exhibits or otherwise impair or affect any claims arising after the date of this Agreement.*

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

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Effective Date: _____

Address for Notices:

Address for Notices:

1720 Bellaire Street, Suite Skybox
Denver, Colorado 80222
Fax: (303) 568-8199
Attn: General Counsel

Telephone: _____
Fax: _____
Attn: _____

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT A
DATA ADDENDUM

¶	Section Cross- Reference	Item
1	1.2	The Approved Location under this Agreement shall be: _____ _____.
2	1.3	The Protected Territory under this Agreement shall be: _____ _____. [a circle with its center at the front door of the Franchised Business and a radius of _____ miles.]

Initials	
Franchisee	Franchisor

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT B
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

In order to induce Einstein Bros. Bagels Franchise Corporation ("**Franchisor**") to sign the Noah's New York Bagels Franchise Agreement between Franchisor and _____ ("**Franchisee**"), dated _____, 202____ (the "**Agreement**"), each of the undersigned parties, jointly and severally, hereby unconditionally guarantee to Franchisor and its successors and assigns that all of Franchisee's obligations (monetary and otherwise) under the Agreement as well as any other contract between Franchisee and Franchisor (and/or Franchisor's affiliates) will be punctually paid and performed.

Upon demand by Franchisor, each of the undersigned persons jointly and severally agree to immediately make each payment required of Franchisee under the Agreement and/or any other contract with Franchisor and/or its affiliates. Each of the undersigned persons waives any right to require Franchisor to: **(a)** proceed against Franchisee for any payment required under the Agreement (and/or any other contract with Franchisor and/or its affiliates); **(b)** proceed against or exhaust any security from Franchisee; **(c)** pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; and/or **(d)** give notice of demand for payment by Franchisee. Without affecting the obligations of the undersigned persons under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee. Each of the undersigned persons undersigned waive notice of amendment of the Agreement (and any other contract with Franchisor and Franchisor's affiliates) and notice of demand for payment by Franchisee, and agree to be bound by any and all such amendments and changes to the Agreement (and any other contract with Franchisor and Franchisor's affiliates).

Each of the undersigned persons jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement (and any other contract with Franchisor and Franchisor's affiliates), any amendment thereto, or any other agreement executed by Franchisee referred to therein.

Each of the undersigned persons agree to be individually bound by all of Franchisee's covenants, obligations, and promises in the Agreement, which include, but are not limited to, the covenants in the following Sections of the Agreement: **Section 9.3** (generally regarding trademarks), **Section 11** (generally regarding confidentiality), **Section 16** (generally regarding Transfers), **Section 18** (generally regarding obligations upon termination or expiration of this Agreement), and **Section 19** (generally regarding covenants against competition) of the Agreement.

Each of the undersigned persons acknowledge and agree that: **(a)** this Guarantee does not grant them any rights under the Agreement (including but not limited to the right to use any of Franchisor's marks such as the "Noah's New York Bagels" marks) and/or the system licensed to Franchisee under the Agreement; **(b)** that they have read, in full, and understand, all of the provisions of the Agreement that are referred to above in this paragraph, and that they intend to fully comply with those provisions of the Agreement as if they were printed here; and **(c)** that

they have had the opportunity to consult with a lawyer of their own choosing in deciding whether to sign this Guarantee.

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

This Guarantee shall be interpreted and construed in accordance with **Section 27** of the Agreement (including but not limited to the waiver of punitive damages, waiver of jury trial, agreement to bring claims within one year, and agreement not to engage in class or common actions). Among other things, that means that this Guarantee shall be interpreted and construed exclusively under the laws of the State of Colorado, and that in the event of any conflict of law, Colorado law will prevail (without applying Colorado conflict of law rules).

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

(in his/her personal capacity)

Printed
Name:_____

Date:_____

Home Address:

(in his/her personal capacity)

Printed
Name:_____

Date:_____

Home Address:

(in his/her personal capacity)

Printed
Name:_____

Date:_____

Home Address:

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT C
LIST OF PRINCIPALS

Name of Principal	Home Address	Interest %

Initials	
Franchisee	Franchisor

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT D

**ELECTRONIC FUND TRANSFER WITHDRAWAL FORM
(DIRECT DEBITS FOR ROYALTY, MARKETING FUND CONTRIBUTION, AND OTHER
FEES)**

_____ (Name of Person or Legal Entity)

_____ (ID Number)

The undersigned depositor ("**Depositor**" or "**Franchisee**") hereby authorizes Einstein Bros. Bagels Franchise Corporation ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**" or "**Bank**") to debit or credit such account(s) pursuant to our instructions.

_____ Depository

_____ Branch

_____ City

_____ State

_____ Zip Code

_____ Bank Transit/ABA Number

_____ Account Number

This authorization is to remain in full and force and effect until sixty days after we have received written notification from Franchisee of its termination.

Email address for receipt: _____

Printed Name
of Depositor: _____

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT E
ADA CERTIFICATION

Einstein Bros. Bagels Franchise Corporation (**"Franchisor"** or **"us"**) and _____ (**"Franchisee"** or **"you"**) are parties to a franchise agreement dated _____, 202____ (the **"Franchise Agreement"**) for the operation of a Noah's New York Bagels Franchised Business at _____ (the **"Franchised Business"**).

- In accordance with Section 5.7 of the Franchise Agreement, you certify to us that, to the best of your knowledge, the Franchised Business and its adjacent areas comply with all applicable federal, state, and local accessibility laws, statutes, codes, rules, regulations, and standards, including but not limited to the Americans with Disabilities Act.
- You acknowledge that you are an independent contractor and the requirement of this certification by Franchisor does not constitute ownership, control, leasing, or operation of the Franchised Business.
- You acknowledge that we have relied on the information contained in this certification.
- You agree to indemnify us and our officers, directors, and employees in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with your compliance with the Americans with Disabilities Act, as well as the costs (including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) related to the same.

Acknowledged and Agreed:

Franchisee:

By: _____

Printed Name: _____

Title: _____

NOAH'S NEW YORK BAGELS
FRANCHISE AGREEMENT
EXHIBIT F

SAMPLE FORM OF
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT
(to be signed by franchisee and its personnel)

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT ("Agreement") is made this _____ day of _____, 202____, by and between _____ (the "**Franchisee**"), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a managerial position with, Franchisee (the "**Member**").

RECITALS:

WHEREAS, Einstein Bros. Bagels Franchise Corporation ("**EBBFC**") owns a format and system (the "**System**") relating to the establishment and operation of "Noah's New York Bagels" restaurants, featuring a menu of [_____] and operating in structures that bear EBBFC's interior and exterior trade dress, and under its Proprietary Marks, as defined below (each, a "**Restaurant**");

WHEREAS, Each Restaurant will offer [_____] ("**Products**"), and certain proprietary foodstuff items such as [_____] and related items (together, "**Proprietary Items**"), for on-premises and carry-out consumption of food products, as well as the retail sale of merchandising items, logo items and certain Proprietary Items;

WHEREAS, EBBFC identifies Noah's New York Bagels Restaurants by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin (including for example the mark "Noah's New York Bagels") and certain other trade names, service marks, and trademarks that EBBFC currently and may in the future designate in writing for use in connection with the System (the "**Proprietary Marks**");

WHEREAS, EBBFC and Franchisee have executed a Franchise Agreement ("**Franchise Agreement**") granting Franchisee the right to operate a Noah's New York Bagels Restaurant (the "**Franchised Business**") and to produce and distribute the Products, Proprietary Items, services, and other ancillary products approved by EBBFC and use the Proprietary Marks in connection therewith under the terms and conditions of the Franchise Agreement;

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

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

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

2. Covenants Not to Compete.

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

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

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

(ii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Franchised Business.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by EBBFC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, Member shall not own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Franchised Business and which business is, or is intended to be, located within a ten (10) mile radius of either the Approved Location or any other Restaurant operating at the time that the obligations under this commence.

(d) As used in this Agreement, the term "same as or similar to the Franchised Business" shall include, but not be limited to, any other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

(e) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of two (2) years from the date of: **(a)** a transfer as contemplated under Section 16 of the Franchise Agreement; **(b)** expiration or termination of the Franchise Agreement (regardless of the cause for termination); **(c)** termination of Member's employment with Franchisee; and/or **(d)** a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause EBBFC irreparable injury, and Member agrees to pay all costs (including without limitation reasonable attorneys' fees, court costs, discovery costs, and all other related expenses) incurred by EBBFC in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

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

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

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

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

FRANCHISEE

MEMBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

NOAH'S BAGELS
AREA DEVELOPMENT AGREEMENT

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NOAH'S BAGELS AREA DEVELOPMENT AGREEMENT

THIS AREA DEVELOPMENT AGREEMENT (the "**Agreement**") is made and entered into on this ____ day of _____, 202__ ("**Effective Date**") by and between:

- Einstein Bros. Bagels Franchise Corporation, a Colorado corporation whose principal place of business is 1720 Bellaire Street, Suite Skybox, Denver, Colorado 80222 ("**Franchisor**"); and
- _____, a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Developer**").

RECITALS:

WHEREAS, Franchisor owns a format and system (the "**System**") relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and exterior trade dress, under the "Noah's New York Bagels" name and marks ("**Restaurants**"), and specializing in the sale of Proprietary Items including fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products as Franchisor may specify from time to time, as well as non-Proprietary Items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption (collectively, the "**Products**");

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

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

WHEREAS, Franchisor continues to develop, use, and control the use of such Proprietary Marks in order to identify for the public the source of services and products marketed thereunder and under the System, and to represent the System's high standards of quality, appearance, and service;

WHEREAS, Developer wishes to obtain certain rights to develop "Noah's Bagels" Restaurants under Franchisor's System, within the Development Area specified in this Agreement and according to the Development Schedule specified in this Agreement; and Developer and Franchisor wish to enter into this Agreement in order to reflect the understandings and agreements that they have reached with respect to the foregoing points and the other matters that are addressed herein.

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

1 GRANT

1.1 Franchisor hereby grants to Developer the right (and Developer hereby accepts the obligation), pursuant to the terms and conditions of this Agreement, to develop _____(____) Restaurants. In this regard, the parties further agree that:

1.1.1 The Restaurants shall be developed by Developer pursuant to the development schedule set forth in Paragraph 2 of Exhibit A, attached hereto (the "**Development Schedule**").

1.1.2 Each Restaurant shall be developed under this Agreement and operated pursuant to a separate Noah's Bagels Franchise Agreement (a "**Franchise Agreement**") that shall be executed as provided in Section 3.1 below.

1.1.3 Each Restaurant developed hereunder shall be located in the area described in Paragraph 1 of Exhibit A, attached hereto (the "**Development Area**"); however, the parties hereto expressly acknowledge and agree that the Development Area shall not include any toll road or interstate highway, "Captive Market Location" (as defined below) or Non-Traditional Facility (as defined below) located within the area described in paragraph 1 of Exhibit A hereto.

1.1.4 Definitions.

1.1.4.1 The term "**Captive Market Location**" is agreed to include, among other things, non-foodservice businesses of any sort within which a Restaurant or an "Noah's Bagels" branded facility is established and operated (including, for example, hotels and resorts), as well as branded locations that serve only our brand of coffee.

1.1.4.2 The term "**Non-Traditional Facility**" includes, among other things, college campuses, schools, hotels, casinos, airports and other travel facilities; federal, state, or local government facilities (including military bases); theme and amusement parks; recreational facilities; seasonal facilities; shopping malls; theaters; and sporting event arenas and centers.

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

1.3 Except as otherwise specifically provided under Section 1.2 above, Franchisor retains all other rights, and therefore Franchisor shall have the right (among others) on any terms and conditions Franchisor deems advisable, and without granting Developer any rights therein, to:

1.3.1 establish, and license others to establish, Restaurants at any location outside the Development Area notwithstanding their proximity to the Development Area or any Restaurant operated by Developer;

1.3.2 establish, and license others to establish, Restaurants at any Institutional Facility, Co-Branded Location, or non-traditional facility, within or outside the Development Area, notwithstanding such Restaurants' proximity to any Restaurant operated by Developer;

1.3.3 establish, and license others to establish, stores under other systems or other proprietary marks, which stores may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which stores may be located within or outside the Development Area, notwithstanding such stores' proximity to any Restaurant operated by Developer;

1.3.4 acquire (or be acquired) and operate any business or store of any kind, whether located within or outside the Development Area (excluding Restaurants operated under the System within the Development Area), notwithstanding such the proximity of any such businesses or stores to any Restaurant operated by Developer; and/or

1.3.5 sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products from any location or to any purchaser (including, but not limited to, sales made at retail locations, supermarkets, gourmet shops, mail order, and on the Internet), so long as

such sales are not conducted from a retail Restaurant operated from a location inside the Development Area.

1.4 In addition to the rights retained by Franchisor, as described in Section 1.3 above, Developer acknowledges and agrees that:

1.4.1 Franchisor and certain of Franchisor's affiliates and designees now sell and shall have the right to sell Products (and items of a similar nature) to wholesale accounts (such as restaurants), retail accounts (such as groceries and supermarkets), or otherwise, to any account and at any location.

1.4.2 Franchisor shall not prohibit other "Noah's Bagels" Restaurants (whether owned or franchised by Franchisor) from providing delivery or catering service to customers at any location, whether within or outside the Development Area.

1.5 This Agreement is not a franchise agreement, and does not grant to Developer any right to use in any manner Franchisor's Proprietary Marks or System.

1.6 Developer shall have no right under this Agreement to license others to use in any manner the Proprietary Marks or System.

1.7 Other Brands. We operate businesses under brands other than the *Noah's New York Bagels* brand. You acknowledge and agree that: (a) this Agreement does not grant you any rights with respect to any other business that we and/or our affiliates operate, including but not limited to, the businesses that license and/or operate under the brands *Einstein Bros. Bagels*, *Manhattan Bagel*, and/or *Kettleman's* (the "**Other Brands**"); and (b) we will have the right to operate and license others to operate businesses under the Other Brands at any location whatsoever, whether inside or outside the Development Area.

2 DEVELOPMENT FEE

2.1 In consideration of the development rights granted herein, Developer shall pay to Franchisor a development fee of _____ Dollars (\$_____) (the "**Development Fee**"), to be paid to Franchisor on or before the date of this Agreement.

2.2 If Developer is in compliance with its obligations under this Agreement, then upon execution of each Franchise Agreement, Franchisor shall credit to Developer the sum of Ten Thousand Dollars (\$10,000) toward the initial franchise fee payable under said Franchise Agreement with respect to each Restaurant that Developer is required to open under this Agreement; provided that in no circumstances will Franchisor grant credits in excess of the total Development Fee.

2.3 The Development Fee shall be fully earned when received by Franchisor and shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor and for the development opportunities lost or deferred as a result of the rights granted Developer herein.

3 DEVELOPMENT OBLIGATIONS

3.1 Developer must sign a separate Franchise Agreement for each Restaurant. Each Restaurant must be operated at a site that Franchisor has approved in writing (the "**Approved Location**"), as provided below. The Franchise Agreement for the first Restaurant developed under this Agreement will be in the form that is attached to this Agreement as Exhibit D. The Franchise Agreement for each additional Restaurant to be developed under this Agreement will be the form of franchise agreement that Franchisor is generally offering when the Franchise Agreement is to be signed. However, no matter what is stated in the form of Franchise Agreement to be signed:

3.1.1 For each Restaurant required to be opened under this Agreement, the initial franchise fee shall be:

- 3.1.1.1 Twenty-Five Thousand Dollars (\$25,000) if that Restaurant is opened thirty (30) or more days before the date required under the Development Schedule; and
- 3.1.1.2 Thirty-Five Thousand Dollars (\$35,000) if that Restaurant is opened within thirty (30) days before, on, or at any time after the date required under the Development Schedule.
- 3.1.2 If Developer has paid the initial franchise fee when the Franchise Agreement is signed, but the initial franchise fee later changes under Sections 3.1.1 or 3.1.2 above, then: (a) if there is a reduction in the initial franchise fee, Franchisor shall remit the amount of the reduction to Developer (or to the franchisee under the Franchise Agreement) within 30 days after the Restaurant opens for business; or (b) if the initial franchise fee increases under Sections 3.1.1.2 or 3.1.2.2 above, Developer (or the franchisee under the Franchise Agreement) shall remit the amount of the increase to Franchisor within 30 days after the Restaurant opens for business.
- 3.1.3 If Developer does not meet its obligations under this Agreement (including the Development Schedule), then nothing in this Agreement (including Sections 3.1.1. through 3.1.3 above) prevents Franchisor from exercising its right to terminate this Agreement.

3.2 For each proposed site for a Restaurant, Developer must submit to Franchisor, in a form specified by Franchisor, a completed site approval package and such other information or materials as Franchisor may reasonably require ("**Site Approval Package**"). Developer must submit the Site Approval Package, information, and materials by no later than one hundred and eighty (180) days before the date on which the Restaurant must open, as listed in the Development Schedule. Notwithstanding the foregoing, Developer must obtain site approval from Franchisor for the first Restaurant to be developed hereunder within eight (8) months of the date of this Agreement. If Franchisor gives its written approval to a proposed site, Franchisor shall send written notice of approval to Developer within thirty (30) days of Franchisor's receipt of the completed Site Approval Package. If Franchisor does not send such notice to Developer within the said thirty (30) day period, then the site shall be deemed disapproved by Franchisor.

3.3 If Developer will occupy the premises from which the Restaurant is to be operated under a lease, then before signing the lease, Developer shall submit the draft lease or sublease to Franchisor for its approval. Franchisor's approval of the lease may be conditioned upon the inclusion in the lease of such provisions as Franchisor may reasonably require. Developer must obtain Franchisor's prior written approval as to the site for each Restaurant before Developer enters into a lease or sublease for such site, and before Developer starts construction at each such site. Within thirty (30) days after site approval by Franchisor, Developer shall execute a lease, after obtaining Franchisor's approval of the terms of the lease, or a binding agreement to purchase the site, subject only to Developer obtaining any necessary zoning variances, building, or use permits. Nothing in Section 3.2 above or this Section 3.3 shall be deemed to amend or modify Developer's obligation to meet the Development Schedule. As used in this Agreement, the term "lease" includes subleases and similar subordinate grants of property rights.

3.4 Recognizing that time is of the essence, Developer agrees to satisfy the Development Schedule. Failure by Developer to adhere to the Development Schedule, or failure by Developer to submit a completed Site Approval Package and obtain Franchisor's approval thereof within the time specified in Section 3.2 hereof shall constitute a default under this Agreement as provided in Section 6.2 hereof.

4 TERM

The term of this Agreement and all rights granted hereunder shall expire on the last date specified in the Development Schedule, unless this Agreement is earlier terminated in accordance with the terms set out in this Agreement.

5 DUTIES OF THE PARTIES

5.1 For each Restaurant developed under this Agreement Franchisor shall furnish to Developer the following:

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

5.1.2 Such on-site evaluation as Franchisor may deem advisable in response to Developer's request for site approval; provided, however, that Franchisor shall not provide on-site evaluation for any proposed site prior to the receipt of a completed Site Approval Package and all information relating to the site as required under Section 3.2 above. Franchisor shall provide one (1) on-site evaluation at no charge to Developer for each Restaurant required to be developed pursuant to the Development Schedule. For any additional on-site evaluation, Developer shall reimburse Franchisor for all reasonable out-of-pocket expenses incurred by Franchisor in connection with such on-site evaluation, including, without limitation, the costs of travel, lodging, wages, and meals.

5.2 Developer accepts the following obligations:

5.2.1 If Developer is a corporation, then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.1.1 Developer shall furnish Franchisor with its Articles of Incorporation, Bylaws, other governing documents, any other documents Franchisor may reasonably request, and any amendments thereto.

5.2.1.2 Developer shall confine its activities, and its governing documents, if any, shall at all times provide that its activities are confined, exclusively to the management and operation of the business contemplated hereunder, including the establishment and operation of the Restaurants to be developed hereunder.

5.2.1.3 Developer shall maintain stop transfer instructions against the transfer on its records of any voting securities; and shall issue no certificates for voting securities upon the face of which the following printed legend does not legibly and conspicuously appear:

The transfer of this stock is subject to the terms and conditions of an Area Development Agreement with Einstein Bros. Bagels Franchise Corporation, dated _____. Reference is made to the provisions of the said Development Agreement and to the Articles and Bylaws of this Corporation.

5.2.1.4 Developer shall maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Developer and shall furnish the list to Franchisor upon request.

5.2.1.5 Such owners of a beneficial interest in the corporation as Franchisor may request shall execute a guarantee of the performance of Developer's obligations under this Agreement in the form attached hereto as Exhibit B.

5.2.2 If Developer is a partnership or limited liability entity of any sort (a “LLC”), then it shall comply, except as otherwise approved in writing by Franchisor, with the following requirements throughout the term of this Agreement:

5.2.2.1 Developer shall furnish Franchisor with its partnership agreement, operating agreement, and/or organizational documents, as well as such other documents as Franchisor may reasonably request, and any amendments thereto.

5.2.2.2 Developer shall prepare and furnish to Franchisor, upon request, a list of all general and limited partners, and/or members, in Developer.

5.2.2.3 Such partners in the partnership, or such members in the LLC, as Franchisor may request shall execute a guarantee of the performance of Developer’s obligations under this Agreement in the form attached hereto as Exhibit B.

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

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

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

6 DEFAULT

6.1 Developer shall be deemed to be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Developer, if Developer shall become insolvent or makes a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer; or if Developer is adjudicated a bankrupt or insolvent; or if a bill in equity or other proceeding for the appointment of a receiver of Developer or other custodian for Developer’s business or assets is filed and consented to by Developer; or if a receiver or other custodian (permanent or temporary) of Developer’s assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Developer; or if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless unappealed or a supersedeas bond is filed); or if Developer is dissolved; or if execution is levied against Developer’s business or property; or if suit to foreclose any lien or mortgage against the premises or equipment of any Restaurant developed hereunder is instituted against Developer and not dismissed within thirty (30) days; or if the real or personal property of Developer shall be sold after levy thereupon by any sheriff, marshal, or constable.

6.2 If Developer fails to meet its obligations under the Development Schedule, such action shall constitute a default under this Agreement, upon which Franchisor, in its discretion, may terminate this Agreement and all rights granted hereunder without affording Developer any opportunity to cure the default, effective immediately upon the delivery of written notice to Developer (in the manner set forth in Section 9 of this Agreement).

6.3 Except as otherwise provided in Sections 6.1 and 6.2, above, if Developer fails to comply with any material term and condition of this Agreement, or fails to comply with the terms and conditions of any Franchise Agreement or other development agreement between the Developer (or a person or entity affiliated with or controlled by the Developer) and Franchisor, such action shall constitute a default under this Agreement. Upon the occurrence of any such default, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Developer at least fifteen (15) days prior to the effective date of termination; provided, however, that Developer may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor within the fifteen-day period (or such longer period as applicable law may require). If any such default is not cured within the specified time (or such longer period as applicable law may require), this Agreement and all rights granted hereunder (including but not limited to, the right to develop any new Restaurants) will terminate without further notice to Developer, effective immediately upon the expiration of the fifteen (15) day period (or such longer period as applicable law may require).

6.4 In lieu of termination, Franchisor shall have the right to reduce or eliminate all or only certain rights of Developer under this Agreement; and if Franchisor exercises said right, Franchisor shall not have waived its right to, in the case of future defaults, exercise all other rights, and invoke all other provisions, that are provided in law and/or set out under this Agreement.

6.5 Upon termination or expiration of this Agreement, Developer shall have no right to establish or operate any Restaurants for which a Franchise Agreement has not been executed by Franchisor at the time of termination. Thereafter, Franchisor shall be entitled to establish, and to license others to establish, Restaurants in the Development Area (except as may be otherwise provided under any Franchise Agreement that has been executed between Franchisor and Developer).

6.6 No default under this Area Development Agreement shall constitute a default under any Franchise Agreement between the parties hereto.

6.7 No right or remedy herein conferred upon or reserved to Franchisor is exclusive of any other right or remedy provided or permitted by law or equity.

7 TRANSFERS

7.1 Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.

7.2 If Developer is a corporation, partnership, or LLC, each principal of Developer ("**Principal**"), and the interest of each Principal in Developer, is identified in Exhibit C hereto. Any person or entity which owns a direct or indirect interest in Developer may be designated as a Principal by Franchisor in its sole discretion, and Exhibit C shall be so amended automatically upon notice thereof to Developer.

7.3 Franchisor shall have a continuing right to designate as a Principal any person or entity which owns a direct or indirect interest in Developer.

7.4 Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer, and that Franchisor has granted the rights described in this Agreement in reliance on Developer's or Developer's Principals' business skill, financial capacity, and personal character. Accordingly:

7.4.1 Developer shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of the Developer under this Agreement; or (b) any material asset of Developer.

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

7.4.3 If Developer is a partnership or LLC, the partners of the partnership or members of the LLC shall not, without the prior written consent of Franchisor, admit additional general partners or managing members, remove a general partner or managing member, or otherwise materially alter the powers of any general partner or managing member. Each general partner or member of a partnership or LLC shall automatically be deemed a Principal of Developer.

7.4.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Developer as shown in Exhibit C.

7.4.5 Developer acknowledges and agrees that any transfer, pledge or other encumbrance by Developer which does not have Franchisor's prior written approval shall be deemed null and void.

7.5 Franchisor shall not unreasonably withhold any consent required by Section 7.4; provided, if Developer proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Developer, Franchisor shall have absolute discretion to require any or all of the following as conditions of its approval:

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

7.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Developer; and, if the obligations of Developer were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;

7.5.3 After the transfer, the Principals of the Developer shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the business of Developer, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the business;

7.5.4 If a proposed transfer would result in a change in control of the Developer, at Franchisor's option, the Developer shall execute, for a term ending on the expiration date of this Agreement the form of area development agreement then being offered to new System Developers, and such other ancillary agreements required by Franchisor for the business contemplated hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement;

7.5.5 The transferor shall remain liable for all of the obligations to Franchisor in connection with this Agreement that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

7.5.6 At Developer's expense, one Principal designated by Franchisor shall successfully complete all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require;

7.5.7 Developer shall pay a transfer fee of the greater of: (a) Ten Thousand Dollars (\$10,000); or (b) two percent (2%) of the total selling price paid by transferee for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer;

7.5.8 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Section 8.2 and Section 8.3 of this Agreement; and

7.5.9 Developer shall have paid Franchisor all of remaining installments of the Development Fee, if any, that Developer has not yet paid to Franchisor under Section 2.2 above.

7.6 Right of First Refusal.

7.6.1 If Developer or any Principal desires to accept any *bona fide* offer from a third party to purchase Developer, any material assets of Developer, or any direct or indirect interest in Developer, Developer or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.

7.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 7.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 7, with respect to a proposed transfer.

7.6.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they shall attempt to appoint a mutually acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Developer, which two appraisers will, in turn, promptly designate a third appraiser; all three appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Developer. The cost of any such appraisal shall be shared equally by Franchisor and Developer. If Franchisor elects to exercise its right of first refusal, it shall have the right to set off all amounts due from Developer, and one-half of the cost of the appraisal, if any, against any payment to the Seller.

7.7 Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

7.8 Upon the permanent disability of any Principal with a controlling interest in Developer, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance

with the conditions described in this Section 7 within six (6) months after notice to Developer. **"Permanent Disability"** shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) months from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 7.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.

7.9 Upon the death or permanent disability of any Principal of Developer, such person or his representative shall promptly notify Franchisor of such death or claim of permanent disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.

7.10 Franchisor's consent to a transfer which is the subject of this Section 7 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

7.11 If Developer or any person holding any interest (direct or indirect) in Developer becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Developer, Developer's obligations and/or rights hereunder, any material assets of Developer, or any indirect or direct interest in Developer shall be subject to all of the terms of this Section 7, including without limitation the rights set forth in Sections 7.4, 7.5, and 7.6 above.

7.12 All materials for an offering of stock, ownership, and/or partnership interests in Developer or any of Developer's affiliates that are required by federal or state law must be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering must be submitted to Franchisor for such review before their use.

7.12.1 Developer agrees that: (a) no offering by Developer or any of Developer's affiliates may imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of Developer's securities or Developer's affiliates; (b) Franchisor's review of any offering will be limited solely to the relationship between Developer and Franchisor (and, if applicable, any of Developer's affiliates and Franchisor); and (c) Franchisor will have the right, but not the obligation, to require that the offering materials contain a written statement that Franchisor requires concerning the limitations stated above.

7.12.2 Developer (and the offeror if Developer is not the offering party), Developer's principals, and all other participants in the offering must fully indemnify Franchisor and its affiliates and each of their directors, officers, agents and employees in connection with the offering.

7.12.3 For each proposed offering, Developer agrees to Franchisor a non-refundable fee of Seven Thousand Five Hundred Dollars (\$7,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering.

7.12.4 Developer agrees to give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 7.12 commences. Any such offering will be subject to all of the other provisions of this Section 7, including without limitation the terms set forth in Sections 7.4, 7.5, 7.6; and further, without limiting the foregoing, it is agreed that any such offering will be subject to Franchisor's approval as to the structure and voting control of the offeror (and Developer, if Developer is not the offeror) after the financing is completed.

7.12.5 Developer must also, for the remainder of the term of the Agreement, submit to Franchisor for Franchisor's review and prior written approval all additional securities documents Developer is required to prepare and file (or use) in connection with any offering of stock, ownership, and/or partnership interests. Developer must reimburse Franchisor for its reasonable costs and expenses Franchisor incurs in connection with the review of those materials.

8 COVENANTS

8.1 Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or one (1) Principal of Developer who will assume primary responsibility for the operations of Developer and shall have been previously approved in writing by Franchisor) shall devote full time, energy, and best efforts to the management and operation of the business contemplated hereunder.

8.2 Developer specifically acknowledges that, pursuant to this Agreement, Developer will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Developer covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership corporation or entity, divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System.

8.3 Developer covenants that, except as otherwise approved in writing by Franchisor, it shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant; and shall not for a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 7 above; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Section 8.3; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the business operated under this Agreement or the Restaurants required to be developed under this Agreement and which business is, or is intended to be, located (i) within the Development Area; (ii) within a five (5) mile radius of any Restaurant developed under this Agreement; or (iii) within a five (5) mile radius of any Restaurant under the System at the time the obligations under this Section 8.3 commenced. As used in this Agreement, the term "same as or similar to the business operated under this Agreement or the Restaurants required to be developed under this Agreement" shall mean any other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

8.4 Section 8.3 hereof shall not apply to ownership by Developer of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "**publicly-held corporation**" shall be deemed to refer to a corporation which has securities that have been registered under the federal Securities Exchange Act of 1934.

8.5 At Franchisor's request, Developer shall require and obtain execution of covenants similar to those set forth in Sections 7 and 8 (as modified to apply to an individual) from any or all of the following persons: Developer's Principals and senior level management personnel. The covenants required by this Section 8.5 shall be in the form provided in Exhibit E to this Agreement. Failure by Developer to obtain execution of a covenant required by this Section 8.5 shall constitute a default under Section 6.3 hereof.

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

8.7 Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 8.2 and 8.3 in this Agreement, or any portion thereof, without Developer's consent, effective immediately upon receipt by Developer of written notice thereof; and Developer agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 13 hereof.

8.8 Developer expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 8. Developer agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 8.

8.9 Developer acknowledges that Developer's violation of the terms of this Section 8 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer accordingly consents to the issuance of an injunction prohibiting any conduct by Developer in violation of the terms of this Section 8.

9 NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, of rejected delivery, or attempted delivery to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, rejected delivery, or delivery not possible because the recipient has moved and left no forwarding address shall be deemed to have been given at the date and time of receipt, rejected, and/or attempted delivery. The Manual, any changes that we make to the Manual, and/or any other written instructions that we provide relating to operational matters, are not considered to be "notices" for the purpose of the delivery requirements in this Section 9.

10 PERMITS AND COMPLIANCE WITH LAWS

10.1 Developer shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business contemplated under this Agreement.

10.2 Developer shall notify Franchisor in writing within five (5) days of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of Developer and/or any Restaurant established pursuant to this Agreement.

11 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

11.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that Developer shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

11.2 At all times during the term of this Agreement, Developer shall hold itself out to the public as an independent contractor operating pursuant to this Agreement. Developer agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the Developer's offices, the content of which Franchisor reserves the right to specify.

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

11.4 Developer shall, to the fullest extent permissible under applicable law, indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, employees, and agents, harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Developer's operation of the business contemplated hereunder, as well as the costs, including attorneys' fees, of defending against them.

12 APPROVALS AND WAIVERS

12.1 Whenever this Agreement requires Franchisor's prior approval or consent, Developer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.

12.2 Developer acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Developer may rely, and assumes no liability or obligation to Developer, by providing any waiver, approval, consent, or suggestion to Developer in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

12.3 No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Developer under any of the terms, provisions, covenants, or conditions of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, duty, or power as against Developer, or as to subsequent breach or default by Developer. Subsequent acceptance by Franchisor of any payments due to it hereunder shall not be deemed to be a waiver by Franchisor of any preceding breach by Developer of any terms, provisions, covenants, or conditions of this Agreement.

13 ENTIRE AGREEMENT AND AMENDMENT

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between Franchisor and Developer concerning the subject matter hereof, and supersede all prior agreements, no other representations having induced Developer to execute this Agreement. No amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing. However, nothing in this Agreement or any other contract is intended as, nor shall it be interpreted to be, a disclaimer by Franchisor of any representation made in its Franchise Disclosure Document ("FDD"), including the exhibits and any amendments to the FDD.

14 SEVERABILITY AND CONSTRUCTION

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

of this Agreement as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and said invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part of this Agreement.

14.2 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Developer, Franchisor, Franchisor's officers, directors, and employees, and such of Developer's and Franchisor's respective successors and assigns as may be contemplated (and, as to Developer, permitted) by Section 7 hereof, any rights or remedies under or by reason of this Agreement.

14.3 Developer expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unenforceable in a final decision to which Franchisor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

14.4 All capitalized terms not defined herein shall have the meaning ascribed to them in the Franchise Agreement.

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

14.6 All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

15 APPLICABLE LAW

15.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Colorado, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Colorado choice of law rules); provided, however, that if the covenants in Section 8 of this Agreement would not be enforceable under the laws of Colorado, and Developer is located outside of Colorado, then such covenants shall be interpreted and construed under the laws of the state in which the Developer's principal place of business is located. Nothing in this Section 15.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Colorado to which this Agreement would not otherwise be subject.

15.2 The parties agree that any action brought by Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 15.2 shall not be construed as preventing either party from removing an action from state to federal court. Developer hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

15.3 Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 15.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.

15.4 No right or remedy conferred upon or reserved to Franchisor or Developer by this Agreement is intended to be, nor shall be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy.

15.5 Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

15.6 Franchisor and Developer irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Developer and Franchisor, or Developer's operation of the business contemplated hereunder, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred.

15.7 Franchisor and Developer hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other, and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

16 ACKNOWLEDGMENTS

16.1 Developer acknowledges that it has conducted an independent investigation of the business contemplated hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Developer and if a corporation, partnership, or LLC, its owners as independent businesspersons.

16.2 Franchisor expressly disclaims the making of, and Developer acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential volume, profits, or success of the business venture contemplated by this Agreement.

16.3 Developer acknowledges that it received a copy of this Agreement, and has read and understood this Agreement the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, prior to the date on which this Agreement was executed, and with sufficient time within which to review the Agreement and to consult with advisors of Developer's own choosing about the potential benefits and risks of entering into this Agreement. Developer further acknowledges that it received Franchisor's franchise disclosure document required by the Federal Trade Commission Franchise Rule, 16 C.F.R. Part 436, at least fourteen (14) calendar days prior to the date on which this Agreement was executed.

[signature page follows]

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

Einstein Bros. Bagels Franchise Corporation
Franchisor

Developer

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for Notices:

Address for Notices:

Einstein Bros. Bagels Franchise Corporation
1720 Bellaire Street, Suite Skybox
Denver, Colorado 80222
Telephone: (303) 568-8000
Fax: (303) 568-8199
Attn: _____

Telephone: _____
Fax: _____
Attn: _____

**NOAH'S BAGELS
AREA DEVELOPMENT AGREEMENT**

**EXHIBIT A
DEVELOPMENT AREA AND DEVELOPMENT SCHEDULE**

1. Development Area. All Restaurants developed under this Development Agreement shall be located within the boundaries of the following area:

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

By (Date)	Cumulative Total Number of Restaurants Which Developer Shall Have Open and in Operation	By (Date)	Cumulative Total Number of Restaurants Which Developer Shall Have Open and in Operation

INITIALED:

FRANCHISOR: _____DEVELOPER: ____

**NOAH'S BAGELS
DEVELOPMENT AGREEMENT**

**EXHIBIT B
GUARANTEE**

As an inducement to Einstein Bros. Bagels Franchise Corporation ("**Franchisor**") to execute the Noah's Bagels Area Development Agreement between Franchisor and _____ ("**Developer**") dated _____, 202__ (the "**Agreement**"), the undersigned hereby agree to defend, indemnify and hold Franchisor, Franchisor's affiliates, and their respective officers, directors, employees, and agents harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney's fees, reasonable costs of investigation, court costs, and arbitration fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Developer to perform any obligation of Developer under the Agreement, any amendment thereto, or any other agreement executed by Developer referred to therein.

The undersigned hereby acknowledge and agree to be individually bound by all of the covenants contained in Section 8 of the Agreement.

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

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 15 of the Agreement (including but not limited to the waiver of jury trial, the waiver of punitive damages, the agreement not to participate in class actions, and the limitation on the time within which claims may be brought). This Guarantee shall be interpreted and construed under the laws of the State of Colorado. In the event of any conflict of law, the laws of the State of Colorado shall prevail (without regard to, and without giving effect to, the application of Colorado conflict of law rules).

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

GUARANTORS

By: _____
[In his/her personal capacity]

Printed
Name: _____

Home Address

By: _____
[In his/her personal capacity]

Printed
Name: _____

Home Address

By: _____
[In his/her personal capacity]

Printed
Name: _____

Home Address

**NOAH'S BAGELS
AREA DEVELOPMENT AGREEMENT**

**EXHIBIT C
LIST OF PRINCIPALS**

Name of Principal	Address	Interest (%)

INITIALED:

FRANCHISOR: _____ DEVELOPER: _____

**NOAH'S BAGELS
DEVELOPMENT AGREEMENT**

**EXHIBIT D
FRANCHISE AGREEMENT**

The form of Franchise Agreement currently offered by Franchisor is attached.

EXHIBIT E
SAMPLE FORM OF
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

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

RECITALS:

WHEREAS, Einstein Bros. Bagels Franchise Corporation ("**EBBFC**") owns a format and system (the "**System**") relating to the establishment and operation of businesses operating in buildings that bear certain interior and exterior trade dress, under the "Noah's Bagels" and "Noah's New York Bagels" name and marks ("**Restaurants**"), and specializing in the sale of Proprietary Items including fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products as EBBFC may specify from time to time, as well as non-Proprietary Items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption (collectively, the "**Products**");

WHEREAS, EBBFC and Developer have executed an Area Development Agreement ("**Development Agreement**") granting Developer the right to develop "Noah's Bagels" Restaurants and to use the Proprietary Marks in connection therewith under the terms and conditions of the Development Agreement;

WHEREAS, the Member, by virtue of his or her position with Developer, will gain access to certain of EBBFC's Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Developer is bound by.

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

1. Confidential Information. Member shall not, during the term of the Development Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Member or of which Member may be apprised by virtue of Developer's operation under the terms of the Development Agreement. As used in this Agreement, "**Confidential Information**" will include, but not be limited to, EBBFC's business concepts and plans, recipes, food preparation methods, equipment, operating techniques, marketing methods, financial information, demographic and trade area information, prospective site locations, market penetration techniques, plans, or schedules, the confidential operating manuals, customer profiles, preferences, or statistics, menu breakdowns, itemized costs, franchisee composition, territories, and development plans, and all related trade secrets or other confidential or proprietary information treated as such by EBBFC, whether by course of conduct, by letter or report, or by the use of any appropriate proprietary stamp or legend designating such information or item to be confidential or proprietary, by any communication to such effect made prior to or at the time any Confidential Information is disclosed to Developer or Member. The term "Confidential Information" shall not include information that (a) is disclosed in a printed publication available to the public, or is otherwise in the public domain through no act of Developer or Member, (b) is approved for release by written authorization of an officer of EBBFC, or (c) is required to be disclosed by proper order of a court of applicable jurisdiction after adequate notice to EBBFC sufficient to permit EBBFC to seek a protective order therefore, the imposition of which protective order Developer and Member agrees to approve and support.

2. Covenants Not to Compete.

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

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

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

(ii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by EBBFC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the business operated under the Development Agreement or the Restaurants required to be developed under the Development Agreement and which business is, or is intended to be, located (i) within the Development Area; (ii) within a five (5) mile radius of any Restaurant developed under the Development Agreement; or (iii) within a five (5) mile radius of any Restaurant under the System at the time the obligations under this Section 2(c) commenced.

(d) As used in this Agreement, the term "same as or similar to the business operated under this Agreement or the Restaurants required to be developed under the Development Agreement" shall mean any other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

(e) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 7 of the Development Agreement; (b) expiration or termination of the Development Agreement (regardless of the cause for termination); (c) termination of Member's employment with Developer; and/or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

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

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

Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

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

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

IN WITNESS WHEREOF, the Developer and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on this _____ day of _____, 20____.

DEVELOPER

MEMBER

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

EXHIBIT B
LIST OF ADMINISTRATORS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state laws. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, the following are the state administrators responsible for the review, registration, and oversight of franchises in these states:

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500; Toll Free: (866) 275-2677	NEW YORK New York State Department of Law Investor Protection Bureau 28 Liberty Street, 21 st Floor New York, New York 10005 (212) 416-8285
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 205 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Department State Capitol Department 414 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Office of the Attorney General Franchise Bureau 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA State Corporation Commission Division of Securities and Retail Franchising 1300 East Main Street, 9th Floor Richmond, Virginia 23219 (804) 371-9051
MICHIGAN Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Department of Financial Institutions Securities Division – 3 rd Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760
MINNESOTA Minnesota Department of Commerce 85 7 th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	WISCONSIN Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

EXHIBIT C
AGENTS FOR SERVICE OF PROCESS

We intend to register this disclosure document as a “franchise” in some or all of the following states, if required by the applicable state law. If and when we pursue franchise registration (or otherwise comply with the franchise investment laws) in these states, we will designate the following state offices or officials as our agents for service of process in these states:

CALIFORNIA Commissioner of Financial Protection and Innovation Department of Financial Protection and Innovation 320 West Fourth Street, Suite 750 Los Angeles, California 90013-2344 (213) 576-7500 Toll Free: (866) 275-2677	NEW YORK New York Secretary of State New York Department of State One Commerce Plaza, 99 Washington Avenue, 6 th Floor Albany, New York 12231-0001 (518) 473-2492
HAWAII Commissioner of Securities of the State of Hawaii Department of Commerce & Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 205 Honolulu, Hawaii 96813 (808) 586-2722	NORTH DAKOTA North Dakota Securities Commissioner State Capitol 600 East Boulevard Avenue, Fifth Floor Bismarck, North Dakota 58505-0510 (701) 328-4712
ILLINOIS Illinois Attorney General 500 South Second Street Springfield, Illinois 62706 (217) 782-4465	RHODE ISLAND Director of Department of Business Regulation Department of Business Regulation Securities Division, Building 69, First Floor John O. Pastore Center 1511 Pontiac Avenue Cranston, Rhode Island 02920 (401) 462-9527
INDIANA Secretary of State Franchise Section 302 West Washington, Room E-111 Indianapolis, Indiana 46204 (317) 232-6681	SOUTH DAKOTA Division of Insurance Director of the Securities Regulation 124 South Euclid Avenue, 2 nd Floor Pierre, South Dakota 57501 (605) 773-3563
MARYLAND Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020 (410) 576-6360	VIRGINIA Clerk of the State Corporation Commission 1300 East Main Street, 1 st Floor Richmond, Virginia 23219 (804) 371-9733
MICHIGAN Michigan Attorney General's Office Corporate Oversight Division, Franchise Section 525 West Ottawa Street G. Mennen Williams Building, 1 st Floor Lansing, Michigan 48913 (517) 335-7567	WASHINGTON Director of Department of Financial Institutions Securities Division – 3 rd Floor 150 Israel Road, Southwest Tumwater, Washington 98501 (360) 902-8760
MINNESOTA Commissioner of Commerce Minnesota Department of Commerce 85 7 th Place East, Suite 280 St. Paul, Minnesota 55101 (651) 539-1600	WISCONSIN Division of Securities 4822 Madison Yards Way, North Tower Madison, Wisconsin 53705 (608) 266-2139

Exhibit D

Noah's Bagels – Franchisees and Area Developers *
(as of December 27, 2022)

None.

Noah's Bagels – Former Franchisees and Area Developers
(during the period from December 29, 2021 through December 27, 2022)

None

Exhibit E

Noah's Bagels
Company-Owned Restaurants
(as of December 27, 2022)

Store Number	Street Address	City	State	Zip	Phone Number
2101	1883 Solano Ave	Berkley	CA	94707	(510) 525-4447
2160	311 N San Fernando Blvd	Burbank	CA	91502	(818) 562-1635
2153	608 Las Posas Rd	Camarillo	CA	93010	(805) 388-5090
3632	7423 Fair Oaks Blvd	Carmichael	CA	95608	(916) 571-7612
3896	415 Railroad Ave	Danville	CA	94526	(925) 575-9025
2130	1411 W Covell Blvd Ste 114A	Davis	CA	95616	(530) 750-5163
2500	2231 Rosecrans Ave Ste C	El Segundo	CA	90245	(310) 725-9160
3476	821 N Douglas St	El Segundo	CA	90245	(310) 535-2135
2174	5249 Hazel Ave	Fair Oaks	CA	95628	(916) 848-3283
3897	210 Palladio Parkway	Folsom	CA	95678	(916) 458-4903
2139	3958 Mowry Ave	Fremont	CA	94538	(510) 744-9142
2109	170 Bon Air Ctr	Greenbrae	CA	94904	(415) 925-9971
2117	3518 Mt Diablo Blvd	Lafayette	CA	94549	(925) 299-0716
2186	1412 1st St	Livermore	CA	94550	(925) 454-9836
2154	10910 Lindbrook Dr	Los Angeles	CA	90024	(310) 209-8177
2192	250 N Larchmont Blvd	Los Angeles	CA	90004	(323) 466-2924
2859	8985 Venice Blvd Ste B	Los Angeles	CA	90034	(310) 280-0271
2121	15996 Los Gatos Blvd	Los Gatos	CA	95032	(408) 358-5895
2546	330 Manhattan Beach Blvd	Manhattan Beach	CA	90266	(310) 937-2206
2183	546-548 Washington Blvd.	Marina Del Ray	CA	90292	(310) 574-1155
2509	124 N Milpitas Blvd	Milpitas	CA	95035	(408) 941-9440
2180	3351 Lakeshore Ave	Oakland	CA	94610	(510) 452-3744
3686	5095 Telegraph Ave. Suite A-1	Oakland	CA	94609	(510) 379-5557
2152	15270 Antioch St # 15276	Pacific Palisades	CA	90272	(310) 230-1461
2185	375-A S. McDowell Blvd.	Petaluma	CA	94954	(707) 766-9651
2471	1552 Fitzgerald Dr	Pinole	CA	94564	(510) 758-2757
2163	1737 Santa Rita Rd Ste 400	Pleasanton	CA	94566	(925) 485-1921
2107	1067 El Camino Real	Redwood	CA	94063	(650) 299-9050
2156	895 Silver Spur Rd	Rolling Hills	CA	90274	(310) 541-7824
2131	2030 Douglas Blvd Ste 14	Roseville	CA	95661	(916) 782-6772
3902	4201 Thrive Drive Suite C	Roseville	CA	95678	(916) 367-4349
2112	2559 Fair Oaks Blvd	Sacramento	CA	95825	(916) 973-8051
2151	2918 Fulton Ave	Sacramento	CA	95821	(916) 973-1365
2181	1901 J St Ste B	Sacramento	CA	95811	(916) 444-5887

Store Number	Street Address	City	State	Zip	Phone Number
3689	1601 Broadway	Sacramento	CA	95818	(916) 313-7302
2103	2075 Chestnut St	San Francisco	CA	94123	(415) 775-2910
2105	1521 Sloat Blvd	San Francisco	CA	94132	(415) 731-1700
2113	100 Bush St Ste 102	San Francisco	CA	94104	(415) 433-9682
2147	2300 16th St	San Francisco	CA	94103	(415) 861-2802
2159	1578 S Bascom Ave	San Jose	CA	95125	(408) 371-8321
2170	1340 El Paseo De Saratoga	San Jose	CA	95130	(408) 871-0633
2214	1140 Lincoln Ave	San Jose	CA	95125	(408) 298-8953
3610	1095 E Brokaw Rd Ste 10	San Jose	CA	95131	(408) 797-2100
2115	50 E 4 th Ave	San Mateo	CA	94401	(650) 347-2364
2802	2380 El Camino Real	Santa Clara	CA	95050	(408) 249-9923
2142	14622 Ventura Blvd Ste 105	Sherman Oaks	CA	91403	(818) 907-9570
2201	123 Lincoln Ctr	Stockton	CA	95207	(209) 951-2284
2140	33 N Moorpark Rd Ste I	Thousand Oaks	CA	91360	(805) 381-9893
3691	15020 Kensington Park Drive Suite 110	Tustin	CA	92780	(657) 210-6013
3688	1670 East Monte Vista Ave Suite 104	Vacaville	CA	95688	(707) 474-4359
2211	25910 the Old Rd Ste C1	Valencia	CA	91381	(661) 254-9474
2162	1413 S Victoria Ave Ste D	Ventura	CA	93003	(805) 650-1413
2169	730 Bancroft Rd	Walnut Creek	CA	94566	(925) 256-8284
3611	1930 Mt Diablo Blvd Unit B	Walnut Creek	CA	94596	(925) 357-6967
2167	21917 Ventura Blvd	Woodland Hills	CA	91364	(818) 999-9577

Exhibit F

Financial Statements and Guarantee

CONSOLIDATED FINANCIAL STATEMENTS

Caribou Coffee Company, Inc. and Subsidiaries

(A Majority-Owned Subsidiary of Caribou Coffee Holdings, LLC)

As of December 27, 2022 and December 28, 2021; and for the Fiscal Years

Ended December 27, 2022, December 28, 2021 and December 29, 2020

With Report of Independent Certified Public Accountants



COFFEE & BAGEL BRANDS



Caribou Coffee Company, Inc. and Subsidiaries

Consolidated Financial Statements

As of December 27, 2022 and December 28, 2021;
and for the Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

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REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Board of Directors and Shareholders
Caribou Coffee Company, Inc.

Opinion

We have audited the consolidated financial statements of Caribou Coffee Company, Inc. and subsidiaries (the "Company"), which comprise the consolidated balance sheets as of December 27, 2022 and December 28, 2021, and the related consolidated statements of operations and comprehensive income (loss), changes in stockholders' equity, and cash flows for each of the three years in the periods ended December 27, 2022, December 28, 2021, and December 29, 2020, and the related notes to the financial statements.

In our opinion, the accompanying consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 27, 2022 and December 28, 2021, and the results of its operations and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for opinion

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

Responsibilities of management for the financial statements

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

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

**Auditor's responsibilities for the audit of the financial statements**

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

In performing an audit in accordance with US GAAS, we:

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

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

Grant Thornton LLP

Denver, Colorado
March 29, 2023

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands (except share information))

	December 27, 2022	December 28, 2021
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 94,524	\$ 100,238
Trade accounts receivable, net	26,077	25,027
Other accounts receivable	709	715
Inventories	25,001	21,719
Prepaid expenses and other assets	4,781	3,444
Total current assets	151,092	151,143
Operating lease assets	224,891	212,635
Property and equipment, net	134,321	129,981
Other assets:		
Goodwill	384,813	384,813
Trademarks, net	457,500	457,500
Other intangible assets, net	10,825	15,224
Deposit and other	9,546	18,403
Total other assets	862,684	875,940
Total assets	\$ 1,372,988	\$ 1,369,699
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 84,229	\$ 73,625
Accrued expenses	73,020	84,294
Current operating lease liabilities	55,752	56,312
Current portion of long-term debt	3,831	400,777
Total current liabilities	216,832	615,008
Long-term debt, net of unamortized discount	334,461	-
Deferred income taxes, net	100,821	101,694
Long-term operating lease liabilities	198,990	186,737
Other long-term liabilities	4,174	6,914
Total long-term liabilities	638,446	295,345
Commitments and contingencies		
Noncontrolling interests subject to put provisions	58,552	27,144
Shareholders' equity:		
Caribou Coffee Company, Inc. and Subsidiaries shareholders'		
Common stock, par value \$0.01; 28,000,000 shares authorized;		
21,125,385 and 21,125,385 shares issued and outstanding at December 27, 2022 and		
December 28, 2021, respectively	211	211
Additional paid-in capital	311,872	336,689
Accumulated other comprehensive income, net of income tax	-	(3,462)
Retained earnings	144,162	95,478
Total shareholders' equity before non-controlling interest	456,245	428,916
Noncontrolling interest	2,913	3,286
Total shareholders' equity	459,158	432,202
Total liabilities and shareholders' equity	\$ 1,372,988	\$ 1,369,699

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands)

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Coffeehouse and bagel bakery sales	\$ 792,112	\$ 709,744	\$ 599,983
Franchise royalties and fees	23,426	20,000	16,975
Franchise advertising sales	4,017	3,524	2,519
Franchise and commercial product sales	150,136	124,196	116,418
Net sales	969,691	857,464	735,895
Cost of goods sold	203,878	173,808	146,597
Labor	240,207	221,362	198,536
Occupancy	83,686	80,742	89,687
Other operating expenses	113,309	101,794	88,922
Total coffeehouse and bagel bakery expense	641,080	577,706	523,742
Franchise operations and other expenses	2,307	2,357	2,284
Ad fund expense franchise	4,017	3,524	2,519
Franchise and commercial product cost of goods sold	116,077	94,319	84,296
Depreciation and amortization	40,926	41,502	49,795
General and administrative expenses	85,453	71,892	73,216
Pre-opening expenses	2,830	1,109	804
Total costs and expenses	892,690	792,409	736,656
Operating income (loss)	77,001	65,055	(761)
Interest expense, net	18,100	17,831	19,163
Other (income) expense	-	(1,029)	-
Pre-tax income (loss)	58,901	48,253	(19,924)
Income tax expense (benefit)	8,686	10,741	(2,826)
Net income (loss)	\$ 50,215	\$ 37,512	\$ (17,098)
Less net income (loss) attributable to noncontrolling interest	1,531	1,480	(536)
Net income (loss) attributable to Caribou Coffee Company, Inc. and Affiliates	\$ 48,684	\$ 36,032	\$ (16,562)

Refer to the accompanying notes as an integral part of these consolidated financial statements.

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)

	<u>December 27, 2022</u>	<u>Fiscal Year Ended December 28, 2021</u>	<u>December 29, 2020</u>
Net income (loss)	\$ 50,215	\$ 37,512	\$ (17,098)
Other comprehensive income (loss)			
Unrealized gain (loss) on cash flow hedges, net of tax expense of \$283, tax benefit of \$190, and tax expense of \$2,476 for the fiscal years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively	817	399	(7,071)
Reclassification of loss on cash flow hedge, net of tax benefit of \$825, \$1,937, and \$1,599 for the fiscal years ended December 27, 2022, December 28, 2021 and December 29, 2020, respectively	2,375	5,579	4,606
Settlement of PNC derivative securities and novation of BNP and Rabo derivative securities	475	—	—
Comprehensive income (loss) attributable to Caribou Coffee Company, Inc. and Subsidiaries	<u>53,882</u>	<u>43,490</u>	<u>(19,563)</u>
Less net comprehensive income (loss) attributable to noncontrolling interest	1,531	1,480	(536)
Comprehensive income (loss) attributable to Caribou Coffee Company, Inc. and Subsidiaries	<u>\$ 52,351</u>	<u>\$ 42,010</u>	<u>\$ (19,027)</u>

Refer to the accompanying notes as an integral part of these consolidated financial statements.

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENT OF CHANGES IN SHAREHOLDERS' EQUITY
(in thousands, except share information)

	Non-controlling interests subject to put provisions	Common Stock		Additional Paid In Capital	Noncontrolling Interest	Accumulated Other Comprehensive Loss	Retained Earnings	Total
	\$	Shares	Amount	\$	\$	\$	\$	\$
Balance, December 31, 2019	37,094	20,886,412	209	327,463	2,791	(6,949)	76,008	436,616
Net loss	(156)	-	-	-	(380)	-	(16,562)	(17,098)
Adjustments required under tax sharing agreement	-	-	-	171	-	-	-	171
Stock based compensation expense	4,026	-	-	-	-	-	-	4,026
Accrued interest on shareholder note receivable	(107)	-	-	-	-	-	-	(107)
Unrealized loss on derivative securities, net of income tax	(66)	-	-	-	-	(7,005)	-	(7,071)
Reclassification of loss on cash flow hedge, net of tax benefit	43	-	-	-	-	4,563	-	4,606
Distribution of non-controlling interest	-	-	-	-	(31)	-	-	(31)
Changes in noncontrolling interest from:								
Distributions (repurchases), including								
repayments on shareholder notes receivable	(18,175)	-	-	803	-	-	-	(17,372)
Contributions (share issuances), net of shareholder notes receivable	6,164	-	-	-	-	-	-	6,164
Fair value remeasurements	(330)	-	-	330	-	-	-	-
Balance, December 29, 2020	28,493	20,886,412	209	328,767	2,380	(9,391)	59,446	409,904
Net income	302	-	-	-	1,178	-	36,032	37,512
Adjustments required under tax sharing agreement	-	-	-	2,468	-	-	-	2,468
Stock based compensation expense	3,656	-	-	-	-	-	-	3,656
Accrued interest on shareholder note receivable	(100)	-	-	-	-	-	-	(100)
Unrealized gain on derivative securities, net of income tax	4	-	-	-	-	395	-	399
Reclassification of loss on cash flow hedge, net of tax benefit	45	-	-	-	-	5,534	-	5,579
Distribution of non-controlling interest	-	-	-	-	(272)	-	-	(272)
Changes in noncontrolling interest from:								
Distributions (repurchases), including								
repayments on shareholder notes receivable	(2,198)	-	-	(240)	-	-	-	(2,438)
Contributions (share issuances), net of shareholder notes receivable	2,638	-	-	-	-	-	-	2,638
Rollover and pushdown of Parent shares	(7,547)	238,973	2	7,545	-	-	-	-
Fair value remeasurements	1,851	-	-	(1,851)	-	-	-	-
Balance, December 28, 2021	27,144	21,125,385	211	336,689	3,286	(3,462)	95,478	459,346
Net income	759	-	-	-	772	-	48,684	50,215
Adjustments required under tax sharing agreement	-	-	-	766	-	-	-	766
Stock based compensation expense	7,465	-	-	-	-	-	-	7,465
Accrued interest on shareholder note receivable	(43)	-	-	-	-	-	-	(43)
Unrealized gain on derivative securities, net of income tax	12	-	-	-	-	805	-	817
Reclassification of loss on cash flow hedge, net of tax benefit	35	-	-	-	-	2,340	-	2,375
Settlement of PNC derivative securities and novation of BNP and Rabo derivative securities	158	-	-	355	-	317	-	830
Distribution of non-controlling interest	-	-	-	-	(1,145)	-	-	(1,145)
Changes in noncontrolling interest from:								
Distributions (repurchases), including								
repayments on shareholder notes receivable	(3,623)	-	-	(324)	-	-	-	(3,947)
Contributions (share issuances), net of shareholder notes receivable	1,031	-	-	-	-	-	-	1,031
Fair value remeasurements	25,614	-	-	(25,614)	-	-	-	-
Balance, December 27, 2022	58,552	21,125,385	211	311,872	2,913	-	144,162	517,710

Refer to the accompanying notes as an integral part of these consolidated financial statements.

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
OPERATING ACTIVITIES:			
Net income (loss)	\$ 50,215	\$ 37,512	\$ (17,098)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	40,086	40,509	45,374
Amortization of deferred financing fees	1,552	1,797	967
Stock-based compensation	7,465	3,656	4,026
Deferred income taxes	8,736	6,371	(3,964)
Impairment of restaurant assets	840	993	2,111
Right of use asset impairment charges	2,029	824	2,310
Losses on disposal of assets	1,113	1,398	4,992
Provision for (benefit from) losses on accounts receivable	38	(1,224)	1,407
Other	2,197	1,932	160
Changes in operating assets and liabilities:			
Trade and other accounts receivable, net	1,829	(1,247)	408
Inventories	(3,282)	(2,124)	2,095
Prepaid expenses and other	(1,166)	(2,269)	1,223
Deposits and other	(125)	4,005	1,892
Accounts payable	10,599	15,287	(7,770)
Accrued expenses	(6,543)	6,328	3,938
Operating lease assets and lease liabilities	(7,743)	(15,893)	16,567
Other long-term liabilities	(2,740)	(6,073)	(974)
Net cash provided by operating activities	105,100	91,782	57,664
INVESTING ACTIVITIES:			
Payments for property and equipment	(41,196)	(28,802)	(20,807)
Proceeds from disposal of property and equipment	13	14	4
Notes receivable	-	-	1,600
Net cash used in investing activities	(41,183)	(28,788)	(19,203)
FINANCING ACTIVITIES:			
Distribution of noncontrolling interest	(1,145)	(272)	(31)
Issuances of noncontrolling interests subject to put provisions	1,031	2,450	801
Repurchases of noncontrolling interests subject to put provisions	(4,447)	(1,159)	(489)
Proceeds on line of credit	313,000	-	78,000
Repayments on line of credit	(373,000)	(21,000)	(55,000)
Settlement of shareholder promissory notes	-	(12,703)	-
Settlement of cash flow hedge liability	(262)	-	-
Proceeds from term loan	86,875	-	-
Term loan repayments	(89,375)	(5,000)	(2,500)
Proceeds from Payment Protection Program	-	596	426
Payment of debt financing fees	(2,308)	(1,205)	(1,220)
Net cash (used in) provided by financing activities	(69,631)	(38,293)	19,987
Net increase in cash, cash equivalents & restricted cash	(5,714)	24,701	58,448
Cash, cash equivalents and restricted cash, beginning of period	100,238	75,537	17,089
Cash, cash equivalents and restricted cash, end of period	\$ 94,524	\$ 100,238	\$ 75,537

Refer to the accompanying notes as an integral part of these consolidated financial statements.

Caribou Coffee Company, Inc. and Subsidiaries
 Notes to Consolidated Financial Statements
 As of December 27, 2022 and December 28, 2021; and for the
 Fiscal Years Ended December 27, 2022, December 28, 2021 and December 29, 2020

1. Business and Summary of Significant Accounting Policies

Description of Business

Caribou Coffee Company, Inc. (the Company or CCCI) is the parent company of certain consolidated subsidiaries that comprise its two business units namely, the Coffee business unit and the Bagel Brands business unit. The Coffee business unit (or Caribou), including Caribou Coffee Operating Company (CCOC), Caribou Coffee Development Company, Inc. and Caribou MSP Airport, operate, franchise and license Caribou Coffee branded retail coffeehouses. These subsidiaries sell high-quality premium coffee and espresso-based beverages, foods, and coffee lifestyle items. Caribou also sells its high-quality premium coffee through grocery, foodservice, and office coffee service distribution channels. The Bagel Brands business unit (ENRGI), including Einstein Noah Restaurant Group, Inc. and its subsidiary, Bruegger's Enterprises, Inc. (BEI), operate franchise and license specialty bagel bakeries in the United States under the Einstein Bros. Bagels (Einstein Bros.), Noah's New York Bagels (Noah's), Manhattan Bagel Company (Manhattan Bagel), and Bruegger's Bagels brands. Bagel Brands also sells its high quality bagels through grocery, club and foodservice distribution channels.

The Company is a majority-owned subsidiary of Caribou Coffee Holdings, LLC (a Delaware limited liability company), which is an indirect wholly-owned subsidiary of Panera Brands, Inc. (a Delaware corporation).

As of December 27, 2022, Caribou operated 339 company-owned retail coffeehouses and franchised/licensed 432 locations across 19 states. Of the 432 franchised/licensed locations, 287 operate internationally, primarily in the Middle East. ENRGI operated 513 company-owned retail bagel bakeries and franchised/licensed 490 locations across 45 states.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its majority owned subsidiaries, CCOC and ENRGI. CCOC consolidates Caribou MSP Airport, a partnership in which CCOC owns a 49% interest and operates six coffeehouses at the Minneapolis/St. Paul International Airport. CCOC provided a loan to its partner in Caribou MSP Airport for all of the partner's equity contribution to the venture. Consequently, CCOC bears all the risk of loss but does not control all decisions that may have a significant effect on the success of the venture. Therefore, CCOC consolidates the Caribou MSP Airport, as it is the primary beneficiary in this variable interest entity. All material intercompany balances and transactions have been eliminated in consolidation.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

1. Business and Summary of Significant Accounting Policies (continued)

Noncontrolling Interest

Noncontrolling interests subject to put provisions in the Company's consolidated financial statements includes a 0.17% interest in CCCI, a 1.0% interest in CCOC, and a 1.47% interest in ENRGI as of December 27, 2022. The Company consolidates the financial results of CCOC and ENRGI. The noncontrolling owner's share of net assets and results of operations are deducted and reported as a noncontrolling interest on the consolidated balance sheets and as net income attributable to noncontrolling interest in the consolidated statements of operations.

Noncontrolling interest in the Company's consolidated financial statements represents the 51% interest in Caribou MSP Airport. Since the Company consolidates the financial statements of Caribou MSP Airport, the noncontrolling owner's share of Caribou MSP Airport's net assets and results of operations are deducted and reported as a noncontrolling interest on the consolidated balance sheets and as net income attributable to noncontrolling interest in the consolidated statements of operations.

Fiscal Year End

Prior to December 30, 2021, the Company's fiscal year ended on the Tuesday closest to December 31, with the three most recent fiscal years consisting of 52 weeks ending on December 27, 2022, December 28, 2021, and December 29, 2020. Beginning with the fiscal year ending December 27, 2022, the Company's fiscal year ends on the last Tuesday in December, consistent with Panera Bread, a reportable segment of Panera Brands, Inc.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (U.S. GAAP) requires management to make estimates and assumptions that affect the amounts reported in the accompanying consolidated financial statements. Actual results may differ from those estimates, and such differences may be material to the consolidated financial statements.

Cash and Cash Equivalents

Cash and cash equivalents include all highly liquid investments with a maturity of three months or less when purchased. All credit and debit card transactions that process in less than seven days are classified as cash and cash equivalents. The amounts due from banks for these credit and debit card transactions classified as cash total \$2.5 million and \$2.1 million as of December 27, 2022 and December 28, 2021, respectively.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

1. Business and Summary of Significant Accounting Policies (continued)

Restricted Cash

The Company's restricted cash consists of franchisee paid funds which are earmarked as advertising fund contributions. Restricted cash of \$3.5 million and \$2.8 million as of December 27, 2022 and December 28, 2021, respectively, is included in cash and cash equivalents on the Company's consolidated balance sheets.

Concentrations of Risk

The Company maintains cash and cash equivalent balances with financial institutions that exceed federally insured limits. The Company has not experienced any losses related to these balances, and management believes its credit risk to be minimal.

Fair Value Measurements

The fair value measurement accounting standard provides a framework for measuring fair value and defines fair value as the price that would be received to sell an asset or paid to transfer a liability. Fair value is a market-based measurement that should be determined using assumptions that market participants would use in pricing an asset or liability. The standard establishes a valuation hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs market participants would use in valuing the asset or liability developed based on independent market data sources. Unobservable inputs are inputs that reflect the Company's assumptions about the factors market participants would use in valuing the asset or liability developed based upon the best information available.

The valuation hierarchy is composed of three categories. The categorization within the valuation hierarchy is based on the lowest level of input that is significant to the fair value measurement. The categories within the valuation hierarchy are described as follows:

Level 1: Observable inputs that reflect unadjusted quoted prices for identical assets or liabilities traded in active markets.

Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.

Level 3: Inputs that are generally unobservable. These inputs may be used with internally developed methodologies that result in management's best estimate of fair value.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

1. Business and Summary of Significant Accounting Policies (continued)

Fair Value of Financial Instruments

The Company's financial instruments typically consist of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, note receivable, interest rate swap derivatives and debt. The fair values of accounts receivable and accounts payable approximate their carrying values, due to their short-term nature. The fair value of the Company's long-term debt approximates carrying value because the applicable interest rates are variable and reflect current market rates. Refer to Note 5 for more information on the fair value of interest rate swap derivatives.

Trade Accounts Receivable, Net and Other Accounts Receivable

Trade accounts receivable, net consists primarily of amounts due to the Company from its franchisees and licensees for purchases of products from the Company, royalties due to the Company from franchisee and licensee sales, information technology services provided to franchisees, and receivables from credit card and catering on-account sales.

As of December 27, 2022, other accounts receivable consisted primarily of \$0.3 million foreign tax receivable, and \$0.4 million of sublease income receivable from subtenants. As of December 28, 2021, other accounts receivable consisted primarily of \$0.3 million of sublease income receivable from subtenants and a \$0.2 million foreign tax receivable.

Allowance for Doubtful Accounts

The Company determines an allowance for doubtful accounts by considering a number of factors, including the length of time the account is past due, previous losses, payment history and condition of the economy and industry as a whole. A summary of the allowance for doubtful accounts is as follows (in thousands):

Fiscal Year Ended	Beginning Balance	Additions	Deductions	Ending Balance
December 27, 2022	\$ 286	\$ 317	\$ (279)	\$ 324
December 28, 2021	\$ 1,510	\$ 534	\$ (1,758)	\$ 286

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

1. Business and Summary of Significant Accounting Policies (continued)

Inventories

Raw materials consist primarily of green coffee beans and bagel ingredients. Finished goods include roasted coffee, tea, bagels, packaged foods, and accessory products and supplies. Caribou inventories are stated at the lower of weighted average cost or net realizable value while ENRGI inventories are stated at the lower of first-in, first-out cost or net realizable value.

Property and Equipment

Property and equipment are stated on the basis of cost less accumulated depreciation. Depreciation of property and equipment is computed using the straight-line method over the assets' estimated useful lives of one to twenty years. Leasehold improvements are amortized using the straight-line method over the shorter of their estimated useful lives or the related initial non-cancelable lease term, excluding renewal option terms, which is generally five to ten years, unless it is reasonably assured that the renewal option term is going to be exercised.

Capitalization of Internal Construction Costs

The Company capitalizes direct costs associated with the construction of new coffeehouses and bagel bakeries that would not have been incurred had the site-specific lease not been obtained. The Company capitalized \$0.7 million, \$0.4 million, and \$0.2 million of such costs during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. These costs are amortized over the initial lease term of the underlying leases.

Asset Retirement Obligations

The Company has certain asset retirement obligations, primarily associated with leasehold improvements, whereby at the end of a lease, the Company is contractually obligated to remove such leasehold improvements in order to comply with the lease agreement. At the inception of a lease with such conditions, the Company records an asset retirement obligation liability and a corresponding capital asset in an amount equal to the estimated fair value of the obligation. The liability is estimated based on a number of assumptions requiring management's judgment, including store closing costs and discount rates, and is accreted to its projected future value over time. The capitalized asset is depreciated using the estimated useful life for depreciation of leasehold improvement assets. Upon satisfaction of the asset retirement obligation conditions, any difference between the recorded asset retirement obligation liability and the actual retirement costs incurred is recognized as an operating gain or loss in the Company's financial statements in the period incurred. There were no net operating gains recorded for the fiscal years ended December 27, 2022 and December 28, 2021, and December 29, 2020, respectively.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

1. Business and Summary of Significant Accounting Policies (continued)

Asset Retirement Obligations (continued)

Total asset retirement obligation expense was less than \$0.1 million for each of the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, and is included in costs of sales and related occupancy costs and depreciation and amortization. As of December 27, 2022 and December 28, 2021, the Company's net asset retirement obligation asset included in property, plant and equipment, net of accumulated depreciation and amortization was less than \$0.1 million for each fiscal year, while the Company's net asset retirement obligation liability was equal to \$0.3 million for each of the fiscal years ended December 27, 2022 and December 28, 2021.

Operating Leases and Rent Expense

The Company leases all coffeehouse and bagel bakery locations as well as its corporate office spaces under operating leases. The Company also has equipment leases that qualify as operating leases. The Company determines if an arrangement is a lease at inception. The Company has lease agreements with lease and non-lease components, which are generally accounted for separately.

Right of use assets represent the Company's right to use an underlying asset for the lease term and lease obligations represent the Company's obligation to make lease payments arising from the lease. The Company includes short-term leases, or leases with a term of twelve months or less, in its right of use asset and lease liability calculations. Operating leases are included in right of use assets, current portion of lease liabilities, and lease liabilities on the Company's consolidated balance sheets. Operating right of use lease assets and obligations are recognized at the commencement date, which is the date we take possession of the property, based on the present value of lease payments over the lease term. As most of the Company's leases do not provide an implicit rate, the Company uses its incremental borrowing rate based on the estimated rate of interest for collateralized borrowing over a similar term of the lease payments at the commencement date in determining the present value of lease payments. The right of use asset also includes any lease payments made less upfront lease incentives received from the lessor.

The Company's lease terms generally include rent escalation clauses and options to extend or terminate the lease upon exercise of the lease option. Lease expense for lease payments is recognized on a straight-line basis over the lease term. Additionally, tenant allowances used to fund leasehold improvements are recognized when earned and reduce our right of use asset related to the lease. These are amortized through the operating lease asset as reductions of expense over the lease term. Refer to Note 9 for more information on leases.

Caribou Coffee Company, Inc. and Subsidiaries
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1. Business and Summary of Significant Accounting Policies (continued)

Deferred Financing Fees

The Company capitalizes the costs incurred to issue debt. These costs are included as a component of Current portion of long-term debt and Long-term debt, net of unamortized discount on the Company's consolidated balance sheets as of December 27, 2022 and December 28, 2021, respectively. The costs are being amortized over the life of the debt agreement on a straight-line basis, which approximates the effective interest method.

Goodwill

The Company had gross goodwill of \$384.8 million as of December 27, 2022 and December 28, 2021. Goodwill represents the excess of the acquisition costs over estimated fair value of assets acquired, less liabilities assumed. No additional goodwill was recognized for the fiscal years ended December 27, 2022 and December 28, 2021.

The Company tests goodwill for impairment annually or upon the occurrence of events that may indicate possible impairment. When assessing the recoverability of goodwill, the Company may first perform an assessment of qualitative factors. We may elect to skip the qualitative assessment and proceed directly to the quantitative analysis, for any reporting unit, in any period. If we do not perform a qualitative assessment, or if we determine it is not more-likely-than-not that the fair value of the reporting unit exceeds its carrying amount, the Company assesses goodwill for impairment through a quantitative analysis, utilizing a discounted cash flow approach, which incorporates assumptions regarding future growth rates, terminal values, and discount rates. This process compares the estimated fair value of each reporting unit to the reporting unit's carrying value, including goodwill. The Company recognizes a goodwill impairment charge for the amount by which the reporting unit's carrying amount exceeds its fair value. If the fair value of a reporting unit exceeds its carrying value, goodwill of the reporting unit is considered not to be impaired. If circumstances change significantly that would indicate a possible impairment, the Company would also test a reporting unit's goodwill for impairment at an interim date between its annual tests.

For the fiscal years ended December 27, 2022 and December 28, 2021, the Company elected to perform a qualitative assessment for its annual review of goodwill to determine whether or not indicators of impairment exist. As a result of the qualitative assessment, no indicators of impairment were identified, and no additional indicators of impairment were identified through the end of our fiscal year that would require further testing for impairment.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
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1. Business and Summary of Significant Accounting Policies (continued)

Goodwill (continued)

Given the deterioration in general economic conditions, deterioration in market environments in which the Company operates, and the substantial reduction in our revenues and cash flows during 2020 as a result of the COVID-19 pandemic, the Company identified triggering events as of March 31, 2020 that required it to assess the need for potential goodwill impairment charges. The Company's goodwill impairment assessments were not significantly altered as a result of the COVID-19 pandemic; management continues to calculate fair value of each of the Company's reporting units in excess of carrying value. The Company then performed a qualitative assessment of goodwill as of December 1, 2020, the annual testing date, for the remainder of fiscal year 2020, noting that projected revenue and cash flows had improved since the triggering event date.

There were no goodwill impairment charges for the years ended December 27, 2022, December 28, 2021, and December 29, 2020.

Intangible Assets and Liabilities

Intangible assets primarily represent the tradenames for the Company's brands, contractual customer relationships including franchise, K-cup coffee supply and concession agreements, and reacquired franchise rights. All tradenames except for one, Manhattan Bagel, have been assigned an indefinite life and are reviewed for impairment annually. All other intangible assets and liabilities are amortized on a straight-line basis over their estimated useful lives.

For the fiscal years ended December 27, 2022 and December 28, 2021, the Company elected to perform a qualitative assessment for its annual review of intangibles to determine whether or not indicators of impairment exist. As a result of the qualitative assessment, no indicators of impairment were identified, and no additional indicators of impairment were identified through the end of our fiscal year that would require further testing for impairment.

As discussed above, the Company identified triggering events as of March 31, 2020 that required it to assess the need for potential intangible asset impairment charges. The Company's intangible asset impairment assessments were not significantly altered as a result of the COVID-19 pandemic; management continues to calculate the fair value of each of the Company's indefinite-lived intangible assets in excess of carrying value. The Company did not have any impairment of indefinite-lived intangible assets during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
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1. Business and Summary of Significant Accounting Policies (continued)

Self-Insurance Reserves

The Company provides for workers' compensation, general liability and employee healthcare benefits claims using a combination of self-insurance and third party liability insurance. The Company is responsible for a portion of the claims costs for workers' compensation, general liability and employee healthcare benefits and accrues a liability for the estimate of the ultimate cost of the claim incurred and unpaid as of the balance sheet date. The workers' compensation and general liability is based upon an estimate from a third party actuary, while the employee healthcare benefits liability is based upon the Company's analysis of both current and historical data. These liabilities are included in accrued expenses. The Company also maintains stop-loss coverage with third party insurers which limits the exposure from workers' compensation liability, general liability and employee healthcare benefits claims.

Impairment of Long-Lived Assets and Disposal of Long-Lived Assets

The Company reviews long-lived assets, including right of use assets and certain definite-lived intangibles, for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. In accordance with Accounting Standards Codification Topic 842, *Leases*, when a right of use asset related to an operating lease is impaired, the Company amortizes the remaining right of use asset on a straight-line basis over the remaining lease term, as a finance type lease.

The Company recorded impairment charges of \$2.9 million during the fiscal year ended December 27, 2022, comprised of \$0.9 million and \$2.0 million of leasehold improvement impairments and right of use asset impairments, respectively, which were recorded in depreciation and amortization expense and occupancy expense, respectively, in the Company's consolidated statements of operations.

The Company recorded impairment charges of \$1.8 million during the fiscal year ended December 28, 2021, comprised of \$1.0 million and \$0.8 million of leasehold improvement impairments and right of use asset impairments, respectively, which were recorded in depreciation and amortization expense and occupancy expense, respectively, in the Company's consolidated statements of operations.

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1. Business and Summary of Significant Accounting Policies (continued)

Impairment of Long-Lived Assets and Disposal of Long-Lived Assets (continued)

The COVID-19 pandemic, and the resulting temporary and permanent store closures, reduction in revenues and reduction in cash flows created a triggering event and the Company completed impairment testing as of March 31, 2020. As a result of this testing, the Company recorded store impairment charges of \$4.4 million during the fiscal year ended December 29, 2020, comprised of \$2.1 million and \$2.3 million of leasehold improvement impairments and right of use asset impairments, respectively. The impairment charges were recorded in depreciation and amortization expense in the Company's consolidated statements of operations.

Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

Stock Compensation

The Company maintains a long-term incentive equity plan, which provides for the granting of non-qualified stock options and restricted stock to officers, certain key employees and certain non-employees and generally vest four and a half years from the date of grant. The plan includes provisions for the grantee, after the satisfaction of a six month holding period, to sell the vested shares to the Company in exchange for the current fair value of the shares. The Company has the option to call outstanding vested shares in exchange for the current fair value of the shares. Beginning in fiscal year 2020, CCOC and ENRGI also maintain long-term incentive equity plans with terms identical to the Company's long term incentive plan.

Restricted stock units are valued based on the grant date fair value of the shares. The fair value of the shares is estimated using a market approach, which estimates the value of the stock based upon comparison to comparable public companies in a similar line of business. From the comparable public companies, a representative market value multiple is determined and then applied to the Company's financial metrics. The estimated grant date fair value of stock options was calculated using Black-Scholes option-pricing model. The estimated grant date fair value of each stock-based award is recognized in the consolidated statements of operations on a straight-line basis over the requisite service period (generally the vesting period).

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1. Business and Summary of Significant Accounting Policies (continued)

Coffeehouse and Bagel Bakery Location Preopening and Closing Expenses

Costs incurred in connection with start-up and promotion of new coffeehouse and bagel bakery openings are expensed as incurred and are included in operating expenses in the consolidated statements of operations. The Company incurred \$2.8 million, \$1.1 million, and \$0.8 million of coffeehouse and bagel bakery pre-opening expenses during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. When a coffeehouse or bagel bakery is closed, the remaining carrying amount of property and equipment, net of expected recovery value, is charged to operations. For coffeehouses and bagel bakeries under operating lease agreements, the estimated liability under the lease is also accrued. In accordance with ASU 2016-02, lease termination liabilities are included in the balance of the Company's right of use assets. Refer to Note 19 for more closed store information.

Revenue Recognition

Retail Revenue

The Company recognizes retail coffeehouse/bagel bakery sales for products and services when payment is tendered at the point of sale, as the performance obligation has been satisfied. Company-operated retail coffeehouse/bagel bakery revenues are reported excluding sales, use or other transaction taxes collected from customers, which are remitted to various tax jurisdictions. Accordingly, sales taxes have no effect on the Company's reported net sales in the accompanying consolidated statements of operations.

Product and Royalty Revenue

Sales of coffee, food, and related products to commercial, franchise or online customers is generally recognized upon shipment, depending on contract terms, as control typically transfers and performance obligations are typically met upon shipment. Pursuant to Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers (Topic 606)*, the Company has elected to account for shipping and handling as fulfillment costs. Shipping charges billed to commercial, franchise, or online customers are recognized as revenue, and the expense of such shipping and handling costs is included in cost of sales, as incurred. ENRGI includes the shipping and handling fee in the total product price. The Company recorded shipping revenue of \$1.8 million, \$1.5 million, and \$1.2 million during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

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Notes to Consolidated Financial Statements (continued)
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1. Business and Summary of Significant Accounting Policies (continued)

Revenue Recognition (continued)

Product and Royalty Revenue (continued)

The Company sells Caribou Coffee branded coffee to Peet's Coffee and Tea, LLC (Peet's) and Keurig Green Mountain, Inc. (KGM), affiliates of Panera Brands, Inc., and recognizes revenue when the performance obligation is met, defined in the contract as the passage of title and risk of loss to the customer, generally upon shipment of product. Additionally, the Company receives royalties from Peet's and KGM for all Caribou Coffee branded product sold to Peet's and KGM's consumer package goods (CPG) customers. Royalty revenue is recognized as the performance obligations are met and is included in franchise and commercial product sales in the accompanying consolidated statements of operations.

Franchise Revenue

The Company's franchise agreements typically require upfront franchise fees such as initial fees paid upon opening of a store and fees paid to renew the term of the franchise right. Fees are recognized over the term of the related franchise license for the respective coffeehouse or bagel bakery on a straight-line basis, which is consistent with the Company's performance obligations under the agreements and the franchisee's right to use and benefit from the intellectual property.

Advertising Cooperatives

The Company participates in various advertising cooperatives with its franchisees. These advertising cooperatives are established to collect and administer funds contributed for use in advertising and promotional programs designed to increase sales and enhance the reputation of the Company and its franchise owners. Contributions to the advertising cooperatives are required for franchise coffeehouses or bagel bakeries and Company-owned bagel bakeries within the Bruegger's brand. The cooperatives are required to spend all funds collected on advertising and promotional programs. Revenues for these services are typically billed and paid monthly. The Company has determined the advertising services provided to franchisees are highly interrelated with the franchise right and therefore not a distinct performance obligation. Franchisees remit to the Company a percentage of coffeehouse or bagel bakery sales as consideration. As a result, those royalties are recognized for the franchise rights and advertising within commercial and franchise advertising sales when the related sales occur.

Total advertising cooperative revenue was \$4.0 million, \$3.5 million, and \$2.5 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. Expenses incurred to provide these services were \$4.0 million, \$3.5 million, and \$2.5 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

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1. Business and Summary of Significant Accounting Policies (continued)

Revenue Recognition (continued)

Stored Value Cards

The Company sells stored value cards of various denominations. Cash receipts related to stored value card sales are deferred when initially received and revenue is recognized when the card is redeemed and the related products are delivered to the customer. Such amounts are classified as current deferred revenue on the Company's consolidated balance sheets.

The Company will honor all stored value cards presented for payment; however, the Company has determined that the likelihood of redemption is remote for certain card balances due to long periods of inactivity and historical redemption patterns. To the extent management determines there is no requirement for remitting balances to government agencies under unclaimed property laws, card balances may be recognized in the consolidated statements of operations. The Company uses the proportional model and recognizes the estimated value of abandoned cards as a percentage of every stored value card redeemed and includes the amount in coffeehouse and bagel bakery sales. Gift card breakage income of \$3.3 million, \$4.2 million, and \$2.9 million was recognized in coffeehouse and bagel bakery sales in the consolidated statements of operations for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

All revenue is recognized net of any discounts, returns, allowances, and sales incentives, including coupon redemptions and rebates.

Advertising

Advertising costs are expensed as incurred except for production costs related to major radio, television or media campaigns which are expensed in the period when the advertisement is initially aired/distributed. Advertising expenses aggregated approximately \$29.5 million, \$22.9 million, and \$16.6 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. As of December 27, 2022 and December 28, 2021, the Company had \$0.4 million and \$0.4 million of prepaid advertising expenses, respectively, which are included as a component of prepaid expenses on the Company's consolidated balance sheets.

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1. Business and Summary of Significant Accounting Policies (continued)

Income Taxes

The Company accounts for income taxes under the liability method. Under this method, deferred income tax assets and liabilities are determined based on differences between the financial reporting and tax basis of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. A deferred tax asset or liability is recognized whenever there are future tax effects from existing temporary differences, operating losses and tax credit carryforwards. If the Company determines that a deferred tax asset could be realized in a greater or lesser amount than recorded, the asset's recorded amount is adjusted, and the consolidated statements of operations are either credited or charged, respectively, in the period during which the determination is made.

Though the validity of any tax position is a matter of tax law, the body of statutory, regulatory, and interpretive guidance on the application of the law is complex and often ambiguous. Because of this, whether a tax position will ultimately be sustained may be uncertain. The Company's recognition of an uncertain tax position is dependent on whether or not that position is more likely than not of being sustained upon audit by the relevant taxing authority. If an uncertain tax position is more likely than not to be sustained, the position must be recognized at the largest amount that is more likely than not to be sustained. No portion of an uncertain tax position will be recognized if the position has less than a 50% likelihood of being sustained. Refer to Note 15 for more information.

Recent Accounting Pronouncements

In March 2020, the Financial Accounting Standards Board ("FASB") issued ASU 2020-04, *Reference Rate Reform* (Topic 848): *Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, which provides optional expedients and exceptions for applying U.S. GAAP to contracts, hedging relationships, and other transactions that reference London Interbank Offered Rate ("LIBOR") and other interbank offered rates expected to be discontinued because of reference rate reform. This amendment is effective as of March 12, 2020 through December 31, 2022. The guidance was effective upon issuance and generally can be applied to applicable contract modifications through December 31, 2022. The adoption of this guidance did not have a material impact on the Company's condensed consolidated financial statements.

Caribou Coffee Company, Inc. and Subsidiaries
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1. Business and Summary of Significant Accounting Policies (continued)

Recent Accounting Pronouncements (continued)

On April 8, 2020, the FASB held a public meeting and shortly afterwards issued a question-and-answer ("Q&A") document which was intended to provide accounting relief for lease concessions related to the COVID-19 pandemic. The accounting relief permits an entity to choose to forgo the evaluation of the enforceable rights and obligations of a lease contract, which is a requirement of Accounting Standards Codification Topic 842, *Leases*, as long as the total rent payments after the lease concessions are substantially the same, or less than, the total payments previously required by the lease. An entity may account for COVID-19 related lease concessions either (i) as if they were part of the enforceable rights and obligations of the parties under the existing lease contract; or (ii) as a lease modification. To the extent that a rent concession is granted as a deferral of payments, but the total lease payments are substantially the same, lessees are permitted to account for the concession as if no change had been made to the original lease contract.

The Company has elected to account for qualifying COVID-19 related rent concessions as if they were part of the enforceable rights and obligations of the parties under the existing lease contract. Refer to Note 9 for more information.

In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* (ASU 2019-12), which is intended to simplify various aspects related to accounting for income taxes. The guidance is effective for fiscal years beginning after December 15, 2021 and interim periods within fiscal years beginning after December 15, 2022, with early adoption permitted. The adoption of this guidance did not have a material impact on the Company's condensed consolidated financial statements.

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Notes to Consolidated Financial Statements (continued)
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2. Revenue

Disaggregation of Revenue

Financial information relating to our operations by line of business is as follows:

(in thousands)	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Coffeehouse and bagel bakery sales	\$ 792,112	\$ 709,744	\$ 599,983
Franchise royalties and fees	23,426	20,000	16,975
Franchise advertising sales	4,017	3,524	2,519
Product sales:			
Franchise	38,870	28,812	22,282
Commercial	111,266	95,384	94,136
Total franchise and commercial product sales	150,136	124,196	116,418
Net sales	<u>\$ 969,691</u>	<u>\$ 857,464</u>	<u>\$ 735,895</u>

Sublease income, reported within retail revenue, was \$0.5 million, \$0.6 million, and \$0.7 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. Total future minimum sublease rental income is \$0.7 million as of December 27, 2022.

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Notes to Consolidated Financial Statements (continued)
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2. Revenue (continued)

Contract Liabilities

The Company has contract liabilities which comprise unamortized upfront fees received from franchisees. A summary of significant changes to the unamortized upfront franchise fee liability balance, included within accrued expenses on the consolidated balance sheets, is presented below.

(in thousands)	Not yet amortizing*	Amortizing	Total
Balance at December 29, 2020	\$ 586	\$ 2,720	\$ 3,306
Additions:			
Upfront fees associated with amortizing contracts that were effective in prior periods due to the adoption of ASC 606	(267)	259	(8)
Upfront fees associated with amortizing contracts that became effective during the fiscal year ended December 28, 2021	834	343	1,177
Less:			
Revenue recognized that was included in unamortized upfront fees received from licensees/franchisees	-	(670)	(670)
Voided contracts prior to store opening	(88)		(88)
Balance at December 28, 2021	\$ 1,065	\$ 2,652	\$ 3,717
Additions:			
Upfront fees associated with amortizing contracts that were effective in prior periods due to the adoption of ASC 606	(458)	458	-
Upfront fees associated with amortizing contracts that became effective during the fiscal year ended December 27, 2022	715	651	1,366
Less:			
Revenue recognized that was included in unamortized upfront fees received from licensees/franchisees	-	(669)	(669)
Voided contracts prior to store opening	(174)	-	(174)
Balance at December 27, 2022	\$ 1,148	\$ 3,092	\$ 4,240

*"Not yet amortizing" includes deferred upfront fees for stores that have not yet opened and therefore have not yet begun the amortization process.

In March 2020, the Company terminated its Indo Franchise Agreement, and the franchisee closed the six coffeehouses operating thereunder. Due to the termination of the contract, the Company recorded revenue of \$0.9 million associated with the elimination of the remaining short-and long-term deferred revenue under the contract.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
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2. Revenue (continued)

Contract Liabilities (continued)

The Company expects to recognize amortizing upfront franchise fees as revenue over the remaining term of the associated franchise agreement as follows (in thousands):

Fiscal year	Amount
2023	\$ 556
2024	478
2025	389
2026	282
2027	217
2028 and thereafter	1,170
	<u>\$ 3,092</u>

The Company also has contract liabilities for its stored value cards. Revenue from stored value cards is recognized upon card redemption. The Company's stored value cards do not expire. Based on historical redemption rates, a small and relatively stable percentage of stored cards will never be redeemed, referred to as "breakage." Estimated breakage revenue is recognized over time in proportion to actual stored value card redemptions. A summary of significant changes to the stored value card liability balance, included within accrued expenses on the consolidated balance sheets, is presented below (in thousands).

Balance at December 29, 2020	\$ 13,828
Stored value cards issued during the period	109,650
Stored value cards redeemed during the period	(105,518)
Breakage	(4,187)
Balance at December 28, 2021	<u>\$ 13,773</u>
Stored value cards issued during the period	119,284
Stored value cards redeemed during the period	(118,014)
Breakage	(3,280)
Balance at December 27, 2022	<u>\$ 11,763</u>

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3. Goodwill

For financial accounting and reporting purposes, the Company reports results for its two business units as follows: (1) the Coffee business unit, including CCOC, Caribou Coffee Development Company, Inc. and Caribou MSP Airport, and (2) the Bagel Brands business unit, including ENRGI and its consolidated subsidiary, BEI. Within the two business units, the Company has allocated its goodwill into its seven reporting units and analyzes for impairment accordingly. These reporting units are defined as Coffee Retail, Coffee Commercial, Coffee Domestic Franchise & Licensing, Coffee International Franchise & Licensing, Bagels Retail, Bagels Commercial, and Bagels Domestic Franchise & Licensing.

For the fiscal years ended December 27, 2022 and December 28, 2021, the Company elected to perform a qualitative assessment for its annual review of goodwill to determine whether or not indicators of impairment exist. As a result of the qualitative assessment, no indicators of impairment were identified, and no additional indicators of impairment were identified through the end of our fiscal year that would require further testing for impairment.

Given the deterioration in general economic conditions, deterioration in market environments in which the Company operates, and the substantial reduction in our revenues and cash flows during 2020 as a result of the COVID-19 pandemic, the Company identified triggering events as of March 31, 2020 that required it to assess the need for potential goodwill impairment charges. The Company's goodwill impairment assessments were not significantly altered as a result of the COVID-19 pandemic; management continues to calculate fair value of each of the Company's reporting units in excess of carrying value. The Company then performed a qualitative assessment of goodwill as of December 1, 2020, the annual testing date, for the remainder of fiscal year 2020, noting that projected revenue and cash flows had improved since the triggering event date. There were no goodwill impairment charges for the years ended December 28, 2021, December 29, 2020, and December 31, 2019.

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4. Intangible Assets and Liabilities

Intangible assets and liabilities consist of the following (in thousands):

As of December 27, 2022			
	Gross Carrying Amount	Accumulated Amortization	Net Amount
Intangible assets not subject to amortization:			
Tradenames	\$ 457,500	\$ -	\$ 457,500
Intangible assets subject to amortization:			
Customer relationships	9,295	(9,055)	240
Tradename (Manhattan Bagel)	3,700	(3,700)	-
Reacquired franchise rights	957	(835)	122
Franchise agreements	35,470	(30,991)	4,479
K-cup coffee supply agreement	4,800	(4,310)	490
Concession agreement	10,900	(5,405)	5,495
Total intangible assets subject to amortization	65,122	(54,297)	10,825
Total intangible assets	\$ 522,622	\$ (54,297)	\$ 468,325

As of December 28, 2021			
	Gross Carrying Amount	Accumulated Amortization	Net Amount
Intangible assets not subject to amortization:			
Tradenames	\$ 457,500	\$ -	\$ 457,500
Intangible assets subject to amortization:			
Customer relationships	9,295	(8,925)	370
Tradename (Manhattan Bagel)	3,700	(3,700)	-
Reacquired franchise rights	957	(759)	198
Franchise agreements	35,470	(27,624)	7,846
K-cup coffee supply agreement	4,800	(4,030)	770
Concession agreement	10,900	(4,860)	6,040
Total intangible assets subject to amortization	65,122	(49,898)	15,224
Total intangible assets	\$ 522,622	\$ (49,898)	\$ 472,724

The Company recognized net intangible asset amortization expense of \$4.4 million, \$4.8 million, and \$6.3 million during each of the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively, included in depreciation and amortization expense in the consolidated statements of operations.

Caribou Coffee Company, Inc. and Subsidiaries
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4. Intangible Assets and Liabilities (continued)

The Company assigned the following useful lives to its intangible assets:

	Useful life	Location of Amortization Expense
Tradenames	Indefinite	—
Tradename (Manhattan Bagel)	6.5 years	Depreciation and amortization
Customer relationships	8-10 years	Depreciation and amortization
Franchise agreements	6.5-10 years	Depreciation and amortization
K-cup coffee supply agreement	10 years	Depreciation and amortization
Reacquired franchise rights	5-8.8 years	Depreciation and amortization
Concession agreement	20 years	Depreciation and amortization

The Company estimates that amortization expense related to intangible assets will be as follows for the next five fiscal years (in thousands):

	Fiscal 2023	Fiscal 2024	Fiscal 2025	Fiscal 2026	Fiscal 2027	Thereafter	Total
Customer relationships	\$ 130	\$ 110	\$ -	\$ -	\$ -	\$ -	\$ 240
Tradename (Manhattan Bagel)	-	-	-	-	-	-	-
Reacquired franchise rights	77	36	8	-	-	-	121
Franchise agreements	2,423	1,982	27	27	20	-	4,479
K-cup coffee supply agreement	280	210	-	-	-	-	490
Concession agreement	545	545	545	545	545	2,770	5,495
Total	<u>\$ 3,455</u>	<u>\$ 2,883</u>	<u>\$ 580</u>	<u>\$ 572</u>	<u>\$ 565</u>	<u>\$ 2,770</u>	<u>\$ 10,825</u>

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5. Derivative Financial Instruments

The Company evaluates various strategies in managing its exposure to market-based risks, such as entering into derivative transactions to manage its exposure to fluctuating interest rates.

The Company's derivatives are recorded at fair value in accrued expenses at December 28, 2021 and in other long-term liabilities on the consolidated balance sheets at December 29, 2020. For those cash flow hedges that have been designated and qualify as an effective accounting hedge, the effective portion of the derivative's gain or loss is initially reported as a component of other comprehensive loss, and subsequently reclassified into net earnings when the hedged exposure affects net income (loss). For those cash flow hedges that are not designated or do not qualify as an effective accounting hedge, the entire derivative gain or loss is recorded in interest expense on the consolidated statements of operations as incurred.

On July 2, 2018, the Company entered into an interest rate swap with BBVA Compass Bank pursuant to an ISDA Master Agreement. During 2021, PNC Financial Services Group acquired the U.S. subsidiary of BBVA, and as a result, the Company's interest rate swap is now held at PNC (the Bank). The Company entered into the interest rate swap agreement to mitigate its risk on \$350 million of the Company's total outstanding debt under its amended and restated credit facility dated as of October 5, 2017. The interest rate swap is designated as a cash flow hedge. It has an effective date of July 2, 2018, a trade date of July 3, 2018, and a termination date of October 5, 2022. The Company is required to make certain variable rate interest payments to the Bank based on a one-month LIBOR rate calculated on an initial notional amount of \$350 million, with annual amortizing reductions of the notional from \$350 million to \$250 million by its termination date. The Company pays or receives payment for the difference between the swap rate of 2.7825% and the variable rate, effectively fixing the annual interest rate payable on the outstanding notional amount of the Company's total outstanding debt at 2.7825%, plus an applicable margin rate ranging from 1.25% to 2.00%. To the extent the hedge is effective; changes in fair value will be recorded in other comprehensive income. To the extent the hedge is ineffective, changes in fair value will be recorded as a charge/credit to income.

Changes in fair value of the interest rate swaps are recorded as a component of accumulated other comprehensive income ("AOCI") in the consolidated balance sheets. The Company reclassifies the effective gain or loss from AOCI to interest expense in the Condensed Consolidated Statements of Operations at the time of the forecasted transaction. The following table presents pre-tax gains and losses on the interest rate swaps recognized in other comprehensive income ("OCI") and reclassified from AOCI to earnings for the periods indicated (in thousands):

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Net gains (losses) recognized in OCI before reclassifications	\$ 1,100	\$ 589	\$ (9,548)
Net (gains) losses reclassified from AOCI to earnings	\$ 3,200	\$ 7,516	\$ 6,205

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5. Derivative Financial Instruments (continued)

The Company did not recognize a gain or loss due to hedge ineffectiveness during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020. The Company does not hold or use derivative instruments for trading purposes. The Company does not have any derivatives that are not designated as hedging instruments and has not designated any non-derivatives as hedging instruments.

During June 2022, in connection with the Company's debt refinancing, the Company paid \$0.3 million to terminate a portion of its interest rate swap and novated its remaining \$0.4 million interest rate swap balance to Panera Brands, Inc. The final payment on the terminated swap equaled the fair value of the interest rate swap at the time of its termination, and a gain of \$0.1 million was recognized as a result of the transaction. No gain or loss was recorded as a result of the swap novation. Since the hedged interest payments remain probable of occurring, the unrecognized gains and losses that existed as of the novation of these interest rate swap agreements were amortized out of accumulated other comprehensive loss and into interest expense, net over the remaining period of the original novated interest rate swap agreement, and the Company recorded its share of the parent company transaction.

6. Fair Value Measurements

Recurring Fair Value Measurements

The following table presents the assets and liabilities measured at fair value on a recurring basis as of December 27, 2022 (in thousands):

	Total			
	December 27, 2022	Level 1	Level 2	Level 3
Noncontrolling interests subject to put provision	\$ 64,689	\$ -	\$ -	\$ 64,689
Total mezzanine equity	\$ 64,689	\$ -	\$ -	\$ 64,689

The following table presents the financial liabilities measured at fair value on a recurring basis as of December 28, 2021 (in thousands):

	Total			
	December 28, 2021	Level 1	Level 2	Level 3
Interest rate swap qualified for hedging	\$ 4,970	\$ -	\$ 4,970	\$ -
Total liabilities	\$ 4,970	\$ -	\$ 4,970	\$ -
Noncontrolling interests subject to put provision	\$ 35,129	\$ -	\$ -	\$ 35,129
Total mezzanine equity	\$ 35,129	\$ -	\$ -	\$ 35,129

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6. Fair Value Measurements

Recurring Fair Value Measurements (continued)

The fair value of noncontrolling interests subject to put provision is estimated using a market approach, which estimates the value of the stock based upon comparison to comparable public companies in a similar line of business. From the comparable public companies, a representative market value multiple is determined and then applied to the Company's financial metrics. The interest rate swap is included at fair value on the consolidated balance sheets in accrued expenses as of December 28, 2021. Fair value is determined using quoted prices based on observable inputs, and these are considered to be Level 2 instruments.

Nonrecurring Fair Value Measurements

Certain nonfinancial assets, primarily property, plant, and equipment, right of use assets, goodwill and intangible assets, are not required to be measured at fair value on a recurring basis and are reported at carrying value. However, these assets are required to be assessed for impairment whenever events or circumstances indicate that their carrying value may not be fully recoverable, and at least annually for goodwill and indefinite-lived intangible assets. In the event an impairment is required, the asset is adjusted to fair value, using market-based assumptions.

The fair value of non-financial assets measured at fair value on a non-recurring basis, which is classified as Level 3 in the fair value hierarchy, is determined based on appraisals or sales prices of comparable assets and estimates of future cash flows.

As of December 27, 2022, long-lived assets held and used with a carrying amount of \$9.0 million associated with distinct underperforming Company-owned coffeehouses and bagel bakeries were determined to have a fair value of \$6.1 million, resulting in an impairment loss of \$2.9 million.

As of December 28, 2021, long-lived assets held and used with a carrying amount of \$16.2 million associated with distinct underperforming Company-owned coffeehouses and bagel bakeries were determined to have a fair value of \$14.4 million, resulting in an impairment loss of \$1.8 million.

As of December 29, 2020, long-lived assets held and used with a carrying amount of \$38.6 million associated with distinct underperforming Company-owned coffeehouses and bagel bakeries and Company-owned coffeehouses and bagel bakeries were determined to have a fair value of \$34.2 million, resulting in an impairment loss of \$4.4 million.

Impairment charges on coffeehouse and bagel bakery assets and right of use assets are classified as Level 3 within the fair value hierarchy. Impairments of property and equipment, net are recorded within depreciation and amortization expense in the consolidated statements of operations. Impairments of operating lease assets are recorded within occupancy expense in the consolidated statements of operations for the fiscal years ended December 27, 2022 and December 28, 2021 and within depreciation and amortization expenses for the fiscal year ended December 29, 2020.

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7. Inventories

Inventories consist of the following (in thousands):

	December 27, 2022	December 28, 2021
Coffee	\$ 7,163	\$ 5,576
Raw materials	692	642
Finished goods	17,146	15,501
Total	<u>\$ 25,001</u>	<u>\$ 21,719</u>

As of December 27, 2022, the Company had the following outstanding raw inventory commodity purchase commitments with fully fixed prices, market only fixed prices and premium only fixed prices, with remaining terms in excess of one year (in thousands):

Fiscal year	Amount
2023	\$ 61,230
2024	21,048
Thereafter	606
	<u>\$ 82,884</u>

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8. Property and Equipment

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

	December 27, 2022	December 28, 2021
Leasehold improvements	\$ 184,348	\$ 173,304
Machinery and equipment	151,756	142,195
Computer software	16,127	14,142
Furniture and fixtures	52,952	50,217
Smallwares	3,004	169
Construction in progress	8,218	5,784
	<u>416,405</u>	<u>385,811</u>
Less accumulated depreciation and amortization	<u>(282,084)</u>	<u>(255,830)</u>
Total	<u>\$ 134,321</u>	<u>\$ 129,981</u>

The Company recorded depreciation expense related to these assets of \$35.7 million, \$35.7 million, and \$39.1 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively, reported in depreciation and amortization in our consolidated statements of operations. Depreciation expense for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020 includes equipment and leasehold improvement impairments of \$0.9 million, \$1.0 million, and \$2.1 million, respectively. Repair and maintenance expenses are reported in the following lines in our consolidated statements of operations as follows (in thousands):

Repair and Maintenance Expenses Included in the Statement of Operations Line	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Other operating expenses	\$ 16,985	\$ 15,404	\$ 13,265
General and administrative expenses	783	1,021	617
Total	<u>\$ 17,768</u>	<u>\$ 16,425</u>	<u>\$ 13,882</u>

The Company capitalized \$0.6 million, \$0.6 million, and \$0.3 million of costs incurred in cloud computing service arrangements that are service contracts during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

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9. Leases

Lease expenses are reported in cost of sales and related occupancy costs in the consolidated statements of operations. Certain leases provide for contingent (variable or percentage) rent, which is determined as a percentage of gross sales in excess of specified levels. The components of lease expense were as follows (in thousands):

	Fiscal year ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Operating lease expense	\$ 62,170	\$ 60,278	\$ 63,663
Variable lease expense	2,260	3,021	2,504
Non-lease components	36,245	34,124	34,648
Total occupancy expense	<u>\$ 100,675</u>	<u>\$ 97,423</u>	<u>\$ 100,815</u>

Supplemental cash flow information related to leases follows (in thousands):

	Fiscal year ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash flows related to operating leases	\$ 69,984	\$ 80,281	\$ 58,913
Right of use assets obtained in exchange for new operating lease liabilities	\$ 20,601	\$ 10,201	\$ 4,135

The Company monitors for events or changes in circumstances that may require a reassessment of one of its leases and determines if a remeasurement is required. The balance of COVID-19-related rent concessions the Company received for coffeehouses and bagel bakeries, recorded in current operating lease liabilities and long-term operating lease liabilities on the consolidated balance sheets and generally correlating with the temporary period our stores were closed, was \$0.2 million and \$0.6 million for the years ended December 27, 2022 and December 28, 2021, respectively. Consistent with updated guidance from the FASB in April 2020, the Company elected to treat COVID-19-related rent concessions as if they were part of the enforceable rights and obligations of the existing contract. Reductions in lease liabilities were recorded with corresponding reductions in the right of use assets.

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9. Leases (continued)

As of December 27, 2022, the weighted-average remaining lease term and discount rate were as follows:

	Weighted-Average Remaining Lease Term (Years)	Weighted-Average Discount Rate ⁽¹⁾
Operating leases	5.4	6.7%

⁽¹⁾ The Company cannot determine the interest rate implicit in its leases. Therefore, the discount rate used in determining the present value of lease payments represents the Company's incremental borrowing rate, which is determined based on the risk-free rate, adjusted for the risk premium attributed to the Company's credit rating for a secured or collateralized debt instrument.

Future minimum lease payments under non-cancelable operating leases as of December 27, 2022 were as follows:

Fiscal Year	Operating Leases
2023	70,285
2024	61,919
2025	51,849
2026	42,492
2027	29,292
Thereafter	47,993
Total future minimum lease payments	\$ 303,830
Less: imputed interest	(49,088)
Present value of minimum lease payments	\$ 254,742

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10. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

	December 27, 2022	December 28, 2021
Compensation and related employment taxes	\$ 19,956	\$ 29,275
Gift card liability	11,763	13,773
Loyalty program	11,077	9,899
Taxes, other than income tax	4,743	5,276
Insurance	6,077	5,600
Advertising	3,313	2,934
Occupancy costs	2,561	1,450
Utilities	1,607	1,263
Capital expenditures	2,515	1,723
Interest payable	11	688
Deferred revenue	983	1,270
Interest rate swaps	-	4,970
Due to related parties	575	-
Other	7,839	6,173
Total	<u>\$ 73,020</u>	<u>\$ 84,294</u>

The Company self-insures a portion of the exposure for costs related to employee healthcare, workers' compensation, and general liability. The Company utilizes third party actuarial experts' estimates of expected losses based on statistical analyses of the Company's actual historical data and historical industry data to determine required self-insurance reserves. The assumptions are closely reviewed, monitored, and adjusted when warranted. Estimated accruals for these liabilities could be affected if actual experience related to the number of claims and cost per claim differ from these assumptions and historical trends. As of December 27, 2022 and December 28, 2021, self-insurance reserves were \$6.1 million and \$5.6 million, respectively, and were included in accrued expenses in the consolidated balance sheets. Total amounts expensed for self-insurance were \$17.4 million, \$14.3 million, and \$10.1 million for fiscal 2022, fiscal 2021, and fiscal 2020, respectively. Expenses are recorded based on actuarial estimates for reported and incurred but not reported claims considering several factors, including historical claims experience, severity factors, litigation costs, inflation, and other actuarial assumptions.

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11. Paycheck Protection Loan

During 2020, the Company did not seek nor receive a Paycheck Protection Program (“PPP”) Loan; however, in April 2020, the 51% partner in Caribou MSP Airport applied for and received a Paycheck Protection Loan under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) in the principal amount of \$0.4 million. In July 2021, Caribou MSP Airport applied for and received a second Paycheck Protection Loan under the CARES Act (CARES Act Loans, together, with the original loan) in the principal amount of \$0.6 million. The Company elected to account for the CARES Act Loans proceeds as a long-term liability, included in the Company’s other long-term liabilities on the consolidated balance sheet, pursuant to the terms of the CARES Act Loan Program and pursuant to all regulations and guidance promulgated or provided by the Small Business Administration (the “SBA”) and other federal agencies that are now, or may become, applicable to the loan. The loans bear interest at the rate of 1% per annum and has a 2-year term.

During the third quarter of 2021, Caribou MSP Airport submitted an application for forgiveness of the first PPP Loan and upon approval by the SBA and the lender, Caribou MSP Airport received forgiveness for 100% of the \$0.4 million loan. During the fourth quarter of 2021, Caribou MSP Airport submitted an application for forgiveness of the second PPP Loan and upon approval by the SBA and the lender, Caribou MSP Airport received forgiveness for 100% of the \$0.6 million loan. Both amounts are recorded in other income in the consolidated statements of operations for the fiscal year ended December 28, 2021.

12. Debt

In February 2015, the Company entered into a bank line of credit and term loan (the Bank Agreement) with Rabobank Nederland and a syndicate of other lenders (the Lenders).

The Bank Agreement established a \$475 million credit facility consisting of a \$375 million revolving credit loan and a \$100 million term loan subject to certain limits for borrowing, prepaying or reborrowing. The Bank Agreement includes provisions for the borrowing of swingline loans of up to \$20 million and letters of credit of up to \$20 million. The Bank Agreement is subject to commitment fees for unused credit ranging from 0.20% to 0.30%, based upon the total leverage ratio. Letters of credit incur participation fees based upon the applicable margin for Eurodollar loans ranging from 1.25% to 2.00% based upon the Company’s leverage ratio and is payable based upon the amount of the letter of credit exposure.

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12. Debt (continued)

Loans under the Bank Agreement can be either a base rate loan or Eurodollar loan. Base rate loans bear interest at the greater of (a) the Prime rate, (b) 0.50% to 1.00% above the Federal Funds Effective rate or (c) the adjusted LIBO rate for a Eurodollar loan with a one-month interest period plus 1%, plus an applicable margin on base rate loans of 0.25% to 1.00% based upon the Company's leverage ratio. A Eurodollar loan bears interest at the London InterBank Offered Rate for a Eurodollar loan multiplied by a statutory reserve rate plus an applicable margin on Eurodollar loans of 1.25% to 2.00% based upon the Company's leverage ratio.

The financial covenants under the Bank Agreement require the Company to comply with a maximum total leverage ratio and a minimum interest coverage ratio, each measured quarterly. Under the Bank Agreement, the Company was required to maintain a total leverage ratio of not more than 4.25 to 1 for the quarters ended September 30, 2017 through September 30, 2019. On May 24, 2019, the Company entered into the third amendment to the Bank Agreement, which modified the leverage ratio requirement. Commencing with the fiscal quarter ending June 30, 2019, the Company was required to maintain a total leverage ratio of not more than 4.50 to 1 as of the last day of any fiscal quarter. The Company was also required to maintain an interest coverage ratio of at least 3.5 to 1. The third amendment also introduced limitations for annual capital expenditures. On June 30, 2020, the Company entered into the fourth amendment to the Bank Agreement. Commencing with the fiscal quarter ending June 30, 2020 and running through the fiscal quarter ending March 31, 2021 (the "Waiver Period"), the reporting requirements for the leverage ratio and interest coverage ratio were waived. In place of the leverage ratio and interest coverage ratio reporting requirements, during the Waiver Period, the Company was required to maintain minimum liquidity of \$30 million, defined as the sum of unrestricted cash plus the amount of debt available for borrowing under the terms of the Bank Agreement. During the Waiver Period, the Company was required to report monthly compliance with the minimum liquidity covenant.

On April 28, 2021, the Company entered into the fifth amendment to the Bank Agreement. Commencing with the fiscal quarter ending June 30, 2020 and running through the fiscal quarter ending June 29, 2022 (the "Second Waiver Period"), the reporting requirements for the leverage ratio and interest coverage ratio were waived. In place of the leverage ratio and interest coverage ratio reporting requirements, during the Second Waiver Period, the Company was required to maintain minimum liquidity of \$45 million, defined as the sum of unrestricted cash plus the amount of debt available for borrowing under the terms of the Bank Agreement. Starting with the quarter ending June 30, 2022, the Company was again required to maintain a total leverage ratio of not more than 4.50 to 1 as of the last day of any fiscal quarter. The Company was also required to maintain an interest coverage ratio of at least 3.5 to 1 starting with the quarter ending June 30, 2022.

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12. Debt (continued)

The Bank Agreement also provides customary restrictions upon additional indebtedness or liens, fundamental changes to the business, dispositions, investments, transactions with affiliates, transfers of assets, payment of dividends, making or repaying loans, modifying material contracts, significant accounting changes, entry into hedging or sale leaseback agreements, or the use of proceeds for other than specific business purposes. The Bank Agreement is secured by substantially all of the assets of the Company and its subsidiaries.

As of December 28, 2021, Caribou had total borrowings of \$402.4 million under the Bank Agreement, composed of term loan borrowings of \$89.4 million and borrowings under the revolving credit facility of \$313.0 million, and outstanding letters of credit of \$9.8 million resulting in \$52.2 million of available capacity under the Bank Agreement. The Company refinanced the Bank Agreement pursuant to the Company Credit Facility (as defined below) on June 15, 2022. All amounts were paid in full.

Panera Brands, Inc. Credit Facility

On June 15, 2022, Panera Brands, Inc. entered into a new credit agreement (the “PBI Credit Facility”). The PBI Credit Facility provided for term loans in two tranches with an aggregate principal amount of \$1 billion each and a revolving credit facility in an aggregate principal amount of \$1 billion. The initial proceeds from the PBI Credit Facility were used in part to refinance the Bank Agreement described above and to fund working capital needs for Panera Brands, Inc. The revolving credit facility is available for general corporate purposes for Panera Brands, Inc. and its subsidiaries, including the Company.

Borrowings under the PBI Credit Facility accrue interest at a rate, per annum, equal to, in the case of “base rate” borrowings, the greater of (x) a prime rate, (y) the NYFRB Rate (as defined in the PBI Credit Facility) plus 0.50% and (z) the Adjusted Term SOFR Rate (as defined in the PBI Credit Facility) for a one month interest period plus a leverage-based margin of 0.25% to 1.00%. In the case of term benchmark borrowings, such borrowings under the PBI Credit Facility accrue interest at a rate, per annum, equal to the Adjusted Term SOFR Rate plus a leverage-based margin of 1.25% to 2.00%. Applicable interest rates are subject to a 0.00% SOFR floor. Letter of credit and unused revolver fees accrue based on a leverage-based fee.

The revolving credit facility and one tranche of term loans under the PBI Credit Facility matures five years after closing, and the second tranche of term loans under the PBI Credit Facility matures three years after closing. The maturity date of any credit facility under the PBI Credit Facility may be extended by an additional year with the consent of the applicable lenders. Pursuant to this extension option, each of the revolving credit facility and the five-year term loan tranche may be extended on two occasions and the three-year term loan tranche may be extended on one occasion. The obligations under the PBI Credit Facility are collateralized by substantially all of the assets of Panera Brands, Inc. and the guarantors of the PBI Credit Facility, which includes the loan parties under the Bank Agreement.

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12. Debt (continued)

The PBI Credit Facility contains customary negative covenants which, among other things, generally limited (with certain exceptions): mergers, amalgamations, or consolidations; the incurrence of additional indebtedness (including guarantees); the incurrence of additional liens; the sale, assignment, lease or conveyance or transfer of assets; certain investments and restricted payments (including to the Company); transactions with affiliates; engaging in materially different lines of business; swap agreements; and other activities customarily restricted in similar financing agreements. The PBI Credit Facility contains customary affirmative covenants, representations and warranties and events of default. The PBI Credit Facility also contains a financial covenant in which Panera Brands, Inc. shall not permit the Total Net Leverage Ratio (as defined in the PBI Credit Facility) to exceed 5.50x. Panera Brands, Inc. is in compliance with all financial covenants under the PBI Credit Facility as of December 27, 2022.

The PBI Credit Facility requires a “Qualifying IPO” (as defined in the PBI Credit Facility) to occur on or prior to June 15, 2023. Within 10 business days after the occurrence of a “Qualifying IPO”, Panera Brands, Inc. is also required to repay \$160.0 million of outstanding borrowings under the PBI Credit Facility. A “Qualifying IPO” includes certain public issuances of common equity interests, SPAC transactions, and cash contributions to, and issuances of, qualified equity interests that, in each case, generate gross proceeds of not less than \$660.0 million.

On June 25, 2022, Panera Brands, Inc. and the Company entered into an Intercompany Loan Agreement, which allocates a portion of the PBI Credit Facility to the Company: term loans in two tranches with an aggregate principal amount of \$86.9 million each and a revolving credit facility in an aggregate principal amount of \$374.8 million. The terms and covenants of the Intercompany Loan Agreement essentially mirror that of the PBI Credit Facility. The Company is in compliance with all financial covenants under the Intercompany Loan Agreement as of December 27, 2022.

As of December 27, 2022, the Company had total borrowings of \$339.9 million under the PBI Credit Facility, composed of term loan borrowings of \$86.9 million and borrowings under the revolving credit facility of \$253.0 million, and outstanding letters of credit of \$9.8 million resulting in \$112.0 million of available capacity under the Company Credit Facility. As of December 27, 2022, the caption "Current portion of long-term debt" in the Condensed Consolidated Balance Sheets includes borrowings of \$4.3 million under the Company Credit Facility, composed of principal payments due within twelve months of December 27, 2022, and \$0.5 million of deferred financing fees.

In connection with the acquisition of the PBI Credit Facility, the Company paid debt acquisition costs of \$2.3 million during the fiscal year ended December 27, 2022. These costs have been capitalized as deferred financing fees. Deferred financing fees on the consolidated balance sheets as of December 27, 2022 and December 28, 2021 totaled approximately \$2.4 million and \$1.6 million, respectively. Amortization expense of deferred financing fees, including write-offs of debt acquisition costs associated with the Bank Agreement in 2022, totaled \$1.6 million, \$1.8 million, and \$1.0 million for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

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13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation

Caribou Coffee Company, Inc. Long-Term Incentive Plan and Executive Ownership Plan

During 2013, the Company established the Caribou Coffee Company, Inc. Long-Term Incentive Plan (C-LTIP), which provides for the granting of non-qualified stock options and restricted stock to officers and key employees. The Company is authorized to issue a maximum of 1,300,000 shares of its \$.01 par value common stock pursuant to the C-LTIP. The plan includes provisions for the grantee, after the satisfaction of a six month hold period, to sell the vested shares to the Company in exchange for the current fair value of the shares. The Company has the option to call outstanding vested shares in exchange for the current fair value of the shares.

During the fiscal years ended December 28, 2022 and December 29, 2021, the Company issued restricted stock awards and non-qualified stock options to employees that vest four and half years from the date of grant. Restricted stock awards include a six-month holding period before the employee can sell the shares. Non-qualified stock options can be exercised any time after vesting and up to ten years from the date of grant. As of December 27, 2022, 1.2 million shares of the Company's common stock were available for issuance under the C-LTIP.

On June 13, 2013, the Company established the Caribou Executive Ownership Plan (C-EOP). The C-EOP allows eligible executive employees and non-employee directors to purchase shares of the Company's common stock during specified investment periods at an amount that equals or exceeds an investment minimum, which is defined as five percent of the participant's annual base salary divided by the fair market value of a share on the investment date. In no event shall the aggregate value of shares acquired by any participant pursuant to the C-EOP exceed the aggregate investment limit, which is defined as the product of ten and the participant's annual base salary.

The C-EOP allows for the granting of matching awards of the number of shares purchased by the participants and vests on the 54-month anniversary of the investment date. The matching awards granted, as well as any shares issued at a discount, under the C-EOP are accounted for as stock-based compensation expense. There were no purchases of the Company's stock under the C-EOP during the fiscal years ended December 27, 2022 and December 28, 2021.

Shareholders who purchased shares under the C-EOP plan may sell the shares to the Company during specified investment periods for the then current fair value. Shareholders are subject to market risk on the value of their shares. During the fiscal year ended December 27, 2022, 0.1 million shares were repurchased by the Company for \$2.8 million, net of shareholder loans. During the fiscal year ended December 28, 2021, less than 0.1 million shares were repurchased by the Company for \$0.6 million, net of shareholder loans. As of December 27, 2022, 2.0 million shares of the Company's common stock were available for issuance under the C-EOP.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Caribou Coffee Company, Inc. Long-Term Incentive Plan and Executive Ownership Plan (continued)

Restricted stock units are valued based on the grant-date fair value of the shares. The fair value of the shares is estimated using a market approach, which estimates the value of the stock based upon comparison to comparable public companies in a similar line of business. From the comparable public companies, a representative market value multiple is determined and then applied to the Company's financial metrics. The estimated grant date fair value of each stock-based award is recognized in the consolidated statements of operations on a straight-line basis over the requisite service period (generally the vesting period). Total stock-based compensation expense for all CCCI C-LTIP and matching awards under the C-EOP plans for the fiscal years ended December 27, 2022 and December 28, 2021 was \$1.3 million and \$0.9 million, respectively, and is included in general and administrative expenses on the consolidated statements of operations.

Stock option activity during the fiscal years ended December 27, 2022, December 28, 2021 is as follows (in thousands, except per share and life data):

Options Outstanding	Number of Shares	Weighted Average Exercise Price	Weighted Average Contract Life
Outstanding, December 29, 2020	14	\$ 66.39	5.7 years
Granted	-	-	
Exercised	-	-	
Cancelled	(9)	69.63	
Outstanding, December 28, 2021	5	\$ 60.62	5.5 years
Granted	-	-	
Exercised	(2)	58.76	
Cancelled	-	-	
Outstanding, December 27, 2022	3	\$ 62.31	4.3 years
Vested and expected to vest	3	\$ 62.31	4.3 years
Exercisable, December 27, 2022	3	\$ 62.31	4.3 years

Stock options were issued with an exercise price equal to the market price of our common stock on the date of grant. As of December 27, 2022, all stock options in the Caribou Coffee Company, Inc. equity plans were vested. There was no unrecognized compensation cost related to non-vested stock options granted to employees.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Caribou Coffee Company, Inc. Long-Term Incentive Plan and Executive Ownership Plan (continued)

Restricted stock activity during the fiscal years ended December 27, 2022 and December 28, 2021 is as follows (in thousands, except per share data):

Non-Vested Shares Outstanding	Shares	Weighted Average Fair Value
Balance December 29, 2020	140	\$ 55.71
Granted	21	49.08
Vested	(17)	60.74
Forfeited	(17)	55.00
Balance December 28, 2021	127	\$ 53.99
Granted	4	65.67
Vested	(26)	53.10
Forfeited	-	-
Grants transferred to Einstein Noah Restaurant Group, Inc.	(63)	56.31
Balance December 27, 2022	42	\$ 52.18

As of December 27, 2022, there was \$1.0 million of unrecognized compensation cost related to non-vested restricted shares granted to employees, which is expected to be recognized over a weighted average period of 2.4 years.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Caribou Coffee Operating Company Long-Term Incentive Plan and Executive Ownership Plan

In March 2020, CCOC established the CCOC Long-Term Incentive Plan (CCOC-LTIP), which provides for the granting of non-qualified stock options (NSOs) and restricted stock units (RSUs) to officers and key employees with terms identical to the C-LTIP. In March 2020, CCOC established the CCOC Executive Ownership Plan (CCOC-EOP) that allows eligible executive employees and non-employee directors to purchase shares of CCOC common stock with terms identical to the C-EOP. During the fiscal year ended December 27, 2022, executive employees purchased less than 0.1 million shares of CCOC under the CCOC-EOP for \$0.1 million, net of shareholder loans. During the fiscal year ended December 28, 2021, executive employees purchased 0.1 million shares of CCOC under the CCOC-EOP for \$0.9 million, net of shareholder loans. During the fiscal years ended December 27, 2022 and December 28, 2021, the Company granted matching shares of less than 0.1 million and 0.1 million shares of CCOC, respectively.

Shareholders who purchased shares under the CCOC-EOP may sell the shares to CCOC during specified investment periods for the then current fair value. Shareholders are subject to market risk on the value of their shares. During the fiscal year ended December 27, 2022, 0.1 million shares were repurchased by CCOC for \$0.5 million, net of shareholder loans. During the fiscal years ended December 28, 2021, less than 0.1 million shares were repurchased by CCOC for \$0.2 million, net of shareholder loans.

The estimated grant date fair value of each stock-based award is recognized in the consolidated statements of operations on a straight-line basis over the requisite service period (generally the vesting period). The fair value of the shares is estimated using a market approach, which estimates the value of the stock based upon comparison to comparable public companies in a similar line of business. From the comparable public companies, a representative market value multiple is determined and then applied to the Company's financial metrics. Total stock-based compensation expense for awards issued under the CCOC-LTIP and CCOC-EOP for the fiscal years ended December 27, 2022 and December 28, 2021 was \$2.2 million and \$1.8 million, respectively, and is included in general and administrative expenses on the consolidated statements of operations.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Caribou Coffee Operating Company Long-Term Incentive Plan and Executive Ownership Plan

Stock option activity during the fiscal years ended December 27, 2022 and December 28, 2021 is as follows (in thousands, except per share and life data):

Options Outstanding	Number of Shares	Weighted Average Exercise Price	Weighted Average Contract Life
Outstanding, December 29, 2020	48	\$ 28.86	7.0 years
Granted	-	-	
Exercised	-	-	
Expired	(1)	35.35	
Forfeited	(3)	29.40	
Outstanding, December 28, 2021	44	\$ 28.71	5.6 years
Granted	32	30.02	
Exercised	-	-	
Expired	-	-	
Forfeited	(1)	28.01	
Outstanding, December 27, 2022	75	\$ 29.29	6.8 years
Vested and expected to vest	66	\$ 29.18	6.4 years
Exercisable, December 27, 2022	43	\$ 28.73	5.0 years

Stock options were issued with an exercise price equal to the market price of our common stock on the date of grant. The weighted average fair value of the stock options granted during the fiscal year ended December 27, 2022 was \$10.85. No stock options were granted during the fiscal year ended December 28, 2021. As of December 27, 2022, there was \$0.2 million of unrecognized compensation cost related to CCOC non-vested stock options granted to employees, which is expected to be recognized over a weighted average period of 2.2 years.

The Company estimated the fair value of each stock option award on the date of grant using a Black-Scholes option pricing model, modified for dividends and using the following assumptions:

Expected stock price volatility	37.40%
Expected life	6.55 years
Risk free interest rate	1.87%
Dividend yield	1.00%

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Caribou Coffee Operating Company Long-Term Incentive Plan and Executive Ownership Plan (continued)

Restricted stock activity during the fiscal years ended December 27, 2022 and December 28, 2021 is as follows (in thousands, except per share data):

Non-Vested Shares Outstanding	Shares	Weighted Average Fair Value
Balance December 29, 2020	255	\$ 24.92
Granted	183	23.97
Vested	(4)	25.17
Forfeited	(30)	24.09
Balance December 28, 2021	404	\$ 24.50
Granted	88	30.43
Vested	(80)	25.17
Forfeited	(8)	24.51
Balance December 27, 2022	404	\$ 25.66

As of December 28, 2021, there was \$5.2 million of unrecognized compensation cost related to non-vested restricted shares granted to employees, which is expected to be recognized over a weighted average period of 2.8 years.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Einstein Noah Restaurant Group, Inc. Long-Term Incentive Plan and Executive Ownership Plan

In March 2020, ENRGI established the ENRGI Long-Term Incentive Plan (ENRGI-LTIP), which provides for the granting of non-qualified stock options (NSOs) and restricted stock units (RSUs) to officers and key employees with terms identical to the C-LTIP. In March 2020, ENRGI established the ENRGI Executive Ownership Plan (ENRGI-EOP) that allows eligible executive employees and non-employee directors to purchase shares of ENRGI common stock with terms identical to the C-EOP. During the fiscal year ended December 27, 2022, executive employees purchased 0.1 million shares of ENRGI for \$1.0 million, net of shareholder loans. During the fiscal year ended December 28, 2021, executive employees purchased 0.2 million shares of ENRGI for \$1.6 million, net of shareholder loans. During the fiscal years ended December 27, 2022 and December 28, 2021, the Company made matching grants of 0.1 million shares and 0.2 million shares, respectively.

Shareholders who purchased shares under the ENRGI-EOP may sell the shares to ENRGI during specified investment periods for the then current fair value. Shareholders are subject to market risk on the value of their shares. During the fiscal year ended December 27, 2022, less than 0.1 million shares were repurchased by ENRGI for \$0.6 million, net of shareholder loans. During the fiscal year ended December 28, 2021, 0.1 million shares were repurchased by ENRGI for \$1.1 million, net of shareholder loans.

The estimated grant date fair value of each stock-based award is recognized in the consolidated statements of operations on a straight-line basis over the requisite service period (generally the vesting period). The fair value of the shares is estimated using a market approach, which estimates the value of the stock based upon comparison to comparable public companies in a similar line of business. From the comparable public companies, a representative market value multiple is determined and then applied to the Company's financial metrics. Stock-based compensation expense for the ENRGI-LTIP and ENRGI-EOP for the fiscal years ended December 27, 2022 and December 28, 2021 was \$3.9 million and \$1.0 million, respectively, and is included in general and administrative expenses on the consolidated statements of operations.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Einstein Noah Restaurant Group, Inc. Long-Term Incentive Plan and Executive Ownership Plan

Stock option activity during the fiscal years ended December 27, 2022 and December 28, 2021 is as follows (in thousands, except per share and life data):

Options Outstanding	Number of Shares	Weighted Average Exercise Price	Weighted Average Contract Life
Outstanding, December 29, 2020	84	\$ 28.85	6.8 years
Granted	-	-	
Exercised	(9)	30.39	
Expired	(5)	31.81	
Forfeited	(24)	28.39	
Outstanding, December 28, 2021	46	\$ 28.43	5.2 years
Granted	71	33.02	
Exercised	(7)	30.61	
Expired	-	-	
Forfeited	(1)	27.18	
Outstanding, December 27, 2022	109	\$ 31.28	7.7 years
Vested and expected to vest	100	31.12	7.5 years
Exercisable, December 27, 2022	38	\$ 28.06	5.0 years

Stock options were issued with an exercise price equal to the market price of our common stock on the date of grant. The weighted average fair value of the stock options granted during the fiscal year ended December 27, 2022 was \$11.42. No stock options were granted during the fiscal year ended December 28, 2021. As of December 27, 2022, there was \$0.4 million of unrecognized compensation cost related to ENRGI non-vested stock options granted to employees, which is expected to be recognized over a weighted average period of 0.7 years.

The Company estimated the fair value of each stock option award on the date of grant using a Black-Scholes option pricing model, modified for dividends and using the following assumptions:

Expected stock price volatility	37.78%
Expected life	5.80 years
Risk free interest rate	1.83%
Dividend yield	1.00%

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
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13. Noncontrolling Interests Subject to Put Provisions and Stock-Based Compensation (continued)

Einstein Noah Restaurant Group, Inc. Long-Term Incentive Plan and Executive Ownership Plan (continued)

Restricted stock activity during the fiscal years ended December 27, 2022 and December 28, 2021 is as follows (in thousands, except per share data):

Non-Vested Shares Outstanding	Shares	Weighted Average Fair Value
Balance December 29, 2020	350	\$ 23.81
Granted	273	25.34
Vested	(28)	24.42
Forfeited	(144)	24.45
Balance December 28, 2021	451	\$ 24.49
Granted	215	34.66
Grants transferred from Caribou Coffee Company, Inc.	118	34.66
Vested	(14)	24.42
Forfeited	(28)	25.73
Balance December 27, 2022	742	\$ 29.00

As of December 27, 2022, there was \$9.7 million of unrecognized compensation cost related to non-vested restricted shares granted to employees, which is expected to be recognized over a weighted average period of 2.8 years.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

14. Accumulated Other Comprehensive Income

The following tables summarize changes in accumulated other comprehensive income, net of tax, for the fiscal years ended December 27, 2022 and December 28, 2021 (in thousands):

	Cash flow hedging instruments	Accumulated other comprehensive income	Non-controlling interests subject to put provisions
Balances at December 29, 2020	\$ (9,645)	\$ (9,391)	\$ (254)
Unrealized gains on cash flow hedging instruments, net of tax	399	395	4
Reclassification adjustment for net losses realized in earnings on cash flow hedging instruments, net of tax	5,579	5,534	45
Balances at December 28, 2021	<u>\$ (3,667)</u>	<u>\$ (3,462)</u>	<u>\$ (205)</u>
Unrealized gains on cash flow hedging instruments, net of tax	817	805	12
Reclassification adjustment for net losses realized in earnings on cash flow hedging instruments, net of tax	2,375	2,340	35
Settlement and novation of cash flow hedging instruments	475	317	158
Balances at December 27, 2022	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>	<u><u>\$ -</u></u>

During the fiscal year ended December 27, 2022, the Company settled one interest rate swap contract and novated the remaining two to Panera Brands, Inc. Caribou Coffee Company, Inc. did not hold any cash flow hedging instruments as of December 27, 2022. Refer to Note 5 for more information on the settlement and novation.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

15. Income Taxes

The income tax expense (benefit) for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020 consists of the following (in thousands):

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Current			
Federal	\$ (2,969)	\$ -	\$ -
State	1,930	515	380
International	256	290	244
Total Current	(783)	805	624
Deferred			
Federal	7,955	7,153	(4,863)
State	1,514	2,783	1,413
Total Deferred	9,469	9,936	(3,450)
Total Tax Expense (Benefit)	\$ 8,686	\$ 10,741	\$ (2,826)

A reconciliation of the differences between income taxes computed at the U.S. Federal statutory tax rate and the Company's income tax expense (benefit) for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020 is as follows (in thousands):

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Federal tax rate	\$ 12,207	\$ 9,886	\$ (4,104)
Foreign taxes	256	290	244
State taxes	3,106	2,461	(1,101)
Tax rate change to deferred taxes	-	-	2,514
Stock option windfall	(32)	29	103
Tax credits	(3,083)	(2,138)	(670)
Changes in unrecognized tax benefits	(3,280)	-	-
Return to Provision adjustments	(190)	115	(37)
Other	(298)	98	225
	\$ 8,686	\$ 10,741	\$ (2,826)

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

15. Income Taxes (continued)

Deferred income taxes reflect the tax effect of temporary differences between the carrying amounts of the assets and liabilities for financial reporting purposes and amounts used for income taxes. The tax effects of temporary differences that give rise to significant portions of the Company's deferred income tax assets (liabilities) are as follows (in thousands):

	December 27, 2022	December 28, 2021
Net operating losses and credit carryforwards	\$ 10,570	\$ 9,748
Operating lease liabilities	68,885	61,775
Accrued expenses	7,652	8,092
State deferred taxes	4,281	4,395
Deferred revenue	1,255	969
Stock based compensation	3,115	2,442
Other	570	1,394
Gross deferred tax assets	<u>96,328</u>	<u>88,815</u>
Property & equipment	(9,367)	(7,942)
Operating lease assets	(61,768)	(55,233)
Other intangibles	(125,984)	(127,280)
Gross deferred tax liabilities	<u>(197,119)</u>	<u>(190,455)</u>
Valuation allowance	(30)	(54)
Net deferred tax liabilities	<u>\$ (100,821)</u>	<u>\$ (101,694)</u>

A valuation allowance of less than \$0.1 million and approximately \$0.1 million was placed on certain state net operating loss deferred tax assets as of December 27, 2022 and December 28, 2021, respectively, as management believes it is not more likely than not those deferred tax assets will be realized.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

15. Income Taxes (continued)

Unrecognized tax benefits are included in accrued expenses and other accrued liabilities and deferred tax liability, net on the consolidated balance sheets. A reconciliation of the beginning and ending amount of unrecognized tax benefits for the fiscal years ended December 27, 2022 and December 28, 2021 was as follows (in thousands):

	Fiscal Year Ended	
	December 27, 2022	December 28, 2021
Beginning gross unrecognized tax benefit	\$ 4,269	\$ 4,288
Gross increases for prior periods	-	5
Gross decreases for prior periods	(3,567)	(24)
Ending gross unrecognized tax benefit	<u>\$ 702</u>	<u>\$ 4,269</u>

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. There was no penalty or interest to be recognized in income tax expense for any period presented. The Company believes that it is reasonably possible that a decrease of up to \$0.7 million in unrecognized tax benefits may be recognized by the end of 2023 as a result of a lapse of the statute of limitations.

As of December 27, 2022, the Company had net operating loss carryforwards of approximately \$0.0 million and \$81.5 million for federal and state tax purposes, respectively. The federal carryforwards do not expire. If not utilized, state carryforwards will begin to expire in 2023.

As of December 27, 2022, the Company had various tax credit carryforwards of approximately \$6.1 million and \$0.1 million for federal and state tax purposes, respectively. If not utilized, the credits can be carried forward between 10 and 20 years.

For federal purposes, tax years prior to 2019 are closed for assessment purposes.

The Company files a federal consolidated income tax return and various state unitary or combined income tax returns with Panera Brands, Inc. and Subsidiaries. As such, the Company has entered into a Tax Sharing Agreement with the Parent which governs the allocation, settlement, and administrative matters of the consolidated group of companies. As of December 27, 2022, the Company has recorded a \$7.1 million net related party receivable within the 'Deposits and other' on the Consolidated Balance Sheets for the value of tax benefits or cash payments used by other companies as part of the fiscal years 2015 to 2021 and estimated 2022 consolidated tax filings. The income tax provision reflected in the consolidated financial statements has been prepared on a stand-alone basis. As of December 27, 2022, the Company has recorded a \$4.5 million difference between the amount received under the tax matters agreement and the expected settlement amount prepared on the Company's stand-alone basis as an additional investment by the parent within the consolidated statement of changes in shareholders' equity.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

16. Employee Benefit Plan

Caribou sponsors a 401(k) defined contribution plan for substantially all employees, excluding key employees and officers, and generally matches 25% of the first 5% contributed by its employees after three months of employment. Caribou matching contributions are fully vested after four years of service. Caribou did not accrue or pay a discretionary match for the fiscal year ended December 28, 2021. Amounts expensed for Caribou matching contributions to the plan aggregated to \$0.3 million and \$0.1 million for the fiscal years ended December 27, 2022 and December 29, 2020, respectively.

ENRGI sponsors a 401(k) defined contribution plan for substantially all employees, excluding key employees and officers, if they meet certain eligibility requirements. ENRGI may generally make a matching contribution which would vest after three years of service. ENRGI did not accrue or pay a discretionary match for the fiscal years ended December 27, 2022 and December 28, 2021. Amounts expensed for ENRGI matching contributions to the plan aggregated to \$0.1 million for the fiscal year ended December 29, 2020.

The Company established the Caribou Nonqualified Deferred Compensation Plan (DC Plan) for key employees, generally officers, who were eligible to participate in the DC Plan effective January 1, 2019. The DC Plan allows an eligible employee to defer up to 80% of their base salary and bonus. The deferred amounts are invested with The Charles Schwab Trust Company under investment criteria directed by the participant.

Due to the substantial reduction in the Company's cash flows during 2020 as a result of the COVID-19 pandemic and its continued impact during 2021, the Company temporarily suspended Company matching contributions to its defined contribution plans and DC Plan. Caribou reinstated its matching contributions in January 2022; ENRGI reinstated its matching contributions in January 2023.

17. Master Franchise Agreement

Middle East Franchise Agreement

In November 2004, the Company entered into a master franchise agreement (Middle East Franchise Agreement) with a franchisee. In 2017, the Middle East Franchise Agreement was amended to expand the rights of the franchisee to develop 600 Caribou Coffee branded coffeehouses and to extend the expiration date. The Middle East Franchise Agreement, as amended, expires in October 2027.

The Company's Middle East Franchise Agreement requires upfront franchise fees such as initial fees paid upon opening of a store and fees paid to renew the term of the franchise right. Fees are recognized over the term of the related franchise license for the respective coffeehouse or bagel bakery. Revenues for these upfront franchise fees are recognized on a straight-line basis over the life of the franchise agreement for the respective coffeehouse or bagel bakery, which is consistent with the franchisee's right to use and benefit from the intellectual property.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

17. Master Franchise Agreement (continued)**Middle East Franchise Agreement (continued)**

Monthly royalty payments ranging from 3% to 5% of gross sales are also due to the Company under this Middle East Franchise Agreement. Royalty revenue of \$3.7 million, \$3.9 million, and \$3.0 million was received during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively, and is included in franchise royalties and fees on the consolidated statements of operations.

As of December 27, 2022, there were 287 coffeehouses operating under this agreement.

Indo Franchise Agreement

In January 2015, the Company entered into a master franchise agreement (Indo Franchise Agreement) with a franchisee partner in Indonesia. The agreement was for ten years and granted the exclusive right to the franchisee to open sixty Caribou Coffee branded coffeehouses in Indonesia over the term of the agreement.

Monthly royalty payments ranging from 3% to 5% of gross sales are also due to the Company. The agreement may be extended for an additional ten-year term.

During 2020, the Company terminated the Indo Franchise Agreement, and the franchisee closed the six coffeehouses operating thereunder. As a result of the termination of the contract, the Company recorded revenue of \$0.9 million associated with the elimination of the remaining short- and long-term deferred revenue under the contract. In addition, the Company recorded operating expenses of \$0.2 million associated with the elimination of startup costs that had previously been deferred.

Domestic Master Franchise Agreements

In November 2021, the Company entered into an area development agreement ("First Domestic Master Franchise Agreement") with a franchisee. In December 2022, the First Domestic Franchise Agreement was amended to expand the rights of the franchisee to develop 60 Caribou Coffee branded coffeehouses within a specific development area, as defined in the agreement, and to extend the expiration date. The First Domestic Franchise Agreement, as amended, expires in December 2033.

In January 2022, the Company entered into a second area development agreement ("Second Domestic Master Franchise Agreement") with a separate franchisee. The Second Domestic Franchise Agreement grants the franchisee the right to develop 10 Caribou Coffee branded coffeehouses within a specific development area, as defined in the agreement. The Second Domestic Franchise Agreement expires in July 2025.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
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17. Master Franchise Agreement (continued)

Domestic Master Franchise Agreements (continued)

In January 2022, the Company entered into a third area development agreement (“Third Domestic Master Franchise Agreement”) with a separate franchisee. The Third Domestic Franchise Agreement grants the franchisee the right to develop 29 Caribou Coffee branded coffeehouses within a specific development area, as defined in the agreement, with the option to develop an additional 27 Caribou Coffee branded coffeehouses within the specified development area, provided certain conditions are met by the franchisee. The Third Domestic Franchise Agreement does not include a stated expiration date.

Subsequent to year end, in January 2023, the Company entered into a fourth area development agreement (“Fourth Domestic Master Franchise Agreement”) with a separate franchisee. The Fourth Domestic Franchise Agreement grants the franchisee the right to develop 60 Caribou Coffee branded coffeehouses within a specific development area, as defined in the agreement. The Fourth Domestic Franchise Agreement expires in December 2030.

The Company’s domestic franchise agreements require upfront franchise fees such as initial fees paid upon opening of a store and fees paid to renew the term of the franchise right. Fees are recognized over the term of the related franchise license for the respective coffeehouse or bagel bakery. Revenues for these upfront franchise fees are recognized on a straight-line basis over the life of the franchise agreement for the respective coffeehouse or bagel bakery, which is consistent with the franchisee’s right to use and benefit from the intellectual property.

Monthly royalty payments ranging from 4% to 6% of gross sales are also due to the Company under these agreements. The first domestic franchise location under the First Domestic Franchise Agreement opened in November 2022, and less than \$0.1 million of royalty revenue was recorded during the fiscal year ended December 27, 2022.

18. Related-Party Transactions

Sales of Coffee to Peet’s

The Company sells Caribou Coffee branded coffee to Peet’s and receives a royalty for all sales by Peet’s to its CPG customers of Caribou Coffee branded product as described in Note 1. The Company recorded \$30.6 million, \$27.0 million, and \$25.5 million of Peet’s coffee bean sales and royalties in franchise and commercial product sales in the consolidated statements of operations for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. As of December 27, 2022 and December 28, 2021, the Company had a receivable due from Peet’s of \$3.6 million and \$2.5 million recorded in trade accounts receivable, net in the consolidated balance sheets, respectively.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

18. Related-Party Transactions

Coffee Sales to Keurig Green Mountain

The Company sold \$16.4 million, \$12.8 million, and \$13.9 million of green coffee to KGM during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. The Company received royalties of \$8.6 million, \$8.7 million, and \$8.8 million from KGM on sales by KGM of Caribou Coffee branded product during the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. As of December 27, 2022 and December 28, 2021, the Company had a receivable due from KGM related to the coffee sales and royalty of \$1.2 million and \$1.2 million recorded in trade accounts receivable, net in the consolidated balance sheets, respectively.

Tax Matters Agreement

The Company files a consolidated tax return with Panera Brands, Inc. and Subsidiaries. The Company, Peet's Coffee & Tea, LLC (Peet's), Krispy Kreme Holdings, Inc. (KKH), Panera Bread Co. (Panera), and KK HoldCo Inc. (formerly JAB Beech, Inc.) have agreed to a tax matters agreement as described in Note 15. The long-term amounts due from Peet's, KKH, Panera and KK HoldCo Inc. under the tax matters agreement are \$7.1 million and \$16.7 million as of December 27, 2022 and December 28, 2021, respectively. There were no short-term amounts due from related parties under the tax matters agreement at December 27, 2022 or December 28, 2021.

Shareholder Notes Receivable

Caribou Coffee Company, Inc. Shareholder Notes

During the fiscal year ended December 31, 2019, the Company provided loans to certain management employees to purchase 39,421 Company shares at an average cost of \$56.31 per share. The loans mature in three to ten years from the date of issuance and bear no stated interest. Concurrent with the inception of the CCOC-EOP and ENRGI-EOP plans during the fiscal year ended December 29, 2020, certain outstanding shareholder loans were assigned from the Company to CCOC or ENRGI. As of December 28, 2021, \$1.8 million of Company shareholder loans were outstanding and included in noncontrolling interests subject to put provisions, respectively. These shareholder loans were settled during the fiscal year ended December 27, 2022, and there were no Caribou Coffee Company, Inc. shareholder loans outstanding at December 27, 2022.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

18. Related-Party Transactions (continued)

Shareholder Note Receivable (continued)

Caribou Coffee Operating Company, Inc. Shareholder Notes

During the fiscal year ended December 29, 2020 and in addition to the outstanding shareholder loans assumed from the Company, CCOC provided loans to certain management employees to purchase 29,440 of CCOC shares at a cost of \$23.60 per share. During the fiscal year ended December 28, 2021, CCOC provided loans to certain management employees to purchase 53,654 Company shares at an average cost of \$24.21 per share. During the fiscal year ended December 27, 2022, CCOC provided loans to certain management employees to purchase 3,211 Company shares at an average cost of \$30.43 per share. The loans mature in three to ten years from the date of issuance and bear no stated interest. During the fiscal year ended December 27, 2022, \$1.3 million of CCOC shareholder loans were paid in full. As of December 27, 2022 and December 28, 2021, \$1.5 million and \$2.7 million of CCOC shareholder loans were outstanding and included in noncontrolling interests subject to put provisions, respectively.

Einstein Noah Restaurant Group, Inc. Shareholder Notes

During the fiscal year ended December 29, 2020 and in addition to the outstanding shareholder loans assumed from the Company, ENRGI provided loans to certain management employees to purchase 32,581 of ENRGI shares at a cost of \$20.14 per share. During the fiscal year ended December 28, 2021, ENRGI provided loans to certain management employees to purchase 94,227 Company shares at an average cost of \$25.60 per share. During the fiscal year ended December 27, 2022, ENRGI provided loans to certain management employees to purchase 36,895 Company shares at an average cost of \$34.66 per share. The loans mature in three to ten years from the date of issuance and bear no stated interest. As of December 27, 2022 and December 28, 2021, \$4.6 million and \$3.4 million of ENRGI shareholder loans were outstanding and included in noncontrolling interests subject to put provisions, respectively.

The Company, CCOC, and ENRGI discounted new shareholder loans to present value and recorded a discount of less than \$0.1 million, \$0.1 million, and less than \$0.1 million as stock based compensation expense included in general and administrative expense on the consolidated statement of operations during each of the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively. The Company, CCOC, and ENRGI recognized interest income of less than \$0.1 million, \$0.1 million, and \$0.1 million related to shareholder loans on the consolidated statement of operations during each of the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020, respectively.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

18. Related-Party Transactions (continued)

Shareholder Promissory Notes Payable

During the fiscal year ended December 29, 2020, the Company provided promissory notes payable to certain shareholders for the repurchase of 280,388 Company shares at an average cost of \$49.24 per share. The promissory notes payable issued for repurchases transacted during the March 2020 equity window matured in March 2021 and bore interest at 0.91% per annum. The promissory notes payable issued for repurchases transacted during the September 2020 equity window matured in September 2021 and bore interest at 0.14% per annum. As of December 29, 2020, \$11.6 million of promissory notes payable to certain shareholders were outstanding and included in current portion of long-term debt on the consolidated balance sheets. During March and May 2021, the company paid the \$11.6 million outstanding balance of shareholder promissory notes. As of December 27, 2022 and December 28, 2021, there were no shareholder promissory note agreements outstanding.

Dividend

No dividends were declared or paid during the fiscal years ended December 27, 2022 and December 28, 2021.

19. Bakery and Coffeehouse Closings, Transfers and Asset Disposals

Upon closing of a coffeehouse or bagel bakery, the Company accrues for estimated expenses associated with the closings.

Closing and disposal charges for the fiscal years ended December 27, 2022, December 28, 2021, and December 29, 2020 consist of the following (in thousands, except coffeehouse and bakery numbers):

	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Coffeehouse and bagel bakery closures	17	33	39
Amount charged for closed and transferring coffeehouses and bagel bakery:			
Other closing costs	\$ 680	\$ 1,170	\$ 2,307
Net loss on sale of closed coffeehouse and bagel bakery property and equipment	1,100	1,392	3,687
Coffeehouse and bagel bakery closing expense and disposal of assets	\$ 1,780	\$ 2,562	\$ 5,994

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

19. Bakery and Coffeehouse Closings, Transfers and Asset Disposals (continued)

Coffeehouse and bagel bakery closing expenses are included in other operating expenses in the consolidated statements of operations.

In accordance with ASU 2016-02, lease termination liabilities of \$0.3 million and \$0.3 million at December 27, 2022 and December 28, 2021, respectively, are included in the balance of the Company's right of use assets.

20. Commitments and Contingencies

From time to time, the Company becomes involved in certain legal proceedings in the ordinary course of business, including the significant legal proceedings described below. The Company believes that it has valid defenses to these legal proceedings and is defending the matters vigorously. Nevertheless, the outcome of any litigation is inherently uncertain.

570 Associates, LLC

On October 8, 2021, 570 Associates III, LLC commenced an action against Einstein and Noah Corp. and Einstein Noah Restaurant Group, Inc. in the Supreme Court for the State of New York, Erie County, alleging, among other things, money damages for the Einstein entities' alleged failure to construct a commercial building on the leased space that it rented from 570 Associates, LLC and open for business as a fully stocked restaurant no later than October 31, 2015 as required by the parties' lease.

The parties engaged in substantive motion practice over the next year and agreed to settle the dispute for a \$1.1 million payment to satisfy any obligation to construct the commercial building. The Company accrued this settlement as of December 27, 2022.

Data Security Incident

The Company experienced a data security incident that occurred in late 2018. From approximately August 28, 2018 through December 3, 2018, hackers installed malware on point of sale devices in certain locations that had the potential, during time periods varying by location, to access payment card information of customers when those customers made a purchase. As part of the data security incident, the Company may be subject to monetary assessments pursuant to its contractual relationships with its acquiring bank and incorporated card brand rules from Visa, MasterCard, American Express, and Discover. The Company has insurance coverage for potential liabilities of this nature; however, the coverage may not be sufficient to cover all claims and liabilities.

The Company, MasterCard, and American Express agreed on a \$1.6 million assessment, in conjunction with the data security incident, which has been paid as of December 28, 2021.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

20. Commitments and Contingencies (continued)

Data Security Incident (continued)

In December 2020, Visa tendered a preliminary assessment of \$6.5 million related to the data security incident. The Company included that liability in accrued expenses and other accrued liabilities on the consolidated balance sheet as of December 29, 2020.

In May 2021, VISA completed its review of the Company's financial information related to the data security incident and determined a global compromised account recovery liability assessment could potentially cause catastrophic impact to future operations of the Company. As a result, VISA forgave \$6.5 million of the remaining assessment under its catastrophic liability waiver program. The Company reversed the \$6.5 million liability in accrued expenses and other liabilities on the consolidated balance sheet during May 2021.

On June 21, 2019, Village Bank filed a suit in the United States District Court for the District of Minnesota claiming damages from the 2018 data security breach. The Plaintiff sought damages on behalf of a nationwide class of banks whose customers used their credit/debit cards at a Company store during the data security incident exposure window in 2018. The Company reached a \$5.8 million settlement in principle at a January 2020 mediation and signed the settlement agreement on May 14, 2020. This settlement was funded with two payments: \$4.2 million was paid by the Company's insurance carrier during 2020, and the remaining \$1.6 million was paid by the Company in January 2021.

Council for Education and Research on Toxics Claim

On August 7, 2010, the Council for Education and Research on Toxics (CERT), filed an enforcement action under California Health and Safety Code section 25249.6 (Proposition 65) against a number of companies, including the Company, for not providing "clear and reasonable warnings" before allegedly exposing individuals in California to acrylamide in "ready to drink" coffee. On May 9, 2011, CERT sued more than 40 companies (joint defense group or JDG) that sell beans, grounds, and other "coffee" products in California, for not providing "clear and reasonable warnings" before allegedly exposing individuals in California to acrylamide in such coffee products. The cases have now been consolidated and are pending in Los Angeles County Superior Court. By way of procedural motion, the issues have been bifurcated. "Phase I" of the proceedings litigated the defendants' three affirmative defenses: infringement of First Amendment rights; federal preemption of the state statute; the state statute has a "no significant risk" provision that applies to coffee. The Court ruled, on September 1, 2015, that defendants had not met their burden of proof regarding these defenses and, therefore, the cases proceeded to "Phase II" which was a trial on plaintiffs' claims. The Court ruled, on March 29, 2018, that defendants had not met their burden to establish that the acrylamide levels in coffee are not subject to the application of Proposition 65 and set the damages phase of the trial, "Phase III", for October 15, 2018.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

20. Commitments and Contingencies (continued)

Council for Education and Research on Toxics Claim (continued)

On Friday, June 15, 2018, the Office of Environmental Health Hazard Assessment (OEHHA), the agency tasked with implementation of Proposition 65, announced a proposed amendment to its regulations exempting all chemicals formed as a result of roasting coffee beans or brewing coffee from the statute's warning requirement. The "Phase III" trial was set for October 15, 2018; however, on October 12, 2018, the California Court of Appeal granted the defendants request for a stay of the trial. The court granted the JDG's motion for summary judgment on August 25, 2020 and entered judgment on October 1, 2020; the JDG prevailed on its motion for summary judgment ending this stage of the litigation. CERT filed its Notice of Appeal on November 20, 2020 in the California Court of Appeals. The California Court of Appeals issued its decision in the CERT matter on October 26, 2022 in favor of the JDG on the merits as well as denying an award of CERT's attorneys' fees. CERT then filed its Petition for Review in the California Supreme Court on December 2, 2022, which was denied on February 15, 2023. The California Supreme Court will now issue a remittitur to the Court of Appeal, which in turn will issue a remittitur to the trial court to affirm the judgment in the joint defense group's favor plus costs (excluding expert witness fees).

Davis Claims

In July 2018, Trina Davis filed a Private Attorneys General Act (PAGA) lawsuit in Sacramento County Superior Court against ENRGI alleging wage and break violations. Although filed as a PAGA-only claim, Davis sought damages on behalf of herself and other employees. ENRGI prevailed on a motion to compel arbitration based on Davis' employment arbitration agreement, but the Court provided her with an option to avoid arbitration by amending her complaint to seek PAGA-only relief without wage claims. Davis amended her complaint, and ENRGI filed a notice of appeal challenging the Court's allowance of the amended complaint.

In February 2019, Trina Davis filed a purported nationwide class action against ENRGI and the Company in the United States District Court for the Northern District of California. Plaintiff alleged violations of the Fair Credit Reporting Act, the California Investigative Consumer Reporting Agencies Act, the California Consumer Credit Reporting Agencies Act and the California Unfair Competition Law, based on the language in ENRGI's background check disclosure form. ENRGI moved to compel arbitration in accordance with Plaintiff's written agreement to arbitrate and the Court ordered Plaintiff to arbitrate her individual claims.

The parties reached a settlement agreement of \$1.5 million, covering both of Trina Davis's claims, at the February 21, 2020 mediation and paid this amount during the fiscal year ended December 28, 2021.

Caribou Coffee Company, Inc. and Subsidiaries
Notes to Consolidated Financial Statements (continued)
As of December 27, 2022 and December 28, 2021; and for the
Fiscal Years Ended December 27, 2022, December 28, 2021, and December 29, 2020

21. Supplemental Cash Flow Information

The following table sets forth supplemental cash flow information for the periods indicated:

(in thousands)	Fiscal Year Ended		
	December 27, 2022	December 28, 2021	December 29, 2020
Interest	\$ 16,662	\$ 16,421	\$ 18,525
Income taxes	3,412	1,077	450
Non-cash investing and financing activities			
Change in accrued property and equipment purchases	\$ 797	\$ 807	\$ (1,652)

22. Subsequent Events

The Company has evaluated subsequent events through March 29, 2023, the date that the consolidated financial statements were available to be issued, noting there were none requiring disclosure.

UNAUDITED FINANCIAL STATEMENTS

THESE FINANCIAL STATEMENTS HAVE BEEN PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED AN OPINION WITH REGARD TO THEIR CONTENT OR FORM.

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS
(in thousands (except share information))
(unaudited)

	August 22, 2023
ASSETS	
Current assets:	
Cash and cash equivalents	\$ 99,375
Trade accounts receivable, net	25,352
Other accounts receivable	728
Inventories	30,692
Prepaid expenses and other assets	3,949
Total current assets	160,096
Operating lease assets	232,044
Property and equipment, net	133,934
Other assets:	
Goodwill	384,813
Trademarks, net	457,500
Other intangible assets, net	8,526
Deposit and other	12,245
Total other assets	863,084
Total assets	\$ 1,389,158
LIABILITIES AND SHAREHOLDERS' EQUITY	
Current liabilities:	
Accounts payable	\$ 89,985
Accrued expenses	61,387
Current operating lease liabilities	56,267
Current portion of long-term debt	3,844
Total current liabilities	211,483
Long-term debt, net of unamortized discount	292,730
Deferred income taxes, net	108,670
Long-term operating lease liabilities	203,838
Other long-term liabilities	4,683
Total long-term liabilities	609,921
Commitments and contingencies	
Noncontrolling interests subject to put provisions	60,197
Shareholders' equity:	
Caribou Coffee Company, Inc. and Affiliates shareholders'	
Common stock, par value \$0.01; 28,000,000 shares authorized;	
21,315,011 and 21,125,385 shares issued and outstanding at August 22, 2023 and	
December 27, 2022, respectively	214
Additional paid-in capital	329,388
Retained earnings	175,032
Total shareholders' equity before non-controlling interest	504,634
Non-controlling interest	2,923
Total shareholders' equity	507,557
Total liabilities and shareholders' equity	\$ 1,389,158

CARIBOU COFFEE COMPANY, INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands)
(unaudited)

	Eight months ended August 22, 2023
Coffeehouse and bagel bakery sales	\$ 552,354
Franchise royalties and fees	15,988
Franchise advertising sales	2,763
Franchise and commercial product sales	104,669
Net sales	675,774
Cost of goods sold	139,038
Labor	161,370
Occupancy	55,497
Other operating expenses	83,946
Total coffeehouse and bagel bakery expense	439,851
Franchise operations and other expenses	2,419
Ad fund expense franchise	2,826
Franchise and commercial product cost of goods sold	82,717
Depreciation & amortization	25,956
General and administrative expenses	69,079
Pre-opening expenses	1,206
Total costs and expenses	624,054
Operating income	51,720
Interest expense, net	10,898
Pretax income	40,822
Income tax expense	8,982
Net income	\$ 31,840
Net income attributable to non-controlling interest	970
Net income attributable to Caribou Coffee Company Inc. and Affiliates	\$ 30,870

GUARANTEE OF PERFORMANCE

For value received, Caribou Coffee Company, Inc. a Minnesota corporation (the "Guarantor"), located at 3900 Lakebreeze Avenue N., Minneapolis, Minnesota 55429, absolutely and unconditionally guarantees to assume the duties and obligations of Einstein Bros. Bagels Franchise Corporation, located at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222, (the "Franchisor"), under its franchise registration in each state where the franchise is registered, and under its Franchise Agreement identified in its Franchise Disclosure Document issued October 25, 2023, as it may be amended, and as that Franchise Agreement may be entered into with franchisees and amended, modified or extended from time to time. This guarantee continues until all such obligations of the Franchisor under its franchise registrations and the Franchise Agreement are satisfied or until the liability of Franchisor to its franchisees under the Franchise Agreement has been completely discharged, which ever occurs first. The Guarantor is not discharged from liability if a claim by a franchisee against the Franchisor remains outstanding. Notice of acceptance is waived. The Guarantor does not waive receipt of notice of default on the part of the Franchisor. This guarantee is binding on the Guarantor and its successors and assigns.

The Guarantor executes this guarantee at Denver, Colorado, on the 31st day of October, 2023.

Guarantor: **Caribou Coffee Company, Inc.**

By: 
Mike Davis (Oct 31, 2023 15:04 MDT)

Print Name: Michael Davis

Print Title: Chief Legal Officer & Director

Exhibit G**Noah's Bagels Table of Contents of Manuals**

Section	Pages
Introduction	(pgs. 1-5)
▶ Baking	(pgs. 6-150)
▶ Food	(pgs. 151-353)
▶ Beverages	(pgs. 353-472)
▶ Catering	(pgs. 473-616)
▶ Marketing & Merchandising	(pgs. 617-639)
▶ Guest Service	(pgs. 640-679)
▶ Sales Planning	(pgs. 680-691)
▶ Cleaning & Maintenance	(pgs. 692-801)
▶ Managing a Shift	(pgs. 802-826)
▶ Risk Management & Compliance	(pgs. 827-946)
▶ Training the Team	(pgs. 947-962)
▶ Inventory & Cost Management	(pgs. 963-981)

Total Pages: 981 pages

Exhibit H
State-Specific Disclosures

EXHIBIT H-1

California Disclosure

In recognition of the requirements of the California Franchise Investment Law, Cal. Corp. Code §§ 31000-31516, and the California Franchise Relations Act, Cal. Bus. & Prof. Code §§ 20000-20043, the Franchise Disclosure Document for Einstein and Noah. in connection with the offer and sale of franchises for use in the State of California shall be amended to include the following:

1. The State Cover Page of the Franchise Disclosure Document shall be amended by the addition of the following paragraph:

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE FRANCHISE DISCLOSURE DOCUMENT.

2. Item 1, "The Franchisor, Its Predecessors, and Affiliates," shall be amended by adding the following paragraph at the conclusion of the Item:

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS FINANCIAL PROTECTION AND INNOVATION, ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION at www.dpfi.ca.gov.

3. In Item 3, "Litigation," shall be amended by adding the following paragraphs:

Pursuant to California law, this Item does not include any information regarding the arrest of any person(s) that did not result in a conviction or plea of nolo contendere.

Neither we, nor any person identified in Item 2 above, is subject to any currently effective order of any national securities association or national securities exchange (as defined in the Securities and Exchange Act of 1934, 15 U.S.C. § 78a, *et seq.*) suspending or expelling such person from membership in such association or exchange.

4. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by adding the following paragraphs at the conclusion of the Item:

California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer or non-renewal of a franchise. If the Franchise Agreement or Area Development Agreement contains a provision that is inconsistent with the law, the law will control.

The Franchise Agreement and Area Development Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C. § 101, *et seq.*).

California Disclosure (Page 1 of 2)

The Franchise Agreement and Area Development Agreement contains a covenant not to compete which extends beyond the termination of the franchise. This provision may not be enforceable under California law.

The Franchise Agreement contains a liquidated damages clause. Under California Civil Code § 1671, certain liquidated damages clauses are unenforceable.

The Franchise Agreement and Area Development Agreement requires application of the laws of the State of Colorado. This provision may not be enforceable under California law.

You must sign a general release if you renew or transfer your franchise. California Corporations Code § 31512 voids a waiver of your rights under the Franchises Investment Law (California Corporations Code §§ 31000 through 31516). Business and Professions Code § 20010 voids a waiver of your rights under the Franchise Relations Act (Business and Professions Code §§ 20000 through 20043).

5. The Franchise Disclosure Document is amended to include the following:

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.

EXHIBIT H-2**Illinois Disclosure**

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44, the Franchise Disclosure Document for Einstein Bros. Bagels Franchise Corporation for use in the State of Illinois shall be amended as follows:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the deletion of provisions "v" and "w" in its entirety, and the following provision shall be substituted in their place:

Provision	Section in Agreement	Summary
v. Choice of forum	§ 27.2 of Franchise Agreement; § 15.2 in Area Development Agreement	Illinois.
w. Choice of law	§ 27.1 of Franchise Agreement; § 15.1 in Area Development Agreement	Illinois.

2. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following at the conclusion of the Item:

Sec. 705/4 of the Illinois Franchise Disclosure Act provides that "any provision in a franchise agreement that designates jurisdiction or venue in a forum outside this state [Illinois] is void."

3. Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently, without reference to this addendum.

EXHIBIT H-3

Maryland Disclosure

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the Franchise Disclosure Document for EINSTEIN BROS. BAGELS FRANCHISE CORPORATION for use in the State of Maryland shall be amended as follows:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following language:

The general releases required for renewal or transfer will not apply with respect to any claim you may have which arises under the Maryland Franchise Registration and Disclosure Law.

Except with respect to claims arising under the Maryland Franchise Registration and Disclosure Law, the Franchise Agreement permits you to sue only in the jurisdiction in which we maintain our principal place of business.

2. Exhibit J, "Franchisee Compliance Certification," shall be amended by the addition of the following at the end of Exhibit J:

The representations under this Franchisee Compliance Certification are not intended, nor shall they act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law.

3. Each provision of this addendum to the disclosure document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this addendum to the disclosure document.

EXHIBIT H-4**Michigan Disclosure**

THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU:

- (A) A PROHIBITION ON THE RIGHT OF A FRANCHISEE TO JOIN AN ASSOCIATION OF FRANCHISEES.
- (B) A REQUIREMENT THAT A FRANCHISEE ASSENT TO A RELEASE, ASSIGNMENT, NOVATION, WAIVER, OR ESTOPPEL WHICH DEPRIVES A FRANCHISEE OF RIGHTS AND PROTECTIONS PROVIDED IN THIS ACT. THIS SHALL NOT PRECLUDE A FRANCHISEE, AFTER ENTERING INTO A FRANCHISE AGREEMENT, FROM SETTLING ANY AND ALL CLAIMS.
- (C) A PROVISION THAT PERMITS A FRANCHISOR TO TERMINATE A FRANCHISE PRIOR TO THE EXPIRATION OF ITS TERM EXCEPT FOR GOOD CAUSE. GOOD CAUSE SHALL INCLUDE THE FAILURE OF THE FRANCHISEE TO COMPLY WITH ANY LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND TO CURE SUCH FAILURE AFTER BEING GIVEN WRITTEN NOTICE THEREOF AND A REASONABLE OPPORTUNITY, WHICH IN NO EVENT NEED BE MORE THAN 30 DAYS, TO CURE SUCH FAILURE.
- (D) A PROVISION THAT PERMITS A FRANCHISOR TO REFUSE TO RENEW A FRANCHISE WITHOUT FAIRLY COMPENSATING THE FRANCHISEE BY REPURCHASE OR OTHER MEANS FOR THE FAIR MARKET VALUE, AT THE TIME OF EXPIRATION, OF THE FRANCHISEE'S INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES, AND FURNISHINGS. PERSONALIZED MATERIALS WHICH HAVE NO VALUE TO THE FRANCHISOR AND INVENTORY, SUPPLIES, EQUIPMENT, FIXTURES, AND FURNISHINGS NOT REASONABLY REQUIRED IN THE CONDUCT OF THE FRANCHISED BUSINESS ARE NOT SUBJECT TO COMPENSATION. THIS SUBSECTION APPLIES ONLY IF: (i) THE TERM OF THE FRANCHISE IS LESS THAN 5 YEARS; AND (ii) THE FRANCHISEE IS PROHIBITED BY THE FRANCHISE OR OTHER AGREEMENT FROM CONTINUING TO CONDUCT SUBSTANTIALLY THE SAME BUSINESS UNDER ANOTHER TRADEMARK, SERVICE MARK, TRADE NAME, LOGOTYPE, MARKETING, OR OTHER COMMERCIAL SYMBOL IN THE SAME AREA SUBSEQUENT TO THE EXPIRATION OF THE FRANCHISE OR THE FRANCHISEE DOES NOT RECEIVE AT LEAST 6 MONTHS ADVANCE NOTICE OF FRANCHISOR'S INTENT NOT TO RENEW THE FRANCHISE.
- (E) A PROVISION THAT PERMITS THE FRANCHISOR TO REFUSE TO RENEW A FRANCHISE ON TERMS GENERALLY AVAILABLE TO OTHER FRANCHISEES OF THE SAME CLASS OR TYPE UNDER SIMILAR

CIRCUMSTANCES. THIS SECTION DOES NOT REQUIRE A RENEWAL PROVISION.

- (F) A PROVISION REQUIRING THAT ARBITRATION OR LITIGATION BE CONDUCTED OUTSIDE THIS STATE. THIS SHALL NOT PRECLUDE THE FRANCHISEE FROM ENTERING INTO AN AGREEMENT, AT THE TIME OF ARBITRATION, TO CONDUCT ARBITRATION AT A LOCATION OUTSIDE THIS STATE.*
- (G) A PROVISION WHICH PERMITS A FRANCHISOR TO REFUSE TO PERMIT A TRANSFER OF OWNERSHIP OF A FRANCHISE, EXCEPT FOR GOOD CAUSE. THIS SUBDIVISION DOES NOT PREVENT A FRANCHISOR FROM EXERCISING A RIGHT OF FIRST REFUSAL TO PURCHASE THE FRANCHISE. GOOD CAUSE SHALL INCLUDE, BUT IS NOT LIMITED TO:
 - (i) THE FAILURE OF THE PROPOSED FRANCHISEE TO MEET THE FRANCHISOR'S THEN CURRENT REASONABLE QUALIFICATIONS OR STANDARDS.
 - (ii) THE FACT THAT THE PROPOSED TRANSFEREE IS A COMPETITOR OF THE FRANCHISOR OR SUBFRANCHISOR.
 - (iii) THE UNWILLINGNESS OF THE PROPOSED TRANSFEREE TO AGREE IN WRITING TO COMPLY WITH ALL LAWFUL OBLIGATIONS.
 - (iv) THE FAILURE OF THE FRANCHISEE OR PROPOSED TRANSFEREE TO PAY ANY SUMS OWING TO THE FRANCHISOR OR TO CURE ANY DEFAULT IN THE FRANCHISE AGREEMENT EXISTING AT THE TIME OF THE PROPOSED TRANSFER.
- (H) A PROVISION THAT REQUIRES THE FRANCHISEE TO RESELL TO THE FRANCHISOR ITEMS THAT ARE NOT UNIQUELY IDENTIFIED WITH THE FRANCHISOR. THIS SUBDIVISION DOES NOT PROHIBIT A PROVISION THAT GRANTS TO A FRANCHISOR A RIGHT OF FIRST REFUSAL TO PURCHASE THE ASSETS OF A FRANCHISE ON THE SAME TERMS AND CONDITIONS AS A BONA FIDE THIRD PARTY WILLING AND ABLE TO PURCHASE THOSE ASSETS, NOR DOES THIS SUBDIVISION PROHIBIT A PROVISION THAT GRANTS THE FRANCHISOR THE RIGHT TO ACQUIRE THE ASSETS OF A FRANCHISE FOR THE MARKET OR APPRAISED VALUE OF SUCH ASSETS IF THE FRANCHISEE HAS BREACHED THE LAWFUL PROVISIONS OF THE FRANCHISE AGREEMENT AND HAS FAILED TO CURE THE BREACH IN THE MANNER PROVIDED IN SUBDIVISION (C).
- (I) A PROVISION WHICH PERMITS THE FRANCHISOR TO DIRECTLY OR INDIRECTLY CONVEY, ASSIGN, OR OTHERWISE TRANSFER ITS OBLIGATIONS TO FULFILL CONTRACTUAL OBLIGATIONS TO THE FRANCHISEE UNLESS PROVISION HAS BEEN MADE FOR PROVIDING THE REQUIRED CONTRACTUAL SERVICES.

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

IF THE FRANCHISOR'S MOST RECENT FINANCIAL STATEMENTS ARE UNAUDITED AND SHOW A NET WORTH OF LESS THAN \$100,000.00, THE FRANCHISOR MUST, AT THE REQUEST OF THE FRANCHISEE, ARRANGE FOR THE ESCROW OF INITIAL INVESTMENT AND OTHER FUNDS PAID BY THE FRANCHISEE UNTIL THE OBLIGATIONS TO PROVIDE REAL ESTATE, IMPROVEMENTS, EQUIPMENT, INVENTORY, TRAINING, OR OTHER ITEMS INCLUDED IN THE FRANCHISE OFFERING ARE FULFILLED. AT THE OPTION OF THE FRANCHISOR, A SURETY BOND MAY BE PROVIDED IN PLACE OF ESCROW.

THE NAME AND ADDRESS OF THE FRANCHISOR'S AGENT IN THIS STATE AUTHORIZED TO RECEIVE SERVICE OF PROCESS IS: MICHIGAN DEPARTMENT OF COMMERCE, CORPORATION AND SECURITIES BUREAU, 6546 MERCANTILE WAY, P.O. BOX 30222, LANSING, MICHIGAN 48910.

ANY QUESTIONS REGARDING THIS NOTICE SHOULD BE DIRECTED TO:

DEPARTMENT OF THE ATTORNEY GENERAL'S OFFICE
CORPORATE OVERSIGHT DIVISION, FRANCHISE SECTION
ATTN: FRANCHISE
525 WEST OTTAWA STREET
G. MENNEN WILLIAMS BUILDING
LANSING, MICHIGAN 48913

*NOTE: NOTWITHSTANDING PARAGRAPH (F) ABOVE, WE INTEND TO, AND YOU AGREE THAT WE AND YOU WILL, ENFORCE FULLY THE PROVISIONS OF THE ARBITRATION SECTION OF OUR AGREEMENTS. WE BELIEVE THAT PARAGRAPH (F) IS UNCONSTITUTIONAL AND CANNOT PRECLUDE US FROM ENFORCING THE ARBITRATION PROVISIONS UNDER THE FEDERAL ARBITRATION ACT.

EXHIBIT H-5

Minnesota Disclosure

In recognition of the requirements of the Minnesota Franchises Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the Franchise Disclosure Document for Einstein Bros. Bagels Franchise Corporation for use in the State of Minnesota shall be amended to include the following:

1. Item 13 is amended by the addition of the following language:

The franchisor will protect the franchisee's right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify the franchisee from any loss, costs or expenses arising out of any claim, suite or demand regarding the use of the name.

2. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraphs:

With respect to franchisees governed by Minnesota law, we will comply with Minn. Stat. § 80C.14, Subds. 3, 4, and 5 which 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 of non-renewal of the Franchise Agreement, and that consent to the transfer of the franchise not be unreasonably withheld.

Pursuant to Minn. Rule 2860.4400D, any general release of claims that you or a transferor may have against us or our shareholders, directors, employees and agents, including without limitation claims arising under federal, state, and local laws and regulations shall exclude claims you or a transferor may have under the Minnesota Franchise Law and the Rules and Regulations promulgated thereunder by the Commissioner of Commerce.

Minn. Stat. § 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

Minn. Stat. § 80C.17 prohibits any action from being commenced under the Minnesota Franchises Law more than three years after the cause of action accrues.

3. Each provision of this addendum shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchises Law or the Rules and Regulations promulgated thereunder by the Minnesota Commission of Commerce are met independently without reference to this addendum to the disclosure document.

Minnesota Disclosure (Page 1 of 2)

EXHIBIT H-6

New York Disclosure

ADDITIONAL RISK FACTORS:

INFORMATION COMPARING FRANCHISORS IS AVAILABLE. CALL THE STATE ADMINISTRATORS LISTED IN EXHIBIT B OR YOUR PUBLIC LIBRARY FOR SOURCES OF INFORMATION. REGISTRATION OF THIS FRANCHISE BY NEW YORK STATE DOES NOT MEAN THAT NEW YORK STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. IF YOU LEARN THAT ANYTHING IN THE DISCLOSURE DOCUMENT IS UNTRUE, CONTACT THE FEDERAL TRADE COMMISSION AND NEW YORK STATE DEPARTMENT OF LAW, INVESTOR PROTECTION BUREAU, 28 LIBERTY STREET, 23ST FLOOR, NEW YORK, NEW YORK 10005.

THE FRANCHISOR MAY, IF IT CHOOSES, NEGOTIATE WITH YOU ABOUT ITEMS COVERED IN THE PROSPECTUS. HOWEVER, THE FRANCHISOR CANNOT USE THE NEGOTIATING PROCESS TO PREVAIL UPON A PROSPECTIVE FRANCHISEE TO ACCEPT TERMS WHICH ARE LESS FAVORABLE THAN THOSE SET FORTH IN THIS PROSPECTUS.

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs. tit. 13, §§ 200.1 through 201.16), the Franchise Disclosure Document for EINSTEIN BROS. BAGELS FRANCHISE CORPORATION for use in the State of New York shall be amended as follows:

1. Item 3, "Litigation," shall be amended by the addition of the following text:

Except as otherwise identified in this Item 3:

1. Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, has any administrative, criminal, or a material civil or arbitration action (or a significant number of civil or arbitration actions irrespective of materiality) pending against him alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property, or comparable allegations.

2. Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, has been convicted of a felony or pleaded *nolo contendere* to any other felony charge or, during the ten-year period immediately preceding the application for registration, been convicted of a misdemeanor or pleaded *nolo contendere* to any misdemeanor charge or been found liable in an arbitration proceeding or a civil action by final judgment, or been the subject of any other material complaint or legal or arbitration proceeding if such misdemeanor conviction or charge, civil action, complaint, or other such proceeding involved a violation of any franchise law, securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property, or comparable allegation.

3. Neither we, nor any of our predecessors, nor any person identified in Item 2 above, nor any affiliate offering franchises under our trademark, is subject to 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; or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a franchise as a real estate broker or sales agent.

2. The last paragraph under Item 4, "Bankruptcy" is deleted in its entirety and the following language substituted in its place:

Except as indicated above, neither the franchisor, nor any predecessor or current officer of the Franchisor, during the ten-year period immediately preceding the date of this disclosure document, has filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code; obtained a discharge of its debts under the

New York Disclosure (Page 2 of 4)

bankruptcy code; or was a principal officer in 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 of the time that the officer or general partner held this position in the company or partnership.

3. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by deleting rows d, j, and w, and the following new rows d, j, and w shall be substituted in their place:

Provision	Section in Franchise Agreement	Summary
d. Termination by you	None	Pursuant to New York General Business Law, the franchisee may terminate the Agreement on the grounds (if any) that are available by law.
j. Assignment of contract by us	§ 16.1 of Franchise Agreement; § 7.1 in Area Development Agreement	There are no limits on our right to assign the Franchise Agreement or the Development Agreement. However, no assignment will be made except to an assignee who, in Franchisor's judgment, is willing and able to assume the Franchisor's obligation under the agreement.
w. Choice of law	§ 27.1 of Franchise Agreement; § 15.1 in Area Development Agreement	Colorado. The foregoing choice of law should not be considered as a waiver of any right conferred upon the franchisor or the franchisee by the General Business Law of the State of New York, Article 33.

4. There are circumstances in which an offering made by us would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the State of New York. However, an offer or sale is deemed made in New York if the franchisee is domiciled in or the franchise will be opened in New York. We are required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

STATEMENT OF DISCLOSURE DOCUMENT ACCURACY

THE FRANCHISOR REPRESENTS THAT THIS DISCLOSURE DOCUMENT DOES NOT KNOWINGLY OMIT ANY MATERIAL FACT OR CONTAIN ANY UNTRUE STATEMENT OF A MATERIAL FACT.

EXHIBIT H-7**North Dakota Disclosure**

In recognition of the requirements of the North Dakota Franchise Investment Law, N.D. Cent. Code, §§ 51-19-01 through 51-19-17, and the policies of the office of the State of North Dakota Securities Commission, the Franchise Disclosure Document for Einstein Bros. Bagels Franchise Corporation shall be amended by the addition of the following language:

1. The North Dakota Securities Commissioner has held the following to be unfair, unjust, or inequitable to North Dakota franchisees (Section 51-19-09, N.D.C.C.):
 - A. Restrictive Covenants: Franchise disclosure documents which disclose the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.
 - B. Situs of Arbitration Proceedings: Franchise agreements providing that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.
 - C. Restriction on Forum: Requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.
 - D. Liquidated Damages and Termination Penalties: Requiring North Dakota franchisees to consent to liquidated damages or termination penalties.
 - E. Applicable Laws: Franchise agreements which specify that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.
 - F. Waiver of Trial by Jury: Requiring North Dakota franchisees to consent to the waiver of a trial by jury.
 - G. Waiver of Exemplary and Punitive Damages: Requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.
 - H. General Release: Requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.
 - I. Limitation on Claims. Requiring North Dakota franchisees to consent to a limitation on when claims may be brought.

EXHIBIT H-8

Rhode Island Disclosure

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34 the Franchise Disclosure Document for Einstein Bros. Bagels Franchise Corporation for use in the State of Rhode Island shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following:

Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This addendum to the Disclosure Document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this addendum to the Disclosure document.

EXHIBIT H-9

Virginia Disclosure

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act, the Franchise Disclosure Document of Einstein Bros. Bagels Franchise Corporation is amended as follows:

Additional Disclosure: The following statements are added to Item 17.h.

Pursuant to 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.

This addendum to the disclosure document will be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Virginia Retail Franchise Act are met independently without reference to this addendum to the Disclosure Document.

EXHIBIT H-10**Washington Disclosure**

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, the Franchise Disclosure Document for Einstein Bros. Bagels Franchise Corporation in connection with the offer and sale of franchises for use in the State of Washington shall be amended to include the following:

1. Item 17, "Renewal, Termination, Transfer and Dispute Resolution," shall be amended by the addition of the following paragraphs at the conclusion of the Item:

- a. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
- b. RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
- c. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
- d. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
- e. Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
- f. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise

Washington Disclosure (Page 1 of 2)

agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

- g. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.

2. Each provision of this addendum to the disclosure document shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.180, are met independently without reference to this addendum to the disclosure document.

Washington Disclosure (Page 2 of 2)

Exhibit I
Agreement Amendments

EXHIBIT I-1

Illinois Franchise Amendment

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. Section 2 of the Agreement, under the heading "Term and Renewal," shall be supplemented by the addition of the following new paragraph 2.3, which shall be considered an integral part of the Agreement:

2.3 If any of the provisions of this Section 2 are inconsistent with Section 20 of the Illinois Franchise Disclosure Act, the provisions of the Act shall apply. If we refuse to renew this Agreement, we will compensate you if (and to the extent) such compensation is required under Section 20 of the Illinois Franchise Disclosure Act.

2. Section 17 of the Agreement, under the heading "Default and Termination," shall be supplemented by the addition of the following new paragraph 17.8, which shall be considered an integral part of the Agreement:

17.8 If any of the provisions of this Section 17 concerning termination are inconsistent with Section 19 of the Illinois Franchise Disclosure Act, then said Illinois law shall apply.

3. Sections 27.1 and 27.2 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in their entirety, and shall have no force or effect; and the following new paragraphs shall be substituted in its place:

27.1 This Agreement takes effect upon its acceptance and execution by us, and shall be interpreted and construed under the laws of Illinois, which laws shall prevail in the event of any conflict of law.

27.2 The parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the state of Illinois in the judicial district in which you have your principal place of business. The parties agree that this Section 27.2 shall not be construed as preventing either party from removing an action from state to federal court. You hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

4. Section 27 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following new Section 27.10, which shall be considered an integral part of the Agreement:

27.10 Nothing contained in this Section shall constitute a condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of

Illinois Amendment to the Franchise Agreement (Page 1 of 2)

the Illinois Franchise Disclosure Act or any other Illinois law (as long as the jurisdictional requirements of the Illinois Franchise Disclosure Act are met).

5. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed, sealed and delivered this Illinois amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation Franchisor	_____ Franchisee Entity
By:_____	By:_____
Name:_____	Name:_____
Title:_____	Title:_____

Illinois Area Development Amendment

In recognition of the requirements of the Illinois Franchise Disclosure Act, Ill. Comp. Stat. §§ 705/1 to 705/44, the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement (the "Agreement") agree as follows:

1. Sections 15.1 and 15.2 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in their entirety, and shall have no force or effect; and the following new paragraphs shall be substituted in its place:

15.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed under the laws of Illinois, which laws shall prevail in the event of any conflict of law.

15.2 The parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the state of Illinois in the judicial district in which Developer has its principal place of business. The parties agree that this Section 15.2 shall not be construed as preventing either party from removing an action from state to federal court. Developer hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

2. Section 15 of the Agreement, under the heading "Applicable Law," shall be supplemented by the addition of the following new Section 15.8, which shall be considered an integral part of the Agreement:

15.8 Nothing contained in this Section shall constitute a condition, stipulation, or provision purporting to bind any person to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other Illinois law (as long as the jurisdictional requirements of the Illinois Franchise Disclosure Act are met).

3. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this amendment.

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

Einstein Bros. Bagels Franchise Corporation Franchisor	_____ Developer
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By: _____	By: _____
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Name: _____	Name: _____
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Title: _____	Title: _____
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Illinois Amendment to the Area Development Agreement
(Page 1 of 2)

EXHIBIT I-2

Maryland Franchise Amendment

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.2.7 of the Agreement, under the heading "Term And Renewal," shall be deleted in its entirety and shall have no force or effect, and the following shall be substituted in its place:

2.2.7 You must execute a general release, in a form we prescribe, of any and all claims against us and our subsidiaries and affiliates, and their respective officers, directors, agents, and employees, excluding only such claims as you may have under the Maryland Franchise Registration and Disclosure Law;

2. Section 16.5.1 of the Agreement, under the heading "Transfer of Interest," shall be deleted in its entirety and shall have no force or effect, and the following shall be substituted in its place:

16.5.1. The transferor shall have executed a general release under seal, in a form satisfactory to us, of any and all claims against us and our officers, directors, shareholders and employees, in their corporate and individual capacities, excluding only such claims as the transferor may have under the Maryland Franchise Registration and Disclosure Law;

3. Sections 27.2 and 27.7 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in their entirety, and shall have no force or effect; and the following shall be substituted in their place:

27.2 The parties agree that any action brought by you against us in any court, whether federal or state, must be brought within such state and in the judicial district in which we have our principal place of business (except with respect to claims arising under the Maryland Franchise Registration and Disclosure Law). Any action brought by us against you in any court, whether federal or state, may be brought within the state and judicial district in which we have our principal place of business. The parties agree that this Section 24.2 shall not be construed as preventing either party from removing an action from state to federal court. You hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

27.7 Any and all claims and actions arising out of or relating to this Agreement, the parties' relationship, or your operation of the Franchised Business, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred; except that any and all claims arising under the Maryland

Maryland Amendment to the Franchise Agreement (Page 1 of 2)

Franchise Registration and Disclosure Law shall be commenced within three (3) years after the grant of the franchise, or such action shall be barred.

4. Section 28 of the Agreement, under the heading "Acknowledgments," shall be amended by the deletion of Sections 28.1, 28.2, 28.3, 28.4, 28.5, 28.7, 28.8, 28.10 and 28.12.

5. Section 28 of the Agreement, under the heading "Acknowledgments," shall be supplemented by the following:

28.14 The foregoing acknowledgments are not intended to nor shall they act as a release, estoppel or waiver of any liability under the Maryland Franchise Registration and Disclosure Law.

28.15 The Franchise Compliance Certification is not intended to, and shall not act, as a release, estoppel or waiver of any liability under the Maryland Franchise Registration and Disclosure Law.

6. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Maryland amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Maryland Amendment to the Franchise Agreement
(Page 2 of 2)

Maryland Area Development Amendment

In recognition of the requirements of the Maryland Franchise Registration and Disclosure Law, the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement (the "Agreement") agree as follows:

1. Section 7.5.1 of the Agreement, under the heading "Transfers," shall be deleted in its entirety and shall have no force or effect, and the following shall be substituted in its place:

The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Developer and Franchisor or its affiliates, and federal, state, and local laws and rules, excluding only such claims as the transferor may have under the Maryland Franchise Registration and Disclosure Law;

2. Sections 15.2 and 15.6 of the Agreement, under the heading "Applicable Law," shall be deleted in their entirety, and shall have no force or effect; and the following shall be substituted in their place:

15.2 The parties agree that any action brought by Developer against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business (except with respect to claims arising under the Maryland Franchise Registration and Disclosure Law). Any action brought by Franchisor against Developer in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 15.2 shall not be construed as preventing either party from removing an action from state to federal court. Developer hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

15.6 Franchisor and Developer irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding. Any and all claims and actions arising out of or relating to this Agreement, the relationship of Developer and Franchisor, or Developer's operation of the business contemplated hereunder, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred; except that any and all claims arising under the Maryland Franchise Registration and Disclosure Law shall be commenced within three (3) years after the grant of the franchise, or such action shall be barred.

3. Section 16 of the Agreement, under the heading "Acknowledgments," is deleted in its entirety.

Maryland Amendment to the Area Development Agreement (Page 1 of 2)

4. Each provision of this amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Maryland Franchise Registration and Disclosure Law are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Maryland amendment to the Area Development Agreement on the same date as the Area Development Agreement was executed.

Einstein Bros. Bagels Franchise Corporation Franchisor	_____
	Developer

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

EXHIBIT I-3

Minnesota Franchise Amendment

In recognition of the requirements of the Minnesota Franchises Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.2.7 of the Agreement, under the heading "Term and Renewal," shall be deleted in its entirety and shall have no force or effect, and the following paragraph shall be inserted in its place:

2.2.7 You must execute a general release, in a form we prescribe, of any and all claims against us and our subsidiaries and affiliates, and their respective officers, directors, agents, and employees, excluding only such claims as you may have that have arisen under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

2. Section 2 of the Agreement, under the heading "Term and Renewal," shall be supplemented by the addition of the following new paragraph:

2.3 Minnesota law provides franchisees with certain non-renewal rights. In sum, Minn. Stat. § 80C.14 (subd. 4) currently requires, except in certain specified cases, that a franchisee be given 180 days notice of non-renewal of the Franchise Agreement.

3. Section 9 of the Agreement, under the heading "Proprietary Marks," shall be amended by the addition of the following new paragraph 9.5:

9.5 Pursuant to Minnesota Stat. Sec. 80C.12, Subd. 1(g), we are required to protect any rights you may have to our Proprietary Marks.

4. Section 16.5.1 of the Agreement, under the heading "Transfer of Interest," shall be deleted in its entirety and shall have no force or effect, and the following paragraph shall be inserted in its place:

16.5.1 The transferor shall have executed a general release under seal, in a form satisfactory to us, of any and all claims against us and our officers, directors, shareholders and employees, in their corporate and individual capacities, excluding only such claims as the transferor may have under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce.

Minnesota Amendment to the Franchise Agreement (Page 1 of 3)

5. Section 16 of the Agreement, under the heading "Transfer of Interest," shall be supplemented by the addition of the following new paragraph 16.12:

16.12 *Minnesota law provides franchisees with certain transfer rights. In sum, Minn. Stat. §80C.14 (subd. 5) currently requires that consent to the transfer of the franchise may not be unreasonably withheld.*

6. Section 17 of the Agreement, under the heading "Default and Termination," shall be supplemented by the following new paragraph 17.8:

17.8 *Minnesota law provides franchisees with certain termination rights. In sum, Minn. Stat. § 80C.14 (subd. 3) currently requires, except in certain specified cases, that a franchisee be given 90 days notice of termination (with 60 days to cure) of the Franchise Agreement.*

7. Section 27.5 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in its entirety and shall have no force or effect; and the following paragraph shall be substituted in its place:

27.5 *Nothing herein contained shall bar our right to seek injunctive relief against threatened conduct that will cause us loss or damage, under the usual equity rules, including the applicable rules for obtaining specific performance, restraining orders, and preliminary injunctions.*

8. Section 27 of the Agreement, under the heading "Applicable Law and Dispute Resolution", shall be supplemented by the following paragraph 24.10, which shall be considered an integral part of the Agreement:

27.10 *Minn. Stat. § 80C.17 prohibits any action from being commenced under the Minnesota Franchises Law more than three years after the cause of action accrues. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.*

9. Each provision of this Agreement shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchises Law or the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce are met independently without reference to this addendum to the Agreement.

**Minnesota Amendment to the Franchise Agreement
(Page 2 of 3)**

IN WITNESS WHEREOF, the parties hereto have duly executed, and delivered this Minnesota amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

Minnesota Area Development Amendment

In recognition of the requirements of the Minnesota Franchises Law, Minn. Stat. §§ 80C.01 through 80C.22, and of the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce, Minn. Rules §§ 2860.0100 through 2860.9930, the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement (the "Agreement") agree as follows:

1. Section 4 of the Agreement, under the heading "Term," shall be amended by the addition of the following new paragraph:

Minnesota law provides franchisees with certain non-renewal rights. In sum, Minn. Stat. § 80C.14 (subd. 4) currently requires, except in certain specified cases, that a franchisee be given 180 days notice of non-renewal of the Franchise Agreement.

2. Section 7.5.1 of the Agreement, under the heading "Transfers," shall be deleted in its entirety and shall have no force or effect, and the following paragraph shall be inserted in its place:

7.5.1. The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Developer and Franchisor or its affiliates, and federal, state, and local laws and rules, excluding only such claims as the transferor may have under the Minnesota Franchises Law and the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce;

3. Section 7 of the Agreement, under the heading "Transfers," shall be amended by the addition of the following new paragraph:

7.13 Minnesota law provides developers with certain transfer rights. In sum, Minn. Stat. §80C.14 (subd. 5) currently requires that consent to the transfer of the development may not be unreasonably withheld.

4. Section 6 of the Agreement, under the heading "Default," shall be amended by the following new paragraph 6.8:

6.8 Minnesota law provides developers with certain termination rights. In sum, Minn. Stat. § 80C.14 (subd. 3) currently requires, except in certain specified cases, that a developer be given 90 days notice of termination (with 60 days to cure) of the Area Development Agreement.

Minnesota Amendment to the Area Development Agreement (Page 1 of 2)

5. Sections 15.5 of the Agreement, under the heading "Applicable Law," shall be deleted in its entirety and shall have no force or effect; and the following paragraph shall be substituted in its place:

15.5 Nothing herein contained shall bar Franchisor's right to seek injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

6. Section 15 of the Agreement, under the heading "Applicable Law", shall be amended by the addition of the following paragraph 15.8, which shall be considered an integral part of the Agreement:

15.8 Minn. Stat. § 80C.17 prohibits any action from being commenced under the Minnesota Franchises Law more than three years after the cause of action accrues. Minn. Stat. §80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in the disclosure document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

7. Each provision of this Agreement shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Minnesota Franchises Law or the Rules and Regulations promulgated thereunder by the Minnesota Commissioner of Commerce are met independently without reference to this addendum to the Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Minnesota amendment to the Area Development Agreement on the same date as the Area Development Agreement was executed.

Einstein Bros. Bagels Franchise _____
Corporation Developer
 Franchisor

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

**Minnesota Amendment to the Area Development Agreement
 (Page 2 of 2)**

EXHIBIT I-4

New York Franchise Amendment

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs., tit. 13, §§ 200.1 through 201.16), the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. Section 2.2.7 of the Agreement, under the heading "Term and Renewal," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

2.2.7 You must execute a general release, in a form we prescribe, of any and all claims against us and our affiliates, and their respective officers, directors, agents, and employees, provided, however, that all rights enjoyed by you and any causes of action arising in your favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied; and

2. Section 16.5.1 of the Agreement, under the heading "Transfer of Interest," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

16.5.1 The transferor shall have executed a general release, in a form satisfactory to us, of any and all claims against us and our officers, directors, agents, and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state, and local laws, rules, and ordinances, provided, however, that all rights enjoyed by the transferor and any causes of action arising in its favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied;

3. Section 19.12 of the Agreement, under the heading "Covenants," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

19.12 You acknowledge that your violation of the terms of this Section 19 would result in irreparable injury to us for which no adequate remedy at law may be available, and you accordingly agree that we may seek an injunction prohibiting any conduct by you in violation of the terms of this Section 19.

New York Amendment to the Franchise Agreement (Page 1 of 2)

4. Section 27.5 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in lieu thereof:

27.5 Nothing herein contained shall bar our right to seek injunctive relief against threatened conduct that shall cause us loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

5. Section 27 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the addition of the following new Section 27.10:

27.10 Nothing in this Agreement should be considered a waiver of any right conferred upon you by New York General Business Law, Sections 680-695.

6. There are circumstances in which an offering made by us would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the state of New York. However, an offer or sale is deemed made in New York if you are domiciled in or the franchise will be opening in New York. We are required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**New York Amendment to the Franchise Agreement
(Page 2 of 2)**

New York Area Development Amendment

In recognition of the requirements of the New York General Business Law, Article 33, Sections 680 through 695, and of the regulations promulgated thereunder (N.Y. Comp. Code R. & Regs., tit. 13, §§ 200.1 through 201.16), the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement (the "Agreement") agree as follows:

1. Section 7.5.1 of the Agreement, under the heading "Transfers," shall be deleted in its entirety, and shall have no force or effect; and the following paragraph shall be substituted in its place:

7.5.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Developer and Franchisor or its affiliates, and federal, state, and local laws and rules, provided, however, that all rights enjoyed by the transferor and any causes of action arising in its favor from the provisions of New York General Business Law Sections 680-695 and the regulations issued thereunder, shall remain in force; it being the intent of this provision that the non-waiver provisions of N.Y. Gen. Bus. Law Sections 687.4 and 687.5 be satisfied;

2. Sections 15.5 of the Agreement, under the heading "Applicable Law," shall be deleted in its entirety and shall have no force or effect; and the following paragraph shall be substituted in its place:

15.5 Nothing herein contained shall bar Franchisor's right to seek injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

3. Section 15 of the Agreement, under the heading "Applicable Law," shall be supplemented by the addition of the following new Section 15.8:

15.8 Nothing in this Agreement should be considered a waiver of any right conferred upon Franchisee by New York General Business Law, Sections 680-695.

4. There are circumstances in which an offering made by Franchisor would not fall within the scope of the New York General Business Law, Article 33, such as when the offer and acceptance occurred outside the state of New York. However, an offer or sale is deemed made in New York if Franchisee is domiciled in or the franchise will be opening in New York. Franchisor is required to furnish a New York prospectus to every prospective franchisee who is protected under the New York General Business Law, Article 33.

[SIGNATURE PAGE FOLLOWS]

New York Amendment to the Area Development Agreement (Page 1 of 2)

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this New York amendment to the Area Development Agreement on the same date as the Area Development Agreement was executed.

Einstein Bros. Bagels Franchise _____
Corporation Developer
Franchisor

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

**New York Amendment to the Area Development Agreement
(Page 2 of 2)**

EXHIBIT I-5

North Dakota Franchise Amendment

In recognition of the requirements of the North Dakota Franchise Investment Law, N.D. Cent. Code, §§ 51-19-01 through 51-19-17, and the policies of the office of the State of North Dakota Securities Commission, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. The Franchise Agreement for Einstein Bros. Bagels Franchise Corporation shall be amended by the addition of the following Section 29:

29. The parties acknowledge and agree that they have been advised that the North Dakota Securities Commissioner has determined the following agreement provisions are unfair, unjust or inequitable to North Dakota franchisees:

- A. Restrictive Covenants: Any provision which discloses the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.*
- B. Situs of Arbitration Proceedings: Any provision requiring that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.*
- C. Restriction on Forum: Any provision requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.*
- D. Liquidated Damages and Termination Penalties: Any provision requiring North Dakota franchisees to consent to liquidated damages or termination penalties.*
- E. Applicable Laws: Any provision which specifies that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.*
- F. Waiver of Trial by Jury: Any provision requiring North Dakota franchisees to consent to the waiver of a trial by jury.*
- G. Waiver of Exemplary and Punitive Damages: Any provision requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.*
- H. General Release: Any provision requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.*
- I. Limitation on Claims. Requiring North Dakota franchisees to consent to a limitation on when claims may be brought.*

[SIGNATURE PAGE FOLLOWS]

**North Dakota Amendment to the Franchise Agreement
(Page 1 of 2)**

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this North Dakota Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By:_____

By:_____

Name:_____

Name:_____

Title:_____

Title:_____

North Dakota Area Development Amendment

In recognition of the requirements of the North Dakota Franchise Investment Law, N.D. Cent. Code, §§ 51-19-01 through 51-19-17, and the policies of the office of the State of North Dakota Securities Commission, the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement (the "Agreement") agree as follows:

1. The Area Development Agreement for Einstein Bros. Bagels Franchise Corporation shall be amended by the addition of the following Section 17:

17. The parties acknowledge and agree that they have been advised that the North Dakota Securities Commissioner has determined the following agreement provisions are unfair, unjust or inequitable to North Dakota franchisees:

- A. Restrictive Covenants: Any provision which discloses the existence of covenants restricting competition contrary to Section 9-08-06, N.D.C.C., without further disclosing that such covenants will be subject to this statute.*
- B. Situs of Arbitration Proceedings: Any provision requiring that the parties must agree to arbitrate disputes at a location that is remote from the site of the franchisee's business.*
- C. Restriction on Forum: Any provision requiring North Dakota franchisees to consent to the jurisdiction of courts outside of North Dakota.*
- D. Liquidated Damages and Termination Penalties: Any provision requiring North Dakota franchisees to consent to liquidated damages or termination penalties.*
- E. Applicable Laws: Any provision which specifies that any claims arising under the North Dakota franchise law will be governed by the laws of a state other than North Dakota.*
- F. Waiver of Trial by Jury: Any provision requiring North Dakota franchisees to consent to the waiver of a trial by jury.*
- G. Waiver of Exemplary and Punitive Damages: Any provision requiring North Dakota franchisees to consent to a waiver of exemplary and punitive damages.*
- H. General Release: Any provision requiring North Dakota franchisees to execute a general release of claims as a condition of renewal or transfer of a franchise.*
- I. Limitation on Claims. Requiring North Dakota franchisees to consent to a limitation on when claims may be brought.*

[SIGNATURE PAGE FOLLOWS]

**North Dakota Amendment to the Area Development Agreement
(Page 1 of 2)**

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this North Dakota Amendment to the Area Development Agreement on the same date as the Area Development Agreement was executed.

Einstein Bros. Bagels Franchise _____
Corporation Developer
Franchisor

By: _____

Name: _____

Title: _____

EXHIBIT I-6

Rhode Island Franchise Amendment

In recognition of the requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement (the "Agreement") agree as follows:

1. Section 27.2 of the Agreement, under the heading "Applicable Law and Dispute Resolution," shall be supplemented by the following additional text:

27.2 Notwithstanding the foregoing, Section 19-28.1-14 of the Rhode Island Franchise Investment Act provides that "A provision in a franchise agreement restricting jurisdiction or venue to a forum outside this state or requiring the application of the laws of another state is void with respect to a claim otherwise enforceable under this Act."

2. This amendment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Rhode Island Franchise Investment Act, §§ 19-28.1-1 through 19-28.1-34, are met independently without reference to this amendment.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Rhode Island amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT I-7**Washington Franchise Amendment**

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 through 19.100.940, the parties to the attached Einstein Bros. Bagels Franchise Corporation Franchise Agreement agree as follows:

1. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
2. RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
3. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
5. Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
6. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

Washington Amendment to the Franchise Agreement
(Page 1 of 2)

7. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.
8. The undersigned does hereby acknowledge receipt of this addendum.
9. This amendment will apply only if the Washington Franchise Investment Protection Act, Wash. Rev. Code Chapter 19.100, would apply independently without referring to this amendment.

IN WITNESS WHEREOF, the parties have signed and delivered this Washington Amendment to the Franchise Agreement on the same date as the Franchise Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Washington Amendment to the Franchise Agreement
(Page 2 of 2)

Washington Area Development Amendment

In recognition of the requirements of the Washington Franchise Investment Protection Act, Wash. Rev. Code §§ 19.100.010 through 19.100.940, the parties to the attached Einstein Bros. Bagels Franchise Corporation Area Development Agreement agree as follows:

1. In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act, Chapter 19.100 RCW will prevail.
2. RCW 19.100.180 may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise. There may also be court decisions which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.
3. In any arbitration or mediation involving a franchise purchased in Washington, the arbitration or mediation site will be either in the state of Washington, or in a place mutually agreed upon at the time of the arbitration or mediation, or as determined by the arbitrator or mediator at the time of arbitration or mediation. In addition, if litigation is not precluded by the franchise agreement, a franchisee may bring an action or proceeding arising out of or in connection with the sale of franchises, or a violation of the Washington Franchise Investment Protection Act, in Washington.
4. A release or waiver of rights executed by a franchisee may not include rights under the Washington Franchise Investment Protection Act or any rule or order thereunder except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, or rights or remedies under the Act such as a right to a jury trial, may not be enforceable.
5. Transfer fees are collectable to the extent that they reflect the franchisor's reasonable estimated or actual costs in effecting a transfer.
6. Pursuant to RCW 49.62.020, a noncompetition covenant is void and unenforceable against an employee, including an employee of a franchisee, unless the employee's earnings from the party seeking enforcement, when annualized, exceed \$100,000 per year (an amount that will be adjusted annually for inflation). In addition, a noncompetition covenant is void and unenforceable against an independent contractor of a franchisee under RCW 49.62.030 unless the independent contractor's earnings from the party seeking enforcement, when annualized, exceed \$250,000 per year (an amount that will be adjusted annually for inflation). As a result, any provisions contained in the franchise agreement or elsewhere that conflict with these limitations are void and unenforceable in Washington.

Washington Amendment to the Development Agreement (Page 1 of 2)

7. RCW 49.62.060 prohibits a franchisor from restricting, restraining, or prohibiting a franchisee from (i) soliciting or hiring any employee of a franchisee of the same franchisor or (ii) soliciting or hiring any employee of the franchisor. As a result, any such provisions contained in the franchise agreement or elsewhere are void and unenforceable in Washington.
8. The undersigned does hereby acknowledge receipt of this addendum.
9. This amendment will apply only if the Washington Franchise Investment Protection Act, Wash. Rev. Code Chapter 19.100, would apply independently without referring to this amendment.

IN WITNESS WHEREOF, the parties have signed and delivered this Washington Amendment to the Development Agreement on the same date as the Development Agreement was executed.

Einstein Bros. Bagels Franchise Corporation
Franchisor

Developer Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**Washington Amendment to the Development Agreement
(Page 2 of 2)**

EXHIBIT J

GENERAL RELEASE LANGUAGE

The following is our current general release language that we expect to include in a release that a franchisee, developer, and/or transferor may sign as part of a renewal or an approved transfer. We may, in our sole discretion, periodically modify the release.

Franchisee [Developer], its officers and directors, its owners, and their respective agents, heirs, administrators, successors, and assigns (the **"Franchisee Group"**), hereby forever release and discharge, and forever hold harmless Einstein Bros. Bagels Franchise Corporation, its current and former affiliates and predecessors, and their respective shareholders, partners, members, directors, officers, agents, representatives, heirs, administrators, successors, and assigns (the **"Franchisor Group"**), from any and all claims, demands, debts, liabilities, actions or causes of action, costs, agreements, promises, and expenses of every kind and nature whatsoever, at law or in equity, whether known or unknown, foreseen and unforeseen, liquidated or unliquidated, which the Franchisee Group and/or its owners had, have, or may have against any member of the Franchisor Group, including, without limitation, any claims or causes of action arising from, in connection with or in any way related or pertaining, directly or indirectly, to the Franchise [Development] Agreement, the relationship created by the Franchise [Development] Agreement, or the development, ownership, or operation of the Restaurant.

This release constitutes the entire, full, and complete agreement between the parties concerning the subject matter hereof, and supersedes all prior agreements and communications concerning the subject matter hereof. This includes the waiver of state laws that might apply to limit a release (such as Calif. Civil Code Section 1542, which states that "[a] general release does not extend to claims which the creditor does not know or suspect exist in his [or her] favor at the time of executing the release, which if known by him [or her] must have materially affected his [or her] settlement with the debtor"). The Franchisee Group further indemnifies and holds the Franchisor Group harmless against, and agrees to reimburse them for any loss, liability, expense, or damages (actual or consequential) including, without limitation, reasonable attorneys', accountants', and expert witness fees, costs of investigation and proof of facts, court costs, and other litigation and travel and living expenses, which any member of the Franchisor Group may suffer with respect to any claims or causes of action which any customer, creditor, or other third party now has, ever had, or hereafter would or could have, as a result of, arising from, or under the Franchise [Development] Agreement or the Restaurant. The Franchisee Group and its owners represent and warrant that they have not made an assignment or any other transfer of any interest in the claims, causes of action, suits, debts, agreements, or promises described herein.

STATE EFFECTIVE DATES

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

This document is effective and may be used in the following states, where the document is filed, registered, or exempt from registration, as of the Effective Date stated below:

STATE	EFFECTIVE DATE
California	Pending

Other states may require registration, filing, or exemption of a franchise under other laws, such as those that regulate the offer and sale of business opportunities or seller-assisted marketing plans.

Exhibit K Receipts

ITEM 23 • RECEIPT
(Exhibit K)

This disclosure document summarizes provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If Einstein Bros. Bagels Franchise Corporation offers you a franchise, it must provide this disclosure document to you (a) 14 calendar days before you sign a binding agreement with, or make a payment to, us or an affiliate in connection with the proposed franchise sale, or (b) under New York law, if applicable, at the earlier of (i) your first personal meeting to discuss the franchise, or (ii) 10 business days before you sign a binding agreement with, or make payment to us or an affiliate in connection with the proposed franchise sale, or (c) under Iowa requirements at the earlier of the first personal meeting, or 14 days before signing the franchise or other agreement or the payment of any consideration that relates to the franchise relationship, or (d) Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If Einstein Bros. Bagels Franchise Corporation does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and the state agencies listed in Exhibit B.

The franchisor is Einstein Bros. Bagels Franchise Corporation, located at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (tel-303.568.8000).

Issuance date: October 25, 2023.

The franchise sellers are Patricia Perry, Kade MacKey, Tina D'Ottavio, Leah Laughlin and Tina Welch at 1720 S. Bellaire Street, Suite Skybox, Denver, Colorado 80222 (tel-303.568.8000). Any additional individual franchise sellers involved in offering the franchise are:

Einstein Bros. Bagels Franchise Corporation authorizes the respective state agencies identified on Exhibit C to receive service of process for it in the particular state.

I received a Franchise Disclosure Document dated October 25, 2023 that included the following Exhibits:

A-1	Franchise Agreement and Exhibits; Electronic Debit Agreement; Confidentiality Agreement	E	List of Company-Owned Noah's Bagels Restaurants
A-2	Area Development Agreement	F	Financial Statements
B	List of State Administrators	G	Table of Contents for Manuals
C	Agents for Service of Process	H	State-specific Disclosures
D	List of Current and Former Einstein Bros. Franchisees	I	State-specific Agreement Amendments
		J	General Release Language
		K	Receipts (2 copies)

Date Received

Prospective Franchisee

Date Received

Name (please print)

Address: _____

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Prospective Franchisee

Date Received

Name (please print)

Address: _____