

FRANCHISE DISCLOSURE DOCUMENT

TRU FRANCHISE, LLC

TRU Franchise, LLC

A California limited liability company

1590 N. Batavia Street #2

Orange, California 92867

(714) 922-8760, ext. 100

www.sweetfactory.com

Received
LA Mailroom

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Department of
Business Oversight

We franchise self-service candy and confections shops under the trade name "**Sweet Factory.**"

We offer 2 franchise programs:

Single Franchise Program I and II. Under the Single Franchise Program, you may purchase an existing and operating Sweet Factory store or kiosk from Trinity Retail Unlimited, LLC, a Nevada limited liability company (the "**Operating Company**"), and operate the store or kiosk under our Franchise Agreement or you may purchase a new store or kiosk which the Operating Company has constructed, equipped and furnished, but not yet opened for business (a "**Turnkey Unit**"), and operate the store or kiosk under our Franchise Agreement. The total investment necessary to begin operations of an existing and operating Sweet Factory store or kiosk ranges from \$365,500-\$2,112,500 for a turnkey Sweet Factory store depending on the existing store cash flow, or kiosk. You may also build your own store or kiosk which ranges from \$365,000-\$1,115,000 for a new buildout. These amounts include \$35,000 that must be paid to the franchisor (and a \$5,000 training fee for the first Sweet Factory store).

Area Development Program. Under the Area Development Program, we grant development rights which enable you to open a specified number of Sweet Factory stores or kiosks within a specified area under individual Franchise Agreements. The total investment necessary to begin operations of between 2 to 3 Sweet Factory stores ranges from \$410,500-\$2,157,500 for 2 stores to \$446,500 to \$2,189,800 for 3 stores. These amounts include \$35,000 for each Sweet Factory store or kiosk to be established (and a \$5,000 training fee for the first Sweet Factory store or kiosk) that must be paid to the franchisor.

This Disclosure Document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read the 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 payments to the Franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact our President, John Kim, 1590 N. Batavia Street #2, Orange, California 92867, (714) 922-8760, ext. 100.

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 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 "Buying a Franchise, A Consumer Guide," which can help you understand how to use this Disclosure Document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency listed on Exhibit A 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 DISCLOSURE DOCUMENT IS JUNE 4, 2018.

STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF THIS FRANCHISE WITH A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS IT OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT. Call the state franchise administrator listed on Exhibit A for information about the franchisor, or about franchising in your state. MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

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

1. THE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT PERMIT YOU TO SUE US ONLY IN CALIFORNIA. OUT OF STATE LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO SUE US IN CALIFORNIA THAN IN YOUR HOME STATE.
2. THE FRANCHISE AGREEMENT AND DEVELOPMENT AGREEMENT REQUIRE THAT THE LAW OF CALIFORNIA GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. YOUR SPOUSE AND THE SPOUSES OF YOUR OWNERS, PARTNERS, SHAREHOLDERS AND MEMBERS, IF YOU ARE AN ENTITY, MUST SIGN THE FRANCHISE AGREEMENT AND PERSONALLY GUARANTEE ALL OBLIGATIONS OF THE FRANCHISED BUSINESS WHETHER OR NOT HE/SHE IS/ARE INVOLVED IN THE OPERATION OF THE FRANCHISED BUSINESS. THIS REQUIREMENT PLACES YOUR PERSONAL ASSETS AND THE PERSONAL ASSETS OF YOUR SPOUSE AND THE SPOUSES OF YOUR OWNERS, PARTNERS, SHAREHOLDERS AND MEMBERS AT RISK.
4. YOU MUST SIGN OUR INITIAL TRAINING AGREEMENT BEFORE YOU SIGN YOUR FRANCHISE AGREEMENT AND OPEN YOUR STORE AND MUST PAY US \$5,000 FOR OUR INITIAL TRAINING PROGRAM. IF YOU DO NOT SATISFACTORILY COMPLETE OUR INITIAL TRAINING PROGRAM, IN OUR SOLE AND ABSOLUTE DISCRETION, WE WILL REFUND ONLY \$3,000 OF THE INITIAL TRAINING FEE TO YOU AND WILL RETAIN \$2,000.
5. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.
6. THE TOTAL INVESTMENT NECESSARY TO BEGIN OPERATION OF A SWEET CANDY FRANCHISE IS \$365,500 to \$2,112,500. THIS INCLUDES \$62,000 THAT MUST BE PAID TO THE FRANCHISOR OR ITS AFFILIATES.

LOCAL LAW MAY SUPERSEDE THESE FRANCHISE AGREEMENT PROVISIONS. CERTAIN STATES REQUIRE THE SUPERSEDING PROVISIONS TO APPEAR IN AN EXHIBIT IN THIS DISCLOSURE DOCUMENT.

See Next Page for State Effective Dates

STATE EFFECTIVE DATES

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

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

California: _____, 2018

Michigan: _____, 2018

Washington: _____, 2018

In all other states, the effective date of this Franchise Disclosure Document is the issuance date of June 4, 2018.

TRU FRANCHISE, LLC

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ITEM 1

THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES

The Franchisor

TRU Franchise, LLC ("TRU", "we" or "us") is a limited liability company, which was organized in California on November 6, 2017. Our principal business address is 1590 N. Batavia Street #2, Orange, California 92867. We do business under our corporate name, as well as under the trade name "Sweet Factory." We do not do business under any other names. "You" or "Franchisee" means the business entity, person or persons who sign our Franchise Agreement.

Our agents for service of process are listed in Exhibit A.

Our Parents, Predecessors and Affiliates

Our parent company, Trinity Retail Unlimited, LLC (the "Operating Company") currently owns and operates 10 Sweet Factory stores in 2 states. The Operating Company is a limited liability company, which was organized in Nevada on August 4, 2017. On November 14, 2017, the Operating Company acquired the assets of 10 Sweet Factory Stores from Sweet Candy, LLC, and SCSF Newco Inc., and Sweet Candy Franchise, LLC (the "Predecessors"), who were then operating these businesses prior to a private foreclosure sale. The principal business address of Trinity Retail Unlimited, LLC is 1590 N. Batavia Street #2, Orange, California 92867.

Pursuant to that certain Operating Agreement, dated as of November 14, 2017, by and between the Operating Company and Franchisor, Franchisor has all of the right, title, and interest in the licenses, trademarks, and tangible and intangible assets, including the Proprietary Mark and Proprietary Products (as such terms are defined below) that Franchisor requires in order to franchise the System (as defined below).

On August 6, 2002, Sweet Candy, LLC had acquired the assets of 90 Sweet Factory Stores from Sweet Factory Group, Inc., Sweet Factory, Inc., SF Candy Company and SF Properties, Inc. (the "Former Predecessors"), who were then operating these businesses following their filing of reorganization proceedings under Chapter 11 of the U. S. Bankruptcy Code. Sweet Factory Group, Inc., Sweet Factory, Inc., SF Candy Company and SF Properties, Inc.'s principal business address was 929 W. Barkley Avenue, Orange, California 92868.

Neither we, the Operating Company nor its predecessors offered franchises for sale in any other line of business.

The Former Predecessors' former affiliate, Signature Distribution, LLC, a Nevada limited liability company, formerly known as CandyWorks, LLC ("Signature"), is a distributor that sold candy inventory to Sweet Candy Franchise, LLC and its franchisees until May 31, 2009. Signature was sold to an unrelated third party on June 1, 2009.

The Sweet Factory Franchise

The Sweet Factory franchise is an owner-operated self-service candy and confection in-line store (a "Store") or kiosk (a "Kiosk") which is identified by certain trade names, service marks and trademarks, such as "Sweet Factory" (the "Proprietary Marks") and offer one-price candy and confections in bulk for sale to the general public (the "System"). The distinguishing characteristics of the System include candy, gifting and novelty items which incorporate Franchisor's trade secrets and proprietary information (the "Proprietary Products"); operating

methods and business practices; the relationship between Franchisor and its franchisees; distinctive exterior and interior design, decor, color scheme, fixtures, and furnishings; standards and specifications for products and supplies; service standards; uniform standards, specifications, and procedures for operations; procedures for inventory and management control; training and assistance; advertising and promotional programs; Franchisor's websites; Franchisor specified pricing; restrictions on ownership; standard operating and administrative procedures; and management and technical programs; all of which may be changed, improved, and further developed by Franchisor in the future. If we offer you a franchise, you will sign a franchise agreement (a "**Franchise Agreement**") which will grant you the right to establish and operate a Store or a Kiosk at a location specified in the Franchise Agreement (the "**Franchised Location**"). Your franchise will either be (1) an in-line store in a shopping mall, shopping center, strip shopping center or a corner or mid-block property in a commercial area; or (2) a Kiosk located in a shopping mall or shopping center. The one-price bulk candy and confection business is well established and very competitive. Stores and Kiosks will compete with other one-price bulk candy and confection stores and other retail businesses which sell candy and confections.

The Franchises Offered

We offer 3 separate franchise programs in this Disclosure Document, though we may not necessarily allow you the opportunity to purchase under either of these programs:

Single Franchise Program I. Under this program, you will sign a Franchise Agreement for one Sweet Factory self-service candy and confection in-line Store. We grant you a franchise when: (1) you purchase an existing and operating Sweet Factory Store or Kiosk from the Operating Company under an Asset Purchase Agreement (the "**Asset Purchase Agreement**") and operate the business of the Store or Kiosk under a Franchise Agreement and an Addendum for Store Purchase (a "**Purchase Addendum**") or (2) when you purchase a new Store or Kiosk from the Operating Company under an Asset Purchase Agreement which the Operating Company has constructed, equipped and furnished, but not yet opened for business (a "**Turnkey Unit**"), and operate the business of the Store or Kiosk under a Franchise Agreement and an Addendum for Purchase of a Turnkey Unit (a "**Turnkey Addendum**").

Single Franchise Program II. Under this program, you will sign a Franchise Agreement to build one Sweet Factory self-service candy and confection in-line Store. We grant you a franchise to build out a brand-new store in compliance with the Sweet Factory brand.

Area Development Program. Under this program, we offer an Area Development Agreement (a "**Development Agreement**") which grants you rights to operate a specified number of Stores or Kiosks in a specified area (the "**Development Area**") according to a development schedule (the "**Development Schedule**") in the Development Agreement. You will sign a separate Franchise Agreement for each Store or Kiosk.

Industry-Specific Regulations

You must comply with all local, state, and federal laws that apply to your Store including health, sanitation, no smoking, discrimination, employment, and sexual harassment laws. The Americans with Disability Act of 1990 requires readily accessible accommodation for disabled people and therefore may affect your building construction, site elements, entrance ramps, doors, seating, bathrooms, drinking facilities, etc. You must obtain real estate permits and licenses and operational licenses. You should consult with your attorney concerning these and other local laws and ordinances that may affect your Store.

ITEM 2

BUSINESS EXPERIENCE

President:

John Kim

John Kim, was the CEO of CandyWorks Distribution from 2006-2010 and was the CEO of Sweet Candy, LLC and Sweet Candy Franchise, LLC from 2010-2015. On November 14, 2017, Mr. Kim, through Trinity Retail Unlimited, LLC, has acquired all of the assets of Sweet Candy, LLC and Sweet Candy Franchise, LLC through a private foreclosure sale. John Kim is the individual responsible for the sale and operations of the franchise.

Vice President of Development:

Paul Correale

Paul Correale has been the Director of Franchise Development for numerous notable brands from 2006-2017. Mr. Correale has developed single-unit and multi-unit real estate and franchises businesses for TCBY, Mrs. Fields, Cold Stone Creamery, Blimpie, Taco Time, Great Steak, Samarui Sam's BOL, Surf City Squeeze, and many others during his tenure at Famous Brands and Kahuala Corporation.

Vice President of Operations:

Anna Stewart

Anna Stewart has been Vice President of Operations since 2010 and has been with the "Sweet Factory" brand since 2002. Ms. Stewart will be responsible for communications and training with the franchisees.

Controller:

Royce Fernando

Royce Fernando became our Controller in 2007 and is also responsible for the sale and operations of the franchise.

ITEM 3

LITIGATION

No litigation is required to be disclosed in this Item.

ITEM 4

BANKRUPTCY

The entity Sweet Candy Franchise, LLC was a wholly owned subsidiary of Sweet Candy, LLC. On November 14, 2017, Trinity Retail Unlimited, LLC acquired the assets of these two entities through a foreclosure sale from the predecessors. The exact date of the foreclosure proceeding is unknown.

ITEM 5

INITIAL FEES

Initial Training Fee for First Store

Before you are eligible to sign a Franchise Agreement for your first Store, you (or a principal of yours acceptable to us and who holds at least a 10% equity interest in your entity) must successfully complete our 2 week initial training program (the **"Initial Training Program"**). You must pay us \$5,000 for our Initial Training Program when you sign our Initial Training Agreement (the **"Initial Training Fee"**). We will provide the Initial Training Program for you and for one management employee for this \$5,000. The Initial Training Fee is uniform to all individuals applying to purchase a franchise. You must complete our Initial Training Program to our satisfaction to be eligible to sign a Franchise Agreement for your first Store. If you complete the Initial Training Program to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your first Store when we sign the Franchise Agreement for the Store. If you (1) fail to complete the Initial Training Program within 6 months after we sign the Initial Training Agreement, (2) do not complete the Initial Training Program to our satisfaction, (3) do not, during the Initial Training Program, appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (4) are not acceptable to become a franchisee for any reason whatsoever, in our sole and absolute discretion, the Initial Training Agreement will automatically terminate, you will not be eligible to become a franchisee, we will retain \$2,000 of the Initial Training Fee and will refund the \$3,000 balance of the Initial Training Fee to you within 30 days. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of your purchase of our franchise. You will not receive a refund of the Initial Training Fee under any other circumstances. The portion of the fees we retain is our reasonable estimate of the costs, administrative expenses, loss of foregone opportunities and other damages which we are likely to incur and are believed to be reasonable under the circumstances.

If you would like us to train additional trainees for you, the Initial Training Fee for each additional trainee is \$3,000 payable in full when you sign the Initial Training Agreement, is fully earned when paid and is not refundable.

You should not sign a lease for a Store until we notify you that you have successfully completed the Initial Training Program. We do not charge an Initial Training Fee for your second or subsequent Stores. If financing is a requirement for opening a new store, we recommend you do not sign a lease until your financing is fully approved.

Single Franchise Program I and II

You must pay an initial franchise fee of \$35,000 for each Store or Kiosk (the **"Initial Franchise Fee"**). The Initial Franchise Fee is payable after you complete our Initial Training Program and when you sign the Franchise Agreement. The Initial Franchise Fee is uniform to all individuals applying to purchase a franchise. We will refund \$20,000 of the Initial Franchise Fee to you (1) if you do not open the Store or Kiosk for business within 6 months after we sign a Franchise Agreement; (2) if we conclude (in our sole and absolute discretion) after your completion of the Initial Training Program and prior to the opening of the store or Kiosk for business that you do not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (3) if we conclude that you are not acceptable to become a franchisee for any reason whatsoever, in our sole and absolute discretion. Refunds are payable within 30 days after the Franchise Agreement is terminated. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of the termination of the Franchise Agreement. The Initial Franchise Fee is not refundable under any other circumstances.

The Initial Franchise Fee will be used to compensate us for the services we provide in connection with our selection of the Franchised Location, our acquisition of the Franchised Location, your Initial Training Program and our loss of other franchise sales opportunities with respect to your Store.

Area Development Program

If you sign a Development Agreement, you must pay a development fee of \$10,000 for each Store to be developed in your territory under the Development Agreement. The development fee is payable in full when the Development Agreement is signed and is not refundable. The number of units to be developed in your territory will be described in the Development Schedule which is a part of the Development Agreement. We determine the number of units you can develop and operate before you sign the Development Agreement. The development fee will be credited towards the Initial Franchise Fee for each Store.

Other Initial Expenses

When you purchase an existing operating Sweet Factory Store or Kiosk from the Operating Company, you will make additional payments to us before the opening of your Store or Kiosk. A summary of these items and services (including an estimate of their cost) is described in Item 7, under the heading "**Purchase of an Existing and Operating Store or Kiosk**." These additional payments are non-refundable.

When you purchase a Turnkey Unit from the Operating Company, you will make additional payments to us before the opening of your Store or Kiosk. A summary of these items and services (including an estimate of their cost) is described in Item 7, under the heading "**Purchase of a Turnkey Unit (New Store or Kiosk)**." These additional payments are non-refundable. The initial franchise fee for the purchase of a Turnkey Unit is the same as the initial franchise fee for the purchase of an Existing or Operating Store or Kiosk.

Initial Local Advertising Program

If you purchase a Turnkey Unit, we may require you to prepare and conduct an initial local advertising program when the Store or Kiosk first opens. If we require you to prepare an initial local advertising program, you must spend \$500 - \$2,000 for this initial advertising with third party vendors. Your payments to these vendors may or may not be refundable based upon the policies of your vendors.

Site Evaluation Fee

No fee is imposed for the first site evaluation by us. We will charge you \$500 for each evaluation of additional proposed sites for the Store. Site evaluation fees are non-refundable.

Security Deposit Due Under Sublease

If you sublease the store from us or our affiliate, you must pay us a security deposit equal to 1 - 3 months' rent. If you fully perform your obligation under your Sublease, we will return your security deposit to you at the expiration of the term of your Sublease and after you vacate the Franchised Location.

Different Fees

We may reduce, finance, defer or waive the Initial Training Fee, Initial Franchise Fee, or Development Fee if and when we determine, in our sole discretion, it is warranted by a unique or compelling situation.

Except for the circumstances described in this Item 5, we do not refund any initial fee.

ITEM 6

OTHER FEES

NAME OF FEE	AMOUNT	DATE DUE	REMARKS
Royalty	5.0% of "Gross Revenue" as defined in the Franchise Agreement	Payable weekly, by electronic funds transfer or other automatic payment mechanism we designate, on Wednesday of each week on the Gross Revenue for the prior week. (Weekly periods begin and end at 11:59 P.M. on Sundays.)	Gross Revenue means all revenue from the sale of all products and services, and all other income of every kind related to the Store, except taxes
Advertising	An amount we will determine, which will not be less than 1% or more than 2% of weekly Gross Revenue. We do not require the payment of an advertising fee as of the date of this Disclosure Document.	Same as Royalty Fee	See Item 11 for details
Transfer Fee and New Franchisee Training Fee ¹ (Franchise Agreement)	Transfer Fee: \$5,000 plus our out of pocket costs associated with the transfer, including attorneys' fees associated with the transfer; New Franchisee Training Fee: \$5,000 for up to 3 trainees.	At Transfer	An administrative fee of \$500 is imposed for transfers to corporations, partnerships, limited liability companies or any other business entity you own
Extension Fee	1/2 of the then-current Initial Franchise Fee to extend the term of the Franchise Agreement	Upon extension of the term	You are granted two 5-year options to extend the term of the Franchise Agreement
Additional Initial Training	\$3,000 per person	Upon Demand	We will train you and one management employee for the \$5,000 Initial Training Fee
Remedial Training	To be determined	Upon Demand	If we determine it to be necessary, we may provide

NAME OF FEE	AMOUNT	DATE DUE	REMARKS
			you with on-site remedial training or assistance subject to the availability of our personnel. You will pay us any fee which we may charge you and other franchisees to defray the direct costs of providing this remedial training. In addition, you will be responsible for any and all other expenses incurred in connection with sending your employees to remedial training including the costs of transportation, lodging, meals, training materials and any wages. We will, in our sole discretion, select the time and location of all remedial training.
Initial Local Advertising Program	\$500 - \$2,000	When the Store or Kiosk first opens	If you purchase a Turnkey Unit, we may require you to prepare and conduct an initial local advertising program when the Store or Kiosk first opens.
Audit by Franchisor	Amount due plus costs of audit	Upon Demand	If an audit discloses an underpayment of Gross Revenue due to us of 3% more, you must pay us the amount in error plus our costs and expenses for the audit
Gross-Up Fees	Varies with circumstances	Upon demand	To insure that we receive a full 5% of Gross Revenue as the royalty fee and advertising fee that is due, you must pay us, whether in arrears, in advance, in a lump sum or in the same manner that you pay us royalty and advertising fees, the amount of all taxes we

NAME OF FEE	AMOUNT	DATE DUE	REMARKS
			must pay on revenue we earn or collect based upon your use of our intellectual property or other intangibles or based upon the existence of the Franchise Agreement.
Interest on Overdue Payments	Lesser of 18% per year or maximum rate permitted by law	Upon Demand	Payable on overdue amounts
Reimbursement of monies paid by us on your behalf	Varies with circumstances	15 days after request	Covers cost of insurance and other payments you fail to make and which we make on your behalf
Evaluation of proposed sites for the Store	\$500	At time of evaluation	No fee is imposed for the first site evaluation by us. See Item 11 for details
Supplier Approval Fee	\$2,000 - \$3,000	Upon Demand	You may recommend suppliers to us at any time. You must pay our reasonable costs and expenses if you request us to inspect and evaluate a proposed supplier
Legal Fees	\$3,000 - \$6,500	On the closing date of your purchase of the Store	If you purchase an Operating Store or a Turnkey Store, you may be required to pay our legal fees for the preparation of the purchase and sale documents for each Store purchased as well as your own attorneys' fees.
Other Costs and Attorneys' Fees	Will vary under circumstances	Upon Demand	You must reimburse us for our expenses in enforcing or terminating the Initial Training Agreement, Franchise Agreement, Development Agreement, Asset Purchase Agreement, Sublease and Guarantees.

NAME OF FEE	AMOUNT	DATE DUE	REMARKS
Indemnification	Will vary under circumstances	Upon Demand	You must reimburse and pay our attorneys' fees if we are held liable for claims from your operation of the Store
Liquidated Damages	An amount equal to twice the total Royalty Fees paid (or if unpaid, payable) by you during the 12 months immediately preceding the effective date of termination.	Within 30 days following the date of termination	Payable only if you default and we terminate your Franchise Agreement.
Additional Training	Will vary under circumstances. We may charge you and our franchisees fees to defray our direct costs of providing services (\$10 - \$1,500)	Upon Demand	You and your management personnel must attend additional training programs at your expense
Computer Maintenance Costs	\$400 per year	As arranged	Paid to 3 rd party vendors
Security Deposit Due Under Sublease	Equal to 1 – 3 Month's Rent	When You Sign the Sublease	If you default, the Operating Company may apply your deposit against the amount you owe and, if we do so, you must restore the security deposit to its original amount within 10 days after the Operating Company demands payment.

NAME OF FEE	AMOUNT	DATE DUE	REMARKS
Sublease Administration Fee	Up to 10% of the Rent due under the Master Lease	Monthly	You must pay an amount equal to the Rent the Operating Company pays to the Master Landlord under its Master Lease for the Franchised Location PLUS up to 10% of the Rent as a sublease administration fee, as we determine. We may waive payment in our discretion.
Interim Management Fee	To be determined	As incurred	If you are in default under the Franchise Agreement, and we elect to assume interim management of your franchised business during the pendency of any cure period or in lieu of immediately terminating your Franchise Agreement, we may charge you a reasonable fee for management services.

NOTES:

All fees are imposed by and are payable to us, unless otherwise noted. Any interest owed begins to accrue from the date of underpayment. No other fees or payments are to be paid to us, nor do we impose or collect any other fees or payments for any third party. Any fees paid to us are non-refundable unless otherwise noted.

ITEM 7

ESTIMATED INITIAL INVESTMENT

1. SINGLE FRANCHISE PROGRAM I and II

YOUR ESTIMATED INITIAL INVESTMENT

New Store Buildout

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS MADE
Initial Training Fee (for first Store only) ^{1/}	\$5,000	Cash	When you sign the Initial Training Agreement. If you complete the Initial Training Program for your first Store to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your Store when we sign the Franchise Agreement for the Store	Us
Initial Franchise Fee ^{1/}	\$35,000	Cash	When you sign the Franchise Agreement	Us
New Store Buildout ^{2/}	\$365,000 - \$1,115,000	Cash	As Negotiated	Operating Company
Franchise or Development Application Fee ^{2/}	\$10,000	Cash	When you submit your application for your franchise.	Us
Purchase of Business of Existing and Operating Store or Kiosk ^{3/ and 9/}	\$300,000 - \$2,000,000	Cash	As Negotiated	Operating Company
Real Estate Lease ^{4/}	See Note 3	Cash	As Required	Landlord
Insurance ^{5/}	\$1,500 – \$3,000	Cash	Annually	Insurers
Training ^{6/}	\$1,500 – \$5,000	Cash	Before Closing	Suppliers of transportation, food and Lodging; Your employees; us
Computer Equipment	\$2,000 - \$3,500	Cash	Before Opening	Approved Suppliers

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS MADE
Initial Inventory and Operating Supplies ^{7/}	\$10,000 – \$20,000	As Arranged	At Closing	Operating Company
Legal Fees ^{9/}	\$1,000-\$3,000	Cash	Cash	Legal & State
Additional Initial Expenses ^{8/}	\$500 - \$8,000	Cash	At Closing	Us or the Operating Company
Additional Funds – 3 months ^{10/}	\$10,000 - \$30,000	Cash	During the first 3 months of operations	Various
TOTAL ESTIMATED INITIAL INVESTMENT^{11/}	\$365,500-\$1,111,500			

NOTES

Except as otherwise described below, any payment to us is not refundable.

1/ The Initial Training Fee is described in Item 5 of this Disclosure Document. You must complete our Initial Training Program to our satisfaction to be eligible to sign a Franchise Agreement for your first Store. If you complete the Initial Training Program to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your first Store when we sign the Franchise Agreement for the Store. If you (1) fail to complete the Initial Training Program within 6 months after we sign the Initial Training Agreement, (2) do not complete the Initial Training Program to our satisfaction, (3) do not, during the Initial Training Program, appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (4) are not acceptable to become a franchisee for any reason whatsoever, in our sole and absolute discretion, the Initial Training Agreement will automatically terminate, you will not be eligible to become a franchisee, we will retain \$2,000 of the Initial Training Fee and will refund the \$3,000 balance of the Initial Training Fee to you within 30 days. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of your purchase of our franchise. You will not receive a refund of Initial Training Fee under any other circumstances.

The Initial Franchise Fee is described in Item 5 of this Disclosure Document. We will refund \$20,000 of the Initial Franchise Fee to you (i) if you do not open the Store or Kiosk for business within 6 months after we sign a Franchise Agreement; (2) if we conclude (in our sole and absolute discretion) after your completion of the Initial Training Program and prior to the opening of the store or Kiosk for business that you do not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (3) are not acceptable to become a franchisee for any reason whatsoever, in our sole and absolute discretion. Refunds are payable within 30 days after the Franchise Agreement is terminated. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of the termination of the Franchise Agreement.

2/ The cost to build out a new store depends on the area, size, master lease, and the value of the leasehold improvements. In the typical case, you will pre-pay one month's security deposit equal to 1 months' rent.

3/ The purchase price of an ongoing business typically depends on the business's gross cash flow, the remaining term of the master lease and the value of the leasehold. In the typical case, you will purchase all assets of the business owned by the Operating Company, including the goodwill of the business other than the goodwill associated with the various Proprietary Marks, receive an assignment of all relevant commercial contracts and sublease the Franchised Location from the Operating Company under a Sublease (the "**Sublease**") substantially in the form of **Attachment G** to the Asset Purchase Agreement. In the typical case, you will pre-pay one month's rent and a security deposit equal to 1 – months' rent and a security deposit equal to 1 to 3 months' rent for the Franchised Location when you complete the purchase of the assets. The Operating Company will generally retain all liabilities of the former business. The purchase price and the terms of the Asset Purchase Agreement and its Attachments will vary considerably among businesses, depending upon the gross cash flow for the existing business, the value of the leasehold, any unique characteristics regarding each transaction and ongoing business, financing arrangements and other factors, and are negotiable.

4/ A Store will be located in a shopping mall or shopping center in a 500 – 2,000 square-foot site. The total cost for a site of this nature generally ranges from \$1,250 to \$16,000 per month, depending upon the local real estate market, the amount of leasehold improvements required, local construction ordinances, current construction costs in the area and your credit worthiness. A Kiosk will be located in a shopping mall or shopping center in a 150 – 300 square-foot site. The minimum cost for a site of this nature generally ranges from \$2,500 to \$6,000 per month. If you purchase an existing operating Sweet Factory Store or Kiosk from the Operating Company, the Operating Company will lease the Franchised Location from the Master Landlord under a Master Lease and will sublease the Franchised Location to you under our then-current Sublease. You must pay the Operating Company a security deposit equal to 1 – 3 months' rent.

5/ This estimate covers the annual costs for required coverage.

6/ Training is described in Item 5 and Item 11 of this Disclosure Document. This estimate includes transportation, living expenses, and wages for trainees. Generally, these costs will vary widely with the distance traveled, the accommodations selected, and the mode of transportation selected.

7/ Typically, you will purchase the existing candy, confection and operating supplies inventory from the Operating Company as a separate transaction based on the actual inventory at closing.

8/ Additional initial expenses you may pay us include additional training fees of \$3,000 per each additional trainee, a site evaluation fee of \$500 per site after the first site, and a security deposit under your Sublease equal to 1 – 3 months' rent. See Item 5.

9/ If you purchase an ongoing business, you may be required to pay our legal fees for the preparation of the purchase and sale documents as well as your own attorneys' fees.

10/ You must, at all times, maintain adequate reserves and working capital sufficient for you to fulfill all your obligations under the Franchise Agreement and to cover the risks and contingencies of the franchised business for at least 3 months. The estimates provided above do not include pre-opening training expenses, pre-opening food waste, managerial salaries or any payment to you. The need for additional funds will vary widely among franchisees. If you purchase an existing operating Sweet Factory Store or Kiosk from the Operating Company, the need for additional funds should not be the same as it may be for a new Sweet Factory Store or Kiosk; however, there is no assurance that additional funds will not be necessary during or after you purchase the Store or Kiosk.

We relied upon the experience of the Operating Company in opening Sweet Factory Stores and Kiosks when preparing these figures.

11/ The table, together with its footnotes, estimates your initial investment to build out a new store or kiosk. These expenditures will vary depending on factors such as real estate costs, your financial condition, and the business decisions you make. Therefore, there can be no assurance that your experience will correspond with the information in the table.

YOUR ESTIMATED INITIAL INVESTMENT

Purchase of Turnkey Unit (New Store or New Kiosk)

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Training Fee (for first Store only) ^{1/}	\$5,000	Cash	When you sign the Initial Training Agreement. If you complete the Initial Training Program for your first Store to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your Store when we sign the Franchise Agreement for the Store.	Us
Initial Franchise Fee ^{1/}	\$35,000	Cash	When you sign the Franchise Agreement	Us
Purchase of Turnkey Unit-Store ^{3/}	\$300,000 - \$2,000,000	Cash	As Negotiated	Operating Company
Purchase of Turnkey Unit-Kiosk ^{3/}	\$300,000 - \$2,000,000	Cash	As Negotiated	Operating Company
Real Estate Lease ^{4/}	See Note 3	Cash	As Required	Landlord
Insurance ^{5/}	\$1,500 – \$3,000	Cash	Annually	Insurers
Training ^{6/}	\$1,500 – \$5,000	Cash	Before Closing	Suppliers of transportation, food and Lodging; your employees; us
Initial Inventory ^{7/}	\$10,000 – \$20,000	As Arranged	At Closing	Operating Company
Initial Small Wares, Supplies, Uniforms ^{8/}	\$1,700 – \$2,500	As Arranged	Before Opening	Various Suppliers and Distributors
Opening Promotional Activities ^{9/}	\$ 500 – \$2,000	As Arranged	At or Before Opening	Media and other promoters
Additional Initial Expenses ^{10/}	\$500 - \$10,000	Cash	At Closing	Us or the Operating Company
Legal Fees ^{11/}	\$1,000- \$3,000	Cash	As incurred	Legal & State
Additional Funds- 3 months ^{12/}	\$10,000 - \$30,000	Cash	During the first 3 months of operations	Various

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
TOTAL ESTIMATED INITIAL INVESTMENT FOR TURNKEY STORE ^{13/}	\$375,700-\$2,122,500			
TOTAL ESTIMATED INITIAL INVESTMENT FOR TURNKEY KIOSK ^{13/}	\$365,700-\$2,112,500			

2. AREA DEVELOPMENT PROGRAM (2 to 3 Stores)

YOUR ESTIMATED INITIAL INVESTMENT

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Training Fee (for first Store only) ^{1/}	\$5,000	Cash	When you sign the Initial Training Agreement. If you complete the Initial Training Program for your first Store to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your Store when we sign the Franchise Agreement for the Store	Us
Initial Franchise Fee ^{1/} (for 2 – 3 stores)	\$70,000-\$105,000	Cash	When you sign the Franchise Agreement	Us
Purchase of Business of Existing and Operating Store or Kiosk ^{3/}	\$300,000 - \$2,000,000	Cash	As Negotiated	Operating Company
Real Estate Lease ^{4/}	See Note 3	Cash	As Required	Landlord
Insurance ^{5/}	\$1,500 – \$3,000	Cash	Annually	Insurers
Training ^{6/}	\$1,500 – \$5,000	Cash	Before Closing	Suppliers of transportation, food and Lodging; Your employees; us
Computer Equipment	\$2,000 - \$3,500	As Arranged	Before Opening	Approved Suppliers

TYPE OF EXPENDITURE	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
Initial Inventory and Operating Supplies ^{7/}	\$10,000 – \$20,000	As Arranged	At Closing	Operating Company
Additional Initial Expenses ^{10/}	\$500 - \$8,000	Cash	At Closing	Us or the Operating Company
Additional Funds – 3 months ^{12/}	\$10,000 - \$30,000	Cash	During the first 3 months of operations	Various
TOTAL ESTIMATED INITIAL INVESTMENT¹³ (for 2 to 3 stores)	\$410,500- \$2,157,500 (2 stores) \$446,500 to \$2,189,800 (3 stores)			

Notes

Except as otherwise described below, any payment to us is not refundable. Except as described in Item 10 below, we currently do not offer financing for any purpose, but reserve the right to do so in the future. We do not guarantee your note, lease or obligation.

1/ The Initial Training Fee is described in Item 5 of this Disclosure Document. You must complete our Initial Training Program to our satisfaction to be eligible to sign a Franchise Agreement for your first Store. If you complete the Initial Training Program to our satisfaction, we will credit the entire Initial Training Fee towards the Initial Franchise Fee for your first Store when we sign the Franchise Agreement for the Store. If you (1) fail to complete the Initial Training Program within 6 months after we sign the Initial Training Agreement, (2) do not complete the Initial Training Program to our satisfaction, (3) do not, during the Initial Training Program, appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (4) are not acceptable to become a franchisee for any reason whatsoever, in our sole and absolute discretion, the Initial Training Agreement will automatically terminate, you will not be eligible to become a franchisee, we will retain \$2,000 of the Initial Training Fee and will refund the \$3,000 balance of the Initial Training Fee to you within 30 days. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of your purchase of our franchise. You will not receive a refund of Initial Training Fee under any other circumstances.

The Initial Franchise Fee is described in Item 5 of this Disclosure Document. We will refund \$20,000 of the Initial Franchise Fee to you (i) if you do not open the Store or Kiosk for business within 6 months after we sign a Franchise Agreement; (2) if we conclude (in our sole and absolute discretion) after your completion of the Initial Training Program and prior to the opening of the store or Kiosk for business that you do not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (3) are not acceptable to become a franchisee for any reason whatsoever, in our sole

and absolute discretion. Refunds are payable within 30 days after the Franchise Agreement is terminated. You must sign a mutual general release when the refund is paid, which will release any claims which either you or we may have against the other arising out of the termination of the Franchise Agreement.

2/ If you develop 2 Sweet Factory Stores under an Area Development Agreement, your total development fees will be \$20,000, and your total initial franchise fees will be \$70,000, less a \$20,000 credit for your development fee, or \$50,000. The estimated initial investment for 2 Sweet Factory Stores is \$411,500 to \$2,157,500. If you develop 3 Sweet Factory Stores under an Area Development Agreement, your total development fees will be \$30,000, and your total initial franchise fees will be \$105,000, less a \$30,000 credit for your development fee, or \$75,000. The estimated initial investment for 3 Sweet Factory Stores is \$446,500 to \$2,189,800.

3/ The purchase price of a Turnkey Unit, whether a Store or a Kiosk, typically depends on the anticipated gross cash flow of the business following the opening of the Store for business, the quality of the Franchised Location, the term of the Master Lease and Sublease or Lease and other factors, and is negotiable. In the typical case, the Operating Company will construct the Turnkey Unit, furnish, equip, attach fixtures, and decorate the Turnkey Unit and sell the Turnkey Unit to you before the Turnkey Unit opens for business.

4/ A Turnkey Unit Store will generally be located in a shopping mall or shopping center in a 500 – 2,000 square-foot site. The total cost for a site of this nature generally ranges from \$1,250 to \$16,000 per month, depending upon the local real estate market, the amount of leasehold improvements required, local construction ordinances, current construction costs in the area and your credit worthiness. A Turnkey Unit Kiosk will be located in a shopping mall or shopping center in a 150 – 300 square-foot site. The minimum cost for a site of this nature generally ranges from \$2,500 to \$6,000 per month. If you purchase a Turnkey Unit from the Operating Company, the Operating Company will generally lease the Franchised Location from the Master Landlord under a Master Lease and will sublease the Franchised Location to you under our then-current Sublease. You must pay the Operating Company a security deposit equal to 1 – 3 months' rent.

5/ **Insurance**

You must obtain and maintain during the term of the Franchise Agreement and the Sublease insurance policies protecting you, the Operating Company, the Master Landlord and us and our affiliates. The insurance must be underwritten by insurers licensed and admitted to write coverage in the state in which the Store or Kiosk is located and with a rating of "A" or better. These policies must include the coverage required by the Operating Company and the Master Landlord under the Sublease and Master Lease, which generally, include: (a) "all-risk" property insurance, including business interruption insurance, customarily obtained by similar businesses in the principal trade area; (b) comprehensive general liability insurance, including products and contractual, in an amount of not less than \$2,000,000 combined single limit; (c) workers' compensation insurance for statutory limits and employer's liability insurance in an amount not less than \$1,000,000. At least 10 days before any insurance is first required to be carried by you, and after that at least 30 days before the expiration of any policy, you must deliver to us, the Operating Company and the Master Landlord certificates of insurance evidencing the proper types and minimum amounts of required coverage. If you do not maintain the required insurance, we or the Operating Company may obtain the insurance for you and charge you for its cost as well as our costs to obtain it. We will not derive income from purchasing insurance for you. This estimate covers the annual costs for required coverage.

6/ Training is described in Item 5 and Item 11 of this Disclosure Document. This estimate includes transportation, living expenses, and wages for trainees. Generally, these costs will vary widely with the distance traveled, the accommodations selected, and the mode of transportation selected.

7/ This estimate covers the cost of stocking the Turnkey Unit with candy and confection products necessary for 4 - 6 weeks following the opening of the Turnkey Unit. On an ongoing basis, some items are replenished several times per week while others are replenished over a much longer period. You will generally receive payment for candy and confections sold to a customer before the Store pays the vendor. Therefore, the cash investment is generally recovered after a Turnkey Unit opens for business.

8/ This estimate is for uniforms for employees, packaging supplies and office supplies for 3 months following the opening of the Turnkey Unit.

9/ Opening promotional activities are described in Item 11 of this Disclosure Document.

10/ Additional initial expenses you may pay us include additional training fees of \$3,000 per each additional trainee, a local advertising expenses of \$500 to \$2,000, a site evaluation fee of \$500 per site after the first site, and a security deposit under your Sublease equal to 1 - 3 months' rent. See Item 5.

11/ If you purchase a Turnkey Unit, you may be required to pay our legal fees for the preparation of the purchase and sale documents as well as your own attorneys' fees.

12/ You will, at all times, maintain adequate reserves and working capital sufficient for you to fulfill all your obligations under the Franchise Agreement and to cover the risks and contingencies of the franchised business for at least 3 months. The estimates provided above do not include pre-opening training expenses, pre-opening food waste, managerial salaries or any payment to you. The need for additional funds will vary widely among franchisees. We relied upon the experience of the Operating Company in opening Sweet Factory Stores and Kiosks when preparing these figures.

13/ The table, together with its footnotes, estimates your initial investment for a Turnkey Unit purchased from the Operating Company. These expenditures will vary depending on factors such as real estate costs, your financial condition, and the business decisions you make. Therefore, there can be no assurance that your experience will correspond with the information in the table. We do not offer financing to you if you purchase a Turnkey Unit.

ITEM 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

To insure that the highest degree of quality and service is maintained, you must operate the Store in strict conformity with our methods, standards, and specifications and you must purchase all products, equipment, supplies, and materials used or sold by the Store solely from suppliers we approve. When you purchase an existing and operating Sweet Factory Store or Kiosk, you will purchase the Store or Kiosk from the Operating Company. When you purchase a Turnkey Unit, you will purchase the Store or Kiosk from the Operating Company. You must purchase our Proprietary Products from us or our approved suppliers. For details regarding our current requirements to purchase our Proprietary Products, see the disclosure below under the heading **Candy & Confections, Equipment, Supplies, and Materials.**

We and/or our affiliates may negotiate purchase arrangements with suppliers for your benefit and may derive revenue or obtain rebates, bulk pricing discounts or allowances for our own account from approved or designated suppliers in the future if rebates or other considerations become available to us because of your purchases or our purchases of products or services. We will derive income if you purchase Proprietary Products or fixtures, equipment or supplies from us or the Operating Company. The Operating Company will also derive income if you purchase an existing and operating Sweet Factory Store, Turnkey Unit or Kiosk from the Operating Company and if you sublease the Franchised Location from the Operating Company. We do not provide any material benefits to you because of your use of approved suppliers. However, if you purchase products from certain approved suppliers you may qualify to receive certain allowances, as disclosed below under the heading **Candy & Confections, Equipment, Supplies and Materials.**

Acquisition of Franchised Location

In most cases, the Operating Company will lease the Franchised Location from the Master Landlord of the site under a Master Lease and will sublease the Franchised Location to you under our then-current Sublease. Our Sublease is Attachment G to the Asset Purchase Agreement. If you are a corporation or limited liability company, your shareholders and members must sign a Guarantee of the obligations under the Sublease (in a form substantially similar to the Guarantee attached to the Sublease as Attachment B). Alternatively, we may require you to lease the Franchised Location directly under a Lease with a landlord.

Purchase of Fixtures, Furnishings, Equipment, Decor, Signs, and Other Items

You must purchase all fixtures, furnishing, equipment, decor, signs, and other items we have approved as meeting our specifications. You must purchase or lease approved types, brands, or models of fixtures, furnishing, equipment, decor, signs and other items we have approved from us or our approved suppliers.

Purchases from Other Suppliers

If you desire to purchase products from other than our approved suppliers and distributors, you must submit a written request to us for approval of the proposed supplier, together with any evidence of conformity with our standards and specifications as we may reasonably require, or shall request the supplier itself to do so. We may inspect and evaluate the supplier's facilities and products before we approve or disapprove your proposed supplier, and you must pay all of our reasonable costs and expenses incurred in doing so. You may not use a supplier before we approve the supplier in writing. A supplier must demonstrate to our reasonable satisfaction that it can supply an item meeting our standards and specifications for the item, that it is in good financial standing in the business community and that its products and services are reliable. We will provide you with our specifications and standards and our criteria for approval of suppliers and will approve or disapprove a proposed supplier in 60 - 90 days. We will notify you if and when we no longer approve a previously approved supplier. A supplier must continually adhere to our standards and specifications to maintain its approval.

Candy & Confections, Equipment, Supplies, and Materials

Our designated suppliers, including Signature, are the sole suppliers of our Proprietary Products and you must purchase these products from us or from them as we designate.

To ensure that the highest degree of quality and service is maintained, you must maintain in sufficient supply and use only these products, equipment, materials, signs and supplies that conform to our specifications. We have compiled a list of approved suppliers who provide products which comply with our specifications.

There are no franchisee purchasing or distribution cooperatives. However, you may take advantage of any bulk pricing discounts or allowances offered by suppliers to the Operating Company for your purchase of candy, confection, gifting or novelty products, equipment, supplies, and materials. Any allowances that may be provided to you by suppliers will be provided to you based your pro-rata share of purchases. We do not provide material benefits to you (for example, renewal or granting additional franchises) based on your purchase of particular products or services or use of particular suppliers.

Purchase of an Existing and Operating Store or Kiosk from the Operating Company

If you purchase an existing and operating Sweet Factory Store or Kiosk from the Operating Company, you must sign an Asset Purchase Agreement and applicable attachments in substantially the same forms as attached to this Disclosure Document as **Exhibit I**. Under the terms of the Asset Purchase Agreement, you must purchase the assets of the Store or Kiosk, which may include fixtures, furnishing, equipment, decor, signs, as well as any supplies and materials used or sold by the Store or Kiosk. You must sublease the premises of the Store or Kiosk from the Operating Company under a Sublease and make monthly rental payments to the Operating Company. Under the terms of the Sublease, you must pay rent in an amount equal to the rental payments which the Operating Company is obligated to pay the landlord under the Master Lease **PLUS** an additional amount up to 10% of these payments. In addition, you must pay the Operating Company a security deposit equal to 1 – 3 months' rent. If you default under the Sublease, the Operating Company may apply your deposit against the amount you owe and you must restore the security deposit to its original amount within 10 days after a demand for payment. The Sublease is Attachment G to the Asset Purchase Agreement. You may also be required to assume contracts with suppliers of goods and services to the Store or Kiosk.

Purchase of a Turnkey Unit from the Operating Company

If you purchase a Turnkey Unit from the Operating Company, you must sign an Asset Purchase Agreement and applicable attachments in substantially the same forms as attached to this Disclosure Document as **Exhibit I**. Under the terms of the Asset Purchase Agreement, you must purchase the assets of the Turnkey Unit, which will include fixtures, furnishing, equipment, décor and signs, as well as any supplies and materials the Operating Company purchases for the Turnkey Unit. You will generally sublease the premises of a Turnkey Unit from the Operating Company under a Sublease and make monthly rental payments to the Operating Company. Under the terms of the Sublease, you must pay rent in an amount equal to the rental payments which the Operating Company is obligated to pay the landlord under the Master Lease **PLUS** an additional amount up to 10% of these payments. In addition, you must pay the Operating Company a security deposit equal to 1 – 3 months' rent. If you default under the Sublease, the Operating Company may apply your deposit against the amount you owe and you must restore the security deposit to its original amount within 10 days after a demand for payment. The Sublease is Attachment G to the Asset Purchase Agreement.

Our Revenue From Sales and Leases to You

The Operating Company will derive revenue from you if you purchase an existing and operating Sweet Factory Store or Kiosk or a Turnkey Unit from the Operating Company. If you purchase an existing and operating Sweet Factory Store or Kiosk or a Turnkey Unit from the Operating Company, we estimate that your required

purchases from the Operating Company will range from 12% to 19% of your total initial investment and from 27% to 43% of your total expenditures. The total revenue of Sweet Candy, LLC, the predecessor to the Operating Company, during the fiscal year ending January 2, 2017, was \$615,005. Sweet Candy, LLC had \$78,768 in revenues from the sale of existing and/or turnkey Sweet Factory Stores to franchisees and from subleases to franchisees during the fiscal year ending January 2, 2017, or 11.3% of its total revenue.

Specifications, Standards, and Procedures

Every aspect of the interior and exterior of the Store or Kiosk is subject to our specifications. You must comply with all mandatory specifications (whether contained in our manuals or any other written communication) regarding the appearance, function, cleanliness, and operation of the Store. We formulate and modify our methods, standards and specifications in writing through supplements to our manuals and other written communications.

Maintenance and repair are solely your responsibilities. For the term of the Franchise Agreement, you must, at your expense, maintain the Store or Kiosk in a clean, orderly condition and in excellent repair. You must make these additions, alterations, repairs, and replacements as may be required for that purpose, including repainting, repairing, and replacing obsolete or deteriorated signs, furnishing, fixtures, equipment, and decor as we may reasonably require.

You must make all alterations, additions, or modifications to the Store or Kiosk as we may reasonably require to accommodate changes made by us to the System, including changes to product items or marketing positioning. You will have 3 months in which to make any required changes to the Store or Kiosk from the date we give notice to you to do so.

We may require you to refurbish the Store or Kiosk at your expense at any time, but not within the first 3 years after you purchase an existing and operating Sweet Factory Store from the Operating Company, unless we required refurbishment as part of our purchase arrangement, and in no case more often than once every 5 years. However, you will not be obligated to perform remodeling work that costs more than \$10,000 - \$80,000 for refurbishment of the interior and exterior of the Store or Kiosk.

Computer Systems

You must purchase or lease the computer hardware and software, dedicated telephone and power lines, modem(s), printer(s), and other computer-related accessories or peripheral equipment that we approve, according to our specifications. The computer hardware and software is for recording sales and other record keeping and central functions. You are not obligated to purchase from a particular approved seller, but you must use specific brands of equipment that we designate. We may permit you to use comparable brands of equipment, subject to our prior written approval. You must help us connect your computer system with a computer system used by us or our affiliates. We may retrieve all data and information from your computer system and there are no contractual limitations on our right to do so. You must strictly comply with our specifications for all items associated with your computer system, and operate your computer system according to our specifications. You will be required to maintain the computer systems in good repair and working order, including installing program software updates we specify. Other than the Operating Company there are currently no approved suppliers in which any of our officers owns an interest.

Improvements

All ideas, concepts, techniques or materials created by you while you are a Sweet Factory franchisee, whether or not protectable intellectual property (an **"Improvement"**), must be promptly disclosed to us and will become our exclusive property and a part of the Sweet Factory System as a work made for hire for us without compensation to you.

ITEM 9

FRANCHISEE'S OBLIGATIONS

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

	OBLIGATION*	SECTION IN FRANCHISE AGREEMENT	SECTION IN DEVELOPMENT AGREEMENT	SECTION IN OTHER AGREEMENTS	DISCLOSURE DOCUMENT ITEM
a.	Site selection and acquisition/ lease	§ 1, 7 and Attachment A	§ 1 and Attachment B	Attachment A	Items 8 and 11
b.	Pre-opening purchases/ leases	§ 5, 7, 10, 11 and 12	Not Applicable	Not Applicable	Items 5, 7, and 8
c.	Site development and other pre-opening requirements	§ 5, 6 and Attachment A	§ 1		Items 8 and 11
d.	Initial and ongoing training	§ 6	Not Applicable	Initial Training Agreement; § 2 of Purchase Addendum	Item 11
e.	Opening	§ 5	Not Applicable	Not Applicable	Item 11
f.	Fees	§ 2, 4, 11,12 and 14	§2 and 7	§3 a, b, c and f, 12b of Asset Purchase Agreement; § 2, 3.1 of Sublease	Items 5 and 6
g.	Compliance with standards and policies/Operating Manual	§ 7, 8 and 9	Not Applicable	Not Applicable	Items 8, 11 and 14
h.	Trademarks and proprietary information	§ 8 and 9	§ 1.3, 4, 7.6		Items 13 and 14
i.	Restrictions on products/ services offered	§ 7	Not Applicable	§ 4.2 of Sublease	Items 5, 8 and 16
j.	Warranty and customer service requirements	§ 7	Not Applicable	Not Applicable	Item 16

	OBLIGATION*	SECTION IN FRANCHISE AGREEMENT	SECTION IN DEVELOPMENT AGREEMENT	SECTION IN OTHER AGREEMENTS	DISCLOSURE DOCUMENT ITEM
k.	Territorial development and sales quotas	Not Applicable	§ 1 and Attachments A and B of Development Agreement	Not Applicable	Item 12
l.	Ongoing product/service purchases	§ 7 and 11	Not Applicable	Not Applicable	Item 8
m.	Maintenance, appearance and remodeling requirements	§ 2 and 7	Not Applicable	§ 4 and 7 of Sublease	Item 8
n.	Insurance	§ 5 and 12	§6.2.9	§ 5 of Sublease	Items 7 and 8
o.	Advertising	§ 11	Not Applicable	Not Applicable	Items 6, 8 and 11
p.	Indemnification	§ 19	§ 10.4	§ 13 of Asset Purchase and Sale Agreement; § 8 of Sublease	Not Applicable
q.	Owner's participation/management/ staffing	§ 6, 7 and 10	Not Applicable	Not Applicable	Item 15
r.	Records/re-ports	§ 4, 10 and 18	Not Applicable	Not Applicable	Item 6
s.	Inspection/audits	§ 5, 7 and 10	Not Applicable	Not Applicable	Items 6 and 11
t.	Transfer	§ 13	§ 5	§ 10 of Sublease	Item 17
u.	Renewal	§ 2	Not Applicable	Not Applicable	Item 17
v.	Post-termination obligations	§ 15	§ 7	Not Applicable	Item 17
w.	Non-competition covenants	§ 16	§ 8	Not Applicable	Item 17
x.	Dispute resolution	§ 23	§ 13	§19 of Asset Purchase Agreement	Item 17
y.	Taxes/permits	§ 5 and 18	Not Applicable	§ 9f and h, 12a and b of Asset Purchase Agreement; § 2 of Sublease	Item 1
z.	Security Interest	§ 4.6	Not Applicable	§3(e) of Asset Purchase Agreement; § 14 of Sublease	Item 10

TRU FRANCHISE, LLC

FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT A

STATE ADMINISTRATORS AND AGENTS FOR SERVICE OF PROCESS

EXHIBIT A

STATE ADMINISTRATORS AND STATE AGENTS FOR SERVICE OF PROCESS

STATE	STATE ADMINISTRATOR	AGENT FOR SERVICE OF PROCESS
CALIFORNIA	Department of Business Oversight 320 West Fourth Street Suite 750 Los Angeles, California 90013 (213) 576-7500 (866) 275-2677	InCorp Services, Inc. 5716 Corsa Avenue #100 Westlake Village, California 91362
MICHIGAN	Department of Attorney General Consumer Protection Division, Franchise Section 525 West Ottawa Street Williams Building, First Floor, Lansing, Michigan 48933-1067 (517) 373-7177	InCorp Services, Inc. 2285 South Michigan Road P.O. Box 266 Eaton Rapids, Michigan 48827
WASHINGTON	Department of Financial Institutions Securities Division 150 Israel Road S.W. Tumwater, Washington 98501 (360) 902-8760	InCorp Services, Inc. 4505 Pacific Highway E Suite C-2 Fife, Washington 98424

If a state is not listed, we are not required to appoint an agent for service of process in that state in order to comply with the requirements of franchise laws. There may be states in addition to those listed above in which we have appointed an agent for service of process. There may also be additional agents appointed in some of the states listed.

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
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TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT D
INITIAL TRAINING AGREEMENT

TRU FRANCHISE, LLC
INITIAL TRAINING AGREEMENT

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ATTACHMENT A ENTITY INFORMATION

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT

INITIAL TRAINING AGREEMENT

THIS INITIAL TRAINING AGREEMENT (this "Agreement") made and entered into as of _____, _____ (the "Effective Date"), by and TRU FRANCHISE, LLC, a California limited liability company ("Franchisor"), and _____ ("Trainee"), on the other hand, with reference to the following facts:

A. Trinity Retail Unlimited, LLC, a Nevada limited liability company, an affiliate of Franchisor (the "Operating Company"), acquired the assets, including the System (as defined below) of Sweet Candy, LLC, and SCSF Newco Inc., and Sweet Candy Franchise, LLC (the "Predecessors"), who had, as the result of the expenditure of time, skill, effort, and money, developed a distinctive system relating to the establishment and operation of self-service candy stores offering one-price candy and confections in bulk (the "System").

B. The distinguishing characteristics of the System include, without limitation, candy, gifting and novelty items which incorporate Franchisor's trade secrets and proprietary information (the "Proprietary Products"); operating methods and business practices; the relationship between Franchisor and its franchisees; distinctive exterior and interior design, decor, color scheme, fixtures, and furnishings; standards and specifications for products and supplies; service standards; uniform standards, specifications, and procedures for operations; procedures for inventory and management control; training and assistance; advertising and promotional programs; Franchisor's websites; Franchisor specified pricing; restrictions on ownership; standard operating and administrative procedures; and management and technical training programs; all of which may be changed, improved, and further developed by Franchisor from time to time.

C. The System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited, to the mark "Sweet Factory" and such other trade names, service marks, and trademarks as are now designated and may hereafter be designated by Franchisor in writing for use in connection with the System (the "Proprietary Marks").

D. Franchisor has the right to use, and to license others to use, the Proprietary Products, the Proprietary Marks and the System.

E. Trainee desires to enter into the business of operating a retail store as a franchisee of Franchisor under the System and using the Proprietary Marks (a "Store"), and acknowledges and agrees that Trainee's completion of Franchisor's Initial Training Program for franchisees offered by Franchisor (the "Initial Training Program") is a condition to the grant by Franchisor to Trainee of a license to operate a Store as a franchisee of Franchisor and to the execution of a Franchise Agreement for a Store by Franchisor and Trainee.

NOW, THEREFORE, IT IS AGREED:

1. INCORPORATION OF RECITALS.

The recitals set forth in Paragraphs A through E above are true and correct and are hereby incorporated by reference into the body of this Agreement.

2. INITIAL TRAINING PROGRAM.

Franchisor shall provide an Initial Training Program in the Franchisor's System and methods of

operation at the Franchisor's training facilities and at other Sweet Factory Stores. Trainee shall attend and complete the Initial Training Program to become eligible to sign a Franchise Agreement. Franchisor shall determine the contents and manner of conducting the Initial Training Program in its discretion, however, the Initial Training Program will be structured to provide practical training in the implementation and operation of a Sweet Factory Store and may include such topics as Sweet Factory standards, marketing and customer service techniques, reports and maintenance. Trainee acknowledges that because of Franchisor's superior skill and knowledge with respect to the training and skill required to manage the Store, Franchisor's judgment as to whether or not Trainee has satisfactorily completed such Initial Training Program shall be determined by Franchisor in its judgment. Trainee shall pay Franchisor an initial training fee of \$5,000 for the Initial Training Program (the "**Initial Training Fee**") for Trainee and one management employee on the Effective Date. If Trainee desires to have additional attendees attend the Initial Training Program, Trainee shall pay Franchisor an initial training fee of \$3,000 for each additional attendee sent by Trainee. Trainee shall be responsible for any and all other expenses incurred in connection with attendance at the Initial Training Program including, without limitation, the costs of transportation, lodging, meals, and any wages of additional attendees. Franchisor shall, in its sole discretion, select the time and location of the Initial Training Program. Trainee acknowledges that Trainee has been advised by Franchisor that Trainee should not sign a lease or purchase a site for the Store until Franchisor notifies Trainee that Trainee has successfully completed the Initial Training Program and secured the necessary financing to open a store(s).

3. **INITIAL TRAINING FEE.**

Trainee shall pay Franchisor an initial training fee of \$5,000 for the Initial Training Program (the "**Initial Training Fee**") for Trainee and one management employee on the Effective Date. If Trainee desires to have additional attendees attend the Initial Training Program, Trainee shall pay Franchisor an initial training fee of \$3,000 for each additional attendee sent by Trainee. Trainee shall be responsible for any and all other expenses incurred in connection with attendance at the Initial Training Program including, without limitation, the costs of transportation, lodging, meals, and any wages of additional attendees. Franchisor shall, in its sole discretion, select the time and location of the Initial Training Program. Trainee shall exert Trainee's best efforts to complete the Initial Training Program to Franchisor's satisfaction, as determined by Franchisor in its sole and absolute discretion. Trainee must attend and complete the Initial Training Program within six (6) months after the Effective Date, unless otherwise agreed by Franchisor. Trainee acknowledges that Trainee has been advised by Franchisor that Trainee should not sign a lease or purchase a site for the Store until Franchisor notifies Trainee that Trainee has successfully completed the Initial Training Program.

- 3.1 **Credit of Initial Training Fee.** If Trainee completes the Initial Training Program to Franchisor's satisfaction, Franchisor shall credit the entire Initial Training Fee towards the initial franchise fee for a Store upon the parties' execution of a Franchise Agreement for a Store.
- 3.2 **Partial Refund of Initial Training Fee.** If Trainee (i) fails to complete the Initial Training Program within six (6) months after the Effective Date, (ii) does not complete the Initial Training Program to Franchisor's satisfaction, (iii) does not, during the Initial Training Program, appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (iv) is not acceptable to become a franchisee of Franchisor for any reason whatsoever, in Franchisor's sole and absolute discretion, this Agreement shall automatically terminate and be of no further force or effect, Trainee shall not be eligible to become a franchisee of Franchisor and Franchisor shall retain \$2,000 of the Initial Training Fee and shall refund \$3,000 of the Initial Training Fee to Trainee within thirty (30) days. Franchisor and Trainee acknowledge and agree that the actual damages to be suffered by Franchisor in the circumstances described in this Section 3 are difficult, if not impossible to determine, and that, under all the facts and circumstances, this calculation of Franchisor's potential damages and the portion of the Initial Training Fee retained by Franchisor are a reasonable, good-faith estimate of such damages.

- 3.3 **Conditions of Refund.** Payment by Franchisor and acceptance by Trainee of a refund of a portion of the Initial Training Fee shall constitute a release of any and all claims which each may have against the other (including the respective partners, shareholders, directors, agents, or employees thereof) arising out of or in connection with the Initial Training Program and Trainee's efforts to purchase a license to operate a Store. As a condition to the payment of any refund, Trainee shall execute a general release, in a form prescribed by Franchisor, of any and all claims which Trainee may have or believes to have against Franchisor and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement, the Initial Training Program, the Initial Training Fee and Franchisor's decision to not permit Trainee to purchase a license to operate a Store which arose on or before the date of the general release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances.

4. **FRANCHISOR UNDER NO OBLIGATION TO GRANT FRANCHISE.**

Franchisor and Trainee acknowledge and agree that neither the execution of this Agreement by Franchisor nor Trainee's completion of the Initial Training Program shall obligate Franchisor in any way to grant Trainee a license to operate a Store or to execute a Franchise Agreement for a Store. Franchisor may refuse to offer a Franchise Agreement to Trainee (i) if Trainee fails to attend and complete the Initial Training Program to Franchisor's satisfaction, as determined by Franchisor, in its sole and absolute discretion, (ii) if Trainee fails to complete the Initial Training Program within six (6) months after the Effective Date, unless otherwise agreed by Franchisor, (iii) if, for any reason, Franchisor determines during the Initial Training Program, in its sole and absolute discretion, that Trainee does not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (iv) if, for any reason, Franchisor determines during the Initial Training Program, in its sole and absolute discretion, that Trainee is not acceptable to become a franchisee of Franchisor for any reason whatsoever, in Franchisor's sole and absolute discretion. If Franchisor refuses to offer Trainee a Franchise Agreement for a Store, to the extent permitted by applicable law, Trainee nor Trainee's management employee shall, for a period of twenty-four (24) months thereafter, either directly or indirectly, own, operate, advise, be employed by, or have any financial interest in any self-service candy and confection business which offers one-price candy and confections for sale in bulk similar to the products offered by a Sweet Factory Store within a ten (10) mile radius of any Sweet Factory Store, without Franchisor's prior written consent. In applying for such consent, Trainee and/or such individual will have the burden of establishing that any such activity will not involve the use of benefits provided under this Agreement or constitute unfair competition with Franchisor or other franchisees of Franchisor.

5. **CONFIDENTIALITY.**

Trainee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of, anyone else, any confidential information, which includes, without limitation, tangible and intangible information (whether or not in electronic form) relating to Franchisor's business operations, products and services, sources of materials and equipment, client management and other software, data, other content, formulations, patterns, compilations, programs, devices and processes, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for research, potential new or supplemental products and services, websites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators, current customer and prospective customer names and addresses, information regarding credit extensions to customers, customer service purchasing histories and prices charged to customers, information regarding the skills and compensation

of employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationships between Franchisor and other companies, persons or entities, knowledge or know-how concerning the methods of operation of Stores which may be communicated to Trainee, or of which Trainee may be apprised, by virtue of Trainee's attendance at the Initial Training Program, and any other information or material considered proprietary by Franchisor whether or not designated as confidential information by Franchisor, that is not generally known by the public, or which derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or its affiliates and which is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy, and any other information in oral, written, graphic or electronic form which, given the circumstances surrounding its disclosure, would be considered confidential (collectively, the "**Confidential Information**"). Confidential Information does not include any information that was in the lawful and unrestricted possession of Trainee prior to its disclosure by Franchisor; is or becomes generally available to the public by acts other than those of Trainee after receiving it; has been received lawfully and in good faith by Trainee from a third party who did not derive it from Franchisor or Trainee; or is shown by acceptable evidence to have been independently developed by Trainee. Trainee shall not at any time copy, duplicate, record, or otherwise reproduce any of the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person. The duplication or use of the System in any other endeavor or business by Trainee shall constitute an unfair method of competition. Any and all matters, information, knowledge, know-how, techniques, Proprietary Products, customer information, pricing, and other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement. Trainee shall make no unauthorized copy of any portion of the System, including without limitation, the Manuals, bulletins, supplements, confidential correspondence, or other confidential communications, whether written or oral. Trainee acknowledges and agrees that failure to comply with the requirements of this Section 5 will result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Trainee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to the requirements of this Section 5.

6. **NO RIGHT TO USE PROPRIETARY MARKS OR SYSTEM.**

Franchisor and Trainee acknowledge and agree that this Agreement is not a Franchise Agreement and does not grant Trainee any right whatsoever to use or to license the use of, the Proprietary Marks, the Proprietary Products or the System in any way.

7. **GENERAL**

- 7.1 **No Waiver.** 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 Trainee of any of the terms, provisions, or covenants of this Agreement, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, or power as against Trainee, or as to a subsequent breach or default by Trainee.
- 7.2 **Entire Agreement.** This Agreement constitutes the entire and complete Agreement between Franchisor and Trainee concerning the subject matter of this Agreement and supersedes all prior agreements. No amendment, change, or variation 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.
- 7.3 **Severability and Construction.** Except as expressly provided to the contrary in this Agreement, each section, paragraph, part, term, and provision of this Agreement shall be considered severable; and if, for any reason, any section, paragraph, part, term, provision, and/or covenant

in this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, paragraphs, parts, terms, provisions, and/or covenants 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 the invalid portions, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement. Neither this Agreement or any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. On the contrary, this Agreement has been review by all parties and shall be construed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Agreement. Franchisor and Trainee intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

- 7.4 **Captions.** All captions in this Agreement are intended for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.
- 7.5 **Choice of Law.** This Agreement takes effect upon its acceptance and execution by Franchisor in California, and shall be interpreted and construed under the laws of California. In the event of any conflict of law, the laws of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if a Store is located outside of California and such provision would be enforceable under the laws of the state in which a Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Section 7.5 is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of any state to which it would not otherwise be subject.
- 7.6 **Venue.** 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 California in the county in which Franchisor has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.
- 7.7 **Non-exclusivity of Remedy.** No right or remedy conferred upon or reserved to Franchisor or Trainee 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.
- 7.8 **Limitation of Adjudicative Proceedings.** Franchisor and Trainee 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 or the relationship of Trainee and Franchisor, shall be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred. Franchisor and Trainee 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.

- 7.9 **Right to Injunctive Relief.** Nothing herein contained shall bar Franchisor's right to seek injunctive relief without the posting of any bond or security to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to Trainee's: (a) use of the System, the Proprietary Products and/or the Proprietary Marks, (b) disclosure or use of any confidential information of Franchisor. Franchisor shall be able to seek injunctive relief to prohibit any act or omission by Trainee and Trainee agrees to pay all costs and reasonable attorneys' fees incurred by Franchisor in obtaining such relief.
- 7.10 **Attorneys' Fees.** If Franchisor becomes a party to any legal proceedings concerning this Agreement by reason of any act or omission of Trainee, Trainee shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.
- 7.11 **Recognition of Business Risks.** Trainee acknowledges and agrees that Trainee has conducted an independent investigation of the proposed franchise, and recognizes that the business venture contemplated by a Franchise Agreement involves business risks and that Trainee's success will be largely dependent upon the ability of Trainee as an independent business person. Franchisor expressly disclaims the making of, and Trainee acknowledges and agrees that Trainee has not received, any warranty or guarantee, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by a Franchise Agreement, or of other Sweet Factory Stores.
- 7.12 **Receipt of Franchise Disclosure Document.** Trainee acknowledges and agrees that Trainee has received a copy of the complete TRU Franchise, LLC's Franchise Disclosure Document for Sweet Factory stores, which contains a copy of this Initial Training Agreement, at least fourteen (14) calendar days prior to the Effective Date. Trainee further acknowledges and agrees that Trainee has received a copy of this Agreement prior to Effective Date. Trainee acknowledges and agrees and agrees that Franchisor has made no promises, representations, warranties or assurances to Trainee which are inconsistent with the terms of this Agreement or Franchisor's Franchise Disclosure Document, concerning the profitability or likelihood of success of a Store at a Franchised Location, that Trainee has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Trainee's business ability and aptitude is primary in determining Trainee's success.
- 7.13 **Review of Franchise Disclosure Document.** Trainee acknowledges and agrees that it has read and understood this Agreement, the attachments to this Agreement, and agreements relating to this Agreement, if any, and that Franchisor has accorded Trainee ample time and opportunity to consult with advisors and counsel of Trainee's own choosing about the potential benefits and risks of entering into this Agreement.
- 7.14 **No Representations by Franchisor.** Trainee acknowledges and agrees that prior to the Effective Date, no employee, agent or other person speaking on Franchisor's behalf made (i) any statement or promise to Trainee concerning projected revenues, profits or operating costs of a Sweet Factory franchised business, (ii) any statement or promise to Trainee regarding the amount of money Trainee may earn in operating a Sweet Factory franchised business, (iii) any statement or promise to Trainee concerning the total amount of revenue a Sweet Factory franchised business will or may generate, or (iv) any statement or promise to Trainee regarding the costs Trainee will or may incur in operating a Sweet Factory franchised business.

7.15 **Atypical Arrangements.** Trainee acknowledges and agrees that Franchisor may modify the offer of Franchisor's Initial Training Program to other franchisees in any manner and at any time, which offers have or may have terms, conditions, and obligations, which may differ from the terms, conditions, and obligations in this Agreement. Trainee further acknowledges and agrees that Franchisor has made no warranty or representation that all Initial Training Agreements previously issued or issued after this Agreement by Franchisor do or will contain terms substantially similar to those contained in this Agreement. Franchisor may, in Franchisor's reasonable business judgment and Franchisor's sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Initial Training Agreements previously executed or executed after the date of this Agreement with other Sweet Factory franchisees in a nonuniform manner.

7.16 **Anti-Terrorism Laws.** Trainee and Trainee's officers, directors, members and shareholders shall comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Trainee and Trainee's officers, directors, members and shareholders certify, represent, and warrant that none of the property or interests of Trainee or its officers, directors, members and shareholders is subject to being "blocked" under any of the Anti-Terrorism Laws and that Trainee and its officers, directors, members and shareholders are not otherwise in violation of any of the Anti-Terrorism Laws.

7.16.1 For the purposes of this Section 7.16, "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA Patriot Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

7.16.2 Trainee and Trainee's officers, directors, members and shareholders certify that none of its employees, or anyone associated with Trainee or its officers, directors, members and shareholders are listed in the Annex to Executive Order 13224. Trainee agrees not to hire any individual listed in the Annex. The Annex is available at:

<http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>

7.16.3 Trainee certifies that Trainee has no knowledge or information that, if generally known, would result in Trainee, its officers, directors, members and shareholders, its employees, or anyone associated with Trainee to be listed in the Annex to Executive Order 13224.

7.16.4 Trainee shall be solely responsible for ascertaining what actions must be taken by Trainee to comply with the Anti-Terrorism Laws, and Trainee specifically acknowledges and agrees that Trainee's indemnification responsibilities set forth in this Agreement pertain to Trainee's obligations under this Section 7.16.

7.16.5 Any misrepresentation by Trainee under this Section 7.16 or any violation of the Anti-Terrorism Laws by Trainee, its officers, directors, members and shareholders, or Trainee's employees shall constitute grounds for immediate termination of this Agreement and any other Agreement Trainee has entered with Franchisor or an affiliate of Franchisor, in accordance with the terms of this Agreement.

- 7.17 **Notices.** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail; by private overnight delivery; or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served; (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail; (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail. Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

TRU Franchise, LLC
1590 N. Batavia Street #2
Orange, California 92867
Attention: President

Notices to Trainee:

Fax: _____

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

- 7.18 **Transfers.** Franchisor shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. Trainee shall not have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity.
- 7.19 **Additional Documents.** Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Agreement.
- 7.20 **Counterparts and Electronic Copies.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed in the manner required, and are dated and identical in form to the original hard copy version of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date.

FRANCHISOR:

TRU FRANCHISE, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

TRAINEE:

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a _____ limited liability company;
- ☐ a _____ corporation

By: _____

Its: _____, and individually

**TRU FRANCHISE, LLC
INITIAL TRAINING AGREEMENT**

**ATTACHMENT A
ENTITY INFORMATION**

ATTACHMENT A ENTITY INFORMATION

If Trainee is an Entity, Trainee represents and warrants that the following information is accurate and complete in all material respects:

(1) Trainee is a (check as applicable):

- ☐ corporation
- ☐ limited liability company
- ☐ general partnership
- ☐ limited partnership
- ☐ Other (specify): _____

(2) Trainee shall provide to Franchisor concurrently with the execution of this Agreement true and accurate copies of its charter documents including Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution of this Agreement, and any amendments to the foregoing ("Entity Documents").

(3) Trainee promptly shall provide such additional information as Franchisor may from time to time request concerning all persons who may have any direct or indirect financial interest in Trainee.

(4) The name and address of each of Trainee's Owners, members, or general and limited partner:

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST (if applicable)

(5) There is set forth below the names, and addresses and titles of Trainee's principal officers or partners who will be devoting their full time to the Business:

NAME	ADDRESS

- (6) The address where Trainee's Financial Records, and Entity records (e.g., Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, etc.) are maintained is:

FRANCHISOR:

TRU FRANCHISE, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

TRAINEE:

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a _____ limited liability company;
- ☐ a _____ corporation

By: _____

Its: _____, and individually

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT E
FRANCHISE AGREEMENT

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT
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ATTACHMENTS

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TRU FRANCHISE, LLC

FRANCHISE AGREEMENT

This Franchise Agreement (the "**Agreement**") made and entered into as of _____ by and between **TRU FRANCHISE, LLC**, a California limited liability company ("**Franchisor**"), and _____ ("**Franchisee**"), with reference to the following facts:

A. Sweet Candy, LLC, a Nevada limited liability company ("**Sweet Candy**"), has, as the result of the expenditure of time, skill, effort, and money, developed a distinctive system relating to the establishment and operation of self-service candy and confection stores offering one-price candy and confections in bulk (the "**System**").

B. The distinguishing characteristics of the System include, without limitation, candy, gifting and novelty items which incorporate Sweet Candy's trade secrets and proprietary information (the "**Proprietary Products**"), distinctive exterior and interior design, décor, color scheme, fixtures, and furnishings; standards and specifications for products and supplies; service standards; uniform standards, specifications, and procedures for operations; procedures for inventory and management control; training and assistance; and advertising and promotional programs.

C. The System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited, to the mark "**Sweet Factory**" and such other trade names, service marks, and trademarks as are now designated and may hereafter be designated by Franchisor in writing for use in connection with the System (the "**Proprietary Marks**").

D. On November 14, 2017, our parent company, Trinity Retail Unlimited, LLC, a Nevada limited liability company (the "**Operating Company**"), acquired all of the assets of Sweet Candy, including the System, the Proprietary Products, and the Proprietary Marks, all of which may be changed, improved, and further developed by the Operating Company or the Franchisor from time to time.

E. Franchisor has the right to use, and to license others to use, the Proprietary Products, the Proprietary Marks and the System.

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

G. Franchisee desires to enter into the business of operating a retail store under the System and using the Proprietary Marks (the "**Store**"), and wishes to enter into an agreement with Franchisor for that purpose, and to receive the training and other assistance provided by Franchisor in connection therewith. Franchisee represents and warrants to Franchisor, as an inducement to Franchisor's execution of this Agreement, that all statements made by Franchisee and all materials provided to Franchisor by Franchisee in connection with the grant of the franchise to Franchisee are accurate and complete and that Franchisee has made no misrepresentations or material omissions in connection with obtaining the franchise. Franchisor grants this franchise in reliance upon each and all of Franchisee's representations.

H. Franchisee understands and acknowledges the importance of Franchisor's high standards of quality, cleanliness, appearance, service, and the necessity of operating the Store in conformity with Franchisor's standards and specifications.

NOW, THEREFORE, THE PARTIES AGREE:

1. GRANT

1.1 **Grant:** Franchisor hereby grants to Franchisee the right, and Franchisee undertakes the obligation, to use the System, the Proprietary Products and Proprietary Marks solely in connection with the operation of one (1) Sweet Factory Store at, and only at, the "**Franchised Location**" (as defined in Section 1.2). The Proprietary Marks, all Internet domain names, URLs, copyrights, toll-free "1-800", "1-888" and "1-877" telephone numbers, or other like toll-free telephone numbers which may be utilized by Franchisor, or its affiliates, and their mnemonics and other identifying marks constituting a part of the System, now or in the future, shall be used solely in connection with the operation of the Store. Nothing contained herein shall be construed to authorize or permit the use by Franchisee of the System, the Proprietary Products or the Proprietary Marks, and Internet domain names, URLs, toll-free "1-800", "1-888" or "1-877" telephone numbers, or any confusingly similar imitations of the same, at or for the benefit of any location other than the Franchised Location, on the Internet or for any other purpose whatsoever. Further, during the term of this Agreement, Franchisee shall not sell candy and confections in bulk through any means of distribution other than the Store including, through the use of toll-free "1-800", "1-888" and "1-877" telephone numbers, mail order catalogs, direct mail advertising, domain names, URLs, on-line computer networks and services, the Internet, kiosks, carts, concessions, satellite units, or other mobile remote, limited service or non-permanent facilities unless expressly authorized by Franchisor in writing to do so. In addition, Franchisee shall not engage in wholesale sales of any kind without Franchisor's prior consent. "Wholesale sales" means the direct or indirect sale or distribution of candy and confection products to a third party for resale, retail sale or further distribution through any trade method or trade channel.

1.2 **Location of Store:** Franchisee shall operate the Store only at the following address: _____ (the "**Franchised Location**"). If, at the time of execution of this Agreement, the Franchised Location has not been obtained, Franchisor and Franchisee shall, following the acquisition of the Franchised Location, complete and execute Attachment A annexed to this Agreement. Franchisee shall not relocate the Store from the Franchised Location without the prior written consent of Franchisor. Any approval or assistance furnished by Franchisor in selecting and/or approving the Franchised Location is not, and shall not be deemed to be, a guarantee or assurance by Franchisor that the Store shall be profitable or successful.

1.3 **Restrictions:** Franchisee expressly acknowledges and agrees that that the franchise granted herein is only for one (1) Store at the Franchised Location and the Franchisee shall not have the right to sublicense, sublease, subcontract or enter into any management agreement providing for the right to operate the Store or to use the System granted pursuant to this Agreement.

1.4 **Protected Area:** During the initial term of this Agreement, and provided that Franchisee is not in default of this Agreement or any other agreement between Franchisor, its affiliates, and Franchisee, Franchisor shall not own, operate, sell, or issue a franchise for any other franchised unit within an area designated as follows: _____ (the "**Protected Area**"). Except as expressly provided for in this Section 1.4 to the contrary, Franchisee shall have no territorial or protective rights, and Franchisor shall have the right to place a company-owned or franchised unit anywhere it desires. In addition, Franchisor and its affiliates retain the right, among others, in any manner and on any terms and conditions that Franchisor deems advisable, and without granting Franchisee any rights therein:

1.4.1 To own, acquire, establish, and/or operate, and license other to establish and operate, Sweet Factory stores, at any location outside or the Protected Area;

1.4.2 To own, acquire, establish and/or operate, and license other to establish and operate, businesses under other proprietary marks or other systems, whether such businesses are the same, similar, or different from the Store, at any location, whether inside or outside the Protected Area;

1.4.3 To license others to sell or distribute any products or services which bear any proprietary marks, including the Proprietary Marks, at any location outside the Protected Area;

1.4.4 To produce, license, distribute and market Sweet Factory candy and confections, clothing, souvenirs, and novelty items through any outlet, whether inside or outside the Protected Area (regardless of its proximity to the Store), including grocery stores, supermarkets and convenience stores and through any

distribution channel, at wholesale or retail, including by means or the Internet, mail order catalogs, direct mail advertising and other distribution methods;

1.4.5 To own, acquire, establish and/or operate and grant others the right to develop, own, operate and issue franchises and licenses to others to develop, own and operate other methods and channels of distribution utilizing the Proprietary Marks and the System, including, without limitation, toll-free "1-800", "1-888" and "1-877" telephone numbers, domain names, URLs, on-line computer networks and services, the Internet, kiosks, carts, concessions, satellite units, other mobile, remote, limited service or non-permanent facilities or other retail operations as a part of larger retail venues such as department stores, supermarkets, shopping malls or in public areas such as amusement parks, airports, train stations, public facilities, college and school campuses, arenas, stadiums, hospitals, office buildings, convention centers, airlines (in-flight service) and military bases, whether inside or outside the Protected Area; and

1.4.6 To sell Sweet Factory candy and confections to "**National Accounts**". For purposes of this Agreement, "**National Accounts**" shall mean and refer to multi-state businesses that purchase such products as end-users and not as re-sellers.

1.4.7 To market on the Internet and use the Proprietary Marks on the Internet, including all use of websites, domain names, URLs, directory addresses, email addresses, metatags, linking, advertising, co-branding and other arrangements, and in all other forms of electronic media.

1.5 **Modification to System and Manual:** Franchisee acknowledges that the System, Franchisor's Confidential Operations Manual or any other manual loaned to Franchisee by Franchisor under to Section 3.5 (hereinafter collectively referred to as the "**Manual**"), and the products and services offered by the Store may be modified, (such as, but not limited to, the addition, deletion, and modification of menu items, operating procedures, products and services) from time to time by Franchisor. Franchisee agrees to comply, at its expense, with all such modifications, including, without limitation, all requirements to implement the modifications, such as replacement or renovation of equipment, remodeling, redecoration, and modifications to existing improvements, including structural changes. Franchisor shall notify Franchisee of any such System changes. Franchisee shall implement any System changes upon receipt of notice thereof from Franchisor, and shall complete their implementation within such time as Franchisor may reasonably specify. For purposes of this Agreement, System changes shall include, without limitation, changes in any of the categories referred to in Section 7.3.

2. **INITIAL AND EXTENDED TERMS**

2.1 **Initial Term:** The initial term of this Agreement, except as otherwise provided herein, shall commence upon its acceptance and execution by Franchisor, or in the case of an assignment of this franchise, commencing on the date Franchisee assumes ownership of the Franchised Unit, and shall expire ten (10) years from the date Franchisee commences operations at the Store, unless sooner terminated under the terms of this Agreement; however, if the term of the "**Lease**", "**Master Lease**" or "**Sublease**" (as defined in Section 2.2.4 and Section 3.1) for the Franchised Location is for less than ten (10) years, including any extension of the term, the initial term of this Agreement shall be for a period identical to the term of the Lease, Master Lease or Sublease. Franchisee shall have no right or option to extend or renew the term of this Agreement except as provided in Section 2.2. Following the opening of the Store or the assignment of this franchise to Franchisee, Franchisor and Franchisee shall complete and execute **Exhibit A** attached to this Agreement to memorialize the commencement date and expiration date of this Agreement.

2.2 **Options to Extend:** Franchisee shall have the option to extend the term of this Agreement on the terms and conditions set forth in this Agreement, for two (2) additional five (5) year periods, upon written notice given by Franchisee to Franchisor not less than six (6) months nor more than twelve (12) months prior to the scheduled expiration date of the term then in effect provided that each of the following conditions are satisfied:

2.2.1 Franchisee shall, in a manner satisfactory to Franchisor, renovate, refurbish, or reconstruct the Store at its expense prior to the effective date of each extension to conform to the building design, trade dress, color schemes, and presentation of Proprietary Marks to the image then in effect for new of the most recently

remodeled stores under the System, including without limitation, such structural changes, remodeling, and redecoration, and such modifications to existing improvements, as may be necessary or required by law;

2.2.2 Franchisee shall not be in default of any provision of this Agreement, or any other agreement between Franchisee and Franchisor or its affiliates, or any standards set forth in the Manual, and Franchisee shall have complied with all the terms and conditions of this Agreement, the Manual and any other agreements during the term of this Agreement;

2.2.3 Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its affiliates, and shall have timely met those obligations throughout the term of this Agreement;

2.2.4 Franchisee must have the ability to extend the term of Franchisee's lease for the Franchised Location (a "**Lease**") with Franchisee's third-party landlord (a "**Landlord**") or Franchisor must have the ability to extend the term of its lease (the "**Master Lease**") with the landlord (the "**Master Landlord**") of the Franchised Location on terms acceptable to Franchisee and/or Franchisor. Each extended term of this Agreement shall, in no event, exceed five (5) years or the extension term of the Lease, Master Lease or Sublease.

2.2.5 Franchisee shall, at Franchisor's option, execute Franchisor's then-current form of Franchise Agreement and any addenda thereto, for the successor term, which agreement shall supersede this Agreement in all respects, and the terms of which, including, without limitation, the Protected Area, the amount of the royalty fee and advertising fee, may differ materially and be less advantageous to Franchisee than the terms of this Agreement; provided, however, that Franchisor's option as set forth in Sections 15.9-15.11 shall remain in effect;

2.2.6 Franchisee shall comply with Franchisor's then-current qualification and training requirements;

2.2.7 Franchisee shall pay Franchisor a fee for the right to obtain an extended term in an amount equal to one-half (1/2) of the then-current initial franchise fee charged by Franchisor to new franchisees of Franchisor; and

2.2.8 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims which Franchisee may have or believes to have against Franchisor and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement, the Store or the Franchised Location, as well as claims, known or unknown, which are not based on, do not arise from or do not relate to this Agreement, the Store or the Franchised Location but which relate to other franchise agreements, stores, franchised locations, and other agreements between Franchisor or its affiliates and Franchisee which arose on or before the date of the general release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances.

2.2.9 If Franchisor is not offering new franchises, is in the process of revising, amending or renewing Franchisor's form of Franchise Agreement or franchise offering circular or is not lawfully able to offer Franchisee Franchisor's then-current form of Franchise Agreement at the time Franchisee exercises an option to extend the term of this Agreement, Franchisor may offer to renew Franchisee's existing Franchise Agreement upon the terms and conditions set forth in this Agreement for the extended term of the franchise, or may offer to extend the term of this Agreement on a week-to-week basis following the expiration of the term for as long as Franchisor deems necessary or appropriate so that Franchisor may lawfully offer Franchisee Franchisor's then-current form of Franchise Agreement.

2.3. **Continued Compliance:** Franchisee's right to acquire to extend the term of this Agreement shall be subject to Franchisee's continued compliance with the terms and conditions of this Agreement as well as Franchisee's compliance with the conditions set forth in Section 2.2.

2.4. **Termination at End of Term:** If Franchisee does not elect to extend the term of this Agreement, this Agreement shall terminate at the end of the term then in effect.

3. DUTIES OF FRANCHISOR

3.1 **Franchised Location:** Franchisor and Operating Company may assist Franchisee in identifying and selecting a site for the Franchised Location if a site has not been selected and approved as the Franchised Location as of the date of this Agreement. Notwithstanding the assistance of Franchisee in identifying and selecting a site for the Franchised Location, the final decision regarding the selection and approval of a site and the terms for the acquisition of same shall be made solely by Operating Company and Franchisor.

3.2 **Store Plans:** Franchisor shall make available, at no charge to Franchisee, the then-current standard plans and specifications for a prototype Sweet Factory store, including exterior and interior design and layout, fixtures, furnishings, and signs.

3.3 **Supervision and Assistance:** Franchisor shall provide such initial and continuing assistance to Franchisee as Franchisor deems advisable.

3.4 **Training:** Franchisor shall offer an initial training program to Franchisee and on (1) management employee of Franchisee as provided in Franchisor's current Initial Training Agreement and, during the term of this Agreement, shall make available other training programs for Franchisee to attend, at Franchisee's expense, as Franchisor deems necessary and appropriate.

3.5 **Manuals:** In order to protect the reputation and goodwill of Franchisor, to maintain uniform standards of the products, services, and operations offered and sold under the Proprietary Marks, and to promote the goodwill of all Sweet Factory Stores and the System, Franchisor has created the Manual. Franchisor shall loan one copy of the Manual to Franchisee during the term of this Agreement. Franchisor may, from time to time in its sole discretion, revise the Manual to incorporate System changes. Franchisee shall promptly implement any System change upon receipt of notice thereof from Franchisor, and shall complete their implementation within the time Franchisor may reasonably specify.

3.6 **Inspection and Evaluation:** Franchisor shall conduct, when and as frequently as it deems advisable, inspections of the Store and evaluations of the Store's management and operations, in order to assist Franchisee and to maintain the System's standards of quality, appearance, and service.

3.7 **Supplies and Suppliers:** Franchisor shall provide Franchisee with a list of its approved and designated suppliers of goods and services for the equipping and operation of the Store following the parties' execution of the Agreement and shall further provide Franchisee with updated lists of suppliers periodically during the term of this Agreement.

3.8 **Consultation and Advisory Services:** Franchisor may periodically consult with Franchisee from time to time concerning the operation of the Store. Franchisor shall at reasonable times, upon request and at no charge to Franchisee, furnish counseling and advisory services to Franchisee with respect to the planning, opening and operation of the Store, including consultation and advice regarding operating problems and procedures, new developments and improvements in the System, record keeping, purchasing, marketing, promotion and merchandising, business forms and the interpretation of policy as set forth in the Manuals, as the same may from time to time be amended, and other directives of Franchisor. The advice to be rendered pursuant to this Section 3.8 shall be general advice designed to assist Franchisee in the operation of the Store. Franchisee acknowledges and agrees that Franchisor, by rendering consultation and advisory services, does not thereby guarantee the success or profitability of the Store.

3.9 **Delegation of Obligations:** Franchisee acknowledges and agrees that any duty or obligation imposed on Franchisor by this Agreement may be performed by any designee, employee, or agent of Franchisor, as Franchisor may direct.

3.10 **Franchisor's Rights In Fulfilling Obligations:** In fulfilling its obligations to Franchisee pursuant to this Agreement, and in conducting any activities or exercising any rights pursuant to this Agreement or on behalf of the System, Franchisor (and its affiliates) shall have the right:

3.10.1 To take into account, as it sees fit, the effect on, and the interests of, other stores in which Franchisor has an interest and on Franchisor's (and its affiliates') own activities;

3.10.2 To share market and product research, and other proprietary and non-proprietary business information, with other stores in which Franchisor has an interest, or with Franchisor's affiliates; and/or

3.10.3 To introduce proprietary and non-proprietary products or operational equipment used by the System into other businesses in which Franchisor or its affiliates have an interest, and to allocate new developments between and among these businesses, as Franchisor sees fit. Franchisee understands and agrees that all obligations of Franchisor under this Agreement are subject to this Section 3.10, and that nothing in this Section 3.10 shall affect in any way Franchisee's obligations under this Agreement.

3.11 **Responsibility of Franchisee:** Notwithstanding the provisions of this Section 3, Franchisee shall be and remain responsible for the operation of the Store at all times and shall hold Franchisor, its affiliates and their respective directors, officers, employees and agents, harmless therefrom. Franchisee shall not look to Franchisor for performance or regular operational duties.

4. **FEES**

4.1 **Initial Franchise Fee:** Franchisee shall pay to Franchisor an initial franchise fee of \$____,000 payable upon execution of this Agreement. The initial fee shall be deemed fully earned and non-refundable when paid, in consideration of administrative and other expenses incurred by Franchisor in entering into this Agreement, and for Franchisor's lost or deferred opportunity to enter into this Agreement with others; provided, however, that if this Agreement is terminated by Franchisor as provided in Section 14.2.1 or Section 14.2.11, Franchisor shall refund \$____,000 of the initial franchise fee to Franchisee.

4.1.1 Any refund due to Franchisee shall be paid within thirty (30) days after the date on which this Agreement is terminated. Payment by Franchisor and acceptance by Franchisee of such refund shall constitute a release of any and all claims which each may have against the other (including the respective partners, shareholders, directors, agents, or employees thereof) arising out of or in connection with the performance or termination of this Agreement. In this regard, Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims which Franchisee may have or believes to have against Franchisor and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement, the Store or the Franchised Location which arose on or before the date of the general release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances.

4.1.2 Franchisor and Franchisee acknowledge and agree that the actual damages to be suffered by Franchisor and/or Operating Company in the circumstances described in Section 14.2.1 or Section 14.2.11 are difficult, if not impossible to determine, and that, under all the facts and circumstances, this calculation of Franchisor's potential damages is a reasonable, good-faith estimate of these damages.

4.2 **Royalty Fee:** Franchisee shall pay to Franchisor, without deduction, abatement or offset, a continuing weekly royalty fee in an amount equal to five percent (5%) of the Gross Revenue of the Store. "Gross Revenue" shall mean all revenue from the sale of all candy and confection products and services and all other income of every kind and nature related to the Store, and business interruption insurance, whether for cash or credit, and regardless of collection in the case of credit, less any sales taxes or other taxes collected by Franchisee from its customers for transmittal to the appropriate taxing authority.

4.3 **Advertising Fee:** Franchisee shall make weekly expenditures and contributions for advertising and promotions as specified in Section 11 without deduction, abatement or offset.

4.4 **Time of Payments:** All payments required by Sections 4.2 and 4.3 shall be paid on a weekly basis, each Wednesday, calculated on the Gross Revenue for the preceding week. For purposes of this Agreement, the week's operating, accounting, and billing period for Franchisee shall end each Sunday at the close of business. All

payments required by Sections 4.2 and 4.3 shall be accompanied by such reports or statements required under Section 10.5. Any report or payment not actually received by Franchisor on or before Wednesday shall be deemed overdue if not postmarked at least by one day prior thereto. If any payment under this Agreement is overdue, Franchisee shall pay to Franchisor, immediately upon demand, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of eighteen percent (18%) per annum, calculated weekly, or the maximum rate permitted by law, whichever is less. Entitlement to such interest shall be in addition to any other remedies Franchisor may have including, without limitation, the right of set-off to withdraw or retain, from time to time and without notice to Franchisee, any amounts due and unpaid by Franchisee from any accounts or amounts otherwise payable to Franchisee. Franchisee shall not be entitled to set-off any payments required to be made under this Section 4 against any monetary claim it may have against Franchisor.

4.5 Direct Debit Deductions and Processing of Credit Card Sales:

4.5.1 Franchisee hereby authorizes Franchisor to initiate debit entries and/or credit collection entries to Franchisee's designated primary business operating checking or savings account for the payment of royalty fees, advertising fees, rent and rent-related expenses, and all other sums that may become due to Franchisor, or its affiliates, from Franchisee. If Franchisor elects to utilize this method of payment of such obligations, Franchisee shall immediately execute such authorizations as Franchisor, its bank and Franchisee's bank shall require, including, without limitation, the Authorization Agreement for Prearranged Payments (Direct Debits) in the form attached hereto as Attachment B, and shall make funds available for withdrawal by Franchisor by electronic transfer on such dates of each month as Franchisor shall designate throughout the term of this Agreement.

4.5.2 Franchisor, and its affiliates shall have the right during the term of this Agreement, upon thirty (30) day prior notice, to require Franchisee to process Franchisee's credit card sales transactions which occur at the Franchised Unit with Franchisor, or its affiliates. In such event, Franchisee hereby authorizes Franchisor and its affiliates to credit any net amount due to Franchisee following the settlement of such credit card transactions against all royalty fees, marketing fees, rent, rent-related expenses, or other sums which are then due and owing to Franchisor, or its affiliates, from Franchisee under the Franchise Agreement, any Sublease in effect for the Franchised Unit or under any other agreement between Franchisor, or its affiliates, and Franchisee, for any period prior to the settlement of such credit card sales transactions. Franchisor shall bill Franchisee for royalty fees, marketing fees, rent, rent-related expenses, and other sums that may become due to Franchisor, or its affiliates, which exceed the net credits or will promptly remit to Franchisee any amounts in excess of such expenses which remain after the settlement of such credit card sales transactions. Franchisee shall remit any amount due to Franchisor, or its affiliates, which exceed the net credits within ten (10) day after billing thereof. Franchisee acknowledges and agrees that any default by Franchisee under this Section 4.5.2 shall constitute a default by Franchisee under this Agreement, any Sublease in effect for the Franchised Location and any other agreement between Franchisor, or its affiliates, and Franchisee. Franchisee shall defend, indemnify and hold Franchisor, and its affiliates, harmless from and against all debts, liabilities, claims, demands and causes of action, of any nature or description, which in any way, relate to or arise out of this processing of credit card sales transactions at the Franchised Unit.

4.6 **Security Interest:** In order to secure payment of all royalty fees, advertising fees, rent and rent-related expenses, and all other sums that may become due to Franchisor, or its affiliates, from Franchisee and to secure performance by Franchisee of all obligations of any kind, whenever and however incurred, in favor of Franchisor, or its affiliates:

4.6.1 Franchisee hereby grants Franchisor a security interest in and to all leasehold improvements, fixtures, furnishings and equipment, inventory and supplies located at or used in connection with the Store, now or hereafter acquired by Franchisee, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Franchisee to use the Proprietary Marks, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Franchisee under this Agreement for the use of the Proprietary Marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights. Franchisee hereby authorizes Franchisor to, prepare and file all Uniform Commercial Code financing statements and other documents necessary or desirable to evidence, perfect and continue the priority of this security interest under the Uniform Commercial Code.

4.6.2 If Franchisee is and remains in good standing under this Agreement and all other agreements with Franchisor, and its affiliates, Franchisor will consent to Franchisee's grant of an additional security interest in the Store or in any of the assets of the Store if the conditions set forth in Section 13.4 are met.

4.6.3 If Franchisee is in default of any of the terms and conditions of this Agreement or any other agreements between Franchisor, and its affiliates, and Franchisee, Franchisor may, in its discretion, exercise its rights with respect to its security interest. In such event, Franchisee shall be and remain liable for any deficiency remaining due to Franchisor and shall be entitled to recover any surplus which results after application of the proceeds derived from the enforcement of Franchisor's security interest.

4.7 **Reimbursement of Monies Paid on Behalf of Franchisee:** Franchisee shall pay to Franchisor, within fifteen (15) days of any written request by Franchisor which is accompanied by reasonable substantiating material, any monies which Franchisor has paid, or has become obligated to pay, on behalf of Franchisee, by consent or otherwise under this Agreement.

4.8 **Application of Fees:** Notwithstanding any designation by Franchisee, Franchisor shall have the sole discretion to apply any payments made by Franchisee to any past due indebtedness of Franchisee for Royalty Fees, Advertising Fees, rent and rent-related expenses, interest or any other indebtedness, in amounts and in the order as Franchisor shall determine.

4.9 **Gross-Up Fees:** To insure that Franchisor receives a full five percent (5%) of Gross Revenue as a royalty fee and the full advertising fee to which Franchisor may be entitled, as the amount thereof may vary from time to time, Franchisee shall pay Franchisor, upon demand, whether in arrears, in advance, in a lump sum or in the same manner as royalty and advertising fees are paid to Franchisor, the amount of all taxes paid by Franchisor to any governmental authority on revenue earned or collected by Franchisor based upon Franchisee's use of Franchisor's intellectual property or other intangibles or based upon the existence of this Agreement, within the governmental authority's domain during each of Franchisor's fiscal years throughout the entire term of this Agreement.

5. **RENOVATION OR CONSTRUCTION OF THE FRANCHISED LOCATION**

5.1 **Approval of Plans:** Franchisee shall, at its own expense, submit final plans to Franchisor for approval within sixty (60) days of receiving site approval from Franchisor. The plans shall be deemed disapproved unless they have been expressly approved in writing by Franchisor within thirty (30) days from the date that Franchisor receives the required plans. Before commencing any renovation or construction, Franchisee shall employ a licensed architect and engineer to prepare preliminary and final architectural and engineering drawings and specifications of the premises in accordance with Franchisor's standard architectural plans and specifications for a prototype Sweet Factory store. Franchisee shall, at its own expense, commence renovation or construction of the Franchised Location within thirty (30) days after approval by Franchisor of Franchisee's final plans. Franchisee shall also provide Franchisor with a construction schedule for the renovation or construction of the Franchised Location which shall provide for the completion of renovation or construction of the Franchised Location and the opening of the Store for business within not more than six (6) months after the date Franchisee executes a Lease or Sublease for the Franchised Location. Preliminary and final drawings and specifications, and the construction schedule, shall be submitted to Franchisor and shall not thereafter be implemented, changed, or modified without the prior written approval of Franchisor, which approval shall be deemed to be granted, unless Franchisor notifies Franchisee of required changes, within thirty (30) days of Franchisor's receipt of such preliminary drawings, specifications, and schedule. Franchisee also shall use a licensed general contractor for all construction, renovations, modifications, or improvements. Franchisee shall provide all information relating to such construction (including the costs of any renovations, modifications, or improvements) as Franchisor may reasonably request. Notwithstanding the foregoing, if Franchisor and Franchisee mutually agree to do so, Franchisor or a subsidiary or affiliate may oversee the initial construction and equipping of the Franchised Unit for and on behalf of Franchisee and at Franchisee's expense in consideration for the payment by Franchisee of a construction management fee equal to the greater of five percent (5%) of the total costs to construct the Store or \$5,000.

5.2 **Permits, Clearances, and ADA Compliance:** Franchisee shall be responsible, at Franchisee's expense, for obtaining all permits, and clearances, including, but not limited to, certificates of occupancy and all clearances and fire and health department approvals, which may be required by federal, state, or local laws, ordinances,

or regulations. Franchisee shall certify in writing to Franchisor that all classifications, permits, and clearances have been obtained. Franchisee shall also take reasonable steps to insure the premises of the Store comply with all applicable requirements of the Americans with Disabilities Act.

5.3 **Requirements During Construction:** Franchisee shall provide written notice to Franchisor of the date construction commenced within seven (7) days after commencement and shall thereafter provide to Franchisor a monthly progress report signed by Franchisee, its architect, and its general contractor warranting that construction is proceeding on schedule and in accordance with the approved final plans and with all applicable laws, ordinances, and regulations. During the construction period, Franchisor and its agents shall have the right, but not the obligation, to inspect the site at all reasonable times. Franchisee shall, at its expense, complete construction and open the Store for business (including all exterior and interior carpentry, electrical, plumbing, heating, ventilation, air conditioning, painting, and finishing work, and installation of all furniture, fixtures, equipment, and signs) in accordance with the final plans and construction schedule approved by Franchisor, within six (6) months after Franchisee executes the Agreement (exclusive of time lost by reason of strikes, lockouts, fire, and other casualties and acts of God). Franchisor shall not unreasonably withhold its consent to Franchisee's request for additional time to complete construction.

5.4 **Approval for Store Opening:** Franchisee shall notify Franchisor of the anticipated construction completion date and, within a reasonable time after construction is completed, Franchisor shall have the right, but not the obligation, to conduct a final inspection of the Store. Franchisee shall not open the Store without the express written authorization of Franchisor, which authorization may be conditioned upon Franchisee's strict compliance with the specifications of the approved final plans and System standards and completion of the pre-opening training required by Franchisor and Franchisee's compliance with staffing and other requirements set forth in the Manual and applicable to the operations of the Store. Franchisee shall open the Store for business following the receipt of a certificate of occupancy and no more than ten (10) days after receipt of Franchisor's written authorization to open.

5.5 **Insurance During Construction:** Franchisee shall procure, prior to the commencement of any construction or the renovation of the Store, and shall maintain in full force and effect at all times during any construction or renovation, at Franchisee's expense, an insurance policy or policies protecting Franchisee, Franchisor, and its affiliates, and their respective partners, shareholders, directors, agents, and employees, against any demand or claim with respect to personal or bodily injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring upon or in connection with the construction or renovation of the Store. Such policy or policies shall be written by a responsible insurer or insurers acceptable to Franchisor, shall comply with the requirements prescribed by the Lease or Master Lease and Sublease and by Franchisor in writing at the time such policies are obtained (including those provisions of Section 12 of this Agreement specified by Franchisor), and shall include, at a minimum, the coverages and amounts specified by Franchisor in the Manual or otherwise in writing.

6. **TRAINING**

6.1 **Pre-Opening Training:** Prior to the opening of the Store, Franchisee (or, if Franchisee is a corporation, partnership, or limited liability company, a principal of Franchisee acceptable to Franchisor and who owns at least a ten percent (10%) equity interest in Franchisee) and at least one (1) management employee approved by Franchisor, shall attend and complete to Franchisor's satisfaction Franchisor's initial training program (or segments thereof at Franchisor's discretion) for management personnel offered by Franchisor. If the Store is the first Sweet Factory Store to be operated by Franchisee, Franchisor shall provide training, instructors, a training manual, and other materials to Franchisee and one (1) person in accordance with the terms of Franchisor's Initial Training Agreement for an initial training fee of \$5,000; Franchisee shall pay a fee of \$3,000 for each additional attendee sent by Franchisee. Except as stated in the preceding sentence, Franchisee shall be responsible for any and all other expenses

incurred in connection with sending its management personnel to such training including, without limitation, the costs of transportation, lodging, meals, and any wages. Franchisor shall, in its sole discretion, select the time and location of the initial training program. During the term of this Agreement, Franchisee shall always employ, on a full-time basis in the operation of the Store, at least one (1) management employee who has successfully completed the minimum level of training specified by Franchisor in the Manual or otherwise in writing. All management personnel shall be dedicated exclusively to the Sweet Factory brand. For the first and second Sweet Factory stores developed by Franchisee, for approximately two (2) days prior to the opening of each Store and for approximately two (2) days thereafter, Franchisor shall provide Franchisee, at Franchisor's expense, with the services of Franchisor's training personnel (up to a maximum of two (2) to facilitate proper operation of the Store during the "opening period" and to assist in correcting any operational problems that may arise. For the third and any subsequent Sweet Factory store developed by Franchisee, Franchisor shall not provide to Franchisee any of Franchisor's personnel to assist in connection with Franchisee's opening of such Store. Franchisee shall be responsible for any and all expenses incurred by Franchisor's training personnel (including the costs of transportation, moderately-priced lodging and meals, but not including wages) in connection with providing training or assistance during the opening of a Store.

6.2 **Additional Training:** Franchisee and Franchisee's management personnel and other employees also shall attend such additional courses, seminars, and other training programs as Franchisor may reasonably require from time to time. Franchisee shall be responsible for all expenses incurred in connection with attending and sending employees to such training including, without limitation, the costs of transportation, lodging, meals, training programs and materials and any wages. Franchisor shall, in its sole discretion, select the time and location of all additional training.

6.3 **Remedial Training:** If Franchisor determines it to be necessary, Franchisor may provide Franchisee with remedial training or assistance subject to the availability of Franchisor's personnel. Franchisee shall pay Franchisor any fee which may be charged by Franchisor to Franchisee and other franchisees to defray the direct costs of providing this remedial training. In addition, Franchisee shall be responsible for any and all, other expenses incurred in connection with sending Franchisee's employees to such remedial training including, without limitation, the cost of transportation, lodging, meals, training materials and any wages. Franchisor shall, in Franchisor's sole discretion, select the time and location of all remedial training.

7. **DUTIES OF FRANCHISEE**

7.1 **Importance of System Standards:** Franchisee understands and acknowledges that every detail of the System and the Store is essential to Franchisee, Franchisor, and other System franchisees in order to: (a) develop and maintain quality operating standards, (b) increase the demand for the products and services sold by all franchisees operating under the System, and (c) protect Franchisor's reputation and goodwill. Franchisee shall maintain Franchisor's high standards with respect to facilities, services, products, and operations.

7.2 **Use of Franchised Location:** Franchisee shall utilize the Franchised Location solely for the operation of the Store; shall keep the Store open and in normal operation for minimum hours and days as Franchisor may specify in the Manual or otherwise in writing; and shall refrain from using or permitting the use of the premises for any other purpose or activity.

7.3 **System Standards:** To insure that the highest degree of quality and service is maintained, Franchisee shall operate the Store in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manual or otherwise in writing. Franchisee shall refrain from: (a) deviating from such standards, specifications, and procedures with Franchisor's prior written consent, and (b) otherwise operating in any manner which reflects adversely on the Proprietary Marks or the System. Without limiting the generality of the foregoing, Franchisee agrees:

7.3.1 To maintain in sufficient supply, and use at all times, only such products, equipment, materials, signs and supplies as conform to Franchisor's standards and specifications; and shall refrain from using non-conforming items;

7.3.2 To sell or offer for sale only such products (which term shall include logoed merchandise) and services as meet Franchisor's uniform standards of quality, as have been expressly approved for sale in writing

by Franchisor; shall sell or offer for sale, all candy and confection products, and services required by Franchisor in the Manual or otherwise in writing as being part of the System; shall not deviate from Franchisor's methods, standards, and specifications regarding, without limitation, quality and dimensions of products sold; and shall discontinue selling and offering for sale any products or services which Franchisor may, in its sole discretion, disapprove in writing at any time.

7.3.3 To purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, décor, signs, and other items as Franchisor may reasonably direct from time to time in the Manual or otherwise in writing; and shall refrain from installing or permitting to be installed on or about the Franchised Location, any fixtures, furnishings, equipment, décor, signs, vending or game machines or other items not previously approved in writing as meeting Franchisor's standards and specifications.

7.4 Purchases of Products, Equipment, Supplies, and Materials:

7.4.1 Franchisee shall purchase all products, equipment, supplies and materials used or sold by the Store, (which include those which incorporate the Proprietary Marks or the Proprietary Products solely from suppliers (including Franchisor, Operating Company, and their affiliates, and other manufacturers, wholesalers, and distributors) who demonstrate, to Franchisor's continuing reasonable satisfaction, the ability to meet Franchisor's reasonable standards and specifications for such items, who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably, and who have been approved by Franchisor in the Manual or otherwise in writing and thereafter disapproved. Franchisee acknowledges and agrees that Franchisor, Operating Company and/or their affiliates may negotiate purchase arrangements with suppliers for Franchisee's benefit and may derive revenue or obtain rebates, bulk pricing discounts or allowances for their own account from approved or designated suppliers if rebates or other considerations become available because of Franchisee's purchases of products or services. These rebates and/or allowances will generally be based upon a percentage of revenue derived from Sweet Factory franchisee purchases, will be included in Franchisor's general revenue, and may be used by Franchisor for a variety of purposes including ongoing programs, education, marketing, advertising, seminars and conferences, the handling of inquiries and complaints from franchisee's customers and for general and administrative expenses. Franchisor may use rebate and allowance funds received from Sweet Factory suppliers for any purpose in its sole and absolute discretion.

7.4.2 If Franchisee desires to purchase products from other than approved suppliers, Franchisee shall submit to Franchisor a written request to approve the proposed supplier, together with such evidence of conformity with Franchisor's specifications as Franchisor may reasonably require, or shall request the supplier itself to do so. Franchisor shall have the right to inspect and evaluate the supplier's facilities and products to be supplied, and Franchisee shall pay all of Franchisor's reasonable expenses incurred in so doing. Franchisor may from time to time re-inspect and re-evaluate the facilities and products of any approved supplier and revoke its general approval or particular products or suppliers when Franchisor determines, in its sole discretion, that such products or suppliers no longer meet Franchisor's standards. Upon receipt of written notice of such revocation, Franchisee shall cease to sell any disapproved products and cease to purchase from any disapproved supplier.

7.4.3 All goods, products, and supplies purchased from Franchisor or its affiliates shall be purchased in accordance with the purchase order format issued from time to time by Franchisor. Franchisor may change the prices, delivery terms, freight charges and other terms relating to its sale of goods, services, products and supplies to Franchisee on prior written notice, provided, that such prices shall be the same as the prices charged to similarly situated franchisees and which shall be reasonable based upon the costs associated with such goods and services. Franchisor in its discretion, may discontinue the sale of any goods or services at any time if in Franchisor's judgment its continued sale becomes unfeasible, unprofitable, or otherwise undesirable. All product orders by Franchisee shall be subject to acceptance by Franchisor at Franchisor's designated offices, and Franchisor reserves the right to accept or reject, in whole or in part, any order placed by Franchisee. Franchisee shall be responsible for the payment of all costs and freight charges for goods and services (including, without limitation, the opening inventory for the Store) purchased from Franchisor or its affiliates. Franchisee shall submit to Franchisor, upon written request, financial statements which contain sufficient information to enable Franchisor to determine the credit limits, if any, to be extended to Franchisee. Franchisor, in its sole discretion, may establish the credit terms, if any, upon which it will accept Franchisee's orders, any may require Franchisee to pay for orders on a cash-in-advance or cash-on-delivery basis.

7.4.4 Each order placed by Franchisee, whether oral or written, for any product shall be deemed to incorporate all of the terms and conditions of this Agreement, shall be deemed subordinate to this Agreement in any instance where any term or condition of such order conflicts with any term or condition of this Agreement, and shall include such information as Franchisor may from time to time specify, and shall be submitted on such form of purchase order as may be prescribed by Franchisor from time to time. No purchase order submitted by Franchisee shall contain any terms except as approved in writing by Franchisor, nor be deemed complete unless all of the information required by the prescribed purchase order form, as revised from time to time, is provided by Franchisee. No new or additional term or condition contained in any order placed by Franchisee shall be deemed valid, effective or accepted by Franchisor unless such term or condition shall have been expressly accepted by Franchisor in writing. Interest shall accrue on any unpaid purchase orders at the maximum interest rate permitted by applicable law.

7.4.5 Franchisor shall not be liable to Franchisee on account of any delay or failure in the manufacture, delivery, or shipment of goods or products caused by Force Majeure or other events or circumstances beyond Franchisor's reasonable control including such events as labor or material shortages, conditions or supply and demand, import/export restrictions, or disruptions in Franchisor's supply sources.

7.4.6 Franchisor may act as a supplier of goods, services, products, and/or supplies purchased by Franchisee, may designate itself as the sole supplier of any such goods or services. On the expiration or termination of this Agreement, or in the event of any default by Franchisee of this Agreement, Franchisor shall not be obliged to fill or ship any orders then pending or, in the case of termination or non-renewal, made any time thereafter by Franchisee, and Franchisor may notify its approved suppliers of any impending termination or expiration of this Agreement and may, among other things, instruct such suppliers to deliver only such quantity of Proprietary Products as is reasonably necessary to supply Franchisee's needs prior to the expiration or termination date of this Agreement.

7.5 **Cooperation with Inspection:** Franchisee shall permit Franchisor or its agents, at any reasonable time, to remove from the Franchised Location representative samples of any ingredients, products, materials, supplies, and paper goods used in the operation of the Store, without payment therefore, in amounts reasonably necessary for testing by Franchisor or an independent laboratory, for the purposes of determining whether the samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Franchisee Agreement, Franchisor may require Franchisee to bear the cost of testing if the supplier has not been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.

7.6 **Maintenance of Franchised Location:** Franchisee shall maintain the Franchised Location (including, adjacent public areas) in a clean, orderly condition and in excellent repair; and, in connection therewith, Franchisee shall, at its expense, make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting, repairing, and replacing of obsolete or deteriorated signs, furnishings, fixtures, equipment, and décor as Franchisor may reasonably direct by written notice to Franchisee. Franchisee shall complete all work specified in any such notice within the time frame Franchisor may reasonable specify.

7.7 **Re-Imaging of Franchised Location:** Franchisee shall at its own expense, make such alterations, additions, or modifications to the Franchised Location as Franchisor may reasonably require to accommodate changes made by Franchisor to the System. Franchisee shall have ninety (90) day from receipt of notice from Franchisor regarding re-imaging requirements in which to make the required alterations, additions, or modifications to the Franchised Location.

7.8 **Refurbishment of Franchised Location:** At Franchisor's request, but not more often than once every five (5) years, but not within three (3) years after the purchase of existing Sweet Factory store from the Operating Company (and in addition to any work which Franchisee may undertake pursuant to other sections of this Agreement), unless sooner required by the Lease or Master Lease and Sublease, Franchisee shall refurbish the Franchised Location, at Franchisee's own expense, to conform to the design, trade dress, color schemes and presentation of the Proprietary Marks in a manner consistent with the then-current public image for new or remodeled SWEET FACTORY stores in the System, including, without limitation, replacement or renovation or equipment; remodeling, redecoration, and modifications to existing improvements and reasonable structural changes that Franchisor may reasonably require or that may be required by law. The cost to Franchisee for such refurbishment shall not exceed \$10,000-\$80,000 for refurbishment of the interior and exterior of the Store.

7.9 **Franchisee Employee Policy:** After the Store has opened to the public, Franchisee shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards as Franchisor may establish from time to time in the Manual or otherwise in writing. In the event Franchisee or its affiliates own and operate multiple Sweet Factory stores, Franchisor may require, in its sole discretion, Franchisee to employ a general operations manager responsible for the oversight of operations at all Sweet Factory stores owned and operated by Franchisee or its affiliates. Franchisee shall be solely responsible for all employment decisions and functions of the Store, including, without limitation, those related to hiring, firing, training, wage and hour requirements, record keeping, supervision, and discipline of employees, and regardless of whether Franchisee receives advice from Franchisor on these subjects.

7.10 **Modification to the System:** Franchisee shall not implement any modification to the System without the express prior written consent of Franchisor. Franchisee shall notify Franchisor in writing of any proposed modification, and shall provide to Franchisor such information as Franchisor requests regarding such modification. Franchisor shall have the right to incorporate the modification into the System without compensation to Franchisee.

7.11 **Compliance with Governmental Regulations:** Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Store, and shall timely obtain any and all permits, certificates, or licenses necessary for the lawful operation of the Store including, without limitation, licenses to do business, fictitious name registration, sales tax permits, certificates of occupancy, health permits and fire clearances.

7.12 **Lease, Master Lease or Sublease:** Franchisee shall comply with all terms of its Lease with a Landlord, or its Sublease with Operating Company for the Franchised Location and with all other agreements affecting the operation of the Store and shall refrain from any activity which may jeopardize the rights of Operating Company or Franchisee to remain in possession of, and/or to renew the Lease, Master Lease, or Sublease for, the Franchised Location. If Franchisee will occupy the premises of a Store under a Lease with a Landlord, Franchisee shall, prior to the execution of the Lease, submit the Lease to Franchisor for Franchisor's prior written approval. Franchisee shall furnish Franchisor with a copy of any executed Lease within fifteen (15) days after execution. Franchisor's approval of the Lease, which shall not be deemed to be an endorsement of the legal or business terms of the Lease, may be conditioned upon the inclusion of any one or more of the following terms and conditions:

7.12.1 The initial term of the Lease, or the initial term together with extension terms, shall be for not less than ten (10) years;

7.12.2 A provision consenting to Franchisee's use of such Proprietary Marks and signage as Franchisor may now or hereinafter prescribe for the Store;

7.12.3 A provision which restricts the use of the leased premises solely to the operation of the Store;

7.12.4 A provision which prohibits Franchisee from subleasing or assigning all or any part of its occupancy rights or extending the term of or renewing the Lease without Franchisor's prior written consent;

7.12.5 A provision requiring that the Landlord provide to Franchisor copies of any and all notices of defaults given to Franchisee under the Lease;

7.12.6 A provision granting Franchisor the right to enter the Store to make modifications necessary to protect the Proprietary Marks or the System, or to cure any default under this Agreement or under the Lease; and

7.12.7 A provision granting Franchisor or Franchisor's designee the option exercisable within fifteen (15) days after receipt of any notice of default or termination from the Landlord, without the Landlord's further consent, to assume all of Franchisee's rights under the Lease, including the right to assign or sublease the Franchised Location and the right to exercise all outstanding renewal options in accordance with the provisions of the Lease.

7.13 Participation in Programs: Franchisee shall at times cooperate with Franchisor and other franchisees of Franchisor and shall actively participate in any and all sales, public relations, advertising, cooperative advertising and purchasing programs or promotional programs which may be developed and implemented by Franchisor which call for the cooperation of Franchisee and other franchisees of Franchisor and shall further cooperate in any additional programs which may be established and designated by Franchisor from time to time including participating in market research programs, the System, and shall purchase a reasonable quantity of new products for test-marketing, promote the sale of the tested products and provide Franchisor with timely reports and test results of such programs for its review, analysis and compilation.

7.14 Test Marketing: Franchisor may, from time to time, authorize Franchisee to test market products and/or services in connection with the operation of the Store. Franchisee shall cooperate with Franchisor in connection with the conduct of such test and shall comply with Franchisor's rules and regulations established from time to time in connection herewith.

7.15 Customer Reporting; Comment Cards, Coupons and Gift Certificates: At Franchisor's request, Franchisee shall use reasonable efforts to secure the names, addresses and other information reasonably required by Franchisor, of Franchisee's customers at the Store and shall allow information to be used by Franchisor. Franchisee may not divulge such customer names, addresses or other information, with or without remuneration, to any third party. Franchisee shall respond promptly to each customer inquiry or complaint and resolve all reasonable complaints to the customer's satisfaction. Franchisee shall use and display in the Store during all operating hours customer comment cards in the manner specified in the Manuals. Franchisee shall, from time to time, purchase from Franchisor or a supplier, and maintain in the Store, a supply of customer comment cards reasonably adequate to meet Franchisee's needs.

7.16 Improvements: If Franchisee develops any new concept, process or improvement in the System (an "Improvement"), Franchisee shall promptly notify Franchisor and provide Franchisor with all necessary related information, without compensation. Any such Improvement shall become the sole property of Franchisor and Franchisor shall be the sole owner of all related intellectual property rights. Franchisee hereby assigns to Franchisor any rights Franchisee may have or acquire in the Improvements, including the right to modify the Improvement, and Franchisee waives and/or releases all rights of restraint and moral rights therein and thereto. Franchisee shall assist Franchisor in obtaining and enforcing the intellectual property rights to any such Improvement in any and all countries and further agrees to execute and provide Franchisor with all necessary documentation for obtaining and enforcing such rights. Franchisee hereby irrevocably designates and appoints Franchisor as Franchisee's agent and attorney-in-fact to execute and file any such documentation and to do all other lawful acts to further the prosecution and issuance of intellectual property right related to any Improvement. If the foregoing provisions of this Section 7.16 are found to be invalid or otherwise unenforceable, Franchisee hereby grants Franchisor a worldwide, perpetual, non-exclusive, fully-paid license to use and sublicense the use of the Improvement to the extent such use or sublicense would, absent this Agreement, directly or indirectly infringe Franchisee's rights therein.

7.17 Co-Branding: Franchisee may not engage in any co-branding in or in connection with the Store except with Franchisor's prior written consent. Franchisor shall not be required to approve any co-branding chain or arrangement except in its discretion, and only if Franchisor has recognized that co-branding chain as an approved co-brand for operation within Sweet Factory stores. "Co-Branding" includes the operation of an independent business, product line or operating system owned or licensed by another entity (not Franchisor) that is featured or incorporated within the Store or is adjacent to the Store and operated in a manner which is likely to cause the public to perceive it to be related to the Store licensed and franchised hereunder.

7.18 **Authorization to Release Information:** Franchisee hereby authorizes (and agrees to execute any other documents deemed necessary to effect such authorization) all banks, financial institutions, businesses, suppliers, manufacturers, contractors, vendors and other persons or entities with whom Franchisee does business to disclose to Franchisor and financial information in their possession relating to Franchisee or the Store which Franchisor may request. Franchisee further authorizes Franchisor to disclose to prospective franchisees or other third parties data from Franchisee's reports if Franchisor determines, in Franchisor's sole discretion, that such disclosure is necessary or advisable.

7.19 **Adequate Reserves and Working Capital:** Franchisee shall, at all times, maintain adequate reserves and working capital sufficient for Franchisee to fulfill all of Franchisee's obligations under this Agreement and to cover the risks and contingencies of the franchised business for at least three (3) months.

7.20 **Notification of Legal Proceedings and Crisis Management Events:** Franchisee shall notify Franchisor in writing within ten (10) days after Franchisee receives actual notice of the commencement of any investigation, action, suit, or other proceeding, or the issuance of any order, writ, injunction, award, or other decree of any court, agency, or other governmental authority that pertains to the Store or that may adversely affect Franchisee's operation of the Store or ability to meet its obligations hereunder. Upon the occurrence of a "**Crisis Management Event**" (as defined below) Franchisee shall immediately inform Franchisor's President (or as otherwise instructed in the Manuals) by telephone. Franchisee shall cooperate fully with Franchisor with respect to Franchisor's response to the Crisis Management Event. "**Crisis Management Event**" means any event that occurs at or about the Store that has or may cause harm or injury customers or employees, such as contagious diseases, natural disasters, terrorist acts, shootings, or any other circumstance which may damage the System, the Proprietary Marks, or image or reputation or Franchisor or its affiliates.

8. **PROPRIETARY MARKS**

8.1 **Franchisor Representations Concerning Proprietary Marks:** Franchisor represents with respect to the Proprietary Marks that:

8.1.1 Franchisor has obtained from its affiliate title to the Proprietary Marks or a license to use, and to license other to use, the Proprietary Marks;

8.1.2 All steps reasonably necessary to preserve and protect the validity of the Proprietary Marks, and Franchisor's right to use and license others to use, the Proprietary Marks will be taken; and

8.1.3 Franchisor will use and permit Franchisee and other franchisees to use the Proprietary Marks only in accordance with the System and the standards and specifications attendant thereto which underlie the goodwill associated with and symbolized by the Proprietary Marks.

8.2 **Franchisee Representations Concerning Proprietary Marks:** Franchisee agrees that:

8.2.1 Franchisee shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor;

8.2.2 Franchisee shall use the Proprietary Marks only for the operation of the Store, and only at the Franchised Location or in connection with Franchisor approved advertising for the Store at the Franchised Location;

8.2.3 Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Store only under the name "**Sweet Factory**" without prefix or suffix;

8.2.4 Franchisee shall identify itself as an independent franchisee-owner of the Store in conjunction with any use of the Proprietary Marks or the operation of the Store, including, but not limited to, such use on invoices, order forms, receipts, business stationery and contracts, as well as at such conspicuous locations on the Franchised Location as Franchisor may designate in writing. The form and content of such identification shall comply with standards set forth in the Manual;

8.2.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement;

8.2.6 Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor;

8.2.7 Franchisee shall execute any documents deemed necessary by Franchisor or its affiliates to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability;

8.2.8 Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name; and

8.2.9 Franchisee shall promptly notify Franchisor of any suspected unauthorized use of, or any challenge to the validity of the Proprietary Marks, or any challenge to Franchisor's or Franchisor's affiliates ownership of, Franchisor's license to use and to license others to use, or Franchisee's right to use, the Proprietary Marks licensed under this Agreement. Franchisee acknowledges that Franchisor or its affiliate has the right to direct and control any administrative proceed or litigation, or other adjudicative proceeding involving the Proprietary Marks, including any settlement thereof. Franchisor or its affiliate has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. Franchisor shall defend Franchisee against any third-party claim, suit, or demand arising out of Franchisee's use of the Proprietary Marks. If Franchisor, in its sole discretion, determines that Franchisee has used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by Franchisor. If Franchisor, in its sole discretion, determines that Franchisee has not used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by Franchisee. In the event of any litigation relating to Franchisee's use of the Proprietary Marks, Franchisee shall execute any and all documents and do such acts as may, in the opinion of Franchisor, be necessary to carry out such defense or prosecution, including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket litigation costs in doing such acts.

8.3 Franchisee Acknowledgements Concerning Proprietary Marks: Franchisee expressly understands and acknowledges that:

8.3.1 Franchisor or its affiliates is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them and Franchisor has the right to use, and license others to use, the Proprietary Marks;

8.3.2 The Proprietary Marks are valid and serve to identify the System and those who are franchised under the System;

8.3.3 During the term of this Agreement and after its expiration or termination, Franchisee shall not directly or indirectly contest the validity of, or Franchisor's or Franchisor's affiliates ownership of the Proprietary Marks, nor take any other action which may tend to jeopardize Franchisor's or Franchisor's affiliate's interest therein, or Franchisor's right to use, and to license others to use, the Proprietary Marks;

8.3.4 Franchisee's use of the Proprietary Marks pursuant to this Agreement does not give Franchisee any ownership interest or other interest in or to the Proprietary Marks other than the license granted by this Agreement;

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

8.3.6 The right and license of the Proprietary Marks granted under this Agreement to Franchisee is nonexclusive, and Franchisor and its affiliates have and retain the rights described in Section 1.1, and among others: (a) to use the Proprietary Marks themselves in connection with selling products and services; (b) to grant other license for the Proprietary Marks, in addition to those licenses already granted to existing franchisees; and (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Franchisee; and

8.3.7 Franchisor reserves the right to change, revise, or substitute different proprietary marks for use in identifying the System, the Store, and products sold or offered for sale through the Store, if the Proprietary Marks no longer can be used, or if Franchisor, in its sole discretion, determines that substitution of different proprietary marks will be beneficial to the System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement, and Franchisor shall not compensate Franchisee for such substitution. Franchisee shall bear the costs of modifying Franchisee's signs and advertising materials to conform to Franchisor's new proprietary marks. If Franchisor's currently licensed Proprietary Marks can no longer be used, Franchisee shall implement promptly any such substitution.

8.3.8 Franchisor shall have the right, at all reasonable times, at the Store and elsewhere, to inspect the products and services on which the Proprietary Marks shall be used as Franchisor considers necessary to carry out the purposes of inspection as part of appropriate quality control. Upon request, Franchisee shall submit to Franchisor all packages, labels, advertising, displays, advertising brochures and other materials used in connection with goods and/or services bearing the Proprietary Marks and Franchisee specifically undertakes to amend to the satisfaction of Franchisor any such package, labels, advertising displays, advertising brochures and other materials which are not approved by Franchisor.

8.4 **Changes in Law Affecting Proprietary Marks:** In the event that the trademark law is amended so as to render inapplicable any of the provisions of this Agreement, Franchisee shall execute any documents, and do such acts and things as in the opinion of Franchisor may be necessary to affect the intent and purpose of the provisions of this Agreement; provided, however, that Franchisor shall bear all costs associated with such request.

8.5 **Electronic Media:** Except as expressly limited in this Agreement, Franchisor (for itself, its affiliates and designees) retains all rights with respect to use of the Proprietary Marks and the System to sell any products or services, similar to those which Franchisee sells, through any alternate channels of distribution. This includes, but is not limited to, retail locations and other channels of distribution such as television, mail order, catalog sales, wholesale to unrelated retail outlets, over the Internet, or through other forms of electronic media (including social technology, social media and social networking platforms). Franchisor exclusively reserves the Internet and other forms of electronic media as channels of distribution for Franchisor, and Franchisee may not independently market on the Internet or through other forms of electronic media, or conduct e-commerce without Franchisor's prior written consent.

9. CONFIDENTIAL MANUAL AND INFORMATION

9.1 **Use of Manual:** Franchisee shall operate the Store in accordance with the standards, methods, policies, and procedures specified in the Manual. Franchisee shall treat the Manual, any other manuals created for or approved for use in the operation of the Store, and the information contained therein, as confidential, and shall maintain such information as secret and confidential. Franchisee shall not at any time copy, duplicate, record, or otherwise reproduce the foregoing materials, in whole or in part, or otherwise make the same available to any unauthorized person. The Manual shall at all times remain the sole property of Franchisor and shall be kept in a secure place on the Franchised Location. Franchisee shall ensure that its copy of the Manual is kept current at all times, and in the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by Franchisor shall be controlling.

9.2 **Confidentiality of Information:** Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of, anyone else, any confidential information, knowledge, or know-how concerning the methods of operation of the Store which may be communicated to Franchisee, or of which Franchisee may be apprised, by virtue of Franchisee's operation under the terms of this Agreement. Franchisee shall divulge such confidential information only to such of its employees as must have access to it in order to perform their employment responsibilities. Any and all matters, information, knowledge, know-how, techniques, Proprietary Products, and other data which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement.

9.3 **Irreparable Injury from Disclosure of Confidential Information:** Franchisee acknowledges that failure to comply with the requirements of this Section 9 will result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to the requirements of this Section 9.

9.4 **Confidentiality Covenants from Individuals Associated with Franchisee:** Franchisee shall require any employee who may have access to any confidential information of Franchisor to execute covenants that they will maintain the confidentiality of information they receive in connection with their association with Franchisee. Such covenants shall be in a form satisfactory to Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

10. **ACCOUNTING AND RECORDS**

10.1 **Computer System:** At Franchisor's request, Franchisee shall purchase or lease, and thereafter maintain in strict conformity with such standards and specifications as Franchisor may from time to time prescribe in the Manual or otherwise in writing, such computer hardware and software, required dedicated telephone and power lines, modem(s), printer(s) and other computer-related accessories or peripheral equipment for the purpose of, among other functions, recording sales and other record keeping and central functions. Franchisee's computer system must meet the following standards: (a) nonresettable gross totals; (b) total line on guest check; (c) ability to discount; (d) specific tendering keys (e.g., cash or credit card); (e) ability to produce weekly summary totals by sales type, including detail of adjustments and discounts; (f) ability to attach a back office system; and (g) ability to communicate with Franchisor's computer system or systems. Franchisee shall provide such assistance as may be required to connect its computer system with a computer system used by Franchisor or its affiliates. Franchisor shall have the right from time to time and at any time to retrieve weekly Gross Revenue data and such other data and information from Franchisee's computer system as Franchisor, in its sole and exclusive discretion, deems necessary or desirable. In view of the contemplated interconnection or computer systems and the necessity that such systems be compatible with each other, Franchisee expressly agrees that it will strictly comply with Franchisor's standards and specifications for all item(s) associated with Franchisee's computer system, and will otherwise operate its computer system in accordance with Franchisor's standards and specifications.

10.2 **Maintenance of Computer System:** To ensure full operational efficiency and optimum communication capability between and among computer systems installed by Franchisee, Franchisor, and other franchisees, Franchisee agrees, at its expense, to keep its computer system in good maintenance and repair, and, at its expense, and following Franchisor's determination that same will prove economically or otherwise beneficial to all System franchisees, to promptly install such additions, changes, modifications, substitutions and/or replacements to Franchisee's computer hardware, software, telephone and power lines, and other computer-related facilities, as Franchisor directs.

10.3 **Maintenance of Records:** Franchisee shall prepare, during the term of this Agreement, and shall preserve for at least five (5) years from the dates of their preparation, complete and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by Franchisor from time to time in the Manual or otherwise in writing.

10.4 **Submission of Financial Statements and Tax Returns:** Franchisee shall, at its expense, provide Franchisor with a copy of Franchisee's financial statements, including monthly profit and loss statements, showing the results of operations of the Store for each fiscal year during the term of the Agreement. The statements shall include

a statement of income, balance sheet, and a statement of cash flows, accompanied by a review report, prepared by an independent certified public accountant satisfactory to Franchisor using generally accepted accounting principles, and shall be furnished within ninety days after the end of each fiscal year of Franchisee; provided, however, that Franchisee shall provide to Franchisor profit and loss statements within three (3) days of the end of each month. Franchisee also shall submit, within five (5) days of their filing, its federal and state tax returns for each year during the term of this Agreement; provided, however, that if Franchisee is not a corporation, partnership, or limited liability company, Franchisee may, at its option, submit only those schedules to its personal tax filings which reflect the revenues and expenses of the Store.

10.5 Submission of Performance Reports: Franchisee shall, at its expense, provide Franchisor with a weekly statement, on forms prescribed by Franchisor, accurately reporting all revenue and expense activity during the preceding week and such other data and information regarding operation of the Store as Franchisor may require. The statement shall be due and remitted to Franchisor in connection with Franchisee's payment of royalty and advertising fees in accordance with Sections 4.2, 4.3, and 4.4. Each statement shall be signed by Franchisee attesting that it is true and correct. Franchisee also shall provide to Franchisor, for review or auditing, such other forms, sales reports, cash register receipts, records, information, and data as Franchisor may reasonably designate, on the forms and in the manner as are reasonably designated by Franchisor. For purpose of reporting under the terms of this Agreement, the operating, accounting, and billing periods for Franchisee shall be thirteen (13) four (4) week periods.

10.6 Audit of Franchisee Records: Franchisor or its designated agents shall have the right at all reasonable times to examine and copy, at Franchisor's expense, the books, records, accounts, and business tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books and records of Franchisee. If an inspection or audit reveals that any payments due to Franchisor have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of eighteen percent (18%) per annum calculated monthly, or the maximum rate permitted by law, whichever is less. If an inspection or audit discloses an understatement in any report of three percent (3%) or more, Franchisee shall, in addition to repayment of monies owed with interest, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging, and wages expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies Franchisor may have because of such under reporting.

10.7 Use of Financial Statements In Disclosure Document: Franchisee hereby irrevocably consents to Franchisor's use of information contained in its financial statements, at Franchisor's election, in Franchisor's Franchise disclosure document for the offer and sale of franchises.

11. ADVERTISING

Recognizing the value of advertising and promotion, and the importance of the standardization of advertising and promotional programs to the furtherance of the goodwill and public image of the Stores and the System, the parties agree as follows:

11.1 Contribution: In accordance with Section 11.8, Franchisee shall not be obligated to make any contribution to the System-wide fund described in Section 11.2 (the "**Fund**") as of the date of this Agreement; however, Franchisor shall have the right, upon thirty (30) days prior notice, to require Franchisee to pay, and Franchisee shall thereafter pay to Franchisor, without deduction, abatement or offset, a continuing weekly advertising fee which shall be calculated as a percentage of Franchisee's Gross Revenue; provided, however, that such amount shall not exceed two percent (2%) nor be less than one percent (1%) of Franchisee's Gross Revenue for the preceding week, as established by Franchisor from time to time. Franchisor, in its sole discretion, shall allocate such amount among contributions to Fund described in Section 11.2 and expenditures on local advertising, and may, in its sole discretion, from time to time and at any time, modify both the amount and allocation of each Franchisee's contribution among the Fund and local advertising. Each Sweet Factory store owned by Franchisor or Operating Company shall spend on advertising, to promote the System, each week, an amount which is calculated on the same basis as contributions and expenditures of similarly situated franchisees.

11.2 The Fund: Franchisor shall have the right, in its sole discretion, but not the obligation, to establish, maintain, and administer the Fund. The following provisions shall apply to the Fund:

11.2.1 The Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting and developing the preparation of advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which the “Administrator” (as defined in Section 11.2.2), believes will enhance the image of the System, including, among other things, the costs of preparing and conducting media advertising campaigns in various media; preparation of direct mail advertising; market research; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; conducting and administering in-store promotions; providing promotional and other marketing materials and services to the businesses operating under the System such as, but not limited to, coupons, merchandising materials, sales aids, and point-of-purchase materials; and providing menus and menu inserts.

11.2.2 The Fund shall be maintained and administered by an administrator (the “Administrator”) selected by Franchisor. Franchisor may select itself, an affiliate, or a third party as Administrator. Franchisor may change the Administrator, in its sole discretion, from time to time and at any time. The activities of the Fund may be coordinated with the advertising and promotional programs for Sweet Factory stores owned by Franchisor or an affiliate of Franchisor.

11.2.3 The Administrator shall direct all advertising and promotional programs, with sole discretion over the creative concepts, materials, and media used in such programs, and the placement and allocation thereof. Franchisee agrees and acknowledges that the Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks for the benefit, of the System; and that the Administrator is not obligated, in administering the Fund, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee’s contribution, or to ensure that any particular franchisee benefits directly or pro rata from the advertising or promotion conducted under the Fund.

11.2.4 All payments shall be made by Franchisee by separate check payable to the Fund. All sums paid to the Fund shall be maintained in an account separate from the other monies of Franchisor and shall not be used to defray any expenses of Franchisor or the Administrator, except for such reasonable costs and overhead, if any, as each may incur in activities reasonably related to the administration or direction of the Fund and advertising programs, including, among other things, cost of personnel for creating and implementing advertising, promotional, and marketing programs. The Fund and any earnings thereon shall not otherwise inure to the benefit of Franchisor or the Administrator. Franchisor shall maintain separate bookkeeping accounts for the Fund. Any unused monies in the Fund at the end of a year may be used in the next year.

11.2.5 A statement of the operations of the Fund as shown on the books of the Fund shall be prepared annually by the Administrator and furnished to Franchisee upon Franchisee’s request.

11.2.6 Franchisor (or its Affiliate) may collect rebates and credits from suppliers based on purchases or sales by Franchisee and, at Franchisor’s discretion, may either refund such amounts to Franchisee, contribute such amounts to the Fund, retain such amounts for Franchisor’s or such Affiliate’s use in promoting the Proprietary Marks, or, as provided in Section 7.4, use the same for a variety of other purposes, including ongoing programs, education, marketing, advertising, seminars and conferences, the handling of inquiries and complaints from franchisees’ customers and for general and administrative expenses, in Franchisor’s discretion, notwithstanding any designation by the supplier or otherwise. Any such contribution of such rebates or credits to the Fund shall not reduce Franchisee’s obligation to pay the advertising fee.

11.3 **Local Advertising:** All local advertising and promotion by Franchisee shall be in such media and of such type and format as Franchisor may approve, shall be conducted in a dignified manner, and shall conform to such standards and requirements as set forth in the Manual or otherwise in writing. Franchisee shall not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 11.4. Approval, if granted, shall remain in effect until notice from Franchisor to discontinue further use. Franchisee shall administer Franchisee’s local store marketing funds. Within thirty (30) days after the end of each calendar year, Franchisee shall provide Franchisor with copies of all invoices, statements, canceled checks or other forms of payment which Franchisee has issued during the preceding calendar year which evidence Franchisee’s expenditure and payment for pre-approved local advertising programs. Franchisor shall review the evidence of these expenditures and, if Franchisee not spent the amount required for local

advertising purposes, the difference between the amount required to be spent by Franchisee for local advertising purposes during the preceding calendar year and the amount actually spent by Franchisee for local advertising purposes during the preceding calendar year must be paid to the Fund within thirty (30) days.

11.4 Approval of Franchisee Advertising Materials: Franchisee shall submit samples of all advertising and promotional plans and materials to Franchisor (through the mail, return receipt requested), prior to their use, and may commence use of such plans or materials fifteen (15) days after Franchisor's receipt, unless prior thereto, Franchisor shall have furnished notice, in writing, to Franchisee prohibiting such use. Franchisor also shall have the right at any time after Franchisee commences use of such material to prohibit further use, effective upon receipt of written notice by Franchisee.

11.5 Opening Advertising: Immediately preceding and following the opening of the Store, Franchisee shall conduct, at Franchisor's option, an initial local advertising and promotion program in the form and manner prepared by Franchisee and approved by Franchisor in writing. Franchisee shall not be obligated to spend in excess of \$2,000 for such initial advertising and promotion. Franchisee shall furnish to Franchisor, within sixty (60) days after the opening of the Store, such evidence as Franchisor may reasonably require to verify such approved expenditure.

11.6 Special Reimbursement Programs: If Franchisee has paid Franchisor, and its affiliates, all royalty fees, advertising fees, rents and other payments due and owing to Franchisor and its affiliates, and is current with Franchisor and its affiliates, in all respects, Franchisor shall have the right, in its sole and absolute discretion, from time to time, to grant Franchisee the right to receive reimbursement from the Fund for Franchisee's actual paid expenditures for local store marketing programs which have been pre-approved by Franchisor in the manner provided for in Section 11.4, and utilized by Franchisee for the benefit of the Store, up to a maximum amount to be established by Franchisor, until the special local store marketing reimbursement program is terminated by Franchisor.

11.6.1 Within thirty (30) days after the end of each calendar year following the institution of any such special local store marketing reimbursement program, Franchisee shall provide Franchisor with copies of all invoices, statements, canceled checks or other forms of payment which have been issued by Franchisee during the preceding calendar year which evidence the expenditure and payment by Franchisee for such pre-approved local store marketing programs utilized by Franchisee for the benefit of the Store. Franchisor shall review the evidence of these expenditures and, if the same are satisfactory, shall cause the Fund to reimburse Franchisee, within sixty (60) days thereafter, for such expenditures, up to a maximum percentage of the advertising fee paid by Franchisee to the Fund during the preceding calendar year, as established by Franchisor, in its sole and absolute discretion.

11.6.2 During the period of time that any such special local store marketing reimbursement program is in effect, the balance of the Fund not allocated to the local store marketing program provided for in this Section 11.6 will be utilized by Franchisor for the development of institutional advertising and promotion programs. If Franchisee is entitled to reimbursement from the Fund for pre-approved local store marketing programs utilized by Franchisee for the benefit of the Store during the preceding calendar year and fails to make application for reimbursement of the same with Franchisor within sixty (60) days after the end of each calendar year following the institution of any such special local store marketing reimbursement program, Franchisor may, upon giving Franchisee thirty (30) days prior written notice, disburse the full amount of Franchisee's potential local store advertising reimbursement to the Fund. Upon such disbursement, Franchisee shall no longer have any right to reimbursement for advertising expenditures for the subject calendar year.

11.6.3 Any special local store marketing reimbursement program established by Franchisor pursuant to this Section 11.6 may be terminated by Franchisor at any time, in its sole and absolute discretion, upon ninety (90) day's notice to Franchisee.

11.8 Telephone Listings: Franchisee shall, at its expense, and in accordance with any standards established in the Manual, obtain boldface listings in the white and yellow pages of the principal telephone directory serving the Store.

11.9 **Amount and Allocation of Contributions:** As of the date of this Agreement, Franchisee shall not be required to make any contribution to the Fund. However, Franchisor may, in its sole discretion, from time to time and at any time, require Franchisee to make contributions to the Fund in accordance with Section 11.1, and may, in its sole discretion, from time to time and at any time, modify both the amount and allocation of each Franchisee's contribution among the Fund and local advertising in accordance with Section 11.1.

12. **INSURANCE**

12.1 **Franchisee's Insurance Obligations:** Franchisee shall obtain, prior to commencement of business at the Store, and shall maintain in full force and effect during the term of this Agreement, at Franchisee's expense, an insurance policy or policies protecting Franchisee and Franchisor Operating Company, the Master Landlord and their affiliates, and their respective partners, shareholders, directors, agents, and employees, against any demand or claim with respect to personal and bodily injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring upon or in connection with the operation of the Store in such types and amounts as specified in the Confidential Operations Manual. Such policy or policies shall: (a) be written by insurer(s) licensed and admitted to write coverage in the state in which the Store is located and with a rating of "A" or better as set forth in the most recent edition of Best's Key Rating Guide; (b) name Franchisor, Operating Company, the Master Landlord and their partners, shareholders, directors, agents, and employees as additional insureds; and (c) comply with the requirements prescribed by the Lease, or the Master Lease and Sublease and by Franchisor in writing at the time such policies are obtained, and provide at least the types and minimum amounts of coverage specified below or as revised by the Manual. Such policies shall include, at the minimum, the following policies:

12.1.1 "All risk" property insurance, including business interruption insurance, customarily obtained by similar businesses in the Store's principal trade area;

12.1.2 Comprehensive general liability insurance, including products and contractual, in an amount of not less than \$2,000,000 combined single limit (CSL);

12.1.3 Workers' compensation insurance for statutory limits and employer's liability insurance in an amount not less than \$1,000,000.

12.2 **Waiver of Subrogation:** In connection with any and all insurance required to be maintained by Franchisee under Section 12.1, Franchisee and Franchisee's insurers shall agree to waive their rights of subrogation against Franchisor, and Franchisee shall provide evidence of such waiver in accordance with Section 12.5

12.3 **Franchisee's Insurance Obligation Not Affected By Franchisor's Insurance:** Franchisee's obligation to obtain and maintain insurance shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of the obligation relieve it of liability under the indemnity provisions set forth in Section 19.4.

12.4 **Additional Required Endorsement:** All public liability and property damage policies shall contain a provision that Franchisor, Operating Company, the Master Landlord and their affiliates, although named as an additional insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor, Operating Company, the Master Landlord or their affiliates, partners, shareholders, directors, agents, or employees by reason of the negligence of Franchisee or its partners, shareholders, directors, agents, or employees.

12.5 **Certificate of Insurance:** At least ten (10) days prior to the time any insurance is first required to be carried by Franchisee, and thereafter at least thirty (30) day prior to the expiration of any policy, Franchisee shall deliver to Franchisor, Operating Company and the Master Landlord Certificates of Insurance evidencing the proper types and minimum amounts of required coverage. All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given to Franchisor, Operating Company and the Master Landlord in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such Certificates. Certificates evidencing the insurance required by this Section 12 shall name Franchisor, Operating Company and the Master Landlord and each of their affiliates, partners, shareholders, directors, agents, and employees as additional insureds on the additional-insured Grantor of Franchise From CG2029 or an insurer's comparable form, and shall expressly

provide that any interest of each shall not be affected by any breach by Franchisee of any policy provisions for which such Certificates evidence coverage.

12.6 Right to Secure Insurance on Behalf of Franchisee: Should Franchisee, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by Franchisor in the Manual or otherwise in writing, Franchisor and/or Operating Company shall have the right and authority (but not the obligation) to immediately procure such insurance and to charge the same to Franchisee, which charges, together with the expenses of Franchisor and/or Operating Company in so acting, shall be payable by Franchisee immediately upon notice. The foregoing remedies shall be in addition to any other remedies Franchisor and Operating Company may have.

13. TRANSFER OF INTEREST

13.1 Transfer by Franchisor: Franchisor shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of Franchisor's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. Upon such assignment and assumption, Franchisor shall be under no further obligation hereunder, except for accrued liabilities, if any. In addition, and without limitation to the foregoing, Franchisee expressly affirms and agrees that Franchisor and or its affiliates may sell their assets, the Proprietary Marks, or the System; may sell securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leverage buy-out, or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages arising from or related to the loss of Franchisor's name, Proprietary Marks (or any variation thereof) and System and/or the loss of association with or identification of TRU Franchise, LLC as Franchisor under this Agreement. Franchisee specifically waives any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing. Franchisee agrees that Franchisor has the right, now or in the future, to purchase, merge, acquire or affiliate with an existing competitive or non-competitive franchise network, chain or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as Sweet Factory Stores operating under the Proprietary Marks or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which Franchisee acknowledges may be proximate to the Store).

13.2 Transfer by Franchisee: Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in reliance on Franchisee's (or, if Franchisee is a corporation, partnership, or limited liability company, its principals') business skill, financial capacity, and personal character. Accordingly, neither Franchisee nor any immediate or remote successor to any part of Franchisee's interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Franchisee shall sell, encumber, assign, transfer, convey, pledge, merge, or give away any direct or indirect interest in this Agreement, in Franchisee or in all or substantially all of the assets of the Store or any other Sweet Factory Store owned by Franchisee, whether individually or collectively, in whole or in part, voluntarily or involuntarily, or any transfer of 49% or more of the capital stock, members interests, partnership rights or other equity ownership interests of Franchisee without the prior written consent of Franchisor. Any change in the control of Franchisee shall be deemed a transfer for purposes of this Agreement. Any purported assignment or transfer not having the written consent of Franchisor required by this Section 13.2 shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Section 14.2.4.

13.3 Requirements for Transfer by Franchisee: Franchisor may, in its sole discretion, require any or all of the following as conditions of its consent to a transfer set forth in Section 13.2:

13.3.1 Franchisee shall not be in default of any provision of this Agreement, any amendment of this Agreement or successor hereto, or any other agreement between Franchisee and Franchisor, or its affiliates;

13.3.2 The transferor (and, if the transferor is other than an individual, the transferor and such other owners of a beneficial interest in the transferor as Franchisor may request) shall execute a general release, in a form prescribed by Franchisor, of any and all claims which the transferor may have or believes to have against Franchisor and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement, the Store or the Franchised Location, as well as claims, known or unknown, which are not based on, do not arise from or do not relate to this Agreement, the Store or the Franchised Location but which relate to other franchise agreement, stores, franchised locations and other agreements between Franchisor or its affiliates and Franchisee which arose on or before the date of the general release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances.

13.3.3 The transferee (or, if the transferee is other than an individual, a principal of the transferee approved by Franchisor) shall demonstrate to Franchisor's satisfaction that the terms of the proposed assignment do not place an unreasonable financial burden on the transferee, and Franchisee understands and acknowledges that Franchisor shall be entitled, in connection with assignee the financial burden placed upon any prospective assignee, to share with such prospective assignee information relating to the Store, including information in Franchisor's possession relating to operations and sales at the Store.

13.3.4 The transferee (or, if the transferee is other than an individual, a principal or the transferee approved by Franchisor) shall demonstrate to Franchisor's satisfaction that the terms of the proposed assignment do not place an unreasonable operational burden on the transferee, and that the transferee meets Franchisor's standards for: (a) work experience and aptitude; (b) character and reputation; (c) absence of conflicting interests; and (d) such other criteria and conditions as Franchisor shall then consider relevant in the case of an application for a new franchise by an applicant not currently operating a Store;

13.3.5 At Franchisor's request, the transferee (and, if the transferee is other than an individual, such principals of the transferee as Franchisor may request) shall execute, for a term ending on the expiration date of this Agreement, the current standard form Franchise Agreement (and individual guarantees) then being offered to new System franchisees, which Franchise Agreement shall supersede this Agreement in all respects and the terms of which Franchise Agreement may differ materially from the terms of this Agreement and may be less favorable to the transferee; provided, however, that the transferee shall not be required to pay an initial franchisee fee;

13.3.6 The transferee shall successfully complete, at its expense, the required initial training as described in Section 6.1, including payment of the then-current training fee charged by Franchisor in those circumstances where Franchisee is required to pay a fee for attendees at the initial training programs;

13.3.7 The transferee and each partner, shareholder or member of the transferee, as the case may be, must be a United States citizen or lawful resident alien or the United States and must have sufficient literacy and fluency in the English language sufficient, in Franchisor's opinion, to communicate with employees, customers, and suppliers of Franchisor and to satisfactorily complete Franchisor's required training program and such other tests and interviews as Franchisor shall reasonably deem to be necessary or desirable. Franchisee shall provide Franchisor with such information as Franchisor may require to make a determination concerning such proposed transfer.

13.3.8 Except in the case of a transfer to a corporation formed for the convenience of ownership, where the ownership of such corporation is in the same proportion as the ownership of Franchisee before such transfer, a transfer fee of \$5,000 and a training fee of \$5,000 for the initial training program for the transferee, plus Franchisor's out of pocket costs associated with the transfer, including costs of attorney's fees associated with the transfer, shall be paid by Franchisee to Franchisor. If Franchisee desires to conduct business in a corporate capacity, Franchisor will consent to the assignment of this Agreement to a corporation, provided that (i) the corporation shall be and shall remain a closely-held corporation; (ii) the stock certificates issued by the corporation shall contain a restriction on transfer referencing this Franchise Agreement, in a form required by Franchisor; (iii) the ownership of the assignee corporation shall be in the same proportion as the ownership of Franchisee before the transfer; and (iv) none of the shares of stock in the assignee corporation shall be held by a business competitor of Franchisor. Franchisee shall pay an administrative fee of \$500 per transfer for each transfer to a corporation, partnership or limited liability company where such transfer is for the convenience of ownership only. At the time of request for a transfer for the convenience of ownership,

Franchisee shall submit the following documents to Franchisor and Franchisor shall review and approve such documents within thirty (30) days thereafter:

a) For an assignment to a closely-held corporation, Franchisee shall provide to Franchisor a (i) file stamped copy of the Articles of Incorporation and By-laws of the proposed assignee corporation, (ii) a sample stock certificate, (iii) a Certificate of Good Standing in the state in which the corporation is authorized to do business and the state in which the corporation will conduct the store business pursuant to this Franchisee Agreement, (iv) a list of officers and their percentage ownership of the stock of the corporation, and (v) a list of directors of the corporation.

b) For an assignment to a partnership, Franchisee shall provide to Franchisor a (i) file stamped copy of the Certificate of Limited Partnership (if applicable) or the Statement of Partnership, and (ii) a copy of the fully executed Partnership Agreement, containing an exhibit showing the percentage of ownership in the partnership by all partners.

c) For an assignment to a limited liability company, Franchisee shall provide to Franchisor a (i) Certificate of Formation of Limited Liability Company and (ii) a fully executed copy of the Operating Agreement, containing an exhibit showing the percentage of ownership of all members in the limited liability company.

13.3.9 Franchisee shall remain liable for all of its obligations to Franchisor and its affiliates which arose prior to the effective date of the transfer, and shall execute any documents reasonably requested by Franchisor to evidence such liability.

13.3.10 As part of the transfer, Franchisee shall assign all of its right, title and interest in and to the Lease to the transferee, with the written consent of the Landlord and all other parties whose consent is required.

13.3.11 Franchisee shall have paid all amounts due to Franchisor

13.3.12 The transferee, at its expense, shall refurbish the Store in the manner described in Section 7.8, irrespective of the five (5) year time frame described therein, to conform to Franchisor's then-current standards and specifications, and complete the refurbishing and other requirements within the time specified by Franchisor.

13.3.13 Franchisee and the transferee/assignee shall use an independent third party escrow company in connection with their purchase and sale transaction.

13.3.14 Franchisee shall remain liable to Franchisor for all obligations of the transferee which arise as a result of acts, events or omissions which occur following the effective date of the transfer. Franchisor's consent to any transfer shall not constitute a waiver or release of any claims Franchisor may have against Franchisee as of the date of the assignment.

13.4 Granting of a Security Interest by Franchisee: Franchisee shall not grant security interest in the Store or in any of the assets of the Store without first obtaining the prior written consent of Franchisor. Franchisor's consent or refusal to consent may be based upon whatever factors Franchisor, in its sole discretion, deems economically and commercially reasonable in protecting Franchisor's interests and security interest under this Agreement and the relationship created under this Agreement. Under any circumstances however, Franchisor shall not consent to any such granting of a security interest unless all of the following conditions are met:

13.4.1 Such security is granted only for the purpose of securing a loan in favor of Franchisee, which loan shall only be for the benefit of the Store;

13.4.2 In the event of any default by Franchisee under any documents in any way relating to the security interest or the loan to which it relates, Franchisor shall have the right at its sole option (but not the obligation) to cure any such default and/or to be substituted as obligor to the lender whose interests are secured by such security interest;

13.4.3 In the event of any such default, and if Franchisor chooses to be substituted as obligor, Franchisor shall be so substituted in all respects on the same terms and conditions to which Franchisee was subject, except that any acceleration of the obligations secured, due to Franchisee's default, shall be void upon cure by Franchisor; and

13.4.4 The sales price of the interest to be conveyed must not be so high, or the terms of the sale so onerous, that, in the judgment of Franchisor, the transferee will be unlikely to properly maintain, operate and promote the Store and meet the transferee's financial and other obligations to Franchisor, third party suppliers and creditors. This provision shall not create any liability to either transferor or transferee on the part of Franchisor, in the event that Franchisor approves the transfer and the transferee experiences financial difficulties.

13.4.5 Such other conditions and terms as Franchisor shall deem necessary and/or prudent to protect its interests under this Agreement.

13.5 **Right of First Refusal:** If any party holding any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Store desires to accept any bona fide offer from a third party to purchase such interest, Franchisee shall notify Franchisor of such offer at least (30) days before such transfer is proposed to take place, 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 such written notification and any background materials concerning the proposed transfer that Franchisor shall reasonably request, 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. If Franchisor declines to purchase the seller's interest, Franchisee shall have ninety (90) days from the earlier of: (a) receipt of a notice from Franchisor declining to exercise its right of first refusal, or (b) thirty (30) days after Franchisor's receipt of the transferor's written notification of the purposed transfer, to close on the transfer of such interest subject to Franchisor's approval pursuant to Section 13.3. Failure to effect a transfer with the third party within the ninety (90) day period, or any material change thereafter in the terms of the offer prior to closing, shall constitute a new offer subject to the same rights of first refusal by Franchisor in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 13.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 13, with respect to a proposed transfer. 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, the 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, an independent appraiser shall be designated by Franchisor at Franchisor's expense, and the appraiser's determination shall be binding.

13.6 **Transfer Upon Death or Incapacitation:** Upon the death or permanent incapacity (mental or physical) of any person with an interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Store, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by Franchisor within six (6) months after such death or mental incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer, except that the transfer fee shall be waived. In the case of transfer by devise or inheritance, however, if the heirs or beneficiaries of any such person are unable to meet the conditions of this Section 13, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by Franchisor within six (6) months, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within such period, Franchisor may, at its option, terminate this Agreement, pursuant to Section 14.2.5.

13.7 **Non-Waiver of Claims:** Franchisor's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

13.8 **Transfer by Franchisee in Bankruptcy – Right of First Refusal:** If, for any reason, this Agreement is not terminated pursuant to Section 14.1 and this Agreement is assumed, or assignment of the same to

any person or entity who has made a bona fide offer to accept an assignment of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth: (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of this Agreement, and, in any event, within ten (10) day prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to Franchisor itself upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by Franchisee out of the consideration to be paid by such assignee for the assignment of this Agreement.

14. DEFAULT AND TERMINATION

14.1 **Termination In the Event of Bankruptcy or Insolvency:** Franchisee shall be deemed to be in default under this Agreement, and all rights granted to Franchisee herein shall automatically terminate without notice to Franchisee, if Franchisee becomes insolvent or makes a general assignment for the benefit of creditors; if Franchisee admits that Franchisee is unable to pay Franchisee's debts as they become due; if a petition in bankruptcy is filed by Franchisee or such petition is filed against and not opposed by Franchisee; if Franchisee is adjudicated as bankrupt or insolvent; if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; if proceedings for a composition with creditors under any state or federal law is instituted by or against Franchisee; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a superseding bond is filed); if Franchisee is dissolved; if execution is levied against Franchisee's business or property; if suit to foreclose any lien or mortgage against the Franchised Location or assets is instituted against Franchisee and not dismissed within thirty (30) days; or if the real or personal property of the Store is sold after levy thereupon by any sheriff, marshal, or constable.

14.2 **Termination with Notice and Without Opportunity to Cure:** Franchisee shall be in default under this Agreement, and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, without affording Franchisee any opportunity to cure the default, effective immediately upon receipt of notice by Franchisee upon the occurrence of any of the following events:

14.2.1 If Franchisee fails to open the Store within the time limits provided in Section 5.3;

14.2.2 If Franchisee at any time ceases to operate or otherwise abandons the Store without the consent of Franchisor, or loses the right to possession of the Franchised Location, or otherwise forfeits the right to do or transact business in the jurisdiction where the premises of the Store is located. If, however, through no fault of Franchisee, the Franchised Location is lost, damaged, or destroyed by an event such that repairs or reconstruction cannot be completed within sixty (60) thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;

14.2.3 If Franchisee (or an officer or director of or a shareholder in Franchisee, if Franchisee is a corporation, or a general or limited partner of Franchisee, if Franchisee is a partnership, or a member, if Franchisee is a limited liability company) is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;

14.2.4 If any surrender of control, purported assignment or transfer of any direct or indirect interest in this Agreement, in Franchisee, or in all or substantially all of the assets of the Store or any other Sweet Factory Store or Kiosk owned by Franchisee or any transfer of 49% or more of the capital stock membership interests, partnership rights, or other equity interests of Franchisee is made to any third party without Franchisor's prior written consent, contrary to the terms of Section 13;

14.2.5 If an approved transfer as required by Section 13.6, is not effected within the time provided following a death or permanent incapacity (mental or physical);

14.2.6 If Franchisee fails to comply with the covenants in Section 16.1 or fails to deliver to Franchisor the executed covenants required under Sections 9.4 or 16.8;

14.2.7 If, contrary to the terms of Section 9, Franchisee, any principal or employee of Franchisee, discloses or divulges the contents of the Manual or other confidential information provided to Franchisee by Franchisor;

14.2.8 If Franchisee or any principal of Franchisee has made any material misrepresentations in connection with Franchisee's application to Franchisor for the franchise granted herein;

14.2.9 If Franchisee, after curing a default pursuant to Section 14.3, commits the same, similar, or different default again, whether or not cured after notice;

14.2.10 If Franchisee loses, through renovation, forfeiture, failure to renew, or otherwise, any license required with respect to the operation of the Store;

14.2.11 If Franchisor concludes (in its sole and absolute discretion) after Franchisee's completion of the initial training program and prior to the opening of the Store for business that (i) Franchisee does not appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or a Franchise Agreement, or (ii) Franchisee is not acceptable to become a franchisee for any reason whatsoever, in Franchisor's sole and absolute discretion;

14.2.12 If Franchisee understates any payment to Franchisor by three percent (3%) or more, or understates any such payment in any amount, twice in any two (2) year period;

14.2.13 If an imminent threat or danger to public health or safety results from the operation of the Store or if Franchisee is cited by a public health authority, fire marshal or other governmental authority for a health, sanitation, fire, OSHA or other violation;

14.2.14 If Franchisee knowingly maintains false books or records or submits any false reports or statements to Franchisor;

14.2.15 If Franchisee fails to obtain or maintain required insurance coverage;

14.2.16 If, within ten (10) days after receipt of written notice from Franchisor that any required payment is overdue, Franchisee does not make such payment to Franchisor, Franchisor's affiliates, or, to Franchisee's suppliers or creditors, unless, with respect to Franchisee's suppliers or creditors, Franchisee notifies Franchisor of the existence on a bona fide dispute and takes immediate action to resolve it;

14.2.17 If Franchisee fails to make timely payments upon any obligation of Franchisee upon which Franchisor has advanced any funds for or on behalf of Franchisee, or upon which Franchisor is acting as a guarantor of Franchisee, or default upon or breach of any provision of any promissory note or other evidence of indebtedness or any agreement relating thereto concerning any obligation of Franchisee which arises from the STORE;

14.2.18 If Franchisee (or any guarantor, officer or director of or a shareholder in Franchisee, if Franchisee is a corporation, or a general or limited partner of Franchisee, if Franchisee is a partnership, or a member, if Franchisee is a limited liability company) or any other franchisee of Franchisor which controls, is controlled by, or is under common control with Franchisee (a "**Franchisee Affiliate**"), fails to comply with any or all of the terms of this Agreement or any other agreement between Franchisor, or its affiliates, and Franchisee within ten (10) days after receipt of written notice from Franchisor to do so;

14.2.19 If Franchisee defaults in the repayment or performance of any obligation or financing transaction with third parties under which this franchise, the Franchised Location or any asset of the Store is pledged as security for Franchisee's performance;

14.2.20 If Franchisee fails to purchase and maintain in inventory such types and quantities of "Sweet Factory" brand products, Proprietary Products or non-proprietary products as are needed to meet reasonably anticipated consumer demand and/or contrary to the terms of Section 7.4, Franchisee purchases any products, equipment, supplies or materials to be used at the Store from any suppliers who are not expressly designated or approved by Franchisor, and fails to remove the same from the Store and cease all use of the same within ten (10) days after receipt of written notice from Franchisor to do so;

14.2.21 If Franchisee fails, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise.

14.3 **Termination With Notice and Opportunity to Cure:** Except as otherwise provided in Sections 14.1 and 14.2, Franchisee shall have thirty (30) days after its receipt from Franchisor of a written Notice of Default within which to remedy any default under this Agreement or any Addendum executed along with this Agreement, and to provide evidence thereof to Franchisor. If any such default is not cured within the specified time, or such longer period as applicable law may require, Franchisor shall have the right to terminate this Agreement by providing written Notice of Termination to Franchisee. Franchisee shall be in default pursuant to this Section 14.3 for failure to substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be modified or supplemented by the Manual, or failure to carry out the terms of this Agreement in good faith.

14.4 **Cross-Default:** Except for a default or termination of any Area Development Agreement consisting solely of Franchisee's failure to meet the development schedule under the Area Development Agreement, any default by Franchisee under the terms and conditions of this Agreement, any Lease, the Master Lease or Sublease, or any other agreement between Franchisor, Operating Company, or their affiliates, and Franchisee, shall be deemed to be a default of each and every other such agreement. In the event of the termination of this Agreement for any cause, or the termination of any other agreement between Franchisor, Operating Company, or their affiliates, and Franchisee, Franchisor and Operating Company may, at their option, terminate any or all of such other agreements.

14.5 **Interim Management:** After Franchisor has given Franchisee written notice that Franchisee is in default, Franchisor may (but is not obligated to) assume interim management of the Store during the pendency of any cure period or in lieu of immediately terminating this Agreement. If Franchisor elects to assume interim management of the Store (i) Franchisor's election will not relieve Franchisee of Franchisee's obligations under this Agreement; (ii) Franchisor will not be liable for any debts, losses, costs or expenses incurred in the operation of the Store during any such interim management period; (iii) Franchisor will have the right to charge a reasonable fee for the management services; and (iv) Franchisee agrees to, and hereby does, indemnify and hold Franchisor harmless against any and all claims, demands, judgments, fines, losses, liabilities, costs, amounts paid in settlement and reasonable expenses (including, but not limited to attorneys' fees) incurred in connection with the interim management of the Store, other than those arising solely from the gross negligence or willful misconduct of Franchisor.

15. **OBLIGATIONS UPON TERMINATION OR EXPIRATION**

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

15.1 **Cessation of Store Operations:** Franchisee shall immediately cease to operate the Store, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor.

15.2 **Cessation of Use of Confidential Information and Proprietary Marks:** Franchisee shall immediately and permanently cease to use, by advertising or in any other manner whatsoever, any confidential methods, procedures, and techniques associated with the System, and all Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. Franchisee acknowledges and agrees that the use of

the Proprietary Marks after termination or expiration of this Agreement constitutes an unauthorized use of an identical mark and Franchisor shall be entitled to damages due to, but not limited to, trademark infringement and counterfeiting.

15.3 Cancellation of Assumed Name Registration: Franchisee shall take such action as may be necessary to cancel any assumed name registration or equivalent registration obtained by Franchisee which contains the Proprietary Marks; and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within thirty (30) days after termination or expiration of this Agreement.

15.4 Termination of Sublease or Assignment of Lease: The Sublease shall immediately terminate, subject to the terms of the Sublease. If Franchisee leases the Franchised Location under a Lease with a Landlord, Franchisee shall immediately assign all of its rights, title and interest in and to the Lease to Franchisor, Operating Company, or their designees.

15.5 Modification of Premises to Avoid Public Confusion: Franchisee agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which, in Franchisor's sole discretion, is likely to cause confusion, mistake, or deception, or which, in Franchisor's sole discretion, is likely to dilute Franchisor's rights in and to the Proprietary Marks. Franchisee further agrees not to utilize any designation of origin or description or representation which, in Franchisor's sole discretion, falsely suggests or represents an association or connection with Franchisor constituting unfair competition.

15.6 Franchisee Payment of Monies Due: Franchisee shall promptly pay all sums owing to Franchisor and its affiliates. In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorney's fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all leasehold improvements, fixtures, furnishings and equipment, inventory, supplies and vehicles located at or used in connection with the Store, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Franchisee to use the Proprietary Marks, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Franchisee under this Agreement for the use of the Proprietary Marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights. Franchisee hereby appoints Franchisor as its attorney in fact, with full power and authority to execute on Franchisee's behalf such documents as are necessary to obtain and perfect such lien. Franchisor shall have the right to set off any amounts which it deems are payable to it by Franchisee. In addition to the foregoing, Franchisee shall pay Franchisor, within thirty (30) days following the date of termination, an amount equal to the present value (using the then-current 30 year treasury bond rate) of the royalty fees Franchisee would have paid Franchisor, calculated as the product of (i) the Store's average monthly Gross Revenue during the twelve (12) months immediately preceding the effective date of termination multiplied by (ii) the number of months remaining to complete the initial term of this Agreement, had this Agreement not been terminated. In this regard, Franchisor and Franchisee acknowledge and agree that it would be impossible and impracticable to determine the precise amount of damages Franchisor will incur upon the termination of this Agreement due to the complications inherent in determining the amount of revenue lost by Franchisor because of the uncertainty regarding the number of months left to complete the initial term of this Agreement, the uncertainty regarding the Gross Revenue of the Store during the remainder of the initial term of this Agreement and the amount of royalty fees Franchisee would have paid Franchisor based upon such Gross Revenue and the like. Franchisor and Franchisee further acknowledge and agree that this calculation of Franchisor's potential damages is a reasonable, good-faith estimate of such damages. If Franchisor is unable to make this calculation because of Franchisee's failure to report the Gross Revenue of the Store as required by Section 10.5, Franchisor may estimate the Gross Revenue of the Store for the applicable period based upon the historical financial information available to Franchisor at such time.

15.7 Franchisee Payment of Franchisor's Cost in Securing Franchisee Compliance with Post Termination Obligations: Franchisee shall pay to Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor prior or subsequent to the termination or expiration of the franchise herein granted in obtaining injunctive or other relief for the enforcement of any provisions of this Section 15.

15.8 **Return of Manual and Other Confidential Information:** Franchisee shall immediately deliver to Franchisor the Manual and all other manuals, records, correspondence, files, and any instructions containing confidential information relating to the operation of the Store which are in Franchisee's possession; and all copies thereof (all of which are acknowledged to be the property of Franchisor).

15.9 **Franchisor's Right to Purchase Fixtures and Tangible Assets:** Except as otherwise provided in Section 15.10, Franchisor shall have the option to the "tangible assets" (as defined in Section 15.11) at their then-current fair market value and in accordance with the procedures described in Section 15.11. Franchisor shall exercise its option by written notice to Franchisee within thirty (30) days after either: (a) termination of this Agreement; or (b) the expiration of the term of this Agreement.

15.10 **Franchisee's Right to Sell Store Assets Upon Expiration:** Except in circumstances where the Agreement is terminated prior to its normal expiration date, and notwithstanding Franchisor's rights pursuant to Section 13 to approve any transfer, Franchisee or its Affiliate shall have the right to sell the assets that are subject to Franchisor's purchase option set forth in Section 15.9 during the last six (6) months of the then expiring term, provided that the purchase agreement specifically includes a covenant approved by Franchisor and which is expressly enforceable by Franchisor as a third-party beneficiary, that the purchaser shall remove the same from the Franchised Location, in accordance with the terms and conditions set forth in the Lease or Master Lease and Sublease, within thirty (30) days following the expiration of the term of this Agreement.

15.11 **Calculating the Purchase Price of Store Assets:** For purposes of this Section 15.11 the term "tangible assets" shall mean only the leasehold improvements, furniture, fixtures, equipment and interior and exterior signs at the Store.

15.11.1 The purchase price for the tangible assets shall be the lesser of their net book value (using a 5-year straight line amortization period) or their then-current fair market value less the amount of all fees and obligations due to Franchisor, or its affiliates, from Franchisee and less the amount of any current and Long term liabilities of the Store to be assumed by Franchisor as described in Section 15.11.3. The purchase price for the tangible assets shall not contain any amount for "goodwill", "going concern value" or initial franchise fees, royalty fees, advertising fees or any other sums paid to Franchisor by Franchisee prior to the termination of this Agreement. In addition, the purchase price for the tangible assets shall not include payment for any inventory or supplies or leasehold improvements, equipment, fixtures or signs which Franchisor deems obsolete or has therefore designated as failing to meet quality standards for the System.

15.11.2 The amount of the purchase price for the tangible assets shall be included by Franchisor in its notice of its exercise of the option to purchase the tangible assets. If Franchisee does not accept Franchisor's purchase price for the tangible assets within ten (10) days following the date of Franchisor's notice under Section 15.9, the purchase price for the tangible assets shall be determined as follows:

a) Within ten (10) days thereafter, each party shall name an appraiser to independently ascertain the purchase price for the tangible assets in accordance with the criteria set forth in Section 15.11.1. If the two appraisals are in "substantial agreement", the "average" of the two appraisals will be the purchase price. For this purpose, the term "substantial agreement" means a difference in the two appraisals of less than fifteen percent (15%) of the higher appraisal and the term "average" means one-half (1/2) of the sum of the two appraisals.

b) If the two appraisals are not in substantial agreement, the two appraisers will jointly choose a third appraiser within ten (10) days of the date that the last appraisal was delivered to the parties who shall conduct his appraisal of the tangible assets within thirty (30) days. If a third appraiser is utilized, the purchase price will be the average of the two appraisals which are closest to each other.

c) The parties shall share equally the fees and expenses of the third appraiser, but each party shall be responsible for the fees and expenses of his or its appraiser. Each party shall bear its own expenses in presenting evidence to the appraisers.

d) In determining the purchase price for the tangible assets, the appraisers shall consider all relevant material submitted to them by the parties or otherwise obtained by them and shall set forth their

determinations in writing, together with their opinions and the considerations on which the opinions are based, with a signed counterpart to be delivered to each party within thirty (30) days.

15.11.3 The purchase price for the tangible assets shall be reduced by the current and long term liabilities of the Store (except liabilities owed to Franchisee or its principals) to be assumed by Franchisor, up to the amount of the purchase price, subject to all defenses available to Franchisee.

15.11.4 The balance of the purchase price for the tangible assets remaining after the deductions described in Section 15.11.3 shall be payable to Franchisee as follows:

a) Forty percent (40%) of the balance due will be paid in cash as a down payment on the date of the close of escrow.

b) The amount remaining due will be evidenced by a promissory note providing for payment of this sum, together with interest at a rate equal to the prime lending rate charged by Franchisor's principal bank determined as of the date of the close of escrow, in seventy-two (72) equal monthly installments of principal and interest commencing on the first day of the second calendar month following the date of the close of escrow and continuing on the same day of each consecutive month until paid in full.

15.11.5 The close of escrow shall occur within forty-five (45) days after the final determination of the purchase price for the tangible assets. Bulk transfer costs shall be paid by Franchisee. Escrow costs shall be shared equally by Franchisor and Franchisee.

15.11.6 If Franchisor does not elect to exercise its option to purchase the tangible assets, Franchisee or its Franchisee Affiliate may assign any Lease for the Franchised Location or sell the real property to a third party, provided that the assignment or purchase agreement specifically include a covenant approved by Franchisor and which is expressly enforceable by Franchisor as a third-party beneficiary, that the purchaser shall not, for a period of twelve (12) months after the termination or expiration of this Agreement, use the Franchised Location for the operation of a store business whose menu or method of operation is similar to that employed by the Store.

15.11.7 Franchisor shall have the right to assign its option to purchase the tangible assets at the Store and to obtain an assignment of any Lease to an assignee of Franchisor's choice at any time prior to the close of escrow.

15.12 **Irreparable Injury to Franchisor:** Franchisee agrees and acknowledges that Franchisee's failure to comply with the provisions of Sections 15.9 and 15.11 will result in irreparable harm to Franchisor and to the Proprietary Marks, and Franchisee agrees to pay all damages, expenses, court costs and reasonable attorneys' fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, and/or damages resulting from a violation of, the requirements of Sections 15.9 and 15.11.

15.13 **Compliance with Post Term Covenants:** All covenants, obligations, and agreements of Franchisee which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination or expiration of this Agreement, shall survive such termination or expiration.

16. **COVENANTS**

16.1 **Non-Competition During Term of Agreement:** Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of Franchisor and the System. Franchisee (or, if Franchisee is a corporation, limited liability company, or partnership, all principals of Franchisee) covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or, if Franchisee is a corporation, limited liability company, or partnership, all principals of Franchisee) shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, or legal entity:

16.1.1 Divert or attempt to divert any present or prospective Store customer to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System;

16.1.2 Employ or seek to employ any person who is or has been within the previous thirty (30) days employed by Franchisor or an affiliate of Franchisor as a managerial or supervisory employee, or otherwise directly or indirectly induce such person to leave his or her employment; or

16.1.3 Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any self-service candy and confection business that is the same or similar to the Store which offers one-price candy and confections for sale in bulk or which sells candy and confection products being offered by the Store.

16.2 **Non-Competition After Execution or Termination of Agreement:** Commencing upon the date of: (a) a transfer permitted under Section 13; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Section 16.2, and continuing for an uninterrupted period of one (1) year thereafter, Franchisee shall not, without Franchisor's prior written consent, either directly or indirectly, of itself, or through, on behalf of, or in conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with (a) any self-service candy and confection business which offers one-price candy and confections for sale in bulk similar to the products offered by the Store, and (b) is, or is intended to be, located at or within a ten (10) mile radius of the Franchised Location.

16.3 **Violation of Non-Compete:** If Franchisee shall commit any violation of Section 16.2 during the one (1) year period following (a) a transfer permitted under Section 13, (b) expiration of this Agreement, (c) termination of this Agreement (regardless of the cause for termination), or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of Section 16.2, in addition to all other remedies available to Franchisor, Franchisee shall pay Franchisor, throughout the one (1) year period, 5% of the gross revenue of any business which provides products and services which are the same as, or similar to, the Store within ten (10) miles of the Franchised Location ("**Post Termination Gross Revenue**") in violation of Section 16.2. Franchisee shall account for and pay the 5% of Post Termination Gross Revenue to Franchisor on the fifteenth day of each month on the Post Termination Gross Revenue of the competing business during the previous calendar month. Franchisor shall have the right to audit the books and records of the competing business to confirm Franchisee's compliance with this Section 16.3, upon prior notice to Franchisee.

16.4 **Exceptions to Non-Compete Covenants:** Sections 16.1 and 16.2 shall not apply to ownership by Franchisee of a less than five percent (5%) beneficial interest in the outstanding equity securities of any company registered under the Securities Act of 1993 or the Securities Exchange Act of 1934

16.5 **Reducing Scope of Covenants:** Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Sections 16.1 and 16.2, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 21.1.

16.6 **Permission From Franchisor:** If Franchisor expressly grants Franchisee permission in writing to compete with Franchisor pursuant to an arrangement made under Section 16.5 or otherwise, as a condition to being granted such permission, Franchisee shall pay Franchisor, throughout the one (1) year period following (a) a transfer permitted under Section 13, (b) expiration of this Agreement, (c) termination of this Agreement (regardless of the cause for termination), or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of Section 16.2, 5% of the Post Termination Gross Revenue earned by Franchisee from any competitor, customer, client, vendor, or account of Franchisor, including, but not limited to, any competitor, customer, client, vendor, or account of Franchisor who was procured by Franchisee or with whom Franchisee became acquainted by reason of this Agreement, or by reason of Franchisee's access to, or knowledge of, the confidential information disclosed to Franchisee during the term of this Agreement. Franchisee shall account for

and pay the 5% of such Post Termination Gross Revenue to Franchisor on the fifteenth day of each month on the Post Termination Gross Revenue earned during the previous month. Franchisor shall have the right to audit the books and records of Franchisee to confirm Franchisee's compliance with this Section 16.6, upon reasonable prior notice to Franchisee.

16.7 Enforceability of Covenants Not Affected by Franchisee Claims: Franchisee expressly agrees that the existence of any claims it may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section 16. Franchisee agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Franchisor in connection with the enforcement of this Section 16.

16.8 Covenants from Individuals: Franchisee shall obtain and furnish to Franchisor executed covenants similar in substance to those set forth in this Section 16 (including covenants applicable upon the termination of a person's relationship with Franchisee) from any or all of the following persons: (a) all employees of Franchisee who have attended any training program described in Section 6.1; (b) all officers, directors, members and holders of a beneficial interest of five percent (5%) or more of the securities of Franchisee, and of any corporation directly or indirectly controlling Franchisee, if Franchisee is a corporation or limited liability company; and (c) the general partners and any limited partners (including any corporation, and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls, directly or indirectly, any general or limited partner), if Franchisee is a partnership. Every covenant required by this Section 16.8 shall be in a form approved by Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

16.9 Reasonable Good Faith Estimate: Franchisor and Franchisee acknowledge and agree that it would be impossible and impracticable to determine the precise amount of damages and expenses Franchisor will incur (1) if Franchisee commits any violation of Section 16.2 during the one (1) year period following (a) a transfer permitted under Section 13, (b) expiration of this Agreement, (c) termination of this Agreement (regardless of the cause for termination), or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of Section 16.2, or (2) if Franchisor grants Franchisee permission in writing to compete with Franchisor under Section 16.5 or otherwise, due to the complications inherent in determining the amount of revenue Franchisor may lose because of the uncertainty regarding the number of months left to complete the then-current term of this Agreement, the uncertainty regarding the Gross Revenue of the Store during the remainder of the then-current term of this Agreement, the amount of Royalties Franchisee would have paid Franchisor based upon the Gross Revenue of the Store, and the like, as well as the amounts that Franchisor will collect from Franchisee upon the occurrence of the circumstances described in Section 16.3 and Section 16.6. Franchisee and Franchisee further acknowledge and agree that 5% of the Post Termination Gross Revenue is a reasonable, good faith estimate of such damages.

16.10 Breach of Covenants Causes Irreparable Injury: Franchisee acknowledges that Franchisee's violation of any covenant of this Section 16 or any action described in Sections 14.2, 14.3, or 18.3 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee consents to the issuance of, and agrees to pay all court cost and reasonable attorney's fees incurred by Franchisor in obtaining, without the posting of any bond, and ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

17. FRANCHISEE AS A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP

17.1 Corporate Franchisee: Except as otherwise approved in writing by Franchisor, if Franchisee is a corporation, it shall: (a) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to operating the Store; (b) maintain stop transfer instructions on its records against the transfer of any equity securities and shall only issue securities upon the face of which a legend, in a form satisfactory to Franchisor, appears which references the transfer restrictions imposed by this Agreement; (c) not issue any non-voting securities convertible into voting securities; (d) maintain a current list of all owners

of record and all beneficial owners of any class of voting stock of Franchisee and furnish the list to Franchisor upon request. In addition, each present and future shareholder of Franchisee shall jointly and severally guarantee Franchisee's performance of each and every provision of this Agreement by executing a Guarantee in the form annexed hereto as Attachment C provided, however, that no guarantee shall be required from a shareholder who acquires Franchisee's securities after Franchisee becomes registered under the Securities Exchange Act of 1934.

17.2 Partnership Franchisee: If Franchisee is a partnership it shall: (a) furnish Franchisor with its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto; and (b) prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee.

17.3 Limited Liability Company Franchisee: If a Franchisee is a limited liability company, Franchisee shall: (a) furnish Franchisor with a copy of its articles of organization and operating agreement, as well as such other documents as Franchisor may reasonably request, and any amendments thereto; (b) prepare and furnish to Franchisor, upon request, a current list of all members and managers in Franchisee; and (c) maintain stop transfer instructions on its records against the transfer of equity securities and shall only issue securities upon the face of which bear a legend, in a form satisfactory to Franchisor, which references the transfer restrictions imposed by this Agreement.

18. TAXES

18.1 Payments of Taxes: Franchisee shall promptly pay to Franchisor an amount equal to all taxes levied or assessed, including, but not limited to, unemployment taxes, sales taxes, use taxes, withholding taxes, excise taxes, personal property taxes, intangible property taxes, gross receipt taxes, taxes on royalty fees, any similar taxes or levies, imposed upon or required to be collected or paid by Franchisor by reason of the furnishing of products, intangible property (including trademarks and trade names) or services by Franchisor to Franchisee through the sale, license, or lease of property or property rights provided by this Agreement.

18.2 Challenging Tax Assessment: In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law.

18.3 Notification of Investigation or Violation: Franchisee shall notify Franchisor by telephone within twenty-four hours, and confirm in writing within two (2) days thereafter, of any investigation or violation, actual or alleged, concerning any health, liquor or narcotics laws or regulations, and notify in writing within five (5) days of the commencement of any investigation, 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 of financial condition of the Store.

19. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

19.1 No Fiduciary Relationship: This Agreement does not create a fiduciary relationship between the parties hereto. Franchisee shall be an independent contractor; and nothing in this Agreement is intended to constitute or appoint either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

19.2 Public Notice of Independent Status: Franchisee shall conspicuously identify itself and the Store in all dealings with its customers, contractors, suppliers, public officials, and others, as an independent

franchisee of Franchisor, and shall place such notice of independent ownership in its Store and on all forms. Franchisor shall have the right to specify the language of any such notice.

19.3 **Independent Contractor:** Franchisee acknowledges and agrees that it is not authorized to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligations in Franchisor's name; and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Franchisee in its conduct of the Store or for any claim or judgment arising therefrom against Franchisee or Franchisor.

19.4 **Indemnification:** Franchisee shall indemnify and hold harmless to the fullest extent by law, Franchisor, its affiliates their respective directors, officers, employees, shareholders, and agents, (collectively the "**Indemnitees**") from any and all "**losses and expenses**" (as hereinafter defined) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Store including, but not limited to, claims arising as a result of the maintenance and operation of vehicles or the Franchised Location (collectively an "**event**"), and regardless of whether same resulted from any strict or vicarious liability imposed by law on the Indemnitees; provided, however, that this indemnity shall not apply to any liability arising from the gross negligence of Indemnitees (except to the extent that joint liability is involved, in which event the indemnification provided herein shall extend to any finding of comparative negligence or contributory negligence attributable to Franchisee). For the purpose of this Section 19.4, the term "**losses and expenses**" shall be deemed to include compensatory, exemplary, or punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to Franchisor's reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Franchisee shall give Franchisor prompt notice of any event of which it is aware, for which indemnification is required, and, at the expense and risk of Franchisee, Franchisor may elect to assume (but under no circumstance is obligated to undertake) the defense and/or settlement thereof, provided that Franchisor will seek the advice and counsel of Franchisee. Any assumption of Franchisor shall not modify Franchisee's indemnification obligation. Franchisor may, in its sole and absolute discretion, take such actions as it seems necessary and appropriate to investigate, defend, or settle any event or take other remedial or corrective actions with respect thereof as may be, in Franchisor's sole and absolute discretion necessary for the protection of the indemnities of the System.

20. **WEB SITES.**

20.1 **Definitions:** For the purposes of this Agreement, the following words and phrases shall have the meanings set forth in this Section 20.1:

20.1.1 "**Content**" means all text, images, sounds, files, video, designs, animations, layout, color schemes, trade dress, concepts, methods, techniques, processes and data used in connection with, displayed on, or collected from or through Franchisor's Web site.

20.1.2 "**Deep Link**" means a Link to the content of a Web site. Typically, a deep link is to an interior page of a Web site (i.e., by passing the front page of the Web site).

20.1.3 "**Electronic Commerce**" means offering and selling merchandise and services associated with the Proprietary Marks, and receiving and accepting orders and payment for that merchandise and services, directly or indirectly, through any means of electronic communication, including receiving and accepting orders over the Internet.

20.1.4 “**Frame**” refers to a feature which, when used in conjunction with certain browsers, allows visitors of a Web site to view content from other Web sites without actually leaving the first page.

20.1.5 “**Franchisee’s Web Page**” means one or more interior pages of Franchisor’s Web site dedicated in whole or in part to the Store.

20.1.6 “**Franchisor’s Web site**” means one or more Internet Web sites that may, among other things, facilitate orders, provide information about the System and the products and services that are offered on the Web site and at Stores operated under the Proprietary Marks; Franchisee’s Web Page may be part of the Franchisor Web site.

20.1.7 “**Internet**” means any means of electronic communication that employs inter-connected computer networks to communicate information (of any kind) by fiber optics, wire, radio or other methods of transmission, including the myriad of computers, telecommunications facilities and similar means (both equipment and software) that comprise the interconnected worldwide network of networks that employ the TCP/IP (Transmission Control Protocol/Internet Protocol) or any predecessor or successor protocols to that protocol.

20.1.8 “**Intranet**” means a private method of communication for use only by employees and franchisees of Franchisor; the Franchisor’s Intranet may be either a “**true**” intranet (a series of inter-connected computers that use the same type of software as the Internet, but that are not technically part of the Internet and do not use the Internet to transmit material to one another) or an extranet (which will actually transmit information over the Internet, but require a password to access data on the servers used by Franchisor).

20.1.9 “**Link**” means a cross-reference which, with the aid of an interactive browser program, allows the end-user to move or connect easily from one document (including, another Web site or page on a Web site) to another.

20.1.10 “**Software**” means all computer programs and computer code (e.g., HTML, Java) used for or on the Web site, excluding any Software owned by third parties.

20.1.11 “**URL**” means uniform resource locator, the unique address assigned to each page of a Web site.

20.1.12 “**Web site**” means a series of inter-connected “**pages**” on the World Wide Web section of the Internet (the “**World Wide Web**” is the portion of the Internet that features graphics-rich pages using the HTTP and HTML protocols).

20.2 **Use of Proprietary Marks on Internet:** Franchisee shall not develop, create, generate, own, license, lease or use in any manner any computer medium or electronic medium (including, any Internet home page, e-mail address, Web site, bulletin board, newsgroup or other Internet-related medium) which in any way uses or displays, in whole or in part, the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto without Franchisor’s express prior written consent, and then only in such manner and in accordance with this Agreement, such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time and only so long as Franchisee is not in default of this Agreement or any other Agreement between Franchisor, its affiliates and Franchisee. Without limiting the generality of the foregoing, Franchisee shall not cause, permit or allow the Proprietary Marks, or any of them, or any words, symbols or terms confusingly similar thereto, be used or displayed in whole or part: (a) as, or as a part of, an Internet domain name; (b) as, or as a part of, a URL (at any level or address); or (c) on or in

connection with any Internet home page, Web site, bulletin board, newsgroup, chat-group, buddy list, instant messenger, meta-tag or the comparable identifier in any future technology) or other internet-related activity, without Franchisor's express prior written consent, and the only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time. Franchisee shall not Link to or frame Franchisor's Web site (including Franchisee's Web Page, if any) to any other Web site or authorize any third party to Link to or frame the Web site (including Franchisee's Web Page, if any) without Franchisor's express prior written consent, and then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

20.2.1 Except as provided in Section 20.4, Franchisee shall not use, nor authorize any third party to use, the Proprietary Marks to advertise, promote, offer or sell any goods or services through the Internet, if those goods or services are the same or similar to those (a) which are offered at or from the Store, (b) which bear any of the Proprietary Marks, or (c) which are otherwise offered or sold under the Proprietary Marks. Franchisee may, however, use the Proprietary Marks to sell such goods or services through the Internet in compliance with Section 20.4 or with Franchisor's prior written consent, but then only in such manner and in accordance with such procedures, policies, standards and specifications as Franchisor may establish in the Manuals from time to time.

20.2.2 Franchisor will own and will retain all right, title and interest in and to the Proprietary Marks and the use thereof in any and all manners and to all existing and future domain names, URLs, future addresses and sub addresses established by Franchisor (including Franchisee's Web Page sub addresses) which may or may not include the Proprietary Marks; all Software; all Content prepared for, or used on, Franchisor's Web site; and all intellectual property rights in or to any of them.

20.3 **Franchisor's Web Site:** Franchisor may, but shall not be obligated to, establish and maintain from time to time Franchisor's Web site to provide information about the System and the goods and services that Sweet Factory stores provide, even though Franchisor's Web site is accessible by persons in Franchisee's trade area. Franchisor has sole discretion and control over the design and content of Franchisor's Web site, except that Franchisor may configure the site to accommodate Franchisee's Web Page as described in Section 20.3.2. Franchisor may, at its sole option, from time to time, without prior notice to Franchisee: (a) change, revise, or eliminate the design, content and functionality of Franchisor's Web site; (b) make operational changes to Franchisor's Web site; (c) change or modify the URL and/or domain name of Franchisor's Web site; (d) substitute, modify, or rearrange Franchisor's Web site, at Franchisor's sole option, including in any manner that Franchisor considers necessary or desirable to, among other things, (1) comply with applicable laws, (2) respond to changes in market conditions or technology, and (c) respond to any other circumstances; (3) limit or restrict end-user access (in whole or in part) to Franchisor's Web site; and (e) disable or terminate Franchisor's Web site without any liability to Franchisee.

20.3.1 Franchisor's Web site may include a series of interior pages that may identify participating Sweet Factory stores by, among other things, name, geographic region, address, telephone number and/or e-mail address. Franchisor may permit Franchisee to customize or post certain information to Franchisee's Web Page, subject to Franchisee's compliance with the procedures, policies, standards and specifications that Franchisor may establish in the Manuals from time to time which may require the Franchisee to pay a reasonable fee for the privilege of having Franchisee's Web Page, and may include, without limitation, specifications and limitations for the data or information to be posted to Franchisee's Web Page, customization specifications, the basic template for design of Franchisee's Web Page, parameters and deadlines specified by Franchisor, disclaimers, and such other standards and specifications and rights and obligations or the parties as Franchisor may establish from time to time. Any modifications (including customizations, alterations, submissions or updates) to the Content made by Franchisee for any purpose with be deemed to be a "**work**

made for hire” under the copyright laws, and therefore, Franchisor shall own the intellectual property rights in and to such modifications. To the extent any modification does not qualify as a work made for hire as outlined above, Franchisee hereby assigns those modifications to Franchisor for no additional consideration and with no further action required and shall execute such further assignment(s) as Franchisor may request. Franchisee may not modify Franchisee’s Web Page except in coordination with Franchisor’s webmaster and in compliance with Franchisor’s policies and procedures. Franchisee shall contribute a reasonable fee toward the cost of the Web site’s maintenance, which may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time. If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or other agreement with Franchisor or Franchisor’s affiliates, or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor’s affiliates, Franchisor may disable Franchisee’s Web Page until such time as Franchisee pay its outstanding obligations in full. Franchisee hereby appoints Franchisor as Franchisee’s attorney-in-fact with full power and authority for the sole purpose of disabling Franchisee’s Web Page. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

20.3.2 Franchisor may Link Franchisor’s Web site to the Web sites of third parties, including, electronic service providers, Franchisor’s affiliates and other providers of goods and services. Franchisor may also permit third parties to Link (including Deep Links to any interior page of Franchisor’s Web site, including Franchisee’s Web Page) and frame Franchisor’s Web site (including Franchisee’s Web Page). Franchisor may place legal notices, disclaimers, Franchisor’s corporate logos and slogans, advertisements, endorsements, trademarks, and other identifying information on Franchisor’s Web site, all of which may be modified, expanded, or eliminated at Franchisor’s option. Further, Franchisor may establish or participate in programs whereby Franchisor refers end-users to other Web sites, or Franchisor receives referrals from other Web sites. All consideration (monetary and non-monetary) received by Franchisor on account of the placement or sale of advertisements, endorsements, and sponsorships on Franchisor’s Web site (including any Franchisee Page), and all consideration (monetary and non-monetary) received by Franchisor on account of affiliate programs, will belong only to Franchisor. Franchisor may also establish programs which encourage repeat and business by end-users.

20.3.3 Without limiting Franchisor’s general unrestricted right to permit, deny and regulate Franchisee’s participation on Franchisor’s Web site in Franchisor’s sole discretion, if FRANCHISEE fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor’s affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor’s affiliates, Franchisor may disable or terminate Franchisee’s Web Page and remove all references to the Store on Franchisor’s Web site until the breach is cured.

20.3.4 Franchisor has no control over the stability or maintenance of the Internet generally; as a result, Franchisor is not responsible for damage or loss caused by errors of the Internet. Furthermore, Franchisor is not liable for any direct, indirect, special, incidental, exemplary or consequential damages arising out of the use of, or the inability to use, Franchisor’s Web site or the Internet, including loss of profits, goodwill, or savings; downtime; or damage to or replacement of programs and data, whether based in contract, tort, product liability, or otherwise.

20.4 **Electronic Commerce.** Franchisee will not use the Proprietary Marks to advertise, promote or sell any services or merchandise through the Internet, nor will Franchisee offer or sell any service that is identified with Proprietary Marks or any memorabilia or other merchandise that bears the Proprietary Marks through the Internet, except in compliance with Section 20.2 and this Section 20.4. Franchisee’s breach of this restriction will constitute willful trademark infringement and a material breach of this Agreement.

20.4.1 Franchisor may, at its discretion, use the Web site described in Section 20.3 or may establish another facility on the Internet for the purpose of engaging in Electronic Commerce with respect to products and services that are identified with the Proprietary Marks.

20.4.2 If Franchisor decides to engage in Electronic Commerce, it will (a) establish uniform procedures, policies and protocols to govern electronic communications between Franchisor and its customers and the use and dissemination of information that Franchisor obtains with respect to customers' identities, purchasing habits and other commercially relevant matters; (b) develop a secure site on the facility through which Franchisor can accept credit card and other confidential information from its customers; (c) establish a central administration center through which customer orders are processed, customer complaints are handled, sales taxes (if any) are remitted, and records of sales transactions are created and maintained; (d) establish a central fulfillment center through which all customer orders are filled; and (e) establish the terms and conditions under which members of the System may participate in Franchisor's Electronic Commerce program.

20.4.3 In the event that Franchisor initiates Franchisor's Electronic Commerce program, Franchisee will have the opportunity to participate in the program provided that Franchisee is in good standing under this Agreement and any other agreement with Franchisor or Franchisor's affiliates. The Electronic Commerce program set forth in the Manuals may (a) state the terms on which Franchisor and participating franchisees of Franchisor may share program revenues and expenses; (b) obligate Franchisee to adhere to Franchisor's procedures, policies and protocols that govern electronic communications and the use and dissemination of customers information, (c) authorize Franchisor from time to time to modify the procedures, policies and protocols that govern the Electronic Commerce program; and (d) release Franchisor from liability to Franchisee and its customers for theft or disclosure of confidential customer information or breach of Franchisor's privacy standards unless the proximate cause of such theft, disclosure or breach is Franchisor's gross negligence or willful misconduct.

20.4.4 If Franchisee declines to participate in the Electronic Commerce program on the terms stated in the Manuals, Franchisee will have no right to share in program revenues, nor will Franchisee have any responsibility to bear or pay any program expenses.

20.4.5 If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under the Agreement, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisee hereby authorizes Franchisor to disable or terminate the end-user's ability to place pick-up and delivery orders with Franchisee until the breach is cured.

20.5 **Franchisor's Intranet:** Franchisor may, at its option, establish and maintain, an Intranet through which Franchisor, franchisees of Franchisor and Franchisor's employees may communicate with each other, and through which Franchisor may disseminate the Manuals, updates thereto and other confidential information. Franchisor shall have sole discretion and control over all aspects of the Intranet, including the content and functionality thereof. Franchisor will have no obligation to maintain the Intranet indefinitely, and may dismantle it at any time without liability to Franchisee.

20.5.1 If Franchisor establishes an Intranet, Franchisee shall have the privilege to use the Intranet, subject to Franchisee's strict compliance with the standards and specifications, protocols and restrictions that Franchisor may establish from time to time. Such standards and specifications, protocols and restrictions may relate to, among other things, (a) the use of abusive, slanderous or otherwise offensive language in electronic communications; (b) communications between or among franchisees that endorse or encourage breach of any franchisee's Franchise Agreement; (c) confidential treatment of materials that Franchisor transmits via the Intranet; (e) password protocols and other security precautions; (f) grounds and

Procedures for Franchisor's suspending or revoking a franchisee's access to the Intranet; and (g) a privacy policy governing Franchisor's access to and use of electronic communications that franchisees post to the Intranet. Franchisee acknowledges that, as administrator of the Intranet, Franchisor can technically access and view any communication that any person posts on the Intranet. Franchisee further acknowledges that the Intranet facility and all communications that are posted to it will become Franchisor's property, free of any claims of privacy or privilege that Franchisee or any other person may assert.

20.5.2 Upon receipt of notice from Franchisor that Franchisor has established the Intranet, Franchisee shall establish and continually maintain (during all times that the Intranet shall be established and until the termination of this Agreement) an electronic connection (the specifications of which shall be specified in the Manuals) with the Intranet that allows Franchisor to send messages to and receive messages from Franchisee, subject to the standards and specifications. Franchisee shall contribute a reasonable amount toward the cost of the Intranet's maintenance with may vary from year to year during the term of this Agreement and shall pay the same to Franchisor in the manner and at the times that Franchisor may establish in the Manuals from time to time.

20.5.3 If Franchisee fails to pay when due any fees or other amounts payable to Franchisor under this Agreement, or any other agreement with Franchisor or Franchisor's affiliates or otherwise breaches this Agreement or any other agreement with Franchisor or Franchisor's affiliates, Franchisor may temporarily disable or terminate Franchisee's access to the Intranet until such time as Franchisee pays its outstanding obligation in full without Franchisor having any liability to Franchisee, in which case Franchisor shall only be required to provide Franchisee a paper copy of the Manuals and any updates thereto, if none have been previously provided to Franchisee, unless Franchisee is not otherwise entitled to the Manuals.

20.6 **Assignment Upon Termination or Expiration:** Franchisee shall, at the option and request of Franchisor, assign to Franchisor all rights to all e-mail address, URLs, domain names, Internet listings, and Internet accounts related to the Store following demand by Franchisor upon Franchisee's misuse of the same and/or the termination or expiration of this Agreement. Furthermore, Franchisee hereby appoints Franchisor as Franchisee's attorney-in-fact with full power and authority for the sole purpose of assigning these rights to Franchisor. This appointment shall be deemed to be coupled with an interest and shall continue in full force and effect until the termination or expiration of this Agreement.

21. **APPROVALS, WAIVERS, AND NOTICES**

21.1 **Obtaining Approvals:** Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor thereof, and such approval or consent must be obtained in writing. Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request thereof.

21.2 **No Waiver:** No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Franchisee, or by any other franchisee, of any of the terms, provisions, or covenants thereof, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, or power as against Franchisee, or as to a subsequent breach or default by Franchisee. Subsequent acceptance by Franchisor of any payments due to it under this Agreement shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Franchisee of any terms, covenants, or conditions of this Agreement.

21.3 Notices: All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail; by private overnight delivery; or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served; (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail; (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery; and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail. Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

TRU Franchise, LLC
1590 N. Batavia Street #2
Orange, California 92867
Fax: 714-922-3931
Attention: President

With a copy (which shall not constitute notice) to:

K. Walter Johnson, Esq.
Law Office of K. Walter Johnson
4000 Pimlico Drive
Suite 114-101
Pleasanton, California 94588
Fax: 925-272-4932

Notices to Franchisee:

Fax: _____

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

22. ENTIRE AGREEMENT, SEVERABILITY, AND CONTRUCTION

22.1 Entire Agreement: This Agreement, any attachments hereto, and any ancillary agreements between Franchisee and Franchisor or any affiliate which are executed contemporaneously with this Agreement, constitute the entire and complete Agreement between Franchisor (and, if applicable, any affiliate) and Franchisee concerning the subject matter thereof, and supersede all prior agreements. Franchisee acknowledges that it is entering into this Agreement, and any ancillary agreements executed contemporaneously herewith, as a result of its own independent investigation of the business franchised hereby and not as a result of any representation made by Franchisor or persons associated with Franchisor, or other franchisees, which are contrary to the terms herein set forth or which are contrary to the terms of any franchise disclosure document, or other similar document required or permitted to be given to Franchisee pursuant to applicable law. Except for those permitted under this Agreement to be made unilaterally by Franchisor, no amendment, change, or variation from this Agreement shall be binding on either party unless mutually agreed to by parties and executed by their authorized officers or agents in writing. Notwithstanding the foregoing,

Nothing in this Agreement is intended to disclaim representations Franchisor made to Franchisee in the Franchise Disclosure Document or in any related document that Franchisor heretofore furnished to Franchisee.

22.2 **Severability and Construction:** Except as expressly provided to the contrary herein, each section, paragraph, part, term, and provision of this Agreement shall be considered severable; and if, for any reason, any section, paragraph, part, term, provision, and/or covenant 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, paragraphs, parts, terms, provisions, and/or covenants 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 the invalid portions, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be part of this Agreement. Neither this Agreement or any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. On the contrary, this Agreement has been review by all parties and shall be constructed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Agreement. Franchisor and Franchisee intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

22.3 **Survival of Obligations After Expiration or Termination of Agreement:** Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination.

22.4 **Survival of Modified Provisions:** Franchisee 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 of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed 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 or agency order.

22.5 **Captions:** All captions in this Agreement are intended for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

22.6 **Responsibility:** The term "Franchisee" as used in this Agreement shall refer to each person executing this Agreement as Franchisee, whether such person is one of the spouses, partners, shareholders, members, trustees, trustors or beneficiaries or persons named as included in Franchisee, and shall apply to each such person as if he were the only named Franchisee in this Agreement.

22.6.1 If Franchisee is a married couple, both husband and wife executing this Agreement shall be liable for all obligations and duties of Franchisee under this Agreement as if such spouse were the sole Franchisee under this Agreement.

22.6.2 If Franchisee is a partnership or if more than one person executes this Agreement as Franchisee, each partner or person executing this Agreement shall be liable for all the obligations and duties of Franchisee under this Agreement.

22.6.3 If Franchisee is a trust, each trustee, trustor and beneficiary signing this Agreement shall be liable for all of the obligations and duties of Franchisee under this Agreement.

22.6.4 If Franchisee is a corporation or limited liability company, all shareholders or members executing this Agreement shall be liable for all obligations and duties of Franchisee under this Agreement as if each such shareholder or member were the sole Franchisee under this Agreement.

22.6.5 If Franchisee is in breach or default under this Agreement, Franchisor may proceed directly against each such spouse, partner, signatory to this Agreement, shareholder, member, trustee, trustor or beneficiary without first proceeding against Franchisee and without proceeding against or naming in such suit any other Franchisee, partner, signatory to this Agreement, shareholder, member, trustee, trustor or beneficiary. The obligations of Franchisee and each such spouse, partner, person executing this Agreement, shareholder, member, trustee, trustor and beneficiary shall be joint and several.

22.6.6 Notice to or demand upon one spouse, partner, person signing this Agreement, shareholder, member, trustee, trustor or beneficiary shall be deemed notice to or demand upon Franchisee and all such spouses, partners, persons signing this Agreement, shareholders, members, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Franchisee's, spouses, partners, persons executing this Agreement, shareholders, members, trustees, trustors or beneficiaries.

22.6.7 The cessation of or release from liability of Franchisee, or any such spouse, partner, person executing this Agreement, shareholder, member, trustee, trustor or beneficiary shall not relieve any other Franchisee, spouse, partner, person executing this Agreement, shareholder, member, trustee, trustor or beneficiary from liability under this Agreement, except to the extent that the breach or default has been remedied or monies owed have been paid.

22.7 **Incorporation of Recitals:** The recitals set forth in Paragraphs A-G of this Agreement are true and correct and are hereby incorporated by reference into the body of this Agreement.

23. **APPLICABLE LAW**

23.1 **Choice of Law:** This Agreement takes effect upon its acceptance and execution by Franchisor in California, and shall be interpreted and constructed under the laws of California. In the event of any conflict of law, the laws of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if the Store is located outside of California and such provision would be enforceable under the laws of the state in which the Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Section 23.1 is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of the state of California to which it would not otherwise be subject.

23.2 **Venue:** 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 California in the country in which Franchisor has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

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

23.4 **Limitation of Adjudicative Proceedings:** Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recovery of any actual damages sustained by it.

23.5 **Right to Injunctive Relief:** Nothing herein contained shall bar Franchisor's right to seek injunctive relief to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to Franchisee's: (a) use of the Proprietary Marks, (b) obligations upon termination or expiration of the Agreement, (c) assignment or proposed assignment of the Store, this Agreement, or any ownership interest in Franchisee, or (d) actions covered by the provisions of Section 15. Franchisor also shall be able to seek injunctive relief to prohibit any act or omission by Franchisee or its employees that constitutes a violation of any applicable law, is dishonest or misleading to Franchisee's customers or to the public, or which may impair the goodwill associated with the Proprietary Marks; and Franchisee agrees to pay all costs and reasonable attorneys' fees incurred by Franchisor in obtaining such relief.

24. **ACKNOWLEDGEMENTS**

24.1 **Recognition of Business Risks:** Franchisee acknowledges that it has conducted an independent investigation of the proposed franchise, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Franchisee as an independent business person. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by this Agreement, or of other Stores.

24.2 **Receipt of Franchise Disclosure Documents:** Franchisee acknowledges that it has received a copy of the complete TRU Franchise, LLC franchise disclosure document for Sweet Factory stores, which contains a copy of this Franchise Agreement, the attachments thereto, and agreements relating thereto, if any, at least fourteen (14) calendar days prior to the date on which this Agreement was executed. Franchisee acknowledges and agrees that Franchisor has made no promises, representations, warranties or assurances to Franchisee which are inconsistent with the terms of this Agreement or Franchisor's franchise disclosure document, concerning the profitability or likelihood of success of the Store, that he has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Franchisee's business ability and aptitude is primary in determining his success.

24.3 **Review of Franchise Disclosure Documents:** Franchisee acknowledges that it has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors and counsel of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

24.4 **Representations by Franchisee:** Franchisee acknowledges and agrees that prior to the date of Franchisee's execution of this Agreement, no employee, agent or other person speaking on Franchisor's behalf made (i) any statement or promise to Franchisee concerning projected revenues, profits or operating costs of a Sweet Factory franchised business, (ii) any statement or promise to Franchisee regarding the amount of money Franchisee may earn in operating a Sweet Factory franchised business, (iii) any statement or promise to Franchisee concerning the total amount of revenue a Sweet Factory franchised business will or may generate, or (iv) any statement or promise to Franchisee regarding the costs Franchisee will or may incur in operating a Sweet Factory franchised business.

24.5 **Anti-Terrorism Laws:** Franchisee and its officers, directors, members and shareholders shall comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Franchisee and its officers, directors, members and shareholders certify, represent, and warrant that none of the property or interests of Franchisee or its officers, directors, members and shareholders is subject to being "**blocked**" under any of the Anti-Terrorism Laws and that Franchisee and its officers, directors, members and shareholders are not otherwise in violation of

any of the Anti-Terrorism Laws. Any violation of the Anti-Terrorism Laws by Franchisee or Franchisee's employees or any "blocking" of Franchisee's assets under the Anti-Terrorism Laws constitutes grounds for immediate termination of this Agreement and any other agreements Franchisee has entered into with Franchisor or any of its affiliates, in accordance with the provisions of Section 14.4.

24.5.1 For the purpose of this Section 24.5, "**Anti-Terrorism Laws**" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA Patriot Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

24.5.2 Franchisee and its officers, directors, members and shareholders certify that none of its employees, or anyone associated with Franchisee or its officers, directors, members and shareholders are listed in the Annex to Executive Order 13224. Franchisee agrees not to hire any individuals listed in the Annex. The Annex is available at:

<http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>

24.5.3 Franchisee certifies that Franchisee has no knowledge or information that, if generally known, would result in Franchisee, its officers, directors, members and shareholders, its employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

24.5.4 Franchisee shall be solely responsible for ascertaining what actions must be taken by Franchisee to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that Franchisee's indemnification responsibilities set forth in this Agreement pertain to Franchisee's obligations under this Section 24.5.

24.5.5 Any misrepresentation by Franchisee under this Section 24 or any violation of the Anti-Terrorism Laws by Franchisee, its officers, directors, members and shareholders, or Franchisee's employees shall constitute grounds for immediate termination of this Agreement and any other Agreement Franchisee has entered with Franchisor or an affiliate of Franchisor, in accordance with the terms of this Agreement.

24.6 **Attorneys' Fees**: If Franchisor becomes a party to any legal proceedings concerning this Agreement, the Store or the Franchised Location by reason of any act omission of Franchisee or its authorized representatives, Franchisee shall be liable to Franchisor for the reasonable attorney's fees and court costs incurred by Franchisor in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorney's fees and costs of suit.

24.7 **Atypical Arrangements**: Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchisee to other franchisees in any manner and at any time, which offers have or may have terms, conditions, and obligations, which may differ from the terms, conditions, and obligations in this Agreement. Franchisee further acknowledges and agrees that Franchisor has made no warranty or representation that all Franchise Agreements previously issued or issued after this Franchise Agreement by Franchisor do or will contain terms substantially similar to those contained in this Franchise Agreement. Franchisor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Franchise Agreements previously executed or

executed after the date of this Franchise Agreement with other Sweet Factory franchisees in a non-uniform manner.

24.8 **Additional Documents:** Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgement and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

24.9 **Exclusive Remedy:** In no event shall Franchisee make any claim for money damages based on any claim or assertion that Franchisor has unreasonably withheld or delayed any consent or approval under this Agreement. Franchisee waives any such claim for damages. Franchisee may not claim any such damages by way of setoff, counterclaim or defense. Franchisee's sole remedy for the claim will be an action or proceeding to enforce the provisions of this Agreement, for specific performance or for declaratory judgment.

24.10 **Force Majeure:** Neither party will be in default in the performance of its obligations under this Agreement if such performance is prevented or delayed due to Force Majeure. "**Force Majeure**" means any event that is reasonably unforeseeable as of the date of this Agreement and that is beyond the reasonable control, directly or indirectly, of a party, the effects of which could not reasonably be prevented or avoided by that party with the exercise of commercially reasonable efforts and due diligence and which event does not result from the party's fault or negligence or the fault or negligence of its agents, employees or subcontractors and which event causes that party to be delayed, in whole or in part, or unable to partially or wholly perform its obligations under this Agreement and subject to the satisfaction of the foregoing criteria, shall include: (a) acts of God (such as tornadoes, earthquakes, hurricanes, floods, fire or other natural catastrophe); (b) strikes, lockouts or other industrial disturbances; (c) war, terrorist acts, riot, or other civil disturbance; (d) unilateral governmental action impacting restaurants generally; and (e) epidemics, transportation shortages, inadequate supply of labor, material or energy, or a party foregoing the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any federal, state or municipal government or any department of agency. In the event of the occurrence of an event constituting Force Majeure, the party claiming the extension by Force Majeure shall notify the other party in writing within ten (10) days after commencement of the Force Majeure of the specific nature and extent of the Force Majeure, and how it has impacted that party's performance hereunder. The particular time period to which the event of Force Majeure applies shall be extended by an amount of time equal to the time period during which the Force Majeure shall have existed. The party claiming the extension by Force Majeure shall continue to provide the other party with updates and all information as may be requested by the other party, including that party's progress and diligence in responding to and overcoming the Force Majeure.

24.11 **Counterparts and Electronic Copies:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed on original copy of this Agreement for all purposes, provided such electronic copies are fully executed, dated and identical in form to the original hard copy version of the Agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first shown above.

FRANCHISOR:

TRU FRANCHISE, LLC

By: _____

Name: _____

Title: _____

FRANCHISEE:

_____,

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a Nevada limited liability company;
- ☐ a _____ corporation

By: _____

Name: _____

Its: _____, and individually

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT A
THE FRANCHISED LOCATION**

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT A
THE FRANCHISED LOCATION**

The following site has been selected by Franchisee and approved by Franchisor as the "**Franchised Location**" for the "**Store**" in accordance with Section 1.2 of the Franchise Agreement entered into between Franchisor and Franchisee dated _____, 201__:

The commencement date of this Agreement is _____. The expiration date of this Agreement is _____; 20__.

FRANCHISOR:

TRU FRANCHISE, LLC

By: _____

Name: _____

Title: _____

FRANCHISEE:

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a Nevada limited liability company;
- ☐ a _____ corporation

By: _____

Name: _____

Its: _____, and individually

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT B
AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS
(DIRECT DEBITS)**

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT B
AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS
(DIRECT DEBITS)**

The undersigned depositor ("**Depositor**") hereby (1) authorizes TRU Franchise, LLC, and its affiliates ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account indicated below and (2) authorizes the depository designated below ("**Depository**") to debit such account pursuant to Franchisor's instructions.

Depository

Branch

City and State

Zip Code

Bank Transit / ABA Number

Account Number

This authority is to remain in full force and effect until Depository has received joint written notification from Franchisor and Depositor of the Depositor's termination of such authority in such time and in such manner as to afford Depository a reasonable opportunity to act on it. Notwithstanding the foregoing, Depository shall provide Franchisor and Depositor with thirty (30) day prior written notice of the termination of this authority. If an erroneous debit entry is initiated to Depositor's account, Depositor shall have the right to have the amount of such entry credited to such account by Depository, if (a) within fifteen (15) calendar days following the date on which Depository sent to Depositor a statement of account or a written notice pertaining to such entry or forty-five (45) days after posting, whichever comes first, Depositor shall have sent to Depository a written notice identifying such entry, stating that such entry was in error, and requesting Depository to credit the amount thereof to such account. These rights are in addition to any rights Depositor may have under federal and state banking laws.

DEPOSITOR (Print Name)

DEPOSITORY (Print Name)

By: _____

By: _____

Its: _____

Its: _____

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT
ATTACHMENT C
STATE SPECIFIC AMENDMENTS**

**[See Exhibit L
State Specific Addenda
of the FDD]**

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT D
GUARANTEE**

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**ATTACHMENT E
ENTITY INFORMATION**

EXHIBIT E
ENTITY INFORMATION

If Franchisee is an Entity, Franchisee represents and warrants that the following information is accurate and complete in all material respects:

- (1) Franchisee is a (check as applicable):
☐ corporation
☐ limited liability company
☐ general partnership
☐ limited partnership
☐ Other (specify): _____

(2) Franchisee shall provide to Franchisor concurrently with the execution of this Agreement true and accurate copies of its charter documents including Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution of this Agreement, and any amendments to the foregoing ("**Entity Record**").

(3) Franchisee promptly shall provide such additional information as Franchisor may from time to time request concerning all persons who may have any direct or indirect financial interest in Franchisee.

(4) The name and address of each of Franchisee's Owners, members, or general and limited partner:

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST

(5) There is set forth below the names, and address and title of Franchisee's principal officers or partners who will be devoting their full time to the Business:

NAME	ADDRESS

(6) The address where Franchisee's Financial Records, and Entity Records (e.g., Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, etc.) are maintained is:

FRANCHISOR:

TRU FRANCHISE, LLC

By: _____

Name: _____

Title: _____

FRANCHISEE:

☐ an individual;

☐ a _____ general partnership;

☐ a _____ limited partnership;

☐ a Nevada limited liability company;

☐ a _____ corporation

By: _____

Name: _____

Its: _____, and individually

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT F
ADDENDUM FOR STORE PURCHASE

**TRU FRANCHISE, LLC
FRANCHISE AGREEMENT ADDENDUM
FOR STORE PURCHASE**

THIS ADDENDUM FOR STORE PURCHASE (the "**Addendum**") is made and entered into as of _____, 20__ by and between **TRU FRANCHISE, LLC**, a California limited liability company ("**Franchisor**"), on the one hand, and _____, husband and wife (collectively "**Franchisee**"), on the other hand, with reference to the following facts

A Franchisee has purchased the assets of a Sweet Factory store from an affiliate of Franchisor (the "**Store**")

B Franchisor and Franchisee have entered into a Franchise Agreement (the "**Agreement**"), which they wish to modify by means of this Addendum, with respect to the operation of the Store, and

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

NOW, THEREFORE, IT IS AGREED

1 The following Paragraphs of the Agreement shall be deleted in their entirety and have no force or effect Paragraphs 31, 51 through and including 55, 115, 14 21, and 16.1.2.

2 The following Paragraph shall be inserted into the Agreement and made a part thereof:

"16.1.2 Except as may be approved in writing by Franchisor prior to Franchisee's purchase of the assets of the Store, Franchisee shall not employ or seek to employ any person who is or has been within the previous thirty (30) days employed by Franchisor or an affiliate of Franchisor as a salaried managerial employee, or otherwise directly or indirectly induce such person to leave his or her employment, or"

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

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date first shown above.

FRANCHISOR

TRU FRANCHISE, LLC,
A California limited liability company

By _____

FRANCHISEE

_____, an individual,
] a _____ general partnership,
] a _____ limited partnership,
] a _____ limited liability company,
] a _____ corporation

By _____

Its _____

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT G
ADDENDUM FOR PURCHASE OF TURNKEY UNIT

TRU FRANCHISE, LLC EXHIBIT

G

ADDENDUM FOR PURCHASE OF TURNKEY UNIT

THIS ADDENDUM FOR PURCHASE OF TURNKEY UNIT (the "**Addendum**") is made and entered into as of _____, 20__ by and between **TRINITY RETAIL UNLIMITED, LLC**, a Nevada limited liability company ("**Seller**"), on the one hand, and _____ ("**Buyer**"), on the other hand, with reference to the following facts.

A On _____, Seller and Buyer entered into an Asset Purchase Agreement (the "**Purchase Agreement**") pursuant to which has Seller agreed to sell, and Buyer agreed to purchase, the assets of a Sweet Factory store described on Attachment A to the Purchase Agreement from Seller before the store has opened for business, which Seller will construct furnish, equip, attach fixtures and decorate for Buyer (a "**Turnkey Unit**"), and which Buyer shall thereafter operate under a Franchise Agreement (the "**Franchise Agreement**") with TRU Franchise, LLC, a California limited liability company ("**Franchisor**")

B Seller and Buyer wish to modify the Purchase Agreement by means of this Addendum with respect to the Turnkey Unit

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

NOW, THEREFORE, IT IS AGREED

1 CONSTRUCTION OF TURNKEY UNIT

Seller shall construct furnish, equip, attach fixtures and decorate the Turnkey Unit for Buyer in such manner and with such items of furniture, equipment, fixtures and decorations as Seller shall determine necessary and appropriate, in its sole and absolute discretion (the "**Work**") Buyer acknowledges and agrees that Buyer shall have no input, choice or opinion of any kind with respect to any items of furniture, equipment, fixtures or decorations installed at the Turnkey Unit by Seller. Seller shall construct furnish, equip, attach fixtures and decorate the Turnkey Unit in a diligent manner, but Seller and Buyer acknowledge and agree that Seller has not made, and makes no covenants or representations of any sort whatsoever with respect to the completion date for the Work or the opening date of the Turnkey Unit for business Consequently, Seller shall not be in breach of any obligations under the Purchase Agreement and/or this Addendum regardless of the length of time incurred to construct furnish, equip, attach fixtures, and decorate the Turnkey Unit and to open the Turnkey Unit for business

2 INSPECTION AND WALK THROUGH

Seller shall notify Buyer of the anticipated construction completion date for the Turnkey Unit and, after construction is completed, Seller and Buyer shall conduct a walk through of the Turnkey Unit (the "**Walk Through**") to determine the condition of the furniture, equipment, fixtures and decorations and leasehold improvements at the Turnkey Unit Seller shall prepare a written list of any repairs to be made by Seller at the Turnkey Unit following the Closing Date (the "**Repair List**") at the Walk Through The Repair List shall be the final and conclusive listing of all repairs to be made by Seller at the Turnkey Unit for all purposes and Seller shall have no responsibility whatsoever for any repairs which are not listed on the Repair List prepared at the Walk Through Seller shall complete work on the items on the Repair List within _____ (__) days following the Closing Date All repairs required after repairs to the items on the Repair List are completed by Seller shall be the sole and absolute responsibility of Buyer, at Buyer's sole expense

3 TEMPORARY CERTIFICATE OF OCCUPANCY

Buyer shall not open the Turnkey Unit without the express written authorization of Seller, which authorization may be conditioned upon completion of any pre-opening training required by Franchisor and Buyer's compliance with staffing and other requirements set forth in the Franchise Agreement and applicable to the operations of the Turnkey Unit. Buyer shall open the Turnkey Unit for business on the date designated by Franchisor following the issuance of a temporary certificate of occupancy for the Turnkey Unit by applicable governmental authorities (the "**Opening Date**") If, for any reason, Buyer does not open the Turnkey Unit for business on the Opening Date, Buyer shall, nonetheless, be responsible for the payment of all rent and other fees, charges, expenses and costs that Buyer is obligated to pay Seller under the Sublease for the Turnkey Unit which accrue on or after the Opening Date, including, but not limited to, real property taxes, utilities, insurance and operating expenses (collectively "**Rent**")

4 PERMANENT CERTIFICATE OF OCCUPANCY

Seller shall, following the Opening Date, complete all Work required to obtain a permanent Certificate of Occupancy for the Turnkey Unit. Seller and Buyer acknowledge and agree that Seller has not made, and makes no covenants or representations of any sort whatsoever with respect to the completion date for the Work required to obtain a permanent Certificate of Occupancy for the Turnkey Unit. Consequently, Seller shall not be in breach of any obligations under the Purchase Agreement and/or this Addendum regardless of the length of time incurred to obtain a permanent Certificate of Occupancy for the Turnkey Unit. If the Work necessary to obtain a permanent Certificate of Occupancy for the Turnkey Unit requires the closure of the Turnkey Unit for any period of time, Buyer shall not be obligated to pay Seller any Rent while the Turnkey Unit remains closed, however, Buyer shall be obligated to pay Rent so long as the Turnkey Unit remains open for business even if Seller has not completed the Work necessary to obtain a permanent Certificate of Occupancy for the Turnkey Unit until after the Opening Date. Seller shall have the right, in its sole discretion, to either complete the Work necessary to obtain a permanent Certificate of Occupancy for the Turnkey Unit itself or to have Buyer complete such Work and to pay Buyer the reasonable costs to do so.

5 RATIFICATION OF PURCHASE AGREEMENT

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

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the date first shown above.

SELLER

TRINITY RETAIL UNLIMITED, LLC,
A Nevada limited liability company

By _____

BUYER

[] an individual
[] a _____ general partnership,
[] a _____ limited partnership,
[] a _____ limited liability company,
[] a _____ corporation

By _____
Its _____ and individually

TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT H
AREA DEVELOPMENT AGREEMENT

TRU FRANCHISE, LLC

**AREA DEVELOPMENT
AGREEMENT
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ATTACHMENTS

Attachment A	Development Schedule
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**TRU FRANCHISE, LLC
AREA DEVELOPMENT AGREEMENT**

THIS AREA DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of _____, 20____, by and between **TRU FRANCHISE, LLC**, a California limited liability company ("**Franchisor**"), and _____ ("**Developer**"), with reference to the following facts:

A. Trinity Retail Unlimited, LLC, a Nevada limited liability company, an affiliate of Franchisor (the "**Operating Company**"), acquired the assets, including the System (as defined below) of Sweet Candy, LLC, and SCSF Newco Inc., and Sweet Candy Franchise, LLC (the "**Predecessors**"), who had, as the result of the expenditure of time, skill, effort, and money, developed a distinctive system relating to the establishment and operation of self-service candy stores offering one-price candy and confections in bulk (the "**System**").

B. The distinguishing characteristics of the System include, without limitation, candy, gifting and novelty items which incorporate Franchisor's trade secrets and proprietary information (the "**Proprietary Products**"); operating methods and business practices; the relationship between Franchisor and its franchisees; distinctive exterior and interior design, decor, color scheme, fixtures, and furnishings; standards and specifications for products and supplies; service standards; uniform standards, specifications, and procedures for operations; procedures for inventory and management control; training and assistance; advertising and promotional programs; Franchisor's websites; Franchisor specified pricing; restrictions on ownership; standard operating and administrative procedures; and management and technical training programs; all of which may be changed, improved, and further developed by Franchisor from time to time.

C. The System is identified by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including, but not limited, to the marks "**Sweet Factory**" and such other trade names, service marks, and trademarks as are now designated and may hereafter be designated by Franchisor in writing for use in connection with the System (the "**Proprietary Marks**").

D. Franchisor has the right to use, and to license others to use, the Proprietary Marks and the System from its affiliate.

E. Franchisor continues to develop, use, and control the use of the Proprietary Marks in order to identify for the public the source of services and products marketed under this Agreement and under the System, and to represent the System's high standards of quality, appearance, and service.

F. Developer desires to obtain certain development rights to develop Sweet Factory stores under the System which use the Proprietary Marks (a "**Store**" or the "**Stores**") and wishes to obtain franchises from Franchisor for that purpose. Developer represents and warrants to Franchisor, as an inducement to Franchisor's execution of this Agreement, that all statements made by Developer and all materials provided to Franchisor by Developer in connection with the grant of these development rights to Developer are accurate and complete and that Developer

has made no misrepresentations or material omissions in connection with obtaining these development rights. Franchisor grants this franchise in reliance upon each and all of Developer's representations.

G. Franchisor has decided, based on the information provided by Developer to Franchisor, to grant such development rights to Developer, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IT IS AGREED:

1. GRANT AND TERM

1.1 **Grant:** Franchisor hereby grants to Developer the right, and Developer accepts the obligation, pursuant to the terms and conditions of this Agreement, to establish and operate not less than the cumulative number of Stores (the "**Minimum Development Obligation**") set forth in the development schedule described on **Attachment A** (the "**Development Schedule**"). Each Store developed under this Agreement shall be located in the area described in **Attachment B** (the "**Development Area**") and at a specific site approved by Franchisor within the Development Area (a "**Franchised Location**"), and shall be established and operated pursuant to a separate franchise agreement (a "**Franchise Agreement**") to be entered into between Developer and Franchisor in accordance with **Paragraph 2.2** of this Agreement. Any increase or decrease in the size of any of the cities included within the Development Area shall have no effect on the Development Area as it is described in **Attachment A**. Each Store shall be established and operated by Developer or by an entity controlling, controlled by, or under common control with, Developer.

1.2 **Protected Development Area:** During the term of this Agreement, neither Franchisor nor an affiliate of Franchisor shall establish or operate, or franchise other persons to establish or operate, a Sweet Factory Store which is located within the Development Area; however, this restriction shall not apply to any Sweet Factory Store located within the Development Area as of the date of Developer's execution of this Agreement. Developer shall not have the right to sublicense, sublease, subcontract or enter into any management agreement providing for the right to operate a Store or to use the System. Franchisor and its affiliates retain the right, among others, in any manner and on any terms and conditions that Franchisor deems advisable, and without granting Developer any rights therein:

1.2.1 To own, acquire, establish, and/or operate, and license others to establish and operate, Sweet Factory Stores outside the Development Area;

1.2.2 To own, acquire, establish and/or operate, and license others to establish and operate, businesses under other proprietary marks or other systems, whether such businesses are the same, similar, or different from the Store, at any location within or outside the Development Area;

1.2.3 To sell or distribute, at retail or wholesale, directly or indirectly, or license others to sell or distribute, any products or services which bear any proprietary marks, including the Proprietary Marks, whether within or outside the Development Area;

1.2.4 To produce, license, distribute and market Sweet Factory candy and confections, clothing, souvenirs, and novelty items through any outlet (regardless of its proximity to a Store) including grocery stores, supermarkets and convenience stores and through any distribution channel, at wholesale or retail, including by means of the World Wide Web section of the Internet, mail order catalogs, direct mail advertising and other distribution methods; and

1.2.5 To own, acquire, establish and/or operate and grant others the right to develop, own, operate and issue franchises and licenses to others to develop, own and operate other methods and channels of distribution utilizing the Proprietary Marks and the System, including, without limitation, toll-free "1-800", "1888" and "1-877" telephone numbers, domain names, URLs, on-line computer networks and services, the Internet, kiosks, carts, concessions, satellite units, other mobile, remote, limited service or non-permanent facilities or other retail operations as a part of larger retail venues such as department stores, supermarkets, shopping malls or in public areas such as amusement parks, airports, train stations, public facilities, college and school campuses, arenas, stadiums, hospitals, office buildings, convention centers, airlines (in-flight service) and military bases.

1.3 **No Right to Use Proprietary Marks or System:** This Agreement is not a Franchise Agreement, and does not grant Developer any right to use or to franchise the use of, the Proprietary Products, the Proprietary Marks or the System.

1.4 **Term:** Unless sooner terminated as provided in this Agreement, the term of this Agreement, and all rights granted under this Agreement, shall expire on the date set forth in the Development Schedule as the date the final Store is to be opened for business. Following the expiration of the term of this Agreement or the sooner termination of this Agreement, Franchisor and its affiliates may construct, equip, open and operate, and license others the rights to construct, equip, open and operate additional Sweet Factory Stores at any location within the Development Area, without restriction, subject to any territorial rights granted for any then existing Store under the applicable Franchise Agreement executed for that Store.

1.5 **Developer May Not Exceed Minimum Development Obligation:** Unless Franchisor otherwise agrees in writing, Developer may not construct, equip, open or operate more than the cumulative number of Stores comprising the Minimum Development Obligation.

2. **DEVELOPMENT FEE AND OBLIGATIONS**

2.1 **Development Fee:** Upon execution of this Agreement, Developer shall pay Franchisor a development fee of \$10,000 for each Store to be developed pursuant to this Agreement, or an aggregate of \$_____, which fee has been fully earned, and is non-refundable, in whole or in part, 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 under this Agreement. The development fee will be credited toward the initial franchise fee if Developer executes the Franchise Agreement, as provided in Section 2.2 below.

2.2 **Execution of Franchise Agreements:** Developer shall execute a Franchise Agreement for each Store to be franchised, the form of which, in each instance, shall be that which is then currently being offered by

Franchisor to new franchisees for Sweet Factory Stores. The current form of Franchise Agreement is attached as **Attachment C**. Developer shall execute and deliver each Franchise Agreement to Franchisor on or before the date specified for the execution of such Franchise Agreement in the Development Schedule. If Franchisor is not legally able to deliver its Franchise Disclosure Document to Developer by reason of any lapse or expiration of its franchise registration, or because Franchisor is in the process of amending any such registration, or for any reason beyond Franchisor's reasonable control, Franchisor may delay the submission and execution of the Franchise Agreement until such time as Franchisor is legally able to deliver a Franchise Disclosure Document, in which case the time period available for Developer to develop and open the subject Store shall be extended by the number of days Franchisor has delayed delivery of the Franchise Agreement to Developer. Notwithstanding any contrary provision in any form of Franchise Agreement executed by Developer, the initial franchise fee to be paid under the Franchise Agreement for each Store shall be the fee as stated in the Development Schedule.

2.3 Development Schedule: Recognizing that time is of the essence under this Agreement, Developer shall satisfy the Development Schedule by executing Franchise Agreements and opening Stores within the time established in the Development Schedule. Failure by Developer to adhere to any date set forth in the Development Schedule for the Minimum Development Obligation shall constitute a default under this Agreement, except as otherwise provided in Paragraph 2.4 of this Agreement.

2.4 Force Majeure: Neither Party will be in default in the performance of its obligations under this Agreement if such performance is prevented or delayed due to Force Majeure. If Developer is unable to meet the Minimum Development Obligation required under the Development Schedule solely as a result of Force Majeure, the Development Schedule shall be extended by an amount of time equal to the time period during which the Force Majeure shall have existed. "**Force Majeure**" means any event that is reasonably unforeseeable as of the date of this Agreement and that is beyond the reasonable control, directly or indirectly, of a party, the effects of which could not reasonably be prevented or avoided by that party with the exercise of commercially reasonable efforts and due diligence and which event does not result from the party's fault or negligence or the fault or negligence of its agents, employees or subcontractors and which event causes that party to be delayed, in whole or in part, or unable to partially or wholly perform its obligations under this Agreement and subject to the satisfaction of the foregoing criteria, shall include: (a) acts of God (such as tornadoes, earthquakes, hurricanes, floods, fire or other natural catastrophe); (b) strikes, lockouts or other industrial disturbances; (c) war, terrorist acts, riot, or other civil disturbance; (d) unilateral governmental action impacting restaurants generally; and (e) epidemics, transportation shortages, inadequate supply of labor, material or energy, or a party foregoing the right to acquire or use any of the foregoing in order to accommodate or comply with the orders, requests, regulations, recommendations or instructions of any federal, state or municipal government or any department or agency. In the event of the occurrence of an event constituting Force Majeure, the Party claiming the extension by Force Majeure shall notify the other Party in writing within ten (10) days after commencement of the Force Majeure of the specific nature and extent of the Force Majeure, and how it has impacted that Party's performance hereunder. The particular time period to which the event of Force Majeure applies shall be extended by an amount of time equal to the time period during which the Force Majeure shall have existed. The Party claiming the extension by Force Majeure shall continue to provide the other Party with updates and all information as may be requested by the other Party, including that Party's progress and diligence in responding to and overcoming the Force Majeure.

3. SITE SELECTION

3.1 **Franchised Locations:** Franchisor and Operating Company shall assist Developer in identifying and selecting sites for the Stores. Notwithstanding the assistance of Developer in identifying and selecting a site for the Stores, the final decision regarding the selection and approval of a site and the terms for the acquisition of same shall be made solely by Operating Company and Franchisor.

3.1.1 Developer shall have the right to submit proposed sites for Franchisor's approval in the manner designated by Franchisor from time to time so long as Developer has determined that the sites are available on generally acceptable terms.

3.1.2 Franchisor will review each proposed site, whether submitted by Developer or identified by Franchisor or Operating Company, and approve, reject or provide comments to Developer regarding the site within thirty (30) days after receipt by Franchisor and Operating Company of all documents and information regarding the site.

3.1.3 Developer shall have thirty (30) days to accept or reject a site for a Store following Franchisor's submission of the site to Developer. Developer's failure to accept a proposed site in writing within such thirty (30) day period shall be considered Developer's rejection of the site. If Developer rejects or is considered to have rejected a proposed site, the site may then be offered to other franchise candidates of Franchisor.

3.1.4 Franchisor shall offer sites to Developer under the foregoing terms and conditions until Developer has satisfied the Minimum Development Obligation.

3.1.5 Following selection and approval of a site for a Store, Franchisor, at Franchisor's sole discretion, shall either (i) cause Operating Company to secure a lease for the site (the "**Master Lease**") on terms acceptable to the landlord (the "**Master Landlord**"), Operating Company, Franchisor and Developer; or (ii) require Developer to enter into a lease (a "**Lease**") with a third-party landlord (a "**Landlord**") for the Franchised Location. Following the execution of a Master Lease by a Master Landlord and Operating Company, Operating Company and Developer shall enter into Franchisor's then-current sublease (the "**Sublease**") for the Franchised Location.

3.2 **Franchise Agreement:** Franchisor and Developer shall execute Franchisor's then-current Franchise Agreement in the form then being provided to prospective developers and franchisees of Franchisor, the terms of which, including, without limitation, the amount of the royalty fee and advertising fee, may differ materially and be less advantageous to Developer than the terms of Franchisor's current Franchise Agreement. After Franchisor's acceptance of the site, lease or purchase agreement, Developer's execution of a Franchise Agreement and payment of the applicable initial franchise fee, and Franchisor's delivery of a fully executed Franchise Agreement to Developer, Developer shall then procure the site pursuant to the form of lease or purchase agreement reviewed and accepted by Franchisor and shall forward to Franchisor, within ten (10) days after its execution, one copy of the executed lease or purchase agreement and, if purchased, the deed evidencing Developer's right to occupy the site. Developer shall then commence construction and operation of the Store at the site pursuant to the terms of the Franchise Agreement.

3.3 **Condition Precedent to Franchisor's Obligation:** Franchisor shall not be required to execute any Franchise Agreement if, at the time scheduled for execution, Developer (or any guarantor, officer or director of or a shareholder in Developer, if Developer is a corporation, or a general or limited partner of Developer, if Developer is a partnership, or a member, if Developer is a limited liability company) or any other developer or franchisee of Franchisor which controls, is controlled by, or is under common control with Developer (a "Developer Affiliate"), shall be in default of any of the terms or provisions of this Development Agreement or of any other agreement between Franchisor, or its affiliates, and Developer.

4. **CONFIDENTIAL INFORMATION**

4.1 **Confidential Information:** Developer acknowledges and agrees that the System is comprised of confidential information that has been developed by Franchisor and its affiliates by the investment of time, skill, effort and money and is widely recognized by the public, is of substantial value, and is proprietary, confidential and constitutes trade secrets of Franchisor and its affiliates, and includes, without limitation, tangible and intangible information (whether or not in electronic form) relating to Franchisor's business operations, products and services, sources of materials and equipment, client management and other software, data, other content, formulations, patterns, compilations, programs, devices and processes, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for research, potential new or supplemental products and services, websites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators, current customer and prospective customer names and addresses, information regarding credit extensions to customers, customer service purchasing histories and prices charged to customers, information regarding the skills and compensation of employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationships between Franchisor and other companies, persons or entities, knowledge or know-how concerning the methods of operation of Stores which may be communicated to Developer, or of which Developer may be apprised, under the terms of this Agreement, and any other information or material considered proprietary by Franchisor whether or not designated as confidential information by Franchisor, that is not generally known by the public, or which derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or its affiliates and which is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy, and any other information in oral, written, graphic or electronic form which, given the circumstances surrounding its disclosure, would be considered confidential (collectively, the "Confidential Information"). Confidential Information does not include any information that was in the lawful and unrestricted possession of Developer prior to its disclosure by Franchisor; is or becomes generally available to the public by acts other than those of Developer after receiving it; has been received lawfully and in good faith by Developer from a third party who did not derive it from Franchisor or Developer; or is shown by acceptable evidence to have been independently developed by Developer.

4.2. **Value:** Developer acknowledges and agrees the Confidential Information is not generally known by the public or parties other than Franchisor, its affiliates, its franchisees and Developer; derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or Developer; and is the subject of efforts by Franchisor that are reasonable under the circumstances

to maintain the secrecy of the Confidential Information, including, without limitation (i) not revealing the Confidential Information to unauthorized parties; (ii) requiring Sweet Factory franchisees to acknowledge and agree in writing that the Confidential Information is confidential; (iii) requiring Sweet Factory franchisees to agree in writing to maintain the confidentiality of the Confidential Information; (iv) monitoring electronic access to the Confidential Information by the use of passwords and other restrictions so that electronic access to the Confidential Information is limited to authorized parties; and (v) requiring its franchisees to return all Confidential Information to Franchisor upon the expiration or termination of their Franchise Agreements.

4.3 Maintain Confidentiality: Developer shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of anyone else, any information that Franchisor considers its trade secrets and/or Confidential Information. Developer shall divulge such Confidential Information only to such of its employees who must have access to it in order to perform their employment responsibilities.

4.4 Irreparable Injury from Disclosure of Confidential Information: Developer acknowledges that failure to comply with the requirements of this Section 4 will result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to the requirements of this Section 4.

4.5 Confidentiality Covenants from Individuals Associated with Developer: Developer shall require any employee who may have access to any Confidential Information of Franchisor to execute covenants that they will maintain the confidentiality of the Confidential Information they receive in connection with their association with Developer. Such covenants shall be in a form satisfactory to Franchisor, including, without limitation, specific identification of Franchisor as a third-party beneficiary of such covenants with the independent right to enforce them.

5. TRANSFER OF INTEREST

5.1 Transfer by Franchisor: Franchisor shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the subsequent performance by the assignee of all of Franchisor's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, Developer expressly affirms and agrees that Franchisor and or its affiliates may sell their assets, the Proprietary Marks, or the System; may sell securities in a public offering or in a private placement; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a refinancing, recapitalization, leveraged buy-out, or other economic or financial restructuring.

5.2 Transfer by Developer: Developer understands and acknowledges that the rights and duties set forth in this Agreement are personal to Developer, and that Franchisor has granted these rights in reliance on Developer's (or, if Developer is a corporation, partnership, or limited liability company, its principals') business skill, financial capacity, and personal character. Accordingly, neither Developer nor any immediate or remote

successor to any part of Developer's interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Developer shall sell, encumber, assign, transfer, convey, pledge, merge, or give away any direct or indirect interest in this Agreement, in Developer, or in all or substantially all of the assets of the Stores without the prior written consent of Franchisor. Any change in the control of Developer shall be deemed a transfer for purposes of this Agreement. Developer acknowledges and agrees that Developer will not be permitted to assign any Store or Franchise Agreement executed pursuant to this Agreement except in conjunction with a concurrent assignment to the same assignee of all of the Franchise Agreements executed pursuant to this Agreement or, at Franchisor's election, the execution by the assignee of new franchise agreements in Franchisor's then-current form for each of the Stores then developed or under development by Developer, and otherwise in accordance with the terms and conditions of Developer's Franchise Agreement(s). Any purported assignment or transfer not having the written consent of Franchisor required by this Paragraph 5.2 shall be null and void and shall constitute a breach of this Agreement, for which Franchisor may immediately terminate without opportunity to cure pursuant to Paragraph 6.2.4 of this Agreement.

5.3 Requirements for Transfer by Developer: Franchisor may, in its sole discretion, require any or all of the following as conditions of its consent to a transfer set forth in Paragraph 5.2:

5.3.1 Developer shall not be in default of any provision of this Agreement, any amendment of this Agreement or successor hereto, or any other agreement between Developer and Franchisor, or its affiliates.

5.3.2 The transferor (and, if the transferor is other than an individual, the transferor and such other owners of a beneficial interest in the transferor as Franchisor may request) shall execute a general release, in a form prescribed by Franchisor, of any and all claims which the transferor may have or believes to have against Franchisor and/or its affiliates and their respective officers, directors, agents and employees, whether the claims are known or unknown, which are based on, arise from or relate to this Agreement and the Stores, as well as claims, known or unknown, which are not based on, do not arise from or do not relate to this Agreement or the Stores but which relate to other franchise agreements, stores, franchised locations and other agreements between Franchisor, or its affiliates, and Developer which arose on or before the date of the general release, including, without limitation, all obligations, liabilities, demands, costs, expenses, damages, claims, actions and causes of action, of whatever nature, character or description, arising under federal, state and local laws, rules and ordinances.

5.3.3 The transferee (or, if the transferee is other than an individual, a principal of the transferee approved by Franchisor) shall demonstrate to Franchisor's satisfaction that the terms of the proposed assignment do not place an unreasonable financial burden on the transferee, and Developer understands and acknowledges that Franchisor shall be entitled, in connection with assessing the financial burden placed upon any prospective assignee, to share with such prospective assignee information relating to the Store, including information in Franchisor's possession relating to operations and sales at the Store.

5.3.4 The transferee (or, if the transferee is other than an individual, a principal of the transferee approved by Franchisor) shall demonstrate to Franchisor's satisfaction that the terms of the proposed assignment do not place an unreasonable operational burden on the transferee, and that the transferee meets Franchisor's standards for: (a) work experience and aptitude; (b) character and reputation; (c) absence of conflicting interests;

and (d) such other criteria and conditions as Franchisor shall then consider relevant in the case of an application for a new developer by an applicant not currently operating any Stores.

5.3.5 At Franchisor's request, the transferee (and, if the transferee is other than an individual, such principals of the transferee as Franchisor may request) shall execute, for a term ending on the expiration date of this Agreement, the current standard form Development Agreement (and individual guarantees) then being offered to new developers, which Development Agreement shall supersede this Agreement in all respects and the terms of which Development Agreement may differ materially from the terms of this Agreement and may be less favorable to the transferee; provided, however, that the transferee shall not be required to pay any development fees;

5.3.6 The transferee and each partner, shareholder or member of the transferee, as the case may be, must be a United States citizen or lawful resident alien of the United States and must have sufficient literacy and fluency in the English language sufficient, in Franchisor's opinion, to communicate with employees, customers, and suppliers of Franchisor and to satisfactorily complete Franchisor's required training program and such other tests and interviews as Franchisor shall reasonably deem to be necessary or desirable. Developer shall provide Franchisor with such information as Franchisor may require to make a determination concerning such proposed transfer;

5.3.7 Except in the case of a transfer to a corporation formed for the convenience of ownership, where the ownership of such corporation is in the same proportion as the ownership of Developer before such transfer, a transfer fee in an amount designated by Franchisor, but which shall not exceed \$10,000, shall be paid by Developer to Franchisor. If Developer desires to conduct business in a corporate capacity, Franchisor will consent to the assignment of this Agreement to a corporation, provided that (i) the corporation shall be and shall remain a closely-held corporation; (ii) the stock certificates issued by the corporation shall contain a restriction on transfer referencing this Development Agreement, in a form required by Franchisor; (iii) the ownership of the assignee corporation shall be in the same proportion as the ownership of Developer before the transfer; and (iv) none of the shares of stock in the assignee corporation shall be held by a business competitor of Franchisor. Developer shall pay an administrative fee of \$500.00 per transfer to a corporation, partnership or limited liability company where such transfer is for the convenience of ownership only. At the time of request for a transfer for the convenience of ownership, Developer shall submit the following documents to Franchisor and Franchisor shall review and approve such documents within thirty (30) days thereafter:

a) For an assignment to a closely-held corporation, Developer shall provide to Franchisor a (i) file stamped copy of the Articles of Incorporation and By-laws of the proposed assignee corporation, (ii) a sample stock certificate, (iii) a Certificate of Good Standing in the state in which the corporation is authorized to do business and the state in which the corporation will conduct the business pursuant to this Franchise Agreement, (iv) a list of officers and their percentage ownership of the stock of the corporation, and (v) a list of directors of the corporation.

b) For an assignment to a partnership, Developer shall provide to Franchisor a (i) file stamped copy of the Certificate of Limited Partnership (if applicable) or the Statement of Partnership, and (ii) a copy of the fully executed Partnership Agreement, containing an exhibit showing the percentage of ownership in the partnership by all partners.

c) For an assignment to a limited liability company, Developer shall provide to Franchisor a (i) Certificate of Formation of Limited Liability Company and (ii) a fully executed copy of the Operating Agreement, containing an exhibit showing the percentage of ownership of all members in the limited liability company.

5.3.8 Developer shall remain liable for all of its obligations to Franchisor and its affiliates which arose prior to the effective date of the transfer, and shall execute any documents reasonably requested by Franchisor to evidence such liability.

5.3.9 Developer shall have paid all amounts due to Franchisor.

5.3.10 Developer and the transferee/assignee shall use an independent third party escrow company in connection with their purchase and sale transaction.

5.4 **Granting of a Security Interest by Developer:** Developer shall not grant a security interest in Developer or in any of the assets of Developer without first obtaining the prior written consent of Franchisor. Franchisor's consent or refusal to consent may be based upon whatever factors Franchisor, in its sole discretion, deems economically and commercially reasonable in protecting Franchisor's interests and the relationship created under this Agreement. Under any circumstances however, Franchisor shall not consent to any such granting of a security interest unless all of the following conditions are met:

5.4.1 Such security is granted only for the purpose of securing a loan in favor of Developer, which loan shall only be for the development of the Stores;

5.4.2 In the event of any default by Developer under any documents in any way relating to the security interest or the loan to which it relates, Franchisor shall have the right at its sole option (but not the obligation) to cure any such default and/or to be substituted as obligor to the lender whose interests are secured by such security interest;

5.4.3 In the event of any such default, and if Franchisor chooses to be substituted as obligor, Franchisor shall be so substituted in all respects on the same terms and conditions to which Developer was subject, except that any acceleration of the obligations secured, due to Developer's default, shall be void upon cure by Franchisor;

5.4.4 The sales price of the interest to be conveyed must not be so high, or the terms of the sale so onerous, that, in the judgment of Franchisor, the transferee will be unlikely to properly maintain, operate and promote the franchised business and meet the transferee's financial and other obligations to Franchisor, third party suppliers and creditors. This provision shall not create any liability to either transferor or transferee on the part of Franchisor, in the event that Franchisor approves the transfer and the transferee experiences financial difficulties.

5.4.5 Such other conditions and terms as Franchisor shall deem necessary and/or prudent to protect its interests under this Agreement.

5.5 **Right of First Refusal:** If any party holding any direct or indirect interest in this Agreement, in Developer, or in all or substantially all of the assets of Developer desires to accept any bona fide offer from a third party to purchase such interest, Developer shall notify Franchisor of such offer at least thirty (30) days before such transfer is proposed to take place, 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 such written notification and any background materials concerning the proposed transfer that Franchisor shall reasonably request, 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. If Franchisor declines to purchase the seller's interest, Developer shall have ninety (90) days from the earlier of: (a) receipt of a notice from Franchisor declining to exercise its right of first refusal, or (b) thirty (30) days after Franchisor's receipt of the transferor's written notification of the proposed transfer, to close on the transfer of such interest subject to Franchisor's approval pursuant to Paragraph 5.3. Failure to effectuate a transfer with the third party within the ninety (90) day period, or any material change thereafter 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 Paragraph 5.5 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 5, with respect to a proposed transfer. 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, an independent appraiser shall be designated by Franchisor at Franchisor's expense, and the appraiser's determination shall be binding.

5.6 **Transfer Upon Death or Incapacitation:** Upon the death or permanent incapacity (mental or physical) of any person with an interest in this Agreement, in Developer, or in all or substantially all of the assets of Developer, the executor, administrator, or personal representative of such person shall transfer such interest to a third party approved by Franchisor within six (6) months after such death or mental incapacity. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions as any inter vivos transfer, except that the transfer fee shall be waived. In the case of transfer by devise or inheritance, however, if the heirs or beneficiaries of any such person are unable to meet the conditions of this Section 5, the executor, administrator, or personal representative of the decedent shall transfer the decedent's interest to another party approved by Franchisor within six (6) months, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within such period, Franchisor may, at its option, terminate this Agreement, pursuant to Paragraph 6.2.6 of this Agreement.

5.7 **Non-Waiver of Claims:** Franchisor's consent to a transfer shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

- 5.8 **Securities in Developer:** The sale of securities in Developer is subject to all of the conditions to transfer set out in Paragraphs 5.2 and 5.3 of this Agreement. All materials required for such offering by federal or state law shall be submitted to Franchisor for review prior to filing with any government agency; and any materials to be used in any exempt offering shall be submitted to Franchisor for review prior to their use. No Developer offering shall imply, by use of the Proprietary Marks or otherwise, that Franchisor is participating in an underwriting, issuance, or offering of securities of either Developer or Franchisor; and Franchisor's review of any offering shall be limited solely to the subject of the relationship between Developer and Franchisor. Developer and the other participants in the offering must fully indemnify Franchisor in connection with the offering. For each proposed offering, Developer shall pay to Franchisor a non-refundable fee of twenty-five thousand dollars (\$25,000), at the time that Developer submits materials for review by Franchisor. Developer shall give Franchisor written notice at least thirty (30) days prior to the date of commencement of any offering or other transaction covered by this Paragraph 5.8. Any such offering shall be subject to Franchisor's right of first refusal as provided in Paragraph 5.5 of this Agreement.
- 5.9 **Transfer by Developer in Bankruptcy - Right of First Refusal:** If, for any reason, this Agreement is not terminated pursuant to Paragraph 6.1 and this Agreement is assumed, or assignment of the same to any person or entity who has made a bona fide offer to accept an assignment of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth: (a) the name and address of the proposed assignee, and (b) all of the terms and conditions of the proposed assignment and assumption, shall be given to Franchisor within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of this Agreement, and, in any event, within ten (10) days prior to the date application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Franchisor shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to Franchisor itself upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by Developer out of the consideration to be paid by such assignee for the assignment of this Agreement.
- 5.10 **No Subfranchising by Developer:** Developer shall not offer, sell, or negotiate the sale of Sweet Factory Store franchises to any third party, either in Developer's own name or in the name of and/or on behalf of Franchisor, or otherwise subfranchise, subcontract, sublicense, share, divide or partition this Agreement, and nothing contained in this Agreement will be construed as granting Developer the right to do so. Developer shall not execute any Franchise Agreement with Franchisor, or construct or equip any Store with a view to offering or assigning such Franchise Agreement or Store to any third party.

6. **DEFAULT AND TERMINATION**

- 6.1 **Termination In the Event of Developer's Bankruptcy or Insolvency:** Developer shall be deemed to be in default under this Agreement, and all rights granted to Developer of this Agreement shall automatically

terminate without notice to Developer, if Developer becomes insolvent or makes a general assignment for the benefit of creditors; if a petition in bankruptcy is filed by Developer or such a petition is filed against and not opposed by Developer; if Developer is adjudicated as bankrupt or insolvent; 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; 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; if proceedings for a composition with creditors under any state or federal law is instituted by or against Developer; if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); if Developer is dissolved; if execution is levied against Developer's business or property; if suit to foreclose any lien or mortgage against Developer's business premises or equipment is instituted against Developer and not dismissed within thirty (30) days; or if the real or personal property of Developer's business shall be sold after levy thereupon by any sheriff, marshal, or constable.

6.2 Termination With Notice and Without Opportunity to Cure: Developer shall be in default under this Agreement, and Franchisor may, at its option, terminate this Agreement and all rights granted under this Agreement, without affording Developer any opportunity to cure the default, effective immediately upon receipt of notice by Developer upon the occurrence of any of the following events:

6.2.1 If Developer (or an officer, director, shareholder, general or limited partner, or member) is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;

6.2.2 If Developer fails to comply with the Development Schedule;

6.2.3 If any of Developer's Franchise Agreements or any other agreement between Developer and Franchisor or its affiliates is terminated due to a breach or default by Developer;

6.2.4 If any purported assignment or transfer of any direct or indirect interest in this Agreement, in Developer, or in all or substantially all of Developer's assets is made to any third party without Franchisor's prior written consent, contrary to the terms of Section 7 of this Agreement;

6.2.5 If, contrary to the terms of Section 4 of this Agreement, Developer or any principal or employee of Developer discloses or divulges the contents of the Manual or other Confidential Information provided to Developer by Franchisor;

6.2.6 If an approved transfer, as required by Paragraph 5.6 of this Agreement, is not effectuated within the time provided following death or mental incapacity;

6.2.7 If Developer fails to comply with the covenants in Paragraph 8.1 of this Agreement or fails to obtain execution of and deliver the covenants required under Paragraph 8.5 of this Agreement;

6.2.8 If Developer or any principal of Developer has made any material misrepresentations in connection with Developer's application to Franchisor for the development rights granted of this Agreement;

6.2.9 If Developer fails to obtain or maintain required insurance coverage; or

6.2.10 If Developer, after curing a default pursuant to Paragraph 6.3 of this Agreement, commits the same, similar, or different default, whether or not cured after notice;

6.2.11 If Developer or a Developer Affiliate fails to comply with any or all of the terms of this Agreement or any other agreement between Franchisor, or its affiliates, and Developer within ten (10) days after receipt of written notice from Franchisor to do so;

6.2.12 If Developer fails, for a period of 10 days after notification of noncompliance, to comply with any federal, state or local law or regulation applicable to the operation of the franchise; or

6.2.13 If Developer shall default in any obligation under this Agreement or any other agreement between Franchisor and Developer that by its nature is not capable of being cured by Developer.

6.3 **Termination With Notice and Opportunity to Cure:** Except as provided in Paragraphs 6.1 and 6.2 of this Agreement, Developer shall have thirty (30) days after its receipt from Franchisor of a written Notice of Termination within which to remedy any default under this Agreement and to provide evidence thereof to Franchisor. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Developer effective immediately upon expiration of the thirty (30) day period or such longer period as applicable law may require. Developer shall be in default pursuant to this Paragraph 6.3 for failure to substantially comply with any of the requirements imposed by this Agreement, as it may from time to time reasonably be modified or supplemented by the Manual, or for failure to carry out the terms of this Agreement in good faith.

6.4 **Franchisor's Options At Termination:** Upon any default under Paragraphs 6.2 or 6.3 of this Agreement, Franchisor may immediately take any one or more of the following actions, by written notice to Developer:

6.4.1 Terminate this Agreement and all rights granted to Developer under this Agreement;

6.4.2 Accelerate or decelerate the Development Schedule;

6.4.3 Reduce the Minimum Development Obligation required under this Agreement;

6.4.4 Eliminate or diminish Developer's rights, as set forth in Paragraph 1.2 of this Agreement, with respect to the Development Area or the size of the Development Area or the Minimum Development Obligation; and/or

6.4.5 Increase the franchise fee to be paid by Developer from the fee set forth in the Development Schedule; provided, however, that, in no event shall such fee exceed the then-current initial fee collected by Franchisor in connection with the execution of a single Franchise Agreement for a Sweet Factory Store.

6.5 **Cross-Default:** Any default by Developer under the terms and conditions of this Agreement, any Franchise Agreement, Lease or Master Lease or Sublease, or any other agreement between Franchisor, or its affiliates, and Developer, shall be deemed to be a default of each and every other such agreement. In the event of the termination of this Agreement for any cause, or the termination of any other agreement between Franchisor, or its affiliates, and Developer, Franchisor may, at its option, terminate any or all of such other agreements.

7. **OBLIGATIONS UPON TERMINATION OR EXPIRATION**

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

7.1 **No Right to Open Additional Stores:** Developer shall have no right to establish or operate any Store for which a Franchise Agreement has not been executed by Franchisor at the time of termination.

7.2 **Franchisor's Right to Establish Stores:** Franchisor shall have the right to establish, and to franchise others to establish, Stores in the Development Area except as may be otherwise provided under any Franchise Agreement in effect between Franchisor and Developer.

7.3 **Franchisor's Right to Terminate Existing Franchise Agreements and Purchase Tangible Assets:** In the event of termination for any default of Developer, Franchisor shall have the option, to be exercised within thirty (30) days after this Agreement is terminated, to terminate the Franchise Agreements for, and purchase Developer's interest in, any or all Stores, regardless of whether such Stores are under construction or are open and operating, and all of the "tangible assets" of Developer related to such Store(s) (as defined in this Paragraph 7.3) at the lesser of Developer's net book value (using a 5-year straight line amortization period) or fair market value in accordance with the applicable provisions of the Franchise Agreements. For purposes of this Paragraph 7.3, the term "tangible assets" shall mean only the leasehold improvements, furniture, fixtures, equipment and interior and exterior signs at the Store(s). The purchase price shall not contain any amount for "goodwill", "going concern value" or initial franchise fees, royalty fees, advertising fees or any other sums paid to Franchisor by Developer prior to the termination of this Agreement. In addition, the purchase price shall not include payment for any inventory or supplies or leasehold improvements, equipment, fixtures or signs which Franchisor deems obsolete or has theretofore designated as failing to meet quality standards for the System.

7.4 **Irreparable Injury to Franchisor:** Developer agrees and acknowledges that Developer's failure to comply with the provisions of Paragraph 7.3 will result in irreparable harm to Franchisor and to the Proprietary Marks, and Developer agrees to pay all damages, expenses, court costs and reasonable attorneys' fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, and/or damages resulting from a violation of, the requirements of Paragraph 7.3 of this Agreement.

7.5 **Payment of Monies Due:** Developer shall promptly pay all sums owing to Franchisor and its affiliates. If this Agreement is terminated because of a default by Developer, such sums also shall include all damages, costs, and expenses, including attorneys' fees, incurred by Franchisor as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien as evidenced by a UCC-1 Financing Statement in favor of Franchisor against any and all leasehold improvements, fixtures, furnishings and equipment, inventory, supplies and vehicles located at or used in connection with the Store, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Developer to use the Proprietary Marks, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Developer under this Agreement for the use of the Proprietary Marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights. Franchisor shall have the right to set off any amounts which Franchisor deems are payable to Franchisor by Developer.

7.6 **Return of Materials and Other Confidential Information:** Developer shall immediately deliver to Franchisor the Manual and all other manuals, records, correspondence files, and any instructions containing Confidential Information relating to the operation of Developer's business which are in Developer's possession; and all copies thereof (all of which are acknowledged to be the property of Franchisor).

8. **COVENANTS**

8.1 **Non-Competition During Term of Agreement:** 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 (or, if Developer is a corporation, limited liability company, or partnership, all principals of Developer) covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Developer (or, if Developer is a corporation, limited liability company, or partnership, all principals of Developer) shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, or legal entity:

8.1.1 Divert or attempt to divert any present or prospective Store customer to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System;

8.1.2 Employ or seek to employ any person who is or has been within the previous thirty (30) days employed by Franchisor or an affiliate of Franchisor as a salaried managerial employee, or otherwise directly or indirectly induce such person to leave his or her employment; or

8.1.3 Own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any self-service candy and confection business that is the same or similar to the Store which offers one-price candy and confections for sale in bulk or which sells candy and confection products being offered by the Store.

8.2 **Non-Competition After Execution or Termination of Agreement:** Commencing upon the date of: (a) a transfer permitted under Section 5 of this Agreement; (b) expiration of this Agreement; (c) termination of this

Agreement (regardless of the cause for termination); or (d) a final court order (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Paragraph 8.2, and continuing for an uninterrupted period of one (1) year thereafter, Developer shall not, without Franchisor's prior written consent, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with (a) any self-service candy and confection business which offers one-price candy and confections for sale in bulk similar to the products offered by the Store, and (b) is, or is intended to be, located at or within a ten (10) mile radius of the Development Area.

8.3 Exceptions to Non-Compete Covenants: Paragraphs 8.1 and 8.2 shall not apply to ownership by Developer of a less than five percent (5%) beneficial interest in the outstanding equity securities of any company registered under the Securities Act of 1933 or the Securities Exchange Act of 1934.

8.4 Reducing Scope of Covenants: Developer understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Paragraphs 8.1 and 8.2, 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 Paragraph 22.1 of this Agreement.

8.5 Covenants from Individuals: Developer shall obtain and furnish to Franchisor executed covenants similar in substance to those set forth in this Section 8 (including covenants applicable upon the termination of a person's relationship with Developer) from any or all of the following persons: (a) all officers, directors, members and holders of a beneficial interest of five percent (5%) or more of the securities of Developer, and of any corporation directly or indirectly controlling Developer, if Developer is a corporation or limited liability company; and (b) the general partners and any limited partners (including any corporation, and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls, directly or indirectly, any general or limited partner), if Developer is a partnership. Every covenant required by this Paragraph 8.6 shall be in a form approved by Franchisor, including, without limitation, specific identification of Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

8.6 Breach of Covenants Causes Irreparable Injury: Developer acknowledges that Developer's violation of any covenant of this Section 8 or any action described in Paragraphs 6.2, 6.3, or 10.4 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Developer consents to the issuance of, and agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in obtaining, without the posting of any bond, an ex parte or other order for injunctive or other legal or equitable relief with respect to such conduct or action.

9. DEVELOPER AS A CORPORATION, LIMITED LIABILITY COMPANY, OR PARTNERSHIP

9.1 Corporate Developer: Except as otherwise approved in writing by Franchisor, if Developer is a corporation, it shall: (a) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to developing and operating the Stores; (b) maintain stop transfer instructions on its records against the transfer of any equity securities and shall only issue securities upon the face of which a

legend, in a form satisfactory to Franchisor, appears which references the transfer restrictions imposed by this Agreement; (c) not issue any non-voting securities convertible into voting securities; (d) maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Developer and furnish the list to Franchisor upon request. In addition, each present and future shareholder of Developer shall jointly and severally guarantee Developer's performance of each and every provision of this Agreement by executing a Guarantee in the form annexed hereto as **Attachment D** provided, however, that no guarantee shall be required from a shareholder who acquires Developer's securities after Developer becomes registered under the Securities Exchange Act of 1934.

9.2 **Partnership Developer:** If Developer is a partnership it shall: (a) furnish Franchisor with its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto; and (b) prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Developer.

9.3 **Limited Liability Company Developer:** If a Developer is a limited liability company, Developer shall: (a) furnish Franchisor with a copy of its articles of organization and operating agreement, as well as such other documents as Franchisor may reasonably request, and any amendments thereto; (b) prepare and furnish to Franchisor, upon request, a current list of all members and managers in Developer; and (c) maintain stop transfer instructions on its records against the transfer of equity securities and shall only issue securities upon the face of which bear a legend, in a form satisfactory to Franchisor, which references the transfer restrictions imposed by this Agreement.

10. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

10.1 **No Fiduciary Relationship:** This Agreement does not create a fiduciary relationship between the parties hereto. Developer shall be an independent contractor; and nothing in this Agreement is intended to constitute or appoint either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

10.2 **Public Notice of Independent Status:** Developer shall conspicuously identify itself and the Store in all dealings with its customers, contractors, suppliers, public officials, and others, as an independent Developer of Franchisor, and shall place such notice of independent ownership in its Store and on all forms. Franchisor shall have the right to specify the language of any such notice.

10.3 **Independent Contractor:** Developer acknowledges and agrees that it is not authorized to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligations in Franchisor's name; and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Developer in its conduct of the Store or for any claim or judgment arising therefrom against Developer or Franchisor.

10.4 **Indemnification:** Developer shall indemnify and hold harmless to the fullest extent by law, Franchisor, its affiliates and their respective directors, officers, employees, shareholders, and agents, (collectively

the "Indemnitees") from any and all losses and expenses (as hereinafter defined) incurred in connection with any litigation or other form of adjudicatory procedure, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which arises directly or indirectly from, as a result of, or in connection with Developer's operation of the Stores including, but not limited to, claims arising as a result of the maintenance and operation of vehicles or the Franchised Locations (collectively an "event"), and regardless of whether same resulted from any strict or vicarious liability imposed by law on the Indemnitees; provided, however, that this indemnity shall not apply to any liability arising from the gross negligence of Indemnities (except to the extent that joint liability is involved, in which event the indemnification provided herein shall extend to any finding of comparative negligence or contributory negligence attributable to Developer). For the purpose of this Paragraph 10.4, the term "losses and expenses" shall be deemed to include compensatory, exemplary, or punitive damages; fines and penalties; attorneys' fees; experts' fees; court costs; costs associated with investigating and defending against claims; settlement amounts; judgments; compensation for damages to Franchisor's reputation and goodwill; and all other costs associated with any of the foregoing losses and expenses. Developer shall give Franchisor prompt notice of any event of which it is aware, for which indemnification is required, and, at the expense and risk of Developer, Franchisor may elect to assume (but under no circumstance is obligated to undertake) the defense and/or settlement thereof, provided that Franchisor will seek the advice and counsel of Developer. Any assumption of Franchisor shall not modify Developer's indemnification obligation. Franchisor may, in its sole judgment, take such actions as it seems necessary and appropriate to investigate, defend, or settle any event or take other remedial or corrective actions with respect thereof as may be, in Franchisor's sole judgment, necessary for the protection of the indemnities or the System.

11. APPROVALS, WAIVERS, AND NOTICES

11.1 **Obtaining Approvals:** Whenever this Agreement requires the prior approval or consent of Franchisor, Developer shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing. 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.

11.2 **No Waiver:** No delay, waiver, omission, or forbearance on the part of Franchisor to exercise any right, option, duty, or power arising out of any breach or default by Developer, or by any other Developer, of any of the terms, provisions, or covenants thereof, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Franchisor to enforce any such right, option, or power as against Developer, or as to a subsequent breach or default by Developer. Subsequent acceptance by Franchisor of any payments due to it under this Agreement shall not be deemed to be a waiver by Franchisor of any preceding or succeeding breach by Developer of any terms, covenants, or conditions of this Agreement.

11.3 **Notices:** All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail; by private overnight delivery; or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served; (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail; (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail; (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery;

and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail. Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor:

TRU Franchise, LLC
1590 N. Batavia Street #2
Orange, California 92867
Fax: 714-922-3931
Attention: President

Notices to Developer:

Fax: _____

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

12. ENTIRE AGREEMENT, SEVERABILITY, AND CONSTRUCTION

12.1 Entire Agreement: This Agreement, any attachments hereto, and any ancillary agreements between Developer and Franchisor or any affiliate which are executed contemporaneously with this Agreement, constitute the entire and complete Agreement between Franchisor (and, if applicable, any affiliate) and Developer concerning the subject matter thereof, and supersede all prior agreements. Developer acknowledges that it is entering into this Agreement, and any ancillary agreements executed contemporaneously herewith, as a result of its own independent investigation of the business franchised hereby and not as a result of any representation made by Franchisor or persons associated with Franchisor, or other developers, which are contrary to the terms herein set forth or which are contrary to the terms of any Franchise Disclosure Document, or other similar document required or permitted to be given to Developer pursuant to applicable law. Except for those permitted under this Agreement to be made unilaterally by Franchisor, no amendment, change, or variation 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. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim representations Franchisor made to Developer in the Franchise Disclosure Document or in any related document that Franchisor heretofore furnished to Developer.

12.2 Severability and Construction: Except as expressly provided to the contrary herein, each section, part, term, and provision of this Agreement shall be considered severable; and if, for any reason, any section, part, term, provision, and/or covenant 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, provisions, and/or covenants 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 the invalid portions, sections, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement. Neither this Agreement or any uncertainty or

ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Agreement. Franchisor and Developer intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

12.3 **Survival of Obligations After Expiration or Termination of Agreement:** Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination.

12.4 **Survival of Modified Provisions:** 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 of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed 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 or agency order.

12.5 **Captions:** All captions in this Agreement are intended for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Agreement.

12.6 **Responsibility:** The term "Developer" as used in this Agreement shall refer to each person executing this Agreement as Developer, whether such person is one of the spouses, partners, shareholders, managers, trustees, trustors or beneficiaries or persons named as included in Developer, and shall apply to each such person as if he were the only named Developer in this Agreement.

12.6.1 If Developer is a married couple, both husband and wife executing this Agreement shall be liable for all obligations and duties of Developer under this Agreement as if such spouse were the sole Developer under this Agreement.

12.6.2 If Developer is a partnership or if more than one person executes this Agreement as Developer, each partner or person executing this Agreement shall be liable for all the obligations and duties of Developer under this Agreement.

12.6.3 If Developer is a trust, each trustee, trustor and beneficiary signing this Agreement shall be liable for all of the obligations and duties of Developer under this Agreement.

12.6.4 If Developer is a corporation or limited liability company, all shareholders or members executing this Agreement shall be liable for all obligations and duties of Developer under this Agreement as if each such shareholder or member were the sole Developer under this Agreement.

12.6.5 If Developer is in breach or default under this Agreement, Franchisor may proceed directly against each such spouse, partner, signatory to this Agreement, shareholder, member, trustee, trustor or beneficiary without first proceeding against Developer and without proceeding against or naming in such suit any other Developer, partner, signatory to this Agreement, shareholder, trustee, trustor or beneficiary. The obligations of Developer and each such spouse, partner, person executing this Agreement, shareholder, trustee, trustor and beneficiary shall be joint and several.

12.6.6 Notice to or demand upon one spouse, partner, person signing this Agreement, shareholder, member, trustee, trustor or beneficiary shall be deemed notice to or demand upon Developer and all such spouses, partners, persons signing this Agreement, shareholders, members, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Developer's, spouses, partners, persons executing this Agreement, shareholders, members, trustees, trustors or beneficiaries.

12.6.7 The cessation of or release from liability of Developer, or any such spouse, partner, person executing this Agreement, shareholder, member, trustee, trustor or beneficiary shall not relieve any other Developer, spouse, partner, person executing this Agreement, shareholder, member, trustee, trustor or beneficiary from liability under this Agreement, except to the extent that the breach or default has been remedied or monies owed have been paid.

12.7 **Incorporation of Recitals:** The recitals set forth in Paragraphs A through G of this Agreement are true and correct and are hereby incorporated by reference into the body of this Agreement.

13. **APPLICABLE LAW**

13.1 **Choice of Law:** This Agreement takes effect upon its acceptance and execution by Franchisor in California, and shall be interpreted and construed under the laws of California. In the event of any conflict of law, the laws of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if the Store is located outside of California and such provision would be enforceable under the laws of the state in which the Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Paragraph 13.1 is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of any state to which it would not otherwise be subject.

13.2 **Venue:** 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 California in the county in which Franchisor has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

13.3 **Non-exclusivity of Remedy:** 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.

13.4 **Limitation of Adjudicative Proceedings:** 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.

13.5 **Right to Injunctive Relief:** Nothing herein contained shall bar Franchisor's right to seek injunctive relief to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Agreement relating to Developer's: (a) use of the Proprietary Marks, (b) obligations upon termination or expiration of this Agreement, (c) assignment or proposed assignment of the Store, this Agreement, or any ownership interest in Developer, or (d) actions covered by the provisions of Section 7. Franchisor also shall be able to seek injunctive relief to prohibit any act or omission by Developer or its employees that constitutes a violation of any applicable law, is dishonest or misleading to Developer's customers or to the public, or which may impair the goodwill associated with the Proprietary Marks; and Developer agrees to pay all costs and reasonable attorneys' fees incurred by Franchisor in obtaining such relief.

13.6 **Incorporation of Recitals:** The recitals set forth in Paragraphs A through G of this Agreement are true and correct and are hereby incorporated by reference into the body of this Agreement.

14. **ACKNOWLEDGMENTS**

14.1 **Recognition of Business Risks:** Developer acknowledges that it has conducted an independent investigation of the proposed franchise, and 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 as an independent business person. 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 sales, income, profits, or success of the business venture contemplated by this Agreement, or of other Stores.

14.2 **Receipt of Franchise Disclosure Document:** Developer acknowledges that it has received a copy of the complete TRU Franchise, LLC Franchise Disclosure Document for Sweet Factory Stores, which contains a copy of this Franchise Agreement, the attachments thereto, and agreements relating thereto, if any, at least fourteen (14) calendar days prior to the date on which this Agreement was executed. Developer acknowledges and agrees that Franchisor has made no promises, representations, warranties or assurances to Developer which are inconsistent with the terms of this Agreement or Franchisor's Franchise Disclosure Document, concerning the profitability or likelihood of success of any Store at any Franchised Location, that Developer has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Developer's business ability and aptitude is primary in determining Developer's success.

14.3 **Review of Franchise Disclosure Document:** Developer acknowledges that Developer has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that Franchisor has accorded Developer ample time and opportunity to consult with advisors and counsel of Developer's own choosing about the potential benefits and risks of entering into this Agreement.

14.4 **Representations by Developer:** Developer acknowledges and agrees that prior to the date of Developer's execution of this Agreement, no employee, agent or other person speaking on Franchisor's behalf made (i) any statement or promise to Developer concerning projected revenues, profits or operating costs of a Sweet Factory franchised business, (ii) any statement or promise to Developer regarding the amount of money Developer may earn in operating a Sweet Factory franchised business, (iii) any statement or promise to Developer concerning the total amount of revenue a Sweet Factory franchised business will or may generate, or (iv) any statement or promise to Developer regarding the costs Developer will or may incur in operating a Sweet Factory franchised business.

14.5 **Attorneys' Fees:** If Franchisor becomes a party to any legal proceedings concerning this Agreement, the Stores or the Franchised Locations by reason of any act or omission of Developer or its authorized representatives, Developer shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

14.6 **Atypical Arrangements:** Developer acknowledges and agrees that Franchisor may modify the offer of development rights to other developers in any manner and at any time, which offers have or may have terms, conditions, and obligations which may differ from the terms, conditions, and obligations in this Agreement. Developer further acknowledges and agrees that Franchisor has made no warranty or representation that all Area Development Agreements previously issued or issued after this Agreement by Franchisor do or will contain terms substantially similar to those contained in this Agreement. Franchisor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Area Development Agreements previously executed or executed after the date of this Agreement with other Sweet Factory Store developers in a nonuniform manner.

14.7 **Anti-Terrorism Laws:** Developer and its officers, directors, members and shareholders shall comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, Developer and its officers, directors, members and shareholders certify, represent, and warrant that none of the property or interests of Developer or its officers, directors, members and shareholders is subject to being "blocked" under any of the Anti-Terrorism Laws and that Developer and its officers, directors, members and shareholders are not otherwise in violation of any of the Anti-Terrorism Laws.

14.7.1 For the purposes of this Section 14.7, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA Patriot Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war.

14.7.2 Developer and its officers, directors, members and shareholders certify that

none of its employees, or anyone associated with Developer or its officers, directors, members and shareholders are listed in the Annex to Executive Order 13224. Developer agrees not to hire any individual listed in the Annex. The Annex is available at:

<http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>

14.7.3 Developer certifies that Developer has no knowledge or information that, if generally known, would result in Developer, its officers, directors, members and shareholders, its employees, or anyone associated with Developer to be listed in the Annex to Executive Order 13224.

14.7.4 Developer shall be solely responsible for ascertaining what actions must be taken by Developer to comply with the Anti-Terrorism Laws, and Developer specifically acknowledges and agrees that Developer's indemnification responsibilities set forth in this Agreement pertain to Developer's obligations under this Section 14.7.

14.7.5 Any misrepresentation by Developer under this Section 14.7 or any violation of the Anti-Terrorism Laws by Developer, its officers, directors, members and shareholders, or Developer's employees shall constitute grounds for immediate termination of this Agreement and any other Agreement Developer has entered with Franchisor or an affiliate of Franchisor, in accordance with the terms of this Agreement.

14.8 Additional Documents: Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

14.9 Counterparts and Electronic Copies: This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first shown above.

FRANCHISOR:

TRU FRANCHISE, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

DEVELOPER:

[] an individual;
[] a _____ general partnership;
[] a _____ limited partnership;
[] a _____ limited liability company;
[] a _____ corporation

By: _____
Its: _____, and individually

**TRU FRANCHISE, LLC
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT A
DEVELOPMENT SCHEDULE
MINIMUM DEVELOPMENT OBLIGATION**

TRU FRANCHISE, LLC AREA DEVELOPMENT AGREEMENT

ATTACHMENT A DEVELOPMENT SCHEDULE
MINIMUM DEVELOPMENT OBLIGATION

DEVELOPER'S DATE OF EXECUTION OF FRANCHISE AGREEMENT	DATE OF STORE OPENING	INITIAL FRANCHISE FEE DUE UNDER FRANCHISE AGREEMENT AFTER CREDIT FOR DEVELOPMENT FEE

FRANCHISOR:

TRU FRANCHISE, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

DEVELOPER:

[] an individual;
[] a _____ general partnership;
[] a _____ limited partnership;
[] a _____ limited liability company;
[] a _____ corporation

By: _____

Its: _____, and individually

TRU FRANCHISE, LLC

AREA DEVELOPMENT AGREEMENT

**ATTACHMENT B
DEVELOPMENT AREA**

TRU FRANCHISE, LLC

**AREA DEVELOPMENT AGREEMENT
ATTACHMENT C**

**CURRENT FORM OF
TRU FRANCHISE, LLC
FRANCHISE AGREEMENT**

**TRU FRANCHISE, LLC
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT D
GUARANTEES**

TRU FRANCHISE, LLC AREA DEVELOPMENT AGREEMENT

ATTACHMENT D GUARANTEE

As an inducement to TRU Franchise, LLC ("Franchisor") to execute the Area Development Agreement with _____ ("Developer") dated _____, and in consideration of Franchisor's executing the Area Development Agreement, _____ ("Guarantors"), jointly and severally agree as follows:

- A. Guarantors shall pay or cause to be paid to Franchisor all monies payable by Developer under the Area Development Agreement on the days and times in the manner therein appointed for payment thereof.
- B. Guarantors shall unconditionally guarantee full performance and discharge by Developer of all the obligations of Developer under the Area Development Agreement at the times and in the manner therein provided.
- C. Guarantors shall indemnify and hold Franchisor and its affiliates harmless against and from all losses, damages, costs, and expenses which Franchisor and its affiliates may sustain, incur, or become liable for by reason of: (1) the failure for any reason whatsoever of Developer to pay the monies payable pursuant to the Area Development Agreement or to do and perform any other act, matter or thing pursuant to the provisions of the Area Development Agreement; or (2) any act, action, or proceeding of or by Franchisor for or in connection with the recovery of monies or the obtaining of performance by Developer of any other act, matter or thing pursuant to the provisions of the Area Development Agreement.
- D. Franchisor shall not be obligated to proceed against Developer or exhaust any security from Developer or pursue or exhaust any remedy, including any legal or equitable relief against Developer, before proceeding to enforce the obligations of the Guarantors under this Guarantee, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of Developer under the Area Development Agreement.
- E. Without affecting the Guarantors' obligations under this Guarantee, Franchisor, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Developer, or settle, adjust, or compromise any claims against Developer. Guarantors waive notice of amendment of the Area Development Agreement and notice of demand for payment or performance by Developer.
- F. Guarantors' obligations under this Guarantee shall remain in full force and effect, and shall be unaffected by: (1) the unenforceability of the Development Agreement against Developer; (2) the termination of any obligations of Developer under the Area Development Agreement by operation of law or otherwise; (3) the bankruptcy, insolvency, dissolution, or other liquidation of Developer, including, without limitation, any surrender or disclaimer of the Area Development Agreement by the trustee in bankruptcy of Developer; (4) Franchisor's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against Developer, or by the winding-up or dissolution of Developer, or any other event or occurrence which would have the effect at law of terminating the existence of Developer's obligations prior to the termination of the Area Development Agreement; or (5) by any other agreements or other dealings between Franchisor and Developer having the effect of amending or altering the Area Development Agreement or Developer's obligations under

this Guarantee, or by any want of notice by Franchisor to Developer of any default of Developer or by any other matter, thing, act, or omission of Franchisor whatsoever.

G. The provisions of Section 12 of the Area Development Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Paragraph 11.3 of the Area Development Agreement shall apply to any notice to either party, except that notice to Guarantors shall be as follows:

Names and Addresses

IN WITNESS WHEREOF, each of the undersigned have signed this Guarantee as of the day and year set forth below.

GUARANTORS:

Date: _____

Date: _____

**TRU FRANCHISE, LLC
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT E
STATE SPECIFIC AMENDMENTS**

TRU FRANCHISE, LLC AREA DEVELOPMENT AGREEMENT

ATTACHMENT E STATE SPECIFIC AMENDMENTS CALIFORNIA

1. The California Department of Business Oversight requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. BUS. & PROF. CODE Section 31000 et seq., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 et seq. To the extent that the Area Development Agreement (the "**Agreement**") contains provisions that are inconsistent with the following, such provisions are amended:

- a. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination or nonrenewal of the Agreement. If the Agreement contains a provision that is inconsistent with the law, the law will control.
- b. If the Agreement contains one or more of the provisions referred to in the following paragraphs, the following paragraphs will control:
 - i. If the Agreement provides for termination upon bankruptcy, this provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et seq.).
 - ii. If the Agreement contains a covenant not to compete which extends beyond the termination of the franchise, this provision may not be enforceable under California law.
 - iii. If the Agreement contains a liquidated damages clause, under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.
- b. Any provision in the Agreement requiring waiver of compliance with the California franchise law is void.
- c. If the Agreement contains a waiver of punitive damages and jury trial provision, these provisions may not be enforceable.
- d. If the Agreement requires binding arbitration, this provision may not be enforceable.
- e. FRANCHISOR'S WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT WWW.DBO.CA.GOV.
- f. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
- g. THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF BUSINESS OVERSIGHT NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

h. YOU MUST SIGN A GENERAL RELEASE IF YOU RENEW OR TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE SECTION 31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE SECTIONS 31000 THROUGH 31516).

i. If the Agreement requires payment of liquidated damages that is inconsistent with California Civil Code Section 1671 and the liquidated damage clause may be unenforceable.

2. Each provision of this Attachment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of California law are met independently without reference to this Attachment.

FRANCHISOR:

TRU FRANCHISE, LLC,

By: _____

Name: _____

Title: _____

DEVELOPER:

[] an individual;
[] a _____ general partnership;

[] a _____ limited partnership;
[] a _____ limited liability company;
[] a _____ corporation

By: _____

Its: _____, and individually

**TRU FRANCHISE, LLC
AREA DEVELOPMENT AGREEMENT**

**ATTACHMENT F
ENTITY INFORMATION**

ATTACHMENT F ENTITY INFORMATION

If Developer is an Entity, Developer represents and warrants that the following information is accurate and complete in all material respects:

(1) Developer is a (check as applicable):

- ☐ corporation
☐ limited liability company
☐ general partnership
☐ limited partnership
☐ Other (specify): _____

(2) Developer shall provide to Franchisor concurrently with the execution hereof true and accurate copies of its charter documents including Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution hereof, and any amendments to the foregoing ("Entity Documents").

(3) Developer promptly shall provide such additional information as Franchisor may from time to time request concerning all persons who may have any direct or indirect financial interest in Developer.

(4) The name and address of each of Developer's Owners, members, or general and limited partner:

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST (if applicable)

(5) There is set forth below the names, and addresses and titles of Developer's principal officers or partners who will be devoting their full time to the Business:

NAME	ADDRESS

(6) The address where Developer's Financial Records, and Entity records (e.g., Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, etc.) are maintained is:

(SIGNATURES ON FOLLOWING PAGE)

1

FRANCHISOR:

TRU FRANCHISE, LLC,
a California limited liability company

By: _____

Name: _____

Title: _____

DEVELOPER:

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a _____ limited liability company;
- ☐ a _____ corporation

By: _____ Its: _____
_____, and individually

TRU FRANCHISE, LLC

FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT I

ASSET PURCHASE AGREEMENT AND ATTACHMENTS

TRU FRANCHISE, LLC

ASSET PURCHASE AGREEMENT

TRU FRANCHISE, LLC
ASSET PURCHASE AGREEMENT
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SCHEDULE 9(n)	REFURBISTMENT OF STORE

(u) ~~ALL FRANCHISE EIGHT ASSETS~~ the Store as more fully described on **Schedule 2(a) (u)** attached to this Agreement and incorporated into this Agreement by reference (the "Service Agreements") and the "Other Contracts" ~~AS MORE FULLY DESCRIBED IN~~ **Section 7(m)** of this Agreement

(m) All of the useable stock-in-trade, retail inventory and supplies located at the Store ~~AS MORE FULLY DESCRIBED IN~~ **Schedule 2(a)(v)** attached to this Agreement and between ~~THE FRANCHISE~~ **THIS ASSET PURCHASE AGREEMENT** is made between ~~INCORPORATED INTO THIS AGREEMENT BY REFERENCE~~ liability company ("Seller"), on the one hand, and _____ ("Buyer"), on the other hand, with reference to the following: All licenses and permits maintained by Seller and used by Seller in the operation of the Store, to the extent that they are transferable, as more fully described on **Schedule 2(a)(iv)** (the "Licenses") attached to this Agreement and incorporated into this Agreement by reference #_____, described on **Attachment A** attached to this Agreement and incorporated into this Agreement by reference (the "Store")

B Seller leases the premises and improvements at the site of the Store (the "Franchised Location") under a Lease (the "Master Lease") with the landlord (the "Master Landlord") described on **Attachment B** attached to this Agreement and incorporated into this Agreement by reference

C Seller desires to sell to Buyer and Buyer desires to purchase from Seller all of the assets owned or used by Seller in the operation of the Store which are more fully described in **Section 2(a)** of this Agreement Seller further desires to operate the Store as a Sweet Factory Store under a Franchise Agreement with Sweet Candy Franchise, LLC, a California limited liability company ("Franchisor"), the Franchisor of Sweet Factory Stores, substantially in the form of **Attachment D** attached to this Agreement and incorporated into this Agreement by reference (the "Franchise Agreement") Seller further desires to sublease the Franchised Location to Buyer and Buyer desires to sublease the Franchised Location from Seller under a Sublease substantially in the form of **Attachment G** attached to this Agreement and incorporated into this Agreement by reference (the "Sublease")

D On _____, Seller and Buyer entered into a Preliminary Business Purchase Agreement for the Store (the "Preliminary Business Purchase Agreement") Seller and Buyer desire to enter into this Agreement to provide for these transactions, on the terms and conditions set forth in this Agreement

NOW, THEREFORE, IT IS AGREED

1 **INCORPORATION OF RECITALS**

The Recitals set forth in Sections A through D of this Agreement are true and correct and are incorporated into this Agreement as part of this Agreement

2 **PURCHASE AND SALE**

a **The "Assets"**

On the "Closing Date" (as defined in **Section 6(b)** of this Agreement), Seller shall sell, convey, transfer, assign and deliver to Buyer and Buyer shall purchase from Seller, all of the assets of the Store listed on **Schedules 2(a)(i) to 2(a)(v)** attached to this Agreement and incorporated into this Agreement by reference (collectively the "Assets") Each reference in this Agreement to the "Assets" of the Store shall mean and refer to the following

(l) All of the fixtures, equipment, signs and other tangible assets of the Store (the "Equipment") as more fully described on **Schedule 2(a)(i)** attached to this Agreement and incorporated into this Agreement by reference

(iv) All telephone numbers and facsimile numbers for the Store as more fully described on Schedule 2(a)(v) attached to this Agreement and incorporated into this Agreement by reference

b Excluded Assets

The following assets shall be excluded from this transaction (the "**Excluded Assets**")

(l) All cash in banks and other financial institution accounts associated with the Store

(u) The business records which relate to the operations of the Store for all periods prior to the Closing Date (the "**Business Records**"), subject, however, to Section 9(e) of this Agreement

(m) All refunds of federal, state or local income or franchise taxes or worker's compensation insurance premiums due Seller as of the Closing Date

(iv) All intellectual property rights of Seller

c Inventory

Seller shall have the right to amend and update Schedule 2(a)(m) up to the Closing Date to accurately reflect the useable Inventory on hand at the Store on the Closing Date, as determined by seller in its sole discretion. On the Closing Date, Seller shall deliver to Buyer a formal version of Schedule 2(a)(m) that accurately reflects the useable Inventory in the Store on the Closing Date, as determined by Seller in its sole discretion. Each version of Schedule 2(a)(m) shall, in addition to listing the Inventory, state the updated aggregate "**Inventory Consideration**" (as defined in Section 3(a) of this Agreement) for the Inventory listed on Schedule 2(a)(m). The Inventory shall be valued at Seller's actual cost for the same.

3 PURCHASE PRICE FOR ASSETS

a Purchase Price

The aggregate purchase price for the Assets (the "**Purchase Price**") shall be the sum of \$ _____ **plus** the value of the Inventory listed on the final version of Schedule 2(a)(m) (the "**Inventory Consideration**") **plus** the amount of cash in the change fund at the Store on the Closing Date **plus** the sum of \$ _____ as payment for Seller's security deposits now held on account by the Master Landlord under the Master Lease as more fully described on **Attachment B** (the "**Security Deposits**"). For purposes of the "**Closing**" (as defined in Section 6(b) of this Agreement), Seller and Buyer agree, subject to Section 3(b) below, that the Inventory Consideration is \$ _____.

b Inventory Consideration

Within two (2) days after the Closing Date, Seller shall inform Buyer of the actual Inventory Consideration, determined in accordance with Section 2(c). If the actual Inventory Consideration is greater than \$_____ in the aggregate, Buyer shall pay Seller within five (5) business days thereafter an additional amount equal to the difference between the actual Inventory Consideration and \$_____. If the actual Inventory Consideration is less than \$_____ in the aggregate, Seller shall pay Buyer within five (5) business days thereafter an amount equal to the difference between \$_____ and the actual Inventory Consideration.

c Deposits and Cash Payments

Contemporaneous with the parties' execution of this Agreement, Buyer shall deposit the sum of \$_____ (the "**initial Deposit**") with the "**Escrow Holder**" described in Section 6(a) of this Agreement as a deposit against the Purchase Price [If Buyer is purchasing a new Sweet Factory store or kiosk from Seller in accordance with the Turnkey Addendum to Purchase Agreement attached to this Agreement (the "**Turnkey Addendum**") which Seller shall construct, equip and furnish, and which is not yet opened for business (a "**Turnkey Unit**") as of the date of this Agreement, Buyer shall deposit the additional sum of \$100,000 (the "**Additional Deposit**") with the Escrow Holder at least five (5) business days before Seller's commencement of construction of the Turn Key Unit] The Initial Deposit [s] [and the Additional Deposit are collectively referred to in this agreement as the "**Deposit**" and are] non-refundable, in whole or in part. On the Closing Date, Buyer shall pay Seller, through the "**Escrow**" described in Section 6(a) of this Agreement the remaining \$_____ of the cash portion of the Purchase Price.

d Purchase Note The \$balance of the Purchase Price shall be evidenced by and shall be payable to Seller in accordance with the terms of Buyer's Promissory Note in the principal amount of \$_____ in substantially the form attached to this Agreement as **Attachment E** and incorporated into this Agreement by reference (the "**Purchase Note**").

e Security for Purchase Note and Security Agreement Payment of the Purchase Note shall be secured by a security interest granted by Buyer in the Assets in accordance with the Security Agreement in substantially the form attached to this Agreement as **Attachment F** and incorporated into this Agreement by reference (the "**Security Agreement**") which will be executed by Buyer on the Closing Date.

f Guarantee(s)

The performance by Buyer of Buyer's obligations under this Agreement, the Purchase Note and the Security Agreement will be personally guaranteed by _____ (the "**Guarantor(s)**") in accordance with the Personal Guarantee(s) in substantially the form attached to this Agreement as **Attachment H**, and incorporated into this Agreement by reference (the "**Guarantee(s)**") which will be executed by Guarantor(s) on the Closing Date.

g Allocation of Purchase Price

Seller and Buyer shall allocate the Purchase Price among the Assets as set forth on **Schedule 3(e)** attached to this Agreement and incorporated into this Agreement by reference, using the allocation method required by Section 1060 of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the regulations thereunder. Seller and Buyer each agree to report the federal, state and local income and other tax

consequences of the transactions contemplated by this Agreement, and in particular to report the information required by Code Section i060(b), in a manner consistent with such allocation and will not take any position inconsistent therewith

h Payments Required in Addition to Purchase Price

Buyer shall pay the following obligations on the Closing Date in addition to the Purchase Price

(l) The \$35,000 Initial Franchise Fee due to Franchisor

(u) The first month's rent and estimated monthly center expenses due to Seller under the Sublease and a security deposit equal to one (i) month's rent and estimated monthly center expenses due under the Sublease as described on **Schedule 3(h)** attached to this Agreement and incorporated into this Agreement by reference

(iii) All amounts attributable to "**Prorations**" as more fully described in **Section 9(h)** and **Section i2(a)** of this Agreement

(iv) All closing costs payable by Buyer as more fully described in **Section** il (hl. of this Agreement

4 LIABILITIES OF STORE

a Seller's Liabilities

Except as specifically provided in **Section 4(b)** of this Agreement, Buyer shall not assume and shall not acquire, take over, or be responsible for any liabilities or obligations of SELLER, known or unknown, relating to or arising from the operation of the Store by SELLER prior to the Closing Date (such liabilities or obligations not assumed by Buyer are referred to in this Agreement as "**Seller's Liabilities**") SELLER shall pay all of Seller's Liabilities

b Assumed Liabilities

Buyer shall assume only those contracts, leases agreements and liabilities listed on **Schedule 4(b)** attached to this Agreement and incorporated into this Agreement by reference (collectively the "**Assumed Liabilities**") in connection with Buyer's acquisition of the Store On the Closing Date, Buyer shall execute the Assumption Agreement in substantially the form of **Attachment I** attached to this Agreement and incorporated into this Agreement by reference (the "**Assumption Agreement**") with respect to the Service Agreements and the Assumed Liabilities Buyer shall pay all of the Assumed Liabilities and shall indemnify, defend and hold harmless Seller from all loss, cost, damage or expense related to the Assumed Liabilities as provided in **Section i3** of this Agreement

5 INITIAL TRAINING AGREEMENT, FRANCHISE AGREEMENT AND SUBLEASE

a Initial Training Agreement

If the Store is the first Sweet Factory Store to be owned and operated by Buyer, concurrently with the parties' execution of this Agreement, Buyer and Franchisor shall execute Franchisor's Initial Training Agreement in the form of **Attachment C** Buyer shall attend and complete Franchisor's Initial Training Program for franchisees offered by Franchisor (the "**Initial Training Program**") to Franchisor's satisfaction, as

determined by Franchisor, in its sole and absolute discretion, in order to become eligible to become a Franchisee of Franchisor

b **Franchise Agreement.** On the Closing Date, Buyer and Franchisor shall execute a Franchise Agreement for the Store in the form of **Attachment D**.

c **Sublease** On the Closing Date, Buyer and Seller shall execute a Sublease for the Franchised Location in the form of **Attachment G** Seller, in its discretion, shall exert Seller's commercially reasonable best efforts to obtain the consent of the Master Landlord to the Sublease, if such consents is required Buyer shall provide to the Master Landlord such financial statements and other information concerning Buyer as the Master Landlord may reasonably require to grant the Master Landlord's consent to the Sublease Buyer shall pay all costs and fees, if any, that the Master Landlord may charge in connection with the Master Landlord's determination to grant the Master Landlord's consents to the Sublease, and may, therefore, not be available prior to the Closing Date because of administrative procedures of the Master Landlord Seller and Buyer therefore agree that the Escrow shall close if all other conditions to the close of the Escrow have been satisfied, even if the written consent of the Master Landlord to the Sublease has not been received prior to the Closing Date If the Master Landlord does not ultimately consent to the subletting of the Franchised Location by Seller to Buyer, the sale of the Assets by Seller and the sale of the franchise rights by FRANCHISOR and all documents executed by Seller, Buyer and FRANCHISOR, shall be canceled by Seller, Buyer and FRANCHISOR and shall become null and void, and all monies paid by Buyer to Seller and FRANCHISOR, less all profits derived by Buyer from the operation of the Store prior to the cancellation of the sale of the Assets and the franchise, shall be refunded to Buyer

6 **THE ESCROW AND THE CLOSING DATE**

a **Escrow Holder and Escrow**

Franchisor shall deposit a fully executed copy of this Agreement with _____ **Telephone** _____ **Facsimile** _____ (the "Escrow Holder"), to the attention of _____, immediately following the parties' execution of this Agreement Delivery of a copy of this Agreement to the Escrow Holder shall constitute the parties' authorization to the Escrow Holder to proceed with Bulk Sale Escrow Number _____ (the "Escrow") with respect to this transaction

b **Closing and Closing Date**

Unless extended in writing by Seller and Buyer, the Escrow shall close (the "Closing") on _____ (the "Closing Date") The Closing shall take place at the offices of the Escrow Holder at i000 A in on the Closing Date If the Closing does not occur on the Opening Date, Seller may terminate this Agreement without any liability to Buyer

7 **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer that except as set forth on the Schedules attached to this Agreement (each section of which qualifies the correspondingly numbered representation and warranty).

a **Due Organization and Authorization**

Seller (i) is duly organized, validly existing and in good standing under the laws of the State of California, and (u) has the power and authority to enter into this Agreement and the documents referenced in this Agreement and to consummate the transactions contemplated by this Agreement and otherwise to perform Seller's obligations under this Agreement This Agreement has been duly authorized and executed by

Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms

b Violation.

The execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated by this Agreement do not and will not (i) violate any provision of the Articles of Organization of Seller, (ii) violate any material court or administrative order, process, Judgment or decree to which Seller is a party or by which it (or any of its respective properties or assets) is bound or (iii) result in the creation or imposition of any material lien, charge, pledge, security interest or other encumbrance upon the Assets pursuant to any provision of, any mortgage, hen, lease, agreement, license, or instrument to which Seller is a party or by which Seller is bound

c Consents.

No consent or approval by, or any notification of or filing with, any person (governmental or private) is required in connection with the execution, delivery and performance by Seller of this Agreement or the consummation of the transactions contemplated by this Agreement, other than the consent of the Master Landlord as described in Section 5 of this Agreement, if the same is required by the terms of the Master Lease

d Assets

There are no proceedings affecting any of the Assets pending or, to the knowledge of Seller, threatened which may reasonably be expected to (i) adversely curtail the use of the Assets for the purpose for which they were acquired or the purpose for which they are now used or (u) adversely curtail the business or operation of the Store The Assets will constitute substantially all of the assets and interests in assets that are used by Seller in the conduct of the business of the Store as currently being conducted, other than the Excluded Assets

e Encumbrances

On the Closing Date, Seller shall have good and marketable title to the Assets, free and clear of any and all liens, claims, Judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind The Escrow Holder shall provide Buyer, at Buyer's expense, with (i) the results of a UCC search prior to the Closing Date to confirm that the Assets are in fact free and clear of any liens, claims, Judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind In the event that such search shall disclose any liens, claims, Judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind, Seller shall exert Seller's best efforts to cause each and all of the same to be paid and/ or removed on or before the Closing Date

f Financial Information/Operating Expenses

Seller has previously delivered to Buyer unaudited Financial Statements for the Store (the "Financial Statements") for the _____ {__} month period ending on _____ the _____ {__} month period ending on _____ and the _____ {__} month period ending on _____ (the "Reporting Period"), a copy of which Financial Statements are attached this Agreement as Schedule 7(f) and are incorporated into this Agreement by reference The Financial Statements were true, correct and complete in all material respects as of the date that they were prepared and were prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the Reporting Period, except as otherwise noted therein and subject (in the case of interim financial statements) to year-end audit adjustments

g Ordinary Course of Business

Seller _____ (i) Seller has operated the Assets and the Store in the ordinary course, consistent with past practice, (u) there have not been any material changes in the operations or financial condition of the Store, (m) there has not been any material asset sold or disposed of (except inventory sold in the ordinary course of business), any material Asset mortgaged, pledged or subjected to any lien, charge or other encumbrance, and (iv) there has not been any agreement by Seller to sell or transfer any Asset other than in the ordinary course of business

h Compliance with Laws

To the best knowledge of Seller, the Store has been operated in compliance with all applicable federal, state and local laws, regulations and ordinances, including, without limitation, "**Environmental Laws**" (as defined below), relating to the operation of the Store For purposes of this Agreement, the term "**Environmental Laws**" shall mean any federal, state or local statute, ordinance, rule or regulation relating to (i) pollution or protection of the environment or (u) exposure of persons, including employees, to toxic or hazardous substances or other products

Inventory

The Inventory listed on Schedule 2(a) (iii) is usable and salable in the ordinary course of business On the Closing Date, Seller shall have good and marketable title to the Inventory, free and clear of any and all liens, claims, Judgments, taxes, encumbrances, security interests, debts or other adverse claims or rights of any kind

Permits and Licenses

On the Closing Date, Seller shall have all permits, and governmental licenses and registrations necessary to carry on the business of the Store (as presently conducted) as required by law or the rules and regulations of any federal, state, county or local governmental agency having jurisdiction over it The Licenses are in good standing and are in full force and effect

k Master Lease

Seller has delivered a full and complete copy of the Master Lease to Buyer prior to the date of this Agreement There are no written amendments to the Master Lease or other agreements between Seller and the Master Landlord reflecting the understandings between Seller and the Master Landlord under the Master Lease which have not heretofore been delivered to Buyer by Seller There are no oral amendments or other agreements between Seller and the Master Landlord which have not been memorized in a written instrument and expressly agreed to by Seller and the Master Landlord Seller has not received notice of any breach or default of any material term or provision of any of the Master Lease and, to the best knowledge of Seller, Seller is not in breach or in default of any material term or provision of the Master Lease as of the date of this Agreement Provided that the consents of the Master Landlord, if required, have been obtained, Seller has the right to sublet the Franchised Location to Buyer with the written consent of the Master Landlord and the consummation of the transactions contemplated by this Agreement will not result in or constitute a breach of any material term or provision of the Master Lease or a default or an event which, with notice or lapse of time or both, would be a default, breach or violation of any material term or provision of the Master Lease The Master Lease is in full force and effect as written and, on the Closing Date, Seller will be in material compliance therewith

Litigation

Except as listed in **Schedule 7(i)** attached to this Agreement and incorporated into this Agreement by reference, there is no pending, or to the knowledge of Seller, threatened suit, action, arbitration or legal, administrative, or other proceeding, against or affecting Seller, the Store, the Assets, the Master Lease or the Licenses

m Other Contracts

Seller is not a party to any contracts, leases or agreements with respect to the Store other than the Service Agreements described on **Schedule 2(a)(ii)** and such other contracts, leases or agreements as are set forth on **Schedule 7(m)** attached to this Agreement and incorporated into this Agreement by reference (the "**Other Contracts**") There is no default or event which, with notice or lapse of time, or both, would constitute a default by any party to the Service Agreements or the Other Contracts The Service Agreements and Other Contracts are in full force and effect as written and, on the Closing Date, Seller will be in material compliance therewith

n Employees

All individuals employed in a non-exempt status at the Store on the Closing Date will be listed on **Schedule 7(n)** attached to this Agreement and incorporated into this Agreement by reference (the "**Employees**"), will be employed on an "**at will**" basis and will be terminated by Seller effective as of the close of business on the Closing Date On the Closing Date, Seller will be current in the payment of all obligations and employee benefits due to such Employees and all Employees will be fully compensated with all monetary and other benefits accrued up to termination Seller shall be solely liable and responsible for all accrued salary, vacation, and other compensation benefits payable up to the Closing Date Seller makes no warranty, express or implied, with respect to the qualification or character of any employee at the Store Seller shall allow Buyer an opportunity to interview each of the Employees during the week prior to the Closing Date Buyer may tender employment to each of the Employees, such employment to commence on terms mutually satisfactory to Buyer and the respective Employees, provided, however, if Buyer, in its sole discretion, determines that one or more of the Employees is not suitable for hire by Buyer, Buyer shall in no way be obligated to tender employment to and of such Employee(s)

o No Violation

Except as may be set forth on **Schedule 7(o)** attached to this Agreement and incorporated into this Agreement by reference, Seller has not received notice of any violation of any applicable federal, state or local statute, law or regulation (including, without limitation, any applicable Environmental Law or applicable building, zoning, health, employment or other law, ordinance or regulation) relating to or directly or materially affecting the Assets or the Store and, to the best knowledge of Seller, there are no such violation by Seller

p **Ownership of Store** Seller and its affiliates have been the owners of the Store during the three (3) year period preceding the date of this Agreement

8 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that except as set forth on the Schedules attached to this Agreement (each Section of which qualifies the correspondingly numbered representation and warranty)

a **Due Organization Incorporation and Authorization** Seller (i) is duly organized, validly existing and in good standing under the laws of the State of California, (u) is qualified to conduct business

m the State of _____, and (m) has the power and authority to enter into this Agreement and the documents referenced in this Agreement and to consummate the transactions contemplated by this Agreement and otherwise to perform Seller's obligations under this Agreement. This Agreement has been duly authorized and executed by Seller and constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

This Agreement has been duly authorized and executed by Buyer and constitutes the legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms.

b Violation

The execution and delivery of this Agreement by the Buyer and the consummation of the purchase of the Assets and the assumption of the Assumed Liabilities contemplated by this Agreement will not violate any material court or administrative order, process, Judgment or decree to which either Buyer is a party or by which Buyer is bound.

c Consents

No consent or approval by, or any notification of or filing with, any person (governmental or private) is required in connection with the execution, delivery and performance by Buyer of this Agreement or the consummation of the transactions contemplated by this Agreement, other than the consent of the Master Landlord, as described in Section 5 of this Agreement, if the same is required by the terms of the Master Lease.

d Condition of Assets

Buyer will conduct an independent inspection of the Store and the Assets prior to the Closing Date and will have continuing access to the Store and the Assets to view and inspect the Store and the Assets following the Opening Date and prior to the Closing Date. Buyer acknowledges and agrees that Buyer will fully and carefully inspect and review the Store and the Assets and will make Buyer's independent determination to proceed with this transaction on the Closing Date.

e Recognition of Business Risks

Buyer has conducted an independent investigation of the proposed franchise, and recognizes that the business venture contemplated by this Agreement involves business risks and that its success will be largely dependent upon the ability of Buyer as an independent business person. Franchisor expressly disclaims the making of, and Buyer acknowledges and agrees that Buyer has not received, any warranty or guarantee, express or implied, as to the potential sales, income, profits, or success of the business venture contemplated by this Agreement, or of other Stores. Buyer further acknowledges and agrees that Buyer has been advised by Seller that

(l) Buyer's costs for inventory, employee benefits, supplies, insurance and other items for the Store will likely exceed Seller's costs for the same items due to advantageous pricing, rebates or bulk pricing discounts or allowances provided to Seller by its vendors because of the high volume of purchases by Seller.

(u) The Financial Statements do not include expenditures for a number of expense items which Buyer will incur in the operation of the Store as a franchisee of Franchisor, including, without limitation, royalties, institutional advertising fees, local advertising expenses, audit expenses, interest on overdue payments, accounting and professional fees, additional training expenses, web site fees and maintenance expenses, and the like.

f Financial Statements

No employee, agent or other person speaking on behalf of Seller or Franchisor has made any statement or promise to Buyer with respect to the Financial Statements attached to this Agreement as Schedule 7(f) that

(l) The Sales of the Store in any period subsequent to the Reporting Period will equal or exceed the Sales of the Store during the Reporting Period Buyer acknowledges and agrees that sales will vary in the future and will depend upon many factors, including, without limitation, general economic conditions, the extent, duration and effectiveness of marketing and promotional efforts conducted by Seller, seasonal fluctuations in the purchase of confections and related products by consumers, retail prices of confections and related products offered at the Store, variations in disposable income and population, competition in the confections' business, consumer preferences, opportunities for consumers to purchase these goods from discount retailers and over the Internet, and the like

(u) The Cost of Goods Sold of the Store in any period subsequent to the Reporting Period will equal, be less than or exceed the Cost of Goods Sold of the Store during the Reporting Period Buyer acknowledges and agrees that the Cost of Goods Sold will vary in the future and will depend upon many factors, including, without limitation, general economic conditions, the availability of, and wholesale and retail prices for, ingredients used to manufacture the confections and other products sold at the Store, seasonal fluctuations in the availability of, and wholesale and retail prices for, ingredients used to manufacture the confections and other products sold at the Store, and variations in freight and other costs due to the volatility of worldwide prices for Oii and Oii related products, and the like

(m) The Operating Expenses-Payroll of the Store in any period subsequent to the Reporting Period will equal, be less than or exceed the Operating Expenses-Payroll of the Store during the Reporting Period Buyer acknowledges and agrees that the Operating Expenses-Payroll will vary in the future and will depend upon many factors, including, without limitation, general economic conditions, potential changes in the minimum wage laws in the State in which the Store is located, increases in the costs for employee benefits for Buyer's employees, and the like

(iv) The Operating Expenses-Occupancy of the Store in any period subsequent to the Reporting Period will equal, be less than or exceed the Operating Expenses-Occupancy of the Store during the Reporting Period Buyer acknowledges and agrees that the Operating Expenses-Occupancy will vary in the future and will depend upon many factors, including, without limitation, general economic conditions, rent escalation provisions in the Master Lease and Sublease, an increase in the costs of the Master Landlord to provide common area maintenance in the shopping mall in which the Franchised Location is located, an increase in real or personal property taxes resulting from a reassessment or sale, and variation in utility costs due to the volatility of worldwide prices for Oii and Oii related products, and the like

(v) The Other Operating Expenses of the Store in any period subsequent to the Reporting Period will equal, be less than or exceed the Other Operating Expenses of the Store during the Reporting Period Buyer acknowledges and agrees that the Other Operating Expenses will vary in the future and will depend upon many factors, including, without limitation, general economic conditions, an increase in costs of insurance, postage or business licenses, repair and maintenance provisions in the Master Lease and Sublease for the Franchised Location, deferred maintenance conditions, acts of God, and the like

g Receipt of Franchise Disclosure Document

Buyer received a copy of the complete TRU Franchise, LLC Franchise Disclosure Document for Sweet Factory stores, which contains a copy of this Agreement, a copy of the complete Sweet

Candy, LLC Franchise Agreement for Sweet Factory stores, the attachments thereto, and agreements relating thereto, if any, at least fourteen (14) calendar days prior to the date on which this Agreement was executed Buyer further acknowledges that Buyer has received a copy of the complete current form of Franchise Agreement for Sweet Factory stores, the attachments thereto and agreements relating thereto, if any, prior to the date on which the Franchise Agreement will be executed Buyer acknowledges and agrees that Franchisor has made no promises, representations, warranties or assurances to Buyer which are inconsistent with the terms of this Agreement or Franchisor's Disclosure Document, concerning the profitability or likelihood of success of the Store at the Franchised Location, that he has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Buyer's business ability and aptitude is primary in determining Buyer's success

h Review of Franchise Disclosure Document

Buyer has read and understood this Agreement, the attachments hereto, and agreements relating thereto, if any, and that Franchisor has accorded Buyer ample time and opportunity to consult with advisors and counsel of Buyer's own choosing about the potential benefits and risks of entering into this Agreement

No Representations by Seller or Franchisor

Prior to the date of Buyer's execution of this Agreement, no employee, agent or other person speaking on behalf of Seller or Franchisor made (i) any statement or promise to Buyer concerning projected revenues, profits or operating costs of a Sweet Factory franchised business, (u) any statement or promise to Buyer regarding the amount of money Buyer may earn in operating a Sweet Factory franchised business, (m) any statement or promise to Buyer concerning the total amount of revenue a Sweet Factory franchised business will or may generate, or (iv) any statement or promise to Buyer regarding the costs Buyer will or may incur in operating a Sweet Factory franchised business

Atypical Arrangements

Seller may modify the terms of its offer for the sale of Sweet Factory Stores to other buyers in any manner and at any time, which offers have or may have terms, conditions, and obligations which may differ from the terms, conditions, and obligations in this Agreement Buyer further acknowledges and agrees that Seller has made no warranty or representation that all Asset Purchase Agreements previously issued or issued after this Agreement by Seller do or will contain terms substantially similar to those contained in this Agreement Seller may, in Seller's reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Asset Purchase Agreements previously executed or executed after the date of this Agreement with other buyers of Sweet Factory Stores in a non-uniform manner

k Representation by Counsel

Buyer has been represented by independent legal counsel of Buyer's own selection in connection with the review of the terms and consequences of this Agreement On the Closing Date, Buyer shall provide Seller and Franchisor with a letter from Buyer's legal counsel in a form satisfactory to Seller attesting that Buyer's counsel has reviewed the provisions of this Agreement with Buyer, including, without limitation, the provisions of this Section 8

Ownership of Store Buyer has been advised by Seller that Seller and its affiliates have been the owners of the Store during the three (3) year period preceding the date of this Agreement

9 **OTHER AGREEMENTS**

a **Condition of Equipment and Walk Through**

All Assets sold pursuant to this Agreement are sold "AS IS" Seller MAKES , NO WARRANTIES WITH RESPECT TO THE ASSETS. UNLESS SPECIFICALLY PROVIDED ELSEWHERE IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE WITH RESPECT TO THE CONDITION OF THE ASSETS, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WITH RESPECT TO PATENT INFRINGEMENT OR THE LIKE. There shall be no abatement of the Purchase Price and Seller shall have no liability to Buyer for any claim, loss or damage as a result of any non-operating deficiency or defect in the Assets, the use or performance of the Assets, or any interruption or loss of service or of use of the Assets

b **Walk Through** Seller and Buyer shall conduct a walk-through of the Store on or before the Closing Date (the "**Walk Through**") to determine the condition of the Equipment and Seller shall prepare a written list of any repairs to be made (the "**Repair List**") to the Equipment at the Walk Through The Repair List shall be the final and conclusive listing of all repairs to be made to the Equipment as of the Closing Date for all purposes and Seller shall have no responsibility whatsoever for any repairs which are not listed on the Repair List prepared at the Walk Through Unless the parties otherwise agree, Seller will complete all repairs on the Repair List within thirty (30) days after the Closing Date All repairs required after repairs to the items on the Repair List are completed by Seller shall be the sole and absolute responsibility of Buyer, at Buyer's own expense

c **Access to Books and Records**

c **Access to Books and Records** Buyer may, prior to the Closing Date, through its representatives, review the Business Records of the Store to familiarize itself with the Assets, the Master Lease and other matters related to the Store In addition, the Business Records shall be retained by Seller in order to comply with applicable laws and taxation regulations If, and to the extent, that Seller is no longer required to retain the Business Records, Seller shall notify Buyer of Seller's intent to destroy the Business Records and, upon written request by Buyer, shall forward the Business Records to Buyer In addition, if, and to the extent, that Buyer needs access to the Business Records in connection with Buyer's conduct of the business of the Store after the Closing Date, Seller shall cooperate with Buyer and provide Buyer with reasonable access to the information that Buyer requires and provide copies of such records to Buyer upon Buyer's written request Buyer shall pay Seller for the actual cost for duplication of such Business Records

d **Confidentiality**

Buyer and Seller shall hold in confidence (i) all documents and information obtained from each other, their employees, agents and independent contractors, (u) the nature and content of this Agreement and all discussions between Buyer and Seller regarding the transactions contemplated by this Agreement, whether prior to or after the execution of this Agreement, and (m) the fact that Seller and Buyer have entered into this Agreement (all of the above shall collectively be referred to herein as "**Confidential Information**"), and shall not disclose or convey any of such Confidential Information to any other person, provided, however, that Buyer and Seller may disclose the Confidential Information (x) to such of their potential lenders, employees, attorneys, accountants and financial advisors as is reasonable to facilitate consummation of the transactions contemplated by this Agreement, (y) to the extent any such disclosure is required by law, and (z) to the Master Landlord and other third parties as necessary to facilitate obtaining such parties' consent to the transfer of Assets under this Agreement

e **Seller to Operate in Ordinary Course of Business**

During the period from the date of this Agreement to the Closing Date, Seller shall conduct the operations of the Store only in the ordinary and usual course of business consistent with past practices

f **Additional Actions**

Subject to the terms and conditions of this Agreement, Seller and Buyer agree to use all commercially reasonable efforts to take, or cause to be taken, all commercially reasonable action and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement as promptly as reasonably practicable. In case at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this Agreement or to vest Buyer with full title to all properties, assets, rights, approvals and immunities of Seller, the proper officers, directors or employees of Seller or Buyer shall take all such commercially reasonable action

g Utilities All utility and telephone service to the Store shall be discontinued in Seller's name as soon as practicable after the Closing Date. Buyer shall use commercially reasonable efforts to transfer such services to Buyer's name so that there is no interruption of such services as a result of the transactions contemplated by this Agreement. Seller shall not be responsible for payment of any related charges effective, in each case, on or after the close of business on the Closing Date. In the event that Seller is required to pay any utility expenses incurred after the Closing Date, Buyer shall reimburse Seller within five (5) business days of Seller's request for such reimbursement. Similarly, if Buyer pays any costs relating to the period prior to Closing Date, Seller shall reimburse Buyer within five (5) business days of Buyer's written request for such reimbursement. In all cases, a party's request for reimbursement shall be accompanied by evidence (reasonably satisfactory to the other) that such party has incurred the expense for which such party is requesting reimbursement.

h **Transfer: Risk of Loss**

Buyer shall take over and assume management and operational control of the Store, shall acquire legal and beneficial ownership of the Assets related to the Store, and shall assume, acquire, take over and become responsible for the Assumed Liabilities and the Service Agreements as of the Closing Date. Seller shall retain all risk of destruction, loss or damage due to fire or other casualty with respect to the Store and the Assets until the Closing Date.

Pre-Closing Credits

Buyer shall reimburse Seller within five (5) business days of receipt of any retroactive credits or other amounts which all or partially relate to any period prior to the Closing Date (i.e., a real estate tax credit arising after the Closing Date that relates to the period nine (9) months before and three (3) months after the Closing Date) will be reimbursed by Buyer to Seller to the extent of seventy-five percent (75%) of such credit received by Buyer.

Post-Closing Charges

Seller shall reimburse Buyer within five (5) business days after receiving written notice from Buyer of any charges which all or partially relate to any period prior to the Closing Date and which are not Assumed Liabilities (i.e., a real estate tax charge received from after the Closing Date that relates to the period nine (9) months before and three (3) months after the Closing Date) will be reimbursed by Seller to the extent of seventy-five percent (75%) of the bill.

k **Public Announcements**

Seller and Buyer shall consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement or the transactions contemplated in this Agreement and Seller and Buyer shall not issue any such press release or make any such public statement prior to such consultation, except to the extent required by law (including, without limitation, the federal securities laws of the United States)

Additional Acknowledgements of Buyer

Buyer acknowledges and agrees that (i) upon Closing, except as may be specifically set forth in the Franchise Agreement executed by Buyer pursuant to Section 5 of this Agreement, Seller shall have no continuing obligation to protect, preserve, or otherwise support the business conducted by the Store, (n) no promise or representations of fact or opinion other than as expressed in this Agreement have been made by Seller, or by any person on Seller's behalf, to induce Buyer to execute this Agreement, and (m) Buyer enters into this Agreement with full knowledge and with the advice of independent legal counsel and/or other business advisors

m **Insurance Coverage**

Buyer shall be solely responsible for obtaining and maintaining public liability insurance from a responsible insurance company licensed to do business in the state in which the Franchised Location is located during the entire Term of the Franchise Agreement and the Sublease in amounts not less than those required by the Franchise Agreement, the Sublease and the Master Lease On the Closing Date and at least ten (10) days prior to the time any insurance is first required to be earned by Buyer, and thereafter, at least thirty (30) days prior to the expiration of any policy, Buyer shall deliver to Sublessor, Franchisor and the Master Landlord Certificates of Insurance evidencing the proper types and minimum amounts of required coverage All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given to Sublessor, Franchisor and the Master Landlord in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such Certificates. Certificates evidencing the required insurance shall name Sublessor, Franchisor and the Master Landlord, and each of their affiliates, partners, shareholders, directors, agents, members and employees as additional insureds and as additional loss payees, and shall expressly provide that any interest of each shall not be affected by any breach by Buyer of any policy provisions for which such Certificates evidence coverage

n **Refurbishment of Store**

Buyer, at its own expense, shall refurbish the Store to enhance the image of the Store in the manner described on Schedule 9(n) attached to this Agreement and incorporated into this Agreement by reference, to conform to Franchisor's current standards and specifications, and shall complete the refurbishing and other requirements within ____ () days following the Closing Date

o **Credit Report**

Seller or its designee may, prior to the Closing Date, through its representatives, access and run the Buyer's credit report In addition, if, and to the extent, that Seller needs to run Buyer's credit report in connection with the financing for the purchase of the Assets after the Closing Date and through the term of the Franchise Agreement with Franchisor, Buyer shall cooperate with Seller and provide Seller with its consent to access and run the Buyer's credit report upon Seller's request Buyer shall reimburse Seller for the cost of pulling any such credit reports

10 CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

The obligation of Buyer to purchase the Assets on the Closing Date is subject to the receipt by Buyer of duly executed originals of the Franchise Agreement, the Sublease and a Bill of Sale for the Assets in substantially the form of **Attachment J** attached to this Agreement and a final version of **Schedule 2(a) (iii)** which shall set forth the final Inventory to be transferred pursuant to this Agreement

11 CONDITIONS PRECEDENT TO SELLER'S PERFORMANCE

The obligation of Seller to sell the Assets on the Closing Date is subject to the satisfaction by Buyer of all of the conditions set forth in this **Section ii**

a Receipt on the Closing Date

On or before the Closing Date

(l) Seller shall have received one (1) duly executed original of the Purchase Note, in substantially the form of **Attachment E** attached to this Agreement

(u) Seller shall have received three (3) duly executed originals of the Security Agreement in substantially the form of **Attachment F** attached to this Agreement

(m) Seller shall have received three (3) duly executed originals of the Sublease, in substantially the form of **Attachment G** attached to this Agreement, as required by **Section 5** of this Agreement

(iv) Seller shall have received three (3) duly executed originals of the Assumption Agreement, in substantially the form of **Attachment I** attached to this Agreement

(v) Seller shall have received three (3) duly executed originals of the Franchise Agreement, in substantially the form of **Attachment D** attached to this Agreement, and all related collateral documents

(vi) Seller shall have received three (3) duly executed originals of the General Release attached to this Agreement as **Attachment K** and incorporated into this Agreement by reference

(vu) Seller shall have received the remainder of the Purchase Price from the Escrow Holder

(vm) Seller and Franchisor shall have received two (2) duly executed original letters from Buyer's legal counsel attesting that such counsel has reviewed the provisions of this Agreement with Buyer

(ix) Seller and Franchisor shall have received Certificates of Insurance evidencing the proper types and minimum amounts of required coverage as provided in Section 9(i) of this Agreement, the Franchise Agreement, the Sublease and the Master Lease

(x) Seller shall have received such other documents as Seller may reasonably require to consummate the transaction contemplated by this Agreement

b Initial Training Program

Buyer shall have attended and completed Franchisor's Initial Training Program to Franchisor's satisfaction, as determined by Franchisor, in its sole and absolute discretion, prior to the Closing Date

c Performance by Buyer

Buyer shall have performed, satisfied and complied with all covenants, agreements and conditions required by this Agreement to be performed or complied with by Buyer on or before the Closing Date

d Accuracy of Buyer's Representations and Warranties

All representations and warranties made by Buyer in this Agreement shall be true on and as of the Closing Date, as the case may be, as if made at that time

12 OBLIGATIONS ON THE CLOSING DATE

a Prorations

All rents, sewer charges, water charges, public utility charges, real and personal property taxes levied or assessed against the Assets and the Store and other items that are customarily prorated between a seller and a buyer of a business shall be prorated between Seller and Buyer as of the Closing Date and shall be paid by Seller or Buyer, as the case may be, on the Closing Date

b Costs and Expenses

Buyer shall pay all sales and/or use taxes arising from the sale of the Assets by Seller to Buyer, all hen search fees, costs for publication of escrow notices, and all escrow charges, costs and fees

c Possession

Seller shall put Buyer into full possession and enjoyment of the Store, the Store Premises and the Assets and all other items required to be conveyed and transferred by Seller to Buyer under this Agreement at 12 01 A in on the Closing Date

d Taxes All sales, transfer, use and similar taxes and recording and similar fees incurred in connection with the sale, conveyance or transfer of the Assets to Buyer, to the extent required by the respective governmental authorities, shall be paid in full by Buyer

13 INDEMNIFICATION

a Indemnification by Seller. Seller shall indemnify, defend and hold Buyer free and harmless from and against any and all "Losses" (as defined in Section i3(c) below), which Buyer shall incur or suffer which are or result from the operation or conduct of the business of the Store by Seller prior to the Closing Date, from Seller's Liabilities and from any breach of Seller's representations, warranties or covenants contained in this Agreement

(i) Buyer shall be entitled to indemnification from Seller under this Section i3(a) only if the aggregate Losses for which Buyer is entitled to indemnification exceed \$5,000 (the "**Indemnification Threshold**"), only to the extent of the excess of the Losses over the Indemnification Threshold and only if a claim for Losses is submitted in writing by Buyer to Seller within one (i) year after the Closing Date

(ii) The remedies provided in this Section i3(a) shall be the exclusive remedy for monetary damages (whether at law or in equity) and are in lieu of any statutory, common law, enforceable or other remedy which Buyer, may have against Seller relating in any way to this Agreement, the other documents

contemplated hereby and the transactions contemplated hereby and thereby Without limiting the generality of the foregoing, Buyer hereby expressly waives any right of offset Buyer may have against amounts otherwise owed to Seller under this Agreement Buyer acknowledges that the limitation on Buyer's remedies set forth in this Section i3(a) is a material term of this Agreement, without which Seller would not have entered into this Agreement or the transactions contemplated hereby

b **Indemnification by Buyer.** Buyer shall indemnify, defend and hold Seller free and harmless from and against any and all Losses which Seller shall incur or suffer which arise or result from any injuries sustained by Buyer while at the Store prior to the Closing Date, from the operation or conduct of business at the Store by Buyer at any time after the Closing Date, from any breach of Buyer's representations, warranties or covenants contained in this Agreement and from the Assumed Liabilities

c **Losses** For purposes of this Agreement, "**Losses**" shall mean any and all obligations, liabilities, costs (including reasonable attorneys' fees), expenses, damages and losses actually incurred by a party entitled to indemnification under Section i3(a) and Section i3(b) of this Agreement, net of any insurance proceeds and material tax adjustments, benefits, savings or reductions to which such party is entitled by virtue of such obligations, liabilities, costs, expenses, damages and losses, provided however, that "**Losses**" exclude all consequential damages of any kind (including, but not limited to, loss of revenue or income, cost of capital or loss of business reputation or opportunity)

d **Obligations of Indemnified Party**

(l) A party entitled to indemnification under the provisions of this Section i3 (the "**Indemnitee**") shall promptly notify the indemnifying party (the "**Indemnitor**") of the existence of any claim, demand, or other matter to which the Indemnitor's indemnification obligations would apply and shall give the Indemnitor a reasonable opportunity to defend or pay the same at the Indemnitor's own expense and with counsel of Indemnitor's own selection

(n) The Indemnitee shall at all times have the right to fully participate in the defense of any claim at the Indemnitee's own expense

(m) If the Indemnitor shall, within a reasonable time after this notice, fail to pay or defend, Indemnitee shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business Judgment), the claim or other matter on behalf, for the account, and at the risk, of the Indemnitor

(iv) If the claim is one that cannot by its nature be defended solely by the Indemnitor, then the Indemnitee shall make available all information and assistance that the Indemnitor may reasonably request for this purpose

e **Mitigation** Each Indemnitee shall be obligated in connection with any claim for indemnification under this Section i3 to use commercially reasonable efforts to mitigate Losses upon and after becoming aware of any event which could reasonably be expected to give rise to such Losses

14 **TERMINATION**

a **Termination by Seller**

This Agreement may be terminated at any time prior to the Closing Date by Seller (i) if there has been a breach by Buyer of any representation, warranty, covenant or agreement set forth in this Agreement on the part of Buyer which Buyer fails to cure within five (5) days after written notice thereof is given by Seller (except that no cure period will be provided for a breach by Buyer which by its nature cannot be cured),

(u) if Buyer fails to complete the Initial Training Program within six (6) months after the parties' execution of this Agreement, (m) if Buyer does not complete the Initial Training Program to Franchisor's satisfaction (iv) if Buyer does not, during the Initial Training Program, appear to possess the skills necessary to properly fulfill and discharge the demands and responsibilities required by the System or the Franchise Agreement, or (v) if Buyer is not acceptable to become a franchisee of Franchisor for any reason whatsoever, in Franchisor's sole and absolute discretion Buyer shall have no right to terminate this Agreement. If this Agreement is terminated by Seller, the obligations of Seller to complete the transactions contemplated by this Agreement will expire and Seller shall have any further obligations under this Agreement.

b Liquidated Damages

SELLER and BUYER HEREBY ACKNOWLEDGE AND AGREE THAT IT WOULD BE DIFFICULT TO MEASURE SELLER'S AGGREGATE DAMAGES IN THE EVENT OF A BREACH OF THIS AGREEMENT BY BUYER AND THAT, ACCORDINGLY, IN ADDITION TO, AND WITHOUT LIMITING ANY REMEDIES THAT MAY BE AVAILABLE TO SELLER FOR A BREACH OF THIS AGREEMENT, SELLER AND BUYER ACKNOWLEDGE AND AGREE THAT A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES IS THE ENTIRE DEPOSIT, WHICH IN NO WAY REPRESENTS A PENALTY OF ANY SORT. SELLER AND BUYER FURTHER ACKNOWLEDGE AND AGREE THAT IN THE EVENT OF THE TERMINATION OF THIS AGREEMENT AS A RESULT OF BUYER'S BREACH OF THIS AGREEMENT PRIOR TO THE CLOSING DATE, SELLER SHALL BE ENTITLED TO RETAIN THE ENTIRE DEPOSIT AS LIQUIDATED DAMAGES. SELLER AND BUYER ACKNOWLEDGE AND AGREE THAT THIS PAYMENT IS A REASONABLE FORECAST OF THE DAMAGES LIKELY TO RESULT FROM SUCH BREACH BECAUSE OF THE LOST OPPORTUNITIES OF SELLER TO SELL THE STORE TO OTHER AVAILABLE BUYERS [AND THE COSTS TO SELLER TO CONSTRUCT THE TURN-KEY UNIT] AND IS NOT A PENALTY OF ANY KIND. SELLER AND BUYER FURTHER ACKNOWLEDGE AND AGREE THAT THE PAYMENT OF LIQUIDATED DAMAGES SHALL NOT BE CONSTRUED AS A RELEASE OR WAIVER BY SELLER OF THE RIGHT TO PREVENT THE CONTINUATION OF ANY BREACH OF THIS AGREEMENT AND SHALL NOT PRECLUDE OR BE CONSTRUED TO PRECLUDE SELLER FROM MAKING A SHOWING OF IRREPARABLE INJURY OR ANY OTHER ELEMENT THAT MAY BE NECESSARY TO SECURE INJUNCTIVE RELIEF.

15 BROKER'S FEES

Each of the parties represents and warrants that such party has dealt with no broker or finder in connection with the transactions contemplated by this Agreement, and, insofar as it knows, no broker or other person is entitled to any commission or finder's fee in connection with this transaction. Each of the parties agrees to indemnify and hold the other harmless from and against any liability, claim, damage, loss or expense incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission or statement of the indemnifying party.

16 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All representations, warranties, covenants and agreements of the parties contained in this Agreement, or in any instrument or other writing provided for in this Agreement, shall survive the Closing Date.

17 APPROVALS, WAIVERS, AND NOTICES

a No Waiver

No delay, waiver, omission, or forbearance on the part of Seller to exercise any right, option, duty, or power arising out of any breach or default by Buyer of any of the terms, provisions, or covenants hereof, and no custom or practice by the parties at variance with the terms of this Agreement, shall constitute a waiver by Seller to enforce any such right, option, or power as against Buyer, or as to a subsequent breach or

default by Buyer Subsequent acceptance by Seller of any payments due to Seller under this Agreement shall not be deemed to be a waiver by Seller of any preceding or succeeding breach by Buyer of any terms, covenants, or conditions of this Agreement

b Notices

All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery, or by electronic transmission Service shall be deemed conclusively made (a) at the time of service, if personally served, (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail, (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail, (d) twenty- four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery, and (e) one (i) business day after electronic transmission (with confirmation copy sent by regular United States mail Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party

Notices to Seller

TRU Franchise, LLC
i590 N. Batavia Street #2nue
Orange, California 92867
Fax 7i4-922-393i
Attention President

With a copy (which shall not constitute notice) to

K. Walter Johnson, Esq.
Law Office of K. Walter Johnson
4000 Pimlico Drive
Suite ii4-i0i
Pleasanton, California 94588
Fax: 925-272-4932

Notices to Buyer

Fax _____

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided bya written notice given in the manner aforesaid to the other party

18 ENTIRE AGREEMENT, SEVERABILITY, AND CONSTRUCTION

a Entire Agreement

This Agreement, the Preliminary Business Purchase Agreement attached to this Agreement as Attachment L, any attachments hereto, the Confidentiality and Indemnity Agreement executed by Buyer in favor of Seller and Franchisor, the Escrow Instructions, and any ancillary agreements between Buyer and Seller, or any affiliate, which are executed contemporaneously with this Agreement, constitute the entire and complete Agreement between Seller (and, if applicable, any affiliate) and Buyer concerning the subject matter thereof, and supersede all prior agreements Except for those permitted under this Agreement to be made unilaterally by Seller, no amendment, change, or variation 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 No officer or, employee or agent of Seller has any authority to make any representation or promise not contained in this Agreement, and Buyer agrees that it Buyer has executed this Agreement without reliance upon any such

representation or promise This Agreement cannot be modified or changed except by written instrument signed by all of the parties hereto

b Severability and Construction

Except as expressly provided to the contrary herein, each section, paragraph, part, term, and provision of this Agreement shall be considered severable, and if, for any reason, any section, paragraph, part, term, provision, and/or covenant 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, paragraphs, parts, terms, provisions, and/or covenants 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 the invalid portions, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Agreement Neither this Agreement nor any uncertainty or ambiguity in this Agreement shall be construed or resolved against the drafter of this Agreement, whether under any rule of construction or otherwise On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Agreement Seller and Buyer intend that if any provision of this Agreement is susceptible to two or more constructions, one of which would render the provision enforceable and the other or others of which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable

c Titles For Convenience Article and Section titles used in this Agreement are for convenience only and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants, or conditions of this Agreement

d Gender And Construction The terms of all Attachments hereto are hereby incorporated into and made a part of this Agreement as if the same had been set forth in full herein All terms used in any one number or gender shall extend to mean and include any other number and gender as the facts, context, or sense of this Agreement or any Article or Section hereof may require As used in this Agreement, the words "include," "includes" or "including" are used in a non-exclusive sense Unless otherwise expressly provided herein to the contrary, any consent, acceptance, approval or authorization of Seller which Buyer may be required to obtain hereunder may be given or withheld by Seller in its sole discretion, and on any occasion where Seller is required or permitted hereunder to make any Judgment, determination or use its discretion, including any decision as to whether any condition or circumstance meets Seller's standards or satisfaction, Seller may do so in its sole subjective Judgment and discretion Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against the drafter hereof, whether under any rule of construction or otherwise On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intention of all parties hereto Seller and Buyer intend that if any provision of this Agreement is susceptible to two (2) or more constructions, one (i) of which would render the provision enforceable and the other or others of which would render the provision unenforceable, then the provision shall be given the meaning that renders it enforceable

e Survival of Obligations

Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination

f Survival of Modified Provisions

Buyer 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 of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the

provisions of this Agreement any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which Seller is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order

g Counterparts and Electronic Copies

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Agreement.

19 APPLICABLE LAW

a Choice of Law

This Agreement takes effect upon its acceptance and execution by Seller in California, and shall be interpreted and construed under the laws of California. In the event of any conflict of law, the laws of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if the Store is located outside of California and such provision would be enforceable under the laws of the state in which the Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Section 19(a) is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of any state to which it would not otherwise be subject.

b Venue

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 California in the county in which Seller has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

c Non-exclusivity of Remedy

Except as otherwise expressly provided in this Agreement, no right or remedy conferred upon or reserved to Seller or Buyer 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.

d Limitation of Adjudicative Proceedings

Seller and Buyer 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 brought by any party hereto against the other, shall be commenced within two (2) years from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred. Seller and Buyer 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.

20 ANTI-TERRORISM LAWS

Buyer and its officers, directors, members and shareholders, and each of them, shall comply with and/or assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti-Terrorism Laws (as defined below) In connection with such compliance, Buyer and its officers, directors, members and shareholders, and each of them, certify, represent, and warrant that none of the property or interests of Buyer or its officers, directors, members and shareholders is subject to being "blocked" under any of the Anti-Terrorism Laws and that Buyer and its officers, directors, members and shareholders, and each of them, are not otherwise in violation of any of the Anti-Terrorism Laws

a **Definition** For the purposes of this Section 20, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the US Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the US Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the US Code of Federal Regulations), the USA Patriot Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any Governmental Authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control) addressing or in any way relating to terrorist acts and acts of war

b **Annex** Buyer and its officers, directors, members and shareholders, and each of them, certify that none of its employees, or anyone associated with Buyer or officers, directors, members and shareholders are listed in the Annex to Executive Order 13224 Buyer agrees not to hire any individual listed in the Annex The Annex is available at

<http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>

c **No Knowledge** Buyer certifies that Buyer has no knowledge or information that, if generally known, would result in Buyer, its officers, directors, members and shareholders, its employees, or anyone associated with Buyer to be listed in the Annex to Executive Order 13224

d **Indemnity** Buyer shall be solely responsible for ascertaining what actions must be taken by Buyer to comply with the Anti-Terrorism Laws, and Buyer specifically acknowledges and agrees that Buyer's indemnification responsibilities set forth in this Agreement pertain to Buyer's obligations under this Section 20

e **Termination** Any misrepresentation by Buyer under this Section 20 or any violation of the Anti-Terrorism Laws by Buyer, its officers, directors, members and shareholders, or Buyer's employees shall constitute grounds for immediate termination of this Agreement and any other Agreement Buyer has entered with Seller or an affiliate of Seller, in accordance with the terms of this Agreement

21 ACKNOWLEDGMENTS

a **General** Buyer, and its owners, jointly and severally acknowledge that they have carefully read this Agreement and all other related documents to be executed concurrently or in conjunction with the execution hereof, that they have obtained the advice of counsel in connection with entering into this Agreement, that they understand the nature of this Agreement, and that they intend to comply herewith and be bound hereby Seller expressly disclaims making, and Buyer acknowledges that it or they have not received or relied on any warranty or guarantee, express or implied, as to the potential volume, profits, expenses, or success of the business venture contemplated by this Agreement

b **Independent Investigation** Buyer acknowledges that Buyer has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its Buyer's success will be largely dependent upon the ability of Buyer and if an entity, its owners, as independent businesspersons Seller expressly disclaims

the making of, and Buyer 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

c **Opportunity to Consult** Buyer acknowledges that it has read and understood this Agreement, the Attachments hereto, and any agreements relating hereto, if any, and that Seller has accorded Buyer ample time and opportunity to consult with advisors of Buyer's own selection about the potential benefits and risks of entering into this Agreement

d **Disclosure Document** Buyer acknowledges that it has received a copy of the complete TRU Franchise, LLC Disclosure Document which contains a copy of this Asset Purchase Agreement, at least fourteen (14) calendar days prior to the date on which this Agreement was executed Buyer acknowledges and agrees that Seller has made no promises, representations, warranties or assurances to Buyer which are inconsistent with the terms of this Agreement or the Disclosure Document, concerning the profitability or likelihood of success of the Store at the Franchised Location, that Buyer has been informed by Seller that there can be no guarantee of success in the Store and that Buyer's business ability and aptitude is primary in determining his success

e **Atypical Terms** Buyer acknowledges and agrees that Seller may modify the offer of its franchises to other Sweet Factory franchisees in any manner and at any time, which such offers have or may have terms, conditions and obligations which may differ from the terms, conditions and obligations in this Agreement Buyer further acknowledges and agrees that Seller has made no warranty or representation that all Franchise Agreements previously issued or issued after this Agreement by Seller do or will contain terms substantially similar to those contained in this Agreement Seller may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other Franchise Agreements previously executed or executed after the date of this Agreement with other Sweet Factory franchisees in a non-uniform manner

f **Attorneys' Fees**

If Seller becomes a party to any legal proceedings concerning this Agreement, the Store or the Franchised Location by reason of any act or omission of Buyer or its authorized representatives, Buyer shall be liable to Seller for the reasonable attorneys' fees and court costs incurred by Seller in the legal proceedings If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit

g **Additional Documents**

Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Agreement

h **Transfers** Seller shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity Buyer shall not have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity

Attachments and Schedules

Seller shall have the right to amend and update all of the Attachments and Schedules attached to this Agreement up to the Closing Date to accurately reflect the information referred to therein Seller shall deliver to Buyer a final version of all of such Attachments and Schedules on or before the Closing Date

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first shown above

SELLER:

TRU FRANCHISE, LLC,

By _____

Name _____

Title _____

BUYER

- ☐ A _____ corporation,
☐ A _____ limited liability company,
☐ A _____ general partnership,
☐ A _____ limited partnership,
☐ An individual
☐ Other (specify) _____

By _____

Name _____

Title _____ and Individually

ENTITY INFORMATION

If Buyer is an entity, Buyer represents and warrants that the following information is accurate and complete in all material respects

- (1) Buyer is a (check as applicable)
☐ corporation
☐ limited liability company
☐ general partnership
☐ limited partnership
☐ Other (specify) _____

State of incorporation/organization _____

(2) Buyer shall provide to Seller concurrently with the execution hereof true and accurate copies of its charter documents including Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, resolutions authorizing the execution hereof and any amendments to the foregoing ("**Entity Documents**")

(3) Buyer promptly shall provide such additional information as Seller may, from time to time, request concerning all persons who may have any, direct or indirect, financial interest in Buyer

(4) The name and address of each of Buyer's Owners, members, or general and limited partners

NAME	ADDRESS	NUMBER OF SHARES OR PERCENTAGE INTEREST
		(if applicable)

(5) There is set forth below the names, addresses and titles of Buyer's Principal Officers or partners who will be devoting their full time to the Store

NAME	ADDRESS	TITLE

(6) The address where Buyer's Financial Records and Entity Documents (Articles of Incorporation, Bylaws, Operating Agreement, Partnership Agreement, etc) are maintained is

(SIGNATURES ON FOLLOWING PAGE)

SELLER

TRU FRANCHISE, LLC,

A California limited liability company

By _____

Title _____

BUYER

- ☐ A _____ corporation,
- ☐ A _____ limited liability company,
- ☐ A _____ general partnership,
- ☐ A _____ limited partnership,
- ☐ An individual
- ☐ Other (specify) _____

By _____

Name _____

Title _____ and Individually

ATTACHMENTS

ATTACHMENT A	STORE
ATTACHMENT B	FRANCHISE LOCATION, MASTER LEASES AND MASTER LANDLORD
ATTACHMENT C	INITIAL TRAINING AGREEMENT
ATTACHMENT D	FRANCHISE AGREEMENT
ATTACHMENT E	SECURED PROMISSORY NOTE
ATTACHMENT F	SECURITY AGREEMENT
ATTACHMENT G	SUBLEASE
ATTACHMENT H	GUARANTEES
ATTACHMENT I	ASSUMPTION AGREEMENT
ATTACHMENT J	BILL OF SALE
ATTACHMENT K	GENERAL RELEASE
ATTACHMENT L	PRELIMINARY BUSINESS PURCHASE AGREEMENT

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT A
STORE**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT B
FRANCHISED LOCATION, MASTER LEASE AND MASTER LANDLORD**

Franchised Location

Master Lease Date

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT C
INITIAL TRAINING AGREEMENT**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT D
FRANCHISE AGREEMENT**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT E
SECURED PROMISSORY NOTE**

ATTACHMENT E
PROMISSORY NOTE

100009085 2)
2013 SWEET FACTORY SECURITY AGREEMENT

("Franchisor"), the Franchisor of Sweet Factory Stores, or under the Sublease between Maker and Payee dated _____, and such default shall continue for a period of ten (10) days after written notice of such default is given by Payee to Maker, or

c Maker shall sell, exchange, transfer or make any other disposition of all or substantially all of the Assets (other than a transfer by Maker to an affiliated entity) of the Store, the Sweet Factory franchise located at the Franchised Location or any other Sweet Factory Store owned by Maker or its affiliates, whether individually or collectively, or a transfer of 49% or more of the capital stock, membership interests, partnership rights, or other equity ownership interests of Maker, or

d Maker shall be adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors, or Maker shall apply for or consent to the appointment of a custodian, receiver, trustee or similar officer, for it or for all, or any substantial part of its property, or such custodian, receiver, trustee or similar officer shall be appointed without the application or consent of Maker, and such appointment shall continue undischarged for a period of sixty (60) days, or

e Maker shall institute, by petition, application, answer, consent or otherwise, any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding shall be instituted, by petition, application or otherwise, against Maker and shall remain undismissed for a period of sixty (60) days,

THEN

upon the occurrence of an Event of Default under Sections 4(c), (g) or 4(e) above or Section S(c) below, automatically, and upon the occurrence of an Event of Default under Sections 4(a) or 4(b) above or S(a) or S(b) below}, and upon the election of Payee following the expiration of the ten (10) day period provided therein, the entire principal balance of this Note, and all accrued interest, without further demand, shall immediately become due and payable. No delay or omission on the part of Payee in exercising any right under this Note shall operate as a waiver of such right.

5 REPORTING AND FINANCIAL CONDITIONS

a Maker shall provide Payee with copies of Maker's internally prepared quarterly Financial Statements (Balance Sheet and Income & Expense Statement) within fifteen (15) days of the end of each calendar quarter.

b Maker shall provide Payee with copies of an accountant prepared annual Financial Statements (Balance Sheet and Income & Expense Statement) within thirty (30) days of the end of each calendar year.

c Maker shall maintain the following financial ratios at all times until this Note is paid in full: Debt Coverage Ratio (EBITDA/TOTAL LOAN PAYMENTS)

6 WAIVER

Maker waives presentment, protest and demand, notice of protest, demand, dishonor and nonpayment of this Note, notice of acceleration, notice of intent to accelerate, and any and all other notices or matters of a like nature, provided that such waiver shall not extend to any notice of default to be given by Payee under Sections 4(a), i(Q), 5(a) hereof.

7 ATTORNEYS' FEES

Maker agrees that if any legal action is brought to enforce or collect this Note, the prevailing party shall be entitled to reasonable attorneys' fees and costs, and any and all costs of collection, in addition to any other relief to which that party may be entitled. This provision shall be applicable to the entire Note.

8 SEVERABILITY

Every provision of this Note is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which term and provisions shall remain binding and enforceable.

9 NOTICES

Except as otherwise expressly provided herein, All notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery, or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served, (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail, (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail, (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery, and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail). Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party.

If to Payee: TRU Franchise, LLC
 1590 N. Batavia Street #2
 Orange, California 92867
 Attention Managing Member
 Facsimile No (714) 223-1081

With a copy (which shall not constitute notice) to

K. Walter Johnson, Esq.
Law Office of K. Walter Johnson
4000 Pimlico Drive
Suite 114-101
Pleasanton, California 94588
Fax: 925-272-4932

If to Maker:

Attention _____
Facsimile No _____

Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

10 BINDING EFFECT

All the terms and provisions of this Note shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, heirs and assigns

11 HEADINGS

Headings at the beginning of each numbered Section of this Note are intended solely for convenience of the parties, and are not to be deemed or construed to a part of this Note

12 SECURITY FOR PAYMENT OF NOTE

Payment of this Note shall be secured by a security interest in the Assets located at the Store and certain other assets of the Store as evidenced by the Security Agreement executed by Maker in favor of Payee concurrently with the execution of this Note

13 ASSIGNMENT OF PAYEE'S RIGHTS

Payee may, without any notice to Maker or Maker's consent, transfer any of Payee's rights under this Note, and any collateral related thereto, and, upon notice, Maker shall render all performance hereunder to such transferee Maker agrees that any such transferee shall have the rights and benefits assigned, but none of the obligations, and such transferee will not be subject to any claims, defenses or set-off that Maker may have against Payee

14 INTEREST RATE

It is the express intent of Maker and Payee not to violate any applicable usury laws or to exceed the maximum amount of interest permitted under applicable law In the event a court of competent jurisdiction declares that any interest payable hereunder is excessive, any such excess payment shall be applied to principal in inverse order of maturity and any remaining excess shall be refunded to Maker following Maker's payment in full of this Note

15 GOVERNING LAW AND VENUE

This Note shall be governed and construed in accordance with the laws of the State of California Venue for purposes of any actions brought in connection with or arising out of this Agreement shall be conclusively presumed to be in the State of California, County of Orange

IN WITNESS WHEREOF, the undersigned have executed this Note as of the day and year first above written

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

☐ A _____ corporation,
☐ A _____ limited liability company,
☐ A _____ general partnership,
☐ A _____ limited partnership,
☐ An individual
☐ Other (specify) _____

Name _____

Title _____ and Individually

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT F
SECURITY AGREEMENT**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT F
SECURITY AGREEMENT**

AGREEMENT made this ____ day of _____ by and between TRU FRANCHISE, LLC, a California limited liability company ("**Secured Party**"), on the one hand, and _____ a _____ ("**Debtor**"), on the other hand, with reference to the following facts

A On _____, Secured Party and Debtor entered into an Asset Purchase Agreement (the "**Purchase Agreement**") pursuant to which Secured Party sold and Debtor purchased all of the assets owned or used by Secured Party (the "**Assets**") in the operation of the Sweet Factory Store known as Sweet Factory # _____ (the "**Store**") located at _____ (the "**Franchised Location**") Debtor agreed to operate the Franchised Location as a Franchisee of TRU Franchise, LLC, the Franchisor of Sweet Factory Stores ("**Franchisor**") In conjunction with this acquisition, Debtor has agreed to pay Secured Party the sum of \$ _____ in accordance with the terms of a Promissory Note (the "**Purchase Note**")

B Secured Party and Debtor desire to enter into this Agreement to grant Secured Party a security interest in all of the Assets at the Store to secure payment of the Purchase Note on the terms and conditions set forth herein

NOW, THEREFORE, IT IS AGREED

1 INCORPORATION OF RECITALS

The Recitals set forth in Paragraphs A and B of this Agreement are true and correct and are incorporated by reference herein as part of this Agreement

2 SECURITY INTEREST

In consideration of the foregoing, Debtor hereby grants to Secured Party a security interest as follows

a **Collateral** Debtor hereby grants to Secured Party a continuing security interest in all of the leasehold improvements, fixtures, furnishings and equipment, inventory and supplies located at or used in connection with the Store, now or hereafter leased or acquired by Debtor, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Debtor to use the Sweet Factory trademarks, service marks, trade names, trade styles, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Debtor under contracts and licenses and Franchise Agreements for the use of the Sweet Factory trademarks, service marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights (collectively the "**Collateral**"), to secure payment and performance by Debtor of the following obligations (the "**Obligations**")

(1) All obligations, including, without limitation, payments for inventory, equipment and supplies, obligations and payments under this Agreement and other agreements between Secured Party, its affiliates, and Debtor, and other amounts and obligations owed to Secured Party,

(u) All expenditures of any kind or nature made by Secured Party to preserve the Collateral, including, without limitation, all amounts paid to discharge taxes, liens, security interest and any other encumbrances against the Collateral, and to repair any damage to the Collateral or otherwise preserve or maintain the Collateral and all insurance thereon,

(m) All expenditures made or incurred by Secured Party pursuant to the provisions of any credit agreements, any promissory note and this Agreement, and

(iv) All other indebtedness, obligations and liabilities of Debtor to Secured Party, its affiliates, or other third parties, direct or indirect, absolute or contingent, due or to become due, whether now or hereafter arising

b **Authorization to File Financing Statements** Debtor hereby irrevocably authorizes Secured Party, at any time and from time to time, to file in any filing office in any Uniform Commercial Code ("UCC") jurisdiction any initial financing statements and amendments thereto and to furnish any information relating to such filings to Secured Party promptly upon Secured Party's request. Debtor further agrees, at the request and option of Secured Party, to take any and all other actions Secured Party may determine to be necessary or useful for the attachment, perfection and first priority of, and the ability of Secured Party to enforce, Secured Party's security interest in any and all of the Collateral

c **Right to Assign Secured Party's Rights and Interest** Secured Party may, without any notice to Debtor or Debtor's consent, transfer any of Secured Party's right under this Agreement, or any security interest in and to the Collateral, and, upon notice, Debtor shall render all performance hereunder to such assignee. Debtor agrees that any such assignee shall have the rights and benefits assigned, but none of the obligations, and will not be subject to any claims, defenses or set-off that Debtor may have against Secured Party

3 WARRANTIES OF DEBTOR

Debtor warrants, covenants and represents to Secured Party that

a **Ownership of Collateral** Debtor is the owner of all of the Collateral, free and clear of all liens and encumbrances, except liens in favor of Secured Party

b **Encumbrances** Until all obligations of Debtor have been paid and performed under the Purchase Note and this Agreement, or the Purchase Note is canceled and terminated, Debtor shall not create, incur, assume or suffer to exist any encumbrances on the Collateral, without the prior written consent of Secured Party

c **Defense and Indemnity** Debtor will defend its title and Secured Party's interest in the Collateral against all claims which may affect title to or Secured Party's security interest in the Collateral, and Debtor will take any action necessary to remove any liens or encumbrances in the Collateral or authorized by this Agreement

d **Sale of Collateral** Once all obligations of Debtor have been paid and performed under the Purchase Note and this Agreement, or the Purchase Note is canceled and terminated, Debtor shall not sell or otherwise dispose of any assets or properties composing the Collateral without the prior written consent of Secured Party

e **Maintenance and Insurance** Debtor shall maintain the Collateral in good repair, working order and condition, and Debtor shall maintain or cause to be maintained, at no cost or expense to Secured Party, for the mutual benefit of Debtor and Secured Party, comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use,

occupancy or condition of the Store and the improvements at the Franchised Location All insurance policies earned by Debtor shall provide that the policies cannot be canceled or materially changed except after thirty (30) days prior notice by the insurer to Secured Party All policies shall name Secured Party as an additional insured

4 **EVENTS OF DEFAULT**

If one (i) or more of the following events shall occur, Debtor shall be in default under the Purchase Note and this Agreement

a **Purchase Note and Loan Agreements** If Debtor shall default in the due and punctual payment of any installment due under the Purchase Note, whether at maturity, upon acceleration or otherwise, or in the performance by Debtor of any remaining obligation under the Purchase Note, or fail to perform any representation, warranty or covenant or obligations under any loan agreement with any third-party lender, or its assignee, for money borrowed for the Store, and such default shall continue for a period of ten (10) days after written notice of such default is given by Secured Party to Debtor

b **Security Agreement and Other Agreements** If Debtor shall default in the performance of Debtor's obligations under this Agreement or under the Franchise Agreement between Debtor and Franchisor dated _____, , and/or under the Sublease between Debtor and Secured Party dated _____, and such default shall continue for a period of ten (10) days after written notice of such default is given by Secured Party to Debtor

c **Sale of Collateral or Business** If Debtor shall sell, exchange, transfer or make any other disposition of all or substantially all of the assets (other than a transfer by Debtor to an affiliated entity) of the Store or the Sweet Factory® business located at the Franchised Location

d **Adjudication** If Debtor shall be adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors, or Debtor shall apply for or consent to the appointment of a custodian, receiver, trustee or similar officer for it or for all or any substantial part of its Collateral, or such custodian, receiver, trustee or similar officer shall be appointed without the application or consent of Debtor, and such appointment shall continue undischarged for a period of sixty (60) days

e **Institution of Proceedings** If Debtor shall institute, by petition, application, answer, consent or otherwise, any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding shall be instituted, by petition, application or otherwise, against Debtor and shall remain undismissed for a period of sixty (60) days

f **Effect of Default** Upon the occurrence of an event of default under Sections 4(c), 4(d) or 4(e) above, automatically, and, upon the occurrence of an event of default under Sections 4(a), and upon the election of Secured Party following the expiration of the ten (10) day period provided therein, the entire principal balance of the Purchase Note and any accrued interest, without further demand, shall immediately become due and payable No delay or omission on the part of Secured Party in exercising any right under the Purchase Note shall operate as a waiver of such right

g **Possession of Collateral and Remedies** Upon the occurrence of any event of default set forth above or upon the occurrence of any other default in payment or performance of any Obligations for which this security interest in granted, Secured Party shall have, in addition to all other rights and remedies, the remedies of a secured party under the UCC as then in effect in the state in which the Franchised Location is located, regardless of whether the UCC applies to the security transactions covered by this Agreement, including, without limitation, the right to accelerate the maturity of the obligations, without notice or demand and the immediate right to take possession and use of the Collateral and any proceeds thereof wherever located Debtor

shall assemble the Collateral and make the Collateral and all records relating thereto available to Secured Party at a place to be designated by Secured Party that is reasonably convenient for both parties. If notice is required, Secured Party shall give to Debtor at least five (5) business days prior written notice of the time and place of any public sale of the Collateral, or of the time after which any private sale or any other intended disposition is to be made. Debtor hereby acknowledges that five (5) business days prior written notice of such sale or sales shall constitute reasonable notice. During the time that Secured Party is in possession of the Collateral, and to the extent permitted by law, Secured Party shall have the right to hold, use, operate, manage and control all or any part of the Collateral, to make all such repairs, replacements, alterations, additions and improvements to the Collateral as it may deem necessary and proper, and to demand, collect and retain all earnings, proceeds from such use and all other costs, expenses, charges, damages or losses by reason of such use.

5 GENERAL PROVISIONS

a **Governing Law and Venue** This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for purposes of any actions brought in connection with or arising out of this Agreement shall be conclusively presumed to be in the State of California, County of Orange.

b **Notices** Except as otherwise expressly provided herein, all notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery, or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served, (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail, (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail, (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery, and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail). Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party.

If to Secured Party:

TRU Franchise, LLC
1590 N. Batavia Street #2
Orange, California 92867
Attention: Managing Member
Facsimile No (714) 223-1081

With a copy (which shall not constitute notice) to:

K. Walter Johnson, Esq.
Law Office of K. Walter Johnson
4000 Pimlico Drive
Suite 114-101
Pleasanton, California 94588
Fax: 925-272-4932

If to Debtor:

Attention _____
Facsimile No _____

Any party may change his or its address by giving ten (10) days prior written notice of such change to all other parties.

c. **Waivers** The delay, omission or forbearance by Secured Party to take action to remedy or seek damages for the breach or default of any term, covenant or condition herein contained, or to exercise any right, power or duty arising from such breach or default shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach or default of the same or any other term, covenant or condition herein contained. The subsequent acceptance of payments by Secured Party shall not be deemed to be a waiver of any preceding breach or default by Debtor other than its failure to pay the particular payment so accepted, regardless of Secured Party's knowledge of such preceding breach or default at the time of acceptance of such payment.

d. **Attorneys' Fees** If any legal action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs and any and all costs of collection, in addition to any other relief to which that party may be entitled.

e. **Modification** This Agreement may be modified only by a writing executed by the party sought to be bound.

f. **Entire Agreement** This Agreement, the other agreements referred to herein and any other agreement that may be executed by the parties concurrently with the execution of this Agreement, set forth the entire agreement and understanding of the parties, and any agreement, representation or understanding, express or implied, heretofore made by either party or exchanged between the parties are hereby waived and canceled.

g. **Cumulative Remedies** Any specific right or remedy set forth in this Agreement, legal, equitable or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

h. **Titles** The various titles of the Sections herein are used solely for convenience and shall not be used in interpreting or construing any word, clause, paragraph or subparagraph of this Agreement.

i. **Gender** All words used in this Agreement in the singular shall include the plural and the masculine gender shall include the feminine and neuter and the neuter shall include the masculine and feminine.

j. **Successors** This Agreement shall be binding upon all of the parties hereto, their respective heirs, executors, administrators, personal representatives, successors and assigns.

k. **Severability** The invalidity of any one (i) or more of the provisions contained in this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

Additional Documents Debtor agrees to execute, acknowledge and deliver to Secured Party and to procure the execution, acknowledgment and delivery to Secured Party of any additional documents or instruments which Secured Party may reasonably require to fully effectuate and carry out the provisions of this Agreement.

m. **Counterparts and Electronic Copies** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Agreement.

n **Representation By Counsel** Debtor acknowledges and agrees that Debtor has been represented by independent legal counsel of Debtor's own selection and connections with the negotiation and review of the terms and conditions of this Agreement, or has had the opportunity to have legal counsel assist Debtor, but Debtor has voluntarily elected not to do so

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written

SECURED PARTY

TRU FRANCHISE, LLC,
A California limited liability company

By —————

Name _____

Title _____

DEBTOR:

- ☐ A _____ corporation,
☐ A _____ limited liability company,
☐ A _____ general partnership,
☐ A _____ limited
partnership, ☐ An individual
☐ Other (specify) _____

By —————

Name _____

Title ————— and Individually

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT G
SUBLEASE**

TRU FRANCHISE, LLC

SUBLEASE

THIS SUBLEASE (the "Sublease") is made and entered into as of _____ by and between TRU FRANCHISE, LLC, a California limited liability company ("Sublessor"), on the one hand, and _____ (collectively "Sublessee"), on the other hand, with reference to the following facts

A Sublessor leases from ("Master Landlord"), the premises located at _____ {the "Franchised Location") pursuant to a Lease dated _____ (the "Master Lease"), a copy of which is attached to this Sublease as Attachment A

B Sublessor wishes to sublease the Franchised Location to Sublessee, and Sublessee wishes to sublease the Franchised Location from Sublessor in order for Sublessee to operate the Sweet Factory Store known as Sweet Factory# _____ (the "Store") at the Franchised Location, subject to the terms of a Franchise Agreement between Sublessee and TRU Franchise, LLC, a California limited liability company, ("Franchisor") dated _____ (the "Franchise Agreement")

C Sublessee acknowledges that Sublessee has received, reviewed, and approved the Master Lease

NOW, THEREFORE, IT IS AGREED

i SUBLEASE TERM

Sublessor hereby subleases the Franchised Location to Sublessee, and Sublessee hereby subleases the Franchised Location from Sublessor, subject to the terms of this Sublease and applicable provisions of Master Lease The term of this Sublease (the "Sublease Term") shall commence on _____ (the "Sublease Commencement Date") and shall expire on _____ (the "Expiration Date"), and shall be subject to the same extension options as contained in the Master Lease following the Expiration Date, provided, however, that the Sublease shall automatically terminate upon the expiration or termination of the Franchise Agreement Sublessor and Sublessee acknowledge that the term of the Franchise Agreement may extend beyond the term available under the Master Lease and that Sublessor has neither right nor obligation to negotiate an extension of the term of the Master Lease or the Sublease Term beyond the remaining term under the Master Lease Sublessee acknowledges that this Sublease may terminate due to the expiration of the remaining term under the Master Lease prior to the expiration of the Franchise Agreement for the Franchised Location Sublessee acknowledges and agrees that in order to avoid an automatic termination of the Franchise Agreement, Sublessee must negotiate a new direct lease with the Master Landlord for the Franchised Location or otherwise obtain a right to retain possession of the Franchised Location in accordance with the Franchise Agreement If, and to the extent that, the Master Lease provides Sublessor with any options to extend the term of the Master Lease, and if Sublessee desires to have the Sublease Term extended by an equivalent term, Sublessee shall give Sublessor notice of Sublessee's desire to have the term of the Master Lease extended at least ninety (90) days in advance of the date that Sublessor is required to give the Master Landlord notice of Sublessor's desire to extend the term of the Master Lease Sublessor shall thereafter give the Master Landlord notice of Sublessor's desire to have the term of the Master Lease extended on or before the date that Sublessor is required to give the Master Landlord notice of Sublessor's desire to extend the term of the Master Lease

2

2 i Beginning on the Sublease Commencement Date, Sublessee shall pay to Sublessor a monthly rental payment equal to (i) the minimum base rent and all percentage rent that Sublessor is obligated to pay under the Master Lease (the "Rent") plus (n) all other rent, fees, charges, expenses, and costs that Sublessor is obligated to pay under the Master Lease, including, without limitation, Sublessor's proportionate share of real property taxes, utilities, insurance, and operating expenses which Sublessor is obligated to pay in accordance

with the terms of the Master Lease (collectively the "**Master Lease Payments**") plus (in) _____ percent {_%} of the Rent ("**Sublease Administration Fee**"), as compensation to Sublessor for, among other things, the administrative and other expenses incurred by it in connection with this Sublease. Sublessee shall make payments of Rent, Master Lease Payments and the Sublease Administration Fee at the address set forth below, due no later than the first day of each month during the Sublease Term, provided, however, that Sublessee shall pay the first month's Rent, Master Lease Payments and Sublease Administration Fee due hereunder upon execution of this Sublease. Sublessor reserves the right to require Sublessee to make all payments of Rent and Master Lease Payments directly to the Master Landlord during the Sublease Term upon ten (10) days prior notice to Sublessee and the Master Landlord. Notwithstanding the foregoing, the parties acknowledge and agree that all Rent, Security Deposits, Master Lease Payments and Sublease Administration Fees due from Sublessee pursuant to this Sublease shall be collectively deemed "**Rents**" under this Sublease for purposes of any actions brought against Sublessee. Rent for partial months shall be prorated on the basis of the actual number of days in the month. The Master Lease Payments total \$ a and the date of this Sublease _____.

2.2 Late Charges. Sublessee acknowledges that late payment by Sublessee of Rent and/or Master Lease Payments will cause Sublessor to incur costs not contemplated by this Sublease, the exact amount of which will be extremely difficult to ascertain. Such costs include, without limitation, processing and accounting charges, and late charges which may be imposed on Sublessor by the Master Landlord under the terms of the Master Lease. Accordingly, if any payment of Rent or Master Lease Payments due from Sublessee shall not be received by the Master Landlord or Sublessor, as the case may be, on or before the fifth day of each month during the Sublease Term, then, without any requirement for notice (including, without limitation, billing) to Sublessee, Sublessee shall pay to Sublessor a late charge equal to ten percent (10%) of such overdue amount. Sublessor and Sublessee agree that such late charge represents a fair and reasonable estimate of the costs Sublessor will incur by reason of late payment by Sublessee. Acceptance of such late charge by Sublessor shall in no event constitute a waiver of Sublessee's default with respect to such overdue amount, nor prevent Sublessor from exercising any other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of Rent or Master Lease Payments during the Sublease Term, the Rent and the Master Lease Payments shall automatically become due and payable quarterly directly to Sublessor, in advance, rather than monthly, notwithstanding any other provision of this Sublease to the contrary.

3 SECURITY DEPOSIT.

3.1 Security for Obligations of Sublessee. Sublessee shall pay Sublessor a security deposit of \$ _____ upon the parties' execution of this Sublease (the "**Security Deposit**") to secure Sublessee's faithful performance of Sublessee's obligations under this Sublease. If Sublessee defaults under this Sublease, Sublessor may use, apply, or retain all or part of the Security Deposit for the payment of Rent and/or other Master Lease Payments, or any other amount Sublessor may spend, or loss Sublessor may suffer, by reason of Sublessee's default. If Sublessor so uses or applies any portion of the Security Deposit, Sublessee shall deposit sufficient funds with Sublessor to restore the Security Deposit to its original amount within ten (10) days after Sublessor's written demand, and Sublessee's failure to do so shall be a material breach of this Sublease. Sublessor shall not be entitled to interest on the Security Deposit. If Sublessee fully and faithfully performs every obligation of Sublessee under this Sublease, Sublessor shall return any remaining balance of the Security Deposit to Sublessee at the expiration of the Sublease Term and after Sublessee has vacated the Franchised Location. Sublessor shall not be required to keep said deposit separate from its general accounts. No trust relationship is created herein between Sublessor and Sublessee with respect to the Security Deposit.

3.2 Other Subleases. If, and to the extent that Sublessee is in breach of this Sublease or any other sublease, if any, between Sublessor and Sublessee, and the Security Deposit made by Sublessee with respect to this Sublease and such other sublease, are not sufficient (a) to pay the Rent or other charges due as a result of Sublessee's default, (b) to pay any other sum to which Sublessor may become obligated by reason of Sublessee's default, or (c) to compensate Sublessor for any loss or damage which Sublessor may thereby suffer, then Sublessor may apply and use such portion of all of the security deposits paid by Sublessee pursuant to this Sublease and all other subleases, to satisfy Sublessor's payment obligations and/or compensatory rights.

4**PREMISES.**

4 i **Condition** Sublessee accepts the Franchised Location and the existing tenant improvements in the Franchised Location in their "AS IS" condition and Sublessee acknowledges and agrees that Sublessor shall not be obligated to make any repairs or maintenance to the Franchised Location or the tenant improvements prior to the Sublease Commencement Date Sublessee's assumption of possession of the Franchised Location on the Sublease Commencement Date shall conclusively establish, for all purposes, that Sublessee has conducted such investigation(s) of the condition of the Franchised Location and the existing tenant improvements at the Franchised Location as Sublessee desired, to the satisfaction of Sublessee, prior to the Sublease Commencement Date and that the Franchised Location and the existing tenant improvements were, in all respects, in a satisfactory condition and acceptable to Sublessee on the Sublease Commencement Date Sublessee acknowledges and agrees that Sublessor has made no representations or warranties whatsoever regarding (a) the square footage of the Franchised Location, (b) the condition of the Franchised Location, (c) the condition of any existing tenant improvements, or (d) compliance with zoning or restrictive covenants unless otherwise expressly provided for in this Sublease Sublessee shall, at its own cost and expense, keep and maintain the exterior and interior of the Franchised Location, including sidewalks adjacent thereto, in good and sanitary order, condition and repair Sublessee hereby waives the provisions of California Civil Code Sections 1941 and 1942, or any comparable law, with respect to Sublessee's right to make repairs and deduct the expenses of such repair from rent

4 2 **Use** Sublessee shall not use the Franchised Location for any purpose other than operating the Store as a Sweet Factory Franchisee of Franchisor Sublessee acknowledges that neither Master Landlord, nor Sublessor, nor any agent acting on their behalf has made any representation or warranty with respect to the suitability of the Franchised Location for the conduct of Sublessee's business

4 3 **Tenant Improvements** Sublessee is solely responsible for the construction, repair and maintenance of any leasehold improvements desired by Sublessee, as well as the demolition of any existing leasehold improvements if necessary, following prior notice to and approval by Sublessor and Master Landlord as provided in the Master Lease

4 4 **Signs** Sublessee shall erect only such signs on the Franchised Location as are allowed by the Franchise Agreement and the Master Lease

5**INSURANCE**

5 i **Incorporated by Reference** The insurance provisions of the Master Lease are expressly incorporated into this Sublease by reference Sublessee shall be solely responsible for obtaining and maintaining all insurance required by the Master Lease and the Franchise Agreement at Sublessee's own cost and expense throughout the Sublease term Insurance required of Sublessee under this Sublease shall, in Sublessor's sole discretion, equal or exceed the insurance required of Sublessor as Tenant under the Master Lease

5 2 **Required Coverage** Sublessee shall be solely responsible for obtaining and maintaining public liability insurance from a responsible insurance company licensed to do business in the state in which the Franchised Location is located during the entire term of this Sublease in amounts not less than those required by the Franchise Agreement and the Master Lease At least ten (10) days prior to the time any insurance is first required to be earned by Sublessee, and thereafter at least thirty (30) days prior to the expiration of any policy, Sublessee shall deliver to Sublessor, Franchisor and the Master Landlord Certificates of Insurance evidencing the proper types and minimum amounts of required coverage All Certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given to Sublessor, Franchisor and the Master Landlord in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such Certificates. Certificates evidencing the insurance required by this Section 5 shall name Sublessor, Franchisor and the Master Landlord, and each of their affiliates, partners, shareholders, directors, agents, members and employees as additional insureds and as additional loss payees, and shall expressly provide that any interest of each shall not be affected by any breach by Sublessee of any policy provisions for which such Certificates evidence coverage

5.3 **Waiver of Subrogation** Sublessor and Sublessee each waive their right to sue and recover damages against each other with respect to any liability arising under the Master Lease or this Sublease and which is required to be covered by any insurance policy in the Master Lease or this Sublease. Each party agrees to endeavor to cause its insurer to waive its rights against the other party in the event of an insured casualty which is not caused by the willful misconduct of the other party.

5.4 **Sublessee's Insurance Obligation Not Affected By Sublessor's Insurance** Sublessee's obligation to obtain and maintain insurance shall not be liability in any way by reason of any insurance which may be maintained by Sublessor, nor shall Sublessee's performance of that obligation relieve Sublessee of liability under the indemnity provisions set forth in this Sublease.

5.5 **Additional Required Endorsement** All public liability and property damage policies shall contain a provision that Sublessor, Operating Company, the Master Landlord and their affiliates, although named as an additional insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to Sublessor, Operating Company, the Master Landlord or their affiliates, partners, shareholders, directors, agents, or employees by reason of the negligence of Sublessee or its partners, shareholders, directors, agents, or employees.

5.6 **Right to Secure Insurance on Behalf of Franchisee** Should Sublessee, for any reason, fail to procure or maintain the insurance required by this Agreement, as such requirements may be revised from time to time by Sublessor in the Manual or otherwise in writing, Sublessor and/or Operating Company shall have the right and authority (but not the obligation) to immediately procure such insurance and to charge same to Sublessee, which charges, together with the expenses of Sublessor and/or Operating Company in so acting, shall be payable by Sublessee immediately upon notice. The foregoing remedies shall be in addition to any other remedies Sublessor and Operating Company may have.

5.7 **Sublessee's Property** Sublessee shall be solely responsible for insuring Sublessee's own property at the Franchised Location. Sublessor shall not be responsible for loss or damage to the personal property of Sublessee, its sublessees, employees, customers, or invitees, in the absence of the receipt of an insurance payment by Sublessor attributable to such loss (in which event said payment shall be delivered forthwith to Sublessee), or unless such loss or damage was occasioned by the willful misconduct of Sublessor, its agents, servants, or employees, but subject in any event to **Section 5.3** of this Sublease.

6 DAMAGE TO PREMISES AND CONDEMNATION

If any part of the Franchised Location is condemned or damaged by fire or other casualty during the term of this Sublease, this Sublease shall remain in full force and effect unless and until the Master Lease is canceled. If the Master Lease is canceled for such cause, Sublessee's obligations under this Sublease shall abate as of the date of such cancellation. Otherwise, Sublessee's obligations shall abate only to the actual extent and for the duration that Sublessor's obligations are reduced under the Master Lease. If the Master Lease gives SUBLESSOR any right to terminate the Master Lease in the event of the partial or total damage, destruction, or condemnation of the Franchised Locations or the building or project of which the Franchised Location is a part, the exercise of such right by SUBLESSOR shall not constitute a default or breach hereunder.

7 OBLIGATIONS UNDER MASTER LEASE

7.1 **Assumption by Sublessee** Sublessee expressly assumes all of the responsibilities and obligations imposed upon Sublessor as the tenant under the terms of the Master Lease. All applicable terms and conditions of the Master Lease are incorporated into and made a part of this Sublease as if Sublessor were the Master Landlord thereunder, Sublessee the tenant thereunder, and the "Premises," the Franchised Location, except as otherwise specifically provided herein. Any obligation of Sublessor which is contained in this Sublease by the incorporation by reference of the provisions of the Master Lease may be observed or performed by Sublessor using reasonable

efforts to cause the Master Landlord to observe and/or perform the same, provided, however, that Sublessee shall pay any cost or expense (including, without limitation, attorneys' fees) incurred by Sublessor in causing the Master Landlord to observe and/or perform the same. Sublessor shall have a reasonable time to enforce its rights to cause such observance or performance by the Master Landlord. Sublessor shall not be required to furnish, supply or install anything required under any article of the Master Lease. Sublessee assumes and agrees to perform the tenant's obligations under the Master Lease during the Sublease Term to the extent that such obligations are applicable to the Franchised Location, except that the obligation to pay rent to the Master Landlord under the Master Lease shall be considered performed by Sublessee to the extent and in the amount rent is paid to Sublessor by Sublessee in accordance with Section 2 of this Sublease. Sublessee shall not commit or suffer any act or omission that will violate any of the provisions of the Master Lease. In the event any inconsistency arises regarding the obligations of Sublessee under the Master Lease and the obligations of Sublessee under this Sublease, the more stringent obligations shall be binding upon Sublessee.

7.2 Obligations of Sublessor Any obligation of Sublessor which is contained in this Sublease by the incorporation by reference of the provisions of the Master Lease may be observed or performed by Sublessor using reasonable efforts to cause the Master Landlord to observe and/or perform the same, provided, however, that Sublessee shall pay any cost or expense (including, without limitation, attorneys' fees) incurred by Sublessor in causing the Master Landlord to observe and/or perform the same. Sublessor shall have a reasonable time to enforce its rights to cause such observance or performance by the Master Landlord. Sublessor shall not be required to furnish, supply or install anything required under any article of the Master Lease.

7.3 Master Landlord's Obligations Sublessor shall not be liable to Sublessee for the defaults of Master Landlord under the Master Lease.

8 INDEMNITY

8.1 Generally Sublessee shall indemnify, hold harmless, and defend Sublessor from all claims, costs, damages, liabilities, and losses incurred by Sublessor, including reasonable attorneys' fees and costs of suit, as a result of Sublessee's default under this Sublease or the Master Lease, or as the result of any act or failure to act by Sublessee, its agents, employees, customers, invitees, licensees, successors, heirs, or assigns, or any and all persons coming upon or near the Franchised Location with regard to the Franchised Location.

8.2 Hazardous Materials Sublessee agrees to indemnify and hold Sublessor harmless from any and all costs of any remedial action or cleanup of Hazardous Materials suffered or incurred by Sublessor arising out of or relating to Sublessee's use of the Franchised Location. "**Hazardous Materials**" means any hazardous, toxic, infectious, or radioactive substances, wastes, or materials listed or defined by any federal or state environmental law.

9 DEFAULT

9.1 Notice: Cure Sublessee shall cure any failure to perform Sublessee's obligations under this Sublease or the Master Lease (a) within three (3) days after receiving notice of any monetary default, or (b) within ten (10) days after receiving notice of any non-monetary default, except that if Sublessee cannot reasonably cure the non-monetary default within ten (10) days, Sublessee shall have up to thirty (30) days to complete the cure, so long as Sublessee proceeds with due diligence. If Sublessee fails to cure defaults during the grace periods specified above, Sublessor shall have the right to declare a default under this Sublease.

9.2 Remedies Sublessor shall have the following rights and remedies upon a default by Sublessee under this Sublease:

9.2.1 Sublessor may terminate this Sublease and upon such termination, Sublessor may recover from Sublessee:

a The worth at the time of the award of the unpaid Rent which has been earned at the time of termination,

b The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Sublessee proves could have been reasonably avoided,

c The worth at the time of the award of the amount by which the unpaid Rent for the balance of the term after the time of award exceeds the amount of such rental loss for said period that Sublessee proves could have been reasonably avoided, and

d Any other amount necessary to compensate Sublessor for all the detriment proximately caused by Sublessee's failure to perform its obligation under the Sublease or which in the ordinary course of things would be likely to result therefrom

The "**worth at the time of the award**" of the amounts referred to in Sections 9 2i (a) and (b) above is computed by allowing interest at the legal rate The worth at the time of the award of the amount referred to in subsection (c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%)

9 2 2 Sublessor may relet the Franchised Location prior to the time of any award for breach of this Sublease by Sublessee In such case, if Sublessor proves that in reletting the Franchised Location Sublessor acted reasonably and in good faith to mitigate damages, Sublessor shall be entitled to an award for Sublessee's termination of this Sublease Such award shall consist of the worth at the time of the award of the amount by which the unpaid rent for the balance of the Sublease Term after the time of award exceeds the amount of such rental loss that Sublessee proves could be reasonably avoided.

9 2 3 Efforts by Sublessor to mitigate the damages caused by Sublessee's breach of the Sublease do not waive Sublessor's right to recover damages

9 2 4 Nothing herein affects the right of Sublessor under this Sublease to indemnification for liability arising prior to the termination of the Sublease for personal injuries or property damage

9 3 **Sublease Remains in Effect** Even when Sublessee has breached this Sublease and abandoned the Franchised Location, this Sublease shall remain in effect for so long as Sublessor does not terminate Sublessee's right to possession, and Sublessor may enforce all its rights and remedies under this Sublease, including the right to recover Rent and Master Lease Payments as they become due under this Sublease The following do not constitute a termination of Sublessee's right to possession

9 3 i Acts of maintenance or preservation, or efforts to relet the Franchised Location, or

9 3 2 The appointment of a receiver on initiation by Sublessor to protect its interest under the Sublease

9 4 **Cure by Sublessor** Sublessor shall have the right, but not the obligation, to cure any default by Sublessee Sublessee shall repay any costs incurred by Sublessor in doing so upon Sublessor's written demand All amounts owed hereunder shall be considered rent and shall bear interest at the rate of twelve percent (12%) per annum or the maximum rate permitted by law, whichever is less, from five (5) days after such demand to the date of payment

9.5 **Cross-Default** If Sublessee (or any guarantor, officer or director of or a shareholder in Sublessee, if Sublessee is a corporation, or a general or limited partner of Sublessee, if Sublessee is a partnership, or a

member, if Sublessee is a limited liability company) or any other Sublessee of Sublessor or any other Franchisee of Franchisor which controls, is controlled by, or is under common control with Sublessee, fails to comply with any or all of the terms of this Sublease or the Master Lease or with any other Agreement between Franchisor, Sublessor, or their affiliates, including, without limitation, the Franchise Agreement, such failure to comply shall be deemed to be a default under this Sublease and each and every other such Agreement. In the event of the termination of this Sublease for any cause, or the termination of any other Agreement between Franchisor, or its affiliates, and Sublessee, or between Sublessor, or its affiliates, and Sublessee, Franchisor and Sublessor, as the case may be, may, at their option, terminate any or all of such other Agreements.

96 **Remedies Cumulative.** The remedies specified in this Sublease are cumulative and in addition to any other remedies which may be available at law or in equity.

10 **ASSIGNMENTS**

Sublessee shall not assign or sublet the Franchised Location, in full or in part without Sublessor's prior written consent in each instance, which Sublessor may withhold in its sole discretion. If Sublessor consents to any assignment or sublease, Sublessor shall be entitled to the amount that any assignee's or subtenant's rent exceeds Rent plus Sublessor's costs of subletting (including attorneys' fees and real estate commissions) and the cost of unamortized tenant improvements paid for by Sublessee. It is expressly acknowledged that any assignment or sublease of this Sublease by Sublessee may be subject to the prior consent of Master Landlord and no assignment or sublease, even if consented to by Sublessor, shall be effective unless and until Master Landlord's consent is also obtained, if needed. Any assignment without the required consents shall be void and shall, at the option of Sublessor, terminate this Sublease.

11 **NOTICES**

Except as otherwise expressly provided herein, **all** notices or demands shall be in writing and shall be served in person, by Express Mail, by certified mail, by private overnight delivery, or by electronic transmission. Service shall be deemed conclusively made (a) at the time of service, if personally served, (b) twenty-four (24) hours (exclusive of weekends and national holidays) after deposit in the United States mail, properly addressed and postage prepaid, if served by Express Mail, (c) upon the earlier of actual receipt or three (3) calendar days after deposit in the United States mail, properly addressed and postage prepaid, Return Receipt Requested, if served by Certified Mail, (d) twenty-four (24) hours after delivery by the party giving the notice, statement or demand if by private overnight delivery, and (e) one (1) business day after electronic transmission (with confirmation copy sent by regular United States mail). Notices and demands shall be given to the respective parties at the following addresses, unless and until a different address has been designated by written notice to the other party.

Notices to Sublessor

TRU Franchise, LLC
1590 N. Batavia Street #2
Orange, California 92867
Fax 714-922-3931
Attention: President

With a copy (which shall not constitute notice) to

K. Walter Johnson, Esq.
Law Office of K. Walter Johnson
4000 Pimlico Drive
Suite 114-101
Pleasanton, California 94588
Fax: 925-272-4932

Notices to Sublessee

Fax _____

7

Sublessee shall promptly provide Sublessor with a copy of all notices received from Master Landlord regarding the Franchised Location, the Master Lease, or this Sublease. Either party may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other party.

12 ENTIRE AGREEMENT, SEVERABILITY, AND CONSTRUCTION

i2 i **Entire Agreement** This Sublease, any Attachments hereto, and any ancillary agreements between Sublessee and Sublessor or any affiliate which are executed contemporaneously with this Sublease, constitute the entire and complete Sublease between Sublessor (and, if applicable, any affiliate) and Sublessee concerning the subject matter thereof, and supersede all prior agreements. Sublessee acknowledges that Sublessee is entering into this Sublease, any attachments and any ancillary agreements executed contemporaneously herewith, as a result of its own independent investigation of the business franchised hereby and not as a result of any representation made by Franchisor, Sublessor or persons associated with Franchisor or Sublessor, or other Franchisees, which are contrary to the terms herein set forth or which are contrary to the terms of the Sweet Candy Franchise, LLC, Uniform Franchise Disclosure Document (the "**Disclosure Document**"), or other similar document required or permitted to be given to Sublessee pursuant to applicable law. No amendment, change, or variation of the terms of this Sublease shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

i2 2 **Severability and Construction** Except as expressly provided to the contrary herein, each section, paragraph, part, term, and provision of this Sublease shall be considered severable, and if, for any reason, any section, paragraph, part, term, provision, and/or covenant 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, paragraphs, parts, terms, provisions, and/or covenants of this Sublease as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and the invalid portions, sections, paragraphs, parts, terms, provisions, and/or covenants shall be deemed not to be a part of this Sublease. Neither this Sublease or any uncertainty or ambiguity in this Sublease shall be construed or resolved against the drafter of this Sublease, whether under any rule of construction or otherwise. On the contrary, this Sublease has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used to fairly accomplish the purposes and intentions of all parties to this Sublease. Sublessor and Sublessee intend that if any provision of this Sublease is susceptible to two (2) or more constructions, one (i) of which would render the provision enforceable and the other or others of which would render the provision unenforceable, the provision shall be given the meaning that renders it enforceable.

i2 3 **Survival of Obligations After Expiration or Termination of Agreement** Any provision or covenant of this Sublease which expressly or by its nature imposes obligations beyond the expiration or termination of this Sublease shall survive such expiration or termination.

i2 4 **Survival of Modified Provisions** Sublessee 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 of this Sublease, as though it were separately articulated in and made a part of this Sublease, that may result from striking from any of the provisions of this Sublease any portion or portions which a court or agency having valid jurisdiction may hold to be unreasonable and unenforceable in an unappealed final decision to which Sublessor is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court or agency order.

i2 5 **Captions** All captions in this Sublease are intended for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision of this Sublease.

i2 6 **Responsibility** The term "**Sublessee**" as used in this Sublease shall refer to each person executing this Sublease as Sublessee, whether such person is one of the spouses, partners, shareholders, members,

trustees, trustors or beneficiaries or persons named as included in Sublessee, and shall apply to each such person as if he were the only named Sublessee in this Sublease

i2 6 i If Sublessee is a married couple, both husband and wife executing this Sublease shall be liable for all obligations and duties of Sublessee under this Sublease as if such spouse were the sole Sublessee under this Sublease

i2 6 2 If Sublessee is a partnership or if more than one person executes this Sublease as Sublessee, each partner or person executing this Sublease shall be liable for all the obligations and duties of Sublessee under this Sublease

i2 6 3 If Sublessee is a trust, each trustee, trustor and beneficiary signing this Sublease shall be liable for all of the obligations and duties of Sublessee under this Sublease

i2 6 4 If Sublessee is a corporation or limited liability company, all shareholders or members executing this Sublease shall be liable for all obligations and duties of Sublessee under this Sublease as if each such shareholder or members were the sole Sublessee under this Sublease In addition, each present and future shareholder or member of Sublessee shall jointly and severally guarantee Sublessee's performance of each and every provision of this Agreement by executing a Guarantee in the form attached to this Sublease as **Attachment B** provided, however, that no Guarantee shall be required from a shareholder who acquires Sublessee's securities after Sublessee becomes registered under the Securities Exchange Act of 1934

i2 6 5 If Sublessee is in breach or default under this Sublease, Sublessor may proceed directly against each such spouse, partner, signatory to this Sublease, shareholder, member, trustee, trustor or beneficiary without first proceeding against Sublessee and without proceeding against or naming in such suit any other Sublessee, partner, signatory to this Sublease, shareholder, member, trustee, trustor or beneficiary The obligations of Sublessee and each such spouse, partner, person executing this Sublease, shareholder, member, trustee, trustor and beneficiary shall be joint and several

i2 6 6 Notice to or demand upon one (i) spouse, partner, person signing this Sublease, shareholder, member, trustee, trustor or beneficiary shall be deemed notice to or demand upon Sublessee and all such spouses, partners, persons signing this Sublease, shareholders, members, trustees, trustors and beneficiaries, and no notice or demand need be made to or upon all such Sublessee's, spouses, partners, persons executing this Sublease, shareholders, members, trustees, trustors or beneficiaries

i3 **APPLICABLE LAW**

i3 i **Choice of Law** This Sublease shall be interpreted and construed under the laws of the state in which the Franchised Location is located

i3 2 **Non-exclusivity of Remedy** No right or remedy conferred upon or reserved to Sublessor or Sublessee by this Sublease 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

i3 3 **Limitation of Adjudicative Proceedings** Sublessor and Sublessee 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

i3 4 **Right to injunctive Relief** Nothing herein contained shall bar Sublessor's right to seek injunctive relief to obtain the entry of temporary and permanent injunctions and orders of specific performance enforcing the provisions of this Sublease relating to Sublessee's (a) use of Franchisor's "**Proprietary Marks**", (b) obligations upon termination or expiration of the Sublease, (c) assignment or proposed assignment of this Sublease, or any ownership interest in Sublessee, or (d) actions covered by the provisions of Section 15 of the Franchise Agreement Sublessor also shall be able to seek injunctive relief to prohibit any act or omission by Sublessee or its employees that constitutes a violation of any applicable law, is dishonest or misleading to Sublessee's customers

or to the public, or which may impair the goodwill associated with Franchisor's "**Proprietary Marks**", and Sublessee agrees to pay all costs and reasonable attorneys' fees incurred by Sublessor in obtaining such relief

13 5 Incorporation of Recitals The Recitals set forth in Sections A through C of this Sublease are true and correct and are herein incorporated by reference into the body of this Sublease

14 SECURITY INTEREST

In order to secure payment of all Rent and all other fees, charges, expenses, and costs that Sublessee is obligated to pay Sublessor under this Sublease, including, without limitation, real property taxes, utilities, insurance and operating expenses and all other sums that may become 'due to Sublessor, or its affiliates, from Sublessee and to secure performance by Sublessee of all obligations of any kind, whenever and however incurred, in favor of Sublessor, or its affiliates, Sublessee hereby grants Sublessor a security interest in and to all leasehold improvements, fixtures, furnishings, equipment, inventory and supplies located at or used in connection with the Store, now or hereafter acquired by Sublessee, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Sublessee to use Franchisor's Proprietary Marks, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Sublessee under the Franchise Agreement for the use of Franchisor's Proprietary Marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights Sublessee hereby authorizes Sublessor to, prepare and file all Uniform Commercial Code ("UCC") financing statements and other documents necessary or desirable to evidence, perfect and continue the priority of this security interest under the UCC If Sublessee is in default of any of the terms and conditions of this Sublease or any other agreements between Sublessor, and its affiliates, and Sublessee, Sublessor may, in its discretion, exercise its rights with respect to its security interest In such event, Sublessee shall be and remain liable for any deficiency remaining due to Sublessor and shall be entitled to recover any surplus which results after application of the proceeds derived from the enforcement of Sublessor's security interest

15 ACKNOWLEDGMENTS

i5 1 Recognition of Business Risks Sublessee acknowledges that Sublessee has conducted an independent investigation of the proposed Franchise, and recognizes that the business venture contemplated by the Franchise Agreement and this Sublease involves business risks and that Sublessee's success will be largely dependent upon the ability of Sublessee as an independent business person Sublessor expressly disclaims the making of, and Sublessee acknowledges that it has not received, any warranty or guarantee, express or implied, as to the potential sales, income, profits, or success of the Stores

i5 2 Receipt of Franchise Disclosure Document Sublessee acknowledges that it has received a copy of the complete Disclosure Document for Sweet Factory Stores, which contains a copy of this Sublease, at least fourteen (i4) calendar days prior to the date on which this Sublease was executed Sublessee further acknowledges that Sublessee has received a copy of the complete Sublease, the Attachments thereto, and agreements relating thereto, if any, prior to the date on which this Sublease was executed Sublessee acknowledges and agrees that Sublessor has made no promises, representations, warranties or assurances to Sublessee which are inconsistent with the terms of this Franchisor's Sublease or the Disclosure Document, concerning the profitability or likelihood of success of the Store at the Franchised Location, that Sublessee has been informed by Franchisor that there can be no guaranty of success in the franchised business and that Sublessee's business ability and aptitude is primary in determining his success

i5 3 Review of Franchise Disclosure Document Sublessee acknowledges that Sublessee has read and understood this Sublease, the Attachments hereto, and Agreements relating thereto, if any, and that Sublessor has accorded Sublessee ample time and opportunity to consult with advisors and counsel of Sublessee's own selection about the potential benefits and risks of entering into this Sublease

i5 4 **Attorneys' Fees** If Sublessor becomes a party to any legal proceedings concerning this Sublease, the Master Lease, the Store or the Franchised Location by reason of any act or omission of Sublessee or the authorized representatives of Sublessee, Sublessee shall be liable to Sublessor for the reasonable attorneys' fees and court costs incurred by Sublessor in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Sublease, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

i5 5 **Atypical Arrangements** Sublessee acknowledges and agrees that Sublessor has made no warranty or representation that all Subleases previously issued or issued after this Sublease by Sublessor do or will contain terms substantially similar to those contained in this Sublease. Sublessor may, in its reasonable business judgment and its sole and absolute discretion, due to local business conditions or otherwise, waive or modify comparable provisions of other subleases previously executed or executed after the date of this Sublease with other Sublessees of Sublessor in a non-uniform manner.

i5 6 **Additional Documents** Each of the parties agrees to execute, acknowledge and deliver to the other party and to procure the execution, acknowledgment and delivery to the other party of any additional documents or instruments which either party may reasonably require to fully effectuate and carry out the provisions of this Sublease.

i5 7 **Counterparts and Electronic Copies** This Sublease may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Sublease shall constitute and be deemed an original copy of this Sublease for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Sublease.

IN WITNESS WHEREOF, the parties have executed this Sublease on the date first shown above.

SUBLESSOR

TRU FRANCHISE, LLC,
A California limited liability company

By _____

Name _____

Title _____

SUBLESSEE:

[] A _____ corporation,
[] A _____ limited liability company,
[] A _____ general partnership,
[] A _____ limited partnership,
[] An individual
[] Other (specify) _____

TRU FRANCHISE, LLC SUBLEASE

ATTACHMENT B
GUARANTEES

As an inducement to TRU Franchise, LLC ("Sublessor") to execute the Sublease with ("Sublessee") dated _____ and in consideration of Sublessor's executing the Sublease _____ ("Guarantors"), Jointly and severally agree as follows

A Guarantors shall pay or cause to be paid to Sublessor all monies payable by Sublessee under the Sublease on the days and times in the manner therein appointed for payment thereof

B Guarantors shall unconditionally guarantee full performance and discharge by Sublessee of all the obligations of Sublessee under the Sublease at the stages and in the manner therein provided

C Guarantors shall indemnify and hold Sublessor and its affiliates harmless against and from all losses, damages, costs, and expenses which Sublessor and its affiliates may sustain, incur, or become liable for by reason of (i) the failure for any reason whatsoever of Sublessee to pay the monies payable pursuant to the Sublease or to do and perform any other act, matter or thing pursuant to the provisions of the Sublease, or (2) any act, action, or proceeding of or by Sublessor for or in connection with the recovery of monies or the obtaining of performance by Sublessee of any other act, matter or thing pursuant to the provisions of the Sublease

D Sublessor shall not be obligated to proceed against Sublessee or exhaust any security from Sublessee or pursue or exhaust any remedy, including any legal or enforceable relief against Sublessee, before proceeding to enforce the obligations of the Guarantors under this Guarantee, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of Sublessee under the Sublease

E Without affecting the Guarantors' obligations under this Guarantee, Sublessor, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Sublessee, or settle, adjust, or compromise any claims against Sublessee. Guarantors waive notice of amendment of the Sublease and notice of demand for payment or performance by Sublessee

F Guarantors' obligations under this Guarantee shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Sublease against Sublessee, (2) the termination of any obligations of Sublessee under the Sublease by operation of law or otherwise, (3) the bankruptcy, insolvency, dissolution, or other liquidation of Sublessee, including, without limitation, any surrender or disclaimer of the Sublease by the trustee in bankruptcy of Sublessee, (4) Sublessor's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against Sublessee, or by the winding-up or dissolution of Sublessee, or any other event or occurrence which would have the effect at law of terminating the existence of Sublessee's obligations prior to the termination of the Sublease, or (5) by any other agreements or other dealings between Sublessor and Sublessee having the effect of amending or altering the Sublease or Sublessee's obligations under this Guarantee, or by any want of notice by Sublessor to Sublessee of any default of Sublessee or by any other matter, thing, act, or omission of Sublessor whatsoever

G The provisions of Section 12 of the Sublease shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Section 10 and 11 of the Sublease shall apply to any notice to either party, except that notice to Guarantors shall be as follows

Names and Addresses

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

GUARANTORS

Date: _____

Date: _____



**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT H
GUARANTEES**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT H
GUARANTEES**

As an inducement to TRU Franchise, LLC ("**Seller**") to execute the Asset Purchase Agreement with _____ ("**Buyer**") dated _____, and the Assumption Agreement, described in the Asset Purchase Agreement (collectively the "**Purchase Agreements**"), and in consideration of Seller's executing the Purchase Agreements,, _____ ("**Guarantors**"), Jointly and severally agree as follows

A Guarantors shall pay or cause to be paid to Seller all monies payable by Buyer under the Purchase Agreements on the days and stages in the manner therein appointed for payment thereof

B Guarantors shall unconditionally guarantee full performance and discharge by Buyer of all the obligations of Buyer under the Purchase Agreements at the places and in the manner therein provided

C Guarantors shall indemnify and hold Seller and its affiliates harmless against and from all losses, damages, costs, and expenses which Seller and its affiliates may sustain, incur, or become liable for by reason of (1) the failure for any reason whatsoever of Buyer to pay the monies payable pursuant to the Purchase Agreements or to do and perform any other act, matter or thing pursuant to the provisions of the Purchase Agreements, or (2) any act, action, or proceeding of or by Seller for or in connection with the recovery of monies or the obtaining of performance by Buyer of any other act, matter or thing pursuant to the provisions of the Purchase Agreements

D Seller shall not be obligated to proceed against Buyer or exhaust any security from Buyer or pursue or exhaust any remedy, including any legal or enforceable relief against Buyer, before proceeding to enforce the obligations of the Guarantors' under this Agreement, and the enforcement of such obligations may take place before, after, or contemporaneously with, enforcement of any debt or obligation of Buyer under the Purchase Agreements

E Without affecting the Guarantors' obligations under this Guarantee, Seller, without notice to the Guarantors, may extend, modify, or release any indebtedness or obligation of Buyer, or settle, adjust, or compromise any claims against Buyer. Guarantors waive notice of amendment of the Purchase Agreements and notice of demand for payment or performance by Buyer

F Guarantors' obligations under this Guarantee shall remain in full force and effect, and shall be unaffected by (i) the unenforceability of the Purchase Agreements against Buyer, (2) the termination of any obligations of Buyer under the Purchase Agreements by operation of law or otherwise, (3) the bankruptcy, insolvency, dissolution, or other liquidation of Buyer, including, without limitation, any surrender or disclaimer of the Purchase Agreements by the trustee in bankruptcy of Buyer, (4) Seller's consent or acquiescence to any bankruptcy, receivership, insolvency, or any other creditor's proceedings of or against Buyer, or by the winding-up or dissolution of Buyer, or any other event or occurrence which would have the effect at law of terminating the existence of Buyer's obligations prior to the termination of the Purchase Agreements, or (5) by any other Purchase Agreements or other dealings between Seller and Buyer having the effect of amending or altering the Purchase Agreements or Buyer's obligations under this Guarantee, or by any want of notice by Seller to Buyer of any default of Buyer or by any other matter, thing, act, or omission of Seller whatsoever

G The provisions of Section i8 of the Asset Purchase Agreement shall apply as to any interpretation or enforcement of this Guarantee, and the provisions of Section i7(b) of the Asset Purchase Agreement shall apply to any notice to either party, except that notice to Guarantors shall be as follows

Names and Addresses

IN WITNESS WHEREOF, each of the undersigned have signed this Guarantee as of the day and year set forth below

GUARANTORS

Date _____

Date _____

TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT

ATTACHMENT I
ASSUMPTION AGREEMENT

TRU FRANCHISE, LLC
ASSUMPTION AGREEMENT

AGREEMENT made this _ day of — — — — — by and between TRU Franchise, LLC, a California limited liability company ("Seller"), on the one hand, and _____ ("Buyer"), on the other hand, with reference to the following facts

A On---- Seller and Buyer entered into an Asset Purchase Agreement (the "**Purchase Agreement**") pursuant to which Seller sold to Buyer all of Seller's right, title and interest in and to the assets of the Sweet Factory store described on **Attachment A** attached to the Purchase Agreement (the "**Store**")

B Section 2(a){iv} of the Purchase Agreement provides that Buyer shall purchase all "**Licenses**" maintained by Seller and used by Seller in the operation of the Store, to the extent that they are transferable, and Section 4(b) of the Purchase Agreement provides that Buyer shall assume (i) each and all of the "**Assumed Liabilities**" (as defined in Section 4(b) of the Purchase Agreement) of the Store and (u) each and all of the obligations of Seller under the "**Service Agreements**" (as defined in Section 2(a)(u) of the Purchase Agreement) and under the "**Other Contracts**" as defined in Section 7(m) of the Purchase Agreement) for the Store on the "**Closing Date**" (as defined in Section 6(b) of the Purchase Agreement

C The parties desire to enter into this Agreement to provide for Buyer's purchase of the Licenses and for Buyer's assumption of all of the obligations described in Section 4(b) of the Purchase Agreement and Section B of this Agreement on the terms and conditions set forth in this Agreement

NOW, THEREFORE, IT IS AGREED

1 INCORPORATION OF RECITALS

The Recitals set forth in Sections A through C of this Agreement are true and correct and are herein incorporated into the body of this Agreement as part of this Agreement

2 LICENSES

Seller hereby assigns, transfers and conveys to Buyer all of Seller's right, title and interest in and to the Licenses, to the extent they are transferable Buyer hereby assumes all obligations under the Licenses from and after the date of this Agreement

3 ASSUMED LIABILITIES

For purposes of this Agreement, the term "**Assumed Liabilities**" shall mean and refer to each and all of the following (i) the contracts, leases, agreements and liabilities listed on Schedule 3(a) attached to this Agreement and incorporated into this Agreement by reference, **plus** (u) the obligations of Seller under the Service Agreements listed on Schedule 3(b) attached to this Agreement and incorporated into this Agreement by reference, **plus** (m) the Other Contracts listed on Schedule 3(c) attached to this Agreement and incorporated into this Agreement by reference

4 ASSIGNMENT AND ASSUMPTION OF ASSUMED LIABILITIES

Seller hereby assigns, transfers and conveys to Buyer all of Seller's right, title and interest in and to the Service Agreements and the Other Contracts Buyer hereby assumes and promises to pay and perform all

of the Assumed Liabilities, including, without limitation, the Service Agreements and the Other Contracts, from and after the date of this Agreement

5 INDEMNIFICATION

Buyer shall indemnify, defend and hold Seller free and harmless from and against any and all "Losses" (as defined below), which Seller shall incur or suffer which are or result from the operation or conduct of the business of the Store by Buyer following the Preliminary Closing Date, from any default of Buyer arising under the Licenses and from any default of Buyer with respect to the Assumed Liabilities "Losses" shall mean any and all obligations, liabilities, costs (including reasonable attorneys' fees), expenses, damages and losses actually incurred by Seller, net of any insurance proceeds and material tax adjustments, benefits, savings or reduction to which Seller is entitled by virtue of such obligations, liabilities, costs, expenses, damages and losses, provided however, that "Losses" exclude all consequential damages of any kind (including, without limitation, loss of revenue or income, cost of capital or loss of business reputation or opportunity)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written

SELLER:

TRU FRANCHISE, LLC,
A California limited liability company

By _____

Name _____

Title _____

BUYER

☐ A _____ corporation,
☐ A _____ limited liability company,
☐ A _____ general partnership,
☐ A _____ limited partnership,
☐ An individual
☐ Other (specify) _____

By _____

Name _____

Title _____ Individually

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT J
BILL OF SALE**

TRU FRANCHISE, LLC

BILL OF SALE

Pursuant to and in accordance with that certain Asset Purchase Agreement dated _____ (the "**Purchase Agreement**"), by and between TRU Franchise, LLC, a California limited liability company ("**Seller**"), on the one hand, and _____ ("**Buyer**"), on the other hand, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, conveys, transfers, assigns and delivers to Buyer the assets (the "**Assets**") of the **Sweet Factory Store known as Sweet Factory#** _____ located at _____ (the "**Store**") as set forth in Sections 2(a) and 2(c) of the Purchase Agreement Seller hereby represents and warrants that Seller has good and marketable title to each of the Assets and, in each case, the Asset is free and clear of any liens, claims, Judgments, taxes, encumbrances, security interests, debts or adverse claims of any kind, except as otherwise disclosed in the Purchase Agreement

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of _____

SELLER

TRU FRANCHISE, LLC,
A California limited liability company

By _____

Name _____

Title _____

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT K
GENERAL RELEASE**

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

GENERAL RELEASE

_____, ("Buyer") and _____
_____, ("Guarantor(s)") enter into this General Release on
_____ with reference to the following facts

1 On--- TRU Franchise, LLC, a California limited liability company ("seller") and Buyer entered into an Asset Purchase Agreement (the "**Purchase Agreement**") pursuant to which on the date hereof (the "**Closing Date**"), Seller sold to Buyer all of Seller's right, title and interest in and to the assets (the "**Assets**") of the Sweet Factory Store known as Sweet Factory# __, described on **Attachment A** attached to the Purchase Agreement (the "**Store**") which is located at the premises (the "**Franchised Location**") described on **Attachment B** attached to the Purchase Agreement. In connection with the Purchase Agreement, (i) Buyer sublet the Franchised Location from Seller under a Sublease between Buyer and Seller (the "**Sublease**"), (n) Buyer agreed to operate the Store as a Franchisee of TRU Franchise, LLC, a California limited liability company ("**Franchisor**"), under a Franchise Agreement (the "**Franchise Agreement**") with Franchisor for the Store, and (m) [if applicable, Buyer executed an Area Development Agreement in favor of Franchisor (the "**Development Agreement**")], and (vu) Guarantor(S) executed Personal Guarantee(s) (the "**Guarantee(s)**") of the Purchase Agreement, the Assumption Agreement, the Sublease, the Franchise Agreement, [and the Development Agreement] in favor of Franchisor effective as of the Closing Date

2 For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Guarantor(s) hereby releases and forever discharges Seller and Franchisor, and their subsidiaries and affiliated companies, and their respective directors, officers, shareholders, partners, employees, members, managers, attorneys and agents, and their respective heirs, successors and assigns, and each of them, from any and all obligations, liabilities, losses, demands, costs, expenses, claims, actions and causes of action, of whatever nature, character or description, known or unknown, based upon anything that has occurred or existed, or failed to occur or exist (collectively the "**Damages**"), from the beginning of time to the date of this Agreement, including, without limitation, the Damages based on, arising from or relating to the Purchase Agreement, the Assets, the Franchised Location, the Assumption Agreement, the Sublease, the Franchise Agreement, [the Development Agreement], and the Guarantee(s), and any right or benefit which Buyer or Guarantor(S) may have under California Civil Code Section i542, or any comparable statute, which reads as follows

"Section i542 General Release. Effects A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing this release, which if known by him or her must have materially affected his settlement with the debtor"

3 This General Release sets forth the entire agreement and understanding of the parties regarding the subject matter of this General Release and any agreement, representation or understanding, express or implied, heretofore made by any party or exchanged between the parties are hereby waived and canceled

4 This General Release shall be binding upon each of the parties to this General Release and their respective heirs, executors, administrators, personal representatives, successors and assigns

(SIGNATURES ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the parties have executed this General Release as of the day and year set forth above

BUYER

_____] A _____ corporation,
_____] A _____ limited liability company,
_____] A _____ general partnership,
_____] A _____ limited partnership,
_____] An individual
_____] Other (specify) _____

By _____

Name _____

Title _____ and Individually

GUARANTORS:

TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT

ATTACHMENT L
PRELIMINARY BUSINESS PURCHASE AGREEMENT

**TRU FRANCHISE, LLC ASSET
PURCHASE AGREEMENT**

**ATTACHMENT L
PRELIMINARY BUSINESS PURCHASE AGREEMENT**

A. OFFER TO PURCHASE ASSETS

1 THIS IS AN OFFER FROM _____ a _____ ("Buyer") to TRU Franchise, LLC, a California limited liability company ("Seller") When executed by Seller and Buyer, this Agreement shall constitute the binding UNCONDITIONAL obligation of Buyer to purchase the "Store" described below WITHOUT any contingencies

2 The Sweet Factory Store whose assets are to be acquired by Buyer is known as Sweet Factory
#____ (the "Store") located at _____
(the "Franchised Location")

3 THE PURCHASE PRICE ISS _____

4 INVENTORY VALUED AT AN ESTIMATED \$ _____ is NOT included in the Purchase Price and cash in the store bank at the Business on the Closing Date estimated at \$1,000 is NOT included in the Purchase Price Buyer will pay Seller the wholesale cost for the inventory and an amount for the actual cash in the store bank through escrow on the Closing Date

5 CLOSE OF ESCROW SHALL OCCUR ON _____ (the "Closing Date")
The Closing Date may be extended for cause by Seller, from time to time Possession will be delivered to Buyer on the Closing Date

B. PAYMENT OF PURCHASE PRICE

1 INITIAL DEPOSIT: \$ _____

Buyer has given a deposit of to be held uncashed until acceptance of this offer by Seller and then deposited within three (3) business days thereafter with Detail Escrow, Inc, 12222 Artesia Boulevard, Artesia, California 90701, Telephone (562) 809-3090, Facsimile (562) 809-3103 (the "Escrow Holder")

2 ADDITIONAL CASH PAYMENT: \$ _____

Buyer to deposit with the Escrow Holder with sufficient time to close escrow Additional cash payment may be provided by a third-party lender

4 SELLER FINANCING: [IF APPLICABLE] \$ _____
(See Section E below)

5 TOTAL PURCHASE PRICE (the "Purchase Price") \$ _____

C. ASSETS TRANSFERRED

Seller will sell and transfer to Buyer all of Seller's right, title and interest to the following assets (the "Assets") free and clear of all liens, claims and encumbrances All of the fixtures, equipment, signs and

other tangible assets of the Store, all of the service agreements for the Store (if, and to the extent, assumable), all of the useable stock-in-trade, retail inventory and supplies located at the Store, all licenses and permits maintained by Seller (to the extent that they are transferable) and all telephone numbers and facsimile numbers

Excluded Assets All cash in banks associated with the Store, the business records which relate to the operation of the Store prior to the Closing Date, all refunds of federal, state or local income or franchise taxes or worker's compensation insurance premiums due Seller as of the Closing Date and all goodwill and intellectual property rights of Seller

All equipment at the Store (the "**Equipment**") will be in working order on the Closing Date. All remaining Assets will be sold "**AS IS**". **SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE ASSETS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE WITH RESPECT TO THE CONDITION OF THE ASSETS, THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THE LIKE.** There will be no abatement of the Purchase Price and SELLER will have no liability to Buyer for any claim, loss or damage as a result of any operating deficiency or defect in the Assets, the use or performance of the Assets, or any interruption or loss of service or of use of the Assets.

Seller and Buyer will conduct a walk-through of the Store on or before the Closing Date (the "**Walk Through**") to determine the condition of the Equipment at the Store and Seller will prepare a written list of any necessary repairs to be made (the "**Repair List**") to the Equipment at the Walk Through. The Repair List will be the formal and conclusive listing of all repairs to be made to the Equipment as of the Closing Date for all purposes, and Seller will have no responsibility whatsoever for any repairs which are not listed on the Repair List prepared at the Walk Through. Unless the parties agree otherwise, Seller will complete all repairs on the Repair List within thirty (30) days after the Closing Date.

D. LIABILITIES TRANSFERRED

The following Service Agreements _____ (if any)

Other _____ (if any)

E. FINANCING

Buyer will have sixty (60) days from the date this Agreement is signed by Seller to obtain financing of the Purchase Price from a third-party lender, if necessary. If Buyer is unable to obtain third-party financing, Seller may finance up to \$ _____ of the Purchase Price, in which case Buyer must proceed with the purchase of the Assets, or Seller may terminate the transaction and return the Initial Deposit to Buyer. Seller's financing will be based upon a ten (10) year amortization, all due and payable within thirty (30) months, with interest at a variable interest adjusted every six (6) months after the Closing Date at a rate equal to the greater of the prime rate of interest, as published by the Western Edition of the Wall Street Journal, plus three percent (3%), OR ten percent (10%) per annum, plus a loan fee equal to one half (1/2) of one percent of the amount financed by Seller (the "**Loan Fee**"). On the Closing Date, Buyer will execute and deliver to Seller a Promissory Note in favor of Seller in the amount financed (the "**Purchase Note**"). Payment of the Purchase Note will be secured by a security interest granted to Seller by Buyer in the Assets in accordance with a Security Agreement (the "**Security Agreement**") to be executed by Seller and Buyer on the Closing Date.

F. PAYMENTS REQUIRED IN ADDITION TO PURCHASE PRICE

Prior to the commencement of training, Buyer will deposit \$5,000 with the Escrow Holder as an Initial Training Fee. On the Closing Date, Buyer will pay the balance of the \$35,000 initial franchise fee due to

TRU FRANCHISE, LLC, a California limited liability company ("**Franchisor**"), the first month's rent and estimated monthly occupancy expenses for the Business Premises, a security deposit equal to two (2) month's estimated rent and monthly occupancy expenses for the Business Premises, \$3,000 for Seller's legal fees for the asset purchase and franchise documents, all Loan Fees and \$3,500 for Seller's legal and document preparation fees, as applicable

G. SUBLEASE

Buyer will sublease the Franchised Location from Seller under a Sublease to be executed by Seller and Buyer on the Closing Date. The expiration date, options to extend (if any), monthly rent and occupancy expenses for the Franchised Location will be identical to the expiration date, options to extend (if any), monthly rent and occupancy expenses provided to Seller under Seller's Lease for the Franchised Location (the "**Master Lease**"). The current rent for the Franchised Location are \$_____ per month. The current occupancy expenses for the Franchised Location are \$_____ per month. Buyer hereby acknowledges receipt of a copy of the Master Lease.

H. FRANCHISE AGREEMENT

As a transaction separate and apart from the sale and purchase of the Assets, Buyer will acquire a license to operate the Store under a Franchise Agreement (the "**Franchise Agreement**") with Franchisor to be executed by Franchisor and Buyer on the Closing Date.

I. INITIAL TRAINING PROGRAM

Buyer will execute Franchisor's Initial Training Agreement (the "**Initial Training Agreement**") following the parties' execution of this Agreement. Buyer must attend and complete Franchisor's Initial Training Program for franchisees offered by Franchisor to Franchisor's satisfaction, in accordance with the terms of the Initial Training Agreement, in order to become eligible to become a franchisee of Franchisor. Buyer hereby authorizes the Escrow Holder to release the Initial Training Fee to Franchisor upon demand by Franchisor without any further instructions or authorization from BUYER to the Escrow Holder.

J. PRORATIONS AND DEPOSITS; TAXES; ESCROW CHARGES

All rents, sewer charges, water charges, public utility charges, real and personal property taxes and other like expenses levied or assessed against the Assets and the Store will be prorated between Seller and Buyer as of the Closing Date. Buyer will pay all sales and/or use taxes arising from the sale of the Assets by Seller to BUYER. Seller and Buyer will equally pay all escrow fees and other related closing costs.

K. BULK SALE ESCROW

Seller and Buyer will comply with the Bulk Sales Law provisions of Division 6 of the Uniform Commercial Code, as the law applies in the State where the Store is located, unless Seller and Buyer waive compliance with the same, in writing, on or before the Closing Date.

L. SECURITY INTERESTS

As a condition to the close of escrow, Buyer will grant Seller and FRANCHISOR a security interest in and to all leasehold improvements, fixtures, furnishings and equipment, inventory and supplies located at or used in connection with the Store, now or hereafter acquired by Buyer, together with all accounts, payment intangibles, attachments, accessories, additions, substitutions and replacements, all cash and non-cash proceeds derived from insurance or the disposition of such assets, all rights of Buyer to use the Sweet Factory® marks, trade names, trade styles, patents, copyrights and their registrations, trade secret information and other proprietary rights, and all rights granted, owned or licensed to Buyer under the

Franchise Agreement for the use of such marks, trade names, trade styles, patents, copyrights, trade secret information and other proprietary rights, to secure payment and performance of all debts, liabilities and obligations of any kind, whenever and however incurred, from Buyer to Seller and Franchisor

M SELLER TO OPERATE IN ORDINARY COURSE OF BUSINESS

During the period from the date of this Agreement to the Closing Date, Seller shall conduct the operations of the Store only in the ordinary and usual course of business consistent with past practices

N INDEMNIFICATION

Buyer will indemnify, defend and hold Seller free and harmless from and against any and all Losses which Seller shall incur or suffer which arise or result from any injuries sustained by Buyer while at the Store prior to the Closing Date and from the operation or conduct of business at the Store by Buyer at any time after the Closing Date, from any breach of Buyer's representations, warranties or covenants and from any assumed liabilities Seller will indemnify, defend and hold Buyer free and harmless from and against any and all Losses which Buyer shall incur or suffer which arise or result from the operation or conduct of business at the Store by Seller at any time before the Closing Date, only if the aggregate Losses exceed \$5,000 (the "**Indemnification Threshold**"), only to the extent of the excess of the Losses over the Indemnification Threshold and only if a claim for Losses is submitted in writing by Buyer to Seller within one (1) year after the Closing Date "**Losses**" will mean any and all obligations, liabilities, costs (including reasonable attorneys' fees), expenses, damages and losses actually incurred by Seller or Buyer, as the case maybe

O TERMINATION

Tots transaction may be terminated at any time prior to the Closing Date by SELLER, if there has been a breach by Buyer of any representation, warranty, covenant or agreement on the part of Buyer which Buyer fails to cure within five (5) days after written notice thereof is given by SELLER (except that no cure period will be provided for a breach by Buyer which by its nature cannot be cured) Buyer will have no right to terminate this Agreement If this Agreement is terminated by Seller, the obligations of Seller to complete the transactions contemplated by this Agreement will expire and Seller will have no further obligations under this Agreement

P. ACKNOWLEDGEMENTS BY BUYER

Buyer acknowledges and agrees as follows

1 Buyer has had the opportunity to review and approve, and hereby approves, the Financial Statements for the Business heretofore provided to Buyer by Seller, the Guarantees, the Master Lease, the Sublease, the Franchise Agreement and the Initial Training Agreement

BUYER'S INITIALS _____

2 Buyer has completed all due diligence to be undertaken by Buyer for the purchase of the Business There is no remaining due diligence to be undertaken by Buyer following the date of this Agreement

BUYER'S INITIALS _____

3 All equity owners of an entity Buyer and their spouses must personally guarantee the obligations of Buyer under the Asset Purchase Agreement, Initial Training Agreement, Assumption Agreement, Sublease, General Release, Franchise Agreement and Attachments, Purchase Note and Security

Agreement [IF APPLICABLE] under a written Guarantee (the "Guarantee") to be submitted by Seller on or before the Closing Date

BUYER'S INITIALS

4 IT WOULD BE DIFFICULT TO MEASURE SELLER'S AGGREGATE DAMAGES IN THE EVENT OF A BREACH OF THIS AGREEMENT BY BUYER AND ACCORDINGLY, IN ADDITION TO, AND WITHOUT LIMITING ANY REMEDIES THAT MAY BE AVAILABLE TO SELLER FOR A BREACH OF THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES IS THE ENTIRE INITIAL DEPOSIT FOR THE PURCHASE OF AN OPERATING BUSINESS, WHICH IN NO WAY REPRESENTS A PENALTY OF ANY SORT. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT IN THE EVENT OF THE TERMINATION OF THIS AGREEMENT AS A RESULT OF BUYER'S BREACH OF THIS AGREEMENT PRIOR TO THE CLOSING DATE, SELLER SHALL BE ENTITLED TO RETAIN THE ENTIRE DEPOSIT AS LIQUIDATED DAMAGES. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THIS PAYMENT IS A REASONABLE FORECAST OF THE DAMAGES LIKELY TO RESULT FROM SUCH BREACH BECAUSE OF THE LOST OPPORTUNITIES OF SELLER TO SELL THE BUSINESS TO OTHER AVAILABLE BUYERS AND IS NOT A PENALTY OF ANY KIND. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT THE PAYMENT OF LIQUIDATED DAMAGES SHALL NOT BE CONSTRUED AS A RELEASE OR WAIVER BY SELLER OF THE RIGHT TO PREVENT THE CONTINUATION OF ANY BREACH OF THIS AGREEMENT AND SHALL NOT PRECLUDE OR BE CONSTRUED TO PRECLUDE SELLER FROM MAKING A SHOWING OF IRREPARABLE INJURY OR ANY OTHER ELEMENT THAT MAY BE NECESSARY TO SECURE INJUNCTIVE RELIEF.

BUYER HEREBY AUTHORIZES THE ESCROW HOLDER TO RELEASE THE ENTIRE DEPOSIT, LESS ESCROW FEES INCURRED TO DATE, TO SELLER UPON DEMAND BY SELLER FOLLOWING ANY TERMINATION OF THIS AGREEMENT AS A RESULT OF A DEFAULT BY BUYER UNDER THIS AGREEMENT, WITHOUT ANY FURTHER INSTRUCTIONS OR AUTHORIZATION FROM BUYER TO THE ESCROW HOLDER.

BUYER'S INITIALS

SELLER'S INITIALS

5 Buyer has been advised by Seller that the following have been the owners of the Store during the three (3) year period preceding the date of this Agreement _____

Q. ATTORNEYS' FEES

If Seller becomes a party to any legal proceedings concerning this Agreement or the Store by reason of any act or omission of Buyer, or its authorized representatives, Buyer will be liable to Seller for the reasonable attorneys' fees and court costs incurred by Seller in the legal proceedings. If either party commences a legal action against the other party arising out of or in connection with this Agreement, the prevailing party will be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

- CHOICE OF LAW: VENUE

This Agreement will be interpreted and construed under the laws of California. Any action brought by either party shall be brought within the State of California in the County of Orange.

S. ASSIGNMENT: SUCCESSORS AND ASSIGNS

Buyer shall not assign all or any part of Buyer's interests in this Agreement without the prior written consent of Seller, which such consent Seller may withhold for any reason, in Seller's sole and absolute discretion. Except as provided herein, this Agreement will be binding upon Seller and Buyer and their respective heirs, successors and assigns.

T. CONFIDENTIALITY

Buyer will hold in confidence all documents and information obtained from Seller regarding the Store (the "Confidential Information"), and will not disclose or convey any of such Confidential Information to any other person. Buyer may disclose Confidential Information to Buyer's potential lenders, employees, attorneys, accountants, landlords and financial advisors in connection with the purchase of the Store.

U. FORMAL DOCUMENTS

As a condition to the close of escrow, Buyer will execute all of the following documents:

Escrow Instructions, Asset Purchase Agreement, Initial Training Agreement, Assumption Agreement, Sublease (with a copy of the Master Lease attached), General Release, Franchise Agreement and Attachments, Addendum for Purchase of Turnkey Unit *[if applicable]*, Purchase Note and Security Agreement *[if applicable]*, Guarantees thereof and Franchise Compliance Certification. The Asset Purchase Agreement will contain customary representations and warranties for Seller and Buyer. Where and to the extent that any of the provisions of the Asset Purchase Agreement or the Attachments to the Asset Purchase Agreement are contrary to, in conflict with or inconsistent with any provision contained in this Agreement, the provisions contained in the Asset Purchase Agreement and the Attachments to the Asset Purchase Agreement shall control.

V. CREDIT REPORTS

Seller or its designee may, prior to the Closing Date, through its representatives, access and run the Buyer's credit report. In addition, if, and to the extent, that Seller needs to run Buyer's credit report in connection with the financing for the purchase of the Assets after the Closing Date and through the term of the Franchise Agreement with Franchisor, Buyer shall cooperate with Seller and provide Seller with its consent to access and run the Buyer's credit report upon Seller's request. Buyer shall reimburse Seller for the cost of pulling any such credit reports.

V. DUAL REPRESENTATION BY BROKER

Buyer and Seller hereby acknowledge and accept that _____ ("Broker"), is representing both the Buyer and the Seller in this transaction (or in Florida acting as a Transaction Broker), and that it is the fiduciary responsibility of Broker, and its agents, to ethically and professionally assist both Buyer and Seller with integrity, honesty and loyalty. Broker recommends that both Buyer and Seller consult with specialized professionals for tax or legal advice.

W. ENTIRE AGREEMENT

This Agreement and the Escrow Instructions contain all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof. No other agreements, oral or otherwise, shall be deemed to exist or bind any of the parties hereto, and all prior agreements, understandings and representations are merged herein and superseded hereby.

(SIGNATURES ON FOLLOWING PAGE)

BUYER

DATE _____

DATE _____

ADDRESS _____

TELEPHONE NUMBER _____

**SELLER HEREBY ACCEPTS THE ABOVE OFFER UPON
THE TERMS AND CONDITIONS HEREIN STATED AND
TO PAY A COMMISSION TO _____
PER THE LISTING AGREEMENT WITH BROKER**

MANAGING MEMBER _____

DATE _____

SCHEDULES

SCHEDULE 2(a)(i)	EQUIPMENT
SCHEDULE 2(a)(ii)	SERVICE AGREEMENTS
SCHEDULE 2(a)(iii)	INVENTORY
SCHEDULE 2(a)(iv)	LICENSES
SCHEDULE 2(a)(v)	TELEPHONE NUMBERS
SCHEDULE 3(g)	ALLOCATION OF PURCHASE PRICE
SCHEDULE 3(h)	RENT AND ESTIMATED CENTER EXPENSES
SCHEDULE 4(b)	ASSUMED LIABILITIES
SCHEDULE 7(o)	FINANCIAL STATEMENTS
SCHEDULE 7(i)	LITIGATION
SCHEDULE 7(m)	OTHER CONTRACTS
SCHEDULE 7(n)	EMPLOYEES
SCHEDULE 7(o)	VIOLATIONS
SCHEDULE 9(n)	REFURBISHMENT OF STORE

TRU FRANCHISE, LLC FRANCHISE
DISCLOSURE DOCUMENT EXHIBITJ
FRANCHISE COMPLIANCE CERTIFICATION

TRU FRANCHISE, LLC EXHIBITJ
FRANCHISE COMPLIANCE CERTIFICATE

As you know, TRU Franchise, LLC ("**Franchisor**") and you are preparing to enter into a Franchise Agreement for the establishment and operation of a Sweet Factory franchised business. The purpose of this Questionnaire is to determine whether any statements or promises were made to you that Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

I had my first face-to-face meeting with a Franchisor representative on _____ date]

2 Have you received and personally reviewed the Franchise Agreement and each Addendum and related agreement attached to it?

Yes_ No

3 Do you understand all of the information contained in the Franchise Agreement, each Addendum and related agreement provided to you?

Yes_ No

If no, what parts of the Franchise Agreement, Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary)

4 Have you received and personally reviewed Franchisor's Franchise Disclosure Document ("**FDD**")?

Yes_ No

5 Did you sign a receipt for the FDD indicating the date you received it?

Yes_ No

6 Do you understand all of the information contained in the FDD and any state-specific Addendum to the FDD?

Yes No

If No, what parts of the FDD and/or Addendum do you not understand? (Attach additional pages, if necessary)

7 Have you discussed the benefits and risks of establishing and operating a Sweet Factory franchised business with an attorney, accountant, or other professional advisor?

Yes_ No

If No, do you wish to have more time to do so?

Yes

No

8 Do you understand that the success or failure of your Sweet Factory franchised business will depend in large part upon your skills and abilities, comprehension from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?

Yes_ No

9 Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a Sweet Factory franchised business that is contrary to the information contained in the FOO?

Yes_ No

10 Has any employee or other person speaking on our behalf made any statement or promise regarding the amount of money you may earn in operating a Sweet Factory franchised business that is contrary to the information contained in the FOO?

Yes_ No

11 Has any employee or other person speaking on our behalf made any statement or promise concerning the total amount of revenue the Sweet Factory franchised business will or may generate that is contrary to the information contained in the FOO?

Yes_ No

12 Has any employee or other person speaking on our behalf made any statement or promise regarding the costs you will or may incur in operating a Sweet Factory franchised business that is contrary to the information contained in the FOO?

Yes_ No

13 Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Sweet Factory franchised business?

Yes_ No

14 Has any employee or other person speaking on our behalf made any statement, promise, or agreement concerning the advertising, marketing, training, support service, or assistance that we will furnish to you that is contrary to the information contained in the FOO?

Yes_ No

15 Have you entered into any binding agreement with us concerning the purchase of this franchise prior to today?

Yes_ No

16 Have you paid any money to us concerning the purchase of this franchise prior to today?

Yes_ No

17 If you have answered "Yes" to any one of questions 9-i6, please provide a full explanation of each "yes" answer in the following blank Pages (Attach additional pages, if necessary, and refer to them below)

18 I signed the Franchise Agreement and Addenda (if any) on _____[date], and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor

Please understand that your responses to these questions are important to us and that we will rely on them

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions

FRANCHISEE

] an individual,
] a _____ general partnership,
] a _____ liability partnership,
] a _____ limited liability company,
] a _____ corporation

By _____

Its — — — — — and individually

_____, 20

TRU FRANCHISE, LLC

FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT J

FRANCHISE COMPLIANCE CERTIFICATE

TRU FRANCHISE, LLC
EXHIBITJ
FRANCHISE COMPLIANCE CERTIFICATE

As you know, TRU Franchise, LLC ("**Franchisor**") and you are preparing to enter into a Franchise Agreement for the establishment and operation of a Sweet Factory franchised business. The purpose of this Questionnaire is to determine whether any statements or promises were made to you that Franchisor has not authorized and that may be untrue, inaccurate, or misleading. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. I had my first face-to-face meeting with a Franchisor representative on _____ [date]

2. Have you received and personally reviewed the Franchise Agreement and each Addendum and related agreement attached to it?

Yes_ No

3. Do you understand all of the information contained in the Franchise Agreement, each Addendum and related agreement provided to you?

Yes_ No

If no, what parts of the Franchise Agreement, Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary)

4. Have you received and personally reviewed Franchisor's Franchise Disclosure Document ("**FDD**")?

Yes_ No

5. Did you sign a receipt for the FDD, indicating the date you received it?

Yes_ No

6. Do you understand all of the information contained in the FDD and any state-specific Addendum to the FDD?

Yes_ No

If No, what parts of the FDD and/or Addendum do you not understand? (Attach additional pages, if necessary)

7. Have you discussed the benefits and risks of establishing and operating a Sweet Factory franchised business with an attorney, accountant, or other professional advisor?

Yes_ No

If No, do you wish to have more time to do so?

Yes

No

8 Do you understand that the success or failure of your Sweet Factory franchised business will depend in large part upon your skills and abilities, compensation from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors?

Yes_ No

9 Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a Sweet Factory franchised business that is contrary to the information contained in the FDD?

Yes_ No

10 Has any employee or other person speaking on our behalf made any statement or promise regarding the amount of money you may earn in operating a Sweet Factory franchised business that is contrary to the information contained in the FDD?

Yes_ No

11 Has any employee or other person speaking on our behalf made any statement or promise concerning the total amount of revenue the Sweet Factory franchised business will or may generate that is contrary to the information contained in the FDD?

Yes_ No

12 Has any employee or other person speaking on our behalf made any statement or promise regarding the costs you will or may incur in operating a Sweet Factory franchised business that is contrary to the information contained in the FDD?

Yes_ No

13 Has any employee or other person speaking on our behalf made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Sweet Factory franchised business?

Yes_ No

14 Has any employee or other person speaking on our behalf made any statement, promise, or agreement concerning the advertising, marketing, training, support service, or assistance that we will furnish to you that is contrary to the information contained in the FDD?

Yes_ No

15 Have you entered into any binding agreement with us concerning the purchase of this franchise prior to today?

Yes_ No

16 Have you paid any money to us concerning the purchase of this franchise prior to today?

Yes_ No

17 If you have answered "Yes" to any one of questions 9-16, please provide a full explanation of each "yes" answers in the following blank Pages (Attach additional pages, if necessary, and refer to them below).

18 I signed the Franchise Agreement and Addenda (if any) on _____ [date], and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them.

By signing this Questionnaire, you are representing that you have responded truthfully to the above questions.

FRANCHISEE

_____,
] an individual,
] a _____ general partnership;
] a _____ limited partnership,
] a _____ limited liability company,
] a _____ corporation

By _____

Its _____

And individually

_____, 20

TRU - Sweet Factory Franchisee Information Current as of Dec

#	Location	Franchisee	Phone Numbers
105	Montclair	Nam Ki Hoon Nam Jung Sun Nam Elisa Yoo	909.621.9755 (Store) 909.621.0633 (Fax) 213.500.7456 (Elisa) 323.467.4493 (Home)
127	Tyler		951.785.0754 (Store)
340	Ontario		909.481.5958 (Store)
155	Mission Viejo		949-347-1242 (Store)
113	South Bay	Sam Chung Christy Chung	310.793.0532 (Store) 949.633.4901 (Christy) 949.285.1097 (Sam)
133	Valencia	Jerry Holly Margaret Holly	661.254.0955 (Store) 661.877.5070 (Jerry) 661.299.1723 (Home)
166	North County	Johnny Kim Judy Kim	760.737.6866 (Store) 714.955.3608 (Johnny) 714.955.3607 (Judy) 858.385.0608 (Home)
115	Carlsbad	Johnny Kim	760-720-5390 (Store)
182	Ventura	Mike Hong	805.650.0765 (Store) 818.269.2742 (Mike) 818.880.9407 (Home)
226	Mainplace	Meena Patel Sharad Patel	714.542.1301 (Store) 714.746.3968 (Meena) 714.670.1771 (Home)
402	Inland Center	Young Choi	909.888.5323 (Store) 714.458.3908 (Cell) 760.948.8341 (Home)
431	Temecula	Young Kim	951.719.3147 (Store) 714.423.1362 (Cell) 714.738.5415 (Home/Fax)
459	Santa Anita	Chris Chon Kathy Chon	626.447.8957 (Store) 714.315.2951 (Kathy) 714.680.3083 (Home) 714.309.8329 (Chris)
134	Northridge		818-718-9398 (Store)
492	Sun Valley	Roger Min Kil-Woo Min	925.969.7868 (Store) 415.385.7223 (Roger)

			925.969.7983 (Fax) 925.937.6809 (Home) 707.399.9369 (Store)
114	Solano	707.399.9069 (Fax)	
451	Stoneridge	Eunice Choi	925.417.8924 (Home) 925.225.0612 (Store)
119	Cerritos	Steve Morrison Kyong Mee Morrison (Jody)	562-809-1266 (Store) 562-505-0695 (Steve) 562-505-0696 (Jody)
109	Parkway	Suk H. Hong Won K. Choi Joong C. Lee	619.410.8747 (Mr.Hong) 619.206.9073 (Mr.Choi) 619.886.2053 (Mr.Lee)
174	Vancouver	DH & TH, LLC By:David Yim Hyewon Yim	360-253-3988 (Store) 360-944-3723 (David's Cell) 360-597-5601(Hyewon's Cell)
180	Bellevue	All about Candy, LLC By:James Chen Hyun-Duck Chen	425-430-1338 (Home) 425-999-5746 (James Cell) 206-248-7381 (Store)
104	Brea	Forever Sweets, LLC Christopher S. Chon	714-255-9901(Store)
485	Victor Valley	Sue Hye Sook Lee Sue Lee Paul Lee	760-245-5823 (Store) 949-878-2042 (sue cell) 949-878-0727 (paul Cell)
288	Horton Plaza	Suk H Hong	619-231-7945 (Store)
331	Somerset	Farah Nabar F N Treats	
497	Great Lakes		

of December 31, 2017

Addresses	
5131 Montclair Plaza Montclair, CA 91763	
Mr. Nam 323.819.2815 212 N. Arden Blvd. Los Angeles, CA 90004 Home	
1124 Galleria Tyler Riverside, CA 92503	
4320 E. 4th St. Sp.317 Ontario, CA 91764	
27000 Crown Valley Pkwy. #218 Mission Viejo, CA 92691	
1815 Hawthorne Blvd. Suite 383 Redondo Beach, CA 90278	
11 Alaska Irvine, CA 92606	
24201 Valencia Blvd. #2009 Valencia, CA 91355	
17774 Heron Lane Fair Oaks Ranch, CA 91387	
200 E. Via Rancho Pkwy. #265 Escondido, CA 92025	
18791 Caminito Pasadero Unit #77, San Diego, CA 92128	
2525 El Camino Real, #135 Carlsbad, CA 92008	
3301-1060 East Main St. Ventura, CA 93003	
3920 Lost Springs D. Calabasas, CA 91301	
2800 N. Main Street #664 Santa Ana, CA 92701	
8881 Vesta Via Avenue Buena Park, CA 90621	
500 Inland Center Dr. Sp.#350 San Bernardino, CA 92418	
10243 Farmington St. Oak Hills, CA 92345	
40820 Winchester Rd. Unit #1510 Temecula, CA 92591	
1156 W. Las Palmas Fullerton, CA 92835	
400 S. Baldwin Ave. #712-L Arcadia, CA 91007	
2586 Pearlblossom St. Fullerton, CA 92835	
9301 Tampa Ave. #70 Northridge, CA 91324	
408 Sun Valley Mall, Concord, CA 94520	
151 Via Monte, Walnut Creek, CA 94598	

1350 Travis Blvd. #X-11 Fairfield, CA 94533

1380 Stoneridge Mall, Sp. #D103 Pleasanton, CA 94588

354 Los Cerritos Center Cerritos, CA 90701

13507 Droxford St., Cerritos, CA. 90703

673 Parkway Plaza #X-9 El Cajon, CA 92020

16275 Avenida Suavidad, San Diego, CA 92128

8700 NE Vancouver Mall Drive, # 266, Vancouver, WA 98662

1713 SE 185th Place, Vancouver, WA 98683

7823 122nd Place SE, Newcastle, WA 98056

206-766-2031 (james office ONLY EMERGENCY CALLS)

1065 Brea Mall #1124A Brea, CA 92821

14400 Bear Valley Road Space #653

Victorville, CA. 92392

227 Horton Plaza San Diego CA 92101

2800 W. Big Beaver Rd #V-348 Troy, MI

4132 Baldwin Rd #405 Auburn Hills, MI

E-mail	COE
<u>elisa_yoo@hotmail.com</u>	1/24/04
	8/7/04
	4/14/08
	5/21/08
<u>ischung@hotmail.com</u>	5/26/04
<u>thehollyfamily@sbcglobal.net</u>	8/7/04
<u>johnny@sweetfactorycandy.com</u>	7/1/04
<u>johnny@sweetfactorycandy.com</u>	9/3/09
<u>mkhong123@hotmail.com</u>	1/26/04
<u>sweetfactory1@sbcglobal.net</u>	4/22/05
<u>youngjinchoi@hotmail.com</u>	5/4/04
<u>yhkim92835@gmail.com</u>	1/26/04
<u>sweetcastlellc@yahoo.com</u>	5/26/06
	10/20/13
<u>rogermin@hotmail.com</u>	1/11/07

	2/7/08
	4/22/08
heavenlysweetsllc@yahoo.com	6/7/07
sukhoan.hong@gmail.com wkchoi2011@gmail.com joonglee@naver.com	7/23/07
yimster@comcast.net hyewon_yim@comcast.net	9/18/08
hyunduck61@hotmail.com	9/25/08
	1/9/09
phclee@gmail.com	6/18/09
sukhoan.hong@gmail.com	2/8/10
ceo@sweetfactoryusa.com	10/1/12

TRU - Sweet Factory Franchisee Information Current as of March 31, 2018

#	Location	Franchisee	Phone Numbers	Addresses
105	Montclair	Nam Ki Hoon Nam Jung Sun Nam Elisa Yoo	909.621.9755 (Store) 909.621.0633 (Fax) 213.500.7456 (Elisa) 323.467.4493 (Home) 951.785.0754 (Store) 949-347-1242 (Store)	5131 Montclair Plaza Montclair, CA 91763 Mr. Nam 323.819.2815 212 N. Arden Blvd Los Angeles, CA 90004 Home 1124 Galleria Tyler Riverside, CA 92503 27000 Crown Valley Pkwy. #218 Mission Viejo, CA 92691
113	South Bay	Sam Chung Christy Chung	310.793.0532 (Store) 949.633.4901 (Christy) 949.285.1097 (Sam)	1815 Hawthorne Blvd. Suite 383 Redondo Beach, CA 90278 11 Alaska Irvine, CA 92606
133	Valencia	Jerry Holly Margaret Holly	661.254.0955 (Store) 661.877.5070 (Jerry) 661.299.1723 (Home)	24201 Valencia Blvd. #2009 Valencia, CA 91355 17774 Heron Lane Fairoaks Ranch, CA 91387
166	North County	Johnny Kim Judy Kim	760.737.6866 (Store) 714.955.3608 (Johnny) 714.955.3607 (Judy) 858.385.0608 (Home)	200 E. Via Rancho Pkwy. #265 Escondido, CA 92025 18791 Caminito Pasadero Unit #77, San Diego, CA 92128
115	Carlsbad	Johnny Kim	760-720-5390 (Store)	2525 El Camino Real, #135 Carlsbad, CA 92008
182	Ventura	Mike Hong	805.650.0765 (Store) 818.269.2742 (Mike) 818.880.9407 (Home)	3301-1060 East Main St. Ventura, CA 93003 3920 Lost Springs D. Calabasas, CA 91301
402	Inland Center	Young Choi	909.888.5323 (Store) 714.458.3908 (Cell) 760.948.8341 (Home)	500 Inland Center Dr. Sp.#350 San Bernardino, CA 92418 10243 Farmington St. Oak Hills, CA 92345
431	Temecula	Young Kim	951.719.3147 (Store) 714.423.1362 (Cell) 714.738.5415 (Home/Fax)	40820 Winchester Rd. Unit #1510 Temecula, CA 92591 1156 W. Las Palmas Fullerton, CA 92835
459	Santa Anita	Chris Chon Kathy Chon	626.447.8957 (Store) 714.315.2951 (Kathy) 714.680.3083 (Home) 714.309.8329 (Chris)	400 S. Baldwin Ave. #712-L Arcadia, CA 91007 2586 Pearlblossom St. Fullerton, CA 92835
134	Northridge		818-718-9398 (Store)	9301 Tampa Ave. #70 Northridge, CA 91324
492	Sun Valley	Roger Min Ki-Woo Min	925.969.7868 (Store) 415.385.7223 (Roger) 925.969.7983 (Fax) 925.937.6809 (Home)	408 Sun Valley Mall, Concord, CA 94520 151 Via Monte, Walnut Creek, CA 94598
114	Solano	707.399.9069 (Fax)	707.399.9369 (Store)	1350 Travis Blvd. #X-11 Fairfield, CA 94533
451	Stoneridge	Eunice Choi	925.417.8924 (Home) 925.225.0612 (Store)	1380 Stoneridge Mall, Sp. #D103 Pleasanton, CA 94588
119	Cerritos	Steve Morrison Kyong Mee Morrison (Jody)	562-809-1266 (Store) 562-505-0695 (Steve) 562-505-0696 (Jody)	354 Los Cerritos Center Cerritos, CA 90701 13507 Droxford St., Cerritos, CA 90703
109	Parkway	Suk H. Hong Won K. Choi Joong C. Lee	619.410.8747 (Mr Hong) 619.206.9073 (Mr. Choi) 619.886.2053 (Mr Lee)	673 Parkway Plaza #X-9 El Cajon, CA 92020 16275 Avenida Suavidad, San Diego, CA 92128
174	Vancouver	DH & TH, LLC By: David Yim Hyewon Yim	360-253-3988 (Store) 360-944-3723 (David's Cell) 360-597-5601 (Hyewon's Cell)	8700 NE Vancouver Mall Drive, # 266, Vancouver, WA 98662 1713 SE 185th Place, Vancouver, WA 98683
180	Bellevue	All about Candy, LLC By: James Chen Hyun-Duck Chen	425-430-1338 (Home) 425-999-5746 (James Cell) 206-248-7381 (Store)	7823 122nd Place SE, Newcastle, WA 98056 206-766-2031 (james office ONLY EMERGENCY CALLS)
104	Brea	Forever Sweets, LLC Christopher S. Chon	714-255-9901 (Store)	1065 Brea Mall #1124A Brea, CA 92821
485	Victor Valley	Sue Hye Sook Lee Sue Lee Paul Lee	760-245-5823 (Store) 949-878-2042 (sue cell) 949-878-0727 (paul Cell)	14400 Bear Valley Road Space #653 Victorville, CA. 92392
331	Somerset	Farah Nabar & Gus S. F N Treats		2800 W. Big Beaver Rd #V-348 Troy, MI



E-mail	COE
elisa_yoo@hotmail.com	1/24/04
	8/7/04 5/21/08
ischung@hotmail.com	5/26/04
thehollyfamily@sbcglobal.net	8/7/04
johnny@sweetfactorycandy.com	7/1/04
johnny@sweetfactorycandy.com	9/3/09
mkhong123@hotmail.com	1/26/04
younginchoi@hotmail.com	5/4/04
yhkim92835@gmail.com	1/26/04
sweetcastllec@yahoo.com	5/26/06
	10/20/13
rogermin@hotmail.com	1/11/07
	2/7/08
	4/22/08
heavenlysweetsllc@yahoo.com	6/7/07
sukhoan.hong@gmail.com	7/23/07
wkchoi2011@gmail.com	
joonglee@naver.com	
yvimster@comcast.net	9/18/08
hyewon_vim@comcast.net	
hyunduck61@hotmail.com	9/25/08
	1/9/09
phclee@gmail.com	6/18/09
ceo@sweetfactoryusa.com	10/1/12



TRU FRANCHISE, LLC
FRANCHISE DISCLOSURE DOCUMENT
EXHIBIT L
STATE SPECIFIC AMENDMENTS

EXHIBIT L
STATE SPECIFIC AMENDMENTS

ATTACHMENTS TO
THE FRANCHISE AGREEMENT
FOR SPECIFIC STATES

If any one of the following Attachments to the Franchise Agreement for Specific States (“Attachment”) is checked as an “Applicable Attachment” below, then that Attachment shall be incorporated into the Franchise Agreement entered into by TRU Franchise, LLC and you. To the extent any terms of an Applicable Attachment conflict with the terms of the Franchise Agreement, the terms of the Attachment shall supersede the terms of the Franchise Agreement.

Applicable Attachment

☐ California
☐ Washington

EXHIBIT L
STATE SPECIFIC AMENDMENTS
CALIFORNIA

The undersigned hereby acknowledge and agree that:

1. The California Department of Corporations requires that certain provisions contained in franchise documents be amended to be consistent with California law, including the California Franchise Investment Law, CAL. BUS. & PROF. CODE Section 31000 et seq., and the California Franchise Relations Act, CAL. BUS. & PROF. CODE Section 20000 et seq. To the extent that the Franchise Agreement (the "**Agreement**") contains provisions that are inconsistent with the following, such provisions are amended:

- a. California Business and Professions Code Sections 20000 through 20043 provide rights to the franchisee concerning termination, transfer, or nonrenewal of the Agreement. If the Agreement contains a provision that is inconsistent with the law, the law will control.
- b. Any provision in the Agreement requiring waiver of compliance with the California franchise law is void.
- c. Forum selection and choice of law provisions in the Agreement may not be enforceable
- d. Section 31125 of the California Corporations Code requires the franchisor to give the franchisee an FDD approved by the Commissioner of Corporations before the franchisor asks the franchisee to consider a material modification of its franchise agreement.
- e. If the Agreement contains a waiver of punitive damages and jury trial provision, these provisions may not be enforceable.
- 1. You are encouraged to consult private legal counsel to determine the applicability of California and federal laws ((such as Business and Professions Code Section 20040.5, Code of Civil Procedure Section 1281, and the Federal Arbitration Act) to any of the provisions of the Agreement restricting venue to a forum outside the State of California.
- f. If the Agreement contains a post-term non-compete provision, this provision may not be enforceable.
- g. If the Agreement requires binding arbitration, this provision may not be enforceable.
- h. FRANCHISOR'S WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE

CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT AT
WWW.DBO.CA.GOV.

- i. THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.
- j. THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF BUSINESS OVERSIGHT NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.
- k. YOU MUST SIGN A GENERAL RELEASE IF YOU RENEW OR TRANSFER YOUR FRANCHISE. CALIFORNIA CORPORATIONS CODE SECTION 31512 VOIDS A WAIVER OF YOUR RIGHTS UNDER THE FRANCHISE INVESTMENT LAW (CALIFORNIA CORPORATIONS CODE SECTIONS 31000 THROUGH 31516).
- l. The Agreement requires payment of liquidated damages that is inconsistent with California Civil Code Section 1671 and the liquidated damage clause may be unenforceable.
- 2. Each provision of this Attachment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of California law are met independently without reference to this Attachment.

EXHIBIT L

STATE SPECIFIC AMENDMENTS WASHINGTON

(Note: These Amendments also apply to the Area Development Agreement)

The undersigned hereby acknowledge and agree that:

The Washington Department of Financial Institutions requires that certain provisions contained in the franchise documents be amended to be consistent with Washington law. To the extent that the Franchise Agreement (the "**Agreement**") contains provisions that are inconsistent with the following, such provisions are amended:

1. The State of Washington has a statute, RCW 19.100.180, which may supersede the Agreement with respect to provisions regarding termination and renewal the franchise. There may also be court decisions which may supersede the Agreement with respect to provisions regarding termination and renewal of the franchise.
2. In any arbitration involving franchise purchased in Washington, the arbitration site shall be either in the state of Washington, on in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.
3. If any of the provisions in the Agreement are inconsistent with the relationship provisions of RCW 19.100.180 or other requirements of the Washington Franchise Investment Protection Act (the "**Act**"), the provisions of the Act will prevail over the inconsistent provisions.
4. A release or waiver of rights executed by Franchisee shall not include rights under the Act except when executed pursuant to a negotiated settlement after the agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.
5. To the extent required by the Act, transfer fees are collectable to the extent that they reflect Franchisor's reasonable estimated or actual costs in effecting a transfer.
6. Each provision of this Attachment shall be effective only to the extent, with respect to such provision, that the jurisdictional requirements of the Act are met independently without reference to this Attachment.

The following paragraph is to be added at the end of Item 17:

If any of the provisions in this Disclosure Document or Franchise Agreement are inconsistent with the related provisions of the Revised Code of Washington Section 19100180 or any other requirements of the Washington Franchise Investment Protection Act (the "**Act**"), the provisions of the Act will prevail over the inconsistent terms of the Disclosure Document or Franchise Agreement.

WASHINGTON

RIDER TO FRANCHISE AGREEMENT

In recognition of the requirements of the Washington Franchise Investment Protection Act (RCW 19100 180), the parties to the attached Franchise Agreement agree as follows:

The State of Washington has a statute, the Washington Franchise Investment Protector Act, RCW 19100 180 ("the Act"), which might supersede this Agreement or Franchisee's relationship with Franchisor, including in the areas of termination and renewal of Franchisee's franchise. There might also be court decisions which supersede the Agreement or Franchisee's relationship with Franchisor, including termination and renewal of Franchisee's franchise.

In any arbitration involving a franchise purchased in Washington, the arbitrator site shall be either in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

In the event of a conflict of laws, to the extent required by the Act, the provisions of the Act, Chapter 19100 RCW, shall prevail.

To the extent required by the Act, a release or waiver of rights executed by Franchisee shall not include rights under the Act, except when executed pursuant to a negotiated settlement after the Agreement is in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or effect 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, might not be enforceable.

To the extent required by the Act, transfer fees are collectable to the extent that they reflect Franchisor's reasonable estimate or actual costs in effecting a transfer.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of its terms.

ACKNOWLEDGMENT:

It is agreed that the applicable foregoing Applicable Attachment, if any, supersedes any inconsistent portion of the Franchise Agreement dated the _____ day of _____, 20__, and of the Franchise Disclosure Document, but only to the extent they are then valid requirements of an applicable and enforceable state law, and for only so long as such state law remains in effect, and the parties further acknowledge and agree that this Applicable Attachment is applicable only to those persons specifically subject to the protections of the state laws referenced in this Applicable Attachment.

DATED this _____ day of _____, 20__.

FRANCHISOR:

TRU FRANCHISE, LLC,

By: _____

Name: _____

Title: _____

FRANCHISEE:

_____,

- ☐ an individual;
- ☐ a _____ general partnership;
- ☐ a _____ limited partnership;
- ☐ a _____ limited liability company;
- ☐ a _____ corporation

By: _____

Its: _____, and individually

TRU FRANCHISE, LLC

FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT M

CONFIDENTIALITY AGREEMENT

(SEE EXHIBIT N)

TRU FRANCHISE, LLC

FRANCHISE DISCLOSURE DOCUMENT

EXHIBIT N

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

TRU FRANCHISE, LLC
NON-DISCLOSURE AND CONFIDENTIALITY
AGREEMENT

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (this "**Agreement**") is made as of this _____ day of _____, 20____, by and between _____ ("**Franchisee**"), on the one hand, and _____ ("**Recipient**"), on the other hand, with reference to the following facts:

A Trinity Retail Unlimited, LLC, a Nevada limited liability company (the "**Operating Company**"), an affiliate of TRU Franchise, LLC, a California limited liability company ("**Franchisor**"), acquired the assets, including the System (as defined below) of Sweet Candy, LLC, and SCSF Newco Inc., and Sweet Candy Franchise, LLC (the "**Predecessors**"), who had, as the result of the expenditure of time, skill, effort, and money, developed a distinctive system (the "**System**") for the operation of owner-operated, self-service candy and confection in-line stores and kiosks (collectively, "**Store**" or "**Stores**") identified by certain trade names, service marks and trademarks, such as "**Sweet Factory**" (the "**Proprietary Marks**").

B The distinguishing characteristics of the System include, without limitation, candy, gifting and novelty items which incorporate Franchisor's trade secrets and proprietary information (the "**Proprietary Products**"), operating methods and business practices, the relationship between Franchisor and its franchisees, distinctive external and interior design, decor, color scheme, fixtures, and furnishings, standards and specifications for products and supplies, service standards, uniform standards, specifications, and procedures for operations, procedures for inventory and management control, training and assistance, advertising and promotional programs, Franchisor's websites, Franchisor specified pricing, restrictions on ownership, standard operating and administrative procedures, and management and technical training programs, all of which may be changed, improved, and further developed by Franchisor from time to time. Franchisor continues to invest time, skill, effort, and money to further develop, test and use the Stores, the Confidential Information (as defined below) and the Factory System (as defined below) in order to maintain the Factory System's high standards of quality, skill and service.

C The "**Factory System**" is comprised of confidential information, including, without limitation, tangible and intangible information (whether or not in electronic form) relating to Franchisor's business operations, products and services, sources of materials and equipment, client management and other software, data, other content, formulations, patterns, compilations, programs, devices and processes, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for research, potential new or supplemental products and services, websites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators, current customer and prospective customer names and addresses, information regarding credit extensions to customers, customer service purchasing histories and prices charged

to customers, information regarding the skills and compensation of employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationships between Franchisor and other companies, persons or entities, knowledge or know-how concerning the methods of operation of the Store which may be communicated to Recipient, or of which Recipient may be apprised, and any other information or material considered proprietary by Franchisor whether or not designated as confidential information by Franchisor, that is not generally known by the public, or which deems independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or its affiliates and which is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy, and any other information moral, written, graphic or electronic form which, given the circumstances surrounding its disclosure, would be considered confidential (collectively, the "**Confidential Information**").

D Franchisor has and continues to protect the Confidential Information by, among other things, (i) not revealing the Confidential Information to unauthorized parties, (ii) requiring Sweet Factory franchisees to acknowledge and agree in writing that the Confidential Information is confidential, (iii) requiring Sweet Factory franchisees to agree in writing to maintain the confidentiality of the Confidential Information, (iv) monitoring electronic access to the Confidential Information by the use of passwords and other restrictions so that electronic access to the Confidential Information is limited to authorized parties, and (v) requiring its franchisees to return all Confidential Information to Franchisor upon the expiration or termination of their Franchise Agreements.

E Franchisor and Franchisee have entered into a Franchise Agreement under which Franchisor has granted Franchisee the right to own and operate a Store (the "**Franchised Business**") and to use the System, the Proprietary Marks and the Confidential Information in the operation of the Franchised Business.

F Franchisee is obligated under its Franchise Agreement with Franchisor to obtain a written agreement from each of Franchisee's employee who may have access to the Confidential Information and who may be the recipient of the disclosure of the Confidential Information to maintain the confidentiality of the Confidential Information, to obtain the written agreement of each employee to not use the Confidential Information other than in the course of his or her employment or engagement by Franchisee and to not disclose any of the Confidential Information to any unauthorized parties during the period of time that he or she is providing services for Franchisee and forever after his or her employment or engagement by Franchisee ends.

NOW, THEREFORE, IT IS AGREED

1 ACKNOWLEDGMENTS OF RECIPIENT

1.1 No Prior Experience, Information or Knowledge Prior to his or her employment or engagement by Franchisee, Recipient had no experience, information or knowledge

whatsoever about the operation of owner-operated self-service candy and confection stores or kiosks or Stores. Recipient's knowledge of the Confidential Information was obtained only from Franchisee following the Effective Date and only in the course of Recipient's employment or engagement by Franchisee.

1.2 **Confidential Information** The Confidential Information includes all of the items included elsewhere in this Agreement and, in addition, without limitation, any other information or material considered proprietary by Franchisor, whether or not designated as Confidential Information by Franchisor but that is not generally known by the public, or which deems independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor and which is the subject of efforts by Franchisor that are reasonable under the circumstances to maintain its secrecy or any other information in oral, written, graphic or electronic form which, given the circumstances surrounding such disclosure, would be considered confidential. Confidential information also includes the manner in which any of the above-described items may be combined with other information or products or synthesized or used by Franchisor, Franchisee or Recipient. Confidential Information does not include any information which (a) was in the lawful and unrestricted possession of Recipient prior to its disclosure by Franchisor, (b) is or becomes generally available to the public by acts other than those of Recipient after receiving it, (c) has been received lawfully and in good faith by Recipient from a third party who did not deem it from Franchisor or Franchisee, or (d) is shown by acceptable evidence to have been independently developed by Recipient.

1.3 **Independent Value** The Confidential Information (i) is not generally known by the public or parties other than Franchisor, its affiliates, its franchisees and Franchisee, (u) deems independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor or Franchisee, and (m) is the subject of extensive efforts by Franchisor that are reasonable under the circumstances to maintain the secrecy of the Confidential Information.

1.4 **Valuable and Proprietary**. The Confidential Information has been developed by Franchisor, its Predecessors, and their respective affiliates by the investment of time, skill, effort and money and is widely recognized by the public, of substantial value, and is proprietary, confidential and constitutes trade secrets of Franchisor, its Predecessors, and their respective affiliates.

2 COVENANTS OF RECIPIENT

Recipient agrees that so long as Recipient is employed or engaged by Franchisee and forever after his or her employment or engagement by Franchisee ends:

2.1 **Maintain Confidentiality**. Recipient will fully and strictly maintain the confidentiality of the Confidential Information, will exercise the highest degree of diligence in safeguarding the Confidential Information and will not disclose or reveal the Confidential Information to any person other than Franchisee or another person employed or engaged by Franchisee while an employee of Franchisee and will then do so only to the degree necessary to carry out Recipient's duties as an

employee of Franchisee.

2.2 **No Reproduction or Use** Recipient will not directly or indirectly reproduce or copy any Confidential Information and will make no use of any Confidential Information for any purpose whatsoever except as may be required while Recipient is employed or engaged by Franchisee and will then do so only in accordance with the provisions of this Agreement and only to the degree necessary to carry out Recipient's duties as an employee of Franchisee.

2.3 **Restrictions** Recipient acknowledges and agrees that due to the valuable specialized training and access to the Confidential Information that Recipient will enjoy while employed or engaged by Franchisee:

2.3.1 Recipient will not, while employed or engaged by Franchisee, either directly or indirectly, for himself or herself, or through, on behalf of, or in conjunction with any other person or entity (i) divert or attempt to divert any present or prospective Store customer to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System, or (ii) employ or seek to employ any person who is or has been within the previous thirty (30) days employed by Franchisee or Franchisor or an affiliate of Franchisor as a manager or supervisory employee, or otherwise directly or indirectly induce such person to leave his or her employment, or (iii) own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any self-service candy and confection business that is the same or similar to the Store which offers one-price candy and confections for sale at retail in bulk or which sells candy and confection products in bulk at retail in a manner similar to the System.

2.3.2 Recipient will not, for a three (3) year period following the date that Recipient is no longer employed or engaged by Franchisee, either directly or indirectly, for himself or herself, or through, on behalf of, or in conjunction with any other person or entity (i) divert or attempt to divert any present or prospective Store customer to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System, or (ii) employ or seek to employ any person who is or has been within the previous thirty (30) days employed by Franchisee or Franchisor or an affiliate of Franchisor as a manager or supervisory employee, or otherwise directly or indirectly induce such person to leave his or her employment, or (iii) own, maintain, advise, operate, engage in, be employed by, make loans to, invest in, provide any assistance to, or have any interest in (as owner or otherwise) or relationship or association with, any self-service candy and confection business that is the same or similar to the Store which offers one-price candy and confections for sale at retail in bulk or which sells candy and confection products in bulk at retail in a manner similar to the System.

2.4 **Third Party Beneficiary** Franchisor is, and shall be and remain, a third-party beneficiary of this Agreement and shall have the independent right to enforce the terms of this Agreement.

3 **GENERAL TERMS**

3.1 **Injunction** Recipient recognizes the unique value and secondary meaning attached to the Confidential Information and the elements of the System and agrees that Recipient's noncompliance with the terms of this Agreement or any unauthorized or improper use of the Confidential Information by Recipient will cause irreparable damage to Franchisor and its franchisees. Recipient therefore agrees that if Recipient should engage in any unauthorized or improper use or disclosure of the Confidential Information, Franchisor and Franchisee, independently, will be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction without notice or the posting of any bond, to prevent any unauthorized or improper use or disclosure of the Confidential Information. In addition to any other remedies prescribed by law, due to the unrepairable damage that would result to Franchisor and Franchisee from any violation of this Agreement, Recipient acknowledges and agrees that any claim Recipient believes he or she may have against Franchisor or Franchisee will be deemed to be a matter separate and apart from Recipient's obligations under this Agreement and will not entitle Recipient to violate or justify any violation of the provisions of this Agreement.

3.2 **Heirs and Successors: Entire Agreement** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns. This Agreement represents the entire understanding between the parties regarding the subject matter of this Agreement and supersedes all other negotiations, agreements, representations and covenants, oral or written. This Agreement may not be modified except by a written instrument signed by Franchisor and Recipient that expressly modifies this Agreement. The parties intend this Agreement to be the entire integration of all of their agreements on this subject of any nature regarding the subject matter of this Agreement. No other agreements, representations, promises, commitments or the like, of any nature, exist between the parties.

3.3 **No Right to Use Proprietary Marks or System** This Agreement is not a license of any sort, and does not grant Recipient any right to use or to license the use of, the Confidential Information, which right is expressly reserved by Franchisor.

3.4 **Waiver and Validity.** Failure by Franchisor or Franchisee to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Any waiver, including a waiver of default in any one instance, shall not constitute a continuing waiver or a waiver in any other instance. Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portions, and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect.

3.5 **Headings and Gender.** The headings in this Agreement are for purposes of convenience only and shall not be used in construing the provisions of this Agreement. As used in this Agreement, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular.

3.6 **Attorneys' Fees.** If Franchisor becomes a party to any legal proceedings concerning this Agreement by reason of any act or omission of Recipient, Recipient shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings. If any party to this Agreement commences any legal proceeding against another party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs of payment.

3.7 **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

3.8 **Notices** Except as otherwise expressly provided herein, all written notices and reports permitted or required to be delivered by the parties under this Agreement shall be deemed delivered at the time delivered by hand, one (1) business day after transmission by fax or email (with a confirmation copy sent by regular United States mail), or three (3) days after placement in the United States mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed as follows:

Any notice or demand to Franchisee shall be given to

Fax _____

With a copy to

TRU Franchise, LLC
1590 N. Batavia Street
#2
Orange, California
92867
Fax 714-922-3931
Attention President

Any notice or demand to Recipient shall be given to

Fax _____

Any party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

3.9 **Governing Law and Venue** This Agreement takes effect upon its acceptance and execution by Franchisee, and shall be interpreted and construed under the laws of California. In the event of any conflict of law, the law of California shall prevail, without regard to the application of California conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of California, and if the Store is located outside of California and such provision would be enforceable under the laws of the state in which the Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this **Section 3.9** is intended by the parties to subject this Agreement to any franchise or similar law, rules, or regulation of the state of California to which it would not otherwise be subject. 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 California, county of Orange. The parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

3.10 **Counterparts and Electronic Copies** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date.

FRANCHISEE:

RECIPIENT:

Name -----

Title

Exhibit O to FDD

LEASE ADDENDUM – FRANCHISEE LEASE

Assignment of Lease (for Collateral Purposes)

FOR VALUE RECEIVED, on this ____ day of _____, 20____, the undersigned (“**Assignor**”) grants, conveys, assigns, transfers and sets over to **TRU Franchise, LLC**, a California limited liability company and a wholly-owned subsidiary of **Trinity Retail Unlimited, LLC**, a Nevada limited liability company (“**Assignee**”), all of Assignor’s right and title to and interest in that certain lease, a copy of which is attached as Appendix A (the “**Lease**”), dated _____, by and between _____ (“**Lessor**”) and Assignee, respecting the Subject Property commonly known as Suite _____ of the shopping center located at _____, as more particularly described on Exhibit “A” attached hereto and incorporated by reference, and any and all improvements now or hereafter located thereon (such land and improvements being herein referred to collectively as the “**Subject Property**”). This assignment is for collateral purposes only, and, except as specified in this document, Assignee will have no liability or obligation of any kind whatsoever arising from or in connection with this assignment or the Lease unless and until Assignee takes possession of the Subject Property according to the terms of this document and assumes Assignor’s obligations under the Lease.

Assignor represents and warrants to Assignee that it has full power and authority to assign the Lease and that Assignor has not previously assigned or transferred, and is not otherwise obligated to assign or transfer, any of its interest in the Lease or the Subject Property.

Upon Assignor’s Event of Default (as defined in the Lease) or a default under the franchise agreement for a retail outlet between Assignee and Assignor (the “**Franchise Agreement**”), or in the event Assignor defaults under any document or instrument related to the Franchise Agreement, Assignee has the right to take possession of the Subject Property and expel Assignor from the Subject Property; provided, however, if an Event of Default exists at such time Assignee expels Assignor from the Subject Property, prior to Assignee taking possession of the Subject Property, Assignee must cure such Event of Default within the 30-day cure period as described section (b) of that certain Consent to Lease Addendum and Agreement of Lessor, dated of even date herewith. In the event Assignee takes possession of the Subject Property and pursuant to this Addendum and Assignment and following the date on which Assignee assumes the Lease in writing, Assignor will have no further right and title to or interest in the Lease, other than the continued liability following an assignment as expressly set forth in the Lease. Further, following such assignment, Assignor shall be liable to Assignee for all past due rents and any other amount Assignee is required to pay Lessor to effectuate the assignment this Addendum and Assignment contemplates.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without Assignee’s prior written consent. Throughout the term of the Franchise Agreement, Assignor agrees that it will elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days before the last day upon which the option must be exercised, unless Assignee agrees otherwise in writing. Upon Assignee’s failure to agree otherwise in writing, and upon Assignor’s failure to elect to extend or renew the Lease as required, Assignor appoints Assignee as its true and lawful attorney-in-fact with the authority to exercise the extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting the extension or renewal.

ASSIGNOR:

Dated: _____

CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, Notary Public, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

----- OPTIONAL -----

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: LEASE ADDENDUM – FRANCHISE LEASE

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

____ Individual
____ Corporate Officer -- Title(s): ____ President ____
____ Partner -- ____ Limited ____ General
____ Attorney-in-Fact
____ Trustee
____ Guardian or Conservator
____ Other: _____

Signers are Representing: _____



Appendix A

[Copy of Master Lease]

Exhibit A

[Legal Description of Leased Property]

CONSENT TO LEASE ADDENDUM AND AGREEMENT OF LESSOR

The undersigned, being the Lessor under the Lease:

- (a) Agrees to notify Assignee in writing of, any default by Assignor under the Lease at the time Lessor notifies Assignor (all capitalized terms not otherwise defined shall have their meanings set forth in the Lease Addendum, as defined below);
- (b) Agrees that Assignee will have the right, but not the obligation, to cure any default by Assignor under the Lease within the time period set forth in the Lease for Assignor to cure such default and if there is no notice and cure period in the Lease for such default, Assignee shall have 10 days to cure such default after receipt of notice of such default, as provided for under section (a) above;
- (c) Consents to Assignee's collateral assignment of the Lease to Assignor and agrees that, prior to taking possession of the Subject Property, pursuant to Assignee's rights under that certain Lease Addendum – Franchisee Lease, dated of even date herewith, by and between Assignor and Assignee ("**Lease Addendum**"), Assignee may (i) provide Lessor with written notice five (5) days prior to the date on which such possession will commence, (ii) assume the obligations of "tenant" under the Lease in writing and (iii) if an Event of Default or default under the Lease then exists, cure such Event of Default or default within the applicable period provided for in section (b) above. Assignee hereby agrees and acknowledges that any such possession by Assignee of the Subject Property shall be subject to all terms and provisions of the Lease, including but not limited to the Permitted Use (as such term is defined in the Lease). Upon Assignee's satisfaction of (i), (ii) and (iii) above, Lessor will recognize Assignee as the tenant under the Lease, but Assignor shall continue to be liable to Lessor for its obligations under the Lease following such assignment and assumption of the Lease by Assignee.

In the event Assignee does not cure any default or Event of Default within the time period described in section (b) above, Lessor shall have the right to exercise all rights and remedies available to it under the Lease without regard to any rights Assignee may have.

Lessor agrees that Assignee may further assign the Lease to, or enter into a sublease with, a person, firm or corporation so long as such person, firm or corporation agrees to assume the tenant's obligations under the Lease in writing and is approved by Lessor. Lessor's decision to approve any such proposed assignment or sublease may be based on Lessor's consideration of relevant factors in connection with the proposed assignment or sublease, including, without limitation, the financial condition, credit-worthiness and business reputation of the proposed assignee or subtenant. Lessor may require a replacement or substitute guarantor of the Lease or a new guarantor (if there is not then a current guaranty of the Lease) as a condition to its approval of any such assignment. Assignee's request for Lessor's approval of any assignment of the Lease or subletting of the Subject Property shall be subject to all assignment requirements as set forth in the Lease (including consent and notice).

Upon Assignee's assignment (but not sublease) approved by Lessor in accordance with this consent, Assignee will have no further liability or obligation under the Lease as assignee, tenant or otherwise, other than to represent and certify that the additional assignee operates the Subject Property the Lease demises as a franchised retail outlet of Assignee.

Any statement, notice, or other communications that Lessor or Assignee may desire or be required to give to the other shall be deemed sufficiently given or rendered if hand delivered, or if sent by registered or certified mail, return receipt requested, addressed to the addresses set forth below,

respectively, or to such other addresses as they shall designate from time to time by prior written notice, and such notice shall be effective when the same is received or mailed as herein provided.

Assignee:

TRU FRANCHISE, LLC,
1590 N. Batavia Street #2
Orange, California 92867
Attn: John Kim

Lessor:

Attn: _____

Dated as of the _____ day of _____, 20____

LESSOR:

By: _____

AGREED TO AND ACKNOWLEDGED BY:

ASSIGNEE:

TRU FRANCHISE, LLC
a California limited liability company

By: _____
Name: _____
Its: _____

Date: _____

ASSIGNOR:

By: _____
Name: _____
Its: _____

RECEIPT

This Disclosure Document summarizes provisions of the franchise agreement and other information in plain language. Read this Disclosure Document and all agreements carefully. If TRU Franchise, LLC offers you a franchise, TRU Franchise, LLC must provide this Disclosure Document to you fourteen (14) calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

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 comes first.

If TRU Franchise, LLC does not deliver this Disclosure Document on time or if it contains a false or misleading statement or a material omission, a violation of federal and state law may have occurred and should be reported to The Federal Trade Commission, Washington D.C. 20580 and the appropriate State Agency identified at Exhibit A.

The franchisor is *TRU Franchise, LLC*,
Located at *1590 N. Batavia Street #2, Orange, California 92868*.
Issuance Date: *June 4, 2018*.

The name, principal business address and telephone number of each Franchise Seller offering the Franchise:

We authorize the persons and/or entities listed in Exhibit A to receive service of process for us. I have received a Disclosure Document dated *June 4, 2018*. This Disclosure Document included the following Exhibits.

Exhibit A -- List of State Administrators and Agents
Exhibit B -- Table of Contents
Exhibit C -- Financial Statements
Exhibit D -- Initial Training Agreement
Exhibit E -- Franchise Agreement and Attachments
Exhibit F -- Addendum for Turnkey Unit
Exhibit G -- Area Development Agreement
Exhibit H -- Asset Purchase Agreement and Attachments
Exhibit I -- Franchise Compliance Certification
Exhibit J -- List of Franchisees
Exhibit K -- State Specific Addenda
Exhibit L -- Candidate Confidentiality Agreement
Exhibit M -- Confidentiality Agreement
Exhibit N -- Non-Disclosure Agreement
Exhibit O -- Lease Addendum
Exhibit P -- Receipts

Please sign and date this copy of the Receipt, and return it to: Royce Fernando, 1590 N. Batavia Street #2, Orange, California 92868.

Print Name _____

Sign Name _____

Date _____

RECEIPT

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Sign Name _____

Date _____