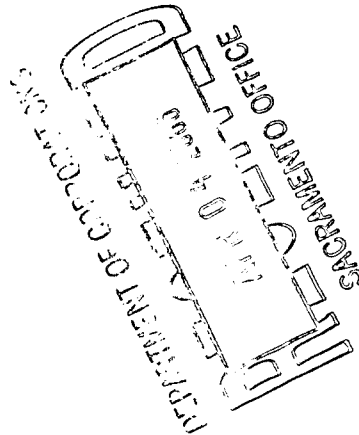
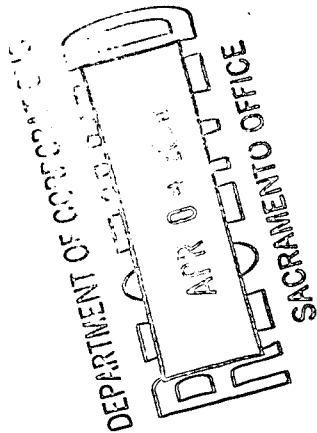


Exhibit B
Franchise Agreement and Exhibits





MANHATTAN BAGEL COMPANY, INC.

FRANCHISE AGREEMENT

**MANHATTAN BAGEL COMPANY, INC.
FRANCHISE AGREEMENT**

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Exhibits:

- A Guarantee, Indemnification and Acknowledgement
- B List of Principals
- C EFT Authorization Form
- D ADA Certification
- E Lease Rider
- F Non-Disclosure and Non-Competition Agreement

**MANHATTAN BAGEL COMPANY, INC.
FRANCHISE AGREEMENT**

THIS FRANCHISE AGREEMENT (the "**Agreement**") is made and entered into on this _____ day of _____, 200__ (the "**Effective Date**"), by and between:

- Manhattan Bagel Company, Inc., a New Jersey corporation with its principal place of business at 1687 Cole Boulevard, Golden, Colorado 80401 ("**Franchisor**"); and
- _____ a [resident of] [corporation organized in] [limited liability company organized in] _____ and having offices at _____ ("**Franchisee**").

RECITALS:

A. WHEREAS, Franchisor owns a format and system (the "**System**") relating to the establishment and operation of businesses operating in buildings that bear Franchisor's interior and exterior trade dress, under the Manhattan Bagel name and marks (the "**Restaurants**"), and specializing in the sale of proprietary items which currently include bagels, cheese spreads, muffins, gourmet coffee and other special recipe beverages and food items, and such additional proprietary products Franchisor may specify from time to time ("**Proprietary Products**"), as well as non-proprietary items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption and such other non-proprietary products Franchisor may designate from time to time (collectively, the "**Products**");

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

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

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

E. WHEREAS, Franchisee desires to enter into the business of operating a Restaurant under the System, wishes to utilize the Proprietary Marks and wishes to obtain a franchise from Franchisor for that purpose, as well as to receive the training and other assistance provided by Franchisor in connection therewith; and

F. WHEREAS, Franchisee understands and acknowledges the importance of Franchisor's high standards of quality, cleanliness, appearance, and service and the necessity of operating the business franchised hereunder in conformity with Franchisor's standards and specifications.

NOW, THEREFORE, the parties, in consideration of the undertakings and commitments of each party to the other party set forth herein, hereby agree as follows:

1 GRANT

1.1 Upon the terms and conditions set forth in this Agreement, Franchisor hereby grants to Franchisee the right and franchise, and Franchisee accepts and undertakes the obligation, to: (a) operate a Restaurant under the System; (b) to use, only in connection with the Restaurant, the Proprietary Marks and the System, as they may be changed, improved, or further developed from time to time by Franchisor; and (c) and to do so only at the Approved Location (as defined in Section 1.2 below).

1.2 The street address of the location approved hereunder is:

(the "**Approved Location**"). Franchisee shall not relocate the Restaurant without Franchisor's prior written consent. Franchisor shall have the right to grant or withhold any approvals under this Section 1.2 and if approval is granted, such approval shall not be deemed to be a guarantee, representation, or assurance by Franchisor that Franchisee's Restaurant shall be profitable or successful.

1.3 During the term of this Agreement, Franchisor shall not establish, nor license any other person to establish, another Restaurant at any location within one-half (1/2) mile of the Restaurant (the "**Protected Territory**"), except as otherwise provided in this Agreement (including but not limited to the provisions below relating to Co-Branded Locations and Institutional Facilities). Franchisor retains all other rights, and may, among other things, on any terms and conditions Franchisor deems advisable, and without granting Franchisee any rights therein:

1.3.1 establish, and license others to establish, Restaurants at any location outside the Protected Territory notwithstanding their proximity to the Protected Territory or the Approved Location or their actual or threatened impact on sales at Franchisee's Restaurant;

1.3.2 establish, and license others to establish, Restaurants at any Institutional Facility or Co-Branded Location (as those terms are defined below) within or outside the Protected Territory, notwithstanding such Restaurants' proximity to the Approved Location or their actual or threatened impact on sales at Franchisee's Restaurant;

1.3.3 establish, and license others to establish, restaurants under other systems or other proprietary marks, which restaurants may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which restaurants may be located within or outside the Protected Territory, notwithstanding such restaurants' proximity to the Approved Location or their actual or threatened impact on sales at Franchisee's Restaurant;

- 1.3.4 acquire and operate any business or restaurant of any kind, whether located within or outside the Protected Territory notwithstanding such business' or restaurant's proximity to the Approved Location or its actual or threatened impact on sales at Franchisee's Restaurant; and
- 1.3.5 sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products, from any location or to any purchaser (including, but not limited, to sales made at retail locations, supermarkets, gourmet shops, mail order, and on the Internet), so long as such sales are not conducted from a Restaurant operated from a location inside the Protected Territory (excluding an Institutional Facility).
 - 1.3.5.1 The term "**Co-Branded Location**" is agreed to include, among other things, businesses of any sort within which a "Manhattan Bagel" facility is established and operated, including for example book stores, department stores, restaurants, and supermarkets.
 - 1.3.5.2 The term "**Institutional Facility**" is agreed to include, among other things: airports; bus stations; factories; federal, state or local government facilities (including military bases); hospitals and other health-care facilities; recreational facilities; schools, colleges and other academic facilities; seasonal facilities; shopping malls; theaters; train stations; and workplace cafeterias.
- 1.4 Franchisee shall offer and sell Products only from the Restaurant, only in accordance with the requirements of this Agreement and the procedures set forth in the Manuals, and only to: (a) retail customers for consumption on the Restaurant's premises or for personal, carry-out consumption; (b) delivery customers; and (c) wholesale customers. As used in this Agreement, the following terms shall have the following meanings:
 - 1.4.1 The term "**delivery customers**" means customers that are located within the Protected Territory that purchase products for delivery to (and consumption in) their home or office.
 - 1.4.2 The term "**wholesale customers**" means customers that: (a) purchase products totaling One Thousand Dollars (\$1,000) or less a month from Franchisee; (b) are not in the business of selling bagels; and (c) do not, in turn, use any of the Proprietary Marks in connection with serving and/or reselling Products purchased from Franchisee. Upon Franchisee's written request that Franchisor waive some or all of the conditions in the preceding sentence with respect to one or more proposed wholesale customers, Franchisor shall have the right to grant or withhold consent, in writing to such a waiver.
- 1.5 Except as specified in Section 1.4 above, Franchisee shall not offer or sell Products through any other means, including without limitation through satellite locations, sales or mail order catalogs, temporary locations, carts or kiosks, the Internet, or through any other electronic or print media.
- 1.6 Notwithstanding anything to the contrary in this Agreement, Franchisee acknowledges and agrees that: (a) Franchisee shall have no rights with respect to any other business operated by Franchisor and/or Franchisor's affiliates, including but not limited to, Noah's New York Bagels, Chesapeake Bagels, Einstein Bros Bagels, New World Coffee, and/or Willoughby's Tea and Coffee ("**Other Brands**"); and (b) Franchisor shall have the right to operate and license others to operate

restaurants under the Other Brands at any location whatsoever, notwithstanding such restaurants' proximity to the Approved Location or the Protected Territory, or the actual or threatened impact such restaurants might have on sales at Franchisee's Restaurant.

2 TERM AND RENEWAL

- 2.1 Except as otherwise provided herein, the term of this Agreement shall expire ten (10) years from the earlier of: (a) six (6) months after the Effective Date; or (b) the date that Franchisee first opens its Restaurant for business (the "**Commencement Date**"); unless this Agreement is sooner terminated in accordance with its provisions.
- 2.2 Franchisee may, at its option, renew this Agreement for one (1) additional term, of ten (10) years, subject to the following conditions, each of which must be met prior to renewal:
- 2.2.1 Franchisee shall give Franchisor written notice of Franchisee's election to renew no fewer than six (6) months nor more than twelve (12) months prior to the end of the initial term;
- 2.2.2 Franchisee shall remodel and refurbish the Restaurant to comply with the current company standards in effect for new Restaurants as described in Section 5.10 below;
- 2.2.3 Franchisee shall not be in default of any provision of this Agreement, any amendment to this Agreement, any successor to this Agreement, or any other agreement between Franchisee and Franchisor or its subsidiaries and affiliates; and, in the reasonable judgment of Franchisor, Franchisee shall have substantially complied with all the terms and conditions of this Agreement, such other agreements, as well as the operating standards prescribed by Franchisor during the term of this Agreement;
- 2.2.4 Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its subsidiaries and affiliates, and to the System-wide advertising fund (the "**NAF**") and/or a market advertising fund (an "**MAF**"), and shall have timely met those obligations throughout the term of this Agreement;
- 2.2.5 Franchisee shall execute Franchisor's then-current form of franchise agreement, which agreement shall supersede this Agreement in all respects (except with respect to the renewal provisions of the new franchise agreement, which shall not supersede this Section 2), and Franchisee acknowledges that the terms, conditions, and provisions of which, and the obligations of the parties thereto, may differ substantially from the terms, conditions, provisions and obligations in this Agreement, including, without limitation, a higher percentage royalty fee and advertising contribution;
- 2.2.6 Franchisee shall pay, in lieu of an initial franchise fee, a renewal fee equal to fifty percent (50%) of Franchisor's then-current initial franchise fee for a new Restaurant, or Ten Thousand Dollars (\$10,000), whichever is greater;
- 2.2.7 Franchisee shall execute a general release, in a form prescribed by Franchisor, of any and all claims against Franchisor and its subsidiaries and affiliates, and their respective officers, directors, agents, and employees;

2.2.8 Franchisee and its personnel shall comply with Franchisor's then-current qualification and training requirements; and

2.2.9 Franchisee shall be current with respect to its obligations to its lessor, suppliers, and any others with whom it does business.

3 FRANCHISOR'S DUTIES

3.1 Prior to the date of opening of the Restaurant, Franchisor shall provide to Franchisee, and to Franchisee's Highly Trained Personnel (as defined in Section 5.5.1 below) such training programs as Franchisor may designate, to be conducted at such time(s) and location(s) designated by Franchisor. Franchisor shall also provide such ongoing training as it may, from time to time, deem appropriate. Franchisor shall be responsible for the cost of instruction and materials (except as set forth in Section 5.5.4 below), subject to the terms set forth in Sections 5.5 and 5.6 below.

3.2 Franchisor shall make available, at no charge to Franchisee, prototype architectural plans and specifications for the construction of a Restaurant and for the exterior and interior design and layout, fixtures, furnishings, equipment, and signs. Franchisee acknowledges that such specifications shall not contain the requirements of any federal, state or local law, code or regulation (including without limitation those concerning the Americans with Disabilities Act (the "ADA") or similar rules governing public accommodations or commercial facilities for persons with disabilities), nor shall such plans contain the requirements of, or be used for, construction drawings or other documentation necessary to obtain permits or authorization to build a specific Restaurant, compliance with all of which shall be Franchisee's responsibility and at Franchisee's expense. Franchisee shall adapt, at Franchisee's expense, the standard specifications to the Restaurant location, subject to Franchisor's approval, as provided in Section 5.2.1 below, which will not be unreasonably withheld, provided that such plans and specifications conform to Franchisor's general criteria. Franchisee understands and acknowledges that Franchisor has the right to modify the prototype architectural plans and specifications as Franchisor deems appropriate from time to time (however Franchisor will not modify the prototype architectural plans and specifications for the Restaurant developed pursuant to this Agreement once those prototype architectural plans and specifications have been given to Franchisee).

3.3 Franchisor shall have the right (but not the obligation) to provide a representative to be present at the opening of the Restaurant. Franchisor will provide such additional on-site pre-opening and opening supervision and assistance as Franchisor deems advisable.

3.4 Franchisor shall provide Franchisee, on loan, one (1) copy of the confidential operations manuals (the "**Manuals**"), as more fully described in Section 7 below.

3.5 Franchisor shall review and shall have the right to approve or disapprove all advertising and promotional materials that Franchisee proposes to use, pursuant to Section 10 below.

3.6 Franchisor shall administer the "Manhattan Bagel" National or Market Advertising Funds, if such funds exist or are created, in the manner set forth in Section 10 below.

- 3.7 Franchisor shall assist Franchisee in developing and conducting the Grand Opening Advertising Program (as described in Section 10.8 below), which program shall be conducted at Franchisee's expense.
- 3.8 Franchisor shall inspect the Restaurant prior to the opening of the Restaurant. Franchisee shall not commence operation of the Restaurant without Franchisor's prior written approval.
- 3.9 Franchisor will provide periodic assistance to Franchisee in the marketing, management, and operation of the Restaurant as Franchisor determines at the time(s) and in the manner determined by Franchisor.
- 3.10 Franchisee acknowledges and agrees that any designee, employee, or agent of Franchisor may perform any duty or obligation imposed on Franchisor by the Agreement, as Franchisor may direct.
- 3.11 In fulfilling its obligations pursuant to this Agreement, and in conducting any activities or exercising any rights pursuant to this Agreement, Franchisor (and its affiliates) shall have the right: (i) to take into account, as it sees fit, the effect on, and the interests of, other franchised businesses and systems and in which Franchisor has an interest and on Franchisor's (and its affiliates') own activities; (ii) to share market and product research, and other proprietary and non-proprietary business information, with other franchised businesses and systems in which Franchisor (or its affiliates) has an interest, or with Franchisor's affiliates; (iii) to introduce proprietary and non-Proprietary Items or operational equipment used by the System into other franchised systems in which Franchisor has an interest; and/or (iv) to allocate resources and new developments between and among systems, and/or Franchisor's affiliates, as Franchisor sees fit. Franchisee understands and agrees that all of Franchisor's obligations under this Agreement are subject to this Section 3.13, and that nothing in this Section 3.13 shall in any way affect Franchisee's obligations under this Agreement.

4 ROYALTY FEES; SALES REPORTING

- 4.1 Franchisee shall pay Franchisor an initial franchise fee of Twenty Thousand Dollars (\$25,000) (the "**Initial Franchise Fee**"), which shall be due and payable on the day that this Agreement is signed. If Franchisee is an existing franchisee of Franchisor and is opening a second (2nd) or subsequent franchised location, Franchisee shall pay a reduced Initial Franchise Fee of Fifteen Thousand Dollars (\$15,000). Payment of the Initial Franchise Fee shall be non-refundable in consideration of administrative and other expenses incurred by Franchisor in granting this franchise and for Franchisor's lost or deferred opportunity to franchise others.
- 4.2 For each Week during the term of this Agreement, Franchisee shall: (a) pay Franchisor a continuing royalty fee in an amount equal to five percent (5%) of the Gross Sales of the Restaurant ("**Royalty Fees**"); and (b) report to Franchisor in writing (or electronically) its Gross Sales (a "**Sales Report**"). As used in this Agreement, the following terms shall have the following meanings:
 - 4.2.1 The term "**Gross Sales**" means all revenue from the sale of all Products and all other income of every kind and nature related to, derived from, or originating from the Restaurant, including proceeds of any business interruption insurance policies, whether at

retail or wholesale (whether such sales are permitted or not), whether for cash, check, or credit, and regardless of collection in the case of check or credit; provided, however, that "Gross Sales" excludes any customer refunds, coupon sales, sales taxes, and/or other taxes collected from customers by Franchisee and actually transmitted to the appropriate taxing authorities.

- 4.2.2 The term "Week" means the period starting with the commencement of business on Monday and concluding at the close of business on the following Sunday (or, if the Restaurant is not open on a Sunday, the immediately preceding business day); however, Franchisor shall have the right to designate in writing any other period of not less than seven days to constitute a "Week" under this Agreement.
- 4.3 All payments required by Section 4.2 above and Section 10 below based on the Gross Sales for the preceding Week, and the Sales Report required by Section 4.2 for the Gross Sales for the preceding Week, shall be paid and submitted so as to be received by Franchisor by the third business day of each Week. Franchisee shall deliver to Franchisor any and all reports, statements and/or other information required under Section 9.3 below, at the time and in the format reasonably requested by Franchisor. Franchisee shall establish an arrangement for electronic funds transfer or deposit of any payments required under Sections 4 or 10. Franchisee shall execute Franchisor's current form of "Authorization Agreement for Prearranged Payments (Direct Debits)," a copy of which is attached to this Agreement as Exhibit C, and Franchisee shall comply the payment and reporting procedures specified by Franchisor in the Manual. Franchisee expressly acknowledges and agrees that Franchisee's obligations for the full and timely payment of Royalty Fees and Advertising Contributions (and all other amounts provided for in this Agreement) shall be absolute, unconditional, fully earned, and due upon Franchisee's generation and receipt of Gross Sales. Franchisee shall not for any reason delay or withhold the payment of all or any part of those or any other payments due hereunder, put the same in escrow or set-off same against any claims or alleged claims Franchisee may allege against Franchisor, the System Advertising Fund, the MAF or others. Franchisee shall not, on grounds of any alleged non-performance by Franchisor or others, withhold payment of any fee, including without limitation Royalty Fees or Advertising Contributions, nor withhold or delay submission of any reports due hereunder including but not limited to Sales Reports.
- 4.4 Franchisee shall pay Franchisor (or Franchisor's affiliate or designee) a systems support fee for each accounting period in such reasonable amount as Franchisor may periodically designate. (Franchisee acknowledges that upon execution of this Agreement, the systems support fee shall be approximately \$275-\$400 per accounting period.) For the purpose of this Section 4.4, the term "accounting period" shall mean the four- or five-week periods that Franchisor may reasonably designate in writing to divide each fiscal year (so long as there are no more than twelve (12) such accounting periods per year), or calendar months if so designated in writing by Franchisor.
- 4.5 Franchisee shall not subordinate to any other obligation its obligation to pay Franchisor the royalty fee and/or any other fee or charge payable to Franchisor, whether under this Agreement or otherwise.
- 4.6 Any payment or report not actually received by Franchisor (or the appropriate advertising fund) on or before such date shall be deemed overdue. If any payment is overdue, Franchisee shall pay Franchisor, in addition to the overdue amount, interest on such amount from the date it was due until paid, at the rate of one and one-half percent (1.5%) per month, 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.

- 4.7 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.

5 FRANCHISEE'S DUTIES

- 5.1 Franchisee understands and acknowledges that every detail of the Restaurant is important to Franchisee, Franchisor, and other franchisees in order to develop and maintain high operating standards, to increase the demand for the Products sold by all franchisees, and to protect Franchisor's reputation and goodwill.
- 5.2 Before commencing any construction of the Restaurant, Franchisee, at its expense, shall comply, to Franchisor's satisfaction, with all of the following requirements:
- 5.2.1 Franchisee shall employ a qualified, licensed architect or engineer who is reasonably acceptable to Franchisor to prepare, for Franchisor's approval, preliminary plans and specifications for site improvement and construction of the Restaurant based upon prototype design and image specifications furnished by Franchisor in the Standards Manual. Franchisor's approval shall be limited to conformance with Franchisor's standard image specifications and layout and shall not relate to Franchisee's obligations with respect to any federal, state and local laws, codes and regulations including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Restaurant, which subjects shall be Franchisee's sole responsibility.
- 5.2.2 Franchisee shall comply with all federal, state and local laws, codes and regulations, including, without limitation, the applicable provisions of the ADA regarding the construction, design and operation of the Restaurant. If Franchisee receives any complaint, claim, or other notice alleging a failure to comply with the ADA, Franchisee agrees that it shall provide Franchisor with a copy of such notice within five (5) days after receipt thereof.
- 5.2.3 Franchisee shall be responsible for obtaining all zoning classifications and clearances which may be required by state or local laws, ordinances, or regulations or which may be necessary or advisable owing to any restrictive covenants relating to Franchisee's location. After having obtained such approvals and clearances, Franchisee shall submit to Franchisor, for Franchisor's approval, final plans for construction based upon the preliminary plans and specifications. Franchisor's review and approval of plans shall be limited to review of such plans to assess compliance with Franchisor's design standards for Restaurants, including such items as trade dress, presentation of Proprietary Marks, and the provision to the potential customer of certain products and services that are central to the functioning of Restaurants. Franchisor shall not review nor shall any approval be deemed to include Franchisee's compliance with federal, state, or local laws and regulations, including the ADA, and Franchisee acknowledges and agrees that compliance with such laws is and shall be Franchisee's sole responsibility. Once

approved by Franchisor, such final plans shall not thereafter be changed or modified without the prior written permission of Franchisor. Any such change made without Franchisor's prior written permission shall constitute a material default under this Agreement and Franchisor may withhold its authorization to open the Restaurant for business until the unauthorized change is rectified (or reversed) to Franchisor's reasonable satisfaction.

- 5.2.4 Franchisee shall obtain all permits and certifications required for the lawful construction and operation of the Restaurant and shall certify in writing to Franchisor that all such permits and certifications have been obtained.
- 5.2.5 Franchisee shall employ a qualified licensed general contractor who is reasonably acceptable to Franchisor to construct the Restaurant and to complete all improvements. Franchisee shall obtain and maintain in force during the entire period of construction the insurance required under Section 12 below; and Franchisee shall deliver to Franchisor such proof of such insurance as Franchisor shall require.
- 5.3 Franchisee shall construct, furnish, and open the Restaurant according to the requirements contained herein, and Franchisee shall open the Restaurant not later than one hundred twenty (120) days after securing all of the necessary authorization and approval for permits and/or certificates (including without limitation landlord approvals), and not later than twelve (12) months from the Effective Date. Time is of the essence. Prior to opening for business, Franchisee shall comply with all pre-opening requirements set forth in this Agreement (including without limitation those with respect to the Grand Opening Advertising Program), the Manuals, and/or elsewhere in writing by Franchisor. Within thirty (30) days of the opening of the Restaurant, Franchisee shall provide to Franchisor a full breakdown of all costs associated with the development and construction of the Restaurant in such form as Franchisor may reasonably require. Additionally, prior to opening the Restaurant, and after any renovation, Franchisee shall execute and deliver to Franchisor an ADA Certification in the form attached to this Agreement as Exhibit D, to certify to Franchisor that the Restaurant and any proposed renovations comply with the ADA.
- 5.4 In connection with the opening of the Restaurant:
 - 5.4.1 Franchisee shall conduct, at Franchisee's expense, such grand opening promotional and advertising activities as Franchisor may require, as set forth in Section 10 below.
 - 5.4.2 Franchisee shall provide at least fourteen (14) days' prior notice to Franchisor of the date on which Franchisee proposes to first open the Restaurant for business. Unless Franchisor waives in writing the foregoing requirement, Franchisee shall not open the Restaurant without the on-site presence of a representative of Franchisor, provided that Franchisor will not unreasonably delay the opening of the Restaurant.
 - 5.4.3 Franchisee shall not open the Restaurant until Franchisor has determined that all construction has been substantially completed, and that such construction conforms to Franchisor's standards including, but not limited to, materials, quality of work, signage, decor, paint, and equipment, and Franchisor has given written Franchisee approval to open, which approval shall not be unreasonably withheld.

- 5.4.4 Franchisee shall not open the Restaurant until the Operating Partner and Restaurant Manager (as defined in Section 5.5) have successfully completed all training required by Franchisor, and Franchisee has hired and trained to Franchisor's standards a sufficient number of employees to service the anticipated level of the Restaurant's customers.
- 5.4.5 In addition, Franchisee shall not open the Restaurant until the Initial Franchise Fee and all other amounts due to Franchisor under this Agreement or any other related agreements have been paid.
- 5.5 Prior to the opening of the Restaurant, Franchisee (or, if Franchisee is a corporation, partnership, limited liability company, or limited liability partnership, one of Franchisee's principals who is designated to supervise the operation of the Restaurant and who has been previously approved by Franchisor (the "**Operating Partner**")) and one full-time general manager (the "**Restaurant Manager**") shall attend and successfully complete, to Franchisor's satisfaction, the initial training program offered by Franchisor, pursuant to Section 3.1 above. The Restaurant shall also be under the active full-time management of either Franchisee or the Operating Partner who has successfully completed (to Franchisor's satisfaction) Franchisor's initial training program. For the purposes of this Section 5.5, the Operating Partner must be a person who has an ownership interest in Franchisee, and who has executed the Guarantee, Indemnification and Acknowledgement appended to this Agreement as Exhibit A.
- 5.5.1 If Franchisee (or the Operating Partner) and/or the Restaurant Manager (collectively, the "**Highly Trained Personnel**") cease active management or employment at the Restaurant, Franchisee shall enroll a qualified replacement (who shall be reasonably acceptable to Franchisor) in Franchisor's initial training program not more than thirty (30) days after the cessation of the former person's full-time employment and/or management responsibilities. The replacement shall attend and successfully complete the basic management training program, to Franchisor's reasonable satisfaction, as soon as it is practical to do so.
- 5.5.2 The Highly Trained Personnel may also be required to attend such refresher courses, seminars, and other training programs as Franchisor may reasonably specify from time to time.
- 5.5.3 The cost of all training (instruction and required materials) shall be borne by Franchisor. All other expenses incurred in connection with training, including without limitation the costs of transportation, lodging, meals, wages, and worker's compensation insurance, shall be borne by Franchisee.
- 5.5.4 If Franchisee requests that Franchisor provide additional on-site training, and Franchisor is able to do so, then Franchisee agrees that it shall pay Franchisor's then-current per diem charges and out-of-pocket expenses, which shall be as set forth in the Manual or otherwise in writing.
- 5.6 Franchisee shall use the Restaurant premises solely for the operation of the Restaurant; shall keep the Restaurant open and in normal operation for such hours and days as Franchisor may from time to time specify in the Manuals or as Franchisor may otherwise approve in writing; and shall refrain from using or permitting the use of the Restaurant premises for any other purpose or

activity at any time. As used in this Section 5.6, the term "premises" shall include the grounds surrounding the Restaurant.

- 5.7 Franchisee agrees to maintain a competent, conscientious, trained staff in numbers sufficient to promptly service customers, including at least one (1) manager on duty at all times and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress code as Franchisor may prescribe. Franchisor shall have the right to require Franchisee to employ one or more district managers (who shall be individuals reasonably acceptable to Franchisor) to supervise the day to day operations of Franchisee's restaurants, if Franchisee (and/or an affiliate of Franchisee) operates two or more Restaurants. Any such district managers shall be required to attend and successfully complete the training course specified in Section 5.5 above.
- 5.8 Franchisee shall meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. Franchisee shall furnish to Franchisor, within five (5) days after receipt thereof, a copy of all inspection reports, warnings, citations, certificates, and/or ratings resulting from inspections conducted by any federal, state or municipal agency with jurisdiction over the Restaurant.
- 5.9 Franchisee shall at all times maintain the Restaurant in a high degree of sanitation, repair, and condition, and in connection therewith shall make such additions, alterations, repairs, and replacements thereto (but no others without Franchisor's prior written consent) as may be required for that purpose, including, without limitation, such periodic repainting or replacement of obsolete signs, furnishings, equipment, and decor as Franchisor may reasonably direct.
- 5.10 Not sooner than one (1) year after the Commencement Date, and again as a pre-condition to renewal pursuant to Section 2.2.2 above, Franchisee shall refurbish the Restaurant at its expense to conform to the building design, exterior facade, trade dress, signage, furnishings, decor, color schemes, and presentation of the Proprietary Marks in a manner consistent with the image then in effect for new Restaurants, including without limitation remodeling, redecoration, and modifications to existing improvements, as Franchisor may require in writing (collectively, **"Facilities Remodeling"**).
 - 5.10.1 Franchisee shall not be required to engage in Facilities Remodeling more than once every five (5) years during the term of this Agreement; provided, however, that Franchisor may require Facilities Remodeling more often if such Facilities Remodeling is required as a pre-condition to renewal as described in Section 2.2.2 above.
 - 5.10.2 Franchisee shall have six (6) months after receipt of Franchisor's written notice within which to complete Facilities Remodeling.
- 5.11 To insure that the highest degree of quality and service is maintained, Franchisee shall operate the Restaurant in strict conformity with such methods, standards, and specifications as Franchisor may from time to time prescribe in the Manuals or otherwise in writing. Franchisee agrees:
 - 5.11.1 To maintain in sufficient supply, and to use and/or sell at all times only such Products, ingredients, materials, supplies, and paper goods as conform to Franchisor's written standards and specifications, and to refrain from deviating therefrom by the use or offer of any non-conforming items without Franchisor's specific prior written consent.

- 5.11.2 To sell or offer for sale only such Products as have been expressly approved for sale in writing by Franchisor; to sell or offer for sale all such Products, utilizing the ingredients and employing the preparation standards and techniques, as specified by Franchisor; to refrain from any deviation from Franchisor's standards and specifications, including manner of preparation of Products, without Franchisor's prior written consent; and to discontinue selling and offering for sale any Products which Franchisor shall have the right to disapprove, in writing, at any time. If Franchisee deviates or proposes to deviate from Franchisor's standards and specifications, whether or not such deviation is approved by Franchisor, such deviation shall become the property of Franchisor.
- 5.11.3 To permit Franchisor or its agents, at any reasonable time, to remove samples of Products, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether said samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.
- 5.11.4 To purchase and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor, and signs as Franchisor shall specify; and to refrain from installing or permitting to be installed on or about the Restaurant premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, decor, signs, or other items not previously approved as meeting Franchisor's standards and specifications.
- 5.11.5 To refrain from installing or permitting to be installed any vending machine, game or coin operated device, unless specifically approved in writing, in advance, by Franchisor.
- 5.11.6 To refrain from selling, offering to sell, or permitting any other party to sell or offer to sell beer, wine, or any form of liquor, without the advance written authorization of Franchisor, which Franchisor shall have the right to withhold.
- 5.11.7 To fully and faithfully comply with all applicable governing authorities, laws and regulations, which by this reference are made part of this Agreement as if incorporated herein. Franchisee shall immediately close the Restaurant and terminate operations thereat in the event that: (i) any Products sold at the Restaurant evidence adulteration or deviation from the standards set for Products by Franchisor; (ii) any Products sold at the restaurants fail to comply with applicable laws or regulations; or (iii) Franchisee fails to maintain the Products, Restaurant premises, equipment, personnel, or operation of the Restaurant in accordance with any applicable law or regulations. In the event of such closing, Franchisee shall immediately notify Franchisor in writing and Franchisee shall destroy all contaminated or adulterated products and eliminate the source thereof, and remedy any unsanitary, unsafe, or other condition or other violation of the applicable law or regulation. Franchisee shall not reopen the Restaurant until after Franchisor has inspected the Restaurant premises, and Franchisor has determined that Franchisee has corrected the condition and that all Products sold at the Restaurant comply with Franchisor's standards.
- 5.11.8 That Franchisor may designate an independent evaluation service to conduct a "mystery shopper" quality control and evaluation program with respect to Franchisor- or affiliate-

owned and/or franchised Restaurants. Franchisee agrees that the Restaurant will participate in such mystery shopper program, as prescribed and required by Franchisor, provided that Franchisor-owned, affiliate-owned, and franchised Restaurants also will participate in such program to the extent Franchisor has the right to require such participation. Franchisor shall have the right to require Franchisee to pay the then-current charges imposed by such evaluation service with respect to inspections of the Restaurant, and Franchisee agrees that it shall promptly pay such charges; provided, however, that such charges shall not exceed Five Hundred Dollars (\$500) during each year of this Agreement.

- 5.12 Franchisee shall purchase all Products, ingredients, supplies, materials, and other products used or offered for sale at the Restaurant solely from suppliers that Franchisor has approved in writing. In determining whether it will approve any particular supplier, Franchisor shall consider various factors, including but not limited to whether the supplier can demonstrate, to Franchisor's continuing reasonable satisfaction, the ability to meet Franchisor's then-current standards and specifications for such items; who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably; whose approval would enable the System, in Franchisor's sole opinion, to take advantage of marketplace efficiencies; and who have been approved in writing by Franchisor prior to any purchases by Franchisee from any such supplier, and have not thereafter been disapproved. For the purpose of this Agreement, the term "supplier" shall include, but not be limited to, manufacturers, distributors, resellers, and other vendors. Franchisee recognizes that Franchisor shall have the right to appoint only one manufacturer, distributor, reseller, and/or other vendor for any particular item (including but not limited to distribution of products to franchised restaurants, soft drinks, and similar items).
- 5.12.1 Notwithstanding anything to the contrary in this Agreement, Franchisee shall purchase all of its requirements for bagels, muffins, cookies, cream cheese, cream cheese spreads, coffee, and coffee beans ("**Proprietary Items**") from Franchisor or Franchisor's designee(s), as set forth in Section 5.13 below (through such distributor or distributors as Franchisor may designate). Franchisor shall have the right to introduce additional Proprietary Items from time to time.
- 5.12.2 Franchisor, its affiliates, and/or designees may establish food commissaries and distribution facilities, and Franchisor may designate these as approved or required manufacturers, suppliers or distributors.
- 5.12.3 If Franchisee wishes to purchase any Products or any items (except for Proprietary Items) from an unapproved supplier, Franchisee shall first submit to Franchisor a written request for such approval. Franchisee shall not purchase from any supplier until, and unless, such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor may also require that the supplier comply with such other requirements as Franchisor may deem appropriate, including payment of reasonable continuing inspection fees and administrative costs, or other payment to Franchisor by the supplier on account of their dealings with Franchisee or other franchisees, for use, without restriction (unless otherwise instructed by the supplier) and for services that

Franchisor may render to such suppliers. Franchisor reserves the right, at its option, to reinspect from time to time the facilities and products of any such approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria.

- 5.12.4 Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier, nor to require Franchisor to make available to prospective suppliers, standards and specifications for formulas, which Franchisor shall have the right to deem confidential.
- 5.12.5 Notwithstanding anything to the contrary contained in this Agreement, Franchisee acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more strategic alliances or preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some Restaurants with some or all of the products and/or services that Franchisor requires for use and/or sale in the development and/or operation of Restaurants. In this event, Franchisor may limit the number of approved suppliers with whom Franchisee may deal, designate sources that Franchisee must use for some or all Products and other products and services, and/or refuse any of Franchisee's requests if Franchisor believes that this action is in the best interests of the System or the franchised network of Restaurants. Franchisor shall have unlimited discretion to approve or disapprove of the suppliers who may be permitted to sell Products to Franchisee.
- 5.12.6 Franchisee acknowledges and agrees that Franchisor shall have the right to collect and retain all manufacturing allowances, marketing allowances, rebates, credits, monies, payments or benefits (collectively, "**Allowances**") offered by suppliers to Franchisee or to Franchisor or its affiliates based upon Franchisee's purchases of Products and other goods and services. These Allowances are based on System-wide purchases of meats, paper goods and other items. Franchisee assigns to Franchisor or its designee all of Franchisee's right, title and interest in and to any and all such Allowances and authorizes Franchisor or its designee to collect and retain any or all such Allowances without restriction (unless otherwise instructed by the supplier).
- 5.13 Franchisee acknowledges and agrees that the Proprietary Items offered and sold at the Restaurant are manufactured in accordance with secret blends, standards, and specifications of Franchisor and/or Franchisor's affiliates, and are Proprietary Items of Franchisor and/or its affiliates. In order to maintain the high standards of quality, taste, and uniformity associated with Proprietary Items sold at all Restaurants in the System, Franchisee agrees to purchase Proprietary Items only from Franchisor, or its designee(s), and not to offer or sell any other bagels, muffins, cookies, cream cheese, cream cheese spreads, coffee, and/or coffee beans (or such other products that Franchisor may designate as a Proprietary Item) at or from the Restaurant. In connection with the handling, storage, transport and delivery of any Proprietary Items purchased from Franchisor, its affiliates or designee(s), Franchisee acknowledges that any action or inaction by any third party (e.g., an independent carrier) in connection with the handling, storage, transport and delivery of the Proprietary Items shall not be attributable to nor constitute negligence of Franchisor.
- 5.14 Franchisee shall require all advertising and promotional materials, signs, decorations, paper goods (including without limitation disposable food and beverage containers, bags, napkins, menus, and all forms and stationery used in the Restaurant), any and all replacement trade dress products, and

other items which may be designated by Franchisor to bear the Franchisor's then-current Proprietary Marks and logos in the form, color, location, and manner then-prescribed by Franchisor.

- 5.15 Franchisee grants Franchisor and its agents the right to enter upon the Restaurant premises at any time for the purpose of conducting inspections, for among other purposes, preserving validity of the Proprietary Marks, and verifying Franchisee's compliance with this Agreement and the policies and procedures outlined in the Manuals. Franchisee shall cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, Franchisee shall take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection.
- 5.16 Except as otherwise approved in writing by Franchisor, if Franchisee is a corporation, it shall: (i) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to operating the Restaurant; (ii) 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; (iii) not issue any voting securities or securities convertible into voting securities; (iv) 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.
- 5.17 If Franchisee is a partnership or limited liability partnership it shall: (i) furnish Franchisor with its partnership agreement as well as such other documents as Franchisor may reasonably request, and any amendments thereto; and (ii) prepare and furnish to Franchisor, upon request, a current list of all general and limited partners in Franchisee.
- 5.18 If a Franchisee is a limited liability company, Franchisee shall: (i) 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; (ii) prepare and furnish to Franchisor, upon request, a current list of all members and managers in Franchisee; and (iii) 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.
- 5.19 Each present and future: (i) shareholder of a corporate Franchisee; (ii) member of a limited liability company Franchisee; (iii) partner of a partnership Franchisee; or (iv) partner of a limited liability partnership Franchisee; shall jointly and severally guarantee Franchisee's performance of each and every provision of this Agreement by executing the Guarantee in the form attached to this Agreement as Exhibit A, provided, however, that no Guarantee shall be required from a person who acquires Franchisee's securities (other than a controlling interest) if and after Franchisee becomes registered under the Securities Exchange Act of 1934.
- 5.20 To promote a uniform System image, Franchisee shall require all of its Restaurant personnel to dress during business hours in the attire specified in the Manuals. Franchisee shall purchase such attire only from approved suppliers.

- 5.21 Franchisee shall offer for sale, and will honor for purchases by customers, any "value cards" or comparable incentive or convenience programs which Franchisor may institute from time to time, and Franchisee shall do so in compliance with Franchisor's standards and procedures for such programs.
- 5.22 Franchisee agrees that Franchisor may set reasonable restrictions on the maximum prices Franchisee may charge for the menu items, products and services offered and sold hereunder. With respect to the sale of all such menu items, products, or services, Franchisee shall have sole discretion as to the prices to be charged to customers; provided, however, that Franchisor may set maximum prices on such menu items, products, and services. If Franchisor has imposed such a maximum price on a particular menu item, product, or service, Franchisee may charge any price for such menu item, product, or service, up to and including the maximum price set by Franchisor.

6 PROPRIETARY MARKS

- 6.1 Franchisor represents with respect to the Proprietary Marks that:
- 6.1.1 Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks.
- 6.1.2 Franchisor has taken and will take all steps reasonably necessary to preserve and protect the ownership and validity in, and of, the Proprietary Marks.
- 6.2 With respect to Franchisee's use of the Proprietary Marks, Franchisee agrees that:
- 6.2.1 Franchisee shall use only the Proprietary Marks designated by Franchisor, and shall use them only in the manner authorized and permitted by Franchisor; all items bearing the Proprietary Marks shall bear the then-current logo.
- 6.2.2 Franchisee shall use the Proprietary Marks only for the operation of the business franchised hereunder and only at the location authorized hereunder, or in franchisor-approved advertising for the business conducted at or from that location.
- 6.2.3 Unless Franchisor otherwise directs Franchisee, in writing, to do so, Franchisee shall operate and advertise the Restaurant only under the name "Manhattan Bagel" without prefix or suffix.
- 6.2.4 During the term of this Agreement and any renewal of this Agreement, Franchisee shall identify itself (in a manner reasonably acceptable to Franchisor) as the owner of the Restaurant in conjunction with any use of the Proprietary Marks, including, but not limited to, uses on invoices, order forms, receipts, and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the premises of the Restaurant as Franchisor may designate in writing.
- 6.2.5 Franchisee's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement of Franchisor's rights.

- 6.2.6 Franchisee shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of Franchisor.
- 6.2.7 Franchisee shall not use the Proprietary Marks as part of its corporate or other legal name, or as part of any e-mail address, domain name, or other identification of Franchisee in any electronic medium.
- 6.2.8 Franchisee shall execute any documents deemed necessary by Franchisor to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability.
- 6.2.9 With respect to litigation involving the Proprietary Marks, the parties agree that:
- 6.2.9.1 Franchisee shall promptly notify Franchisor of any suspected infringement of the Proprietary Marks, any known challenge to the validity of the Proprietary Marks, or any known challenge to Franchisor's ownership of, or Franchisee's right to use, the Proprietary Marks licensed hereunder. Franchisee acknowledges that Franchisor shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. Franchisor shall also have the sole right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks.
- 6.2.9.2 If Franchisee has used the Proprietary Marks in accordance with this Agreement, Franchisor shall defend Franchisee at Franchisor's expense against any third party claim, suit, or demand involving the Proprietary Marks arising out of Franchisee's use thereof. If Franchisee has not used the Proprietary Marks in accordance with this Agreement, Franchisor will defend Franchisee, at Franchisee's expense, against such third party claims, suits, or demands. Franchisee shall promptly notify Franchisor of any suspected unauthorized use of, or any challenge to the validity or ownership of the Proprietary Marks, or its right to use and to license others to use, or Franchisee's right to use, the Proprietary Marks licensed hereunder. Franchisee acknowledges that Franchisor has the right to direct and control any administrative proceeding or litigation, or other adjudicative proceeding involving the Proprietary Marks, including any settlement thereof. Franchisor has the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. Except to the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisor agrees to reimburse Franchisee for its out-of-pocket litigation costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisee shall reimburse Franchisor for the cost of such litigation (or, upon Franchisor's written request, pay Franchisor's legal fees directly), including without limitation attorney's fees, as well as the cost of any judgment or settlement.

6.2.9.3 If Franchisor undertakes the defense or prosecution of any litigation relating to the Proprietary Marks, Franchisee shall execute any and all documents and do such acts and things as may, in the opinion of counsel for 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 costs in doing such acts and things, except that Franchisee shall bear the salary costs of its employees, and Franchisor shall bear the costs of any judgment or settlement. To the extent that such litigation is the result of Franchisee's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, Franchisee shall reimburse Franchisor for the cost of such litigation, including without limitation attorney's fees, as well as the cost of any judgment or settlement.

6.3 Franchisee expressly understands and acknowledges that:

6.3.1 Franchisor is the owner of all right, title, and interest in and to the Proprietary Marks and the goodwill associated with and symbolized by them.

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

6.3.3 Neither Franchisee nor any principal of Franchisee shall directly or indirectly contest the validity or Franchisor's ownership of the Proprietary Marks, nor shall Franchisee, directly or indirectly, seek to register the Proprietary Marks with any government agency, except with Franchisor's express prior written consent.

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

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

6.3.6 The right and license of the Proprietary Marks granted hereunder to Franchisee is non-exclusive, and Franchisor thus has and retains the rights, among others:

6.3.6.1 To use the Proprietary Marks itself in connection with selling Products and services;

6.3.6.2 To grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees;

6.3.6.3 To develop and establish other systems using the same or similar Proprietary Marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Franchisee.

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

7 CONFIDENTIAL OPERATING MANUALS

- 7.1 In order to protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct its business in accordance with the Manuals, one (1) copy of which Franchisee acknowledges having received on loan from Franchisor for the term of this Agreement.
- 7.2 Franchisee shall at all times treat the Manuals, any other manuals created for or approved for use in the operation of the Restaurant, and the information contained therein, as confidential, and shall use best efforts to 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, nor otherwise make the same available to any unauthorized person.
- 7.3 The Manuals shall at all times remain the sole property of Franchisor and shall at all times be kept in a secure place on the Restaurant premises.
- 7.4 Franchisor may from time to time revise the contents of the Manuals, and Franchisee expressly agrees to make corresponding revisions to its copy of the Manuals and to comply with each new or changed standard.
- 7.5 Franchisee recognizes and agrees that from time to time, Franchisor may change or modify the System and that Franchisee will accept and use for the purpose of this Agreement any such change in the System, including new or modified trade names, service marks, trademarks or copyrighted materials, new products, new equipment or new techniques, as if they were part of this Agreement at the time of execution hereof, provided the financial burden placed upon Franchisee is not substantial. Franchisee will make such expenditures and such changes or modifications as Franchisor may reasonably require pursuant to this Section 7.5, and to Section 5 above.
- 7.6 Franchisee shall at all times maintain the Manuals at the Restaurant and insure that the Manuals are kept current and up to date; and, in the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's home office shall be controlling.

8 CONFIDENTIAL INFORMATION

- 8.1 Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised hereunder 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 operate the Restaurant. Any and all information, knowledge, know-how, and techniques which Franchisor designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by Franchisor; or which, at or after the time of disclosure by Franchisor to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others. Any employee who may have access to any confidential information regarding the Restaurant shall execute a covenant that s/he will maintain the confidentiality of information they receive in connection with their association with Franchisee. Such covenants shall be on a form provided by Franchisor, which form shall, among other things, designate Franchisor as a third party beneficiary of such covenants with the independent right to enforce them.

- 8.2 Franchisee acknowledges that any failure to comply with the requirements of this Section 8 will cause Franchisor irreparable injury, and Franchisee agrees to pay all court costs and reasonable attorney's fees incurred by Franchisor in obtaining specific performance of, or an injunction against violation of, the requirements of this Section 8.
- 8.3 Franchisee agrees to disclose to Franchisor all ideas, concepts, methods, techniques and products conceived or developed by Franchisee, its affiliates, owners or employees during the term of this Agreement relating to the development and/or operation of the Restaurants. Franchisee hereby grants to Franchisor and agrees to procure from its affiliates, owners or employees a perpetual, non-exclusive, and worldwide right to use any such ideas, concepts, methods, techniques and products in all food service businesses operated by Franchisor or its affiliates, franchisees and designees. Franchisor shall have no obligation to make any payments to Franchisee with respect to any such ideas, concepts, methods, techniques or products. Franchisee agrees that Franchisee will not use or allow any other person or entity to use any such concept, method, technique or product without obtaining Franchisor's prior written approval.

9 ACCOUNTING AND RECORDS

- 9.1 With respect to the operation and financial condition of the Restaurant, Franchisee shall adopt, until otherwise specified by Franchisor, a fiscal year consisting of not less than twelve (12) accounting periods of four or five weeks each, which coincides with Franchisor's then-current fiscal year, as specified by Franchisor. Franchisee shall maintain for a period of not less than three (3) years during the term of this Agreement, and, for not less than three (3) years following the termination, expiration, or non-renewal of this Agreement, full, 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 Manuals or otherwise in writing, including but not limited to: (i) daily cash reports; (ii) cash receipts journal and general ledger; (iii) cash disbursements and weekly payroll journal and schedule; (iv) monthly bank statements, daily deposit slips and cancelled checks; (v) all tax returns; (vi) supplier's invoices (paid and unpaid); (vii) dated daily and weekly cash register journal and "Z" statements; (viii) semi-annual fiscal period balance sheets and fiscal period profit and loss statements; (ix) daily baker's schedule, waste, employee and Franchisee consumption and weekly inventory records; (x) records of promotion and coupon redemption; (xi) records of all wholesale and catering sales; and (xii) such other records as Franchisor may from time to time request.

- 9.2 Franchisee shall, at its expense, provide to Franchisor, in a format specified by Franchisor, a complete annual financial statement (prepared according to generally accepted accounting principles, that includes a fiscal year-end balance sheet, an income statement of the Restaurant for such fiscal year reflecting all year-end adjustments, and a statement of changes in cash flow of Franchisee), on a review basis, prepared by an independent certified public accountant satisfactory to Franchisor, within ninety (90) days after the end of each fiscal year of the Restaurant during the term hereof, showing the results of operations of the Restaurant during the most recently completed fiscal year. In addition, no later than the fifteenth (15th) day of each accounting period during the term of this Agreement after the opening of the Restaurant, Franchisee shall submit to Franchisor, in a format acceptable to (or, at Franchisor's election, specified by) Franchisor: (i) a fiscal period and fiscal year-to-date profit and loss statement and a quarterly balance sheet (which may be unaudited) for the Restaurant; (ii) reports of those income and expense items of the Restaurant which Franchisor specifies from time to time for use in any revenue, earnings, and/or cost summary it chooses to furnish to prospective franchisees, provided that Franchisor will not identify to prospective franchisees any specific financial results of the Restaurant; and (iii) copies of all state sales tax returns for the Restaurant. In addition, if Franchisee (and/or any affiliate of Franchisee) operates two (2) or more Restaurants, pursuant to separate franchise agreements, then at its expense, Franchisee shall also furnish to Franchisor, within ninety (90) days after the end of each fiscal year of the Restaurant during the term hereof, an Administrative P&L. The term "Administrative P&L" is understood to mean a profit and loss statement, and such additional financial information in such detail as Franchisor may reasonably require, relating to the expenses Franchisee (and/or its affiliates) incurred with respect to the management of its operations (including without limitation Restaurant management) during said fiscal year; and such Administrative P&L shall be prepared on a review basis by an independent certified public accountant satisfactory to Franchisor,
- 9.3 Franchisee shall also submit to Franchisor in addition to the Sales Reports required pursuant to Section 4.2, for review or auditing, such other forms, reports, records, information, and data as and when Franchisor may reasonably designate, in the form and format, and at the times and places reasonably required by Franchisor, upon request and as specified from time to time in the Manuals or otherwise in writing, including, without limitation, via computer diskette, or otherwise in electronic format, and/or restated in accordance with Franchisor's financial reporting periods, consistent with Franchisor's then current financial reporting periods and accounting practices and standards. The reporting requirements of this Section 9.3 shall be in addition to, and not in lieu of, the electronic reporting required under Section 11 below.
- 9.4 Franchisor or its designated agents shall have the right at all reasonable times to examine, copy, and/or personally review or audit, at Franchisor's expense, all books, records, and sales and income tax returns of Franchisee. Franchisor shall also have the right, at any time, to have an independent audit made of the books of Franchisee. If an inspection should reveal that any payments have been understated in any report to Franchisor, then Franchisee shall immediately pay Franchisor the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of one and one-half percent (1.5%) per month, or the maximum rate permitted by law, whichever is less. If an inspection is necessitated because Franchisee fails to timely provide Sales Reports or if an inspection discloses an understatement in any report by Franchisee of two percent (2%) or more, Franchisee shall, in addition, reimburse Franchisor for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies Franchisor may have.

10 ADVERTISING

- 10.1 For each Week during the term of this Agreement, Franchisee shall contribute an amount which, in the aggregate, does not exceed five percent (5%) of the Gross Sales of the Restaurant during the preceding Week (the "Advertising Contribution"). Franchisor shall have the right to reduce the Advertising Contribution to such a percentage as Franchisor may determine is appropriate by giving written notice of the reduction to Franchisee, specifying the period during which the reduced Advertising Contribution shall be in effect. The Advertising Contribution shall be paid by Franchisee in the manner required under Section 4.3 above (and as otherwise provided in this Section 10). In addition to the Advertising Contribution Franchisee shall spend a minimum of Five Thousand Dollars (\$5,000) to conduct the Grand Opening Advertising Program described in Section 10.8 below.
- 10.2 Franchisee's Advertising Contribution shall be paid to the NAF, to any MAF established pursuant to Section 10.4 below, or independently spent on local advertising and promotion, in such proportions as Franchisor shall have the right to designate periodically, in writing.
- 10.3 The NAF shall be maintained and administered by Franchisor or its designee, as follows:
- 10.3.1 Franchisor or its designee shall have the right to direct all advertising programs, as well as all aspects thereof, including without limitation, the concepts, materials, and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the NAF is intended to maximize general public recognition, acceptance, and use of the System; and that Franchisor and its designee are not obligated, in administering the NAF, 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 expenditures by the NAF.
- 10.3.2 The NAF, all contributions thereto, and any earnings thereon, shall be used exclusively (except as otherwise provided in this Section 10.3) to meet any and all costs of maintaining, administering, directing, conducting, creating and/or otherwise preparing advertising, marketing, public relations and/or promotional programs and materials, and any other activities which Franchisor believes will enhance the image of the System, including, without limitation, the costs of preparing and conducting: media advertising campaigns; direct mail advertising; marketing surveys and other public relations activities; employing advertising and/or public relations agencies to assist therein; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services to the Restaurants operated under the System. The NAF may also be used to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, approved in advance by Franchisor, which products, services, or improvements Franchisor shall have the right to determine will promote general public awareness and favorable support for the System.
- 10.3.3 Franchisee shall contribute to the NAF in the manner specified in Section 4.3 above. All sums paid by Franchisee to the NAF shall be maintained in an account separate from Franchisor's other monies. Franchisor shall have the right to charge the NAF for such reasonable administrative costs and overhead as Franchisor may incur in activities reasonably related to the direction and implementation of the NAF and advertising

programs for franchisees and the System, including, without limitation, costs of personnel for creating and implementing, advertising, merchandising, promotional and marketing programs. The NAF and its earnings shall not otherwise inure to the benefit of Franchisor. Franchisor or its designee shall maintain separate bookkeeping accounts for the NAF.

- 10.3.4 The NAF is not and shall not be an asset of Franchisor, nor a trust, and Franchisor does not assume any fiduciary obligation to Franchisee for maintaining, directing or administering the NAF or for any other reason. A statement of the operations of the NAF as shown on the books of Franchisor shall be prepared annually by Franchisor and shall be made available to Franchisee.
- 10.3.5 Although the NAF is intended to be of perpetual duration, Franchisor maintains the right to terminate the NAF. The NAF shall not be terminated, however, until all monies in the NAF have been expended for advertising and/or promotional purposes.
- 10.4 Franchisor shall have the right to designate any geographical area for purposes of establishing an MAF. If an MAF for the geographic area in which the Restaurant is located has been established at the time Franchisee commences operations hereunder, Franchisee shall immediately become a member of such MAF. If an MAF for the geographic area in which the Restaurant is located is established during the term of this Agreement, Franchisee shall become a member of such MAF within thirty (30) days after the date on which the MAF commences operation. In no event shall Franchisee be required to be a member of more than one (1) MAF. The following provisions shall apply to each such MAF:
- 10.4.1 Each MAF shall be organized (including but not limited to bylaws and other organic documents) and governed in a form and manner, and shall commence operations on a date, approved in advance by Franchisor in writing. Unless otherwise specified by Franchisor, the activities carried on by each MAF shall be decided by a majority vote of its members. Any Restaurants that Franchisor operates in the region shall have the same voting rights as those owned by its franchisees. Each Restaurant owner shall be entitled to cast one (1) vote for each Restaurant owned.
- 10.4.2 Each MAF shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Franchisor's approval, standardized promotional materials for use by the members in local advertising and promotion.
- 10.4.3 No advertising or promotional plans or materials may be used by an MAF or furnished to its members without the prior approval of Franchisor, pursuant to the procedures and terms as set forth in Section 10.7 below.
- 10.4.4 Franchisee shall submit its required contribution to the MAF at the time required under Section 4.4 above, together with such statements or reports as may be required by Franchisor or by the MAF with Franchisor's prior written approval. If so requested by Franchisor in writing, Franchisee shall submit its payments and reports to the MAF directly to Franchisor for distribution to the MAF.
- 10.4.5 A majority of the Restaurant owners in the MAF who pay four percent (4%) or more of their respective Restaurant's Gross Sales to the MAF may vote to increase the amount of

each Restaurant owner's contribution to the MAF by up to an additional two percent (2%) of each Restaurant's Gross Sales. In the event of such a vote to increase the amount of each Restaurant owner's contribution to the MAF, the increase shall apply to only those Restaurant owners who pay four percent (4%) or more of each Restaurant's Gross Sales to the MAF. Voting will be on the basis of one vote per Restaurant, and any locations Franchisor operates in the region, if any, will have the same rights as those owned by its franchisees (*i.e.*, one vote per Restaurant). Franchisee shall contribute to the MAF in accordance with any such vote by the MAF to increase each Restaurant's contribution by up to two percent (2%) of the Gross Sales of Franchisee's Restaurant.

- 10.4.6 Although once established, each MAF is intended to be of perpetual duration, Franchisor maintains the right to terminate any MAF. An MAF shall not be terminated, however, until all monies in that MAF have been expended for advertising and/or promotional purposes.
- 10.5 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 Franchisor may specify. 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 10.7 below.
- 10.6 Franchisor shall make available to Franchisee from time to time, at Franchisee's expense, advertising plans and promotional materials, including newspaper mats, coupons, merchandising materials, sales aids, point-of-purchase materials, special promotions, direct mail materials, community relations programs, and similar advertising and promotional materials for use in local advertising and promotion.
- 10.7 For all proposed advertising, marketing, and promotional plans, Franchisee (or the MAF, where applicable) shall submit samples of such plans and materials to Franchisor (by means described in Section 20 below), for Franchisor's review and prior written approval (except with respect to prices to be charged by Franchisee). If written approval is not received by Franchisee or the MAF from Franchisor within fifteen (15) days of the date of receipt by Franchisor of such samples or materials, Franchisor shall be deemed to have disapproved them. Franchisee acknowledges and agrees that any and all copyright in and to advertising and promotional materials developed by or on behalf of Franchisee shall be the sole property of Franchisor, and Franchisee agrees to execute such documents (and, if necessary, require its independent contractors to execute such documents) as may be deemed reasonably necessary by Franchisor to give effect to this provision.
- 10.8 In addition to and not in lieu of the Advertising Contribution and contribution to any MAF, Franchisee shall expend a minimum of Five Thousand Dollars (\$5,000) for grand opening advertising and promotional programs in conjunction with the Restaurant's initial grand opening, pursuant to a grand opening marketing plan development by Franchisor or developed by Franchisee and approved in writing by Franchisor (the "**Grand Opening Advertising Program**"). The Grand Opening Advertising Program shall be executed and completed within three (3) months after the Restaurant commences operation. Franchisee shall submit to Franchisor, for Franchisor's prior written approval, a marketing plan and samples of all advertising and promotional material not prepared or previously approved by Franchisor. For the purpose of this Agreement, the Grand Opening Advertising Program shall be considered local

advertising and promotion, as provided under Section 10.10 below. Franchisor reserves the right to require Franchisee to deposit with Franchisor the funds required under this Section 10.8 to distribute as may be necessary to conduct the Grand Opening Advertising Program.

- 10.9 In addition to and not in lieu of the Advertising Contribution and contribution to any MAF, Franchisee shall also expend, each month, the Local Promotion Expenditure for promotion and advertising relating to the Restaurant, and Franchisee shall provide Franchisor with such receipts, copies of promotional materials, and other materials as Franchisor may reasonably require in order to prove that such Local Promotional Expenditure was made in the amount required, and as required.
- 10.10 Franchisee understands and acknowledges that the required contributions and expenditures are minimum requirements only, and that Franchisee may, and is encouraged by Franchisor to, expend additional funds for local advertising and promotion of a local nature which will focus on disseminating advertising directly related to Franchisee's Restaurant.
- 10.11 As used in this Agreement, the term **"local advertising and promotion"** shall consist only of the direct costs of purchasing and producing advertising materials (including, but not limited to, camera-ready advertising and point of sale materials), media (space or time), and those direct out-of-pocket expenses related to costs of advertising and sales promotion spent by Franchisee in its local market or area, advertising agency fees and expenses, postage, shipping, telephone, and photocopying; however, the parties expressly agree that advertising and sales promotion shall not include costs or expenses incurred by or on behalf of Franchisee in connection with any of the following:
- 10.11.1 Salaries and expenses of any employees of Franchisee, including salaries or expenses for attendance at advertising meetings or activities, or incentives provided or offered to such employees, including discount coupons;
 - 10.11.2 Charitable, political, or other contributions or donations;
 - 10.11.3 The value of discounts provided to consumers; and
 - 10.11.4 The cost of food items.
- 10.12 Franchisee acknowledges that periodic rebates, give-aways and other promotions and programs are an integral part of the System. Accordingly, Franchisee, at its sole cost and expense, from time to time shall issue and offer such rebates, give-aways and promotions in accordance with any reasonable advertising programs established by Franchisor, and further shall honor rebates, give-aways and other promotions issued by other franchisees as long as all of the above do not contravene regulations and laws of appropriate governmental authorities.
- 10.13 Franchisee acknowledges and agrees that certain associations between Franchisee and/or the Restaurant, and/or the Proprietary Marks and/or the System, on the one hand, and certain political, religious, cultural or other types of groups, organizations, causes, or activities, on the other, however well-intentioned and/or legal, may create an unwelcome, unfair, or unpopular association with, and/or an adverse effect on, the reputation of Franchisor or the good will associated with the Marks. Accordingly, Franchisee shall not, without the prior written approval of Franchisor, engage in any activities with, or donate any money, products, services, goods, or