



Cuppy's Coffee & More, Inc.

An International Franchising Company

FRANCHISE AGREEMENT

Franchisee: _____

Date of Agreement: _____

Search Area: _____

Type of Unit: _____

Location of Premises: _____

Protected Territory: _____

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FRANCHISE AGREEMENT

This Franchise Agreement (the "Agreement") is entered into and effective this ____ day of _____, 200__, between Cuppy's Coffee & More, Inc., a Texas corporation, qualified to do business in Florida, located at 348 Miracle Strip Parkway SW, Building 10, Fort Walton Beach, Florida 32548-5257 ("Franchisor"), and _____ ("Franchisee"), residing at _____.

RECITALS

WHEREAS, the System (as defined below) is identified by means of certain trade names, service marks, trademarks, logos, emblems, decor, trade dress, lay out, and commercial symbols and indicia of origin, including, but not limited to, the mark "Cuppy's" as are now designated and may hereafter be designated by Franchisor in writing for use in connection with the System; and,

WHEREAS, the System provides uniform methods of operation, using the distinctive service mark and other distinguishing characteristics, designed and developed by Franchisor; and,

WHEREAS, Franchisor has developed and will continue to develop, additional, or different, services, and marks for the System; and,

WHEREAS, Franchisee desires to enter into the business of operating a restaurant under Franchisor's System and Marks (as defined below), 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; and

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

WHEREAS, Franchisee shall be granted the right to operate a Restaurant of the type as indicated by the check mark below:

☐ Cart Unit ☐ Mobile Unit ☐ Kiosk Unit ☐ Drive-Up Unit ☐ Full-Service Café

Unit

NOW THEREFORE, in consideration of the mutual promises in this Agreement, the parties agree as follows:

1. DEFINITIONS. The definitions in this section apply to only a few of the terms used in this Agreement. This section is not intended to be all-inclusive, and terms, not specifically defined, shall be given their usual and customary meaning in accordance with the context of this Agreement.

1.01 **"Assets"** means the franchised Restaurant, including all inventories, supplies, furnishings, equipment, fixtures, land, buildings and improvements, and other tangible items.

1.02 **"Business"** means the right which is granted to Franchisee to operate a Restaurant as set forth in this Agreement.

1.03 **"Fixed-Unit"** means a Kiosk Unit, Drive-Up Unit, or Full Service Café Unit.

1.04 **"Franchise Owners Association"** (FOA) means a representative group of System franchisees recognized by Us, and may include a Franchise Advisory Council (FAC) as established pursuant to Section 8 of this agreement, and organized for the purpose of consulting with Us regarding matters of importance to the System.

1.05 **"Good Standing"** means that You have complied with all of Your obligations pursuant to this Agreement, and our System Standards, or You have cured any defaults in compliance with this

Agreement, and You have not received a notice of a material default more than twice during any rolling 36 month period during the effective term of this Agreement or the effective term of any renewal agreement.

1.06 **“Gross Revenue”** means the total of all receipts derived from services performed or products sold at the Restaurant, whether the receipts are evidenced by cash, credit, checks, gift certificates, scrip, coupons, services, property, or other means of exchange. “Gross Revenue” shall exclude only sales tax receipts that Franchisee must by law collect from customers and that Franchisee pays to the government, promotional or discount coupons to the extent that Franchisee realizes no revenue, and employee receipt of services or products, if free, or any portion not paid for by an employee.

1.07 **“Manual”** means Our operations manual and other written materials, including information posted on Franchisor’s Web site and information sent to or accessed by Franchisee in print or electronic form, manuals, written procedures, memoranda and their supplements loaned to Franchisee by Franchisor.

1.08 **“Marks”** means Franchisor’s trade names, trademarks, service marks, logos, decor, trade dress, lay out, and commercial symbols, and similar and related words or symbols, now or in the future associated with Franchisor, the System or the franchised Restaurant, whether or not they are registered, including, but not limited to, “Cuppy’s.”

1.09 **“Material Default”** means Your failure to perform any monetary obligations pursuant to this Agreement, and/or Your failure to perform any obligation, pursuant to this Agreement or the System Standards, which has the reasonable potential to harm Us, System franchisees, the public’s perception of the System, or our marks and distinguishing characteristics.

1.10 **“Multi-Area Marketing Programs”** means regional, national, or international programs designed to increase restaurant sales, such as marketing to multi-area customers, Internet, shows, events, yellow pages, directories, affinity marketing, vendor programs, and co-branding programs. Such programs may require Franchisee’s cooperation and participation, including refraining from certain channels of marketing and distribution, and payment of referral fees. Franchisee must also adhere to maximum pricing to the extent permitted by law. Any such programs may be proprietary trade secrets of Franchisor.

1.11 **“National Marketing Fund”** means the separate bank account used by Franchisor for the purposes specified in this Franchise Agreement. The National Marketing Fund is a trust or escrow account, and is managed by Franchisor in its reasonable discretion consistent with the provisions of Section 9.04 below.

1.12 **“Our”, “Ours”** is defined as Cuppy’s Coffee & More, Inc. and includes its shareholders, directors, employees, approved vendors and affiliates.

1.13 **“Premises”** means, for Kiosk Units, Drive-Up Units, and Full Service Café Units, the one location within the Protected Territory and as described in Attachment 1 at which Franchisee may operate the Restaurant using the System (see Section 4.01, below). The term “Premises” is not applicable to Cart Units and Mobile Units, unless Franchisee places those units at a permanent location under the procedures set forth in this Agreement.

1.14 **“Protected Territory”** means the territory described in Attachment 1 to this Agreement, subject to any reservations or exceptions contained in this Agreement.

1.xx **“Purchasing Cooperative”** means an entity organized by Us in collaboration with our Franchise Advisory Council for purposes of group purchasing of supplies and commodities utilized

and distributed through our System, and through multiple channels of distribution as We shall elect, and of which We and our franchisees who are in Good Standing are members.

1.15 **“Restaurant Records”** means evidence of each restaurant transaction, and all financial, marketing, and other operating aspects of the Restaurant, and all evidence and records with respect to customers, employees, and other service professionals relating to the Restaurant including, without limitation, all databases in print, electronic or other form, including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other records created and maintained by Franchisee in operation of the Restaurant.

1.16 **“Restaurant”** means the Unit which Franchisee is granted the right to operate in conformity with the requirements of this Agreement.

1.17 **“System”** means, collectively, Franchisor’s valuable know how, information, trade secrets, methods, Manuals, standards, designs, methods of trademark usage, copyrightable works, products and service sources and specifications, proprietary software, confidential electronic and other communications, methods of Internet usage, marketing programs, and research and development connected with the operation and promotion of the Restaurant, as modified by Franchisor at any time.

1.18 **“System Standards”** mean our methods, procedures, and requirements related to the operation and management of your Business, as initially developed and instituted, or later modified, in consultation with the FOA. While System Standards will be developed, instituted, and modified in consultation with the FOA, We retain the right to develop, institute, modify, and enforce System Standards in our discretion for the benefit of the System. System Standards include our standards of operation, quality assurance standards, trademark identity standards, and other rules We establish for the benefit of the System.

1.19 **“Transfer by You”** means to voluntarily or involuntarily transfer, assign, sell, or encumber any interest in or ownership or control of, the Restaurant, substantial assets of the Restaurant, or of this Agreement. For the purpose of this Agreement, “transfer” includes any act or circumstance by which ownership or control is shifted in whole or in part from any individual or entity to another; including, if You are a corporation, any changes in the present ownership of the stock of Your corporation (as of the Effective Date of this Agreement) or the issuance of additional stock of Your corporation and, if You are a partnership, L.L.C., or L.L.P., any change in or addition of partners or members.

1.20 **“Us”** is defined as Cuppy’s Coffee & More, Inc. and includes its shareholders, directors, employees, approved vendors and affiliates.

1.21 **“You”, “Your”** is defined as the person, persons and/or entities being granted rights and accepting obligations under this agreement, and includes all owners, shareholders, partners, investors and guarantors of this agreement.

1.22 **“We”** is defined as Cuppy’s Coffee & More, Inc. and includes its shareholders, directors, employees, approved vendors and affiliates.

2. GRANT OF FRANCHISE

2.01 Grant of Franchise. Subject to the terms and conditions of this Agreement, We grant to You an exclusive franchise to operate a Restaurant, as designated in Attachment 1 to this Agreement and described in Section 4, using the System and the Marks for the term of this Agreement. You may use the Marks and System only in accordance with the terms and conditions of this Agreement.

2.02 Modification of System. In addition to Your obligation to keep the Restaurant premises compliant with Section 10, and subject to Our duty to confer with the FOA as provided in Section 8.18 of this agreement, You acknowledge that We reserve the right to periodically change, improve, or further develop the System or the Marks, or any part of the System or the Marks, including, without limitation, offering and selling new or different products or services as specified by Us. You must promptly accept and comply with changes to the System Standards, including making reasonable expenditures as necessary for such compliance. In no event shall You be obligated to expend more than \$25,000.00 (subject to COLA per Section ??) during the term of this Agreement.

2.03 Ownership and Principal Contact of Franchisee. If You are an entity, You shall complete and update throughout the term of this Agreement, as necessary, the Statement of Ownership attached hereto as Attachment 2. In addition, if You are an entity, we may reasonably require all persons who own more than twenty percent (20%) of the beneficial ownership interests in the entity to guaranty the entity's performance under this Agreement by signing the Guaranty and Assumption of Your Obligations attached hereto as Attachment 3. If You are a limited liability company, partnership, corporation or other entity, You shall provide to Us a resolution signed by all members, directors or partners, as appropriate, designating the principal contact for the Restaurant. This principal contact must be a managing member, general partner or controlling shareholder. Such representative shall have the authority to speak for and bind You in all matters pertaining to this Agreement, and all matters relating to the Restaurant.

You shall not operate any restaurant that could compete with the operation of the Restaurant during the term of this Agreement.

3. TERM AND RENEWALS

3.01 Term of Agreement. This Agreement begins on the date executed by both parties, and will continue for a period of ten (10) years, unless earlier terminated as provided under this Agreement.

3.02 Rights Upon Expiration. At the end of the term of this Agreement, You may renew Your franchise for successive terms of ten (10) years, provided:

- (a) We are still offering franchises on any date when You wish to renew;
- (b) We do not exercise our rights of refusal as set forth below; and,
- (c) Provided that You have fulfilled the following conditions:
 - (1) You have given Us written notice of Your intent to renew at least one hundred eighty (180) days prior to the end of any current term; and,
 - (2) You are in Good Standing on the date You give Us notice and on the effective date of the renewal; and,
 - (3) On the effective date of renewal, You have successfully completed all training for services added or modified after the effective date; and,
 - (5) You sign Our standard Franchise Agreement then being used; however, You will not have to pay the Initial Franchise Fee; and,
 - (6) On the effective date of renewal, You have renovated and upgraded Your Business in accordance with Our then existing System Standards.

3.03 Right of Refusal to Renew. We may refuse, in Our sole discretion, to renew Your franchise if You:

- (a) fail to remedy, in the time frame set forth in this Agreement, any breach of this

Agreement specified by Us in a written notice;

(b) have committed more than two (2) material breaches of this Agreement in a twenty four (24) month period during the term of the Agreement, regardless of whether you have cured such breaches;

(c) fail to give notice of Your intent to renew at least six (6) months, but no more than twelve (12) months, prior to the expiration of this Agreement. Failure to give timely notice to Us will be considered an election not to renew this Agreement;

(d) are not current in payment obligations to Us or our subsidiaries, affiliates or to trade creditors, landlords, or mortgage holders at the time You deliver Your notice of renewal or on the date this Agreement is scheduled to expire;

(e) fail to present evidence satisfactory to Us that You have the right to remain in possession of the Premises for the duration of the renewal term or You fail to obtain Our approval of a new location for the Restaurant for the duration of the renewal term; or

(f) fail to resolve any claims between You and Us pursuant to Section 16 of this agreement, and, if We require, fail to execute a general release, in a form prescribed by Us, of any and all claims against Us and Our affiliates, and their respective officers, directors, agents, and employees. If You execute a general release, We will execute a general release, in the same form, waiving all of Our claims against You; You shall execute, in a form satisfactory to Us, a statement setting forth all of Your claims against Us, Our subsidiaries or affiliates, and the respective directors, officers, shareholders, employees, agents, and assigns, in their company and individual capacities, including claims arising under federal, state, and local laws, rules, and ordinances.

3.04 Renewal Agreement. Provided on the date of renewal, Our then-current franchise agreement has been negotiated in accordance with Paragraph 18.04 of this agreement, You must execute a renewal franchise agreement and all other legal agreements in Our then-current form as offered by Us in the grant of franchises to prospective new franchisees as of the date of the expiration of this Agreement. These agreements may vary in material aspects from this Agreement, including, but not limited to, higher royalty and advertising fees. You must also make capital expenditures that are reasonably required for the renovation and modernization of the Restaurant, signs, vehicles, or any other required equipment to reflect the then-current image of the System.

3.05 Renewal Fee. Upon signing a renewal franchise agreement, You will not be required to pay another Initial Franchise Fee; however, You will be required to pay a renewal fee of \$5,000 for the Mobile, Kiosk, Drive-Up, or Full Service Café or \$2,500 for the Cart Unit.

3.06 Hold Over. If You do not sign a new franchise agreement prior to expiration of this Agreement and continues to accept the benefits of this Agreement after the expiration of this Agreement, then at Our option, this Agreement may be treated either as: (i) expired as of the date of expiration, with You then being deemed to be operating without a franchise in violation of Our rights; or (ii) continued on a month-to-month basis (the "Interim Period") until one party provides the other with written notice of such party's intention to terminate the Interim Period, in which case the Interim Period will terminate 30 days after receipt of the notice to terminate the Interim Period. In the latter case, all of Your obligations shall remain in full force and effect during the Interim Period as if this Agreement had not expired, and all obligations and restrictions imposed on You upon expiration of this Agreement shall not be deemed to take effect until termination of the Interim Period.

4. TERRITORY

4.01 Provisions Applicable to Kiosk, Drive-Up or Full-Service Café Units.

(a) Premises Designation. If You choose a Kiosk, Drive-Up, or Full Service Café Unit (collectively, "Fixed Unit"), You may operate the Restaurant only at one Premise. At the time of execution of this Agreement, You will indicate a broad search area for Your franchise as designated in Attachment 1 to this Agreement. You understand that this search area is not any guarantee by Us of any acceptable site locations. You also understand that this search area is not Your "Protected Territory". Upon selection of a specific Premise pursuant to Section 12.01 of this Agreement, that Premises designation and your Protected Territory will be added to Attachment 1.

(b) Protected Territory. During the term of this Agreement, with the exception of Your Fixed-Unit and unless otherwise excepted by Section 4.02 and 4.04(a), neither We nor Our affiliates will own, operate or franchise a competing Kiosk, Drive-Up, or Full Service Café within Your Protected Territory as designated in Attachment 1 to this Agreement. The Protected Territory designation will be added to Attachment 1 upon approval of Your Premises selection. You will have the right to service any persons residing in the Protected Territory, regardless of the method of sales, subject to Our express reservation of rights set forth in Section 4.03. Once established, the boundaries of Your Protected Territory will not be adjusted without Our written consent regardless of whether the population of Your Protected Territory increases or decreases over time.

4.02 Provisions Applicable Kiosk Units. For Kiosks located in or upon properties designed for pedestrian mobility rather than vehicular traffic, such as shopping malls, lifestyle centers, or office buildings, the Protected Territory for Your franchise will be limited to the actual boundaries of such properties.

4.03 Provisions Applicable To Cart Units and Mobile Units.

(a) Protected Territory. A Cart Unit or Mobile Unit shall not have a Protected Territory.

(b) Territory Restriction. A Cart Unit or a Mobile Unit shall not operate within one (1) mile of any Fixed-Unit location (i.e., a Kiosk Unit, Drive-Up Unit or Full-Service Café Unit) unless the Fixed Unit location is currently owned by You or You receive prior written permission from the operator of the Fixed-Unit location and from Us. It shall be Your responsibility to obtain from Us the locations of the locations of Fixed-Unit locations that may be affected by Your operation. In the event that You operate a Cart or Mobile Unit in violation of the Protected Territory of a Kiosk, Drive-Up or Full Service Unit franchisee, then You shall pay \$500.00 to the impacted franchisee for each violation.

(c) Time Period. A Cart or Mobile Unit shall not operate at any unconventional sites or special events, including, but not limited to, festivals, parades, holiday celebrations, kids' events, fairs, or marathons or other location for longer than a thirty (30) day time period, unless You receives prior written consent from Us.

(d) Compliance. You are solely responsible for compliance with all national, state and municipal laws, rules, codes and regulations pertaining to the use and/or suitability of the Cart Unit and Mobile Unit. You may operate the Cart Unit or Mobile Unit wherever such use is not prohibited and as approved by Us in Our sole discretion.

(e) Permanent Location. If You desire to operate a Cart Unit or a Mobile Unit at a location longer than 30 consecutive days, You must obtain Our prior approval, which approval may be denied in Our reasonable discretion. Upon Your operation of a Cart or Mobile Unit at a location longer than 30 consecutive days, then You must comply with all provisions of this Agreement applicable to Fixed-Units; additionally, Your royalty fees shall then be \$200.00 per month.

(f) Relocation. If a permanent location is approved, You shall not relocate a Cart or Mobile Unit to another permanent location without Our prior written approval, which approval shall not be unreasonably denied.

(g) Notification. You shall, at all times, notify Us of the approximate location of operation of its Cart or Mobile Units, as outlined in the operations manual, as well as Your intended events for such Units.

4.04 Franchisor's Reservation of Rights for Protected Territories. We reserve the rights, among others:

(a) to establish and operate, and franchise others to establish and operate Restaurants at any location outside of the Protected Territory, regardless of the proximity to the Premises; except, in accordance with Section 4.02 and 4.03(b), We can permit a Kiosk, Cart or Mobile Unit to be located within the Protected Territory;

(b) to use the Marks and System through alternative channels of distribution to sell or distribute, directly or indirectly, or license others to sell or distribute, branded coffee and related espresso beverages, fresh beverages and other related items, including fruit smoothies and bottled waters, including, without limitation, sales to restaurants, shops, kiosks, malls, supermarkets, catering, and other channels of distribution such as television, sales to unrelated restaurants, or over the Internet, at any location outside Your Protected Territory, and provided we have established the Purchasing Cooperative, as defined in Paragraph 1.xx and 8.08 for our mutual benefit, whether within or outside the Protected Territory (notwithstanding proximity to the Premises) under the same or different Marks;

(c) to purchase, franchise or operate any business or store of any kind or be purchased by, or merge or combine with, any business or store of any kind under different proprietary marks at any location (notwithstanding its proximity to the Premises), whether located within or outside the Protected Territory, so long as such business or store offers products or services which are not similar to the System; and

(d) to establish Multi-Area Marketing Programs within or outside the Protected Territory, as applicable, for solicitation of customers.

5. FEES AND ROYALTIES

5.01 Initial Franchise Fee. You must pay an initial franchise fee ("Initial Franchise Fee") upon the signing of this Agreement as set forth in Attachment 1. The Initial Franchise Fee is fully earned upon payment, and is non-refundable under any circumstances. The Initial Franchise Fees will vary by the type of franchise covered by this agreement as follows:

\$2,500.00	for a Cart Unit;
\$5,000.00	for a Mobile Unit;
\$5,000.00	for a Kiosk Unit;
\$15,000.00	for a Drive-Up Unit; or
\$20,000.00	for a Full-Service Café Unit

5.02 Royalties. You must pay to Us a monthly royalty in the amount specified below for the preceding calendar month. The royalty payment is due to Us, without notice from Us, on the tenth (10th) day of each month, commencing on the tenth (10th) day of the fourth (4th) month after the restaurant opens for business. Royalties must be reported in the form specified by Us.

\$25.00	Cart Unit* subject to Section 4.03 (e)
\$50.00	Mobile Unit * subject to Section 4.03 (e)
\$100.00	Kiosk Unit
\$200.00	Drive-Up Unit
\$300.00	Full-Service Café Unit

5.03 Late Charges and Other Fees. Unless otherwise stated, You shall be liable to Us for interest at the rate of one percent (1%) per month for any late payments due under this Agreement, or the maximum interest rate allowed by applicable law, whichever is less, for any payments that are not paid within thirty (30) days of the due date of payment. You must pay all damages, expenses through appeal, collection costs, and reasonable attorneys' fees that We incur in connection with Your failure to make any required payments.

5.04 Payment of Fees and Royalties. All payments required under this Section are imposed by and payable to Us or our affiliates, and are non-refundable except as expressly provided in this Agreement. All payments must be made by any method We reasonably specify, including check, cash, certified check, money order, credit or debit card, automatic pre-authorized payment plan, electronic funds transfer, or the Internet.

You shall be required to pay all service fees and advertising fees (plus any applicable interest) monthly by electronic funds transfer initiated by Us if on at least three occasions during any calendar year, You have failed to make any payment to Us by the due date. If You are required to pay by electronic funds transfer, You shall, upon Our demand, promptly execute and deliver to Us all documents required by Us to facilitate automatic cash transfer payments from Your account to Our account, including granting Us the right to estimate Your Advertising Fee, and initiate an electronic transfer of such estimate for any month or week, if paying weekly, where You do not report Your Gross Receipts to Us by the due date. If You have been required to pay monthly by electronic funds transfer, and if You have for a period of one year timely paid to Us all required fees (including interest) by electronic funds transfer, and if You are not otherwise in default to Us, then at Your request, You may return to a method of payment other than electronic fund transfer.

You must sign an Authorization for Electronic Withdrawal, set forth as **Attachment 4**, and We may require You to automatically make any payments electronically. All payments to Us and dollar amounts stated in this Agreement are in U.S. dollars unless otherwise expressed. We will not require You to deposit all Your revenue into an account that We control, or from which withdrawals may be made only with Our consent, except to secure a loan or financing arrangement by Us.

5.05 Taxes and Debts. You will promptly pay when due all taxes, fees, debts, expenses, and assessments of the Restaurant, including, but not limited to, payroll taxes. You will not permit a tax sale, seizure, levy, execution, bankruptcy, and assignment of the Restaurant, including all inventories, supplies, furnishings, equipment, fixtures, land, buildings and improvements, and other tangible items for or by creditors, or similar action to occur. You shall pay to Us an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Us with respect to any payments to Us required under this Agreement, unless the tax is credited against income tax otherwise payable by Us.

5.06 Tax Assessments. In the event of any bona fide dispute as to Your liability for taxes assessed or other indebtedness, You may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law, but in no event shall You permit a tax sale or seizure by levy or execution or similar writ or warrant, or attachment by a creditor, to occur against the Premises, or any improvements thereon.

6. MARKS

6.01 Marks. You must only use the Marks in the conduct of the Business as specified in this Agreement. Any unauthorized use of the Marks by You will constitute a breach of this Agreement and an infringement on Our rights in and to the Marks. As between Us and You, We have a prior and superior claim to the Marks, and You have no rights in the Marks other than the right to use them in the operation of the Business in compliance with this Agreement. Except as specified in Section 4.04 hereof, the license of the Marks granted hereunder to You is nonexclusive, and We thus have and retain the rights, among others: (a) to use the Marks in connection with selling products and services; (b) to grant other licenses for the Marks; and (c) to develop and establish other systems using the Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses thereto without providing any rights therein to You.

6.02 Authorized Marks. You shall use no trademarks other than various “Cuppy’s” Marks designated by Us for use by You or any other Marks that We may specify for use in the identification, marketing, promotion, or operation of the Restaurant. If You cannot lawfully use the Marks in the Protected Territory, You must obtain Our written approval to use other marks. You must also follow the copyright guidelines as specified by Us in the Manual.

6.03 Change of Marks. We may add, modify, or discontinue any Marks to be used under the System. We shall be responsible for all costs related to changing a trademark, including costs of signage, stationary and items bearing the discontinued proprietary marks, if the change is due to the need to cease an infringement of a senior user’s trademark, Our negligence or a radical change in direction in the franchise system unilaterally caused or mandated by Us. You are responsible for the costs of changing a trademark in Your business, subject to Section 2.02, if a change is due to the continuing need to modernize the franchise System.

6.04 Limitations on Franchisee’s Use of the Marks. You must use the Marks as the sole identification of the Restaurant, but must also identify Yourself as the independent owner of the Restaurant in the manner prescribed by Us. All Marks must be displayed in the manner prescribed by the Us. You may not use the Marks, or any words or symbols similar to the Marks, alone or with any prefix, suffix, modifying words, terms, designs, or symbols not approved by Us:

- (a) as part of any entity or restaurant name;
- (b) in conjunction with any documents, contracts, licenses, permits and other official documents. Any reference to the Marks in any document must state that Your use of the Marks is limited by this Agreement;
- (c) in any form on the Internet, including, but not limited to, addresses, domain names, links, metatags, locators, and search techniques;
- (d) in connection with the performance or sale of any unauthorized services or products;
- (e) to incur any obligation or indebtedness on behalf of Us; or in any other manner not expressly authorized by Us.

6.05 Marks on the Internet. We retain the sole right to use the Marks and market on the Internet, including all use of Web sites, domain names, URLs, linking, advertising, and co-branding arrangements. You may not establish a presence on the Internet except as We may specify, and only with Our prior written consent. You will provide Us with content for Our Internet marketing, and You must sign the Internet and intranet usage agreements when developed by Us. We retain the right to approve any linking to or other use of Our Web site.

6.06 Marks in Advertising. Subject to Section 9.03, You must obtain Our prior written approval for any use of any item of printed, audio, visual, Internet, electronic media, or multimedia

material of any kind bearing any of the Marks, unless supplied by Us.

6.07 Goodwill. All usage of the Marks by You and any goodwill associated with the Marks, including any goodwill that might be deemed to have arisen through Your operation of the Restaurant or other activities will inure to the exclusive benefit of Us.

6.08 Infringement. You must notify Us in writing within three (3) days of obtaining knowledge of any possible infringement or illegal use by others of a trademark which is the same as or confusingly similar to the Marks. We may, in our sole discretion, commence or join any claim against the infringing party, and bear the reasonable costs associated with the action. If We, in our reasonable discretion, determine that You have used the Marks in accordance with this Agreement, then the cost of such defense, including the cost of any judgment or settlement, shall be borne by Us. If We, in our reasonable discretion, determine that You have not used the Marks in accordance with this Agreement, then the cost of such defense, including the cost of any judgment or settlement, shall be borne by You. In the event of any litigation relating to Your use of the Marks, You shall execute any and all documents and do such acts as may, in Our opinion, 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 Your use of the Marks in a manner inconsistent with the terms of this Agreement, We agree to reimburse You for your out-of-pocket costs in doing such acts.

6.09 Signage. As specified by Us, You must display signage bearing the Marks and identifying the Premises as a Restaurant, and signage indicating that the Restaurant is independently owned and operated as a franchised Restaurant, as prescribed by Us. All signage must remain current with the System's standards as We may modify periodically.

7. MANUAL AND CONFIDENTIAL INFORMATION

7.01 Confidential Information. The System, the Manual, and all methods for establishing, operating and promoting the Business pursuant to Our distinctive restaurant format, plans, methods, data, processes, supply systems, marketing systems, formulas, techniques, designs, layouts, operating procedures, Marks and such other information as may be further developed periodically by Us (collectively, "Confidential Information") are proprietary, involve Our trade secrets and are disclosed to You solely on the express condition that You agree to:

- (a) fully and strictly adhere to all security procedures prescribed by Us, in Our sole discretion, for maintaining the proprietary information as confidential;
- (b) disclose such information to Your employees only to the extent necessary to market products and services and for the operation of the Restaurant in accordance with this Agreement;
- (c) not use any such information in any other restaurant or in any manner not specifically authorized or approved in writing by Us; and
- (d) exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all such information during and after the term of this Agreement, and follow Our security procedures, which include the execution of approved nondisclosure agreements, and intranet, extranet and Internet usage agreements when developed by Us, by You and any employee or agent of Yours who is allowed access.

7.02 Confidential Information. You acknowledge that your entire knowledge of the operation of the Business is and shall be derived from information disclosed to You by Us and that certain of such information is proprietary, confidential and the whole or any portion of know-how, knowledge,

methods, specifications, processes, procedures, and improvements regarding the System that is valuable and secret in the sense that it is not generally known to Our competitors (collectively referred to as “Confidential Information” and/or “Trade Secrets”). You shall maintain the absolute confidentiality of all such Confidential Information during and after the term of this Agreement, and shall not use any such information in any other restaurant or in any manner not specifically authorized or approved in writing by Us. You must not copy or otherwise reproduce any Confidential Information, and must establish procedures to prevent unauthorized use by any other person. Unauthorized use of the Manual or the System will constitute a breach of this Agreement and an infringement of Our proprietary rights, including trade secrets and copyrights. You must promptly report any unauthorized use of the Manual or other Confidential Information.

7.03 Manual. We will loan You during the term of the franchise one (1) copy of Our confidential operating Manual, which may be in print, on an access code-protected company intranet or extranet, or through other media. We reserve the right to require You to use the Manual in only an electronic format. The Manual will at all times remain Our property, and You must immediately return the Manual to Us upon expiration, termination, or Transfer of this Agreement. We may periodically update and revise the Manual; provided that, at the request of the FOA, the Operator’s Manual, and any changes thereof, shall also be the subject of FOA advice and counsel pursuant to Section 1.11 of this Agreement.

You expressly agree to comply with all System Standards as incorporated in the Manual. You shall ensure that the Manual is kept current at all times. In the event of any dispute as to the contents of the Manual, the terms of the master copy maintained by Us at Our home office shall be controlling. You are bound by the System Standards for maintaining the privacy of the Manual in the same manner as all other Confidential Information set forth in Section 7.02. To the extent any provision of the Operator’s Manual conflicts with any provision of this Agreement, the terms of this Agreement shall control.

7.04 Nondisclosure and Noncompetition Agreements. You and Your owners, members, managers, partners or shareholders, officers, directors, agents, beneficial owners, principal employees, and immediate family members shall execute Our standard Nondisclosure and Noncompetition Agreement before performing any work at the Business or otherwise having access to Our Confidential Information. Such agreements shall be in the form attached hereto as Attachment 5. A copy of all such signed agreements shall be delivered to Us within one week of their execution.

7.05 Ownership of Restaurant Records. The parties acknowledge and agree that they jointly own all Restaurant Records with respect to customers, employees, and other service professionals of, and related to, the Restaurant including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, telephone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Restaurant Records created and maintained by You. You further acknowledge and agree that, at all times during and after the termination, expiration or cancellation of this Agreement, We may access such Restaurant Records, and may utilize, transfer, or analyze such Restaurant Records as We determine to be in the best interest of the System, in conformity with Section 11.

7.06 Maintenance of Confidentiality. We shall not, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, partnership, association, limited liability company or corporation any confidential information, knowledge or know-how concerning the methods of operation of the Business franchised hereunder, which may be communicated to You or of which You may be apprised by virtue of Your operation under the terms of this Agreement. We shall not, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, partnership, association, limited liability company or corporation any confidential information, knowledge or know-how of Your Business hereunder, which may be communicated to Us or of which We may be apprised by virtue of Our operations under the

terms of this Agreement.

8. FRANCHISOR'S DUTIES

We will strive to improve and update the System for our mutual benefit and We reserve the right to revise, amend, or change the System and System Standards to keep the System competitive with improvements and updates, subject only to Our duty and commitment to confer with our FOA regarding System Standards. We will consult with the FOA regarding Our rights for operating and administering the System.

Any changes in the System developed by Us, You, or other franchisees shall be Our sole property, and We may incorporate the changes into the System and shall have the sole right to copyright, register, or patent such changes, in Our name. You shall have no right to copyright, register, or patent such changes in Our name, nor to use such changes except as specified in this Agreement. If We use any change developed by You, and You have made a substantial investment in developing the change, We will reimburse You for all expenses reasonably incurred by You. You, We, and the entire System mutually benefit from our respective contributions regarding changes to the System.

8.01 Equipment, Inventory, Advertising and Services. We will specify or approve certain equipment, inventory, and supplies used in the Restaurant consistent with System Standards. We may negotiate marketing programs with suppliers and obtain advertising allowances or rebates for doing so, and may utilize such allowances or rebates in any manner in which We elect, in our sole discretion.

8.02 Initial Training. We will provide initial and ongoing training and assistance, as We may reasonably determine to be appropriate, within sixty (60) days of signing this Agreement, or not less than twenty (20) days before the opening of the Business, whichever is later. We will provide the initial training program at Our corporate headquarters, or at another location designated by Us, to You and one designated Manager or other employee, but no more than three (3) people. You and a designated manager must attend and satisfactorily complete the initial training program. The training program lasts for five (5) days. The training program for Cart Units or Mobile Units may be reduced to one (1) day, at Our discretion. The training consists of a discussion of the System, techniques, procedures, and methods of operation, hiring employees, customer service, ordering, sales, procedures, accounting, support procedures and instructions on quality standards and practical experience in the operation of the Restaurant. You are responsible for personal travel, accommodation, and other costs of its employees while attending training. You will be charged Our current training fee for any additional persons attending training.

8.03 Ongoing Training. As part of its commitment to ongoing training, We reserve the right to hold and require You to attend annual conferences to discuss on-going changes in the industry, sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, and advertising programs. If the conference is mandatory, You will not be required to pay a conference fee, but must pay all personal travel and living expenses for itself and all of its employees attending the conference. Conferences will be held at Our corporate headquarters or at an alternate location chosen by Us.

8.04 Opening and Continuing Assistance. If You operate a Fixed Unit, We or Our designated representatives shall provide 3 days of on-site assistance prior to grand opening of the Restaurant. We may also provide reasonable ongoing assistance by telephone, email, or other form of communication to You during normal restaurant hours. If You require additional on-site assistance, You will be charged Our then-current additional assistance fee per day, plus travel and living expenses for Our representative.

8.05 Advertising and Promotional Programs. We will provide advertising and promotional programs as set forth in Section 9.

8.06 Development of Programs. As reasonably necessary or appropriate, We will endeavor to develop new products and service methods, as We deem beneficial to the System. We will offer such new products and service methods to You on terms reasonably determined by Us in consultation with the FOA.

8.07 Modification of System. We shall have the right and responsibility to periodically continue to improve, modify, and revise the Manual and the specifications, standards, and operating procedures and rules of the System, as set forth in Sections 2.02 and 7.04.

8.08 Central Purchasing. We reserve the right and shall endeavor to implement a centralized purchasing system for the benefit of franchisees and negotiate prices and terms with suppliers and to receive rebates from such purchases by You. We may utilize such rebated funds in any manner it chooses in conformity with System Standards. At all times that You are in Good Standing, You shall be entitled to membership in any Purchasing Cooperative organized by Us pursuant for the benefit of the System, with all benefits and responsibilities conferred by such membership. We may suspend your membership in any Purchasing Cooperative during any time that You are not in Good Standing. Your membership in Our Purchasing Cooperative is attached and incidental to your ownership in your franchise and will follow ownership of the franchise should You transfer your franchise as provided in this agreement.

8.09 Web Site. We shall have the right to provide information regarding Your Restaurant on Our Web site, as set forth in Section 9.02.

8.10 Technology Standards. We will exercise reasonable efforts to maintain and upgrade all Internet and e-Commerce computer software and information technology, and other technological assets of the System, in a manner which keeps the System competitive. All decisions regarding technology improvements and upgrades will be made, in Our discretion, after consultation with the FOA. We will not implement "cutting edge" technology which does not have a reasonable cost versus benefit basis. When new technology is ready for use in the System, We will notify You.

8.11 Indemnification for Marks. If, at the time that You become a System franchisee, You have no reasonable basis to have actual or constructive knowledge of any prior or existing use of Our marks or distinguishing characteristics in Your Protected Area, or the market area around Your Protected Area, We will indemnify You, as We deem appropriate, regarding Your use of the marks and distinguishing characteristics during the effective term of this Agreement; if it is necessary for You to stop using Our marks or distinguishing characteristics due to superior rights of which You had no actual or constructive knowledge, Our negligence, or Our unilateral change in the fundamental character of the System, We will reimburse You for the depreciated value of Your signage and the reasonable value of Your remaining stocks of supplies on which Our marks and distinguishing characteristics are affixed.

8.12 Vendor Relationships. We will strive to establish relationships with vendors which offer products and services related to the operation of Your Business. We will strive to obtain pricing which enables You to purchase the product or service at a cost which is lower than costs available in the general marketplace. We cannot guarantee that such relationships and lower pricing can be obtained.

8.13 Confidential Information. We will keep secret, and not divulge to any party, Your proprietary and confidential information. Proprietary and confidential information includes Your operational data, which are not a part of any public records, and includes customer lists, which are deemed to be our joint property, but which will be used by Us on a confidential basis. We can compile

data, customer lists, and information for the benefit of the System. We can also use Your operational data, without identifying You, in any filings or registrations made by Us with governmental and regulatory entities.

8.14 Application of System Standards. We will treat You in the same manner as other similarly situated System franchisees operating under similar franchise agreements and conditions.

8.15 Price Restrictions. We shall have the right to establish maximum retail prices provided that:

- (a) We apply the maximum resale price requirements to similarly situated Units;
- (b) Our and Your actions comply with all applicable legal requirements;
- (c) the maximum resale price also applies to Units owned by Us;
- (d) We take into account the legitimate interests of our franchisees, including (when legally permissible) soliciting in advance the opinions of our franchisees as to the maximum resale price and any related promotion; and
- (e) We make appropriate provision for Units owned by Our franchisees and by Us its whose special circumstances cause them to be disproportionately negatively affected by the maximum resale price or any related promotion.

8.16 Grievance Procedure. We will establish an informal procedure for You to express grievances with Us and/or the System. You will not be subjected to any form of retaliation by Us as a result of You making good faith use of the grievance procedure.

8.17 Unforeseen Changes. If fundamental changes occur in the quick service restaurant industry, or if events occur which have the likelihood of materially affecting the System, then, provided it does not violate any law, regulation, or third party agreement, We will consult with the FOA to determine how the changes or events should be addressed for the best interests of the System.

8.18 Franchise Advisory Council. We may organize a Franchise Advisory Council (FAC), however, it can adopt its own by-laws, elect its own board and officers, establish its own agenda, and meet on its own schedule. The members of the FAC must be system franchisees in Good Standing, who are elected by a majority of all System franchisees who are in Good Standing. We will recognize an FOA as the FAC if it represents more than fifty percent (50%) of all System franchisees who are in Good Standing. Our recognition of the FAC or any independent franchisee association does not limit Our ability to also recognize other associations, or to communicate, in Our discretion, with any franchisee, or group of franchisees. The FAC, or any independent franchisee association, have the right to affiliate with other associations, provided the purpose and standards of such associations are consistent with the purposes and standards of Our System. We will not interfere with the right of franchisees to freely associate with, and participate in, an independent franchisee association.

9. SOLICITATION AND ADVERTISING

9.01 Solicitation. Except as stated in (a) Section 4.03, and (b) sales made from Kiosk, Cart or Mobile Units as described in 4.02(b), You will have the exclusive right to service customers within the Protected Territory. System Standards may include regional, national, or international programs designed to increase restaurant sales, such as Multi-Area Marketing Programs.

9.02 Franchisee Advertising. We recommend that You spend at least Three Hundred Dollars (\$300) per month on advertising and promotion. You must also participate, at Your expense,

in any Multi-Area Marketing Programs as determined by Us as set forth in Section 9.01 above and the National Marketing Fund, as set forth in Section 9.04, below. All expenditures will be reported to Us at such times and in such manner as We specifies, including by electronic means. You may not advertise in any media with a primary circulation outside Your Protected Territory, except with Our written consent and with the consent of any franchisee whose territory is reached by the media. However, You may advertise in media whose circulation is primarily inside Your Protected Territory, even if it also reaches outside Your Protected Territory. All Internet marketing is a part of Multi-Area Marketing Programs, and must be coordinated through and approved by Us. You may not market independently on the Internet or acquire an independent Internet domain name or Web site. We will include Your Restaurant on Our Web site, provided that You are in full compliance with this Agreement, as determined by Our marketing committee. 9.03 Advertising and Marketing Materials. We will provide You with reasonable amounts of initial opening advertising and marketing materials which may include, but are not limited to, video and audiotapes, multimedia, print-ready advertising materials, posters, banners, and other items. You may purchase from Us additional copies of advertising and marketing materials at reasonable cost. You may develop and produce additional advertising and marketing materials, at Your own expense, but any advertising and marketing materials must be approved in writing by Us in advance of Your use of such materials. We will approve or disapprove of materials submitted by You within fifteen (15) days of receipt. We also reserve the option of utilizing and providing to other franchisees, without payment to You other than awards and suitable recognition, advertising and marketing materials developed by You upon advance notice to You.

9.04 National Marketing Fund. The National Marketing Fund shall be maintained and administered by Us as follows:

- (a) All Franchisees and Our operating Fixed-Unit restaurants will be required to pay a fee into the National Marketing Fund to advertise the System on a regional, national, or international level. You will be required to pay a National Marketing Fund contribution equal to one percent (1%) of Your Gross Revenue at the same time and in the same manner as the royalty fee (see Section 5.02.)
- (b) We will consult on a quarterly and annual basis with the FAC (or FOA as provided in Section 8.18), or any designated marketing council of the FAC or FOA regarding the Fund, the advertising budget, uses of the Fund and administration of the Fund, including Fund expenses. We will seek approval of the FAC or FOA for the National Marketing Fund budget, but we reserve the right to exercise our reasonable discretion with respect to the Fund, the budget, administration and the propriety of all expenditures.
- (b) We will hold the National Marketing Fund contributions in a separate bank account. We will use the National Marketing Fund for local, regional, national, Internet, or international advertising or marketing, development and maintenance of any Internet or e-commerce programs, related expenses, and any media or agency costs. All monies paid into Fund will be used for promoting the brand name of the products and services offered by the System to customers and reasonably related expenses necessary to protect the integrity of the fund. The Fund will not be treated as Our income or asset.
- (c) You acknowledge and agree that expenditures from the National Marketing Fund may or may not be proportionate to contributions made by You or provide a direct or any benefit to You. We may accumulate these funds, and the balance may be carried over to subsequent years and used for the purposes stated in this Agreement.
- (d) If the National Marketing Fund operates at a deficit or requires additional funds at any time, We reserves the right to loan such funds to the National Marketing Fund on any terms We determines. We may also utilize the National Marketing Fund to reimburse Ourselves for

administrative expenses incurred in administering the National Marketing Fund. An un-audited annual financial statement of the National Marketing Fund will be prepared within one hundred twenty (120) days of the close of Our fiscal year and will be available to You upon request.

(e) Although the National Marketing Fund is intended to be of perpetual duration, We maintain the right to terminate the National Marketing Fund. The National Marketing Fund shall not be terminated, however, until all monies in the National Marketing Fund have been expended for advertising and/or promotional purposes.

9.05 Cooperative. We shall have the right, in our discretion, to designate any geographical area for purposes of establishing a regional advertising and promotional cooperative ("Cooperative"), and to determine whether a Cooperative is applicable to the Restaurant. If a Cooperative has been established applicable to the Restaurant at the time Your business commences operations hereunder, You must immediately become a member of the Cooperative. If a Cooperative applicable to the Restaurant is established at any later time during the term of this Agreement, You must become a member of such Cooperative no later than thirty (30) days after the date on which the Cooperative commences operation. If the Restaurant is within the territory of more than one Cooperative, You shall be required to be a member of only one such Cooperative.

(a) Each Cooperative shall be organized and governed in a form and manner, shall commence operation on a date, and shall operate pursuant to written governing documents, all of which must be approved in advance by Us in writing.

(b) Each Cooperative shall be organized for the exclusive purpose of administering regional advertising programs and developing, subject to Our approval, standardized advertising materials for use by the members in local advertising.

(c) No promotional or advertising plans or materials may be used by a Cooperative or furnished to its members without Our prior approval. All such plans and materials shall be submitted to Us in accordance with the procedure set forth in Section 9.03 hereof.

(d) Each Cooperative shall have the right to require its members to make contributions to the Cooperative in such amounts as are determined by the Cooperative; provided, however, that You shall not be required to contribute to any Cooperative in excess of Fifteen Hundred Dollars (\$1,500.00) during any calendar year.

(e) Each member franchisee shall submit to the Cooperative the amount invoiced by the Cooperative as provided in Section 9.05(d) hereof, together with such other statements or reports as may be required by Us or by the Cooperative with Our prior approval. All contributions to the Cooperative shall be forwarded to Us, and We shall expend such monies on behalf of the Cooperative.

(f) We, in our sole discretion, may grant to any franchisee an exemption for any length of time from the requirement of membership in a Cooperative, upon written request of such franchisee stating the reasons supporting such exemption. Our decision concerning such request for exemption shall be final. If an exemption is granted to a franchisee, such franchisee must spend on local promotion and advertising the full recommended amount provided for in Section 9.02 hereof. We reserve the right to require Cooperatives to be changed, dissolved, or merged.

10. CONSTRUCTION AND MAINTENANCE OF RESTAURANT

10.01 Restaurant Construction. You must purchase the Cart, Mobile, Kiosk, Drive-Up, or Full Service Café (build-out/construction) from Our designated supplier, which may be Us or an Affiliate.

All construction or conversion work must be completed in accordance with System Standards. You shall be responsible, at Your expense, for conforming to local ordinances, and building codes* and the Americans with Disabilities Act ("ADA") and for obtaining all zoning classifications, permits, and clearances, including, but not limited to, certificates of occupancy and certificates of health, which may be required by federal, state or local laws, ordinances, or regulations, or which may be necessary or advisable owing to any restrictive covenants relating to the Business or required by the Lessor.

10.02 Specific Provisions Relating to Fixed-Units:

(a) You are responsible for the purchase or lease of your real property and improvements for the Premises. We reserve the right to approve such purchase or lease terms. We will provide advice and assistance concerning the selection and development of your location, but to the extent that We provide reasonable assistance to You obtaining such purchase or lease We are not guaranteeing the success of such location, and our assistance is limited by the subject to the provisions of Section 12 of this agreement.

(b) You have one year from the date of this agreement to secure your Premises and the Protected Territory pursuant to Section 4 within the Search Area defined in Attachment 1, and any lease or purchase agreement, and any construction proposals for Premises, subject to any extensions that We may grant in our reasonable discretion. If You fail to provide those proposals within the time period set forth above, We, at our option, may terminate this Agreement.

(c) At least twenty (20) days before any proposed lease or purchase agreement signing date, You shall: (i) upon request by Us, deliver any traffic, competition, and demographic and similar location information relating to the Premises for review; and (ii) deliver a copy of any proposed purchase agreement or lease and option to assume the lease to be signed by the Lessor in favor of Us in a form acceptable to Us.

(d) You must select the Premises for the Restaurant within the designated Search Area but not infringing any other franchisee's Protected Territory and execute the Premises Selection Addendum attached hereto as Attachment 4 and the Conditional Assignment of Lease attached hereto as Attachment 8.

(e) If You seek to relocate a Premise, You must meet the requirements of Section 10. We shall have the right, in our sole discretion, to withhold final approval of any Premises and of any request to relocate any Premises.

10.03 Lease Riders. If You lease the Premises, the applicable lease(s) must contain the following provisions in addition to the requirements of the Premises Selection Addendum attached hereto as Attachment 6:

(a) on termination of this Agreement for any reason, We or our designee will have the option for thirty (30) days to assume Your remaining lease obligations without accruing any liability regarding the lease(s) prior to the effective date of any assignment; or We will have the right to execute a new lease for the remaining term on the same terms and conditions;

(b) all notices of default to You under the lease(s) must be sent contemporaneously to Us;

(c) in the event You default under the lease(s), We or Our designee will have an opportunity, but not the obligation, to cure such default and to assume Your remaining obligations under the lease(s), but will not have any obligation to do so; and

(d) a provision reserving to Us the right, at our sole and absolute election, to receive an assignment of the leasehold interest from You upon termination or expiration of the initial term or any renewal term, or any termination of You as an entity, and the right to reassign the applicable lease(s) without becoming liable on the lease(s) and without further approval from

the landlord(s) or additional charge.

10.04 Maintenance and Upgrades. Subject to the terms of this Section, You must at all times comply with System Standards, specifications, processes, procedures, requirements and instructions regarding the Restaurant's physical facilities, including the layout of furnishings and fixtures. You must maintain the Restaurant and any parking areas in good and safe condition, as specified in the Manual. You must remodel or upgrade the Restaurant at its own cost in accordance with System Standards and the provisions of Section 2.02 of this agreement.

11. RECORDS AND REPORTS

11.01 Records. In furtherance of our mutual commitment to measure and evaluate market trends, the success of marketing efforts and improving the overall System You agree that We may have access to complete and accurate Restaurant Records in the form, time, and manner that We prescribe. We reserves the right to require that You make Your records and files available by way of an electronic means or paper copy. Restaurant Records will specifically also include:

- (a) daily reports;
- (b) reports of product purchases;
- (c) statements of Gross Revenues and Expenses, to be prepared each month for the preceding month;

You must keep accurate records relating to the Restaurant during the term of this Agreement and for a period of six (6) years after the termination or expiration of this Agreement.

11.02 Records Standards. You must prepare all financial reports in accordance with generally accepted accounting principles. Your annual financial statements should be compiled by an independent Certified Public Accountant, and be delivered to Us within ninety (90) days after Your fiscal year end.

11.03 Audits. If We determine that an audit of Your business is necessary, We will bear the cost of the audit, unless You fail to report as required or understate Your Gross Revenue by two percent (2%) or more for any reported time period; in which case You will pay the audit cost plus interest on understated costs of one percent (1%) per month. You must immediately pay to Us all sums owed in addition to any other remedies provided in this Agreement or by law.

12. FRANCHISEE'S DUTIES

12.01 Premises Selection. Notwithstanding assistance provided by Us to You, You are responsible for locating the Premises and negotiating a lease or purchase agreement for the property, as provided in Section 10 of this Agreement. You acknowledge that Our duties with regard to Your site are limited to providing reasonable site location assistance and approval of sites meeting System Standards, and that this Agreement cannot be terminated for Your failure to secure Your location.

- (a) For Cart or Mobile Units, there may be multiple and varied locations for the units. You must secure Our approval for every site from which Your Cart or Mobile Unit is intended to operate as provided in Section 4.02.
- (b) For Fixed-Units:
 - (1) You shall inform Us in writing of the location of any proposed Premises and We shall approve of or reject the proposed Premises within thirty (30) days. We may reject any Premises proposed by You for any reason in its sole discretion.
 - (2) Upon request, We will provide assistance to You in analyzing a proposed Premise. We will analyze the location by examining population density, traffic patterns,

and proximity of the proposed location to any other Restaurants, or any other reasonable criteria, as set forth in Section 10.02.

(3) You agree that the location of the Restaurant is a factor in the potential success of the Restaurant. Any assistance provided by Us in Premises selection shall not constitute a representation or warranty with respect to the property or the business viability of the location.

12.02 Compliance with Applicable Laws. You agree to (i) comply with all applicable laws, ordinances and regulations or rulings, or licensing requirements, of every nature whatsoever which in any way regulate or affect the operation of its Restaurant, (ii) pay promptly all taxes and restaurant expenses, and (iii) comply with all laws governing occupational hazards, accommodations for the disabled, including without limitation, the ADA, if applicable, health, workers' compensation insurance and unemployment insurance. You agree, at Your expense, to modify Your Restaurant, if necessary, to comply with any such applicable laws or regulations. You shall not engage in any activity or practice that results, or may reasonably be anticipated to result, in any public criticism of the System or any part thereof.

12.03 System Compliance. You must comply with System Standards, the Manual, systems, procedures and forms, as in effect from time to time. All mandatory specifications, System Standards, and operating procedures prescribed by Us in the Manual, or otherwise communicated to You in writing, shall constitute provisions of this Agreement as if fully set forth herein. Accordingly, all references in this Agreement to Your obligations under this Agreement, including to the Restaurant, equipment, procedures, products and materials, shall include such mandatory specifications, standards, and operating procedures. We may require You to add additional products or concepts to the Restaurant in the future, at Your expense.

12.04 Uniformity and Image. In order to maintain uniform standards of quality, appearance, and marketing, You acknowledge and agree that it is essential for You to conform to Our System standards.

12.05 Right of Entry and Inspection. You must permit Us or Our authorized agent or representative to enter the Premises during normal business hours and to reasonably inspect the operations of the Restaurant. Without any liability to You, We may confiscate any materials which We, in Our reasonable judgment, determines to be either illegal or in violation of this Agreement. We shall have the right to observe You and Your employees rendering services, to confer with Your employees and customers and to generally review the Business operations for compliance with the System standards. Should You, for any reason, fail to correct any deficiency within a reasonable time as determined by Us, We shall have the right, but not the obligation, to correct any deficiencies which may be susceptible to correction by Us and to charge You a reasonable fee for Our expenses in so acting, payable to Us upon demand. The foregoing shall be in addition to such other remedies We may have.

12.06 Conformity with System Standards. To insure that the highest degree of quality and service is maintained, You shall operate the Restaurant in strict conformity with System standards. You agree:

(a) To maintain a sufficient supply of approved products, and to use at all times, only such products and ingredients acquired from suppliers approved and where appropriate, designated by Us, and use such other ingredients, products, materials, supplies, paper goods, fixtures, furnishings, equipment, signs and menu items, as conform with System Standards.

(b) To discontinue selling and offering for sale any beverages, products or services which We may, in Our discretion, disapprove in writing at any time.

- (c) To use and display only the standard menu format approved by Us, as the same may be revised from time to time. Any change in the menu format must be approved in writing by Us prior to use.
- (d) To sell all products and other products hereunder at retail and not sell such products at wholesale or for re-sale, and to refrain from selling any products or other products or services hereunder outside the Protected Territory.
- (e) All signs to be used on or in connection with the Restaurant must be approved in writing by Us prior to their use by You.
- (f) You and Your employees shall (i) maintain a clean and attractive appearance, (ii) give prompt, courteous and efficient service to the public, and (iii) otherwise operate the Restaurant in strict compliance with the policies, practices and procedures contained in the Manual so as to preserve, maintain and enhance the reputation and goodwill of the System. You may not alter, change, or modify the System, including the Restaurant or products, in any way without the prior written consent and approval of Us.
- (g) To refrain from operating or permitting any other person or entity to operate any other business from the Premises without Our express written approval. For purposes of this Agreement, an adjacent facility shall be considered a part of the Premises of the Business unless it: (i) has an entrance, address, and telephone number separate from the Business; (ii) is separated from the Business by a floor to ceiling demising wall; and (iii) has a separate cash register for its operations.

12.07 Product and Supplier Approval. You agree to sell only products and services that are approved by Us, and that are obtained through designated or approved suppliers, and are consistent with System Standards. If You propose to offer, conduct or utilize any services, products, materials, forms, items, supplies or services for use in connection with or sale through the Business which are not previously approved by Us as meeting System Standards, You shall first request approval in writing from Us. We may, in Our reasonable discretion require submission of specifications, information or samples of such products, services, materials, forms, items or supplies. We shall have the right to require that representatives be permitted to inspect the supplier's facilities and the sample from the supplier be delivered for evaluation and testing either to Us or to an independent testing facility designated by Us. A charge not to exceed the reasonable cost of the evaluation and testing shall be paid by You. We will advise You within a reasonable time whether such products, services, materials, forms, items or supplies meet its specifications. Approved product descriptions and supplier contact information are prescribed in the Manual. If there is no designated or approved supplier for particular items, You may purchase from suppliers approved in advance by Us who meet all of Our specifications and standards as to quality, composition, finish, appearance and service, and who shall adequately demonstrate their capacity and facilities to supply Your needs in the quantities, at the times, and with the reliability requisite to an efficient operation of the Business.

12.08 Limitations on Supply Obligations. Nothing in this Agreement shall be construed to be a promise or guarantee by Us as to the continued existence of a particular product, nor shall any provision herein imply or establish an obligation on the part of Us and Our affiliates to sell products to You if You are in arrears on any payment to Us or Our affiliates or otherwise in default under this Agreement. If You fail to pay in advance in full for each shipment of products purchased, We or Our affiliates shall not be obligated to sell products to You. In addition, We may impose interest on any late payments on the terms described in Section 5.03.

12.09 Insurance. You must keep in force insurance policies as prescribed by Us in the

Manual by an insurance company acceptable to Us at all times during the term of this Agreement and any renewals. Insurance coverage must include general liability, combined single limit, bodily injury and property damage insurance for operations, products liability and all other occurrences against claims of any person, employee, customer, and agent or otherwise in an amount per occurrence of not less than such amount set forth in the Manual and adjusted by Us from time to time. Insurance policies must insure both You and Us, Our officers and directors, as additional named insured against any liability which may accrue against them by reason of the ownership, maintenance or operation by You of the Restaurant. The policies must also stipulate that We shall receive a thirty (30) day prior written notice of cancellation. Upon our request, You will provide Us with copies of all insurance policies, certificates of insurance, or other proof of insurance acceptable to Us shall be furnished to Us together with proof of payment within thirty (30) days of issuance thereof. Your failure to obtain and maintain insurance constitutes a material breach of this Agreement entitling Us to terminate this Agreement. You will also procure and pay for all other insurance required by state or federal law, including, without limitation, workers' compensation and unemployment insurance.

12.10 Training. You and Your designated Manager must complete Our initial training program described in Section 8.02 above. You shall train Your employees according to standards and procedures established by Us.

12.11 Correction of Defects. Should We notify You at any time of defects, deficiencies or unsatisfactory conditions in the appearance or conduct of the Restaurant, You shall correct immediately any such items.

12.12 Indemnification. You shall indemnify and hold Us, our officers, directors, and employees, harmless from and against all fines, suits, proceedings, claims, causes of action, demands or liabilities of any kind or of any nature arising out of or in connection with the construction or operation of Your restaurant; except to the extent that they are directly attributable to an act by Us, or Our failure act where We had an obligation to act. We shall indemnify and hold You, your officers, directors and employees, harmless from and against fines, suits, proceedings, claims, causes of action, demands, or liabilities of any kind or nature arising out of Our performance of, or failure to perform, any duty or obligation of Ours under this Agreement; except to the extent that such performance or failure to perform by Us under this Agreement is directly attributable to an act by You or Your failure to act where You had an obligation to act.

12.13 Notification of Suit. You shall immediately notify Us in writing of the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, which may adversely affect the operation or financial condition of the Business. You agree to indemnify, defend and hold Us, Our parent corporation, Our subsidiaries and affiliates, and their respective shareholders, directors, officers, employees, agents, successors and assignees harmless against all claims and liabilities directly or indirectly arising out of the operation of the Restaurant or arising out of the use of the Marks and System in any manner not in accordance with this Agreement. For purposes of this indemnification, claims shall mean and include all obligations, actual, consequential, incidental or punitive damages and costs reasonably incurred in the defense of any claim, including, without limitation, reasonable accountants', attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. We shall have the right to defend any such claim against it. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement.

12.14 Computer Systems. You will allow Us to have independent access to all information and data generated on Your POS system to evaluate sales and services provided to the consumer and costs associated with the Restaurant for the benefit of the entire System.

12.15 Computer Problems, Viruses, and Attacks. You acknowledge and understand that

computer systems are vulnerable to computer viruses, bugs, power disruptions, communication line disruptions, Internet access failures, Internet content failures, date-related problems, and attacks by hackers and other unauthorized intruders. We have taken reasonable steps so that these problems will not materially affect the System. We do not guarantee that information or communication systems supplied by Us or Our suppliers will not be vulnerable to these problems. You acknowledge and agree that You are solely responsible for protecting Yourself from these problems. You must also take reasonable steps to verify that Your suppliers, lenders, landlords, customers, and governmental agencies on which You rely, are reasonably protected. This may include taking reasonable steps to secure Your systems, including, but not limited to, firewalls, access code protection, anti-virus systems, and use of backup systems.

12.16 Hazardous Materials. You must not cause or permit any toxic or hazardous waste, substances, or materials, as defined under applicable government laws and regulations to be used, generated, stored or disposed of near, on, under, about or transported to or from the Business or any of Your vehicles except as necessary for Your operation of the Restaurant and in accordance with the Manual. You shall conduct such permissible hazardous materials activities in strict compliance, and at Your expense, with all applicable federal, state, and local laws, rules and regulations now or hereafter in effect and using all necessary and appropriate precautions. We will not be liable for any of these activities. You must provide Us with a copy of all hazardous materials inventory statements and updates filed by any governmental agency or regulation and must immediately notify Us both by telephone and in writing of any spill or unauthorized discharge of hazardous materials or of any conditions constituting an imminent hazard.

12.17 Compliance with Lease. You shall comply with all the terms of any lease or sublease and all other agreements affecting the operation of the Restaurant; shall promptly furnish Us a copy of its lease, upon request; shall undertake best efforts to maintain a good and positive working relationship with its landlord and/or Lessor; and shall refrain from any activity which may jeopardize Your right to remain in possession of, or to renew the lease(s) or sublease(s) for, the Premises.

12.18 Health Standards. You shall meet and maintain the highest health standards and ratings applicable to the operation of the Restaurant. You shall furnish to Us within five (5) business days after receipt thereof, a copy of any violation or citation which indicates Your failure to maintain local health or safety standards in the operation of the Restaurant.

12.19 Price Restrictions. You shall have the right to establish appropriate product and service pricing within Your Territory, subject to Our right to establish maximum retail prices.

13. DEFAULT AND TERMINATION

13.01 Termination by You. You may terminate this Agreement if We commit a Material Default of this Agreement and fail to remedy or to make substantial progress toward curing the violation within thirty (30) days after receiving written notice from You detailing the alleged default. Termination by You is effective ten (10) days after We receive written notice of termination after the conclusion of the cure period. If You terminate this Agreement under this provision, You must follow the termination procedures as set forth below.

13.02 Termination by Us. Subject to applicable law to the contrary, We may, at Our option, terminate this Agreement before its expiration as set forth below:

(a) With Notice of 30 Days. This Agreement will terminate thirty (30) days after We give written notice to You of any of the following events or circumstances:

1. You fail to cure, or make substantial progress to effect a cure in Our discretion, any Material Default within the 30-day period.

2. You fail or refuse to maintain and operate the Restaurant in compliance with this Agreement, the System, or the Manual;
3. You fail to pay Us or Our affiliates or suppliers for obligations under this Agreement;
4. You fail to comply with any material federal, state, or local law or regulation applicable to the operation of the Restaurant;
5. You are in breach of any other term, condition, or provision of this Agreement; or,
6. You act, or fail to act, in any manner which is inconsistent with or contrary to Your lease(s) or sublease(s) for the Premises, or in any way jeopardizes Your right to renewal of such lease(s) or sublease(s).

(b) Without Notice. This Agreement and operation of the franchise shall immediately terminate without notice in the event that:

1. You misrepresented or omitted material facts which induced Us to enter into this Agreement;
2. You fail to complete the required initial training;
3. A permanent or temporary receiver or trustee for the Restaurant or all or substantially all of Your property is appointed by any court, or any such appointment is consented to or not opposed through legal action by You, or You makes a general assignment for the benefit of Your creditors or You make a written statement to the effect that You are unable to pay Your debts as they become due, or a levy or execution is made on the franchise, or an attachment or lien remains on the Restaurant for thirty (30) days unless the attachment or lien is being duly contested in good faith by You and We are advised in writing;
4. You lose possession or the right of possession of all or a significant part of the Restaurant through condemnation, casualty, lease termination or mortgage foreclosure and the Restaurant is not relocated or reopened with Our approval;
5. You make an unauthorized Transfer;
6. You are a restaurant entity and any action is taken which purports to merge, consolidate, dissolve or liquidate the entity without Our prior written consent;
7. You voluntarily abandon or cease operation of the Restaurant for more than five (5) consecutive days. Acts of God or other events beyond Your control that make such operation of the restaurant impossible to perform may be waived at Our reasonable discretion.
8. You or any owner of greater than twenty percent (20%) of the Your entity or operator is charged or convicted of a felony, a crime involving moral turpitude, or any crime or offense that is reasonably likely, in Our sole opinion, to materially and unfavorably affect the System, Marks, goodwill or Our reputation.

(c) With Notice, Immediately. This Agreement and franchise will immediately terminate with notice in the event that:

1. You fail to locate an approved Premises or to construct and open the Restaurant within the time limits provided in the Premises Selection Addendum (Attachment 6) or Section 10.02 hereof;
2. A threat or danger to public health or safety results from the operation of the Business;
3. An approved transfer is not effected within the time provided following death or mental incapacity as required by Section 14.06 hereof;
4. If You fail to comply with the covenants in Section 15.02 hereof or fails to obtain execution of the covenants required under Section 7.05 hereof;
5. If, contrary to the terms of Section 7 hereof, You disclose or divulge the contents of the Manual or other confidential information provided to You by Us;
6. If You misuse or make any unauthorized use of the Marks or any other identifying characteristics of the System, or otherwise materially impair the goodwill associated therewith or Our rights therein;
7. If You refuse to permit Us to inspect the Premises, or Your books, records or accounts upon reasonable demand; or
8. If You, after twice committing and curing a Material Default within a rolling 5 year period pursuant to Section 13.02(a) hereof, commit a third Material Default, whether or not cured after notice.

13.03 Effect of Termination. Upon any termination or expiration of this Agreement, all obligations that by their terms or by reasonable implication survive termination, including those pertaining to non-competition, confidentiality, and indemnity, will remain in effect. Upon any termination or expiration of this Agreement, the following provisions will be applicable:

- (a) You must immediately:
 1. promptly pay all amounts owed to Us based on the operation of the Restaurant through the effective date of termination;
 2. return to Us all copies of the Manual, customer lists, records, files, instructions, brochures, advertising materials, agreements, Confidential Information and any and all other materials provided by Us to You or created by a third party for You relating to the operation of the Restaurant, and all items containing any Marks, copyrights, and other proprietary items;
 3. cancel or assign within five (5) days all registrations relating to its use of any of the Marks, in Our sole and absolute discretion. You must notify the telephone, Internet, email, electronic network, directory, and listing entities of the termination or expiration of Your right to use any numbers, addresses, domain names, locators, directories and listings associated with any of the Marks, and must authorize their transfer to Us or any new franchisee as may be directed by the Us. You acknowledge as between You and Us that We have the sole rights to, and interest in, all numbers, addresses, domain names, locators, directories and listings associated with the Marks. You hereby irrevocably appoint Us, with full power of substitution, as Your true and lawful attorney-in-fact, which appointment is coupled with an interest; to execute such directions and

authorizations as may be necessary or prudent to accomplish the foregoing. Such appointment is evidenced by Attachment 7;

4. cease operating any business under any of the Marks and System, cancel any assumed name registration that includes any of the Marks, assign all domain names and Internet directory listings that contain the Marks to Us, and refrain from identifying Yourself as Our Franchisee;

5. allow Us or Our representatives access to the Restaurant and the computer systems to verify and secure Your compliance with the obligations under this Agreement;

6. allow Us to make a final inspection and audit of Your computer system, books, records and accounts;

(g) abide by the terms of the required confidentiality and noncompetition covenants in Sections 7 and 15 herein;

(b) We have the right, but not the obligation, to purchase from You, either all the real and personal property interests used in the operation of the franchise restaurant at the Premises (including Your goodwill as a going concern) or the signage and menu boards, at fair market value as of the time of termination. If You and We cannot agree upon a fair market value purchase price, then the fair market value purchase price shall be determined by a qualified appraiser approved by You and We. If You and We cannot agree upon a qualified appraiser, then three independent appraisals shall be conducted to determine the fair market value. You and We shall each select an appraiser qualified to evaluate assets of this kind and the third appraiser will be one agreed upon by the other two appraisers. The average of the three appraisals shall be the fair market value purchase price. We shall have thirty days from establishment of the fair market value purchase price (whether such figure is established by agreement or by the appraisals) to elect to purchase. You and We shall each bear the costs for the appraiser You and We each select, and You and We shall equally divide and pay the cost of the third appraiser. If You are a party to a lease, leases, contracts (including your phone numbers), or lease option agreements covering the Restaurant or the Premises and We are purchasing the Restaurant pursuant to this Section, You shall, upon Our written notice, do whatever is necessary to effectuate and complete the assignment Your leases and contracts to Us.

(c) In the event We do not elect to exercise Our option to acquire the applicable contracts and lease(s) or sublease(s) for the Premises, You shall make such modifications or alterations to the Premises (including, without limitation, the taking reasonable actions that We may be required to change or disassociate Your address or telephone number from the Marks) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the Premises from that of the Restaurant under the System, shall make such specific additional changes thereto as We may reasonably request for that purpose. In the event You fail or refuse to comply with the requirements of this Section 13.03(i), We shall have the right to enter upon the Premises, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the Your expense, which expenses You agree to pay upon demand; and

(d) In the case of Cart or Mobile Unit(s), We have the right, but not the obligation, to purchase from You, such Unit(s) (including Your goodwill as a going concern) or the signage, and menu boards, at fair market value as of the time of termination. If You and We cannot agree upon a fair market value purchase price, then the fair market value purchase price shall be determined by a qualified appraiser approved by You and We. If You and We cannot agree

upon a qualified appraiser, then three independent appraisals shall be conducted to determine the fair market value. You and We shall each select an appraiser qualified to evaluate assets of this kind and the third appraiser will be one agreed upon by the other two appraisers. The average of the three appraisals shall be the fair market value purchase price. We shall have thirty days from establishment of the fair market value purchase price (whether such figure is established by agreement or by the appraisals) to elect to purchase. You and We shall each bear the costs for the appraiser You and We each select, and You and We shall equally divide and pay the cost of the third appraiser.

13.04 Failure to Cease or Remove Identification. If, within thirty (30) days after termination of this Agreement, You fail to remove all displays of the Marks from the Restaurant which are identified or associated with the System, We may enter the Restaurant to effect removal. In this event, We will not be charged with trespass nor be accountable or required to pay for any displays or materials. If, within thirty (30) days after termination You have not taken all steps necessary to amend or terminate any registration or filing of any fictitious name or any other registration or filing containing the Marks, You hereby irrevocably appoints Us as Your true and lawful attorney, for the purpose of amending or terminating all registrations and filings, this appointment being coupled with an interest to enable Us to protect the System.

13.05 Other Claims. Termination of this Agreement will not affect, modify or discharge any claims, rights, causes of action or remedies, which You or We may have against each other, whether such claims or rights arise before or after termination.

14. TRANSFER.

14.01 Prohibited Acts. Any unauthorized Transfer or other conveyance, by operation of law or otherwise, or any attempt to do so, shall be deemed void, a breach of this Agreement, and grounds for termination of this Agreement by Us.

14.02 Transfer by Us. We can unconditionally assign and transfer, in Our reasonable discretion, this Agreement to another person or restaurant entity at any time. We do not need permission from You for the transfer, and may transfer free of any responsibility or liability whatsoever to You, provided the transferee assumes Our material obligations, with due regard to the transferee's ability and intent to support the System. We may also:

- (a) Sell or issue its stock, other ownership interests, or assets, whether privately or publicly;
- (b) Merge with, acquire, or be acquired by another entity, including an entity that competes directly with You; or
- (c) Undertake a refinancing, recapitalization, leveraged buyout, or other economic or financial restructuring.

14.03 Transfer by You. Your obligations under this Agreement are personal and may not be voluntarily or involuntarily sold, pledged, assigned, transferred, shared, subdivided, sub-franchised, encumbered or transferred in any way without the prior express written approval by Us.

14.04 Conditions for Transfer or Assignment by You. No Transfer of this Agreement will be approved by Us or be effective unless and until:

- (a) Any defaults in the performance or observance of any of its Your under this Agreement or any other agreement with Us are cured at the time of the transfer or assignment;

(b) All outstanding accounts between You and Us are settled, and We, You and Your principals, have executed a mutual general release regarding all claims arising or related to this Agreement and our relationship as franchisor and franchisee. In appropriate circumstances in Our discretion, We may allow You to reserve specific claims as are set forth in paragraph (c) provided such claims are resolved pursuant to Dispute Resolutions provisions of this Agreement (Section 16).

(c) Where permitted by law, You must execute a general release, in a form satisfactory to Us, waiving all of Your claims against Us, Our subsidiaries or affiliates, and the respective directors, officers, members, shareholders, employees, agents, and assigns, in their corporate and individual capacities, including claims arising under federal, state, and local laws, rules, and ordinances; if You execute a general release, We will execute a general release, in the same form, waiving all of Our claims against You.

(d) The proposed transferee pays Us a fee to transfer the Restaurant (the "Transfer Fee") in the amount of Five Thousand Dollars (\$5,000) unless the transferee is:

(1) a corporation of which You are the majority stockholder, or a child, parent, sibling or spouse of You, in which case no Transfer Fee will be required; or,

(2) another franchisee of Us, in which case the Transfer Fee will be Two Thousand Five Hundred Dollars (\$2,500).

(e) The proposed transferee either (1) assumes Your existing franchise agreement for the remaining term, with renewal rights subject to subsection (2) of this clause; or (2) executes a separate franchise agreement with Us, using the then-current form of franchise agreement, including a full term, which agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty fee and advertising contribution, except that the transferee shall not be required to pay any initial franchise fee and the Protected Territory shall remain the same;

(f) If reasonably required by Us, the individual proposed transferee, and/or the stockholders, partners, members, or trustees and beneficiaries of a proposed entity transferee, each execute a personal guarantee, jointly and severally guaranteeing the performance of the proposed transferee's obligations;

(g) The proposed transferee demonstrates to Our satisfaction that it, in all respects, meets Our standards applicable to new franchisees regarding experience, personal and financial reputation and stability, willingness and ability to devote his or her full time and best efforts to the operation of the Restaurant, and any other conditions as We may reasonably apply in evaluating new franchisees. We must be provided all information about the proposed transferee as it may reasonably require. Because of the Confidential Information available to a franchisee, no assignment to a competitor of the System will be permitted;

(h) You remain liable for all of the obligations to Us in connection with the Business which arose prior to the effective date of the transfer and not otherwise settled as of the day of transfer. You and We agree to execute any and all instruments reasonably necessary and/or appropriate to evidence such liabilities; or the transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as We may request) enters into a written assignment, in a form satisfactory to Us, assuming and agreeing to discharge all of Your obligations under this Agreement; and that the transferee guarantee the performance of all such obligations in writing in a form satisfactory to Us;

(i) The transferee (or, if the transferee is a corporation, partnership or limited liability

company, a principal of the transferee acceptable to Us), or the transferee's manager (if transferee or transferee's principal will not manage the Restaurant), complete any training programs then in effect upon such terms and conditions as We may reasonably require;

(j) We shall not unreasonably withhold Our consent to an assignment or transfer, so long as it is shown to Our satisfaction that the proposed transferee can perform a franchisee's obligations under this Agreement, or the current form of agreement then required of new franchisees (the choice of which form of agreement applies to be made by the transferee), and the conditions of this Agreement or the current form of agreement then required of new franchisees are complied with;

14.05 Transfer to an Entity. Notwithstanding the preceding section, You may Transfer Your rights and obligations under this Agreement without Our consent, to an entity in which You own a controlling interest of the outstanding stock, provided:

(a) You remain on the Agreement as a party and the entity is added as a co-party;

(b) You, or Your operational partner or Manager approved by Us, continue to devote full time and best efforts to manage the daily operations of the Restaurant; and,

(c) You and the entity assume joint and several liability of all obligations arising in connection with this Agreement.

14.06 Death of Franchisee or Determination of Mental Incapacity. Upon the death or determination of mental incapacity of an individual Franchisee, the rights granted by this Agreement may pass (without payment of any Transfer Fee) to the next of kin or legatees, provided that Franchisee's legal representatives will within one hundred eighty (180) calendar days of such event apply in writing to Us for the right to transfer to the next of kin or legatee Franchisee's rights under this Agreement. We will not unreasonably withhold permission so long as the proposed transferees meet each of the then-current requirements of franchisees.

14.07 Right of First Purchase and Right of First Refusal.

(a) If You desire to transfer Your interest under this Agreement, or any part of it, or the franchise business, or any shareholder, member or partner of Yours desires to transfer any interest of ownership or control in the franchise business or franchise entity, then before You, or any shareholder, member or partner of Franchise ("Owner"), makes or receives an offer from a third party, You and/or Your owner(s) must deliver to Us a written offer (the "Offer Notice") containing the exact terms and conditions upon which You (or if applicable, any shareholder, member or partner) desires to sell all such rights and interests, along with the following documents: (1) Your financial statements for the franchise business operated at the Premises (including balance sheets and income statements) for the last three fiscal or calendar years, plus the current fiscal or calendar year through the month prior to delivery of the Offer Notice; (2) federal income tax returns and all applicable schedules for the franchise business operated at the Premises for the previous three years; (3) a full and complete copy of Your real property lease for the Premises; and (4) all other contracts which currently relate or pertain to the operation of the business at the Premises.

(b) Upon receipt of the Offer Notice, We shall have the option, exercisable within thirty (30) days of receipt of the Offer Notice, to deliver to You a response (the "Response Notice") indicating Our intention to accept the terms and conditions of the Offer Notice. In order for Us to evaluate whether to deliver a Response Notice, We shall be entitled to receive from You additional documents and information that We deem necessary or desirable to make an informed decision about the fairness of the terms set forth in the Offer Notice. You shall promptly provide Us with all additional documents and information requested by Us, and You shall fully and completely cooperate with Us so that We can complete all due diligence it deems necessary or desirable in sufficient time to deliver a

Response Notice to You/Owner(s). If We deliver a Response Notice to You and/or your Owner(s), then You, Your Owner(s) and We shall prepare a purchase agreement which must be satisfactory to all parties (the "Purchase Agreement"), and which shall contain such agreements, conditions, representations, warranties, covenants, indemnities and other provisions that each party believes is reasonably necessary to protect its respective interests. The Purchase Agreement shall provide for closing within 90 days after delivery of the Response Notice. If We do not deliver a Response Notice, then You and/or Your Owner(s) may solicit offers of transfer from other parties at a price and on terms that are the same as, or more favorable to You or Your Owner(s), than as was set forth in the Offer Notice. If, within one year of the delivery of the Offer Notice to Us, You receive a purchase offer from a third party that You and/or Your Owner(s) is willing to accept (the "Third Party Offer"), then You shall immediately deliver such purchase offer to Us. If the terms of the Third Party Offer are the same, or more favorable to You (or if applicable, its shareholders, members or partners), as those set forth in the Offer Notice, then You (or if applicable its shareholders, members or partners) may accept the offer and complete the sale, subject to satisfaction of the conditions set forth in this Section (including Us granting written consent to the transfer). However, if the sale is not closed within ninety (90) days of delivery of the Third Party Offer to Us, or if there is a change in terms of the proposed sale, then You shall immediately deliver a written notice to Us setting forth such specifics, and We shall have an additional option to purchase (on the terms of the revised offer, if any, and otherwise as set forth in the Third Party Offer) during the thirty (30) day period following Our receipt of such written notice from You and/or Your Owner(s). If You do not deliver a Third Party Offer to Us within one year of delivery of the Offer Notice to Us, or if You and/or Your Owner(s) timely delivers a Third Party Offer to Us, but the sale transaction does not timely close as provided herein, then the provisions of this Section shall lapse and shall have no further force and effect.

(c) If We elect not to purchase the seller's interest, any material change thereafter in the terms of the offer from a third party shall constitute a new offer subject to the same rights of first refusal in favor of us as in the case of the third party's initial offer. Our failure to exercise the option afforded by this Section shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 14, with respect to a proposed transfer. In the event the consideration, terms and/or conditions offered by a third party are such that We may not reasonably be required to furnish the same consideration, terms and/or conditions, then We may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within thirty (30) days on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by the third party, such determination shall be made by an independent appraiser as hereafter provided, and the appraiser's determination shall be binding.

(d) If We do not exercise Our option, then the transfer may take place on the terms and price set forth in the notice; provided (1) We give our written consent, (2) the transfer takes place no later than six (6) months from Our written refusal to exercise Our option to purchase, and (3) all the conditions set forth in this Section 14 are satisfied.

14.08 Election of Right / Set Offs. If We elect to exercise Our option to purchase under this Agreement, We will have the right to set off against any payment all amounts due from You under this Agreement and the cost of the appraisal, if any.

14.09 Rights After Initial Refusal. If We do not exercise Our right to purchase within the required timeframe, You may transfer the Restaurant to the third party, but not at a lower price or on more favorable terms than disclosed to Us in writing. Such transfer remains subject to Our prior written approval and other conditions specified in this Agreement. If You do not transfer the Restaurant to the transferee on the same terms offered to Us, then You must again extend the right of first refusal to Us in the manner described above, before another desired transfer.

15. COVENANTS AND GENERAL PROVISIONS

15.01 Restriction on Competing Business. Unless otherwise authorized in writing by Us, You shall, during the term of this Agreement, devote Your full time, energy, and best efforts to the management and operation of Your business. You shall not, directly or indirectly, for Yourself, or through, on behalf of, or in conjunction with, any other person or entity divert, or attempt to divert, any business or customer to any competitor, by direct or indirect inducement, or otherwise, or to perform, directly or indirectly, any other act which is injurious or prejudicial to the goodwill associated with the System.

15.02 Post-term Covenant Not to Compete. For one (1) year after termination, transfer of this Agreement for any reason, (but not including expiration or circumstances under which You have terminated the Agreement for good cause) neither You, nor persons associated with You, including owners, managers, employees or agents, may participate directly or indirectly or serve in any capacity in any restaurant engaged in the sale of services or products the same as, similar to, or competitive with the System. For fixed-location units, this covenant applies: within a two (2) mile radius from the boundary of Your Protected Territory. This covenant not to compete is given in part in consideration for training and access to Our Trade Secrets, and which, if used in a competitive restaurant without paying royalties and other payments, would give You an unfair advantage over Us and Our franchisees and affiliates. The unenforceability of all or part of this covenant not to compete in any jurisdiction will not affect the enforceability of this covenant not to compete in other jurisdictions, or the enforceability of the remainder of this Agreement.

15.03 Franchisor's Right of Modification. You understand and acknowledge that We shall have the right, in Our sole discretion, to reduce the scope of any covenant set forth in Sections 15.01 and 15.02, or any portion thereof, without Your consent, effective immediately upon receipt by You of written notice thereof; and You agree that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 18.10 hereof.

15.04 Enforcement. You expressly agree that the existence of any claims You may have against Us, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Us of the covenants in this Section 15. You agrees to pay all costs and expenses (including reasonable attorneys' fees) incurred by Us in connection with the enforcement of this Section 15.

16. DISPUTE RESOLUTION

We and You agree that the provisions contained in this section are reasonable and were specifically bargained for.

16.01 Good Faith Discussion and Mediation. While We and You intend to work together in good faith and with the best interests of the System in mind, it is possible that disagreements between Us and You may occur. The parties will first attempt to resolve any dispute relating to or arising out of this Agreement by negotiation or through the procedure for internal dispute resolution as set forth in the Manual, and this procedure may be revised periodically in Our discretion.

If good faith discussions, or the internal process, do not resolve the differences between us, and the issues do not involve the collection of fees due pursuant to this Agreement, all disputes between the parties shall be submitted to mediation. Mediation shall begin within thirty (30) days after written notice is provided by either party to the other. The controversy or claim shall be submitted to one mediator mutually agreed upon by Us and You. We and You must act diligently, reasonably, and in good faith in selecting a mediator. The mediation shall occur in the city in which the mediator resides so long as it is a location reasonably accessible by air travel, or motor vehicle travel, for both parties, or at a location mutually agreed upon by us. We and You shall participate in the mediation in good faith. We and You shall each bear our own costs related to the mediation; however, the fees

and expenses of the mediator shall be divided equally between Us and You. We and You acknowledge that mediation is a nonbinding process.

16.02 Right to Relief. To protect from violations that would cause immediate loss and damages, We and You each have the right to seek from a court of competent jurisdiction:

- (a) Injunctive relief, specific performance, and restraining orders;
- (b) An action for disputes or claims related to or based on the Marks; and
- (c) Enforcement of a covenant not to compete.

16.03 Arbitration. Except as specifically provided under this Agreement, any dispute or claim relating to or arising out of this Agreement must be resolved exclusively by mandatory arbitration by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) or another arbitration service agreed to by the parties. A single arbitrator shall be selected in accordance with standard AAA procedure. Each party shall bear one-half of the arbitrator’s expenses. The decision of the arbitrator shall be final and binding. All aspects of the arbitration proceeding shall be confidential.

16.04 Applicability. This dispute resolution section applies to claims by and against all parties and their affiliates, successors, owners, managers, officers, directors, employees, agents, and representatives, as to claims arising out of or relating to this Agreement, except as stated above. This dispute resolution clause shall survive the termination or expiration of this Agreement.

16.05 Governing Arbitration Law. Notwithstanding any choice of law provision of this Agreement, all issues relating to arbitration or the enforcement of the agreement to arbitrate contained in this Agreement are governed by the U.S. Federal Arbitration Act (9 U.S.C. § 1 et seq.) and the U.S. federal common law of arbitration. This federal act preempts any state rules on arbitration. Judgment on an arbitration award, or on any award for interim relief, may be entered in any court having jurisdiction, and will be binding.

16.06 Governing Law/Consent to Venue and Jurisdiction. Except to the extent governed by the Federal Arbitration Act, the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Sections 1051 et seq.) or other federal law, this Agreement shall be interpreted under the laws of the state where the franchise is located, and any dispute between the parties shall be governed by and determined in accordance with the substantive laws of such state, which laws shall prevail in the event of any conflict of law. We and You have negotiated regarding a forum in which to resolve any disputes which may arise between them and have agreed to select a forum in order to promote stability in their relationship.

16.07 Venue. As to any arbitration, litigation or other dispute involving Us and You, the proceedings will be conducted at a location that is convenient to You. In any dispute involving the Us and two or more franchisees from different jurisdictions, the proceedings will be conducted at a location that is convenient to Us.

17. RELATIONSHIP OF THE PARTIES

17.01 Independent Contractor. You are an independent contractor and are not an agent, partner, joint venturer, or beneficiary of Ours, nor are You a fiduciary of Ours. Neither party will be bound or obligated by the other, except as set forth in this Agreement. You may not act as an agent in Our name or on behalf of Us for any purpose whatsoever.

17.02 Operations and Identification. You must conspicuously identify yourself in all dealings with the public as “independently owned and operated” separate from Us. Your employees are employees of Yours alone and are not, for any purpose, considered employees under Our control. We and You must file separate tax, regulatory, and payroll reports for each party’s own operations, and

must indemnify the other for any liability arising from the other's reports.

17.03 Hold Harmless. Nothing in this Agreement authorizes either of us to make any contract, agreement, warranty or representation on the other's behalf, or to incur any debt or other obligation in each other's name; and neither of us shall in any event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall either of us be liable by reason of any act or omission of the other in the operation of the business franchised hereunder or for any claim or judgment arising therefrom against either of us. You shall indemnify and hold Us, Our officers, directors, and employees, harmless from and against all fines, suits, proceedings, claims, causes of action, demands or liabilities of any kind or of any nature arising out of or in connection with the construction or operation of Your restaurant; except to the extent that such claim or action is directly attributable to an act by Us, or a failure of Us to act where We had an obligation to act. We shall indemnify and hold You, Your officers, directors and employees, harmless from and against fines, suits, proceedings, claims, causes of action, demands, or liabilities of any kind or nature arising out of Our performance of, or failure to perform, any duty or obligation of Ours under this Agreement; except to the extent that such performance or failure to perform by Us under this Agreement is directly attributable to an act by You or a failure You to act where You had an obligation to act.

18. MISCELLANEOUS

18.01 Exercise of Franchisor's Discretion. Whenever We have the right to act, or refrain from acting, pursuant to this Agreement, any action or inaction shall be exercised based on Our reasonable judgment of what is in the best interests of the System, including Us, even if other reasonable, or better, alternatives exist. The exercise of Our right to act, or refrain from acting, in relation to any request made by You pursuant to this Agreement, will not be unreasonably withheld, conditioned, or delayed.

18.02 Force Majeure. If You or We are reasonably prevented from performing our respective obligations, pursuant to this Agreement, due to forces of nature, war, riot, terrorism, or any other cause reasonably beyond the control of the affected party, the failure to perform shall be excused for the period of time the affected party is reasonably unable to perform.

18.03 Entire Agreement. This Agreement, together with all written related agreements, exhibits and attachments, constitutes the entire understanding of the parties and supersedes all prior negotiations, commitments, and representations.

18.04 Modification. No modifications of the terms of this Agreement shall be valid unless made in writing and executed by both You and Us. However, the Manual, System, and Marks may be periodically modified by Us and shall be fully enforceable against You. This Agreement may be amended at any time whenever We and a super-majority (as hereinafter defined) of Cuppy's franchisees agree to any such amendment. We agree to provide you, at least ninety (90) days prior to the date such amendment is to be effective, a copy of the proposed amendment, together with a brief statement explaining the reasons therefore. A "super-majority" of Cuppy's franchisees shall consist of the owners of at least seventy-five percent (75%) of all franchised Cuppy's Units in the United States of America. Whenever a super-majority of Cuppy's franchisees approve an amendment in the manner provided for herein, such amendment shall be binding on all Cuppy's franchisees, including you, to the same extent and in the same manner as if the amendment was unanimously approved by all Cuppy's franchisees, and regardless whether You may or may not desire to be bound by the amendment. By signing this Agreement, You appoint any of our officers as your attorney in fact with irrevocable power and authority to execute any such amendment so approved.

18.05 Waiver. Our waiver of any particular right against You will not affect or impair Our rights as to any subsequent exercise of that right of the same or a different kind; nor will any delay, forbearance or omission by Us to execute any rights affect or impair Our rights as to any future

exercise of those rights.

18.06 Severability. If any part of this Agreement, for any reason, is declared invalid by an arbitrator or court, the declaration will not affect the validity of any remaining portion. The remaining portion will remain in force and effect as if this Agreement were executed with the invalid portion eliminated or curtailed. All partially valid and enforceable provisions shall be enforced to the extent that they are valid and enforceable.

18.07 Conflict with Local Law. If any provision of this Agreement is inconsistent with a valid applicable law, the provision will be deemed amended to conform to the minimum standards required. The parties may execute an Addendum setting forth certain of these amendments applicable in certain jurisdictions, which will apply only so long as and to the extent that then applicable laws referred to in the addendum remain validly in effect.

18.08 Section Headings. Titles of articles and sections are used for convenience of reference only and are not part of the text, nor are they to be construed as limiting or affecting the construction of the provisions.

18.09 Legal Costs. If either party institutes a legal proceeding, including court proceeding and arbitration, and prevails entirely or in part in any action at law or in equity against the other party based entirely or in part on the terms of this Agreement, the prevailing party shall be entitled to recover from the losing party, in addition to any judgment, reasonable attorneys' fees, court costs and all of the prevailing party's expenses in connection with any action at law.

18.10 Obligations. We have no liability for Your obligations to any third party whatsoever.

18.11 Continuation of Agreement. The provisions of this Agreement, which by their terms or by reasonable implication require performance after assignment, expiration or termination, remain enforceable notwithstanding the assignment, expiration or termination of this Agreement, including those pertaining to non-competition, intellectual property protection, confidentiality and indemnity. This Agreement inures to the benefit of and is binding on the respective heirs, legal representatives, successors, and permitted assigns of the parties.

18.12 Delivery. All notices and other communications required by this Agreement must be in writing and must be delivered in person, sent by Federal Express or U.S. Mail overnight delivery, or by registered or certified mail, return receipt requested, or in any other manner We may designate. Communications sent to Us must be sent to the attention of the Chief Executive Officer at Our address or at any other address that We designate in writing. Communications to You will be sent to You at Your last known restaurant address, or at any other address that You designate in writing. Any notice is considered given and received, when delivered in person, or on the third business day following the mailing, if mailed.

18.13 Joint and Several Liability. If two or more persons or entities or any combination sign this Agreement, each will have joint and several liability. All owners and controllers of an entity or association which comprise the Franchisee (if an entity) are jointly and severally liable for the obligations of the Franchisee under this Agreement.

18.14 Cumulative Remedies. Rights and remedies under this Agreement are cumulative. No enforcement of a right or remedy precludes the enforcement of any other right or remedy.

18.15 Completion of Agreement. The parties agree to acknowledge, execute and deliver all further documents, instruments or assurances and to perform all further acts or deeds as may be reasonably required to carry out this Agreement.

19. ACKNOWLEDGEMENT

BY SIGNING THIS AGREEMENT, FRANCHISEE ACKNOWLEDGES THAT:

- (a) FRANCHISEE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE SYSTEM AND RECOGNIZES THAT THE RESTAURANT CONTEMPLATED BY THIS AGREEMENT INVOLVES RESTAURANT RISK AND WILL LARGELY DEPEND UPON THE ABILITY OF FRANCHISEE AS AN INDEPENDENT RESTAURANT PERSON;
- (b) FRANCHISOR HAS NOT GIVEN AND FRANCHISEE HAS NOT RECEIVED ANY EXPRESS OR IMPLIED WARRANTY OR GUARANTY REGARDING POTENTIAL VOLUME, PROFITS, OR SUCCESS OF THE RESTAURANT CONTEMPLATED BY THIS AGREEMENT;
- (c) FRANCHISEE IS NOT A PARTY TO OR SUBJECT TO AGREEMENTS THAT MIGHT CONFLICT WITH THE TERMS OF THIS AGREEMENT AND AGREES NOT TO ENTER INTO ANY CONFLICTING AGREEMENTS DURING THE TERM OR ANY RENEWAL TERMS;
- (d) FRANCHISEE HAS RECEIVED THE FRANCHISE OFFERING CIRCULAR DISCLOSURE DOCUMENT REQUIRED BY THE FEDERAL TRADE COMMISSION WITH APPLICABLE EXHIBITS AT LEAST TEN (10) BUSINESS DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED, AND HAS RECEIVED A COPY OF THE COMPLETE FRANCHISE AGREEMENT AT LEAST FIVE (5) BUSINESS DAYS BEFORE THE DATE ON WHICH THIS AGREEMENT WAS EXECUTED;
- (e) FRANCHISEE 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 OF FRANCHISEE'S OWN CHOOSING ABOUT THE POTENTIAL BENEFITS AND RISKS OF ENTERING INTO THIS AGREEMENT; AND
- (f) UNDER APPLICABLE U.S. LAW, INCLUDING, WITHOUT LIMITATION, EXECUTIVE ORDER 13224, SIGNED ON SEPTEMBER 23, 2001 (THE "ORDER"), FRANCHISOR IS PROHIBITED FROM ENGAGING IN ANY TRANSACTION WITH ANY SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON. "SPECIALLY DESIGNATED NATIONAL" OR "BLOCKED PERSON" SHALL MEAN (1) THOSE PERSONS DESIGNATED BY THE U.S. DEPARTMENT OF TREASURY'S OFFICE OF FOREIGN ASSETS CONTROL FROM TIME TO TIME AS A "SPECIALLY DESIGNATED NATIONAL" OR "BLOCKED PERSON" OR SIMILAR Status, (2) A PERSON ENGAGED IN, OR AIDING ANY PERSON ENGAGED IN, ACTS OF TERRORISM, AS DEFINED IN THE ORDER, OR (3) A PERSON OTHERWISE IDENTIFIED BY GOVERNMENT OR LEGAL AUTHORITY AS A PERSON WITH WHOM FRANCHISOR IS PROHIBITED FROM TRANSACTING BUSINESS. CURRENTLY, A LISTING OF SUCH DESIGNATIONS AND THE TEXT OF THE ORDER ARE PUBLISHED AT THE INTERNET WEBSITE ADDRESS [HTTP://WWW.TREASURY.GOV/OFFICES/ENFORCEMENT/OFAC/PROGRAMS/TERROR/TERROR.PDF](http://www.treasury.gov/offices/enforcement/ofac/programs/terror/terror.pdf). ACCORDINGLY, FRANCHISEE REPRESENTS AND WARRANTS TO FRANCHISOR THAT AS OF THE DATE OF THIS AGREEMENT, NEITHER FRANCHISEE NOR ANY PERSON HOLDING ANY OWNERSHIP INTEREST IN FRANCHISEE, CONTROLLED BY FRANCHISEE, OR UNDER COMMON CONTROL WITH FRANCHISEE IS A SPECIALLY DESIGNATED NATIONAL OR BLOCKED PERSON, AND THAT FRANCHISEE (1) DOES NOT, AND HEREAFTER SHALL NOT, ENGAGE IN ANY TERRORIST ACTIVITY; (2) IS NOT AFFILIATED WITH AND DOES NOT SUPPORT ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST

ACTIVITY; AND (3) IS NOT ACQUIRING THE RIGHTS GRANTED UNDER THIS AGREEMENT WITH THE INTENT TO GENERATE FUNDS TO CHANNEL TO ANY INDIVIDUAL OR ENTITY ENGAGED IN, CONTEMPLATING, OR SUPPORTING TERRORIST ACTIVITY, OR TO OTHERWISE SUPPORT OR FURTHER ANY TERRORIST ACTIVITY. FRANCHISEE AGREES THAT FRANCHISEE SHALL IMMEDIATELY PROVIDE WRITTEN NOTICE TO FRANCHISOR OF THE OCCURRENCE OF ANY EVENT WHICH RENDERS THE REPRESENTATIONS AND WARRANTIES IN THIS SECTION 19(F) INCORRECT.

IN WITNESS WHEREOF, the parties hereto have executed, sealed and delivered this Agreement in two (2) or more original copies on the day and year first above written.

FRANCHISOR:

Cuppy's Coffee & More, Inc.

by: _____
Authorized Representative

FRANCHISEE:

If an entity: _____
Printed name of entity

by: _____
Authorized Representative

If Individual Owners

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Note: This Agreement and Attachment 3 (Guaranty and Assumption of Obligations) must be signed individually by the primary representative of Franchisee and by all owners and spouses of owners.

**ATTACHMENT 1
TO FRANCHISE AGREEMENT
“LOCATION ADDENDUM”**

THIS ADDENDUM to the Franchise Agreement between Cuppy's Coffee & More, Inc. and the undersigned Franchisee, is made effective as of the date of the Franchise Agreement.

Approved by:

Franchisor: Franchisee:

1. The Initial Franchise Fee is \$ _____ payable as follows:

(To be completed and initialed by both parties at approval of the Franchise Agreement)

2a. For Kiosk, Drive-Up, and Full Service Café Units: *All Search Areas, Premises and Protected Territories are strictly on a first-come, first-serve basis. The designation of a Search Area does not guarantee a particular location for the Premises nor does it define the boundaries of the Protected Territory.*

i. Franchisee's Search Area shall be: _____

(To be completed and initialed by both Parties at approval of the Franchise Agreement)

ii. Franchisee's Premises (i.e., the “Restaurant”) will be located at:

(To be completed and initialed by both Parties upon approval of the Premises)

iii. Franchisee's Protected Territory (which is dependent upon population density and can range from approximately one-quarter mile up to a two mile driving distance from Franchisee's Premises) shall be:

(To be completed and initialed by both Parties upon approval of the Premises)

2b. For Cart and Mobile Units: The Unit will be permanently stored at the following address when not in use: _____

(To be completed and initialed by both Parties at approval of the Franchise Agreement)

FRANCHISOR:

Cuppy's Coffee & More, Inc.

By: _____
Authorized Representative

FRANCHISEE:

IF Entity:

Printed Entity Name

By: _____
Authorized Representative

If Individual Owners:

Signature

Signature

Signature

Signature

**ATTACHMENT 2
TO FRANCHISE AGREEMENT
"STATEMENT OF OWNERSHIP"**

Formal name of Franchisee, if an entity: _____

Trade Name that You intend to use: _____

Form of Ownership
(Please check the appropriate box)

☐ Individual ☐ Partnership ☐ Corporation ☐ Limited Liability Company

If the franchisee entity is a:

General or Limited Partnership:

- a. indicate on the lines below the name and address of each partner showing the percentage owned and whether active in management; and,
- b. attach a copy of Partnership Agreement provided by the Secretary of State for the State in which the Partnership was formed.

Limited Liability Company:

- a. indicate on the lines below the name and address of each member and each manager showing the percentage owned; and,
- b. attach a copy of the Operating Agreement provided by the Secretary of State for the State in which the LLC was formed.

Corporation:

- a. indicate on the lines below the names and addresses of each office and director, and list the names and addresses of every shareholder showing the percentage of stock that is owned by each shareholder; and,
- b. attach a copy of the Articles of Incorporation provided by the Secretary of State for the State in which the corporation was formed.

Please indicate the names of the General Partner, Managing Member, President, Chief Operating Officer or other individuals that have authority to act on behalf of the entity: _____

Use additional sheets if necessary. Any and all changes to the above information must be updated and reported to Franchisor in writing.

FRANCHISEE: _____

Printed entity name

by:

Authorized Representative

**ATTACHMENT 3
TO FRANCHISE AGREEMENT
“GUARANTY AND ASSUMPTION OF OBLIGATIONS”**

This **Guaranty and Assumption of Obligation** is given this ____ day of ___, 200__, by the individuals signing below in consideration of, and as inducement to, the execution of that certain Franchise Agreement of even date herewith (the “Agreement”) signed by Franchisee and Cuppy’s Coffee & More, Inc. (the “Franchisor”).

Each of the undersigned hereby personally and unconditionally: (a) guarantees to Franchisor, and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that the Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement; and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities.

Each of the undersigned waives: (i) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (ii) notice of demand for payment of any indebtedness or non-performance of any obligations hereby guaranteed; (iii) protest and non-performance of any obligations hereby guaranteed; (iv) any right it may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (v) any and all other notices and legal or equitable defenses to which it may be entitled.

Each of the undersigned consents and agrees that: (i) his/her direct and immediate liability under this guaranty shall be joint and several; (ii) he or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (iii) such liability shall not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and (iv) such liability shall not be diminished, relieved or otherwise affected by any extension of time, credit, or other indulgence which Franchisor may from time-to-time grant to Franchisee or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this guaranty, which shall be continuing and irrevocable during the term of the Agreement.

IN WITNESS WHEREOF, each of the undersigned has hereunto written his/her signature on the same day and year as the Agreement was executed.

Guarantor(s):

**Percentage of
Ownership of
Franchisee**

_____ (Signature)	_____ Printed Name)	_____%
_____ (Signature)	_____ Printed Name)	_____%
_____ (Signature)	_____ Printed Name)	_____%
_____ (Signature)	_____ Printed Name)	_____%

ATTACHMENT 4
TO FRANCHISE AGREEMENT
“AUTHORIZATION AGREEMENT FOR PREAUTHORIZED PAYMENT SERVICE”

I (or We if there are joint owners of the account referenced later in this agreement) authorize and request Cuppy’s Coffee & More, Inc. (the “Company”) to obtain payment for all royalty amounts I owe to the Company pursuant to the Franchise Agreement between the Company and me (us), as these amounts become due by initiating a payment entry to my (our) account. The account number, name of financial institution, payment amount, and date on or immediately after which payment should be deducted from the account are identified below. In addition, I authorize and request the financial institution, now referred to as the Bank, to accept the payment entries presented to the Bank and to deduct them from my (our) account without responsibility for the correctness of these payments.

Franchisee Information:

Franchisee Name: _____ Franchisee Restaurant No.: _____

Payment Date: _____ Payment Frequency: _____

Your Bank Information:

Bank Name: _____ Bank Address: _____

Transit Routing Number: _____ Checking Account Number: _____

(If you attach a voided check, We will complete this information for you.)

Signature: _____

Signature: _____

Signature: _____

Signature: _____

ATTACHMENT 5
TO FRANCHISE AGREEMENT
“CONFIDENTIALITY AND NON-COMPETITION AGREEMENT”

In consideration of my position as _____ of _____
(the “Franchisee”), and One Dollar, receipt of which is acknowledged, I hereby acknowledge and agree that:

1. As an employee of the Franchisee, I will receive valuable confidential information, disclosure of which would be detrimental to the Franchisor and the Franchisee, such as information relating to distinctive restaurant format, plans, methods, data, processes, supply systems, marketing systems, formulas, techniques, designs, layouts, operating procedures, Marks and information and know-how of the Franchisor and such other information as may be further developed periodically by the Franchisor which are beyond the present skills and experience possessed by me. This list of confidential matters is illustrative only, and does not include all matters considered confidential by the Franchisor and the Franchisee.

2. Cuppy’s Coffee & More, Inc. (the “Franchisor”), as the result of the expenditure of time, skill, effort, and money, has developed, and continues to develop, a distinctive system relating to the establishment and operation of Cuppy’s Coffee & More restaurants (“Cuppy’s Restaurants”), which feature and offer for sale to the public branded coffee and related espresso beverages, fresh beverages and other related items, including fruit smoothies and bottled waters using systems and services designed by Franchisor, under the trade names “Cuppy’s” and “Cuppy’s Coffee & More” (the “System”).

3. I will hold in strict confidence all information designated by the Franchisor or the Franchisee as confidential. Unless the Franchisor otherwise agrees in writing, I will disclose and/or use the confidential information only in connection with my duties as an employee of the Franchisee. My undertaking not to disclose confidential information is a condition of my position with the Franchisee, and continues even after I cease to be in that position.

4. While in my position with the Franchisee, I may not participate directly or indirectly or serve in any capacity in any restaurant engaged in the sale of services or products the same as, similar to, or competitive with the System.

5. The Franchisor is a third-party beneficiary of this Agreement and may enforce it, solely and/or jointly with the Franchisee. I am aware that my violation of this Agreement will cause the Franchisor and the Franchisee irreparable harm; therefore, I acknowledge and agree that the Franchisor and/or the Franchisee may apply for the issuance of an injunction preventing me from violating this Agreement in addition to any other remedies it may have hereunder, at law or in equity; and I agree to pay the Franchisor and the Franchisee all the costs it/they incur/s, including without limitation attorneys’ fees, if this Agreement is enforced against me. Due to the importance of this Agreement to the Franchisor and the Franchisee, any claim I have against the Franchisor or the Franchisee is a separate matter and does not entitle me to violate, or justify any violation of, this Agreement. If any part of this Agreement is held invalid by a court or agency having valid jurisdiction, the rest of the Agreement is still enforceable and the part held invalid is enforceable to the extent found reasonable by the court or agency. I agree that all the words and phrases used in this Agreement will have the same meaning as used in the Franchise Agreement, and that such meaning has been explained to me.

6. The Franchisor may, in its sole discretion, reduce the scope of any covenant set forth in this Agreement, without my consent, effective immediately upon my receipt of written notice thereof; and I agree to comply with any covenant as so modified.

7. This Agreement shall be construed under the laws of the State of Florida. The only way this Agreement can be changed is in a writing signed by both the Franchisee and me.

Executed on the _____ day of _____, 200__ by:

Employee of Franchisee: _____

Franchisee: _____
By _____
Authorized Representative

**ATTACHMENT 6
TO FRANCHISE AGREEMENT
“PREMISES SELECTION ADDENDUM”**

Cuppy's Coffee & More, Inc. (“Franchisor”) and _____ (“Franchisee”), have this _____ day of _____, 200____, entered into a certain Cuppy's Coffee & More Franchise Agreement (the “Franchise Agreement”) and desire to supplement its terms, as set forth below. The parties hereto therefore agree as follows:

1. If Franchisee will occupy the premises of the Restaurant under a lease, Franchisee shall, prior to the execution thereof, (1) execute and obtain Lessor's consent on the Conditional Assignment of Lease in the form attached as **Attachment 8** to the Franchise Agreement, and (2) submit the lease to Franchisor for its pre-approval. Franchisor's approval of the lease may be conditioned upon the inclusion of the following terms and conditions.

- (a) all notices of default to Franchisee under the lease must be sent contemporaneously to Franchisor;
- (b) in the event that Franchisee defaults under the lease, Franchisor or its designee will have an opportunity, but not the obligation, to cure such default and to assume Franchisee's remaining obligations under the lease, but will not have any obligation to do so;
- (c) a provision reserving to Franchisor the right, at Franchisor's sole and absolute election, to receive an assignment of the leasehold interest from Franchisee upon termination of the initial term or any renewal term, or any termination of Franchisee, and the right to reassign the lease without becoming liable on the lease and without additional charge;
- (d) the initial term of the lease, or the initial term together with renewal terms, shall be for not less than ten (10) years;
- (e) the Lessor consents to Franchisee's use of such Marks and initial signage as Franchisor may prescribe for the Restaurant;
- (f) the use of the premises be restricted solely to the operation of the Restaurant;
- (g) a prohibition restricting 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;
- (h) the Lessor shall provide to Franchisor timely copies of any and all notices of default given to Franchisee under the lease;
- (i) the Franchisor have the reasonable right to enter the premises to make modifications necessary to protect the Marks or the System or to cure any default under the Franchise Agreement or under the lease;
- (j) Franchisor (or Franchisor's designee) have the option, upon default or termination of the Franchise Agreement, and upon notice to the Lessor, to assume all of Franchisee's rights under the lease terms, including the right to assign or sublease.

2. Franchisee hereby acknowledges and agrees that Franchisor's approval of a Premises does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the Premises for the Restaurant or for any other purpose. Franchisor's approval of the Premises indicates only that Franchisor believes the Premises complies with acceptable minimum criteria established by Franchisor solely for its purposes as of the time of the evaluation. Both Franchisee and Franchisor acknowledge that application of criteria that may have been effective with respect to other premises may not be predictive of potential for all premises and that, subsequent to Franchisor's approval of a Premise, demographic and/or economic factors, such as competition from other similar businesses, included in or excluded from Franchisor's criteria could change, thereby altering the potential of a premises or lease. Such factors are unpredictable and are beyond Franchisor's control. Franchisor shall not be responsible for the failure of a premises approved by Franchisee to meet Franchisee's expectations as to revenue or operational criteria. Franchisee further acknowledges and agrees that its acceptance of a franchise for the operation of the Restaurant at the Premises is based on its own independent investigation of the suitability of the premise.

If Franchisee operates a Cart or Mobile Unit granted under the Franchise Agreement under one or more leases, the provisions of this Premises Selection Addendum and Section 10.03 of the Franchise Agreement shall apply to each applicable lease:

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

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate on the date first above written.

FRANCHISOR:
Cuppy's Coffee & More, Inc.

FRANCHISEE:
If an entity: _____
Printed name of entity

by: _____
Authorized Representative

by: _____
Authorized Representative

If Individual Owners, Spouses:

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

Signature

Printed Name

ATTACHMENT 7
TO FRANCHISE AGREEMENT
"COLLATERAL ASSIGNMENT OF TELEPHONE NUMBERS, ADDRESSES, AND LISTINGS"

THIS ASSIGNMENT is entered into this ____ day of _____, 20____, in accordance with the terms of that certain Cuppy's Coffee & More, Inc. Franchise Agreement between Franchisee and Cuppy's Coffee & More, Inc. a Texas corporation("Franchisor"), executed concurrently with this Assignment, under which Franchisor granted Franchisee the right to own and operate a Franchise located at _____.

FOR VALUE RECEIVED, Franchisee hereby assigns to Franchisor those certain telephone numbers, addresses, domain names, locators, directories and listings (collectively, the "Numbers, Addresses, and Listings") associated with Franchisor's trade and service marks and used from time to time in connection with the operation of the Franchise Restaurant at the address provided above. This Assignment is for collateral purposes only and, except as specified herein, Franchisor shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment, unless Franchisor shall notify the telephone, Internet, email, electronic network, directory, and listing entities with which Franchisee has dealt (all such entities are collectively referred to herein as "Provider Companies") to effectuate the assignment pursuant to the terms hereof.

Upon any early termination of the Franchise Agreement (without renewal or extension), Franchisor shall have the right and is hereby empowered to effectuate the Assignment of the Numbers, Addresses, and Listings and, in such event, Franchisee shall have no further right, title or interest in the Numbers, Addresses, and Listings, and shall remain liable to the Provider Companies for all past due fees owing to the Provider Companies on or before the effective date of the assignment hereunder.

Franchisee agrees and acknowledges that as between Franchisor and Franchisee, upon early termination of the Franchise Agreement, Franchisor shall have the sole right to and interest in the Numbers, Addresses, and Listings, and Franchisee appoints Franchisor as Franchisee's true and lawful attorney-in-fact to direct the Provider Companies to assign same to Franchisor, and execute such documents and take such actions as may be necessary to effectuate the assignment. Upon such event, Franchisee shall immediately notify the Provider Companies to assign the Numbers, Addresses, and Listings to Franchisor. If Franchisee fails to promptly direct the Provider Companies to assign the Numbers, Addresses and Listings to Franchisor, Franchisor shall direct the Provider Companies to effectuate the assignment contemplated hereunder to Franchisor. The parties agree that the Provider Companies may accept Franchisor's written direction, the Franchise Agreement or this Assignment as conclusive proof of Franchisor's exclusive rights in and to the Numbers, Addresses, and Listings upon such termination or expiration and that such assignment shall be made automatically and effective immediately upon Provider Companies' receipt of such notice from Franchisor or Franchisee. The parties further agree that if the Provider Companies require that the parties execute the Provider Companies' assignment forms or other documentation at the time of termination or expiration of the Franchise Agreement, Franchisor's execution of such forms or documentation on behalf of Franchisee shall effectuate Franchisee's consent and agreement to the assignment. The parties agree that at any time after the date hereof they will perform such acts and execute and deliver such documents as may be necessary to assist in or accomplish the assignment described herein upon termination or expiration of the Franchise Agreement.

ASSIGNEE (FRANCHISOR):

Cuppy's Coffee & More, Inc.

by: _____
Authorized Representative

ASSIGNOR (FRANCHISEE):

If an entity: _____
Printed name of entity

by: _____
Authorized Representative

If Individual Owners:

Signature

Signature

Signature

Signature

ATTACHMENT 8
TO FRANCHISE AGREEMENT
"CONDITIONAL ASSIGNMENT OF LEASE"

FOR VALUE RECEIVED, the undersigned ("Assignor") hereby assigns and transfers to Cuppy's Coffee & More, Inc., a Texas corporation ("Assignee"), all of Assignor's right, title and interest as tenant in, to and under that certain lease, a copy of which is attached hereto as **Exhibit 1 (the "Lease")** respecting premises commonly known as: _____

_____. This Assignment is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment or the Lease unless Assignee takes possession of the premises demised by the Lease pursuant to the terms hereof and assumes the obligations of Assignor thereunder.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein and that Assignor has not previously assigned or transferred, and is not obligated to assign or transfer, any of its interest in the Lease or the premises demised thereby. Upon a default by Assignor under the Lease or under the franchise agreement for a Cuppy's Coffee & More restaurant between Assignee and Assignor (the "Franchise Agreement"), or in the event of a default by Assignor under any document or instrument securing the Franchise Agreement, Assignee shall have the right and is hereby empowered to take possession of the premises demised by the Lease, expel Assignor there from, and, in such event, Assignor shall have no further right, title or interest in the Lease.

Assignor agrees that it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Throughout the term of the Franchise Agreement and any renewals thereto, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that the option must be exercised, unless Assignee otherwise agrees in writing. If Assignee does not otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as aforesaid, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Assignor for the purpose of effecting such extension or renewal.

ASSIGNEE (FRANCHISOR):

Cuppy's Coffee & More, Inc.

by: _____
Authorized Representative

ASSIGNOR (FRANCHISEE):

If an entity: _____
Printed name of entity

by: _____
Authorized Representative

If Individual Owners:

Signature

Signature

Signature

Signature

LANDLORD APPROVAL:

By: _____
Signature

**EXHIBIT 1
To
ATTACHMENT 8**

Lease

(attach here)

ATTACHMENT 9 **TO FRANCHISE AGREEMENT** **FRANCHISEE DISCLOSURE AND COMPLIANCE QUESTIONNAIRE**

You are preparing to enter into a Franchise Agreement with Cuppy's Coffee & More, Inc. for the operation of a Cuppy's franchised business. The purpose of this Questionnaire is to determine whether any statements or promises were made to You that Cuppy's Coffee & More, Inc. did not authorize or that may be untrue, inaccurate or misleading. It is also used to ensure compliance with the various state laws and regulations

Please review each of the following questions carefully and provide honest and complete responses to each question.

1. Have You received and personally reviewed the Cuppy's Franchise Agreement and each exhibit attached to it? Yes ☐ No ☐
2. Do You understand all of the information contained in the Franchise Agreement and each exhibit attached to it? Yes ☐ No ☐

If You answered question 2 "No", what parts of the Franchise Agreement or the exhibits do You not understand? (Attach additional pages, if necessary.) _____

- | | | | |
|----|---|------------------------------|-----------------------------|
| 3. | Have You received and personally reviewed our Offering Circular that We provided? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. | Do You understand all of the information contained in the Offering Circular? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If You answered question 3 "No", what parts of the Offering Circular do You not understand? (Attach additional pages, if necessary.) _____

- | | | | |
|----|---|------------------------------|-----------------------------|
| 5. | Have You discussed the benefits and risks of operating a Cuppy's business with an attorney, accountant or other professional advisor? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 6. | Do You understand the benefits and risks of operating a Cuppy's business? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 7. | Do You understand that the success or failure of your business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, lease terms and other economic and business factors? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

- | | | | |
|----|--|------------------------------|-----------------------------|
| 8. | Has any employee or other person speaking on our behalf made any statement or promise concerning the revenues, profits or operating costs of a Cuppy's franchised business that We or our franchisees operate? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 9. | Has any employee or other person speaking on our behalf made any statement or promise concerning a Cuppy's franchised business that is contrary to, or different from, the information contained in the Offering Circular? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

10.	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 Cuppy's franchise business?	<u> </u> Yes	<u> </u> No
11.	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, or different from, the information contained in the Offering Circular?	<u> </u> Yes	<u> </u> No

If You have answered "Yes" to any of questions 8 through 11, please provide a full explanation of your answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below) If You have answered "No" to each of such questions, please leave the following lines blank.

12. Do You understand that in all dealings with you, our officers, directors, employees and agents act only in a representative capacity and not in an individual capacity and such dealings are solely between You and Cuppy's Coffee & More, Inc.?
- Yes No

=====

Please understand that your answers are important to us and that we will rely on them. By signing this Franchisee Disclosure and Compliance Questionnaire, You are representing to Cuppy's Coffee & More, Inc that You have responded truthfully to the above questions.

Signature

Printed Name of Franchisee/Applicant

Date:_____, 200__