

**EXHIBIT C**  
**FRANCHISE AGREEMENT AND EXHIBITS**

# UNIT FRANCHISE AGREEMENT

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Confidentiality and Non-Compete Agreement

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THIS UNIT FRANCHISE AGREEMENT ("Agreement") is dated this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_ and it is entered into between 360  
Degree Franchise Corporation, a California corporation ("Company"), and \_\_\_\_\_  
\_\_\_\_\_  
("Franchisee"),

## RECITALS

Company has made a substantial investment of money, time and effort to obtain acknowledgment and to develop a distinctive food service system (hereinafter called the "System") under which food is sold to the public from restaurants which are operated with a uniform business format, standards, methods, procedures, merchandising, advertising, techniques and designs and identified to the public under the trademarks, service marks and logotype for the trade name "360 Gourmet Burritos"

Company grants to qualified persons franchises to own and operate restaurants ("360 Gourmet Burritos Restaurants") to sell products and services authorized and approved by the Company utilizing the System and the Company trademarks, trade names, service marks, logos, and commercial symbols described in Schedule A, attached hereto and incorporated by reference hereinafter ("Proprietary Marks").

Franchisee has applied to the Company for a franchise to operate a restaurant ("Franchised Restaurant") and such application has been approved by the Company in reliance upon all representations and statements made by the Franchisee to the Company including, without limitation, the financial resources of the Franchisee.

Franchisee understands and acknowledges the importance of the Company's high and uniform standards of quality and service and the necessity of operating the restaurants in conformity with the Company's standards and qualifications.

Franchisee has reviewed this Agreement, the Franchise Offering Circular, and other materials related to the Company's restaurant franchises and related matters and has independently investigated and become familiar with the scope of the System and declares that it possesses the requisite knowledge and skill to operate a franchise.

Franchisee represents that it has conducted any independent investigations it felt necessary. Franchisee recognizes: that the business risks inherent in the Franchised Restaurant, and that the success of the Franchisee is dependent upon Franchisee's efforts.

Franchisee acknowledges that it has not received or relied upon any guarantee, expressed or implied, as to the revenues, profits, or success of the franchise contemplated by this Agreement; and further acknowledges that there have been no representations by the Company or its agents that are contrary or in addition to the terms enunciated in this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency whereof are hereby acknowledged, Company and Franchisee do hereby agree as follows:

### 1.00 GRANT OF FRANCHISE

#### 1.01 Grant of Franchise.

a) This franchise is being granted based on the application, financial statements and other documents submitted by Franchisee to the Company prior to the execution of this Agreement. Franchisee represents and warrants that those materials: (1) are accurate and complete as of their respective dates and the date of this Agreement; and (2) do not omit any statement of material fact necessary to make them not misleading.

b) Subject to the terms and conditions of this Agreement and the Franchisee's continuing good faith performance under this Agreement, the Company grants to Franchisee: (i) the right to build and operate one (1) Franchised Restaurant and to use the System at the location described on Schedule B ("Location"); (ii) the

right to use such Proprietary Marks of the Company as are now or may hereafter be specifically designated by the Company in writing for use with the System (as they may be changed, improved, and further developed from time to time) in conjunction with the Franchised Restaurant, and (iii) the right to indicate to the public that the Franchised Restaurant is operated as a part of, or a unit in, the Company's Restaurant chain.

c) The Company shall not own, operate nor grant a franchise for a 360 Gourmet Burritos Restaurant within the area surrounding the Location comprised of a circle having a one and a half mile radius with the Location as the center point of the circle, designated as the "Territory;" provided, however, the Company may own or operate, or grant franchises or licenses for others to operate 360 Gourmet Burritos Restaurant within the Territory at the following locations:

- 1) on rights-of-way of any limited access highways or toll roads, airports, campus, educational, industrial or health care institutions, office or business complexes or buildings, military installations, or at expositions, convention centers, fairs, theme parks or similar facilities or events; and
- 2) anywhere outside the Territory (regardless whether such location is within the trading area of the Franchised Restaurant) on such terms and conditions as the Company deems appropriate.

d) The Company reserves the right to sell, directly or through third parties, products that are the same as, or similar to those sold in 360 Gourmet Burritos Restaurants, using brand names the same as, or similar to, the Proprietary Marks designated for use with the System, provided that the items sold by the Company are either packaged or bottled and are sold for preparation or consumption off the selling premises, and are not sold by the Company through restaurant outlets.

e) Franchisee is not limited in the customers Franchisee may serve from each restaurant. However, Franchisee may only sell products on a retail basis, and not for resale by the purchasers thereof, to the general public through the Franchised Restaurant facility. Franchisee is not permitted to distribute the Company's products on a non-retail basis without the prior written consent of the Company and without entering into a separate agreement, if any, requested by the Company.

#### 1.02 Other Restaurants

Franchisee understands that the Company may operate and franchise restaurants and food establishments other than 360 Gourmet Burritos Restaurants. Franchisee agrees that the Company may do so at any location, including locations within the Territory, provided that such restaurants and food establishments are not operated under the name(s) "360 Gourmet Burritos," "360°," "Wrapping Up the Flavors of the World," or similar trade names. Franchisee further acknowledges and agrees that this franchise is solely for the Location and affords Franchisee no rights in any additional franchise to be operated at any other location. Neither this Agreement nor the franchise issued hereunder obligates the Company in any way to sell or issue any other franchise.

#### 1.03 Acceptance of Franchise; Use of Premises

a) Franchisee agrees to diligently develop and operate the Franchised Restaurant and to promote diligently the interests of the System for the term of this Agreement and any renewal thereof. Franchisee accepts said grant and franchise and agrees to construct, maintain and operate the Franchised Restaurant only at the Location, and in accordance with (i) the Company's plans and specifications, (ii) the System, (iii) the Confidential Manual, (iv) other manuals and procedures as may be included in the System and revised from time to time, and (v) the terms and conditions of this Agreement.

b) Franchisee agrees to use the Franchised Restaurant and the premises upon which it is located ("Franchised Restaurant Premises") solely for the operation of the Franchised Restaurant and purposes designated in this Agreement and for no other purpose.

#### 1.04 Company Services

a) The Company agrees to provide Franchisee with the following materials and services for the Franchised Restaurant:

- 1) upon Franchisee's request, written guidelines for site selection;
- 2) standard plans, drawings and specifications for the Franchised Restaurant and its

related facilities;

- 3) standard layouts and specifications for fixtures, furnishings, interior design and decor, signs and equipment for the System;
- 4) such pre-opening assistance as the Company may, in its discretion, deem necessary for Franchisee to meet System standards;
- 5) a pre-opening management training program and such other training at such locations and for such periods as may be designated by the Company from time to time in the Confidential Manual, subject Section to 5.03 of this Agreement;
- 6) on-site opening assistance for the Franchised Restaurant, if determined by the Company to be necessary;
- 7) one (1) copy of the Confidential Manual (a registered copy of which is delivered concurrently with the execution hereof and loaned to Franchisee for the term hereof), and such additions and modifications thereto as the Company may issue from time to time, in its discretion (the Company may require payment of its then current replacement fee for replacing copies of the Confidential Manual);
- 8) a sample of the Company's standardized chart of accounts and format for Franchisee's statement of earnings and balance sheet, to be used by Franchisee for reporting to the Company; and
- 9) the 360 Gourmet Burritos marketing and advertising program(s), as described herein.

NEITHER THE COMPANY'S ACCEPTANCE OF THE LOCATION NOR ANY INFORMATION COMMUNICATED TO FRANCHISEE REGARDING THE COMPANY'S SITE SELECTION CRITERIA FOR 360 GOURMET BURRITOS RESTAURANTS SHALL CONSTITUTE A WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SUITABILITY OF THE LOCATION FOR A 360 GOURMET BURRITOS RESTAURANT OR FOR ANY OTHER PURPOSE. THE COMPANY'S ACCEPTANCE OF THE PROPOSED SITE MERELY SIGNIFIES THAT IT IS WILLING TO GRANT A FRANCHISE FOR A 360 GOURMET BURRITOS RESTAURANT FOR SUCH LOCATION. THE COMPANY IS NOT RESPONSIBLE FOR THE FAILURE OF THE LOCATION TO MEET FRANCHISEE'S EXPECTATIONS AS TO POTENTIAL REVENUES. FRANCHISEE'S DECISION TO OPERATE A 360 GOURMET BURRITOS RESTAURANT AT THE LOCATION IS BASED SOLELY ON FRANCHISEE'S INDEPENDENT INVESTIGATION OF THE SUITABILITY OF THE LOCATION FOR A 360 GOURMET BURRITOS RESTAURANT.

## **2.00 TERM**

2.01 If Franchisee Owns the Franchised Restaurant Premises:

- a) Franchisee warrants and represents to Company that Franchisee owns the Franchised Restaurant Premises;
- b) Franchisee agrees that it shall notify Company in writing of any change regarding its ownership of the Franchised Restaurant Premises; and
- c) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall be twenty (20) years commencing on the date that the Franchised Restaurant opens for business as reported by Franchisee in accordance with the terms of this Agreement and as reflected on the Company's records ("Opening Date");

OR

2.02 If Franchisee Leases the Franchised Restaurant Premises:

- a) Franchisee warrants and represents to Company that Franchisee leases or subleases the Franchised Restaurant Premises pursuant to a lease or sublease agreement dated as of \_\_\_\_\_, of which Franchisee has provided Company with a true and accurate copy (together with any modifications or renewals thereof, "Lease");

b) Franchisee further warrants and represents to Company that the Lease commencement date is \_\_\_\_\_, the Lease expiration date is \_\_\_\_\_ and the Lease provides for (\_\_\_\_\_) option periods of (\_\_\_\_\_) years each;

c) Franchisee shall promptly provide Company with copies of any material modifications of the Lease;

d) Franchisee shall cause the Lease to contain a provision that allows Franchisee and Company to fulfill the requirements of Section 11.02; and

e) Unless previously terminated pursuant to the terms of this Agreement, the term of the franchise granted herein shall be ten (10) years (the term shall be a maximum of 20 years if Franchisee qualifies and elects to exercise its options to renew, described below) commencing on the date that the Franchised Restaurant opens for business as reported by Franchisee in accordance with the terms of this Agreement and as reflected on the Company's records ("Opening Date"), provided, however, that Franchisee agrees that it shall not open the Franchised Restaurant for business prior to the Lease commencement date and the term of this Agreement shall not extend beyond the expiration of Franchisee's Lease.

#### 2.03 Options to Renew.

a) Franchisee may, at its option, renew this franchise agreement for two additional term(s) of five years each; however, Franchisee's exercise of its renewal option shall not extend the term of this franchise beyond the expiration of the Franchisee's Lease. In addition, in order to exercise its renewal option, Franchisee must satisfy all of the following conditions:

- 1) Franchisee must give the Company written notice of its election to renew no less than six (6) months, nor more than nine (9) months, prior to the end of the then current term;
- 2) At the time when notice is given and at the end of the then current term, (a) Franchisee must not have been in default of: (i) any provision of this Agreement in the last 12 months, or (ii) any other agreement between Franchisee or any of its affiliates and the Company or any of the Company's affiliates, and (b) Franchisee and all of its affiliates shall have substantially complied with the terms and conditions of all such agreements during the initial and any prior renewal term(s) of this Agreement;
- 3) Franchisee and all of its affiliates shall have satisfied all monetary obligations owed by them to the Company, its subsidiaries and affiliates prior to renewal, and have timely met all such obligations throughout the initial and all prior renewal terms of this Agreement;
- 4) Franchisee shall provide such financial information regarding Franchisee as the Company reasonably may request;
- 5) Franchisee (and its owners) must execute the Company's then current standard form renewal franchise agreement (including personal guarantees and other attachments), which may contain terms and conditions substantially different from those set forth herein, including, without limitation, increased mandatory fees and advertising expenditures;
- 6) Franchisee and each of its owners shall execute a general release, in a form satisfactory to the Company, of any and all claims Franchisee may have as of the date of execution of the renewal unit franchise agreement, or arising from an event or events which occurred prior to such date, against the Company and its officers, directors, shareholders and employees, in their corporate and individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;
- 7) Franchisee shall present evidence satisfactory to the Company that Franchisee has the right to remain in possession of the Franchised Restaurant Premises for the duration of the renewal term;
- 8) Franchisee shall complete, or provide for, such renovation and modernization of the Franchised Restaurant and Franchised Restaurant Premises as the Company may reasonably require, including, without limitation, such remodeling (including structural modifications), redecoration, repair and replacement of fixtures, furniture, signs and equipment, as may be necessary both to reflect the then current public image required by the Company of new Franchisees and to ensure the presentation of the Proprietary Marks consistent with such

image;

9) Franchisee shall reimburse the company for all costs and expenses incurred by it in connection with the renewal of the franchise up to a maximum of \$2,500.00 including, without limitation, all administrative and legal costs incurred in preparation and review of documentation; and

10) Franchisee at its cost will have satisfied the training requirements for new Franchisees as of the date of such renewal.

b) The Company may, at its option and in its sole discretion, conditionally accept Franchisee's exercise of its renewal option pending Franchisee's satisfaction of the conditions set forth in Section 2.03(a). In such event, Franchisee agrees to execute the Company's then current standard form renewal franchise agreement pursuant to Section 2.03(a)(5), which agreement may provide for a term of a duration substantially shorter than the renewal term provided for in this Agreement and which may grant to Company the right to terminate the same immediately upon notice to Franchisee.

### **3.00 PREMISES AND EQUIPMENT**

#### **3.01 Construction of Franchised Restaurant**

a) The System is used in freestanding restaurants, interior mall or outdoor in-line locations, food courts and other structures. The Location franchised herein is a \_\_\_\_\_  
The Company shall furnish to Franchisee one copy of a preliminary site layout, a set of generic plans and specifications for a standard 360 Gourmet Burritos restaurant of the type specified in this subsection, and a list of and layout for standardized furnishings and equipment for the specified type of restaurant.

b) Franchisee at its expense shall have: (i) the generic plans and specifications adapted as necessary to construct and operate the Franchised Restaurant on the Franchised Restaurant Premises, and (ii) such adapted plans including the final site layout stamped by an architect licensed by the state where the Franchised Restaurant will be located. Any such adaptations and all plans, specifications and layouts other than those furnished by the Company must be approved in writing by the Company prior to the Franchisee's obtaining permits, construction bids or commencing construction. The Company's approval shall signify only its acceptance of the appearance of the restaurant building, and shall not signify that the approved plans or specifications comply with applicable codes. Such approval shall not result in any liability of the Company to Franchisee. Franchisee agrees to indemnify the Company against claims of liability relating to such approval as provided in Section 9 of this Agreement.

c) Layout and plans and specifications, prepared or approved by the Company, shall not thereafter be changed or modified without the Company's prior written consent. Before commencing any construction of the Franchised Restaurant, Franchisee shall furnish to the Company a letter certifying that all required permits and certifications required for the lawful construction and operation of the Franchised Restaurant have been obtained and all other requirements for its lawful construction and operation have been met, including, without limitation, zoning, access, signage, fire, health and safety requirements.

d) Construction of the building and improvements shall begin as soon as possible after the Company furnishes or approves the site layout, plans and specifications (the "Approval Date"). The building and improvements shall be constructed in strict compliance with the plans and specifications and shall be completed within eight (8) months after the Approval Date. The Company, in its discretion, may inspect the construction at all reasonable times. At least thirty (30) days in advance of the Franchised Restaurant's projected Opening Date, Franchisee shall, by written notice, request the Company to perform its final inspection, Franchisee shall open the Franchised Restaurant for business as soon after completion of the building and installation of furnishings and equipment as is reasonably possible, but in no event before the Company's final inspection is performed and written approval is given.

e) If the Franchised Restaurant is damaged or rendered totally or partially unusable as a restaurant by fire or other casualty, Franchisee shall repair or restore the Franchised Restaurant to its former condition within a reasonable time, not to exceed six (6) months after the date of the fire or casualty. The proceeds of all insurance carried by Franchisee covering the Franchised Restaurant Premises shall be applied to the cost of

repairing or restoring the Franchised Restaurant, and Franchisee shall pay the balance, if any, of such costs. If, in the Company's reasonable judgment, the damage or destruction is of such an extent that it is feasible for the Franchisee, without incurring substantial expense additional to the insurance proceeds, to repair or reconstruct the Franchised Restaurant in accordance with the then standard 360 Gourmet Burritos layout and decor specifications, the Company may require the Franchisee to repair or reconstruct the Restaurant in accordance with those specifications. Notwithstanding the foregoing, Franchisee may terminate this Agreement, provided that Franchisee shall have notified the Company in writing of its election to terminate no later than thirty (30) days following the casualty if: (i) the Franchised Restaurant is rendered totally or significantly unusable as a restaurant by fire or other casualty within the two (2) years immediately preceding the date of expiration of the term of this Agreement, and (ii) Franchisee cannot reasonably repair or restore the Franchised Restaurant to its former condition.

### 3.02 Purchase and Installation of Equipment and Furnishings

a) Franchisee shall purchase and install and use in and about the Franchised Restaurant Premises such items and only such items of equipment (including, without limitation, food and beverage preparation equipment, fixtures, furnishings, interior and exterior signage, make-up air and exhaust handling equipment, electronic cash registers, software and computers) and other personal property (collectively, "Equipment") as are designated by the Company from time to time as Approved Brands on the Company's required Equipment and Furnishings List in the Confidential Manual, or which otherwise have been approved by the Company in writing and which strictly conform to the appearance, uniform standards and specifications of the Company and the System as established from time to time. The Company's specifications and standards for such Equipment shall be provided to Franchisee upon written request. If Franchisee desires to purchase or install any item not so listed or approved, Franchisee or the supplier of such item shall submit to the Company a written request for approval of the item. The Company shall have the right to require, among other things, that a sample of the item be delivered (or otherwise be made available in a manner acceptable to the Company), at the Company's option, either to the Company or to an independent certified laboratory designated by the Company for testing prior to acting on the request for approval. A charge not to exceed the cost of the testing shall be paid to the Company by Franchisee or by the item's supplier. The Company shall not be liable for any damage to such items resulting from the testing process. The Company reserves the right to retest any item previously approved by it, and to revoke its approval if the item fails to continue to meet the Company's standards and specifications. Upon notification by the Company, through revision of the Confidential Manual or otherwise, that approval of any item has been revoked, Franchisee shall not thereafter purchase or, if the Company so directs, use such item. The Company may at any and all times inspect all Equipment and its installation to assure the Franchisee's compliance with the Company's standards and specifications.

b) Franchisee shall not install, sell or use on the Franchised Restaurant Premises any vending machines, telephone booths, entertainment devices, products or services not included in the System without the Company's prior written consent.

### 3.03 Maintenance of Premises and Equipment

a) Franchisee shall maintain at all times during the term of this Agreement and any renewals hereof, at Franchisee's expense, the Franchised Restaurant Premises and all Equipment thereon in conformity with the high standards and public image of the Company and the System, and shall make no additions or alterations to the Franchised Restaurant Premises without the Company's prior written consent.

b) Franchisee shall keep the Franchised Restaurant Premises in the highest degree of sanitation, repair and condition, including, without limitation, such periodic repainting, repairs to Equipment and replacement of obsolete signs and Equipment, as the Company may reasonably direct in accordance with its then current standards set out in the Confidential Manual or otherwise.

c) Franchisee shall not attach or exhibit any signs, displays or posters on or in the exterior or interior of the Franchised Restaurant or on the Franchised Restaurant Premises, other than signs, posters or displays then currently supplied, required or authorized in writing by the Company, nor permit others to do so.

d) If Franchisee fails to comply with this Section 3.03 in the Company's judgment, then in addition to all other rights the Company has, the Company may notify the Franchisee and specify the action the Franchisee must take to correct such deficiency. If the Franchisee fails or refuses within ten (10) days after delivery of such notice, to initiate and thereafter continue in good faith with due diligence a bona fide program



to complete such required maintenance, sanitation and repair, the Company will have the right (in addition to all other rights in this Agreement), but not the obligation, to enter the Franchised Restaurant Premises and effect such maintenance, repairs or sanitation on the Franchisee's behalf and at Franchisee's expense.

#### 3.04 Renovation of Equipment and Premises

In addition to performing maintenance required under Sections 3.03(a) and (b), Franchisee shall, upon the Company's request but no more often than once every five (5) years, refurbish the Franchised Restaurant Premises to conform to the building design, trade dress, color schemes and presentation of the Proprietary Marks consistent with the Company's then current public image, including, without limitation, extensive structural changes, remodeling, replacement of Equipment, redecoration and modifications to existing improvements.

### 4.00 SUPPLIES, FOOD PRODUCTS, RECIPE ITEMS AND UNIFORMS

#### 4.01 Use of Food, Supplies and Other Items

a) Franchisee shall serve, sell or offer for sale all food and beverage products and only such products that (i) are listed as standard menu items from time to time in the Confidential Manual; (ii) meet the Company's uniform standards of quality and portions as specified in the Company's Approved Food and Beverage Brands List in the Confidential Manual which may be amended from time to time, and (iii) have been prepared in accordance with the recipes and food handling and preparation methods and procedures designated from time to time in the Confidential Manual.

b) Franchisee shall maintain all such products in sufficient supply at all times; Franchisee shall not deviate from the Company's standards and specifications for serving or selling such products without the Company's prior written consent. Franchisee shall immediately discontinue serving, selling or offering for sale any of such products as the Company may, in its sole discretion, disapprove in writing at any time.

#### 4.02 Sampling and Testing

Franchisee shall permit the Company or its agents, at any and all reasonable times, to remove from the Franchised Restaurant Premises samples of any inventory items, without payment therefor, in amounts reasonably necessary for testing by the Company or an independent, certified laboratory, to determine whether the samples meet the Company's then current standards and specifications.

#### 4.03 Suppliers of Food Supplies and Other Items

a) The Franchisee shall purchase from the Company or sources designated by the Company such secret recipe items as are set forth from time to time in the Confidential Manual. Franchisee shall not purchase such items from any other source or use any other item in substitution therefor.

b) Except as set forth in Section 4.03, Franchisee shall purchase only those food products, paper and plastic goods and service items (collectively, "Products") which conform to the specifications and standards (including standards for handling and distribution of products) of the Company and the System in effect from time to time and which are included on the Company's then current Approved Food and Beverage Brands and Approved Paper Brands Lists appearing in the Confidential Manual. Franchisee may purchase such approved Products from any source. Franchisee must request the Company's approval of any Products not included on the Approved Lists, and the Company may require samples of any such Products to be submitted to it or to a designated independent, certified testing laboratory for testing to determine whether approval shall be granted. Franchisee shall pay upon invoice to Company a charge not to exceed the cost of such testing. The Company reserves the right to retest any Product previously approved by it and to revoke its approval of any product that fails to continue to meet the Company's standards and specifications. Upon notification by the Company that any Product being used is unapproved or otherwise does not satisfy the specifications and standards of the Company and System, Franchisee shall not thereafter purchase and, if the Company so directs, immediately cease to use the unacceptable Product.

#### 4.04 Uniforms

Franchisee shall purchase for its employees' use, uniforms which conform strictly to the current specification, design and style of the Company as set forth from time to time in the Confidential Manual or otherwise in writing.

## **5.00 OPERATING STANDARDS, PROCEDURES, TRAINING AND SERVICING**

### **5.01 Operational Standards**

a) Franchisee shall not be permitted to open the Franchised Restaurant for business unless at the time of such opening, all of the following conditions have been met:

- 1) Franchisee and its owners and affiliates are not in default under any agreement between Franchisee or any of its owners and affiliates and the Company or any of the Company's affiliates and, during the six (6) month period immediately preceding the proposed Opening Date, has not continued in default beyond any applicable cure period under any agreement between Franchisee or any of its affiliates and the Company or any of its affiliates.
- 2) Franchisee is current on all monetary and non-monetary obligations due the Company and its affiliates.
- 3) The Company has determined, in its reasonable discretion, that Franchisee is operating each of its Franchised Restaurants, and is capable of operating the proposed Franchised Restaurant, in accordance with the terms of all franchise agreements between Franchisee and the Company, and in accordance with the System (as may be set forth in the Confidential Manual or otherwise from time to time by the Company).
- 4) Franchisee has provided such financial information regarding Franchisee as the Company reasonably may request.
- 5) Franchisee's architect has certified to the Company that the Franchised Restaurant was constructed strictly in accordance with the final plans and specifications approved by the Company, and that the equipment installed at the Franchised Restaurant complies with the equipment specifications in effect as of the date the Company approved the site for the Franchised Restaurant.

If Franchisee receives an occupancy certificate or permit from the appropriate governmental agency and if Franchisee does not give the Company at least 30 days prior written notice of Franchisee's intent to open the Franchised Restaurant, the Company may delay the opening in order to schedule training.

b) Franchisee shall operate the Franchised Restaurant in strict accordance with the Confidential Manual which, among other things, sets forth the standard method of operation for a Franchised Restaurant, the business format, recipes, menus and instructions for food preparation and the control of quality and portions. Franchisee shall keep the Confidential Manual and all of its contents in confidence except to the extent disclosure is necessary to operate the Franchised Restaurant. Franchisee understands and agrees the Company may, from time to time, revise the contents of the Confidential Manual and such other manuals, standards, instructions, formulas, recipes and specifications, if any, as it may develop for use with the System, and Franchisee shall comply with each changed requirement within such reasonable time as the Company may require.

c) Franchisee shall at all times keep current its copy of the Confidential Manual and other manuals issued to it by the Company. In the event of any dispute as to the contents, current status and completeness of any of such manuals, the master copy of such manual maintained by the Company shall control.

d) Franchisee shall promptly pay when due all taxes levied or assessed on Franchisee in the conduct of the business franchised under this Agreement including, without limitation, payroll, unemployment and sales taxes. In the event of any bona fide dispute as to liability for taxes assessed, Franchisee may contest the validity or the amount of the tax in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Franchised Restaurant Premises, or any improvements thereon.

e) Franchisee shall comply with all federal, state, and local laws, rules and regulations, and shall timely obtain and maintain all permits, certificates and licenses necessary for the full and proper conduct of the Franchised Restaurant, including, without limitation, building and other construction and occupancy permits, licenses to do business and fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire code clearances. Copies of all inspection reports, warnings, certificates and

ratings issued by any governmental entity during the term of this Agreement in connection with the conduct of the Franchised Restaurant which cite or indicate (i) Franchisee's failure to meet or maintain the highest governmental standards, or (ii) less than full compliance by Franchisee with any applicable law, rule or regulation shall be forwarded to the Company within five (5) days of Franchisee's receipt thereof, and Franchisee shall remedy such deficiency within the time period specified in the respective citation, report or other notice, or within ten (10) days if no time period is so specified.

f) Franchisee shall not sell or offer for sale any alcoholic beverages at or from its premises, except beer or wine, which may be offered only where lawful and in strict compliance with the Confidential Manual.

g) The Franchisee shall at all times maintain the confidentiality of the Confidential Manual. The Franchisee acknowledges that it has had no part in the creation or development of nor does it have any property or other rights or claims of any kind in or to any element of the System, the Proprietary Marks or any matters dealt with in the Confidential Manual and that all disclosures made to the Franchisee are communicated to it solely on a confidential basis as trade secrets in which the Company has a substantial investment and legitimate right to protect the same against unlawful disclosure. Accordingly, at no time during the currency of this Agreement or at any time thereafter shall the Franchisee disclose any of the contents of the Confidential Manual or any information whatsoever with respect to the Franchisee's or the Company's business or the System other than to the Company or as may otherwise be required to enable the Franchisee to conduct the Franchised Restaurant from the Franchised Restaurant Premises.

h) **Property Rights.** The Franchisee acknowledges that the Confidential Manual is and shall at all times remain the sole and exclusive property of the Company, and Franchisee shall acquire no right, title, or interest therein from its possession and use the same. Franchisee shall not copy or duplicate or cause to be copied or duplicated any part of the Confidential Manual for any reason. Upon termination of this Agreement for any reason whatsoever, the Franchisee shall forthwith return the Confidential Manual to the Company together with all copies of any portion of the Confidential Manual which the Franchisee may have made.

i) The Franchisee will designate an operating partner with at least ten percent ownership in the company that is participating in the business on a full time basis. This operating partner will reside in the market that the Franchised Restaurant is located and must be approved and trained by the Company. The Company may also require certain key persons to participate in the franchise business. If that is the case, the names of these persons will be set forth in a Notice of Key Employees Form, which will be attached to any applicable Area Development Agreement and Franchise Agreement when executed.

#### 5.02 Operating Hours

The Franchised Restaurant shall be open and in normal operation for such minimum hours and days as may from time to time be prescribed in the Confidential Manual or otherwise by the Company in writing.

#### 5.03 Training

a) The Company has restaurant facilities and/or training center(s) in Walnut Creek, California or elsewhere for training Franchisee and such of its executive, managerial and supervisory employees as the Company deems necessary.

b) The Company shall determine (i) the number of Franchisee's employees to be Company-trained, (ii) the training period necessary to adequately train the employees, and (iii) whether and when the employees have satisfactorily completed training. In so doing, the Company shall consider the background, experience and training performance of the trainee. Unless otherwise specified in writing by the Company, Franchisee's opening manager, prior to opening the Franchised Restaurant, and all successor managers, prior to assuming the position of manager in the Franchised Restaurant, shall successfully complete the minimum period then currently specified by the Company for management training, at such location(s) as the Company may designate.

c) In addition to the required management training, all other employees of Franchisee must undergo such on-the-job and instructional training as the Company may from time to time require. Franchisee shall purchase and use such training materials, equipment and supplies to properly conduct such training as may be specified by the Company from time to time in the Confidential Manual. The Company shall use its best efforts to make available to Franchisee any training films or videotapes made by the Company for a fee equal to the Company's cost of producing and distributing such films or tapes.

d) Franchisee and such executive, managerial, supervisory and other employees as the Company from time to time may require, shall attend and successfully complete subsequent training, refresher, and retraining programs conducted by the Company; however, no individual shall be required to attend more than two (2) such additional training programs in each calendar year.

e) Upon failure for any reason of Franchisee or any of its employees to complete successfully any training, retraining or refresher program required by the Company, Franchisee shall designate another trainee who shall attend and successfully complete the program, and who, if the Company so directs, shall perform the functions of the category of employee for which the program was offered.

f) Franchisee shall pay all expenses of travel, room, board, training supplies and materials and salaries or wages of its employees while in training, as well as such registration or tuition fees as shall be established by the Company from time to time.

g) The Company at its expense will furnish a representative or representatives to assist in the opening activities of the Franchised Restaurant for a period not to exceed three days prior to opening and one (1) week after opening, consisting of seven (7) eight (8) hour days. Upon request by Franchisee, or if the Company deems additional assistance necessary, the representative shall remain for a reasonable period determined by the Company, and Franchisee shall reimburse the Company for its reasonable expenses (including salary) in providing the representative for the additional period. Franchisee's management staff shall be at work in the Franchised Restaurant during the hours assistance is provided by the Company's representative. Notwithstanding the foregoing, the Company, at its option, may decline to provide the assistance set forth in this Section 5.03(g) if Franchisee fails to give at least 30 days prior written notice to the Company of the Opening Date of the Franchised Restaurant.

#### 5.04 Continuing Services

a) The Company may furnish to Franchisee, from time to time, such merchandising and operating aids and services, and printed material in connection therewith, as are furnished generally to other Franchisees of the Company.

b) The Company from time to time, in its discretion, may send its representatives to the Franchised Restaurant to consult with Franchisee or its management representative relative to the operation of the Franchised Restaurant, and shall inspect the Franchised Restaurant Premises with or without prior notice to determine the efficiency and quality of the operation and the faithfulness of Franchisee's compliance with the System.

### 6.00 FEES

#### 6.01 Initial and Royalty Fee

a) Franchisee shall pay to the Company, an initial nonrecurring, nonrefundable unit franchise fee of twenty thousand dollars (\$20,000) which shall be due upon completion of Franchisee's orientation training for Franchisee's first location and shall be fully earned upon payment.

b) Franchisee shall pay to the Company as a royalty fee, a sum equal to five percent (5%) of Franchisee's Gross Sales (as defined below). The Franchisee shall pay the royalty fee monthly by the fifteenth (15th) day of each month for the preceding month's Gross Sales. A report of the Gross Sales of the Franchised Restaurant for the preceding month shall accompany each payment.

#### 6.02 Advertising Expenditures

a) Franchisee shall spend for advertising and marketing programs, a sum equal to three percent (3.0%) of Franchisee's Net Sales from the operation of the Franchised Restaurant. Two percent will be spent locally by the Franchisee and one percent will be sent to the Company for an advertising fund to be administered by the Company. Payment shall be made on or before the fifteenth (15th) day of each month for the preceding month's Gross Sales. A report of the Gross Sales of the Franchised Restaurant for the preceding month shall accompany each payment.

b) Franchisee shall spend, upon execution of this Agreement, an additional sum equal to Two Thousand Dollars (\$2,000), for pre-opening and opening advertising arranged for and placed by the Company or its designee.

### 6.03 Definition of Gross Sales

"Gross Sales" for computation of the fees payable pursuant to Sections 6.01 and 6.02 shall mean gross receipts of every kind and nature from sales of food, food products, beverages, retail merchandise and any other items or services sold in or from the Franchised Restaurant Premises or derived from the business operated on the Franchised Restaurant Premises, whether upon credit or for cash, without reserve or deduction for inability or failure to collect, excluding only (i) employee meals, (ii) all sales, use, excise and similar taxes separately billed and collected by Franchisee for, and remitted to, governmental authorities and agencies, and (iii) over-rings, refunds, allowances, or discounts to customers (including discounts attributable to coupon sales).

### 6.04 Charge on Late Payments

In addition to any other rights the Company may have, the Company will impose a charge on late payments of the lesser of (i) the maximum rate permitted by California law or (ii) one and one-half percent (1 1/2%) per month, from the date due until paid.

### 6.05 Gross Receipts Tax

Franchisee shall pay the Company an amount equal to any sales, value added, gross receipts or similar tax required to be paid or collected by the Company and calculated solely on required payments from the Franchisee to the Company hereunder.

### 6.06 Direct Debit Arrangement

The Company shall have the right, upon written notice to Franchisee, to require Franchisee to establish a direct debit arrangement as described in this Section upon the occurrence of the following events:

- a) In the event that Company has given Franchisee a notice of default arising from any of its monetary obligations under this Agreement.
- b) If and when otherwise required by the Company, Franchisee shall establish a direct debit arrangement with Franchisee's bank(s) for all payments to be made to the Company, or any of its affiliates and subsidiaries.

Such direct debit arrangement shall be entered into between Franchisee and its bank(s) and shall provide for the electronic transfer of funds from Franchisee's bank(s) to the Company's accounts within twenty-four (24) hours of receipt of written instructions from the Company, whether transmitted by telecopy, courier or regular mail and such instructions may be for multiple future transfers. Franchisee shall maintain sufficient funds in its account at all times to ensure that all amounts due the Company and its affiliates and subsidiaries are promptly and fully paid.

## 7.00 ADVERTISING

### 7.01 Origination and Approval of Advertising

a) Recognizing the value of advertising and the importance of the standardization of advertising to the furtherance of the goodwill and public image of the System, Franchisee or its designee shall conduct, determine, maintain and administer all regional, local and other advertising and marketing as may be instituted by the Company from time to time, and the Company shall have the sole right to direct all such advertising and marketing with discretion over the concepts, materials, media, nature, type, scope, frequency, place, form, copy, layout and context used therein.

b) Franchisee agrees that the Company's advertising expenditures may be used to meet any and all costs incident to the advertising and marketing described in Section 7.01(a), including such reasonable administrative costs and overhead, if any, as may be incurred by the Company or its affiliates in conducting market research, preparing advertising and marketing materials, or in other activities reasonably related to the administration or direction of 360 Gourmet Burritos advertising funds. Franchisee understands and acknowledges that advertising expenditures are intended to maximize general public recognition and acceptance of all 360 Gourmet Burritos Restaurants, and the Company makes no representation or warranty

that any particular 360 Gourmet Burritos Restaurant, including the Franchised Restaurant, will benefit directly or pro-rata from such advertising. To promote and increase the demand for the products and services of the Franchised Restaurant, Franchisee may conduct, at its separate expense, advertising in addition to that required for the expenditures described in Section 6.02. All such additional advertising must be in accordance with the standards set forth by the Company.

c) 360 Gourmet Burritos does not currently conduct regional or national advertising programs, however, it may do so in the future. At that time Franchisee may be required to spend additional monies to participate in regional or national advertising programs. Franchisee may also be required to participate in an Advertising Cooperative, if there are other franchised or Company-owned 360 Gourmet Burritos Restaurants in the market in which Franchisee operates a 360 Gourmet Burritos Restaurant(s).

d) Franchisee shall, at its expense: (1) obtain a listing in the white and yellow pages of the telephone directories serving the location of the Franchised Restaurant, which listing shall be the kind and size as may be specified by the Company for all 360 Gourmet Burritos Restaurants from time to time in the Confidential Manual or otherwise in writing; and (2) obtain and maintain an adequate supply of brochures, pamphlets and promotional materials of the kind and size, and at such locations in and around the Franchised Restaurant as the Company may reasonably require of all 360 Gourmet Burritos Restaurants from time to time in the Confidential Manual or otherwise in writing.

e) Upon request from Franchisee, the Company or its designee(s) will provide Franchisee with the special or additional approved local advertising and marketing plans and materials that are currently in use, if any; including, without limitation, newspaper photostats, radio commercial duplicates, merchandising materials, sales aids, special promotions and similar advertising and marketing materials. Such special or additional materials and services shall be provided at the Company's cost.

#### 7.02 Advertising Agency and Use of Advertising Funds

The Company shall have the right to delegate and redelegate its responsibilities and duties hereunder to any designee(s) of its choosing, however, the right of final approval of all advertising programs shall be retained at all times by the Company. The books and business records of accounts for the Company's advertising programs shall be open to inspection by Franchisee or its authorized representative at any reasonable time. The Company may spend in any fiscal year an amount greater or less than the aggregate contributions of all 360 Gourmet Burritos Restaurants in advertising expenditures in that year.

### **8.00 BOOKS, RECORDS, CONTROL PROCEDURES**

#### 8.01 Bookkeeping System

a) The Company shall furnish to Franchisee cost-control procedures to which Franchisee shall adhere, as well as a sample format of a chart of accounts, statement of earnings and balance sheet, which Franchisee shall use in reporting to the Company.

b) The Company shall have the right to require Franchisee to use computer-based cash registers and software that are fully compatible with the then current Company's computer system and which include an information interface capability which allows Franchisee to communicate electronically with the Company's computer system.

#### 8.02 Reports

Upon the Company's request and as specified from time to time in the Confidential Manual or otherwise in writing, Franchisee shall submit to the Company, for review or auditing, such forms, reports, records and financial statements as the Company may reasonably designate.

#### 8.03 Marketing Information

At the Company's request, Franchisee shall promptly furnish requested marketing information based on Franchisee's records.

#### 8.04 Franchisee's Records

Franchisee shall at all times maintain and preserve, during the term of this Agreement, full, complete and accurate books, records and accounts in accordance with generally accepted accounting principles, of such kind, for such length of time and in the form and manner prescribed by the Company from time to time in the Confidential Manual or otherwise in writing.

#### 8.05 Inspection of Franchisee's Records

The Company shall have the right to examine and audit Franchisee's records, accounts and books at reasonable times and places (including, without limitation, at Franchisee's principal place of business). Franchisee shall immediately pay to the Company the amount of any overdue, unreported or understated payment disclosed by such audit, with late payment charges thereon as provided in Section 6.04 herein. If any audit or examination reveals an understatement of Gross Sales for any reported period by Franchisee in excess of three percent (3%), Franchisee shall also pay the Company's fees, charges and expenses (including, without limitation, travel expenses and reasonable accounting and legal fees) incurred in connection with such audit or examination.

### 9.00 WARRANTY, INSURANCE, INDEMNITY

#### 9.01 Warranty

All guarantees and warranties made or issued by Franchisee to a customer or other third party shall be deemed to be made solely by the Franchisee and not by the Company. Franchisee shall fully comply with such customer guarantee program as the Company shall have in effect or which the Company may institute or modify from time to time. Franchisee shall make no untrue or misleading representations to customers or potential customers whether written or oral concerning any warranties or guarantees and shall make all affirmative disclosures which may at any time be required by the Company or by law in order to properly advise customers with respect to such warranties and guarantees regarding sales, service, repair and or replacements and to avoid possible deception or confusion in connection therewith.

#### 9.02 Indemnity

Franchisee agrees to indemnify, protect, defend and hold harmless the Company, its affiliates and their respective officers and employees from liability for any and all loss, injury, debts, obligations, damages, claims, liability, demands, actions, suits, proceedings, judgments or costs of any kind or nature, including attorneys' fees, arising directly or indirectly from, as a result of, or otherwise in connection with Franchisee's operation of the Franchised Restaurant ("Indemnified Matter"). The Company shall have the right to defend and settle any Indemnified Matter in such manner as the Company deems appropriate, in its sole discretion, and without the Franchisee's consent. The Franchisee agrees to reimburse the Company for all costs reasonably incurred in defending such Indemnified Matter, including, without limitation, reasonable attorneys' fees. Franchisee's obligations under this Section shall continue in full force and effect subsequent to the expiration or termination of this Agreement.

#### 9.03 Franchisee's Insurance

a) Prior to opening the Franchised Restaurant, Franchisee, at its sole expense, shall obtain, and thereafter maintain during the entire term of this Agreement and any renewal(s) thereof, the following insurance in full force and effect:

- 1) comprehensive general liability insurance (through a single policy or by a primary policy with one or more excess or umbrella policies) including personal injury, bodily injury, liquor liability (where applicable) and products liability insurance, with minimum policy limits of Five Million Dollars (\$5,000,000) in the aggregate, and Two Million Dollars (\$2,000,000) per occurrence, and property damage insurance with policy limits in the minimum amount of Two Million Dollars (\$2,000,000) per occurrence, insuring Franchisee and the Company, as well as the Company's affiliates, officers, directors, and employees, as additional named insureds, against any liability that may accrue or have accrued against them, and any claim that is brought against them, by reason of the operation

by Franchisee of its business, or by reason of any incident which may occur upon, in, about or in connection with the Franchised Restaurant Premises;

- 2) worker's compensation, social security, unemployment compensation, disability insurance;
- 3) business interruption insurance that will cover 60% of Franchisee's Gross Sales for the Franchisee's most recently ended calendar year; and
- 4) such other insurance coverages as may now or hereafter be required by law; and fire, casualty and extended coverage insurance with limits of not less than the full replacement cost of the Franchised Restaurant and its Equipment and other improvements.

b) Franchisee acknowledges that the minimum coverages and policy limits required by this section may be reasonably increased from time to time by the Company for its own and Franchisee's protection and Franchisee agrees to comply with such new requirements promptly upon receipt of written notice from the Company; however, in no event shall any such increase require minimum policy limits greater than (i) that which is then required for Company-owned restaurants, or (ii) Five Million Dollars (\$5,000,000), whichever is less. Every insurance policy required by this Section shall be written by one or more insurance companies possessing an A.M. Best rating of at least A, 1 or such other rating as the Company may specify in the Confidential Manual or otherwise in writing.

c) Franchisee's obligation to obtain and maintain the foregoing insurance in the amounts specified shall not be diminished in any way by reason of any insurance which may be maintained by the Company, nor shall such obligation relieve Franchisee of liability under the indemnity provisions set forth in Section 9.01.

#### 9.04 Evidence of Insurance

Franchisee shall deliver or cause to be delivered certificates (or copies thereof) of all insurance required by this Section 9 to the Company or, upon the Company's request, the policy or policies shall be deposited with and held by the Company or its designee. Franchisee shall also deliver to the Company evidence of payment of all insurance premiums.

#### 9.05 Notice

All insurance policies shall provide for notice to the Company of any cancellation, termination, modification or nonrenewal thereunder at least thirty (30) days prior to such occurrence and shall permit, but not require, the Company to cure any default in payment of premiums within ten (10) days after written notice. If the Company cures the default, Franchisee shall immediately pay the Company the cost of curing the default together with a reasonable administrative fee to defray the Company's expenses in connection therewith.

#### 9.06 Waiver of Subrogation

Franchisee and its successors and assigns hereby waive, prior to loss, all of their rights of recovery from the Company, its affiliates, successors and assigns, and their right to sue for loss or damage to the Franchised Restaurant and the Franchised Restaurant Premises, the adjacent premises and improvements or other property of Franchisee; provided such loss or damage is within the coverage of the insurance provided for herein. All property insurance policies carried by the Franchisee on the Franchised Restaurant or adjoining property shall, if reasonably possible, contain an express waiver of subrogation.

### **10.00 OWNERSHIP AND LIMITATIONS ON USE OF PROPRIETARY MARKS, TRADE SECRETS**

#### 10.01 Ownership of Proprietary Marks, Trade Secrets

All right, title and interest in and to all Proprietary Marks, trade secrets, systems, Confidential Manuals, instruction manuals and the goodwill associated therewith are the sole property of the Company or its affiliates and no such right, title or interest is or shall be transferred by virtue of this Agreement. Franchisee shall not represent in any manner that it has any such ownership, right, title or interest. Franchisee acknowledges that on expiration or termination of this Agreement, no monetary sum shall be designated by it as attributable to any goodwill associated with Franchisee's use of the System and the Proprietary Marks.



## 10.02 Limitations on Use of Proprietary Marks

### a) Use of Proprietary Marks

Franchisee understands and acknowledges that each and every detail of the System is important to Franchisee, the Company and other Franchisees to develop and maintain high and uniform standards of quality and service, and to protect the reputation and goodwill of 360 Gourmet Burritos Restaurants. Therefore, Franchisee shall:

- 1) operate and advertise under the System name as specified in the Confidential Manual, without prefix or suffix;
- 2) adopt and use the Proprietary Marks solely in the manner prescribed by the Company;
- 3) observe such requirements with respect to trademark registration and copyright notices as the Company may from time to time direct in the Confidential Manual or otherwise in writing; and
- 4) use, promote and offer for sale only those menu items, products and services which are part of the System and meet the standards or specifications as prescribed by the Company from time to time in the Confidential Manual or otherwise in writing.

### b) Defense of Proprietary Marks

Franchisee shall promptly notify the Company of any claim, demand, or cause of action based upon or arising from any attempt by any other person, firm or corporation to use the Proprietary Marks or any colorable imitation thereof. Franchisee also agrees to notify the Company promptly of any litigation instituted by any person, firm, corporation or governmental agency against the Company or Franchisee relating to the Proprietary Marks, and the Company shall have the sole right and duty to defend any such action. The Company shall have the exclusive right to contest or bring action against any third party regarding the third party's use of any of the Proprietary Marks and shall exercise such right in its sole discretion. In any defense or prosecution of any litigation relating to the Proprietary Marks or components of the System undertaken by the Company, Franchisee shall cooperate with the Company and execute any and all documents and take all actions as may be desirable or necessary in the opinion of the Company's counsel, to carry out such defense or prosecution. The Company makes no representation or warranty, express or implied, as to the use, exclusive ownership, validity or enforceability of the Proprietary Marks.

## 10.03 Nondisclosure of Trade Secrets and Confidential Information

a) The Company has disclosed and will continue to disclose to Franchisee certain confidential information relating to the development, marketing and operation of Restaurants, including without limitation:

- 1) ingredients, specifications, recipes, and methods of preparation and presentation of certain food and beverage products;
- 2) site selection criteria for Restaurants and plans and specifications for the development of Restaurants;
- 3) sales, marketing and advertising programs and techniques for Restaurants;
- 4) knowledge of specifications for, and suppliers of, certain food products, materials, supplies and equipment;
- 5) knowledge of operating results and financial performance of 360 Gourmet Burritos Restaurants, other than the Franchised Restaurant; and
- 6) methods of labor control, inventory control, storage, product handling and management of 360 Gourmet Burritos Restaurants (collectively "Proprietary Information").

b) Without the Company's prior written approval, Franchisee shall not, during the term of the Agreement, any renewal hereof and thereafter (regardless of cause of termination) divulge any Proprietary Information nor use any Proprietary Information for the benefit of any other person or entity. Notwithstanding the foregoing, Franchisee may disclose Proprietary Information without the Company's prior written consent: (i) during the term hereof to Franchisee's employees only to the extent necessary for operation of the Franchised Restaurant, and (ii) to the extent such Proprietary Information has validly become public other than through any action or disclosure of Franchisee.

c) Franchisee acknowledges that the Company will suffer irreparable harm and that monetary damages will be inadequate to compensate the Company for any breach by Franchisee of the terms of this Section, therefore, Franchisee agrees that the Company shall be entitled to injunctive relief in addition to all other remedies it may have for such breach.

#### 10.04 Survival

The covenants set forth in this Section 10 shall survive the termination or expiration of this Agreement.

### 11.00 TERMINATION

#### 11.01 Termination

a) Franchisee shall be deemed to be in default, and all rights granted under this Agreement shall automatically terminate without notice to Franchisee upon the occurrence of any of the following events:

- 1) if Franchisee shall become insolvent or make a general assignment for the benefit of creditors;
- 2) if a petition is filed against and consented to by Franchisee, or if Franchisee is adjudicated a bankrupt or insolvent;
- 3) if any proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee, or if a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by a court of competent jurisdiction, or if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee;
- 4) if a final judgment against Franchisee or affecting Franchisee's business remains unsatisfied or of record for thirty (30) days or longer (unless a superseding bond is filed); or
- 5) if execution is levied against Franchisee's business or property, or suit to foreclose any lien against the assets of the Franchised Restaurant is instituted against Franchisee and not dismissed within thirty (30) days, or if the assets of the Franchised Restaurant are sold after levy thereupon by any sheriff, marshal or constable.

b) Franchisee shall be deemed to be in default, and the Company may, at its option, terminate this Agreement and all rights granted hereunder at any time by notice to Franchisee without any opportunity to cure the default, upon the occurrence of any of the following events:

- 1) if Franchisee fails for any reason to have opened the Franchised Restaurant for business within one (1) year from the date hereof, or thereafter ceases to operate or otherwise abandons or forfeits the legal right to transact business at the Franchised Restaurant;
- 2) if Franchisee is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that is reasonably likely, in the Company's sole judgment, to affect adversely the System, the Proprietary Marks, the goodwill associated therewith or the Company's rights therein;

- 3) if Franchisee purports to transfer any rights or obligations arising under this Agreement to any third party without the Company's prior written consent, contrary to the terms of Section 13.02 of this Agreement;
- 4) if Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristic of the System, or otherwise materially impairs the goodwill associated therewith, or the Company's rights therein;
- 5) if Franchisee discloses to a third party any Proprietary Information or other confidential information learned from the Company or relating to the System; or if Franchisee uses or permits to be used any such information or secret, unique or confidential food product or other element of the System in a restaurant or business other than the Franchised Restaurant; or if Franchisee breaches any duty of confidentiality imposed on Franchisee in this Agreement or otherwise by law;
- 6) if three (3) or more notices of default under Section 11.01(c) have been sent to Franchisee for the same, similar or different defaults within a twelve (12) month period, in which event this Agreement may be terminated in lieu of the Company's sending the fourth (4th) or any subsequent Notice of Default;
- 7) if Franchisee made or makes any material misrepresentation to the Company in any information or report provided prior to or during the term of this Agreement; or
- 8) if Franchisee fails to repair or restore the Franchised Restaurant Premises to its former condition within six (6) months of its being damaged or rendered totally or partially unusable as a restaurant by fire or other casualty, as required by Section 3.01(e).

c) Subject to Sections 11.01(a) and (b), Franchisee shall be deemed to be in default and the Company may, at its option, terminate this Agreement and all rights granted under this Agreement without further notice upon the occurrence of any of the following events and Franchisee's failure to cure such default within the time period set forth below:

- 1) if Franchisee fails, refuses or neglects to adhere to the standards and specifications of the System as set forth in the Confidential Manual and otherwise adopted by the Company from time to time;
- 2) if Franchisee or any of its affiliates fails, refuses or neglects to pay promptly when due any amounts owed to the Company or any of its affiliates;
- 3) if Franchisee fails, refuses or neglects to submit to the Company any financial or other information required under this Agreement;
- 4) if Franchisee fails, refuses or neglects to obtain the Company's prior written approval or consent as required under this Agreement;
- 5) if Franchisee fails, refuses or neglects to observe the laws or regulations governing the sale of beer or wine or the conditions governing the sale of beer or wine set out in Confidential Manual; or
- 6) if Franchisee fails, refuses or neglects to observe any other of its obligations under this Agreement or to carry out the terms of this franchise in good faith.

Franchisee shall have the opportunity and right to cure the events of default listed in this Section 11.01(c) for a period of three (3) days with respect to Subsection (c)(1); ten (10) days with respect to Subsection (c)(2) and thirty (30) days with respect to Subsections (c)(3) through (c)(6) following the Company's delivery of written notice of default.

#### 11.02 Effect of Termination or Expiration

a) Franchisee, upon any termination or expiration of this Agreement, shall promptly pay to the Company, its affiliates and subsidiaries any and all sums owed to them. In the event of termination for any default by Franchisee, such sums shall include all actual and consequential damages, costs and expenses, including reasonable attorneys' fees and expenses, incurred by the Company as a result of the default (whether

such fees and expenses are incurred through use of the Company's own legal staff or otherwise), and late payment charges thereon until paid at the lower of (i) the highest rate permitted by California law, or (ii) one and one-half percent (1 1/2%) per month. Franchisee acknowledges and agrees that the proximate cause of the actual and consequential damages sustained by Company is Franchisee's act of default and not Company's exercise of its right to terminate this Agreement. The foregoing obligation shall give rise to and remain, a lien in favor of the Company against any and all of the assets of the Franchisee at the time of default including specifically, but not limited to, the Franchised Restaurant.

b) Upon termination or expiration hereof for any reason, all of Franchisee's rights hereunder shall terminate. Franchisee shall immediately cease to use and shall not thereafter use any Proprietary Information or other trade secrets disclosed to it hereunder or any paper or plastic goods, emblems, signs (other than pole signs and roof signs, which are governed by Section 11.02(c)); displays or other property on which the Company's name, any of the Proprietary Marks or any confusing simulation thereof are imprinted. Franchisee shall not otherwise use or duplicate the System or any portion thereof or assist others to do so. Franchisee shall, on or before the effective date of termination or expiration: (i) remove from the Franchised Restaurant Premises all signs, emblems and displays identifying it as being associated with the Company or the System, (ii) cease to use and return to the Company all copies of the Confidential Manual and all other manuals, instructions or materials delivered to it by the Company or otherwise hereunder, and (iii) relinquish its Franchised Restaurant telephone number.

c) Upon termination or expiration of this Agreement, unless otherwise directed in writing by the Company, Franchisee shall modify the exterior and interior design and decor of the Franchised Restaurant Premises and shall make or cause to be made such changes in signs, buildings and structures as the Company shall reasonably direct, so as to effectively distinguish the Franchised Restaurant from its former appearance and from any other 360 Gourmet Burritos Restaurant. Franchisee shall commence the required modifications immediately upon the termination or expiration of this Agreement and shall complete the modifications within thirty (30) days following the date of termination or expiration. If Franchisee fails or refuses to comply with this Section 11.02(c), in addition to any other rights which the Company may have, the Company shall have the right to enter upon the Franchised Restaurant premises without being guilty of trespass or any other tort and make or cause to be made such changes at Franchisee's expense, which Franchisee shall pay on demand.

d) Franchisee and the Company agrees that the Company's damages resulting from a breach of the provisions of this Section 11.02 are difficult to estimate or determine accurately. Therefore, in the event of a breach by Franchisee of the provisions of this Section, Franchisee shall pay the Company the sum of Fifty Dollars (\$50) per day beginning on the thirty-first (31st) day after the date of termination or expiration of this Agreement, not to exceed a maximum of Seven Thousand Five Hundred Dollars (\$7,500) if termination occurs during the first ten (10) years of this Agreement; and a maximum of Ten Thousand Dollars (\$10,000) thereafter. Such payment shall be made as liquidated damages and not as a penalty, it having been agreed by Franchisee and the Company that the payments are reasonably representative of the actual damage sustained by the Company in the event of such a breach. However, notwithstanding the provision for liquidated damages, the Company shall be entitled to injunctive relief if Franchisee continues to operate as an 360 Gourmet Burritos Restaurant or breaches any other covenant herein.

e) The covenants set forth in Sections 11.02(a) through (d), inclusive, and all rights, claims and indebtedness which may accrue to the Company under this Agreement shall survive any termination or expiration of this Agreement and be enforceable by the Company.

f) Upon termination or expiration of this Agreement, Franchisee shall cease to hold itself out in any way as a Franchisee of the Company or do anything that would indicate any relationship between it and the Company.

#### 11.03 Company's Option to Purchase

a) Upon termination or expiration hereof, the Company shall have the option, but not the obligation, to purchase all or any of the following:

- 1) the land and building constituting the Franchised Restaurant,
- 2) the leasehold estate and improvements constituting the Franchised Restaurant, and
- 3) any patented, special or unique items of 360 Gourmet Burritos Restaurant Equipment, including but not limited to equipment, furnishings, signs, sign faces, decor, food items and supplies of Franchisee. Any such purchases shall be made at the fair market value of the purchased item(s), with no allowance for goodwill or additional charges.

If Franchisee and the Company cannot agree on the fair market value of such items within a reasonable time, the price or disputed terms of purchase shall be determined by three (3) appraisers with each party selecting one (1) appraiser and the two (2) appraisers so chosen selecting the third appraiser. If the Company elects to exercise its option to purchase, it shall have the right to set off the against purchase price all amounts due from Franchisee under this Agreement and the cost of the appraisal.

b) Franchisee shall cause any lease which affects the Franchised Restaurant Premises or any other item subject to this option to contain appropriate language permitting Franchisor to assume such lease without fees or additional charges.

c) In the case of expiration, the Company shall exercise, if it chooses to do so, its option hereunder by giving Franchisee notice at least thirty (30) days prior to expiration of this Franchise Agreement. In the case of termination of the Franchise Agreement for any other reason, the Company shall exercise, if it chooses to do so, its option by giving Franchisee notice within thirty (30) days after such termination. In the event the Company exercises its option, the closing shall be held and the purchase price shall be paid within thirty (30) days of the date of such exercise. The Company's option hereunder is without prejudice to its right under any security agreement held by it or to the extent that it may have a guarantor's or surety's subrogation interest.

## **12.00 FRANCHISEE'S OTHER BUSINESS INTERESTS**

### **12.01 Notification of Other Business Activity**

Without limiting Franchisee's obligations under Section 12.02, Franchisee shall notify the Company of its intention to participate or engage directly or indirectly in any other restaurant, food service or hospitality business activity, at least thirty (30) days before: (i) Franchisee becomes a party to any agreement or understanding relating to such activity, or (ii) such activity commences, whichever is earlier. Franchisee shall provide the Company with such information about the activity as the Company may reasonably request.

### **12.02 Competing Business**

Unless otherwise specified, the term "Franchisee" as used in this Section shall include, individually and collectively, all partners, members, managers, officers, directors, and holders, directly or indirectly (and any partners, officers or directors of any such holder), of any beneficial interest in the franchise granted hereunder ("Owners"). Franchisee acknowledges that pursuant to this Agreement, Franchisee will receive valuable training and confidential and trade secret information, including, without limitation, information regarding the promotional, operational, sales and marketing methods and techniques of the Company and the System. Franchisee further acknowledges its obligation under this Agreement to develop the franchised business and to promote the interests of the System. Accordingly, Franchisee agrees that:

a) During the term of the Agreement, Franchisee shall not, except as otherwise approved in writing by the Company, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons or partnership or corporation own or engage in any restaurant, if the gross sales of wraps or burritos of that restaurant constitute fifty percent (50%) or more of all sales of the restaurant.

b) Subject to this Section, a Franchisee may, during the term of this Agreement own all or a portion of a company that operates a restaurant or restaurants but does not violate the covenants set forth in this Section.

c) For a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, Franchisee shall not, except if approved in writing by the Company, maintain any interest in any restaurant or food service business, which is located within one and one-half miles of the

Franchised Restaurant.

d) Subsections (a) through (c) of this Section shall not apply to ownership by Franchisee of less than ten percent (10%) beneficial interest in the outstanding equity securities of any corporation which is registered under the Securities Act of 1933.

### **13.00 ASSIGNMENT**

#### **13.01 Assignment by Company**

Upon termination, the Company may assign this Agreement and any or all benefits and obligations arising from it without notice to or consent from Franchisee. There are no limitations on the Company's ability to assign the Company's rights under this Agreement.

#### **13.02 Assignment by Franchisee**

a) Unless otherwise specified, the term "Franchisee" for purposes of this Section 13.02 shall mean, as applicable, the individual comprising the Franchisee, any general partners of the Franchisee, or any holder of any securities with voting rights of the Franchisee, who proposes to transfer or assign such its interest in this Agreement or the Franchisee. Franchisee understands and acknowledges that the rights and duties created by this Agreement are personal to Franchisee, and that the Company has granted this franchise in reliance on the individual or collective character, skill, aptitude and business and financial capacity of Franchisee. Franchisee therefore shall not, without the Company's prior written consent, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any interest or partial interest in the Franchisee, this Agreement, or in the franchise granted herein, or offer or attempt to do so, or permit the same to be done. Any actual or purported assignment occurring by operation of law or otherwise without the Company's prior written consent shall be a material default of this Agreement and shall be null and void.

b) If Franchisee or any permitted successor is a partnership LLC or corporation:

1) The Articles of Partnership, Partnership Agreement, Articles of Incorporation, by-laws and other organizational documents shall provide that the issuance and transfer of any interest in Franchisee is restricted by the terms of this Agreement. Copies of such documents and of resolutions of Franchisee's board of directors authorizing its entry into this Agreement shall be furnished to the Company upon request.

2) All general partners, members and all direct and indirect holders of a ten percent (10%) or greater equity interest shall upon Franchisee's execution of this Agreement execute an agreement personally guaranteeing to the Company the full payment and performance of Franchisee's obligations to the Company and undertaking to be bound, individually, jointly and severally, by all the terms of this Agreement, including, without limitation, the restrictions on assignment contained herein. The personal Guaranty shall be in the form annexed hereto as Exhibit A or in such other form as the Company may from time to time prescribe.

3) The Franchisee shall not use the name "360 Gourmet Burritos," any other Proprietary Mark, or any name deceptively similar thereto, except to reflect its franchise relationship with the Company. Neither Franchisee nor any of its Owners may issue or sell, or offer to issue or sell, any securities of Franchisee or an Affiliate of Franchisee, regardless of whether such sale or offer would be required to be registered pursuant to the provisions of the Securities Act of 1933, as amended, or the securities laws of any other jurisdiction, without obtaining the Company's prior written consent and complying with all of the Company's requirements and restrictions concerning use of information about the Company, its affiliates or the System.

4) Franchisee shall furnish the Company, at the time of execution of this Agreement and upon all transfers subject to the provisions of this Section 13.02, a list of all stockholders, members, managers and partners having an interest in Franchisee, their respective percentage interests and the number of shares directly and indirectly owned or controlled by

each.

5) Franchisee, if a corporation, shall maintain stop transfer instructions against the transfer on its records of any securities with voting rights subject to the restrictions of this Section 13.02 and shall cause all certificates representing outstanding voting securities to be surrendered for reissuance and cause all certificates for voting securities in the future to be issued with this legend printed conspicuously upon the face of each certificate:

“The transfer of this certificate and the shares it represents is subject to the terms and conditions of a certain Franchise Agreement with 360 Degree Franchise Corporation, Reference is made to that Agreement and to certain restrictive provisions of the Articles and by-laws of this corporation.”

c) Franchisee acknowledges and agrees that the restrictions on transfer imposed herein are reasonable and necessary to protect the System; the Company's Proprietary Marks, Proprietary Information and operating procedures and quality, as well as the Company's high reputation and image, and are for the protection of the Company, Franchisee, and other Franchisees. No attempted assignment or transfer permitted by this Section 13.02 shall take effect without the Company's written consent.

d) Upon Franchisee's written request, the Company shall not unreasonably withhold its consent to any assignment subject to the restrictions of this Section 13.02; however, in addition to the requirements of Subsection 13.02 (b), the Company's consent shall be conditioned on the satisfaction of the following requirements:

- 1) neither Franchisee nor any successor or affiliate of Franchisee is in default under this Agreement or any other agreement with the Company, and all of their accrued monetary obligations to the Company have been satisfied;
- 2) the assignor and its Owners (as defined in Section 12.02) have executed a general release under seal, in a form prescribed by the Company, of any and all claims against the Company, its affiliates and their officers, directors and employees in their individual and corporate capacities;
- 3) the assignee has demonstrated to the Company's satisfaction that it meets all of the Company's then current requirements for new Franchisees, including, without limitation, character, financial and managerial requirements;
- 4) the assignee has executed and/or caused all necessary parties to execute, the Company's then current standard form Unit Franchise Agreement, including the personal guaranty described in Section 13.02(b)(2) and such other then current ancillary agreements as the Company may reasonably require (the Unit Franchise Agreement shall be for a term expiring on the expiration date of this Agreement and it shall be renewable only upon the terms set forth in such then current Franchise Agreement);
- 5) if this Agreement is the current form Unit Franchise Agreement then being required by the Company, the assignee has entered into a written assignment in a form prescribed by the Company, assuming and agreeing to discharge all of the assignor's obligations under this Agreement and all other ancillary agreements;
- 6) in the sole discretion of the Company, the assignee and any of its employees responsible for the operation of the Franchised Restaurant shall have satisfactorily completed the Company's training then in effect for all new Franchisees;
- 7) except in the case of an assignment to a corporation for convenience of ownership pursuant to Section 13.02(e), a transfer fee has been paid to the Company in an amount determined by the Company, not to exceed Two Thousand Dollars (\$2,000), to defray the Company's reasonable costs and expenses in connection with the transfer, including, without limitation, the cost of legal and accounting fees, credit and investigation charges, evaluations, retraining, and additional supervision; and
- 8) the assignment is not to a business competitor of the Company and the requirements of Section 14.08 are met.

e) If Franchisee is an individual and desires to assign all of his rights to a corporation formed solely for convenience for ownership, the Company's consent to such assignment shall be conditioned on the following requirements, in addition to those in Sections 13.02 (b), (c) and (d):

- 1) the assignee shall be newly organized and its Articles of Incorporation and by-laws shall provide that its activities shall be confined exclusively to operating the Franchised Restaurant or other businesses franchised under similar agreements with the Company, its subsidiaries, or affiliates;
- 2) Franchisee shall be the owner of a majority voting interest in the securities of the assignee; and
- 3) all shareholders of the assignee corporation to which Subsection 13.02 (b)(2) applies shall comply with the requirements of that Subsection.

f) Upon the dissolution or death of Franchisee or of a stockholder member or a general partner of Franchisee, the personal representative or trustee who is legally authorized to transfer the affected interest may sell, assign or otherwise transfer the affected interest in Franchisee to a third party, subject to the conditions set forth in this Agreement for any other transfer. If the personal representative does not receive, or desire to accept, a bona fide offer to sell such interest, and if under applicable law, Franchisee's rights in this Agreement and in the Franchised Restaurant are distributable to heirs or legatees who would otherwise qualify as Franchisees and assignees under the terms of this Section 13.02, the Company shall consent to such assignment, provided such prospective assignees agree to accept all the conditions imposed on Franchisee by this Agreement.

g) If any person, partnership, LLC or corporation with an interest subject to the restrictions of this Section 13.02 desires to accept any bona fide written offer from a third party to purchase such interest, the prospective transferor shall notify the Company in writing of each such offer, and the Company shall have the option, but not the obligation, to purchase such business, franchise and interest, including any lease, on the same terms and conditions offered by the third party, except that the Company shall have at least fifteen (15) days to prepare for closing. If the third party offer is such that the Company may not reasonably be required to furnish the same consideration, terms or conditions, then the Company may purchase the interest to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, or conditions contained in the offer, the consideration shall be determined by an independent appraiser designated by the Company, whose determination shall be binding. The Company shall notify the prospective transferor of its intention to exercise its option within ten (10) days after receipt of notice and a copy of the offer. Any material change in the terms of the third party offer prior to transfer to the third party shall constitute a new offer, subject to the same option by the Company as in the case of an initial offer. The Company's failure to exercise the option afforded by this Section 13.02 (g) shall not constitute a waiver of any other provision of this Agreement, including any of the requirements of Section 13.02 with respect to the proposed transfer, nor shall such failure constitute a waiver of its right to exercise its option with respect to any subsequent third party offer.

h) The Company's consent to a transfer of any interest subject to the restrictions of this Section 13.02 shall not constitute a waiver of any claims it may have against the assignor, nor shall it be deemed a waiver of the Company's right to demand compliance with any of the terms of this Agreement by the assignee at any time and from time to time.

## **14.00 GENERAL PROVISIONS**

### **14.01 Improvements to System**

All improvements in the System developed by Franchisee, the Company or other Franchisees, shall be and become the sole and absolute property of the Company. The Company may incorporate such improvements into the System and shall have the sole and exclusive right to copyright, register and protect such improvements in the Company's own name to the exclusion of Franchisee, whose right to use such improvements shall be limited to its rights as a Franchisee hereunder.

### **14.02 Governing Law; Exclusive Jurisdiction**



This Agreement has been accepted by the Company and shall be deemed to have been made at Walnut Creek, California, and shall be governed and construed under and in accordance with the laws of the State of California, which law shall prevail in the event of any conflict of law. Franchisee and the Company agree that any action arising out of or relating to this Agreement (including, without limitation, the offer and sale of the Franchise) shall be instituted and maintained only in a state or federal court of general jurisdiction in Contra Costa County, California, and Franchisee irrevocably submits to the jurisdiction of such court and waives any objection it may have to either the jurisdiction or venue of such court.

#### 14.03 Severability

a) Except as expressly provided to the contrary herein, each section, part, term and provision of this Agreement shall be considered severable. If, for any reason, any section, part, term or provision of this Agreement is determined to be invalid, contrary to, or in conflict with, any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or affect such other portions, sections, part, terms or provisions of this Agreement as may remain otherwise intelligible, and the latter will continue to be given full force and effect and bind the parties hereto. Such invalid sections, parts, terms and provisions shall be deemed not to be a part of this Agreement.

b) If any applicable law or rule requires a greater period for notice to or performance by Franchisee than the period(s) provided in this Agreement, the period required by such law or rule shall be substituted for the period specified herein.

c) If any court in a final decision to which the Company is a party holds any provision of this Agreement or portion thereof to be unenforceable or reduces the scope of any covenant or provision herein, Franchisee shall be bound to the fullest extent by such covenant or provision as reformed or reduced to the maximum extent consistent with such decision, and as if such reformed or reduced provision were separately set forth in and made a part of this Agreement.

#### 14.04 Franchisee Is Independent Contractor

a) This Agreement does not create a fiduciary relationship between the parties hereto. Franchisee shall be at all times an independent contractor, and nothing herein contained shall constitute Franchisee as the agent, legal representative, partner, joint venturer or employee of the Company. Franchisee shall not have any right or power to and shall not bind or obligate the Company in any way or manner whatsoever, nor represent that it has the right to do so.

b) Franchisee shall have sole responsibility for, and shall promptly pay when due, all taxes levied or assessed by reason of its operation and performance under this Agreement, including, but not limited to, local, state and federal, property, license, sales, use, leasehold, excise and income taxes. Franchisee shall be solely responsible for all loss, damage and contractual liabilities to third persons originating in or in connection with the operation of the Franchised Restaurant and for all claims and demands for damages to property and for injury, illness or death of persons directly or indirectly resulting therefrom. Franchisee shall indemnify and save the Company harmless from any such claims for taxes and other liabilities, loss, expense or damage.

c) In all building directories, public records and in its relationship with other persons, Franchisee shall indicate its independent ownership of the Franchised Restaurant and that it is only a Franchisee of the Company. Franchisee and any permitted assignee shall file, and keep on file at all times in the proper public office for the locality involved, a statement showing the actual name of Franchisee as the proprietor of its business, if such is required or permitted by the law of the state and for the locality where the Franchised Restaurant and Franchisee's principal place of business are located.

#### 14.05 Section Titles

Section titles and Section and Subsection references are used for convenience only and shall not affect the meaning or construction of any provision of this Agreement.

#### 14.06 Entire Agreement

This Agreement, which shall include the preamble recitals, constitutes the entire agreement of the parties and supersedes all prior negotiations, commitments, representations and undertakings of the parties with respect to

the subject matter hereof. The Company has made no representations inducing the execution of this Agreement other than are expressly stated herein.

#### 14.07 Number and Gender

All the terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural), and any other gender (masculine, feminine or neuter), as the context or sense of this Agreement or any paragraph or clause hereof may require, the same as if such words have been fully and properly written in the appropriate number and gender.

#### 14.08 Obligations of Interested Parties

a) Except as otherwise provided herein, all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be jointly and severally made or undertaken by Franchisee, all persons signing this Agreement in their individual capacities and all guarantors.

b) Franchisee shall forward to the Company concurrently with the execution and delivery of this Agreement and prior to the acquisition of any interest in Franchisee by a third party during the term of this Agreement and any extension hereof, a Confidentiality and Noncompetition Agreement (as it may be revised by the Company from time to time), executed by every Owner (as defined in Section 12.02) of the Franchise.

#### 14.09 Written Approval, Waiver and Nonwaiver

a) Whenever this Agreement requires the prior approval or consent of the Company, Franchisee shall make a timely written request therefor and such approval must be obtained in writing. Except where this Agreement expressly obligates the Company to reasonably approve or consent to (or not to unreasonably withhold its approval of or consent to) any action or request by Franchisee, the Company has the absolute right for any reason to refuse any request by Franchisee or to withhold the Company's approval of or consent to any action by Franchisee. The Company may also consider at its option and, in its sole discretion, other reasonable prior requests severally submitted in writing by Franchisee for the Company's waiver of any obligation imposed by this Agreement. The Company makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this franchise or by any neglect or delay in furnishing the same.

b) No failure of the Company to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by Franchisee with any obligation or condition hereunder, and no custom or practice of the parties at variance with the terms hereof, shall constitute a waiver of the Company's right to demand exact compliance with all of the terms hereof. Waiver by the Company of any particular default by Franchisee shall not affect or impair the Company's rights with respect to any subsequent default of the same, similar or different nature, nor shall any delay, forbearance, or omission of the Company to exercise any power or right arising out of any breach or default by Franchisee of any of the terms, provisions, or covenants hereof, affect or impair the Company's right to exercise the same, nor shall such constitute a waiver by the Company of any right hereunder, or the right to declare any subsequent breach a default and to terminate this Agreement prior to the expiration of its term. Subsequent acceptance by the Company of any payments due to it hereunder shall not be deemed to be a waiver by the Company of any preceding breach by Franchisee of any terms, covenants or conditions of this Agreement.

c) No right or remedy conferred upon or reserved to the Company or Franchisee by this Agreement is intended to be, nor shall it be deemed, exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy.

d) No amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed in writing.

#### 14.10 Notices; Payments

a) Subject to Section 14.10(d), all notices, requests and reports permitted or required to be delivered by the provisions of this Agreement shall be deemed delivered: (i) at the time delivered by hand to the recipient party (or to an officer, director or partner of the recipient party); (ii) on the same date of the transmission by facsimile, telegraph or other reasonably reliable electronic communication system; (iii) one

(1) business day after being placed in the hands of a commercial courier service for guaranteed overnight delivery; or (iv) four (4) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid and addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing.

b) If notice is sent to the Company, it shall be addressed to the attention of the President, 360 Degree Franchise Corporation, 1130 Burnett Avenue, Suite K, Concord, California 94520, or at such other address as the Company shall from time to time designate in writing.

c) If notice is sent to Franchisee, it shall be addressed to Franchisee, care of its designated agent, at

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or at such other address as the Franchisee shall from time to time designate in writing.

d) Unless otherwise required by the Direct Debit Arrangement specified by Section 6.06, all payments and reports to accompany payments required to be made hereunder to the Company shall be sent by the means specified in Subsection 14.10(a) (i) (iii) or (iv) above or by electronic wire payment transfer, addressed to the attention of the Treasurer at the above address, or at such address or by such other means as the Company shall from time to time designate in writing. Any payment not actually received by the Company on or before the date specified herein shall be deemed overdue if not postmarked at least five (5) days prior to the date due.

#### 14.11 Designated Agent of Franchisee

Franchisee hereby designates \_\_\_\_\_  
to act in its behalf and execute all documents in all transactions with the Company. All actions by such designee shall be binding upon Franchisee and shall be valid and binding on any partnerships as if done by each and every partner. The Company shall have no duty to deal with anyone other than the designee; however, any documents submitted to the Company executed by any other officer or partner shall be valid and binding upon Franchisee. Franchisee shall promptly notify the Company in writing of any change in its designee.

#### 14.12 Acknowledgments

a) Franchisee acknowledges and warrants that it has received a complete and final copy of this Agreement and applicable exhibits as well as disclosure and other documents required in a timely fashion as required as follows:

We hereby acknowledge and warrant that the following dates are true and correct:

Date of first face to face meeting with Company to discuss the possible purchase of a franchise:

\_\_\_\_\_ (Month/Day/Year)

The date on which we received a uniform Franchise Offering Circular about Company:

\_\_\_\_\_ (Month/Day/Year)

The date we received a completed copy (other than signatures of the Unit Franchise Agreement) that we later signed: \_\_\_\_\_ (Month/Day/Year)

The date on which we delivered cash, check or other consideration in the amount of \$ \_\_\_\_\_  
to or for the benefit of the Company: \_\_\_\_\_ (Month/Day/Year)

b) We hereby represent:

Prior to signing the Unit Franchise Agreement, we were given ample opportunity to review and examine a Uniform Franchise Offering Circular about the Company and have been furnished with a copy of same.

No oral, written or visual claim or representation which contradicted the disclosure statement was made to us except: \_\_\_\_\_ (If none, Franchisee shall write "None")

No oral, written or visual claim or representation which stated or suggested any sales, income or profit levels was made to us except: \_\_\_\_\_ (If none, the Franchisee shall write "None")

IN WITNESS WHEREOF, the Company and Franchisee have executed this Agreement as of the date(s) indicated below.

Franchisee:

\_\_\_\_\_  
Print name

A \_\_\_\_\_  
(Corporation/Partnership/LLC)

By: \_\_\_\_\_

\_\_\_\_\_  
Print name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Franchisor:

360 Degree Franchise Corporation

By: \_\_\_\_\_

\_\_\_\_\_  
President & Chief Executive Officer

Date: \_\_\_\_\_

Witness or Attest:

\_\_\_\_\_

**CONFIDENTIALITY AND NONCOMPETITION AGREEMENT**

THIS AGREEMENT, dated for reference purposes as of \_\_\_\_\_, \_\_\_\_\_ is entered into by and between 360 Degree Franchise Corporation, a California corporation ("Company") and, \_\_\_\_\_ whose notice address is:

\_\_\_\_\_  
("Interested Party"):

On \_\_\_\_\_, \_\_\_\_\_, the Company entered into a Franchise Agreement with \_\_\_\_\_ ("Franchisee"). Interested Party understands that Franchisee will be in default under the Franchisee Agreement and its franchise rights may be terminated if each general partner or stockholder of Franchisee does not execute a written agreement to be personally bound by the covenants in Sections 10.03 and 12.02 of the Franchise Agreement. Interested Party desires to acquire and/or maintain an interest in Franchisee, and has an interest in ensuring that Franchisee complies fully with all of the terms of the Franchise Agreement.

In consideration of the Company's agreement not to terminate the Franchise Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Interested Party hereby agrees:

That he or she will comply with all the requirements set forth in Section 12.02 of the Franchise Agreement, so long as he or she continues to have an interest in Franchisee.

That he or she will observe the restrictions on disclosure of confidential and trade secret information set forth in Section 10.03 of the Franchise Agreement, both during its term and after its termination or expiration, regardless of whether he continues to be directly or indirectly associated with the Company or Franchisee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Walnut Creek, California on the day and year first above written.

WITNESS:

INTERESTED PARTY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

ATTEST:

360 Degree Franchise Corporation

By: \_\_\_\_\_

\_\_\_\_\_  
President & Chief Executive Officer

**EXHIBIT A  
PERSONAL GUARANTY**

In consideration of, and as an inducement to, the execution of the Franchise Agreement with \_\_\_\_\_ ("Franchisee") dated \_\_\_\_\_, \_\_\_\_\_ by 360 Degree Franchise Corporation ("360 Gourmet Burritos"), the undersigned hereby personally and unconditionally guarantees to 360 Gourmet Burritos, its affiliates, successors, assigns, parent and its parent's other subsidiaries, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Franchise Agreement. The undersigned further waives acceptance and notice of acceptance of the foregoing undertakings; notice of demand for payment of any indebtedness or for performance of any obligations hereby guaranteed; protest and notice of default to any party with respect to the indebtedness or performance of obligations hereby guaranteed; any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability; and any and all other notices and legal or equitable defenses to which he or she may be entitled. The undersigned further consents and agrees that his or her direct and immediate liability under this Guaranty shall be joint and several; that he or she shall render any payment or performance required under the Franchise Agreement upon demand if Franchisee fails or refuses punctually to do so; that such liability shall not be contingent or conditioned upon the pursuit of any remedies against the Franchisee or any other person; and that such liability shall not be diminished, relieved or otherwise affected by the extension of time, credit or any other indulgence which 360 Gourmet Burritos, its affiliates, successors, assigns, parent or its parent's other subsidiaries, way, 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. This Guaranty shall continue and be irrevocable throughout the term of the Franchise Agreement and any extensions thereof.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the same day and year as the above Franchise Agreement was executed.

WITNESS:

GUARANTOR

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Print Name)

GUARANTOR'S MAILING ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SCHEDULE A**  
**LIST OF SERVICE MARKS, TRADEMARKS, LOGOS**

Description of Mark	Registration No.
360 Gourmet Burritos Design Plus Words, Letters, And/Or Numbers	2184123
.360 Design, Plus Words, Letters, And/Or Numbers	2069233
Wrapping Up The Flavors Of The World	2002776



**SCHEDULE B  
LOCATION**

The Location is: \_\_\_\_\_

You will operate from one location approved by the Company and must receive the Company's permission before relocating.