

EXHIBIT C

to

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Uniform Franchise Offering Circular (California)

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FRANCHISE AGREEMENT

[See Attached]

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DEPT OF CORPORATIONS
SAN FRANCISCO

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FRANCHISE AGREEMENT

between

DINNER MYWAY, INC.,

a California corporation

(Dinner MyWay)

and

(Franchisee)

Dated: _____, 200__

DINNER MYWAY FRANCHISE AGREEMENT

THIS DINNER MYWAY FRANCHISE AGREEMENT ("**Agreement**") is executed as of this _____ day of _____, 200__, by and between DINNER MYWAY, INC., a California corporation ("**Dinner MyWay**"), with its principal office located at 2205 Sunset Blvd., Suite #501, Rocklin, California ~~95765~~ and ~~95765~~ and _____ ("**Franchisee**"), with its principal office located at _____.

Dinner MyWay and Franchisee may sometimes hereinafter be referred to individually as the "**Party**" or collectively as the "**Parties**."

RECITALS

A. As the result of the expenditure of time, skill, effort and money, Dinner MyWay has developed a system for establishing and operating specialty grocery stores that focus on menu planning, meal preparation training, and distribution of self-prepared home cooked meals and related products and services under the trade name "Dinner MyWay" (the "**System**").

B. The characteristics of the System include, but are not limited to, the following: uniform standards and procedures for business operations; training in operation, management and promotion; advertising and promotional programs; customer development and service techniques; special graphics packaging; and other technical assistance; all of which may be changed, improved or otherwise developed by Dinner MyWay from time to time.

C. Dinner MyWay has the right to use and license the trademark "DINNER MYWAY" and other trademarks, trade dress, services marks, logos and identifying features (the "**Proprietary Marks**") associated with Dinner MyWay and the System.

D. Dinner MyWay desires to grant to others the right to operate Dinner MyWay stores under the Proprietary Marks and System described herein.

E. Franchisee recognizes benefits to be derived from being identified with and receiving a franchise from Dinner MyWay, and desires to obtain a nonexclusive right from Dinner MyWay to operate a Dinner MyWay store, to use the System and the Proprietary Marks, and to enter into this Agreement for that purpose.

F. It is the intention of Franchisee and Dinner MyWay to preserve continuing customer confidence in the reliability and quality of all goods, merchandise and products sold and services provided in connection with any of the Proprietary Marks.

G. Dinner MyWay may, from time to time, add and delete certain products and services promoted by Dinner MyWay as part of the product and service line to which the System then applies.

H. Franchisee has read carefully and had sufficient opportunity to be advised thoroughly of the terms and conditions of this Agreement by advisors of Franchisee's own choosing and by receipt and review of Dinner MyWay's current Uniform Franchise Offering Circular. Further, Franchisee has made an independent investigation of Dinner MyWay's

operations, and now, Franchisee and Dinner MyWay wish to enter into this Agreement so as to fully set forth all of the understandings, agreements, representations, warranties, and terms and conditions of the Parties.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual promises, commitments and understandings contained herein, Dinner MyWay and Franchisee hereby agree as follows:

ARTICLE 1

APPOINTMENT

Section 1.1 Grant.

(a) Dinner MyWay grants to Franchisee, subject to the terms and conditions contained in this Agreement, the nonexclusive right to operate one (1) Dinner MyWay store at the location described in Exhibit A to this Agreement (the “**Franchised Dinner MyWay Store**”) and the non-exclusive license to use the System and the Proprietary Marks (as they may be changed, improved and developed from time to time) together with such other insignia, symbols, and trademarks which may be approved and authorized by Dinner MyWay for use by Franchisee from time to time in connection with its Franchised Dinner MyWay Store.

(b) Franchisee accepts from Dinner MyWay the obligation to operate the Franchised Dinner MyWay Store pursuant to the terms and conditions of this Agreement and agrees that Franchisee will, at all times, faithfully, honestly and diligently perform its obligations hereunder, will continuously exert Franchisee’s best efforts to promote and enhance the business of the Franchised Dinner MyWay Store, and will not engage in any other business or activity that may conflict with the terms and conditions of this Agreement.

Section 1.2 Rights Reserved by Dinner MyWay. Except to the extent contemplated in Section 1.3, Dinner MyWay (on behalf of itself, its licensees, franchisees and affiliates) retains the right, in its sole discretion:

(a) to own, operate and grant franchises to others to operate businesses offering some or all of the products and services authorized for sale by Dinner MyWay stores, under the Proprietary Marks and/or other trademarks, service marks and commercial symbols and pursuant to such terms and conditions as Dinner MyWay deems appropriate;

(b) to itself operate, and to grant to other persons and/or entities the right to operate, Dinner MyWay stores at such locations, including in the immediate proximity of the Exclusive Territory (as defined in Section 1.3(a) below), at such times and on such terms and conditions as Dinner MyWay deems appropriate;

(c) to sell some or all of the products and services authorized for sale by Dinner MyWay stores in any channel of distribution and/or to provide management and/or consulting services using the System to retail stores and others not operated under the Proprietary Marks; and

(d) to purchase, merge, acquire or affiliate with an existing restaurant chain or other food distribution or preparation entity having one or more store(s) or locations and to continue operating under such other name after the date of such purchase, merger, acquisition or affiliation.

Section 1.3 Right of First Refusal/Franchise Reservation

(a) Provided Franchisee is not currently in default, and a default has not occurred within the previous six (6) months, of any provision of this Agreement or any other agreement between Franchisee and Dinner MyWay, its subsidiaries or affiliates; and provided, further, Franchisee has had a minimum of 400 customers per month for at least three (3) consecutive months since its Opening Date (as defined in Section 3.4(b) below), Dinner MyWay shall not open and operate a company-owned Dinner MyWay store, or franchise to other franchisees or other third parties another Dinner MyWay store within a _____ **[insert mileage]** mile radius of Franchisee's store ("**Exclusive Territory**") without first offering such franchise to Franchisee as set forth below. *(The number to be inserted in the line above shall be between 2 miles and 5 miles and shall be mutually agreed upon between Franchisor and Franchisee prior to the execution of this Agreement.)*

(b) Franchisee's Right of First Refusal. Provided the provisions in Section 1.3(a) are satisfied, if at any time during the Term (as defined herein) Dinner MyWay desires to open and operate a company-owned Dinner MyWay store in the Exclusive Territory, or franchise to another franchisee or a third party, a Dinner MyWay franchise in the Exclusive Territory, Dinner MyWay shall first offer to sell the franchise to Franchisee for the consideration and on the terms and conditions then applicable to franchisees. Dinner MyWay's offer (the "**Offer**") shall be made by written notice to Franchisee setting forth the proposed location, price and terms of the Offer.

(c) Time to Accept Offer. Franchisee shall have the first option to purchase the proposed franchise by accepting the Offer in writing to Dinner MyWay within thirty (30) days of receipt of the Offer.

(d) Franchisee Accepts Offer. If Franchisee gives notice of acceptance of the Offer as provided above, then Dinner MyWay shall sell the franchise to Franchisee, and Franchisee shall purchase the franchise from Dinner MyWay for the consideration and upon the terms and conditions set forth in the Offer.

(e) Franchisee Declines Franchisee's Offer. If Franchisee does not accept the Offer within thirty (30) days of receipt of the Offer, Dinner MyWay shall be free to open and operate a company-owned Dinner MyWay store within the Exclusive Territory, or to sell the proposed franchise for another Dinner MyWay Store to another franchisee, or a third party, within the Exclusive Territory for the consideration and upon the terms and conditions specified in the Offer.

Except as limited herein, Franchisee acknowledges that Dinner MyWay may open and operate company-owned Dinner MyWay stores or other businesses, franchise to other franchisees

and third parties Dinner MyWay stores or other business, in the sole and absolute discretion of Dinner MyWay, wherever and whenever it determines.

(f) **Franchise Reservation.** Anytime during the Term of this Agreement, and provided Franchisee is not in default under any terms of this Agreement, Franchisee has the right to reserve the purchase of a franchise in a particular location ("**Reserved Location**"). In order to reserve a particular location, Franchisee shall provide Franchisor with a written request to reserve a particular location, not to exceed an area of more than five (5) miles in radius and shall pay Franchisor a non-refundable reservation fee of Five Thousand Dollars (\$5,000.00) ("**Reservation Fee**"). Upon receipt of the Reservation Fee, Franchisor agrees that after receipt of the notice to request a reservation, if Franchisor has not previously reserved the requested Reserved Location to another party or entered into a separate franchise agreement within the Reserved Location, Franchisor agrees that Franchisor will hold the Reserved Location for Franchisee for six (6) months from the date of the reservation request. If Franchisee does not sign a new franchise agreement in the Reserved Location within the six (6) month period, Franchisor will keep the Reservation Fee in consideration of the deferral of Franchisor's opportunity to sell franchises in the Reserved Location to others. The reservation does not give Franchisee any rights to operate in the Reserved Location, nor does it permit Franchisee to offer, sell, transfer, assign or through any other means transfer its reservation rights in whole or in part to any other party.

Section 1.4 Relocation of the Franchised Dinner MyWay Store. Franchisee may not change the site of the Franchised Dinner MyWay Store without Dinner MyWay's prior written consent, which consent shall not be unreasonably withheld.

ARTICLE 2

TERM

Section 2.1 Initial Term. The initial term of this Agreement shall extend for ten (10) years from the date of this Agreement (the "**Term**"), unless otherwise sooner terminated pursuant to Article 12 of this Agreement. Franchisee accepts this Franchise with the full and complete understanding that the franchise granted hereby contains no promise or assurance of renewal at the end of any Term. The sole and entire conditions under which Franchisee will have the opportunity of obtaining a successor Dinner MyWay Franchise Agreement at the expiration of the Term are those set forth in Section 2.2.

Section 2.2 Renewal of the Term. Franchisee may, at its option, renew the Term for as many succeeding Terms as elected by Franchisee, each equal to a period of ten (10) years, provided that all the following conditions are met:

(a) **Advance Notice.** Franchisee shall give Dinner MyWay written notice of its intention to renew the Term not less than nine (9) months nor more than twelve (12) months prior to the end of the then-current Term;

(b) **Completion of Maintenance, Refurbishing, and Upgrading.** At least six (6) months prior to the expiration of the then-current Term, Dinner MyWay shall be entitled to inspect the Franchised Dinner MyWay Store and give notice of all required maintenance,

refurbishing, renovating and upgrading, and Franchisee shall complete to Dinner MyWay's reasonable satisfaction, all maintenance, refurbishing, renovating and upgrading required by Dinner MyWay's notice no later than sixty (60) days prior to expiration of the then-current Term;

(c) No Default. Franchisee shall not be in breach of any provision of this Agreement or any other agreement between Franchisee and Dinner MyWay, its subsidiaries or its affiliates, and Franchisee shall have substantially complied with all the terms and conditions of such agreements during the terms of such agreements;

(d) Execute the Current Franchise Agreement. Franchisee, within sixty (60) days prior to the expiration of the then-current Term, shall execute and deliver to Dinner MyWay the then-current form of Dinner MyWay Franchise Agreement ("**New Franchise Agreement**"). There will be no renewal fee required. Upon execution and delivery by Dinner MyWay to Franchisee of the New Franchise Agreement and upon expiration of the then-current Term, the New Franchise Agreement shall supersede, in all respects, this Agreement. The terms of the New Franchise Agreement may materially differ from the terms of this Agreement;

(e) Meet Current Qualifications and Training Requirements. Franchisee shall have complied with Dinner MyWay's then-current qualification and training requirements; and

(f) Execute General Release. Franchisee shall execute a general release, in a form prescribed by Dinner MyWay, of any and all claims against Dinner MyWay and its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, attorneys and employees except for known liabilities of Dinner MyWay to Franchisee and liabilities from which Dinner MyWay may not require a release under any applicable state laws.

If Dinner MyWay, in its sole and absolute discretion, determines that all of the conditions specified above have been satisfied, the New Franchise Agreement shall be deemed accepted by Dinner MyWay on the terms and conditions specified in the New Franchise Agreement executed by Franchisee, and the Term shall be renewed commencing on the date following the expiration of the old Term. If Dinner MyWay determines that any of the conditions specified above have not been satisfied, it shall notify Franchisee in writing that the New Franchise Agreement has not been accepted and that the renewal is not effective and shall specify the reasons therefor.

Section 2.3 Reinstatements and Extensions. In the event any termination or expiration of the Term would violate any applicable laws, Dinner MyWay may reinstate or extend the Term for the purpose of complying with such laws, for the duration provided by Dinner MyWay in a written notice to Franchisee, without waiving any of Dinner MyWay's rights under this Agreement or otherwise modifying this Agreement.

ARTICLE 3

FEES AND PAYMENTS

Section 3.1 Types of Fees. Franchisee shall pay Dinner MyWay the following fees in readily available United States currency:

(a) Initial Franchise Fee. The initial franchise fee is Twenty-Four Thousand Dollars (\$24,000.00) or Eighteen Thousand Dollars (\$18,000.00) if you are an existing franchisee and are opening an additional franchise location (the "**Initial Franchise Fee**") and is due and payable in full on or before the execution of this Agreement. The Initial Franchise Fee shall be deemed fully earned by Dinner MyWay and deemed non-refundable upon execution of this Agreement in consideration for the administrative and other costs incurred by Dinner MyWay, and opportunities lost or deferred as a result of the rights granted to Franchisee in this Agreement, except in accordance with subsection (b) below.

(b) Refunds of Initial Franchise Fee. If Franchisee is not accepted by Dinner MyWay within thirty (30) days from the date of this Agreement, then Dinner MyWay will refund one hundred percent (100%) of the Initial Franchise Fee to Franchisee without interest, as well as refund the Opening Advertising Fee (as defined herein), less any Out-of-Pocket Expenses (as defined herein) and reasonable fees incurred for any training and other assistance Dinner MyWay may have provided to Franchisee under this Agreement. "**Out-of-Pocket Expenses**" shall include, but not be limited to, reasonable mileage reimbursement, photo-copying, postage, lodging and meals, if 100 miles outside of Sacramento County, and other direct costs. If a site for Franchisee's Dinner MyWay store is not selected within six (6) months from the date of this Agreement, the Franchised Dinner MyWay Store is not open for business to the general public within nine (9) months from the date of this Agreement, or if Dinner MyWay determines that Franchisee failed to satisfactorily complete its Basic Management Training (as defined below), as determined in Dinner MyWay's sole discretion, then Dinner MyWay will refund one hundred percent (100%) of the Initial Franchise Fee to Franchisee without interest, as well as refund the Opening Advertising Fee, less Dinner MyWay's Out-of-Pocket Expenses and reasonable fees incurred for any training and other assistance Dinner MyWay may have provided to Franchisee under this Agreement.

(c) Royalty Fee. Franchisee shall pay Dinner MyWay a recurring monthly non-refundable royalty fee (the "**Royalty Fee**") during the Term in an amount equal to five percent (5%) of Franchisee's monthly Gross Revenues (as defined in Section 3.2) for the assistance, licenses and services of Dinner MyWay set forth in Article 4.

(d) Opening Advertising Fee. An opening advertising fee of Three Thousand Dollars (\$3,000.00) (the "**Opening Advertising Fee**") shall be payable simultaneously with the execution of this Agreement. The Opening Advertising Fee will be held for the benefit of Franchisee to fund opening advertising expenditures as described in Section 8.2. The Opening Advertising Fee will be promptly refunded in the event the Initial Franchise Fee is refunded to Franchisee pursuant to Section 3.1(b).

(e) National Advertising Contributions. Franchisee shall pay Dinner MyWay a continuing monthly contribution to the Dinner MyWay Marketing Fund (as defined in Section 8.3) during the Term in an amount equal to two percent (2%) of the monthly Gross Revenues (as such term is defined in Section 3.2) (the "**National Advertising Contribution**"). Franchisee is also obligated to participate in any local or regional cooperative advertising programs in accordance with Section 8.3(e) herein.

(f) Renewal Fee. There is no renewal fee.

(g) Transfer Fee. In the event of a transfer of Franchisee's interest in the Franchised Dinner MyWay Store, or of any interest requiring Dinner MyWay's consent under Article 11, Franchisee must, in addition to meeting all other requirements set forth in this Agreement, pay a Transfer Fee as set forth in Section 11.3(j).

(h) Training Fee. There is no training fee charged for the initial training of two (2) individuals for Basic Management Training, as that expense is included in the Initial Franchise Fee. However, at the election of Franchisor, Franchisee is required to pay for Dinner MyWay's Out-of-Pocket Expenses (as herein defined) incurred for any training such as refresher training or advanced management training and for Basic Management Training of new Managers, as described in Section 4.5. Franchisee shall be solely responsible for its own costs and expenses associated therewith, including but not limited to, all travel, meals and lodging costs.

Section 3.2 Gross Revenues. The term "**Gross Revenues**" as used in this Agreement shall mean the total amount received or receivable by Franchisee arising from, connected with or related to the sale of all goods, merchandise or services, rental fees and all business transacted in or from the Franchised Dinner MyWay Store, by Franchisee, directly or indirectly, excluding only the following:

(a) the amount of any federal, state, or local sales or excise taxes or other similar taxes, separately stated, which may now or hereafter be required by law to be collected and paid by Franchisee to any governmental agency or authority; and

(b) the amount of any refund to customers for bona fide returns of goods sold.

Section 3.3 Payment Schedule. The Royalty Fee and National Advertising Contributions must be paid to Dinner MyWay in the method set forth in Section 3.4, along with the delivery of any required reports, no later than the 10th day of each month during the Term with respect to the immediately preceding month. Any payment or report not actually received by Dinner MyWay on or before the due date will be deemed past due and subject to the charges described in Section 3.5.

Section 3.4 Payment System.

(a) Pre-Authorized Transfers. All required payments by Franchisee to Dinner MyWay or any of its affiliates, upon the request of Dinner MyWay, shall be effectuated by the use of pre-authorized transfers from Franchisee's operating account through the use of an automated clearing house ("**ACH**") network designated by Dinner MyWay (the "**Payment System**"). Franchisee shall deposit all Gross Revenues received by Franchisee in Franchisee's operating account accessed by the Payment System on a Staggered Weekly Basis as set forth below. For purposes of this Agreement, a week shall begin on Sunday and end on Saturday and the Gross Revenues of that week shall be immediately due on the second Monday following the end of that first week ("**Staggered Weekly Basis**").

(b) Franchisee's Cooperation In Establishing Payment System. Franchisee shall cooperate with Dinner MyWay in all respects to implement the Payment System at least fifteen (15) days prior to the date on which the Franchised Dinner MyWay Store is first opened for business to the general public (the "**Opening Date**"). Franchisee agrees to cooperate with Dinner MyWay in all respects in maintaining the efficient operation of the Payment System. Franchisee shall give its financial institution instructions in a form provided or approved by Dinner MyWay and shall obtain the financial institution's agreement to follow such instructions. Franchisee shall provide Dinner MyWay with copies of such instructions and agreement. The financial institution's agreement may not be withdrawn or modified without the prior written approval of Dinner MyWay, which approval shall be within the sole discretion of Dinner MyWay. Franchisee shall also execute such other forms relating to the Payment System as Dinner MyWay may request from time to time. Franchisee shall pay all the charges imposed by Franchisee's financial institution relating to the Payment System.

(c) Dinner MyWay May Receive Banking Statements. Dinner MyWay may require Franchisee's financial institution to send a monthly statement of all activity in the operating account accessed by the Payment System to Dinner MyWay at the same time as it sends such statements to Franchisee, and such other reports of the activity in such operating account as Dinner MyWay may reasonably request. If Franchisee maintains any other accounts of any type for the Franchised Dinner MyWay Store, Franchisee shall identify such accounts to Dinner MyWay and provide to Dinner MyWay copies of the monthly statements for all such accounts and the details of all deposits and withdrawals to them. In the event Dinner MyWay requires Franchisee's financial institution to send a monthly statement of all activity in the operating account accessed by the Payment System, Franchisee shall execute all reasonably required documents to effectuate release of Franchisee's monthly statements as the financial institutions may require.

(d) Franchisee's Payment Obligations Absolute. Franchisee agrees that its obligations to make payments as specified in this Agreement and any other agreement entered into with Dinner MyWay or any of its subsidiaries or affiliates with respect to the Franchised Dinner MyWay Store, and the rights of Dinner MyWay and its subsidiaries and affiliates, if any, to receive such payments, are absolute and unconditional, and are not subject to any abatement, reduction, setoff, defense, counterclaim or recoupment due or alleged to be due to, or by reason of, any past, present or future claims which Franchisee has or may have against Dinner MyWay, any of its subsidiaries or affiliates, or against any other person for any reason whatsoever.

Section 3.5 Late Charges. Although each failure to pay amounts due to Dinner MyWay when due will be a material breach of this Agreement, to encourage prompt payment and to cover the costs and expenses involved in handling and processing late payments, without limiting any other rights or remedies of Dinner MyWay, if any payment under this Agreement or any other agreement between Dinner MyWay and Franchisee relating to the Franchised Dinner MyWay Store becomes overdue for any reason, except for (i) Dinner MyWay's failure to access Franchisee's operating account when sufficient funds were in the operating account and the Payment System was in effect, or (ii) banking errors or malfunctions outside Franchisee's reasonable control, late charges will be imposed on such overdue amount, equal to twelve percent (12%) per annum or one percent (1%) per month.

Section 3.6 Guaranty of and Security for Franchisee's Obligations. As security for all monetary and other obligations of Franchisee to Dinner MyWay, the individual Franchisee, the shareholders of a corporate Franchisee, the general partners of a general partnership or limited partnership Franchisee, or the beneficial owners of the equity interests of any other entity constituting Franchisee, and the spouses of the foregoing, if any, shall execute and deliver to Dinner MyWay their personal, absolute, continuing, joint and several guaranty of Franchisee's obligations hereunder in the form of a Guaranty attached hereto as Exhibit B. In addition, Franchisee hereby grants to Dinner MyWay an absolute, continuing, first priority security interest in all the tangible and intangible personal property of every kind and description acquired by Franchisee, whether now existing or later acquired, including, all inventory, goods, materials, supplies, tools, fixtures, furniture, equipment and machinery, as such property is attached to any part of the Franchised Dinner MyWay Store or used in connection with the use or operation of the Franchised Dinner MyWay Store. To perfect such security interest, Franchisee shall execute and deliver to Dinner MyWay (if required by applicable law) a UCC-1 Financing Statement securing such collateral in the form approved by Dinner MyWay. Franchisee shall take all other action reasonably requested by Dinner MyWay to perfect Dinner MyWay's security interest as granted to it hereunder.

ARTICLE 4

DUTIES OF DINNER MYWAY

During the Term, and provided that Franchisee is not in default under this Agreement, Dinner MyWay shall provide Franchisee, from time to time, with the following assistance and services:

Section 4.1 Site Selection Assistance. Franchisee shall be responsible for obtaining a site for the Franchised Dinner MyWay Store that satisfies Dinner MyWay's site selection criteria. Dinner MyWay shall provide site selection counseling and assistance to Franchisee as Dinner MyWay may reasonably deem advisable. Further, Dinner MyWay shall provide on-site evaluation as Dinner MyWay may deem advisable in response to Franchisee's requests for site approval. Dinner MyWay shall provide its written notice of approval or disapproval of Franchisee's proposed site within forty-five (45) days of submission. A site shall be deemed submitted to Dinner MyWay for approval upon Dinner MyWay's receipt from Franchisee of a site analysis report, as specified by Dinner MyWay, for the specific location contemplated. Dinner MyWay's approval of a site location shall not be unreasonably withheld. Dinner MyWay's approval of a site is not a representation or a warranty of any kind, expressed or implied, by Dinner MyWay that the Franchised Dinner MyWay Store will be profitable or that Franchisee's sales will attain any predetermined levels, or such Franchised Dinner MyWay Store is suitable to the area. Such approval is intended only to indicate that the proposed site meets Dinner MyWay's minimum criteria for identifying sites. Franchisee agrees that Dinner MyWay's approval or disapproval of a proposed site shall not impose any liability or obligation on Dinner MyWay. Unless otherwise agreed to in writing, site approval will be conditioned upon Dinner MyWay's receipt of evidence of Franchisee's ownership, lease or control of the site upon which the Franchised Dinner MyWay Store shall be located.

Section 4.2 Lease. In the event Franchisee intends to lease the site for the Franchised Dinner MyWay store from a third party ("**Leased Location**"), such lease shall be subject to Dinner MyWay's written approval as set forth below. Dinner MyWay shall assist Franchisee in its lease negotiations by giving to Franchisee a franchisee/tenant lease negotiation checklist. In addition, the lease shall provide the following:

(a) The lease shall contain provisions that, in the event this Agreement is for any reason terminated or not renewed due to a default in Franchisee's obligations, allow for, at the option of Dinner MyWay, Dinner MyWay's right to cure any default in Franchisee's leasehold obligations under the lease, and/or Dinner MyWay's right to take an assignment of the lease upon such default in Dinner MyWay's discretion.

(b) Franchisee shall, at all times, keep Dinner MyWay informed of Franchisee's progress toward the satisfaction of all obligations and conditions contained in any lease.

(c) Franchisee acknowledges that Dinner MyWay's approval of a lease or any assistance in the lease, or site selection, does not constitute legal advice nor create any attorney-client relationship between Dinner MyWay's legal counsel and Franchisee, and Franchisee is advised to obtain the independent advice of qualified individuals concerning all such matters. Franchisee further acknowledges that Dinner MyWay's approval of a lease or any assistance in the lease, or site selection, or of any other involvement by Dinner MyWay or Dinner MyWay's legal counsel, does not constitute a guaranty, recommendation or endorsement of any kind.

(d) Any lease for the Leased Location shall be subject to the prior written approval of Dinner MyWay. Dinner MyWay shall provide its written notice of approval or disapproval within forty-five (45) days after receipt of a copy of the lease from Franchisee. After final execution of the lease is completed, Franchisee shall provide Dinner MyWay with a fully executed copy of the lease.

Section 4.3 Building Plans and Specifications. Dinner MyWay shall loan to Franchisee (A) a sample set of standard building plans for the Franchised Dinner MyWay Store and specifications and/or standard recommended floor plan, and (B) specifications of Dinner MyWay's requirements for design, decoration, layout, equipment, furniture, fixtures and signs for the Franchised Dinner MyWay Store.

Section 4.4 Lists, Forms and Schedules. Dinner MyWay shall supply to Franchisee (A) a list of all required equipment, supplies, materials, inventory and other items necessary to operate the Franchised Dinner MyWay Store and a list of approved suppliers of all such items, and (B) an initial set of forms, including, but not limited to, standard brochure and various operational forms, such as standardized forms for reporting accounting information, daysheets, invoices and contract forms.

Section 4.5 Management Training.

(a) **Four-Day Training.** Dinner MyWay shall provide four (4) days of instruction for up to two (2) persons ("**Trainees**") in Dinner MyWay's corporate headquarters and/or at such other location as Dinner MyWay may specify in writing ("**Basic Management Training**"). Each

such Trainee must, prior to the Opening Date, at a time scheduled by Dinner MyWay, complete to the reasonable satisfaction of Dinner MyWay the then-current Basic Management Training.

(b) Franchisee or Manager Must Attend Training. Unless otherwise agreed in writing by Dinner MyWay, at least one (1) of the Trainees described in subsection (a) above shall be Franchisee, or if Franchisee is a partnership, corporation, limited liability company or other entity, the partner, officer, manager, or employee having responsibility for the day-to-day operations of the Franchised Dinner MyWay Store (the “**Manager**”).

(c) Topics Covered. Basic Management Training shall cover hiring, marketing, bookkeeping techniques, inventory, control, purchasing, kitchen work, use of forms, quality control procedures, merchandising, promotion, advertising techniques, and products and services, sales techniques, methods and suggestions. The content, operation and manner of conducting Basic Management Training shall be in the sole control of Dinner MyWay.

(d) Expenses Paid by Franchisee. Franchisee shall be responsible for all expenses of the Trainees in attending Basic Management Training, including all travel, lodging and meal expenses, and compensation of, such Trainees. All costs and expenses incurred to have additional employees or agents of Franchisee attend Basic Management Training, including reasonable training fees, shall be borne by Franchisee.

(e) Partial Refund upon Failure of Basic Management Training. In the event any Trainee fails to satisfactorily complete Basic Management Training, as determined by Dinner MyWay in its sole discretion, Dinner MyWay may elect to terminate this Agreement. In such event, Franchisee shall be entitled to the refunds provided in Section 3.1(b) herein above.

(f) Subsequent Training. In the event the Manager passes away, is physically or mentally incapable (as determined by a reputable physician) or is no longer willing or able to exercise day-to-day control over the Franchised Dinner MyWay Store, Franchisee shall, within sixty (60) days thereafter, designate a new Manager of the Franchised Dinner MyWay Store with the same responsibility. Such new Manager and all other successive Managers, if any, shall be required to attend Basic Management Training at Franchisee’s sole cost and expense within sixty (60) days after the time such new person is designated the Manager, and such new person shall be considered the Manager under this Agreement. Franchisee shall be solely responsible for the costs and expenses associated therewith, including but not limited to, the then-prevailing standard rates charged by Dinner MyWay for Basic Management Training and all travel, meals and lodging costs, and compensation of, such new Manager.

Section 4.6 Loan of Dinner MyWay Manuals. During the Term, Dinner MyWay shall loan to Franchisee one (1) copy of Dinner MyWay’s confidential, proprietary operating manual(s) for franchisees (the “**Dinner MyWay Operating Manuals**”) which shall remain the exclusive property of Dinner MyWay at all times.

Section 4.7 Inspection. Dinner MyWay shall provide on-site assistance and inspection of the installation of Dinner MyWay’s signage and equipment and shall generally inspect the Franchised Dinner MyWay Store and provide Franchisee with advice and comments as Dinner

MyWay deems appropriate to ensure that Franchisee conforms to applicable standards one (1) month prior to the Opening Date.

Section 4.8 Pre-Opening On-Site Training. Dinner MyWay shall make available to Franchisee pre-opening on-site training of a minimum of two (2) days, in most instances to be conducted at the Franchised Dinner MyWay Store shortly before the Opening Date and during the first week of operation, at the times Dinner MyWay deems appropriate. Such on-site training program shall cover material aspects of the operation of the Franchised Dinner MyWay Store including financial control, marketing techniques, maintenance of quality standards, employee hiring and motivation, kitchen work, inventory control, security standards, merchandising techniques, promotional and advertising techniques, operations, purchasing and sales.

Section 4.9 Opening Assistance. In addition to the on-site training prior to the opening as set forth in Section 4.8, Dinner MyWay will coordinate the expenditure of the Opening Advertising Fee, assist in securing advertising and vendor promotional materials and provide an opening team to assist in the opening of the Franchised Dinner MyWay Store.

Section 4.10 Continued Assistance and Support.

(a) **Periodic Visits.** Dinner MyWay shall, at its sole expense, provide assistance and support to Franchisee in the development and operation of the Franchised Dinner MyWay Store by means of periodic visits by a field representative of Dinner MyWay. If requested by Franchisee, Dinner MyWay will furnish additional guidance and assistance to deal with Franchisee's unusual or unique operating problems at reasonable per diem fees, charges and out-of-pocket expenses established from time to time by Dinner MyWay.

(b) **Hotline.** Dinner MyWay shall, during its regular business hours, maintain a telephone "hotline" for informational assistance for Franchisee and/or maintain a web-based help desk whereby Franchisee can directly email questions or issues to Franchisor and Franchisor will return email inquiries within a reasonable period, not to exceed forty-eight (48) hours, unless events beyond Franchisor's control occur.

(c) **Advertising.** Dinner MyWay shall generally promote the Franchised Dinner MyWay Store through advertising and public relations campaigns using National Advertising Contributions paid by Franchisee to Dinner MyWay. Dinner MyWay shall provide direction regarding the proper usage of the Proprietary Marks. Dinner MyWay shall also provide Franchisee the promotional methods and materials Dinner MyWay may develop from time to time. Franchisee grants to Dinner MyWay a non-transferable, non-exclusive, royalty-free license to use Franchisee's tradename, trademarks or other proprietary marks now owned or hereafter adopted, acquired or developed by Franchisee for Dinner MyWay to generally promote the Franchised Dinner MyWay Store or the Dinner MyWay System through advertising and public relation campaigns.

(d) **Website Representation.** So long as Dinner MyWay maintains a website for marketing and sales purposes (which shall be in the sole and absolute discretion of Dinner MyWay), Dinner MyWay shall list the Franchised Dinner MyWay Store on its corporate website at url www.DinnerMyWay.com (the "**Dinner MyWay Website**") and post certain other

information provided by Franchisee subject to Dinner MyWay's approval in Dinner MyWay's sole discretion. The Dinner MyWay Website shall have a feature that allows customers to schedule sessions with the Franchised Dinner MyWay Store online. Dinner MyWay shall have sole discretion over the design, layout, and content of the Dinner MyWay Website. Dinner MyWay shall not be liable to Franchisee for any default or delay in the performance of its obligations under this Section 4.10(d) if caused, directly or indirectly, by a power outage, systems failure, or by any other cause not within the reasonable control of Dinner MyWay or which by the exercise of reasonable diligence Dinner MyWay is unable to prevent. Franchisee is prohibited from operating its own website in connection with marketing or promoting its Franchised Dinner MyWay Store, any other Dinner MyWay franchise, the System, or the Proprietary Marks. Dinner MyWay shall be the only authorized operator of a website devoted to Dinner MyWay and the System, and which uses in any way the Proprietary Marks.

(e) Additional Training. Dinner MyWay, from time to time, may provide refresher training programs or seminars, or advanced management training, at such locations as may be designated by Dinner MyWay, which may be required for the Manager or Franchisee's other employees, at the option of Dinner MyWay. Such mandatory training shall not be required more often than twice each year. Franchisee shall not be required to pay training fees for any mandatory training; however, Franchisee shall be solely responsible for all costs and expenses associated with attending such mandatory training, including, but not limited to, all travel, meals and lodging costs, and compensation of, Franchisee's attendees.

Section 4.11 Right to Delegate Duties. Franchisee acknowledges Dinner MyWay's right to delegate any or all of the aforementioned duties or any other duties of Dinner MyWay hereunder to a designee. Franchisee shall be required to discharge its duties in all respects with such designee to the extent requested by Dinner MyWay, from time to time, in the same manner with which Franchisee is otherwise required to do so with Dinner MyWay.

ARTICLE 5

GENERAL DUTIES OF FRANCHISEE

Franchisee understands and acknowledges that every detail of the operation of the Franchised Dinner MyWay Store is important to Franchisee, Dinner MyWay and the other Dinner MyWay franchisees in order to develop and maintain high and uniform operating standards, increase the demand for the products sold and services rendered by Dinner MyWay franchisees, and to protect and enhance Dinner MyWay's Proprietary Marks, reputation and goodwill. Nothing contained in this Agreement shall be construed to limit or restrict Franchisee's right to set its own prices or to limit or restrict the persons to whom Franchisee may sell, provided that all such sales occur at the Franchised Dinner MyWay Store or pursuant to a delivery from the Franchised Dinner MyWay Store.

Section 5.1 Construction Plans and Permits.

(a) Engagement of Architect or Engineer. Franchisee shall employ an architect or engineer reasonably approved by Dinner MyWay to prepare a site plan and plans and specifications adapting Dinner MyWay's standard plans and specifications to Franchisee's

approved location and to local and state laws, regulations and ordinances, and lease requirements and restrictions. Such plans shall include interior and exterior design of the building, layout, floor plan, and parking facilities and shall include specifications for color, décor, equipment and machines related to the System. Any material modifications to the standard plans and specifications must be approved by Dinner MyWay, which approval shall not be unreasonably withheld or delayed. The modified plans and approvals, once approved by Dinner MyWay, shall not thereafter be materially changed or modified without the further prior written consent of Dinner MyWay.

(b) Signage. Franchisee shall only use that signage at the Franchised Dinner MyWay Store that complies with the drawings and specifications provided by Dinner MyWay. If such signage cannot be used because of local ordinances or applicable building codes, then Franchisee must submit to Dinner MyWay detailed drawings and specifications of the proposed signage to be used, in sufficient detail acceptable to Dinner MyWay, which signage can only be used upon receiving the prior written approval of Dinner MyWay. Franchisee agrees that, other than the Proprietary Marks, no other name, symbol or identifying marks shall be used in conjunction with the approved signage; provided, however, that a trademark of an approved vendor may be displayed with Dinner MyWay's prior written approval. Franchisee shall obtain Dinner MyWay's prior written consent as to the manner of the use of the trademarks of approved vendors and the configuration of the signage in each instance.

(c) Permits. Franchisee shall obtain all licenses, permits, and certifications as may be required for the lawful construction and operation of the Franchised Dinner MyWay Store, together with certifications from all governmental authorities having jurisdiction over the Franchised Dinner MyWay Store that all necessary permits have been obtained and that all requirements for construction and operation have been met, including, but not limited to, zoning, access, sign, fire, health, environmental and safety requirements.

Section 5.2 Construction and Opening Requirements.

(a) Commencement of Construction. Franchisee shall commence construction or build-out in accordance with the terms of Franchisee's lease for the location of the Franchised Dinner MyWay Store, but in no event later than six (6) months after the execution of this Agreement unless prevented from doing so due to permitting issues or site restrictions, or other circumstances beyond Franchisee's reasonable control.

(b) Completion of Construction and Opening. Unless prevented from doing so due to permitting issues or site restrictions, Franchisee shall complete construction or build out of the Franchised Dinner MyWay Store, including all exterior and interior carpentry, electrical, painting and finishing work and installation of all approved fixtures, equipment, and signs in accordance with the site layout and plans and specifications, at Franchisee's expense, in accordance with the terms of Franchisee's lease for the location of the Franchised Dinner MyWay Store, and the Franchised Dinner MyWay Store shall be open for business to the general public no event later than nine (9) months from the execution of this Agreement, exclusive of time lost by reason of strikes, lockouts, fire, other casualties, and acts of God. Dinner MyWay and its agents shall have the right to inspect the construction at all reasonable times.

(c) Certificate of Occupancy and Opening. Franchisee shall, within ten (10) days after completion of construction or build-out, apply for a “**Certificate of Occupancy**” for the Franchised Dinner MyWay Store from the applicable regulatory agency. After obtaining the Certificate of Occupancy, Franchisee shall obtain Dinner MyWay’s approval for opening and shall open the Franchised Dinner MyWay Store within twenty (20) days thereafter. Franchisee and Dinner MyWay agree that time is of the essence in the construction and opening of the Franchised Dinner MyWay Store.

Section 5.3 Licenses, Permits and Taxes. Franchisee shall: (Aa) secure and maintain in full force and effect in Franchisee’s name all required licenses, permits and certificates relating to the operation of the Franchised Dinner MyWay Store; (Bb) deliver copies of any and all of the foregoing to Dinner MyWay within five (5) days of request; (Cc) pay promptly all taxes and assessments when due; and (Dd) operate the Franchised Dinner MyWay Store in full compliance with all applicable laws, ordinances and regulations, including, but not limited to, laws relating to occupational hazards, health and workers’ compensation insurance, unemployment insurance, and withholding and payment of federal and state income taxes, social security taxes and sales taxes.

Section 5.4 Conditions Precedent to Opening. Franchisee agrees not to open the Franchised Dinner MyWay Store for business until: (Aa) all of Franchisee’s obligations pursuant to Sections 5.1 through 5.3 have been fulfilled; (Bb) training of Franchisee, its Manager(s), and other employees has been completed to Dinner MyWay’s reasonable satisfaction; (Cc) the Initial Franchise Fee, Opening Advertising Fee, and all other amounts due to Dinner MyWay and its affiliates under this Agreement have been paid; (Dd) Dinner MyWay has been furnished with certificates of insurance and copies of all insurance policies required by Section 10.2, or such other evidence of insurance coverage as Dinner MyWay reasonably requests; and (Ee) Dinner MyWay’s opening team is available to assist and be present at the opening of the Franchised Dinner MyWay Store.

Section 5.5 Use of the Location. Franchisee shall keep the Franchised Dinner MyWay Store open for business and in normal operation for such minimum hours and days as Dinner MyWay may from time to time prescribe in the Dinner MyWay Operating Manuals or otherwise in writing, except as may be limited by local law. Franchisee shall refrain from using or permitting the use of the site of the Franchised Dinner MyWay Store for any other purpose or activity other than the operation of the Franchised Dinner MyWay Store at any time without first obtaining the written consent of Dinner MyWay.

Section 5.6 Conditions and Appearance. Franchisee shall maintain the Franchised Dinner MyWay Store in an attractive, clean, and safe condition and as otherwise set forth in the Dinner MyWay Operating Manuals.

Section 5.7 Operational Requirements. Franchisee shall operate the Franchised Dinner MyWay Store in conformity with such uniform methods, standards and specifications as Dinner MyWay may from time to time prescribe, including, but not limited to, in the Dinner MyWay Operating Manuals, to ensure that the highest degree of quality and service is uniformly maintained. Franchisee agrees:

(a) Comply with Payment System. To comply with the Payment System established by Dinner MyWay, as may be amended from time to time;

(b) Comply with Dinner MyWay's Procedures and Systems. To comply with all of the procedures and systems instituted by Dinner MyWay both now and in the future, including, but not limited to, those relating to sales, operations, software and hardware requirements, terms and conditions of use of the Dinner MyWay Website, good business practices, advertising and other obligations and restrictions set forth in this Agreement and in the Dinner MyWay Operating Manuals, as may be amended from time to time;

(c) Maintain Sufficient Inventory. To maintain in sufficient supply (as Dinner MyWay may prescribe in the Dinner MyWay Operating Manuals or otherwise in writing), and use at all times, only such inventory, equipment, materials, advertising methods and formats, and supplies as conform with Dinner MyWay's standards and specifications, if any, therefor, at all times sufficient to meet the anticipated volume of business, and to refrain from deviating therefrom without Dinner MyWay's prior written consent;

(d) Offer all Services and Products. To sell or offer for sale all and only the services and products expressly approved for sale in the Dinner MyWay Operating Manuals or otherwise in writing by Dinner MyWay and to refrain from any deviation from Dinner MyWay's standards and specifications for providing or selling the same without Dinner MyWay's prior written consent;

(e) Discontinue Selling Disapproved Items. To discontinue selling and offering for sale any such items as Dinner MyWay may, in its absolute discretion, disapprove in writing at any time; and

(f) Purchase, Maintain and Replace Equipment. To purchase and install, at Franchisee's expense, all fixtures, furnishings, signs and equipment as Dinner MyWay may reasonably specify from time to time in the Dinner MyWay Operating Manuals or otherwise in writing. The equipment shall be maintained in a condition that meets operational standards specified in the Dinner MyWay Operating Manuals and, as equipment becomes obsolete, unsafe or inoperable, Franchisee will replace the equipment with the types and kinds of equipment as are then approved for use in the Franchised Dinner MyWay Store. If Dinner MyWay reasonably determines that additional or replacement equipment is needed because of a change in technology, customer concerns or because of health or safety considerations, Franchisee will, at its sole cost and expense, install the additional equipment or replacement equipment within the reasonable time specified by Dinner MyWay.

Section 5.8 Hiring, Training and Appearance of Employees. Franchisee shall maintain a competent, conscientious staff and employ such minimum number of employees as are necessary to meet the anticipated volume of business of the Franchised Dinner MyWay Store and take such steps as are reasonably necessary to ensure that its employees meet its employment criteria and keep a neat personal appearance and comply with such dress code as Dinner MyWay may prescribe. Franchisee acknowledges and agrees that Franchisee shall be solely responsible for all employment decisions and functions, including, but not limited to, those related to hiring, firing,

establishing wage and hour requirements, disciplining, supervising, and record keeping, and that Dinner MyWay shall not assume any liability or duties related thereto.

Section 5.9 Approved Specifications and Sources of Supply. Franchisee shall purchase or lease all products and services used in connection with the operation of the Franchised Dinner MyWay Store from manufacturers and suppliers who provide the types of services and quality of food products that satisfy the minimum requirements of Dinner MyWay as set forth in the Dinner MyWay Operating Manuals. For the convenience of Franchisee, Dinner MyWay shall provide a list of recommended suppliers and servicers, but Franchisee shall be under no obligation or requirement to order and obtain supplies and goods solely from those on the recommended list.

Section 5.10 Credit Cards and Other Methods of Payment. Franchisee shall, at all times, maintain credit card relationships with VISA®, Master Card®, American Express®, Discover® and such other credit and debit card issuers or sponsors, check verification services, financial center services, and electronic fund transfer systems as Dinner MyWay may designate from time to time in order that Franchisee may accept customers' credit and debit cards, checks, and other methods of payment.

Section 5.11 Management of the Franchised Dinner MyWay Store. At least one (1) full-time Manager must devote his or her best efforts to the management and operation of the Franchised Dinner MyWay Store. Franchisee acknowledges and agrees that the Franchised Dinner MyWay Store requires the day-to-day supervision of at least one (1) Manager at all times during which the Franchised Dinner MyWay Store is open for business. Such Manager is required to complete Basic Management Training in accordance with Section 4.5.

Section 5.12 Telephones and Answering Service. Franchisee shall at all times maintain continuously the number of operating telephone lines, fax lines and telephone numbers to be used exclusively by Franchisee for the operation of the Franchised Dinner MyWay Store prescribed from time to time by Dinner MyWay, with sufficient staff to handle telephone calls and telefaxes in an efficient and courteous manner at all times during business hours.

Section 5.13 Tax Payments; Contested Assessments. Franchisee shall promptly pay when due all taxes levied or assessed by any federal, state or local tax authority, including, but not limited to, unemployment taxes, withholding taxes, sales taxes, income taxes, tangible commercial personal property taxes, real estate taxes, intangible taxes and any and all other indebtedness incurred by Franchisee in the conduct of the Franchised Dinner MyWay Store.

Section 5.14 Customer Surveys. Upon the reasonable request of Dinner MyWay, Franchisee shall present to its customers such evaluation forms as are periodically prescribed by Dinner MyWay and shall participate and/or request its customers to participate in any marketing surveys performed by or on behalf of Dinner MyWay.

Section 5.15 Inspections.

(a) **Dinner MyWay may Conduct Inspections.** Upon reasonable notice from Dinner MyWay, Franchisee shall permit Dinner MyWay, and/or its designees, to enter the Franchised Dinner MyWay Store or the office of Franchisee at times during normal business hours for

purposes of conducting inspections which shall include, but not be limited to, evaluations regarding the general maintenance, repair, and cleanliness of the Franchised Dinner MyWay Store and the conformity of the operations to Dinner MyWay's standards as set forth in the Dinner MyWay Operating Manuals. Franchisee shall cooperate fully with Dinner MyWay and/or its designees in such inspections by rendering such assistance as Dinner MyWay's designees may reasonably request and by permitting Dinner MyWay's designees, at their option, to observe the manner in which Franchisee is selling its products and rendering its services, to monitor sales volume, to confer with Franchisee's employees and customers and to remove samples of any products, supplies and materials, in amounts reasonably necessary to return to the office of Dinner MyWay for inspection and record-keeping, at Dinner MyWay's expense. The inspections may be conducted without prior notice at any time when Franchisee or one of its employees is at the Franchised Dinner MyWay Store. All such inspections shall be conducted so as not to unduly disrupt Franchisee's business.

(b) Franchisee shall Correct Deficiencies. Upon notice from Dinner MyWay, and without limiting Dinner MyWay's other rights under this Agreement, Franchisee agrees to take such steps as may be necessary to correct immediately any deficiencies detected during such inspections, including, without limitation, immediately desisting from the further use of any equipment, advertising, materials, products, supplies or other items that do not conform to Dinner MyWay's then current requirements. In the event Franchisee fails or refuses to correct such deficiencies, Dinner MyWay shall have the right, without any claim to the contrary by Franchisee, to enter the Franchised Dinner MyWay Store or the office of Franchisee without being guilty of trespass or any other tort, for the purposes of making or causing to be made such corrections as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

Section 5.16 Franchisee's Performance Standards. Franchisee acknowledges and agrees that the granting of Franchisee's rights under this Agreement are expressly conditioned upon Franchisee's successful penetration of the market in which the Franchised Dinner MyWay Store is located. Franchisee agrees to promote actively and aggressively the products and services of the Franchised Dinner MyWay Store.

Section 5.17 Agreement With Landlord. Franchisee shall be required to obtain an agreement with Franchisee's landlord, in a form acceptable to Dinner MyWay, whereby the landlord agrees, among other things, to mail to Dinner MyWay copies of all written notices, including but not limited to, all notices of default sent to Franchisee by Franchisee's landlord to Dinner MyWay, and agrees to allow Dinner MyWay the opportunity to cure such defaults and take occupancy of the Franchised Dinner MyWay Store.

Section 5.18 Renovation and Upgrading. Recognizing the value of uniform national standards to Franchisee, Dinner MyWay and the System, Franchisee shall, at its sole cost and expense, from time to time, abide by any reasonable requirement of Dinner MyWay with regard to the remodeling and upgrading of the Franchised Dinner MyWay Store to comply with standards then applicable to new franchises and company-owned Dinner MyWay stores, provided, however, that such requirements shall not impose an undue economic burden on Franchisee. If any changes in or additions of equipment or changes in or additions to the Franchised Dinner MyWay Store are required by Dinner MyWay in connection with upgrading or remodeling, Franchisee will bear the

entire cost of such upgrading or remodeling. **FRANCHISEE ACKNOWLEDGES THAT POSSIBLE ADDITIONAL INVESTMENT MAY BE CALLED FOR PURSUANT TO THIS SECTION.**

ARTICLE 6

PROPRIETARY MARKS

Section 6.1 Limited License for the Proprietary Marks. Dinner MyWay grants to Franchisee, subject to the terms and conditions of this Agreement, a non-transferable, non-exclusive license, without a right to sublicense or assign, to use the Proprietary Marks now owned or which by license Dinner MyWay has the right to use, or hereafter are adopted, acquired or developed by Dinner MyWay, in the operation of the Franchised Dinner MyWay Store. Nothing in this Agreement shall be construed as authorizing or permitting their use at or from any other location or for any other purpose.

Section 6.2 Restrictions on Franchisee's Use of the Proprietary Marks. With respect to Franchisee's use of the Proprietary Marks pursuant to this Agreement, Franchisee agrees that:

(a) Use in Accordance with all Restrictions. Franchisee shall use only the Proprietary Marks as designated, from time to time, by Dinner MyWay, only in the manner required or authorized and permitted by Dinner MyWay and only in connection with the operation of the Franchised Dinner MyWay Store;

(b) Not Use Any Other Marks. Franchisee shall use the Proprietary Marks as the sole tradename and service mark identifications for the Franchised Dinner MyWay Store, provided that Franchisee shall identify itself as an independent licensee of the Proprietary Marks, in the manner prescribed by Dinner MyWay;

(c) Only Display as Designated by Dinner MyWay. Franchisee agrees to display prominently the Proprietary Marks on and/or in connection with all materials designated and authorized by Dinner MyWay and in the manner prescribed by Dinner MyWay; and

(d) Signage Requirements. Subject to Section 5.1(b), Franchisee shall maintain a suitable sign or graphics package at, or near, the front of the Franchised Dinner MyWay Store on any pylon sign, building directory or other area identifying the Franchised Dinner MyWay Store only as "Dinner MyWay." Such signage shall conform in all respect to Dinner MyWay's requirements, except to the extent prohibited by local laws and regulations.

Section 6.3 Franchisee's Lack of Ownership. Franchisee expressly acknowledges Dinner MyWay's ownership or license rights in and to the Proprietary Marks. Franchisee agrees not to represent in any manner that Franchisee has any ownership in the Proprietary Marks, except as granted herein. Franchisee further agrees that its use of the Proprietary Marks shall not create in its favor any right, title or interest in or to the Proprietary Marks except as the right to use same is expressly set forth in this Agreement.

Section 6.4 Infringement by Franchisee. Franchisee acknowledges that the use of the Proprietary Marks outside the scope of this Agreement, without Dinner MyWay's prior written

consent, is an infringement of Dinner MyWay's rights in and to the Proprietary Marks, and expressly covenants that during the Term, and after the expiration or termination of the Term, Franchisee shall not, directly or indirectly, commit an act of infringement or contest or aid in contesting the validity or right of Dinner MyWay to the Proprietary Marks, or take any other action in derogation of Dinner MyWay's rights in and to the Proprietary Marks.

Section 6.5 Indemnification of Franchisee. Dinner MyWay agrees to indemnify Franchisee against and to reimburse Franchisee for all damages for which it is held liable finally (by nonappealable judgment) in any proceeding arising solely out of Franchisee's proper use of any of the Proprietary Marks, and for all costs reasonably incurred by Franchisee in the defense of any such claim brought against it or in any such proceeding in which it is named as a party; provided that Franchisee: (A~~a~~) has timely notified Dinner MyWay of such claim or proceeding in accordance with Section 6.6(a); (B~~b~~) has otherwise complied with this Agreement; and (C~~c~~) allows Dinner MyWay sole control of the defense and settlement of the action in accordance with Section 6.6(b). Dinner MyWay shall not be liable for any consequential or incidental damages, even if it has been advised or knows of the likelihood thereof.

Section 6.6 Claims Against the Proprietary Marks.

(a) **Trademark Infringement.** In the event of any possible claim of infringement, actual claim of infringement, illegal use by others, unfair competition, any challenge to Franchisee's right to use any of the Proprietary Marks, or in the event Franchisee becomes aware of any use of or claims to any mark, name, logo or any other commercial symbol identical to or confusingly similar to any of the Proprietary Marks, Franchisee shall promptly notify Dinner MyWay in writing of such an event no more than five (5) days after Franchisee's discovery of such an event. Franchisee acknowledges that Dinner MyWay shall have the right to determine whether action will be taken on account of any possible infringement or illegal use. Dinner MyWay shall have the right to commence or prosecute such action in Dinner MyWay's own name and may join Franchisee as a party to the action if Dinner MyWay determines it to be reasonably necessary for the continued protection and quality control of the Proprietary Marks. Dinner MyWay shall bear the reasonable cost of any such action, including attorneys' fees. Franchisee will not institute any action on account of any possible infringement or illegal use without first obtaining Dinner MyWay's prior written consent.

(b) **Dinner MyWay Controls Action.** Dinner MyWay shall have sole discretion to take such action as it deems appropriate and the right to control exclusively any litigation or U.S. Patent and Trademark Office or other proceeding arising out of any such infringement, challenge, or claim or otherwise relating to any of the Proprietary Marks. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts and things as may, in the opinion of Dinner MyWay's counsel, be necessary or advisable to protect and maintain the interests of Dinner MyWay in any litigation or U.S. Patent and Trademark Office or other proceeding, or to otherwise protect and maintain the interests of Dinner MyWay in the Proprietary Marks.

Section 6.7 Franchisee's Use Non-Exclusive. The right and license to use the Proprietary Marks granted under this Agreement to Franchisee is non-exclusive, and Dinner MyWay thus may (A~~a~~) itself use the Proprietary Marks in company-owned Dinner MyWay stores, and grant

licenses and franchises to others to use the Proprietary Marks; (~~Bb~~) establish, develop, and license or franchise other systems, different from the System licensed pursuant to this Agreement, without offering or providing Franchisee any rights in, to, or under such other system; (~~Cc~~) sell such products and services authorized for the Franchised Dinner MyWay Store under a name or names dissimilar to the Proprietary Marks, without offering or providing Franchisee any rights in, to, or under such other arrangements or agreements; and (~~Dd~~) modify or change, in whole or in part, any aspect of the Proprietary Marks.

Section 6.8 Goodwill Solely Belongs to Dinner MyWay. Franchisee agrees that all goodwill associated with the Franchised Dinner MyWay Store and identified by the Proprietary Marks shall inure directly and exclusively to the benefit of Dinner MyWay and is the sole and exclusive property of Dinner MyWay. Franchisee will derive no benefit from such goodwill except through profit received from the operation or possible permitted sale of the Franchised Dinner MyWay Store during the Term.

Section 6.9 Modification of the Proprietary Marks. If it becomes advisable at any time in Dinner MyWay's sole discretion to modify or discontinue use of the Proprietary Marks, and/or to use one or more additional or substitute trade or service marks, Franchisee at its sole expense, shall adopt, use and display only such Proprietary Marks as are then approved by Dinner MyWay and shall promptly discontinue use and display of the outmoded or superseded marks.

ARTICLE 7

DINNER MYWAY OPERATING MANUALS AND OTHER CONFIDENTIAL INFORMATION

Section 7.1 Confidentiality of Manuals.

(a) **Treat Confidential.** Franchisee shall at all times treat the Dinner MyWay Operating Manuals and any other trade secrets and confidential, proprietary information concerning various aspects of the System and related confidential information under or in connection with this Agreement as confidential, and shall use its best efforts to maintain such information as confidential. The Dinner MyWay Operating Manuals shall, at all times, be kept in a locked, secured area within the Franchised Dinner MyWay Store. Franchisee shall strictly limit access to the Dinner MyWay Operating Manuals to the Manager(s). Employees of Franchisee shall have access to the Dinner MyWay Operating Manuals to the extent reasonably necessary to perform their duties as employees. Franchisee's employees shall be advised that they are subject to the same confidentiality requirements as set forth herein. Franchisee acknowledges that it shall be responsible for the acts and conduct of its employees and restrict access to confidential information to those employees who have a "need to know" in order to perform their jobs. Franchisee shall not at any time, without Dinner MyWay's prior written consent, copy, record or otherwise reproduce any of the Dinner MyWay Operating Manuals, in whole or in part, nor otherwise make the same available to any unauthorized person except as may be required by law, regulation or court order. Any duplication, disclosure, or dissemination of the Dinner MyWay Operating Manuals, or any portion thereof, in any way shall constitute a material breach of this Agreement and may subject Franchisee, in Dinner MyWay's sole and absolute discretion, to liquidated damages in an amount not to exceed five percent (5%) of

Franchisee's gross sales for the twelve month period, or such shorter period if such conduct occurred less than twelve months preceding such unauthorized duplication, release or use of the Dinner MyWay Operating Manuals. Franchisee shall report the theft, loss or destruction of the Dinner MyWay Operating Manuals, or any portion thereof, immediately to Dinner MyWay.

(b) Nondisclosure and Non-Competition Agreement. All current and future principals, Manager(s), employees and agents of Franchisee involved in any manner with the Franchised Dinner MyWay Store and having access to the Dinner MyWay Operating Manuals, shall be required to sign, prior to Basic Management Training or upon employment, a Nondisclosure and Non-Competition Agreement, in the form attached hereto as Exhibit C.

Section 7.2 Manuals are Sole Property of Dinner MyWay. The Dinner MyWay Operating Manuals and other confidential information developed for or approved for use in the operation of the Franchised Dinner MyWay Store shall at all times be deemed and remain the sole property of Dinner MyWay. Franchisee shall acquire no right, title or interest thereto under this Agreement except to possess and use such Dinner MyWay Operating Manuals or other confidential information during the Term of, and subject to the restrictions contained in, this Agreement. Franchisee shall return the Dinner MyWay Operating Manuals to Dinner MyWay upon the expiration, termination or assignment of this Agreement.

Section 7.3 Periodic Revisions of Manuals. Dinner MyWay may (but shall not be obligated to), from time to time, revise and change the contents of the Dinner MyWay Operating Manuals and Franchisee expressly agrees to comply with each new or changed provision. Revisions to the Dinner MyWay Operating Manuals shall be based on what Dinner MyWay, in its sole and absolute discretion, deems is in the best interests of Dinner MyWay, its franchisees and company-owned Dinner MyWay stores, including, but not limited to, to promote quality, enhance goodwill, increase efficiency, decrease administrative burdens, or improve the profitability of Dinner MyWay or its franchisees. Such revisions will be imposed uniformly upon all franchised Dinner MyWay stores and company-owned Dinner MyWay stores to the extent feasible. FRANCHISEE AGREES THAT SUCH REVISIONS MAY BE MATERIAL IN THAT THEY MAY HAVE AN EFFECT ON THE OPERATION OF FRANCHISEE'S BUSINESS.

ARTICLE 8

ADVERTISING

Recognizing the value of advertising, and the importance of the standardization of advertising programs to the furtherance of the goodwill and public image of Dinner MyWay, the parties agree as follows:

Section 8.1 Local Advertising by Franchisee. Franchisee shall submit to Dinner MyWay for Dinner MyWay's approval, all designs, signs, promotional materials and advertising including the form, color, number, location and size, which bear any of the Proprietary Marks, unless it has been approved on a prior occasion or it consists solely of materials provided by Dinner MyWay. Notwithstanding Dinner MyWay's approval, Franchisee shall be solely responsible for complying with all federal, state and local laws and regulations relating to such advertising.

Dinner MyWay may require Franchisee to withdraw and/or discontinue the use of any promotional materials or advertising, and Franchisee shall be bound by such requirement, if in the judgment of Dinner MyWay such materials or advertising may injure or be harmful to Dinner MyWay, notwithstanding any prior approval.

Section 8.2 Opening Advertising Program. Dinner MyWay will implement an opening advertising and promotional program for the Franchised Dinner MyWay Store during the first sixty (60) days after the Opening Date of the Franchised Dinner MyWay Store ("**Opening Period**") using the Opening Advertising Fee which will include Dinner MyWay's standard opening activities and supply package, print and media advertising, promotional items, publicity, and advice and guidance with regard to staffing, decoration, and operation of the Franchised Dinner MyWay Store during the Opening Period.

Section 8.3 Dinner MyWay Marketing Fund/ Cooperative Advertising.

(a) Use of Advertising Funds. Franchisee agrees that the National Advertising Contributions will be deposited into a fund, maintained and operated by Dinner MyWay, used to meet the costs of maintaining, administrating, directing, and conducting advertising and promotional activities on a regional or national scale, including, but not limited to, the cost of television, radio, magazine and newspaper advertising campaigns, test marketing, marketing surveys, and public relations activities, employing a director and agencies to assist therein, providing marketing and other materials to Dinner MyWay's franchisees, defraying such reasonable salaries, administrative costs and overhead as Dinner MyWay may incur in connection with such activities, and other purposes deemed beneficial to Dinner MyWay's franchisees by Dinner MyWay (the "**Dinner MyWay Marketing Fund**"). The Dinner MyWay Marketing Fund shall not be used solely for the purpose of selling additional Dinner MyWay franchises.

(b) Dinner MyWay Oversees Expenditures of Advertising Funds. All expenditures from the Dinner MyWay Marketing Fund shall be made at the sole discretion of Dinner MyWay. Dinner MyWay may spend in any calendar year an amount greater or less than the aggregate National Advertising Contributions to the Dinner MyWay Marketing Fund in that year and the Dinner MyWay Marketing Fund may borrow from Dinner MyWay or other lenders to cover deficits of the Dinner MyWay Marketing Fund or cause the Dinner MyWay Marketing Fund to invest any surplus for future use by the Dinner MyWay Marketing Fund. Franchisee agrees and acknowledges that the National Advertising Contributions are intended to maximize general public recognition and acceptance of the Proprietary Marks for the benefit of Dinner MyWay's franchisees as a whole, and that Dinner MyWay undertakes no obligation, in administering the National Advertising Contributions, to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution, or to insure that any particular franchisee benefits directly or pro rata from advertising or promotion conducted in connection with the National Advertising Contributions.

(c) Collection of Supplier and Distributor Credits. Franchisee authorizes Dinner MyWay to collect for remission to the Dinner MyWay Marketing Fund any advertising monies or

credits due from any distributor or other supplier to Franchisee or other rebates from distributors and other suppliers based upon purchases by Franchisee.

(d) Use of Interest. All interest earned on monies contributed to the Dinner MyWay Marketing Fund will be used to pay advertising costs before other assets of the Dinner MyWay Marketing Fund are expended.

(e) Cooperative Advertising. From time to time, Franchisor may designate local or regional advertising coverage areas to develop cooperative local or regional advertising and promotional programs. Franchisee must participate in and contribute its share to the cooperative advertising and promotional programs in your Advertising Coverage Area (as defined below) in addition to contributions and expenditures required under this Agreement. “**Advertising Coverage Area**” means the area covered by a particular advertising medium (television, radio or other medium) as recognized in the industry. At the time a cooperative local or regional advertising or promotional program is developed, Franchisor will provide Franchisee with a list of the areas covered under that local or regional cooperative. Upon demand, Franchisee will contribute a set amount to the local advertising cooperative in which a Franchisee belongs. By signing this Agreement, Franchisee consents to membership in the local or regional cooperative advertising programs and agrees to be governed by the bylaws created by the local or regional cooperative advertising programs. Pursuant to the bylaws, the cooperatives will establish to whom and when to make contribution payments.

Section 8.4 Content and Concepts. With respect to any and all fees collected by Dinner MyWay for promotion and advertising, Dinner MyWay shall administer and develop promotional programs and material for use by Dinner MyWay’s franchisees and the company-owned Dinner MyWay stores retaining sole and absolute subjective discretion exercised in good faith over the concepts and materials, including the cost thereof, form of media, content, format, production, timing (including regional or local concentrations and seasonal exposure), location and all other matters relating to such advertising, public relations, marketing, market research and promotional campaigns.

Section 8.5 Operating Statement. A review of the operations of the Dinner MyWay Marketing Fund as shown on the books of Dinner MyWay shall be prepared annually by an independent certified public accountant selected by Dinner MyWay, at the expense of the Dinner MyWay Marketing Fund, and shall be made available to Franchisee. Except as expressly provided in this Article 8, Dinner MyWay assumes no direct or indirect liability or obligations to Franchisee with respect to the maintenance, direction or administration of the Dinner MyWay Marketing Fund.

Section 8.6 Termination and Restriction on Expenditures. Although the National Advertising Contributions may be held by Dinner MyWay for perpetual duration, Dinner MyWay maintains the right to terminate the collection and disbursement of any or all of the National Advertising Contributions and the Dinner MyWay Marketing Fund. In the event of any termination, Dinner MyWay’s licensees, Dinner MyWay’s franchisees and company-owned Dinner MyWay stores who have previously made National Advertising Contributions to the Dinner MyWay Marketing Fund shall be entitled to a return of the National Advertising

Contributions then held by Dinner MyWay, in any manner Dinner MyWay deems appropriate, in its sole reasonable discretion, on a pro-rata basis.

ARTICLE 9

ACCOUNTING AND RECORDS

Section 9.1 Use of Books and Records by Dinner MyWay. Franchisee shall establish and maintain, at its own expense during the Term, a bookkeeping, accounting and record keeping system in accordance with generally accepted accounting principles, consistently applied, and preserved for at least three (3) years after the fiscal year to which they relate or longer if required by law. Such system will be kept solely for the Franchised Dinner MyWay Store, and be segregated from all other information not concerning the Franchised Dinner MyWay Store such as from other businesses, if any, of Franchisee. Such books, records and accounts shall be kept in accordance with federal and state tax requirements and in the form and manner prescribed by Dinner MyWay from time to time in the Dinner MyWay Operating Manuals or otherwise in writing. Dinner MyWay may use the information contained in Franchisee's books, records and accounts for any purpose Dinner MyWay deems appropriate, including, but not limited to, disseminating such information to Dinner MyWay's creditors and potential franchisees; provided, no social security number, birthdate or home address shall be disclosed without Franchisee's prior written consent, unless required or permitted by law.

Section 9.2 Quarterly Reports. Franchisee shall permit Dinner MyWay to automatically gather from Franchisee's point of sale computer system or submit quarterly, by the fifteenth (15th) of each January, April, July and November of the Term, in the form and manner prescribed by Dinner MyWay, a quarterly profit and loss statement, for the immediately previous consecutive three (3) calendar month period, which may be unaudited, for the Franchised Dinner MyWay Store.

Section 9.3 Annual Report. Franchisee shall permit Dinner MyWay to automatically gather from Franchisee's point of sale computer system or submit, within ninety (90) days of end of the fiscal year of Franchisee, an annual balance sheet, income statement, and funds flow statement for Franchisee. Each annual statement shall be accompanied by a copy of Franchisee's tax returns for such fiscal year, and shall be signed by Franchisee or by Franchisee's treasurer or chief financial officer attesting that the financial statements are true and correct and fairly present the financial position of Franchisee as at and for the times indicated.

Section 9.4 Additional Reports. Franchisee shall also submit to Dinner MyWay, for review and audit, such other forms, and other periodic reports, information and data as Dinner MyWay may reasonably designate, in the form and manner, and at the times reasonably required by Dinner MyWay, from time to time in the Dinner MyWay Operating Manuals or otherwise in writing.

Section 9.5 Review and Audit by Dinner MyWay.

(a) **Review and Audit.** Dinner MyWay and its representatives shall have the right, at all reasonable times, to examine and copy, at Dinner MyWay's expense, the books, records,

accounts and tax returns and all cash control devices and systems of Franchisee and of any corporation or other business association having any ownership interest in the Franchised Dinner MyWay Store. The Franchisee shall fully cooperate with Dinner MyWay and its representatives or agents in conducting such examinations or audits and, upon request from Dinner MyWay, Franchisee shall submit a written response to any issues raised in connection with said examinations or audits. Dinner MyWay shall have the right, at any time, to have an independent audit made of the books and records of Franchisee.

(b) Payment for Review and Audit. If an inspection should reveal that any financial information reported to Dinner MyWay (such as Gross Revenues, or payments owed to Dinner MyWay) has been misrepresented in any report to Dinner MyWay, then, to the extent any amounts owed to Dinner MyWay were understated, Franchisee shall immediately pay to Dinner MyWay, upon demand, the amount understated in addition to interest at the maximum rate permitted by law commencing from the time the required payment was due. If any inspection discloses a misrepresentation of any reported amount of any type, in any report, of two percent (2%) or more of Gross Revenues or amount owed to Dinner MyWay for the period of such report, Franchisee shall, in addition to paying any additional fees and applicable late payments, reimburse Dinner MyWay for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wages for personnel of Dinner MyWay and reasonable accountant and attorneys' fees). If the audit discloses an overpayment of the Royalty Fee and/or National Advertising Contributions, Dinner MyWay will promptly pay to Franchisee the amount of such overpayment or offset such overpayment against any amounts owed to Dinner MyWay, without interest. The foregoing remedies shall be in addition to any other remedies which Dinner MyWay may have hereunder or under applicable law.

ARTICLE 10

INSURANCE

Section 10.1 General Requirements. Franchisee shall procure no later than fifteen (15) days prior to commencing construction or build-out of the Franchised Dinner MyWay Store or the Opening Date (whichever event occurs first), and maintain in full force and effect during the Term, at Franchisee's expense, an insurance policy or policies protecting Franchisee and naming Dinner MyWay as an additional named insured or loss payee, as the case may be. Such insurance shall protect Franchisee and Dinner MyWay against any loss, liability, personal injury, death, property damage or expense whatsoever from fire, lightning, theft, vandalism, malicious mischief and the perils included in the extended coverage endorsement, arising or occurring upon or in connection with the Franchised Dinner MyWay Store. Franchisee shall also obtain and maintain such other insurance applicable to such other special risks, if any, as Dinner MyWay may reasonably require for its own and Franchisee's protection, as well as any insurance coverage required by Franchisee's landlord or lender.

Section 10.2 Types and Amounts of Coverage. Without limiting Section 10.1, all insurance policies provided by Franchisee shall be written by an insurance company reasonably satisfactory to Dinner MyWay with a Best rating of "A" or better, and shall include, without limitation, at a minimum, the following:

(a) General Liability. Commercial general liability insurance, completed operations and independent contractors coverage and comprehensive automobile liability coverage for both owned and non-owned vehicles in an amount not less than \$1,000,000/\$2,000,000 per person/per occurrence for bodily injury and property damage combined, and naming Dinner MyWay as an additional named insured in each such policy or policies;

(b) Workers' Compensation and Disability. Workers' compensation, employer's liability insurance, disability insurance, and other insurance required by statute or rule of the state in which the franchise is located and operated;

(c) Fire, Vandalism and Extended Coverage. Fire, vandalism and extended coverage insurance with primary and excess limits of not less than the full replacement value of the Franchised Dinner MyWay Store and its furniture, fixtures, equipment, machinery and inventory, naming Dinner MyWay as loss payee;

(d) Advertising Liability. Advertising liability insurance in the minimum amount of \$1,000,000.00;

(e) Products Liability. Products liability Insurance in the amount of \$1,000,000.00 each claim and \$3,000,000.00 in the aggregate; and

(f) Additional Insurance. Such other insurance, and in such amounts, as reasonably may be required by Dinner MyWay for its own and Franchisee's protection.

Dinner MyWay may periodically increase the amounts of coverage required under such insurance policies and require different or additional kinds of insurance at any time, including excess liability insurance, to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards, or other relevant changes in circumstances, provided such changes are effectuated generally for each Dinner MyWay franchisee and any company-owned Dinner MyWay stores.

Section 10.3 Evidence of Insurance. Certificates of insurance issued by insurance companies approved by Dinner MyWay showing compliance with the requirements of Section 10 shall be furnished by Franchisee to Dinner MyWay upon their receipt by Franchisee. The certificates of insurance shall include a statement by the insurer that the policy or policies will not be canceled, subject to nonrenewal or materially altered without at least thirty (30) days' prior written notice to Dinner MyWay. Copies of all insurance policies shall be submitted promptly to Dinner MyWay together with proof of payment. Franchisee shall send to Dinner MyWay current certificates of insurance and copies of all insurance policies on an annual basis.

Section 10.4 Dinner MyWay's Right to Participate in Claims Procedures. Dinner MyWay, or its insurer, shall have the right to participate in discussions with Franchisee's insurance company or any claimant (in conjunction with Franchisee's insurance company) regarding any claim which Dinner MyWay determines may have an adverse effect on Dinner MyWay, and Franchisee agrees to adopt Dinner MyWay's reasonable recommendations to Franchisee's insurance carrier regarding the settlement of any such claims.

Section 10.5 Franchisee's Failure to Maintain Insurance. Should Franchisee, for any reason, fail to procure or maintain the insurance required by this Agreement, as revised, from time to time, by Dinner MyWay, Dinner MyWay shall have the right and authority (without, however, any obligation) to immediately procure such insurance and to charge the cost of such insurance to Franchisee, plus interest at the maximum rate permitted by law, which charges, together with a reasonable fee for Dinner MyWay's expenses in so acting, shall be payable by Franchisee immediately upon demand from Dinner MyWay.

ARTICLE 11

TRANSFER OF INTEREST

Section 11.1 Transfer by Dinner MyWay. Dinner MyWay shall have the absolute right to assign or delegate all or any part of its rights or obligations pursuant to this Agreement to any person without the consent of Franchisee. Upon the assignment by Dinner MyWay of its rights and obligations under this Agreement and delivery of written notice to Franchisee of such assignment, including the written assumption by the assignee, Dinner MyWay shall thereby be released from all liabilities under this Agreement to Franchisee, except for known breaches of this Agreement prior to such assignment and except for any liabilities from which Dinner MyWay may not be released under any applicable state or federal laws.

Section 11.2 Transfer by Franchisee. Franchisee understands and agrees that the rights and duties set forth in this Agreement are personal to Franchisee, and that Dinner MyWay has granted this franchise in reliance on Franchisee's business skill, attitude, aptitude and financial capacity. Therefore, Franchisee shall not, without Dinner MyWay's prior written consent, by operation of law or otherwise, sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber (collectively, for purposes of this Article, "**Transfer**") any interest in nor offer, permit or suffer the transfer of (Aa) any interest in this Agreement, (Bb) any interest in the Franchised Dinner MyWay Store or its assets (outside the ordinary course of business), or (Cc) any interest in Franchisee. Any purported Transfer under (Aa), (Bb), or (Cc) above not having the prior written consent of Dinner MyWay shall be null and void and shall constitute a default by Franchisee providing good cause for immediate termination of this Agreement without prior notice or opportunity to cure the default.

Section 11.3 Conditions to Franchisee's Assignment. Dinner MyWay may condition its approval of any proposed transfer or sale of the Franchised Dinner MyWay Store or its assets, or of Franchisee's interest in this Agreement, or of any interest in Franchisee upon satisfaction of the following requirements:

(a) **Dinner MyWay Does Not Exercise Right of First Refusal.** Dinner MyWay does not exercise its right of first refusal pursuant to Section 11.7;

(b) **Franchisee's Accrued Monetary and other Obligations Satisfied.** All of Franchisee's accrued monetary and other obligations to Dinner MyWay shall have been satisfied. Dinner MyWay may conduct an investigation and audit pursuant to Section 9.5 to determine the extent of accrued obligations;

(c) Execution of General Release. Franchisee shall have executed a general release, in a form satisfactory to Dinner MyWay, of any and all claims against Dinner MyWay, its affiliates, and their respective officers, directors, shareholders, representatives, agents and employees, in their corporate and individual capacities, except for known liabilities incurred by Dinner MyWay to Franchisee, and except for liabilities from which Dinner MyWay may not be released under any applicable state or federal laws;

(d) All Defaults Cured. All existing defaults and breaches under this Agreement shall have been cured within the period permitted for cure;

(e) Transferee Meets Dinner MyWay's Current Criteria. The transferee shall have (i) met Dinner MyWay's then-current criteria, if any, applicable for new franchisees, (ii) demonstrated to Dinner MyWay's satisfaction that the transferee meets Dinner MyWay's educational, managerial and business standards, possesses a good moral character, business reputation and credit rating; and has the aptitude and ability to operate and to own or control the Franchised Dinner MyWay Store (as may be evidenced by prior related business experience or otherwise), (iii) successfully completed to the satisfaction of Dinner MyWay the then-current Basic Management Training, and (iv) executed in the case of a Transfer of any interest in Franchisee, the Guaranty Agreement required under Section 3.6 herein above;

(f) Transferee Completes Application Procedure. The transferee franchisee shall satisfactorily complete the application procedure for new franchisees;

(g) Renovation of Franchised Dinner MyWay Store. The transferee shall renovate, at its sole expense, the Franchised Dinner MyWay Store to conform to the operating and/or design concepts then being used in Dinner MyWay stores, and shall complete the renovation within the time reasonably specified by Dinner MyWay;

(h) Dinner MyWay's Satisfaction with Proposed Terms of Sale. Dinner MyWay must be reasonably satisfied that the proposed terms of sale or other factors involved in the Transfer do not materially reduce the potential ability of the transferee to effectively assume and carry out its obligations to Dinner MyWay;

(i) Execution of Satisfactory Assignment. The transferee shall have executed either (i) a written assignment, in a form satisfactory to Dinner MyWay, pursuant to which the transferee franchisee shall assume all of the obligations of Franchisee under this Agreement, or (ii) at Dinner MyWay's request, the then-current standard Dinner MyWay Franchise Agreement (and such other then-current ancillary agreements as Dinner MyWay may reasonably request, all of which agreements may differ from the terms of this Agreement and its ancillary agreements, including, without limitation, a higher Royalty Fee and/or National Advertising Contributions, except that the new franchisee shall not be required to pay an Initial Franchise Fee or other similar fee) which shall expire on the date of expiration of this Agreement, and shall be renewable, at its expiration, if at all, only pursuant to the terms thereof; and

(j) Payment of Transfer Fee. Except as expressly provided to the contrary in this Agreement, a transfer fee of twenty percent (20%) of Dinner MyWay's then-current Initial Franchise Fee (the "**Transfer Fee**") shall have been paid in full to Dinner MyWay to cover

Dinner MyWay's administrative, accounting, legal, training and other expenses in connection with the Transfer, but no Initial Franchise Fee or other similar fee shall be charged by Dinner MyWay for a Transfer. The Transfer Fee is not refundable under any circumstances, unless the Transfer is not consummated. In such case, Dinner MyWay will refund the balance, if any, remaining after deducting its out-of-pocket costs and expenses incurred in connection with the proposed Transfer and an administrative charge of ten percent (10%) of the Transfer Fee.

Dinner MyWay's consent to a Transfer shall not constitute a waiver of any claims it may have against Franchisee, nor shall it be deemed a waiver of Dinner MyWay's right to demand exact compliance with any of the terms of this Agreement by the transferee. Without limitation of the foregoing, no Transfer (even if approved by Dinner MyWay) may relieve Franchisee of liability for its conduct prior to the Transfer, including, without limitation, conduct in breach of this Agreement.

Section 11.4 Transfer Upon Death or Incapacity. In the event of the death or permanent incapacity of any individual who holds a controlling interest in Franchisee, directly or indirectly (or if Franchisee is an individual, the death or permanent incapacity of Franchisee), Dinner MyWay shall not unreasonably withhold its consent to a Transfer of all of such person's interest in Franchisee or all of such person's interest in this Agreement, to one person designated by such individual's executor, administrator, personal representative or guardian; provided, however, that (i) the conditions of Sections 11.3(b) through 11.3(i) are met, (ii) the proposed Transfer is applied for in writing within a reasonable time after the date of death or permanent incapacity by the legal representative of such individual, and is effected within six (6) months from the date of such application, and (iii) in the case of permanent incapacity, the legal representative shall have furnished a certification of a physician designated by Dinner MyWay that Franchisee has been or will be unable to operate the Franchised Dinner MyWay Store for a period of six (6) months or longer. If the Transfer of such person's interest in the Franchise to a party acceptable to Dinner MyWay has not taken place within the required period, Dinner MyWay shall have the option to purchase the interest at fair market value exclusive of intangible assets (such as, but not limited to, goodwill) determined by an independent appraiser designated by Dinner MyWay. Such option may be exercised within thirty (30) days after the expiration of the required period by written notice to Franchisee or Franchisee's estate. No Transfer under this Section 11.4(a) shall be subject to the Transfer Fee.

Section 11.5 Transfers to Family Members. Franchisee, or if Franchisee is an entity, any individual owning a controlling interest in Franchisee, may Transfer his or her interest in Franchisee to his or her spouse, parent, sibling, descendant or spouse's descendant with Franchisor's consent, which shall not be unreasonably withheld; provided, such family member has been substantially involved in the operation of Franchisee's Dinner MyWay Store during the preceding six (6) months, or has successfully completed Basic Management Training. No Transfer under this Section 11.5 shall be subject to the Transfer Fee, but the transferee must execute the Guaranty required under Section 3.6 herein above.

Section 11.6 Transfer for Estate Planning Purposes. Any individual may Transfer his or her interest in Franchisee or this Agreement to a revocable living trust in which such individual is the controlling trustee, without the consent of Franchisor. No Transfer under this Section 11.6 shall

be subject to the Transfer Fee. Such individual shall give written notice to Dinner MyWay of such Transfer within ten (10) days of the Transfer.

Section 11.7 Dinner MyWay's Right of First Refusal.

(a) **Mandatory Offer to Sell to Dinner MyWay.** If at any time during the Term Franchisee desires to sell and receives an acceptable bona fide, arms-length written offer from an independent third party to purchase any interest in Franchisee, Franchisee's interest in this Agreement, or all or substantially all of the assets used in the Franchised Dinner MyWay Store, Franchisee shall first offer to sell to Dinner MyWay the interest or the assets (as the case may be) for the consideration and on the terms and conditions set forth in such third party's written offer. The Franchisee's offer (the "**Bona Fide Offer**") shall be made by written notice to Dinner MyWay setting forth the name and address of the prospective purchaser, the price and terms of the Bona Fide Offer and any other information that Dinner MyWay may reasonably request in order to evaluate the Bona Fide Offer, including, without limitation, any purchase and sale and related agreements proposed or executed by Franchisee or the third party.

(b) **Time to Accept the Bona Fide Offer.** Dinner MyWay shall have the first option to purchase the interest or the assets (as the case may be) by accepting the Bona Fide Offer, within sixty (60) days after its receipt of the Bona Fide Offer.

(c) **Dinner MyWay Accepts the Bona Fide Offer.** If Dinner MyWay gives notice of acceptance of the Bona Fide Offer as provided above, then Franchisee shall sell the interest or the assets (as the case may be) to Dinner MyWay, and Dinner MyWay shall purchase the interest or the assets (as the case may be) from Franchisee, for the consideration and upon the terms and conditions set forth in the Bona Fide Offer, less any broker's commission not due if Dinner MyWay exercises its right of first refusal but due and payable by Franchisee upon the sale to the prospective purchaser.

(d) **Dinner MyWay Declines the Bona Fide Offer.** If Dinner MyWay does not accept the Bona Fide Offer, Franchisee shall be free, for a period of sixty (60) days after Dinner MyWay has elected not to accept the Bona Fide Offer to sell the interest or the assets (as the case may be) to the aforementioned independent third party for the consideration and upon the terms and conditions specified in the Bona Fide Offer, subject to full compliance with all terms and conditions of Transfer required under this Agreement, including those set forth in this Section 11.7. It shall be a condition precedent to any sale of the interest or the assets to an independent third party that there is delivered to such third party an acknowledgment that the interest purchased by it is and shall be subject to the terms and conditions of this Agreement and that such third party agrees to be bound by the terms of this Section with respect to transferring the interest or the assets, in the same manner as Franchisee. If Franchisee does not sell the interest or the assets (as the case may be) within the aforesaid 60-day period, then any transfer by it of the interest or the assets (as the case may be) shall again be subject to the restrictions set forth herein.

(e) **Closing.** Unless otherwise agreed by Franchisee and Dinner MyWay, the closing of the purchase of the interest or the assets (as the case may be) purchased by Dinner MyWay

shall be held at such time, and at Dinner MyWay's then principal office or other location, designated by Dinner MyWay.

Section 11.8 Ownership and Control of Franchisee. Franchisee represents and warrants that all persons having an ownership or control interest in Franchisee, directly or indirectly, are set forth in Exhibit D to this Agreement. No other person has nor shall have any ownership interest in Franchisee during the Term, unless through a Transfer or series of Transfers permitted by this Agreement.

Section 11.9 Operation of the Franchised Dinner MyWay Store Pending Transfer. Franchisee shall continue to operate the Franchised Dinner MyWay Store in the ordinary course of business in accordance with the Dinner MyWay Operating Manuals and this Agreement throughout the transition period pending any Transfer.

ARTICLE 12

DEFAULT AND TERMINATION

Section 12.1 Termination By Dinner MyWay, Without Notice. Franchisee shall be deemed to be in default of this Agreement, and Dinner MyWay may, at its sole option, terminate this Agreement, which termination shall be deemed to be for cause, and all of Franchisee's rights under this Agreement, without affording Franchisee an opportunity to cure the default, effective immediately upon receipt of notice by Franchisee, if:

(a) Insolvency or Bankruptcy. Franchisee becomes insolvent or makes a general assignment for the benefit of creditors; or proceedings for a compromise with creditors under any state or federal law should be instituted by or against Franchisee; or a petition in bankruptcy is filed by Franchisee or such a petition is filed against and not opposed by Franchisee; or Franchisee is adjudicated a bankrupt or insolvent; or a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; or a receiver or other custodian (permanent or temporary) of Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or any such involuntary petition, adjudication, proceeding or appointment is not dismissed within (sixty) 60 days thereafter; or

(b) Outstanding Judgment or Dissolution. A final judgment related to Franchisee remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed), or Franchisee is dissolved, or execution is levied against Franchisee, or suit to foreclose any lien or mortgage against Franchisee or any of its assets is instituted against Franchisee and not dismissed within thirty (30) days, or the real or personal property of Franchisee must be sold after levy thereupon by any sheriff, marshal or constable; or

(c) Material Misrepresentations. Franchisee has made any material misrepresentations or misstatements to Dinner MyWay on the application for the franchise, or with respect to the ownership of the Franchised Dinner MyWay Store; or

(d) Failure to Operate Franchise. Franchisee ceases to operate the Franchised Dinner MyWay Store for ~~threeseven~~ (37) consecutive days, or when, in Dinner MyWay's opinion, the ability of Franchisee to resume an effective operation has been substantially impaired, or Franchisee otherwise abandons the Franchised Dinner MyWay Store at any time, or Franchisee otherwise forfeits the right to do or transact business in the jurisdiction where the Franchised Dinner MyWay Store is located. If such closure is due to natural disasters, remodeling required by Dinner MyWay, or other matters beyond Franchisee's reasonable control, Franchisee shall not be deemed to be in default of this subsection 12.1(d); provided, Franchisee gives notice of any such closure to Dinner MyWay within three (3) days after the initial occurrence of the event and Dinner MyWay acknowledges in writing that such closure is due to one of the foregoing causes; and, provided further, that Franchisee shall re-establish the Franchised Dinner MyWay Store and be fully operational within one hundred-twenty (120) days after the initial occurrence of the event or such longer period as Dinner MyWay may permit. In the event Dinner MyWay does not agree that Franchisee's closure is due to one of the foregoing causes, Franchisee shall resume full operations within three (3) days of notice; or

(e) Conviction of Felony or Other Crime. Franchisee or any of Franchisee's owners, directors, or officers is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Dinner MyWay believes is reasonably likely to have an adverse effect upon the Franchise, the Proprietary Marks, the goodwill associated therewith, or Dinner MyWay's interest therein; or

(f) Breach of Confidentiality Obligations. Franchisee discloses or divulges the contents of the Dinner MyWay Operating Manuals or other confidential information provided to Franchisee by Dinner MyWay, contrary to the terms of this Agreement; or

(g) False Books or Records. Franchisee knowingly maintains false books or records, or knowingly submits any false or fraudulent report, statement or document to Dinner MyWay; or

(h) Improper Use of Marks. Franchisee misuses or makes any unauthorized use of the Proprietary Marks or any other identifying characteristics of the System, or otherwise materially impairs the goodwill associated therewith or Dinner MyWay's rights therein.

Section 12.2 Termination By Dinner MyWay, With Notice. Except as set forth in Section 12.1 above, Franchisee will have fifteen (15) days after receipt of a written Notice of Default from Dinner MyWay within which to remedy any default under this Agreement and provide evidence of such cure to Dinner MyWay; provided, however, that if the default is of a nature that is not reasonably curable within such fifteen (15) day period, then Franchisee may avoid termination of this Agreement under this Section 12.2 by immediately initiating a remedy to cure such default after receiving written Notice of Default from Dinner MyWay and curing it to Dinner MyWay's satisfaction within such longer period as Dinner MyWay may, in its sole discretion grant, and by promptly providing proof thereof to Dinner MyWay. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee, effective immediately upon the expiration of the fifteen (15) day period or such longer period as applicable law may require. Any termination under this Section 12.2 shall be deemed to be for cause. Franchisee shall be in

default under this Agreement for failure to comply with any of the requirements imposed by this Agreement, as it may from time to time be reasonably supplemented by the Dinner MyWay Operating Manuals, or fails to carry out the terms of this Agreement in good faith. Such defaults include, but are not limited to:

(a) Failure to Pay Amounts Due. If Franchisee fails, refuses, or neglects (i) to pay promptly any monies owing to Dinner MyWay or its subsidiaries or affiliates when due, or (ii) to submit the financial or other information required by Dinner MyWay under this Agreement; or

(b) Failure to Observe Standards. If Franchisee fails to maintain or observe any of the standards, specifications or procedures prescribed by Dinner MyWay in this Agreement, the Dinner MyWay Operating Manuals, or otherwise in writing; or

(c) Failure to Obtain Dinner MyWay's Consent. If Franchisee fails, refuses, or neglects to obtain Dinner MyWay's prior written consent as required by this Agreement; or

(d) Improper Transfer. If Franchisee or any owner of Franchisee purports to sell, transfer or relinquish its assets, any rights or obligations under this Agreement or any interest in Franchisee to a third party without Dinner MyWay's prior written consent, contrary to the terms of this Agreement, or Franchisee's heirs, legatees, personal representative, conservator or guardian, as applicable, fails to dispose of Franchisee's interest in this Agreement following Franchisee's death or permanent disability or legal incapacity as outlined in this Agreement; or

(e) Failure to Comply with Covenants. If Franchisee fails to comply with any of the covenants or conditions, or fails to obtain execution of the covenants required by this Agreement, including, without limitation the covenants contained in Article 14; or

(f) Failure to Permit Inspection or Audit. If Franchisee refuses to permit Dinner MyWay to inspect or audit the books and records of the Franchised Dinner MyWay Store in accordance with the terms of this Agreement; or

(g) Disputes of Franchisee Adversely Affecting Dinner MyWay. If Franchisee allows any dispute, disagreement or controversy between or among partners, managers, officers, director or stockholders of Franchisee which, in the reasonable opinion of Dinner MyWay, adversely affects the operation of Franchisee, or the Franchised Dinner MyWay Store; or

(h) Excessive Customer Complaints. If Franchisee receives an excessive amount of customer complaints against the Franchised Dinner MyWay Store and/or Franchisee, and an investigation by Dinner MyWay determines these complaints to be warranted; or

(i) Public Danger. A threat or danger to public health or safety results from the maintenance or operation of the Franchised Dinner MyWay Store; or

(j) Failure to Cure Default. If Franchisee, upon receiving a Notice of Default for a default specified under this Agreement, fails to immediately initiate a remedy to cure such default; or

(k) Repetitive Defaults. If Franchisee, after curing a default pursuant to this Agreement, commits the same default again, whether or not cured after notice; or Franchisee is in default under this Agreement for failure to substantially comply with any of the requirements imposed by this Agreement, whether or not cured after notice, three (3) or more times in any twelve (12) month period.

Section 12.3 Termination By Franchisee. There are no conditions contained in this Agreement under which Franchisee may terminate this Agreement prior to the expiration of the Term except by mutual agreement with Dinner MyWay and execution of a mutual release, or by electing to sell the Franchised Dinner MyWay Store to another Franchisee in good standing or to a qualified third party pursuant to the terms of this Agreement.

Section 12.4 Notice As Required by Law. Notwithstanding anything to the contrary contained in this Section 12, if applicable law or regulation limits Dinner MyWay's rights to terminate or requires longer notice periods than those set forth above, this Agreement shall be deemed amended to conform to the minimum notice periods or restrictions upon termination required by such laws and regulations. Dinner MyWay shall not, however, be precluded from contesting the validity, enforceability or application of such laws or regulations in any action, arbitration, hearing or dispute relating to this Agreement or the termination hereof.

ARTICLE 13

OBLIGATIONS UPON TERMINATION

Section 13.1 Franchisee's Obligations. Immediately upon termination of this Agreement, or expiration or non-renewal of the Term for any reason, all rights granted to Franchisee shall terminate and Franchisee shall thereafter:

(a) Cease Operations. Franchisee shall immediately cease to operate the Franchised Dinner MyWay Store, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Dinner MyWay or as an authorized independently owned and operated Dinner MyWay store or in any other way affiliate itself with Dinner MyWay; and

(b) Cease Use of Dinner MyWay's System and Methods. Franchisee shall immediately cease using the System and Dinner MyWay's methods of operation; and

(c) Comply with Restrictive Covenants. Franchisee shall comply with the post-term covenants contained in Articles 7 and 14; and

(d) Cease Use of Dinner MyWay's Proprietary Marks. Franchisee shall immediately cease using the Proprietary Marks or any confusingly similar name, device, mark, service mark, trademark, trade name, slogan or symbol used in connection with the Franchise, including any reproduction, counterfeit copy, variation, emulation or colorable imitation thereof which is likely to cause confusion or mistake or deceive the public and take any steps necessary to change the name of any corporation or entity which Franchisee may have formed, or under which Franchisee

trades or does business, so that the name will not likely be confused with the Proprietary Marks; and

(e) Complete and Effective Transfer. Franchisee shall immediately bring about a complete and effective transfer of its rights hereunder, its customers and/or customer lists and services to Dinner MyWay or its designee; and

(f) Cease Use of Telephone Numbers. Franchisee shall immediately cease and desist use of telephone numbers listed in the Yellow Pages or white pages of the telephone directory under the name Dinner MyWay or any other name confusingly similar to any of the Proprietary Marks and shall immediately transfer ownership of such telephone numbers to Dinner MyWay or its designee; and

(g) Cease Use of Printed Materials. Franchisee shall immediately return to Dinner MyWay, at Franchisee's expense, all printed material furnished to Franchisee, including, without limitation, all Dinner MyWay Operating Manuals, advertising material, stationery and printed forms and all other matter relating to the operation of the Franchise and/or bearing the Proprietary Marks which may be in Franchisee's possession or control at the time of such expiration, termination or non-renewal; and

(h) Payments of all Sums and Debts Owed. Dinner MyWay may retain all fees paid pursuant to this Agreement. In addition, within ten (10) days after the effective date of the termination of this Agreement or expiration of the Term, or such later date as it is determined that amounts are due to Dinner MyWay, Franchisee shall pay to Dinner MyWay all Royalty Fees, National Advertising Contributions, amounts owed for products purchased by Franchisee from Dinner MyWay, and all other amounts owed to Dinner MyWay or its affiliates which are then unpaid; and

(i) Assignment of Location. In the event the Franchised Dinner MyWay Store is leased, Franchisee shall, at Dinner MyWay's option, assign to Dinner MyWay Franchisee's interest in such lease. Franchisee shall be and remain liable for all of its obligations accruing up to the effective date of any lease assignment; and

(j) Modify Location. In the event Dinner MyWay does not exercise its rights, if any, under Section 13.1(i), Franchisee shall make such modifications or alterations to the Franchised Dinner MyWay Store (including, without limitation, changing the telephone number and taking down all signs bearing the Proprietary Marks and identifying architectural superstructure) immediately upon termination or expiration of the Term as may be necessary to distinguish the appearance of the Franchised Dinner MyWay Store from that of other Dinner MyWay stores, and shall make such specific additional changes thereto as Dinner MyWay may reasonably request for that purpose including a change of use of the Franchised Dinner MyWay Store. Franchisee agrees to refrain from taking any action to reduce the goodwill of its customers or potential customers toward Dinner MyWay or its franchisees. In the event Franchisee fails or refuses to comply with this provision, Dinner MyWay shall have the right, without any claim to the contrary by Franchisee, to enter the Franchised Dinner MyWay Store, or the office of Franchisee without being guilty of trespass or any other tort, for the purposes of making or causing to be

made such modifications or alterations to the Franchised Dinner MyWay Store as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

Section 13.2 Execution of Documents. Dinner MyWay may, if Franchisee fails or refuses to do so, execute in Franchisee's name and on its behalf, any and all documents necessary to effectuate the obligations of Franchisee under this Section 13 and Franchisee hereby irrevocably appoints Dinner MyWay as Franchisee's attorney-in-fact to do so.

Section 13.3 Dinner MyWay's Rights Not Prejudiced. The expiration, termination or non-renewal of this Agreement shall be without prejudice to Dinner MyWay's rights against Franchisee and such expiration, termination or non-renewal shall not relieve Franchisee of any of its obligations to Dinner MyWay existing at the time of expiration, termination or non-renewal, nor will it terminate those obligations of Franchisee which by their nature survive the expiration, termination or non-renewal.

Section 13.4 Return of Materials. Franchisee shall immediately turn over to Dinner MyWay all materials, including the Dinner MyWay Operating Manuals, records, files, instructions, correspondence, all materials related to operating the Franchised Dinner MyWay Store, including, but not limited to, brochures, agreements, disclosure statements, and any and all other materials relating to the operation of the Franchised Dinner MyWay Store in Franchisee's possession or control, and all copies and any other forms of reproductions thereof (all of which are acknowledged to be the sole and exclusive property of Dinner MyWay), and shall retain no copy or record of any of the foregoing, excepting only Franchisee's copy of this Agreement and related agreements and of correspondence between the parties, and copies of any other documents which Franchisee reasonably needs for compliance with any provision of law. Dinner MyWay shall reimburse Franchisee for the reasonable cost of shipping the foregoing materials to Dinner MyWay promptly after receipt of receipts or other reasonable evidence of such costs.

Section 13.5 Dinner MyWay's Purchase Rights. Dinner MyWay shall have the right (but not the obligation) to purchase any items bearing the Proprietary Marks such as any or all signs, advertising material, supplies, inventory or other items at a price equal to the lesser of Franchisee's cost as determined by reference to Franchisee's books and records, or fair market value as determined by the agreement of the parties, or lacking such agreement, by an independent appraiser designated by Dinner MyWay, by written notice of such intent within thirty (30) days after the termination or expiration of the Term. If Dinner MyWay elects to exercise any option to purchase provided in this Agreement, it shall have the right to set off all amounts due from Franchisee under this Agreement.

ARTICLE 14

INDEPENDENT COVENANTS OF FRANCHISEE

Section 14.1 Devotion to Operation of the Franchised Dinner MyWay Store. Franchisee covenants that during the Term, except as otherwise approved in writing by Dinner MyWay, Franchisee or its Manager shall devote his or her full time, energy and best efforts to the management and operation of the Franchised Dinner MyWay Store.

Section 14.2 Confidentiality.

(a) Confidential Information. Franchisee acknowledges that Dinner MyWay shall disclose or make known to Franchisee and Franchisee shall be given access to and become acquainted with certain confidential information, confidential materials and trade secrets, including, but not limited to, confidential information regarding processes, methods, techniques, formulas, contracts, projected results, supplier lists, pricing, marketing, computer programs, products, skills, performance specifications, technical and other data, designs, recipes, menus, schematics, samples, financial information and results and other information and know-how all relating to or useful in Dinner MyWay's business (collectively, the "**Confidential Information**"). Confidential Information does not include information which (i) becomes generally known to the public other than as a result of a disclosure by Franchisee or its directors, officers, employees, agents, representatives or advisors, or (ii) is disclosed to Franchisee on a non-confidential basis from a source other than Dinner MyWay or its advisors; provided, that such source is not known by Franchisee, after reasonable inquiry to be bound by a confidentiality agreement with, or other obligation of secrecy to, Dinner MyWay or a related party. Franchisee acknowledges that any information received from other franchisees or any modifications made by Franchisee to the Confidential Information shall also be deemed Confidential Information which is the property of Dinner MyWay. Franchisee further acknowledges that the Confidential Information is considered confidential, proprietary and a trade secret.

(b) Nondisclosure of Confidential Information. In consideration of Dinner MyWay's granting Franchisee a franchise and in recognition by Franchisee that the Confidential Information constitutes valuable and unique assets owned by, or in the custody of Dinner MyWay, Franchisee hereby agrees and covenants that Franchisee shall not use the Confidential Information or any part of the Confidential Information in any manner to the detriment of Dinner MyWay. Franchisee shall hold all the Confidential Information in the strictest confidence, not to be used, reproduced, distributed or disclosed to anyone without the express prior written consent of Dinner MyWay or as required by law. Franchisee agrees that the disclosure or use by a partner, shareholder, spouse or member of the immediate family of Franchisee of the Confidential Information other than in the operation of the Franchised Dinner MyWay Store shall be deemed a breach and default by Franchisee of this Section. Franchisee further acknowledges that it would be an unfair method of competition for Franchisee or such partner, shareholder, spouse or family member to use, duplicate or disclose any of the Confidential Information or knowledge, know-how and expertise received from Dinner MyWay for any use other than the operation of the Franchised Dinner MyWay Store.

Section 14.3 Non-Competition.

(a) During and After the Term of this Agreement. Franchisee acknowledges the uniqueness of the System and agrees that Dinner MyWay is making the Dinner MyWay Operating Manuals and the Confidential Information available to Franchisee only to operate the Franchised Dinner MyWay Store. Franchisee acknowledges that it would be an unfair method of competition to use or duplicate any of the Dinner MyWay Operating Manuals or Confidential Information received from Dinner MyWay for any other use.

(i) Non-Solicitation. Franchisee covenants that during the Term of this Agreement and for a two (2) year period thereafter, except as otherwise approved in writing by Dinner MyWay, neither Franchisee nor any person required to execute a Guaranty for Franchisee's obligations ("**Guarantors**") will directly or indirectly, solicit or otherwise attempt to induce, by combining or conspiring with, or attempting to do so, or in any other manner influence any employee, officer, director, agent, consultant, representative, contractor, supplier, distributor, franchisee or other business contact of Dinner MyWay to terminate or modify his or her position with or to compete against Dinner MyWay.

(ii) Non-Competition During Term. Franchisee covenants that during the Term of this Agreement, except as otherwise approved in writing by Dinner MyWay, neither Franchisee nor any Guarantors will, directly or indirectly, as owner, officer, director, employee, agent, lender, broker, consultant, franchisee or in any other capacity whatsoever be connected in any manner with the ownership, management, operation or control of or conduct a business which is (a) not a franchised Dinner MyWay store or a company-owned Dinner MyWay store, and (b) engaged in the sale or distribution of wholesale or retail self-prepared, home meal replacement goods and services or otherwise engaged in any other business which is similar to any business engaged in by Dinner MyWay, its subsidiaries or affiliates (provided that this restriction shall not apply to a five percent (5%) or less beneficial interest in a reporting company registered under the Securities Act of 1933).

(iii) Non-Competition After the Term. Franchisee covenants that for two (2) years following the Term of this Agreement, except as otherwise approved in writing by Dinner MyWay, neither Franchisee nor any Guarantors will, directly or indirectly, as owner, officer, director, employee, agent, lender, broker, consultant, franchisee or in any management or operational capacity be connected in any manner with the ownership, management, operation or control of or conduct a business which is (a) not a franchised Dinner MyWay store or a company-owned Dinner MyWay store, and (b) engaged in the sale or distribution of wholesale or retail self-prepared, home meal replacement goods and services or otherwise engaged in any other business which is similar to any business engaged in by Dinner MyWay, its subsidiaries or affiliates within a five (5) mile radius of any Dinner MyWay store then in operation or under construction (provided that this restriction shall not apply to a five percent (5%) or less beneficial interest in a reporting company registered under the Securities Act of 1933).

(iv) Non-Disturbance. In addition to, and not in limitation of the other provisions of this Article 15, neither Franchisee nor any Guarantor shall in any manner interfere with, disturb, disrupt, decrease or otherwise jeopardize the business of Dinner MyWay, or any of its other franchisees.

(b) Reasonableness of Restrictions. Franchisee and each Guarantor acknowledge and confirm that the length of the term and geographical restrictions contained in this Article 14 are fair and reasonable and not the result of overreaching, duress or coercion of any kind. Franchisee acknowledges and confirms that its, its Guarantors' and their principals', full, uninhibited and faithful observance of each of the covenants contained in this Article 14 will not cause any undue hardship, financial or otherwise, and that enforcement of each of the covenants contained in this Article 14 will not impair its, its Guarantors' or their principals' ability to obtain employment commensurate with their respective abilities and on terms fully acceptable to them or otherwise

to obtain income required for the comfortable support of such persons and, if such person is an individual, his or her family, and the satisfaction of the needs of his or her creditors.

(c) **Enforcement.** Franchisee acknowledges that to disregard the provisions of this Article 14 would effectively foreclose Dinner MyWay from selling other franchises and Franchisee could be unjustly enriched and unfairly derive benefit from the goodwill of and training from Dinner MyWay. Moreover, Dinner MyWay's franchisees and company-owned Dinner MyWay stores could be severely disadvantaged if Franchisee competes, without authorization, against them using the Proprietary Marks and/or other Confidential Information of the System. Therefore, it is the manifest intent of Franchisee and Dinner MyWay that, in the event that any court shall finally hold that the time or territory or any other provision stated in this Article 14 constitutes an unreasonable restriction upon Franchisee or any of Franchisee's principals, then such unenforceable covenant shall be amended to relate to such lesser period or geographical area as shall be enforceable or, if deemed appropriate by such court, deemed eliminated from this Agreement for the purpose of those proceedings to the extent necessary to permit the remaining covenants to be enforced. In the event of Franchisee's actual or threatened breach or default of this Article 14, (i) Dinner MyWay shall be entitled to an ex parte injunction (without notice to or service of process upon Franchisee) restraining Franchisee from any such actual or threatened breach or default, (ii) Franchisee agrees that Dinner MyWay's harm shall be irreparable and Dinner MyWay has no adequate remedy at law to prevent such harm, and (iii) Dinner MyWay shall not be required to show any actual damage or to post any bond or other security before obtaining injunctive relief.

Section 14.4 Modification of Covenants. Franchisee understands and acknowledges that Dinner MyWay shall have the right, in its sole discretion, to reduce the scope of any covenants set forth in this Article 14 without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof. Franchisee agrees that it shall forthwith comply with any covenant as so modified, which shall be fully enforceable to the extent permitted by applicable law.

Section 14.5 Additional Parties. At Dinner MyWay's request, Franchisee shall require its officers, directors, shareholders, partners, members, agents, representatives and/or managerial employees to execute a Nondisclosure and Non-Competition Agreement attached as Exhibit C to this Agreement containing restrictive language similar to this Article 14.

ARTICLE 15

INDEPENDENT CONTRACTOR AND INDEMNIFICATION

Section 15.1 Independent Status of Franchisee. It is understood and agreed by the Parties that this Agreement does not create a fiduciary relationship between them. Franchisee shall be an independent contractor, and nothing in this Agreement is intended to constitute either Party an agent, legal representative, subsidiary, joint venturer, partner, employee, affiliate or servant of the other Party for any purpose whatsoever. Nothing in this Agreement authorizes either Party to make any contract, agreement, warranty or representation on the other Party's behalf, or to incur any debt or other obligation in the other Party's name. Neither Party shall in any event assume

liability for, or be deemed liable under this Agreement as a result of, any such action, or by reason of any act or omission of the other Party or any claim or judgment arising therefrom.

Section 15.2 Dinner MyWay has no Control over Franchisee's Employees. Dinner MyWay shall have no control over the terms and conditions of employment of Franchisee's employees or of their activities.

Section 15.3 Public Representation of Franchisee's Independence. During the Term, Franchisee shall in all dealings with customers, distributors, suppliers, public officials and others hold itself out as an independent contractor operating the Franchised Dinner MyWay Store pursuant to a franchise agreement from Dinner MyWay and as an authorized user of the Proprietary Marks which are licensed from Dinner MyWay. Franchisee agrees to take such affirmative action as Dinner MyWay deems necessary for Franchisee to comply with such requirement.

Section 15.4 Indemnification.

(a) **Franchisee's Indemnification of Dinner MyWay.** Franchisee shall indemnify and hold harmless Dinner MyWay, its parent, subsidiaries and affiliates, and their officers, directors, agents, employees, successors and assignees (the "**Indemnified Parties**"), from any claim, loss, liability, obligation, damages or expense resulting from the acts or omissions of Franchisee or Franchisee's employees or agents including, but not limited to, any loss resulting from personal injury or damage to real or tangible personal property, or any other claim arising from or in connection with the operation of the Franchised Dinner MyWay Store, and the use of the Proprietary Marks or System, in a manner not in accordance with this Agreement. For purposes of this Agreement, claims shall mean and include all obligations, actual or consequential damages, and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, without limitation, reasonable accountants' fees, attorneys' fees (whether in-house or retained), costs for expert witnesses, costs for investigation and proof of facts, court costs, other litigation expenses and travel and living expenses as may be reasonably incurred in either defending against an action or pursuing an action on behalf of Franchisee. Dinner MyWay shall have the right to defend any such claim against it and to select counsel of its choice at Franchisee's expense. This indemnity shall continue in full force and effect subsequent to and notwithstanding the expiration or termination of this Agreement. Notwithstanding the foregoing, Dinner MyWay reserves all rights and privileges with regard to any defenses that may apply.

(b) **Dinner MyWay's Indemnification of Franchisee.** Dinner MyWay shall defend, indemnify, and hold harmless Franchisee from and against any and all claims, counter-claims, suits, debts, demands, costs, liabilities, expenses (including, without limitation, attorneys' fees, expert witness fees, costs and other expenses incurred in the investigation or defense of such matters), setoffs, liens, attachments, judgments, actions and causes of action arising out of or in connection with any proceeding in which Franchisee is named as a party by a third party complainant alleging infringement of its marks by Franchisee's use of any of the Proprietary Marks, pursuant to and in full compliance with this Agreement; provided, however, that Franchisee shall have timely notified Dinner MyWay of the claim or proceeding within ten (10) days after service of process, and Franchisee has otherwise complied with this Agreement, and Dinner MyWay shall be entitled to take over defense of the action engaging legal counsel of its

choosing. Franchisee shall cooperate with Dinner MyWay in the defense of the matter as may be requested or required by legal counsel. Dinner MyWay's obligation to defend, indemnify, and hold harmless Franchisee shall in no manner be affected by the existence or non-existence of insurance. Franchisee's right to indemnity under this Agreement shall arise notwithstanding that joint or concurrent liability may be imposed on Franchisee by statute, ordinance, regulation or otherwise.

ARTICLE 16

REPRESENTATIONS AND WARRANTIES OF FRANCHISEE

Section 16.1 Representations of Franchisee. Franchisee hereby makes the following representations and warranties to Dinner MyWay, which shall be true and correct upon the execution of this Agreement and throughout the Term:

(a) Due Organization of Franchisee. If Franchisee is a corporation, limited liability company or a general or limited partnership, Franchisee is duly organized, validly existing and in good standing under the laws of its state or jurisdiction of incorporation. Franchisee has the corporate or partnership power to own its properties and conduct its business and is duly qualified to do business in the state in which the Franchised Dinner MyWay Store is or will be located.

(b) Authorization. Franchisee has the power to execute, deliver, and carry out the terms and conditions of this Agreement. Franchisee has taken all necessary action with respect thereto. This Agreement has been duly authorized, executed and delivered by Franchisee and constitutes its valid, legal and binding agreement and obligation in accordance with the terms of this Agreement, except as may be limited by applicable bankruptcy, insolvency, reorganization and other laws and equitable principles affecting creditors' rights generally from time to time in effect.

(c) No Violation. Performance by Franchisee of its obligations under this Agreement will not result in (i) the breach of any term or condition of, or constitute a default under, any term or condition of any contract, agreement, arrangement, or other commitment to which Franchisee is a party or by which it is bound, or constitute an event which, with notice, lapse of time or both, would result in such a breach or event of default, nor (ii) result in the violation by Franchisee of any statute, rule, regulation, ordinance, code, judgment, order, injunction or decree.

(d) True Copies. Copies of all documents required to be furnished by Franchisee to Dinner MyWay will be true and correct copies of such documents, including all amendments or modifications thereto and all written representations made by Franchisee, in any application, financial statement or other document submitted to Dinner MyWay to obtain the franchise or otherwise, are true and correct and contain no misleading or incorrect statement or material omissions.

ARTICLE 17

GENERAL PROVISIONS

Section 17.1 Amendments. Except as otherwise provided with respect to the Dinner MyWay Operating Manuals, the provisions of this Agreement may not be modified, supplemented or waived orally, but only by a written document signed by the Party as to whom enforcement of any such modification, supplement or waiver is sought and making specific reference to this Agreement. With respect to Dinner MyWay, only the President or Vice President of Dinner MyWay shall have the authority to execute any amendment on behalf of Dinner MyWay. No other officer, employee or agent of Dinner MyWay shall have authority to execute any amendment.

Section 17.2 Binding Effect. All of the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective administrators, executors, legal representatives, heirs, successors and permitted assigns, whether so expressed or not.

Section 17.3 Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, sent via certified mail (postage prepaid), return receipt requested, sent by facsimile, or sent by e-mail, addressed to:

If to Dinner MyWay:

With a copy to:

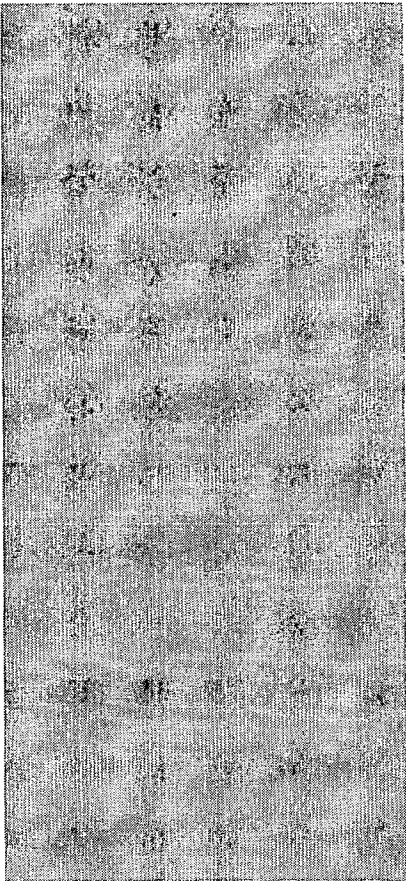
Dinner MyWay, Inc.
Attn: William Martin
2205 Sunset Blvd., Suite
#501
Rocklin, CA 95765
Facsimile:
Fax:
E-mail:

Downey Brand LLP
Attn: Grace M. Arupo
555 Capitol Mall, 10th Floor
Sacramento, CA 95814
Facsimile/Fax: (916) 444-2100
E-mail:
garupo@downeybrand.com

With a copy to:

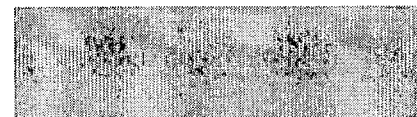
If to Franchisee:

_____ Facsimile:



Facsimile:
E-mail:

E-mail:



<u>If to Franchisee:</u>	<u>If to Franchisee:</u>	<u>With a copy to:</u>
<u>Print Name of Entity or Corporation</u> _____ _____	<u>Print Name of Entity or Corporation</u> _____ _____	<u>Print Name of Entity or Corporation</u> _____ _____
<u>Address</u> <u>Fax:</u> <u>E-mail:</u>	<u>Address</u> <u>Fax:</u> <u>E-mail:</u>	<u>Address</u> <u>Fax:</u> <u>E-mail:</u>

or to such other address as any party may designate by notice complying with the terms of this Section. Each such notice shall be deemed delivered: (Aa) on the date delivered if by personal delivery; (Bb) on the date communicated if by email; (Cc) on the date of transmission with confirmed answer back if by facsimile; or (Dd) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed.

Section 17.4 Interpretation. The headings contained in this Agreement are for convenience of reference only, are not to be considered a part of this Agreement and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement. Any reference herein to days shall mean calendar days, unless otherwise defined.

Section 17.5 Severability.

(a) If any provision of this Agreement or any other agreement entered into pursuant to this Agreement is contrary to, prohibited by, or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder of this Agreement shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

(b) In addition to, and without limiting the provisions of the foregoing paragraph (a), if any applicable and binding law or rule of any applicable jurisdiction requires a greater prior notice of the termination of or non-renewal of the Term than is required hereunder, or the taking of some other action not required hereunder, or if under any applicable and binding law or rule of any applicable jurisdiction, any provision of this Agreement or any specification, standard or operating procedure prescribed by Dinner MyWay is invalid or unenforceable, the prior notice and/or other action required by such law or rule shall be substituted for the comparable provisions of this Agreement. Dinner MyWay shall have the right, in its sole discretion, to modify such invalid or unenforceable provision, specification, standard or operating procedure to

the extent required to be valid and enforceable. Franchisee agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision of this Agreement, as though it were separately articulated in and made a part of this Agreement, that may result from striking from any of the provisions of this Agreement, or any specification, standard or operating procedure prescribed by Dinner MyWay, any portion or portions which a court may hold to be unenforceable in a final decision to which Dinner MyWay is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such a court order.

Section 17.6 Waivers. The failure or delay of any Party at any time to require performance by another Party of any provision of this Agreement, even if known, shall not affect the right of such Party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any Party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any Party in any circumstance shall, of itself, entitle such Party to any other or further notice or demand in similar or other circumstances.

Section 17.7 Enforcement Costs. If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such Party or Parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges billed by the attorney to the prevailing party.

Section 17.8 Specific Performance. Franchisee acknowledges that Dinner MyWay will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by Franchisee of any provision of this Agreement, then Dinner MyWay shall be entitled, in addition to all other rights or remedies, to an injunction restraining such breach, without being required to show any actual damage or to post an injunction bond, and/or to a decree for specific performance of the provisions of this Agreement.

Section 17.9 Jurisdiction and Venue. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the State of California. Each Party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Service of any court paper may be affected on such Party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedure or local rules.

Section 17.10 Remedies Cumulative. Except as otherwise expressly provided in this Agreement, no remedy in this Agreement conferred upon any Party is intended to be exclusive of

any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

Section 17.11 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Confirmation of execution by electronic transmission of a facsimile signature page shall be binding upon any party so confirming.

Section 17.12 **Consents, Approvals and Satisfaction.** All consents or approvals required of Dinner MyWay shall not be binding upon Dinner MyWay unless the consent or approval is in writing and signed by the President or Vice President of Dinner MyWay. No other officer, employee or agent of Dinner MyWay shall have the authority to execute any consent or approval on behalf of Dinner MyWay. Dinner MyWay's consent or approval, whenever required, may be withheld if any default by Franchisee exists under this Agreement, or unless this Agreement expressly states otherwise, for any other reason in the sole discretion of Dinner MyWay. Anytime the satisfaction of Dinner MyWay is required pursuant to this Agreement, unless this Agreement expressly states otherwise such satisfaction shall be determined in the sole discretion of Dinner MyWay.

Section 17.13 **Governing Law.** This Agreement and all transactions contemplated by this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

Section 17.14 **Preparation of Agreement.** This Agreement shall not be construed more strongly against any Party regardless of who is responsible for its preparation. The Parties acknowledge each contributed and is equally responsible for its preparation.

Section 17.15 **Survival.** All covenants, agreements, representations and warranties made in this Agreement or otherwise made in writing by any Party pursuant hereto that, by their nature, are intended to survive the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

Section 17.16 **Third Parties.** Unless expressly stated in this Agreement to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

Section 17.17 **Right of Performance.** In the event that Franchisee shall default in performing any of its obligations under this Agreement, Dinner MyWay shall have the right (but not the obligation) to perform Franchisee's obligations and shall be reimbursed by Franchisee for

the actual costs of performing Franchisee's obligations plus ten percent (10%) as an administrative fee.

Section 17.18 **Waiver of Warranties.** Dinner MyWay makes no warranties, express or implied, nor any representation whatsoever other than as expressly set forth in this Agreement. Franchisee warrants and represents to Dinner MyWay that Franchisee and all partners or shareholders or members in a corporate franchisee have the full right, ability and authorization to enter into this Agreement, and that no such person or entity is a party to any agreement which might interfere with the performance of this Agreement, and that entering into this Agreement shall not in any way interfere with or constitute a breach or default of any prior existing contracts to which Franchisee or any partner, shareholder, or member is a party. The breach or default of any or all of these warranties shall be cause for immediate termination of this Agreement by Dinner MyWay. Franchisee further agrees to defend, indemnify and hold harmless Dinner MyWay, its officers, directors, agents and employees from any and all claims, demands, suits, expenses, costs, attorneys' fees, judgments or other charges incurred by Dinner MyWay by reason of reliance on these warranties.

Section 17.19 **Exhibits.** Each party shall deliver to the other, copies of all relevant agreements, instruments and documents relating to the information on any exhibits to this Agreement upon proper notice, provided such copies are available to or in the possession of such party. Such attachments, however, will not take the place of information otherwise required on such exhibits. Each exhibit to this Agreement is made a part of this Agreement.

Section 17.20 **Acknowledgments of Franchisee.**

(a) **Dinner MyWay Reserves Certain Rights.** Franchisee acknowledges that Dinner MyWay and its subsidiaries and affiliates have certain rights reserved to them to (i) grant licenses and rights to others, which may or may not be similar to the license and rights conveyed under this Agreement, (ii) to market Dinner MyWay-approved products, and (iii) to otherwise use Dinner MyWay's Proprietary Marks and System as set forth in this Agreement.

(b) **Franchisee has had Opportunity to Conduct Due Diligence.** Franchisee acknowledges that, prior to the execution of this Agreement, Franchisee has had the opportunity to contact existing Franchisees of Dinner MyWay and/or managers and employees of existing company-owned Dinner MyWay stores. Franchisee acknowledges that Franchisee also had the opportunity to independently investigate, analyze and construe both the business opportunity being offered hereunder and the terms and provisions of this Agreement itself, utilizing the services of such independent attorneys, accountants, or other advisers as Franchisee so elects.

(c) **Receipt of Agreement and UFOC.** The undersigned acknowledges receipt of this Agreement, with all blanks completed and with any amendments and exhibits at least ten (10) business days prior to execution of this Agreement. In addition, the undersigned acknowledges receipt of Dinner MyWay's Uniform Franchise Offering Circular at least ten (10) business days prior to the execution of this Agreement or Franchisee's payment of any monies to Dinner MyWay, refundable or otherwise.

(d) NO REPRESENTATIONS MADE TO FRANCHISEE. FRANCHISEE ACKNOWLEDGES THAT NO REPRESENTATIONS, PROMISES, INDUCEMENTS, GUARANTEES OR WARRANTIES OF ANY KIND WERE MADE BY OR ON BEHALF OF DINNER MYWAY WHICH HAVE LED FRANCHISEE TO ENTER INTO THIS AGREEMENT. FRANCHISEE UNDERSTANDS THAT WHETHER FRANCHISEE SUCCEEDS IN THE DEVELOPMENT OF A FRANCHISE IS DEPENDENT UPON FRANCHISEE'S EFFORTS, BUSINESS JUDGMENTS, THE PERFORMANCE OF FRANCHISEE'S EMPLOYEES, MARKET CONDITIONS AND VARIABLE FACTORS BEYOND THE CONTROL OR INFLUENCE OF DINNER MYWAY. FRANCHISEE FURTHER UNDERSTANDS THAT SOME FRANCHISEES ARE MORE, OR LESS SUCCESSFUL THAN OTHER FRANCHISEES, AND THAT DINNER MYWAY HAS MADE NO REPRESENTATION THAT FRANCHISEE WILL DO AS WELL AS ANY OTHER FRANCHISEE.

Section 17.21 Modification of Manuals. FRANCHISEE RECOGNIZES AND AGREES THAT, FROM TIME TO TIME, DINNER MYWAY MAY REASONABLY MAKE ADDITIONS, DELETIONS AND CHANGES TO THE DINNER MYWAY OPERATING MANUALS. FRANCHISEE AGREES TO ACCEPT, AND BE BOUND BY, ANY SUCH ADDITIONS, DELETIONS AND CHANGES AS IF THEY WERE PART OF THIS AGREEMENT AT THE TIME OF EXECUTION OF THIS AGREEMENT. FRANCHISEE WILL MAKE SUCH EXPENDITURES IN CONNECTION WITH SUCH ADDITIONS, DELETIONS AND) CHANGES TO THE SYSTEM AS DINNER MYWAY MAY REQUIRE FROM TIME TO TIME. FRANCHISEE AGREES THAT SUCH REVISIONS MAY BE MATERIAL IN THAT THEY MAY HAVE AN EFFECT ON THE OPERATION OF FRANCHISEE'S BUSINESS.

Section 17.22 Entire Agreement. This Agreement, its exhibits and all other written agreements related hereto and expressly referenced in this Agreement, represent the entire understanding and agreement between the Parties with respect to the subject matter of this Agreement, and supersede all other negotiations, understandings and representations (if any) made by and between the Parties. No representations, inducements, promises or agreements, oral or otherwise, if any, not embodied in this Agreement shall be of any force and effect.

[Signature Page Immediately Follows]

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

FRANCHISEE:

Insert Name of Entity or Corporation, if any

By: _____
Signature of Franchisee

Name: _____
Print Name of Franchisee

Title: _____
Print Title (i.e. President/Individual)

If more than one Franchisee:

Insert Name of Entity or Corporation, if any

By: _____
Signature of Franchisee

Name: _____
Print Name of Franchisee

Title: _____
Print Title (i.e. President/Individual)

Insert Name of Entity or Corporation, if any

By: _____
Signature of Franchisee

Name: _____
Print Name of Franchisee

Title: _____
Print Title (i.e. President/Individual)

DINNER MYWAY, INC.,
a California corporation

By: _____

Name: _____

Its: _____