

business interruption/extra expense exposures. The policy or policies shall value property (real and personal) on a new replacement cost basis without deduction for depreciation and the amount of insurance shall not be less than ninety percent (90%) of the full replacement value of the Restaurant, its furniture, fixtures, equipment, and stock (real and personal property). Any deductibles contained in such policy shall be subject to review and approval by Franchisor.

12.1.6 Products liability insurance in an amount not less than One Million Dollars (\$1,000,000), which policy shall be considered primary.

12.1.7 Business interruption insurance to cover at least franchisee's obligations with respect to leases, royalties, advertising fund obligations, fixed costs, and other recurring expenses for a period of not less than six (6) months following an interruption to the business' operation.

12.1.8 Any other insurance coverage that is required by federal, state, or municipal law.

12.2 All policies listed in Section 12.1 above (unless otherwise noted below) shall contain such endorsements as shall, from time to time, be provided in the Manuals. All policies shall waive subrogation as between Franchisor (and its insurance carriers) and Franchisee (and its insurance carriers).

12.3 In the event of cancellation, material change, or non-renewal of any policy, sixty (60) days' advance written notice must be provided to Franchisor in the manner provided in Section 21 below.

12.4 In connection with all significant construction, reconstruction, or remodeling of the Restaurant during the term of this Agreement, Franchisee will cause the general contractor, its subcontractors, and any other contractor, to effect and maintain at general contractor's and all other contractor's own expense, such insurance policies and bonds with such endorsements as are set forth in the Manuals; all written by insurance or bonding companies approved by Franchisor, having a rating as set forth in Section 12.1 above.

12.5 Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 18.4 below.

12.6 All public liability and property damage policies shall list Franchisor as an additional named insured, and shall also contain a provision that Franchisor, although named as an insured, shall nevertheless be entitled to recover under said policies on any loss occasioned to Franchisor or its servants, agents, or employees by reason of the negligence of Franchisee or its servants, agents, or employees.

12.7 At least thirty (30) days prior to the time any insurance is first required to be carried by Franchisee, and thereafter at least thirty (30) days prior to the expiration of any such

policy, Franchisee shall deliver to Franchisor, certificates of insurance evidencing the proper coverage with limits not less than those required hereunder. All certificates shall expressly provide that no less than thirty (30) days' prior written notice shall be given Franchisor in the event of material alteration to, cancellation, or non-renewal of the coverages evidenced by such certificates. Further certificates evidencing the insurance required by Section 12.1 above shall name Franchisor, and each of its affiliates, directors, agents, and employees as additional insureds, and shall expressly provide that any interest of same therein shall not be affected by any breach by Franchisee of any policy provisions for which such certificates evidence coverage.

12.8 In addition to its obligations under Section 12.7 above, on the first anniversary of the Effective Date, and on each subsequent anniversary thereof during the term of this Agreement and any renewal hereof, Franchisee shall provide Franchisor with proof of insurance evidencing the proper coverage with limits not less than those required hereunder, in such form as Franchisor may reasonably require.

12.9 The requirements of this Section 12 with respect to insurance shall not be reduced, diminished, eroded, or otherwise affected by insurance that Franchisee carries (and/or claims made under that insurance) for other businesses, included but not limited to other Restaurants operated by franchisee (and/or its affiliates) under the System.

12.10 Franchisor shall have the right, from time to time, to make such changes in minimum policy limits and endorsements as it may determine; provided, however, all changes shall apply to all franchisees of Franchisor who are similarly situated.

13 TRANSFER OF INTEREST

13.1 Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations under this Agreement to any person or legal entity, and any assignee of Franchisor shall become solely responsible for all obligations of Franchisor under this Agreement from the date of assignment.

13.2 If Franchisee is a corporation, limited liability company, partnership, or limited liability partnership, each principal of Franchisee ("**Principal**"), and the interest of each Principal in Franchisee, is identified in Exhibit B hereto. Franchisee represents and warrants that its owners are as set forth on Exhibit B attached to this Agreement, and covenants that it will not permit the identity of such owners, or their respective interests in Franchisee, to change without complying with this Agreement. Franchisor shall have the right to designate any person or entity which owns a direct or indirect interest in Franchisee as a Principal, and Exhibit B shall be so amended automatically upon notice thereof to Franchisee.

13.3 Franchisor shall have a continuing right to designate as a Principal any person or entity that owns a direct or indirect interest in Franchisee.

13.4 Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted this franchise in

reliance on Franchisee's or Franchisee's Principals' business skill, financial capacity, and personal character. Accordingly:

13.4.1 Franchisee shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber: (a) the rights and obligations of Franchisee under this Agreement; or (b) any material asset of Franchisee or the Restaurant.

13.4.2 If Franchisee is a corporation or limited liability company, Franchisee shall not, without the prior written consent of Franchisor, issue any voting securities or securities convertible into voting securities, and the recipient of any such securities shall become a Principal under this Agreement, if so designated by Franchisor.

13.4.3 If Franchisee is a partnership or limited partnership, the partners of the partnership shall not, without the prior written consent of Franchisor, admit additional general partners, remove a general partner, or otherwise materially alter the powers of any general partner. Each general partner shall automatically be deemed a Principal of Franchisee.

13.4.4 A Principal shall not, without the prior written consent of Franchisor, transfer, pledge or otherwise encumber any interest of the Principal in Franchisee as shown in Exhibit B.

13.5 Franchisor shall not unreasonably withhold any consent required by Section 13.4 above; provided, that if Franchisee proposes to transfer its obligations hereunder or any material asset, or if a Principal proposes to transfer any direct or indirect interest in Franchisee, Franchisor shall have the right to require any or all of the following as conditions of its approval:

13.5.1 The transferor shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor and its affiliates, successors, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in their corporate and individual capacities including, without limitation, claims arising under this Agreement, any other agreement between Franchisee and Franchisor or its affiliates, and federal, state, and local laws and rules;

13.5.2 The transferee of a Principal shall be designated as a Principal and each transferee who is designated a Principal shall enter into a written agreement, in a form satisfactory to Franchisor, agreeing to be bound as a Principal under the terms of this Agreement as long as such person or entity owns any interest in Franchisee; and, if the obligations of Franchisee were guaranteed by the transferor, the Principal shall guarantee the performance of all such obligations in writing in a form satisfactory to Franchisor;

13.5.3 Franchisee's new Principals (that is, the individuals who will run the business after the transfer(s)) shall meet Franchisor's educational, managerial, and business standards; each shall possess a good moral character, business reputation, and credit rating; have the aptitude and ability to operate the Restaurant, as may be evidenced by prior related business experience or otherwise; and have adequate financial resources and capital to operate the Restaurant;

13.5.4 If a proposed transfer would result in a change in control of Franchisee, at Franchisor's option, Franchisee shall execute, for a term ending on the expiration date of this Agreement the form of franchise agreement then being offered to new System franchisees, and such other ancillary agreements required by Franchisor for the business franchised hereunder, which agreements shall supersede this Agreement and its ancillary documents in all respects, and the terms of which may differ from the terms of this Agreement including, without limitation, a higher royalty and advertising fee;

13.5.5 If so requested by Franchisor, Franchisee, at its expense, shall upgrade the Restaurant to conform to the then-current standards and specifications of new restaurants then-being established in the System, and shall complete the upgrading and other requirements set forth in Section 5.10 above within the time specified by Franchisor;

13.5.6 All monetary obligations of Franchisee hereunder shall be paid in full on a current basis, and Franchisee must not be otherwise in default of any of its obligations hereunder including, without limitation, its reporting obligations;

13.5.7 The transferor shall remain liable for all of the obligations to Franchisor in connection with the Restaurant that arose prior to the effective date of the transfer, and any covenants that survive the termination or expiration of this Agreement, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

13.5.8 At Franchisee's expense, one (1) Principal designated by Franchisor to be a new Operating Partner shall successfully complete (to Franchisor's satisfaction) all training programs required by Franchisor upon such terms and conditions as Franchisor may reasonably require (and while Franchisor will not charge a fee for attendance at such training programs, the transferee shall be responsible for the salary and all expenses of the person who attends training);

13.5.9 Franchisee shall pay Franchisor a transfer fee of the greater of: (i) Ten Thousand Dollars (\$10,000); or (ii) two percent (2%) of the total selling price paid by transferee; to compensate Franchisor for Franchisor's legal, accounting, training, and other expenses incurred in connection with the transfer.

13.5.10 The transferor must acknowledge and agree that the transferor shall remain bound by the covenants contained in Sections 16.2 and 16.3 below.

13.6 Right of First Refusal.

13.6.1 If Franchisee or any Principal desires to accept any *bona fide* offer from a third party to purchase Franchisee, any material assets of Franchisee, or any direct or indirect interest in Franchisee, Franchisee or such Principal shall promptly notify Franchisor of such offer and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within thirty (30) days after receipt of all such information, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. If

Franchisor elects to purchase the seller's interest, the closing on such purchase shall occur within thirty (30) days from the date of notice to the seller of the election to purchase by Franchisor.

13.6.2 Any material change in the terms of the offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of the third party's initial offer. Failure of Franchisor to exercise the option afforded by this Section 13.6 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 13, with respect to a proposed transfer.

13.6.3 In the event the consideration, terms, and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms, and/or conditions, then Franchisor may purchase the interest proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms, and/or conditions offered by the third party, they must attempt to appoint a mutually-acceptable independent appraiser to make a binding determination. If the parties are unable to agree upon one (1) independent appraiser, then an independent appraiser shall be promptly designated by Franchisor and another independent appraiser shall be promptly designated by Franchisee, which two (2) appraisers shall, in turn, promptly designate a third appraiser; all three (3) appraisers shall promptly confer and reach a single determination, which determination shall be binding upon Franchisor and Franchisee. The cost of any such appraisal shall be shared equally by Franchisor and Franchisee. If Franchisor elects to exercise its right under this Section 13.6, Franchisor shall have the right to set off all amounts due from Franchisee, and one-half (½) of the cost of the appraisal, if any, against any payment to the seller.

13.7 Upon the death of a Principal, the deceased's executor, administrator, or other personal representative shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the death. If no personal representative is designated or appointed or no probate proceedings are instituted with respect to the deceased's estate, then the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee shall transfer the deceased's interest to a third party approved by Franchisor within twelve (12) months after the deceased's death.

13.8 Upon the permanent disability of any Principal with a controlling interest in Franchisee, Franchisor shall have the right to require such interest to be transferred to a third party in accordance with the conditions described in this Section 13 within six (6) months after notice to Franchisee. "**Permanent Disability**" shall mean any physical, emotional, or mental injury, illness, or incapacity that would prevent a person from performing the obligations set forth in this Agreement for at least six (6) consecutive months and from which condition recovery within six (6) consecutive months from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor upon examination of such person or, if such person refuses to be examined, then such person shall automatically be deemed permanently disabled for the purposes of this Section 13.8 as of the date of refusal. Franchisor shall pay the cost of the required examination.

13.9 Upon the death or permanent disability any Principal of Franchisee, such person or his representative shall promptly notify Franchisor of such death or claim of permanent disability. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as any *inter vivos* transfer.

13.10 Franchisor's consent to a transfer which is the subject of this Section 13 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferor or transferee.

13.11 If Franchisee or any person holding any interest (direct or indirect) in Franchisee becomes a debtor in a proceeding under the U.S. Bankruptcy Code or any similar law in the U.S. or elsewhere, it is the parties' understanding and agreement that any transfer of Franchisee, Franchisee's obligations and/or rights hereunder, any material assets of Franchisee, or any indirect or direct interest in Franchisee shall be subject to all of the terms of this Section 13, including without limitation the terms of Sections 13.4, 13.5, and 13.6 above.

13.12 All materials for an offering of stock or partnership interests in Franchisee or any affiliate of Franchisee which are required by federal or state law shall be submitted to Franchisor for review as described below before such materials are filed with any government agency. Any materials to be used in any exempt offering shall be submitted to Franchisor for such review prior to their use. No offering by Franchisee or any affiliate of Franchisee shall imply (by use of the Proprietary Marks or otherwise) that Franchisor is participating in an underwriting, issuance, or offering of the securities of Franchisee or Franchisee's affiliates; and Franchisor's review of any offering shall be limited solely to the relationship between Franchisor and Franchisee and any subsidiaries and affiliates, if applicable. Franchisor may, at its option, require the offering materials to contain a written statement prescribed by Franchisor concerning the limitations stated in the preceding sentence. Franchisee (and the offeror if not Franchisee), the Principals, and all other participants in the offering must fully indemnify Franchisor, its subsidiaries, affiliates, successor, and assigns, and their respective directors, officers, shareholders, partners, agents, representatives, servants, and employees in connection with the offering. For each proposed offering, Franchisee shall pay Franchisor a non-refundable fee of Seven Thousand Five Hundred Dollars (\$7,500) or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses (including legal and accounting fees) for reviewing the proposed offering. Franchisee shall give Franchisor written notice at least thirty (30) days before the date that any offering or other transaction described in this Section 13.13 commences. Any such offering shall be subject to all of the other provisions of this Section 12, including without limitation the terms set forth in Sections 13.4, 13.5, 13.6; and further, without limiting the foregoing, it is agreed that any such offering shall be subject to Franchisor's approval as to the structure and voting control of the offeror (and Franchisee, if Franchisee is not the offeror) after the financing is completed.

14 DEFAULT AND TERMINATION

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

14.2 Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Franchisee any opportunity to cure the default, effective immediately upon the delivery of written notice to Franchisee by Franchisor (in the manner set forth under Section 21 below), upon the occurrence of any of the following events:

14.2.1 If Franchisee fails to construct and open the Restaurant within the time limits as provided in Section 5.3 above, and within the requirements set forth in Section 5.4.2 above;

14.2.2 If Franchisee at any time ceases to operate or otherwise abandons the Restaurant for two (2) consecutive business days, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Restaurant is located; provided, however, that if, through no fault of Franchisee, the premises are damaged or destroyed by an event such that repairs or reconstruction cannot be completed within ninety (90) days thereafter, then Franchisee shall have thirty (30) days after such event in which to apply for Franchisor's approval to relocate and/or reconstruct the premises, which approval shall not be unreasonably withheld;

14.2.3 If Franchisee or any Principal is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or Franchisor's interest therein;

14.2.4 If a threat or danger to public health or safety results from the construction, maintenance, or operation of the Restaurant;

14.2.5 If Franchisee or any Principal purports to transfer any rights or obligations under this Agreement or any interest to any third party in a manner that is contrary to the terms of Section 13 above;

14.2.6 If Franchisee fails to comply with the covenants in Section 16.2 below or fails to timely obtain execution of the covenants required under Section 16.5 below;

14.2.7 If, contrary to the terms of Sections 7 or 8 above, Franchisee discloses or divulges the contents of the Manuals or other confidential information provided to Franchisee by Franchisor;

14.2.8 If an approved transfer of an interest in Franchisee is not effected within a reasonable time, as required by Section 13.9 above;

14.2.9 If Franchisee knowingly maintains false books or records, or submits any false reports (including, but not limited to, information provided as part of Franchisee's application for this franchise) to Franchisor;

14.2.10 If Franchisee commits two (2) or more defaults under this Agreement in any fifty-two (52) week period, whether or not each such default has been cured after notice;

14.2.11 If Franchisee sells products not previously approved by Franchisor, or purchases any product from a supplier not previously approved by Franchisor;

14.2.12 If Franchisee engages in any conduct or practice that is fraudulent, unfair, unethical, or a deceptive practice; and/or

14.2.13 If Franchisee makes any unauthorized or improper use of the Proprietary Marks, or if Franchisee or a Principle of Franchisee fails to utilize the Proprietary Marks solely in the manner and for the purposes directed by Franchisor, or directly or indirectly contests the validity of Franchisor's ownership of the Proprietary Marks or its right to use and to license others to use the Proprietary Marks.

14.3 Except as otherwise provided in Sections 14.1 and 14.2 above, upon any other default by Franchisee of its obligations hereunder, Franchisor may terminate this Agreement only by giving written notice of termination (in the manner set forth under Section 21 below) setting forth the nature of such default to Franchisee at least thirty (30) days prior to the effective date of termination; provided, however, that Franchisee may avoid termination by immediately initiating a remedy to cure such default, curing it to Franchisor's satisfaction, and by promptly providing proof thereof to Franchisor, all within the thirty (30) day period. 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 thirty (30) day period or such longer period as applicable law may require.

14.4 If, for any reason, the Agreement is not terminated pursuant to this Section 14, and the Agreement is assumed, or assignment of the same to any person or entity who has made

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

14.5 If Franchisor is entitled to terminate this Agreement in accordance with Sections 14.2 or 14.3 above, Franchisor shall have the right to undertake any one or more of the following actions instead of terminating this Agreement:

14.5.1 Franchisor may terminate or modify any rights that Franchisee may have with respect to "exclusivity" in the Protected Territory, as granted under Section 1.3 above, effective ten (10) days after delivery of written notice thereof to Franchisee; and/or

14.5.2 Franchisor may modify, or eliminate completely, the Protected Territory described in Section 1.3 above.

14.6 If any of such rights, options, arrangements, or areas are terminated or modified in accordance with Section 14.5, such action shall be without prejudice to Franchisor's right to terminate this Agreement in accordance with Sections 14.2 or 14.3 above, and/or to terminate any other rights, options or arrangements under this Agreement at any time thereafter for the same default or as a result of any additional defaults of the terms of this Agreement.

14.7 Franchisee shall pay Franchisor all damages, costs, and expenses, including but not limited to reasonable attorneys' fees, incurred by Franchisor as a result of any default of Franchisee under this Agreement (in addition to other remedies that Franchisor may have).

15 OBLIGATIONS UPON TERMINATION OR EXPIRATION

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

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

15.2 Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures and techniques associated with the System, the mark "Einstein Bros Bagels" and all other Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System, as well as all Albert Einstein Indicia, Albert Einstein Publicity Symbols, and/or Einstein Alone. In particular, Franchisee shall cease to use, without limitation, all signs, advertising materials, displays, stationery, forms, and any other articles that display the Proprietary Marks, as well as any of the Albert Einstein Indicia, Albert Einstein Publicity Symbols, and/or Einstein Alone.

15.3 Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the mark "Einstein Bros Bagels" or "Einstein Bros", and all other Proprietary Marks, and/or any other service mark or trademark of Franchisor, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within five (5) days after termination or expiration of this Agreement.

15.4 In connection with Franchisor's consent to the Approved Location pursuant to Sections 1.2 and 5 above, Franchisee shall execute, and cause the landlord to execute, the Lease Rider appended hereto as Exhibit E.

15.4.1 If Franchisor does not elect or is unable to exercise any option it may have to acquire the lease or sublease for the premises of the Restaurant, or otherwise acquire the right to occupy the premises, Franchisee shall make such modifications or alterations to the premises operated hereunder (including, without limitation, the changing of the telephone number) immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of said premises from that of other Restaurants, and shall make such specific additional changes thereto as Franchisor may reasonably request for that purpose. In addition, Franchisee shall cease use of all telephone numbers and any domain names, websites, e-mail addresses, and any other identifiers, whether or not authorized by Franchisor, used by Franchisee while operating the Restaurant, and shall promptly execute such documents or take such steps necessary to remove reference to the Restaurant from all trade or business telephone directories, including "yellow" and "white" pages, or at Franchisor's request transfer same to Franchisor.

15.4.2 If Franchisee fails or refuses to comply with the requirements of this Section 15.4, Franchisor (or its designee) shall have the right to enter upon the premises of the Restaurant, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

15.5 Franchisee agrees, if it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute Franchisor's rights in and to the Proprietary Marks, and further agrees not to utilize any designation of origin,

description, trademark, service mark, or representation which suggests or represents a present or past association or connection with Franchisor, the System, or the Proprietary Marks.

15.6 Franchisee shall promptly pay all sums owing to Franchisor and its subsidiaries and affiliates (regardless whether those obligations arise under this Agreement or otherwise). In the event of termination for any default of Franchisee, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of the default.

15.7 Franchisee shall pay Franchisor all damages, costs, and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default of Franchisee under this Agreement and/or subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 15.

15.8 Franchisee shall immediately deliver to Franchisor the Standards Manual, the Manuals and all other manuals, records, and instructions containing confidential information (including without limitation any copies thereof, even if such copies were made in violation of this Agreement), all of which are acknowledged to be the property of Franchisor.

15.9 Franchisor shall have the option, to be exercised within thirty (30) days after termination or default under prime lease, to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, supplies, or inventory of Franchisee related to the operation of the Restaurant, at the lesser of Franchisee's cost or fair market value. The cost shall be determined based upon a five (5) year straight-line depreciation of original costs. For equipment that is five (5) or more years old, the parties agree that fair market value shall be deemed to be ten percent (10%) of the equipment's original cost. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee.

15.10 In order to preserve the goodwill of the System following termination, Franchisor (or its designee) shall have the right to enter the Restaurant (without liability to Franchisee, Franchisee's Principals, or otherwise) for the purpose continuing the Restaurant's operation and maintaining the goodwill of the business.

16 COVENANTS

16.1 Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee (or one (1) designated management employee who will assume primary responsibility for the franchise operations and shall have been previously approved in writing by Franchisor) shall devote full time, energy, and best efforts to the management and operation of the Restaurant.

16.2 Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing

methods and techniques of Franchisor and the System. Franchisee covenants that during the term of this Agreement, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

16.2.1 Divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with Franchisor's Proprietary Marks and the System.

16.2.2 Unless released in writing by the employer, employ or seek to employ any person who is at that time employed by Franchisor or by any other franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave his or her employment.

16.3 Franchisee covenants that, except as otherwise approved in writing by Franchisor, it shall not, during the term of this Agreement, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant; and shall not for a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 13 above; (b) expiration or termination of this Agreement (regardless of the cause for termination); or (c) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Section 16.3; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity), own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant and which business is, or is intended to be, located within a five (5) mile radius of either the Approved Location or any other Restaurant operating at the time that the obligations under this Section 16.3 commence. As used in this Agreement, the term "same as or similar to the Restaurant" shall mean any other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

16.4 Section 16.3 above shall not apply to ownership by Franchisee of less than five percent (5%) beneficial interest in the outstanding equity securities of any publicly-held corporation. As used in this Agreement, the term "publicly-held corporation" shall be deemed to refer to a corporation which has securities that have been registered under the Securities Exchange Act of 1934.

16.5 Franchisee shall require and obtain execution of covenants similar to those set forth in Sections 6.3.3, 8, 13, 15, and this Section 16 (as modified to apply to an individual) from any or all of the following persons: Franchisee's Restaurant general managers, supervisors, and Principals. The covenants required by this Section 16.5 shall be in the form provided in Exhibit F to this Agreement. Failure by Franchisee to obtain execution of a covenant required by this Section 16.5 shall constitute a default under Section 14.2.6 above.

16.6 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Section 16 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 16.

16.7 Franchisee understands and acknowledges that Franchisor shall have the right to reduce the scope of any covenant set forth in Sections 16.2 and 16.3 in this Agreement, or any portion thereof, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 21 below.

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

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

16.9.1 Franchisee and its owners certify that none of them, their respective employees, or anyone associated with Franchisee is listed in the Annex to Executive Order 13224 (which can be accessed at <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>). Franchisee agrees not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

16.9.2 Franchisee certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its owners, their employees, or anyone associated with Franchisee to be listed in the Annex to Executive Order 13224.

16.9.3 Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti-Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this Section 16.9.

16.9.4 Any misrepresentation under this Section or any violation of the Anti-Terrorism Laws by Franchisee, its owners, agents, its employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered

with Franchisor or any of Franchisor's affiliates, in accordance with the terms of Section 14.1 of this Agreement.

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

16.10 Franchisee acknowledges that Franchisee's violation of the terms of this Section 16 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee accordingly consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section 16.

17 TAXES, PERMITS, AND INDEBTEDNESS

17.1 Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the business franchised under this Agreement. Franchisee shall pay Franchisor an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the tax is credited against income tax otherwise payable by Franchisor.

17.2 In the event of any bona fide dispute as to Franchisee's liability for taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with procedures of the taxing authority or applicable law; however, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the premises of the Restaurant, or any improvements thereon.

17.3 Franchisee shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the business franchised under this Agreement, including, without limitation, licenses to do business, health certificates, food handler's permits, fictitious name registrations, sales tax permits, and fire clearances. To the extent that the requirements of said laws are in conflict with the terms of this Agreement, the Manuals, or other instructions of Franchisor, Franchisee shall: (a) comply with said laws; and (b) immediately provide written notice describing the nature of such conflict to Franchisor.

17.4 Franchisee shall notify Franchisor in writing within five (5) days of receipt of notice of any health or safety violation, the commencement of any action, suit, or proceeding, and of the issuance of any order, writ, injunction, award, or decree of any court, agency, or other governmental instrumentality, or within five (5) days occurrence of any accident or injury which may adversely affect the operation of the Restaurant or the financial condition of Franchisee, or give rise to liability or a claim against Franchisee or Franchisor.

18 INDEPENDENT CONTRACTOR AND INDEMNIFICATION

18.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that Franchisee shall be an independent contractor; and, that nothing in this Agreement is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, or servant of the other for any purpose whatsoever.

18.2 At all times during the term of this Agreement and any extensions hereof, Franchisee shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from Franchisor. Franchisee agrees to take such action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Approved Location, the content of which Franchisor reserves the right to specify.

18.3 It is understood and agreed that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty, or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall Franchisor be liable by reason of any act or omission of Franchisee in its conduct of the Restaurant or for any claim or judgment arising therefrom against Franchisee or Franchisor.

18.4 Franchisee shall indemnify and hold Franchisor, Franchisor's owners and affiliates, and their respective officers, directors, employees, and agents harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Restaurant (notwithstanding any claims that Franchisor or Franchisor's owners and affiliates, or their respective officers, directors, employees, or agents, are or were negligent), as well as the costs, including attorneys' fees, of defending against them.

19 FORCE MAJEURE.

19.1 Neither party shall be responsible to the other for non-performance or delay in performance occasioned by causes beyond its control, including without limiting the generality of the foregoing: (a) acts of God; (b) acts of war, terrorism, or insurrection; (c) strikes, lockouts, labor actions, boycotts, floods, fires, hurricanes, tornadoes, and/or other casualties; and/or (d) the inability of Franchisor and/or its affiliates or suppliers to manufacture, purchase, and/or cause delivery of any Products used in the operation of the Restaurant.

19.2 The inability of either party to obtain and/or remit funds shall be considered within control of such party for the purpose of Section 19.1 above. If any such delay occurs, any applicable time period shall be automatically extended for a period equal to the time lost; provided, however, that the party affected makes reasonable efforts to correct the reason for such delay and gives to the other party prompt notice of any such delay; and further provided, however, that Franchisee shall remain obligated to promptly pay all fees owing and due to Franchisor hereunder, without any such delay or extension.

20 APPROVALS AND WAIVERS

20.1 Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefor, and such approval or consent must be obtained in writing.

20.2 Franchisee acknowledges and agrees that Franchisor makes no warranties or guarantees upon which Franchisee may rely, and assumes no liability or obligation to Franchisee, by providing any waiver, approval, consent, or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor.

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

21 NOTICES.

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by registered mail, or by other means which affords the sender evidence of delivery, or of rejected delivery, to the respective parties at the addresses shown on the signature page of this Agreement, unless and until a different address has been designated by written notice to the other party. Any notice by a means which affords the sender evidence of delivery, or rejected delivery, shall be deemed to have been given at the date and time of receipt or rejected delivery.

22 ENTIRE AGREEMENT AND AMENDMENT.

This Agreement and the exhibits referred to herein constitute the entire, full, and complete Agreement between Franchisor and Franchisee concerning the subject matter hereof,

and supersede all prior agreements, no other representations having induced Franchisee to execute this Agreement. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change, or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

23 SEVERABILITY AND CONSTRUCTION

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

23.2 Except as expressly provided to the contrary herein, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, and such of Franchisee's and Franchisor's respective successors and assigns as may be contemplated (and, as to Franchisee, permitted) by Section 13 above, any rights or remedies under or by reason of this Agreement.

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

23.4 All captions in this Agreement are intended solely for the convenience of the parties, and none shall be deemed to affect the meaning or construction of any provision hereof.

23.5 All provisions of this Agreement which, by their terms or intent, are designed to survive the expiration or termination of this Agreement, shall so survive the expiration and/or termination of this Agreement.

24 SECURITY INTEREST.

Franchisee hereby grants to Franchisor a security interest in all of Franchisee's interest in all leasehold improvements, furniture, furnishings, fixtures, equipment, inventory, supplies, cash, accounts receivable, and all other tangible and intangible personalty located at or used in connection with the Restaurant, now or hereafter owned, leased or acquired, together with all

attachments, accessions, accessories, additions, substitutions and replacements therefore, and all cash and non-cash proceeds derived from insurance or the disposition of such collateral, to secure payment and performance of all debts, liabilities and obligations of any kind, whenever and however incurred, of Franchisee to Franchisor. Franchisee agrees to execute and deliver to Franchisor in a timely manner, all financing statements and other documents necessary, or reasonably requested by Franchisor, to evidence, perfect and continue the priority of such security interests under the Uniform Commercial Code. For such purposes the address of Franchisee and Franchisor are set forth on the signature page of this Agreement. If Franchisee is in good standing, Franchisor agrees, upon request, to execute subordinations of its security interest to purchase money suppliers, lenders and/or lessors furnishing equipment or financing for the Restaurant.

25 APPLICABLE LAW AND DISPUTE RESOLUTION

25.1 This Agreement takes effect upon its acceptance and execution by Franchisor, and shall be interpreted and construed exclusively under the laws of the State of Colorado, which laws shall prevail in the event of any conflict of law (without regard to, and without giving effect to, the application of Colorado choice-of-law rules); provided, however, that if the covenants in Section 16 of this Agreement would not be enforceable under the laws of Colorado, and the Restaurant is located outside of Colorado, then such covenants shall be interpreted and construed under the laws of the state in which the Restaurant is located. Nothing in this Section 25.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Colorado to which this Agreement would not otherwise be subject.

25.2 Subject to Section 25.3 below, the parties agree that any action brought by Franchisee against Franchisor in any court, whether federal or state, shall be brought within such state and in the judicial district in which Franchisor has its principal place of business. Any action brought by Franchisor against Franchisee in any court, whether federal or state, may be brought within the state and judicial district in which Franchisor has its principal place of business. The parties agree that this Section 25.2 shall not be construed as preventing either party from removing an action from state to federal court; provided, however, that venue shall be as set forth above. Franchisee hereby waives all questions of personal jurisdiction or venue for the purpose of carrying out this provision. Any such action shall be conducted on an individual basis, and not as part of a consolidated, common, or class action.

25.3 Before any party may bring an action in court against the other, the parties must first meet to mediate the dispute (except as otherwise provided below). Any such mediation shall be non-binding and shall be conducted by the American Arbitration Association in accordance with its then-current rules for mediation of commercial disputes. Notwithstanding anything to the contrary, this Section 25.3 shall not bar either party from obtaining injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions, without having to engage in mediation.

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

25.5 Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damages, under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

25.6 Franchisor and Franchisee irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either of them against the other, whether or not there are other parties in such action or proceeding.

25.7 Any and all claims and actions arising out of or relating to this Agreement, the relationship of Franchisee and Franchisor, or Franchisee's operation of the Restaurant, brought by any party hereto against the other, shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or, it is expressly acknowledged and agreed by all parties, such claim or action shall be irrevocably barred.

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

25.9 Franchisee shall pay to Franchisor all damages, costs and expenses (including without limitation reasonable attorneys' fees) that Franchisor incurs subsequent to the termination or expiration of the franchise granted under this Agreement in: (a) obtaining injunctive or other relief for the enforcement of any provisions of this Agreement (including without limitation Sections 8 and 16 above); and/or (b) successfully defending a claim that Franchisor defrauded Franchisee into signing this Agreement, that the provisions of this Agreement are not fair, were not properly entered into, and/or that the terms of this Agreement do not govern the parties' relationship.

26 ACKNOWLEDGMENTS

26.1 Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, recognizes that the business venture contemplated by this Agreement involves business risks, and that its success will be largely dependent upon the ability of Franchisee and if a corporation or a partnership or other business organization, its owners as independent businesspersons. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received from Franchisor or any employee, representative or other party purporting to act on Franchisee's behalf, any warranty, promise or guarantee, express or implied, as to the potential sales volume, profits, or success of the business venture contemplated by this Agreement.

26.2 Franchisee acknowledges that it received a copy of this Agreement, the exhibit(s) hereto, and agreements relating hereto, if any, with all of the blank lines therein filled in, at least five (5) business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it received the uniform franchise offering circular required by the Federal Trade Commission Franchise Rule at least ten (10) business days prior to the date on which this Agreement was executed.

26.3 Franchisee acknowledges that it has read and understood this Agreement, the exhibits hereto, and agreements relating thereto, if any, and that Franchisor has accorded Franchisee ample time and opportunity to consult with advisors of Franchisee's own choosing about the potential benefits and risks of entering into this Agreement.

26.4 Each party represents and warrants to the other party that:

26.4.1 There are no other agreements, court orders, or any other legal obligations that would preclude or in any manner restrict such party from: (a) negotiating and entering into this Agreement; (b) exercising its rights under this Agreement; and/or (c) fulfilling its responsibilities under this Agreement.

26.4.2 It is duly organized, validly existing, and is in good standing under the laws of the state of its incorporation (or organization);

26.4.3 It has taken all corporate actions necessary to enter into the terms of this Agreement and to execute and deliver each of the documents referenced in this Agreement; and

26.4.4 The person(s) signing this Agreement on its behalf are duly authorized to negotiate, execute, and deliver this Agreement on such party's behalf.

26.5 Franchisee acknowledges that it shall have sole and complete responsibility for the choice of the Approved Location; that Franchisor has not (and shall not be deemed to have) and shall not be deemed to have, even by Franchisor's approval of the site that is the Approved Location) given any representation, promise, or guarantee of Franchisee's success at the Approved Location; and that Franchisee shall be solely responsible for its own success at the Approved Location.

26.6 Although Franchisor retains the right to establish and periodically modify System standards, which Franchisee has agreed to maintain in the operation of the Restaurant, Franchisee retains the right and sole responsibility for the day to day management and operation of the Restaurant and the implementation and maintenance of system standards at the Restaurant.

26.7 Franchisee acknowledges and agrees that Franchisor may modify the offer of its franchises to other franchisees in any manner and at any time, which offers and agreements have or may have terms, conditions, and obligations that may differ from the terms, conditions, and obligations in this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly signed and delivered this Agreement in duplicate on the day and year first above written.

Einstein and Noah Corp.
Franchisor

Franchisee Entity

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address for Notices:

Address for Notices:

Einstein and Noah Corp.
1687 Cole Blvd.
Golden, Colorado 80401
Telephone: (303) 568-8000
Fax: (303) 568-8199
Attn: _____

Telephone: _____
Fax: _____
Attn: _____

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT A
GUARANTEE, INDEMNIFICATION, AND ACKNOWLEDGMENT

As an inducement to Einstein and Noah Corp. (“Franchisor”) to execute the Einstein and Noah Corp. Franchise Agreement between Franchisor and _____ (“Franchisee”), dated _____, 200____ (the “Agreement”), the undersigned, jointly and severally, hereby unconditionally guarantee to Franchisor and Franchisor’s successors and assigns that all of Franchisee’s monetary obligations under the Agreement will be punctually paid and performed and that all monetary obligations will be punctually paid and performed.

Upon demand by Franchisor, the undersigned each hereby jointly and severally agree to immediately make each payment required of Franchisee under the Agreement and waive any right to require Franchisor to: (a) proceed against Franchisee for any payment required under the Agreement; (b) proceed against or exhaust any security from Franchisee; (c) pursue or exhaust any remedy, including any legal or equitable relief, against Franchisee; or (d) give notice of demand for payment by Franchisee. Without affecting the obligations of the undersigned under this Guarantee, Franchisor may, without notice to the undersigned, extend, modify, or release any indebtedness or obligation of Franchisee, or settle, adjust, or compromise any claims against Franchisee, and the undersigned each hereby jointly and severally waive notice of same and agree to remain and be bound by any and all such amendments and changes to the Agreement.

The undersigned each hereby jointly and severally agree to defend, indemnify and hold Franchisor harmless against any and all losses, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorney’s fees, reasonable costs of financial and other investigation, court costs, and fees and expenses) resulting from, consisting of, or arising out of or in connection with any failure by Franchisee to perform any obligation of Franchisee under the Agreement, any amendment thereto, or any other agreement executed by Franchisee referred to therein.

The undersigned each hereby jointly and severally acknowledge and expressly agree to be individually bound by all of the covenants contained in Sections 6.3.3, 8, 13, 15, and 16 of the Agreement, and acknowledge and agree that this Guarantee does not grant the undersigned any right to use the “Einstein Bros” marks or system licensed to Franchisee under the Agreement.

This Guarantee shall terminate upon the termination or expiration of the Agreement, except that all obligations and liabilities of the undersigned which arose from events which occurred on or before the effective date of such termination shall remain in full force and effect until satisfied or discharged by the undersigned, and all covenants which by their terms continue in force after the expiration or termination of the Agreement shall remain in force according to their terms. Upon the death of an individual guarantor, the estate of such guarantor shall be bound by this Guarantee, but only for defaults and obligations hereunder existing at the time of death; and the obligations of the other guarantors will continue in full force and effect.

Unless specifically stated otherwise, the terms used in this Guarantee shall have the same meaning as in the Agreement, and shall be interpreted and construed in accordance with Section 25 of the Agreement. This Guarantee shall be interpreted and construed under the laws of the State of Colorado. In the event of any conflict of law, the laws of the State of Colorado shall prevail (without regard to, and without giving effect to, the application of Colorado conflict of law rules).

IN WITNESS WHEREOF, each of the undersigned has signed this Guarantee as of the date of the Agreement.

GUARANTOR(S)

(Seal)

Signed: _____
(In his/her individual capacity)

Name: _____

Address: _____

(Seal)

Signed: _____
(In his/her individual capacity)

Name: _____

Address: _____

(Seal)

Signed: _____
(In his/her individual capacity)

Name: _____

Address: _____

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT B
LIST OF PRINCIPALS

Name of Principal	Address	Interest %

Initials

Franchisee

Franchisor

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT C

AUTHORIZATION AGREEMENT FOR PREARRANGED PAYMENTS (DIRECT DEBITS)

(Name of Person or Legal Entity)

(ID Number)

The undersigned depositor ("**Depositor**") ("**Franchisee**") hereby authorizes Einstein and Noah Corp. ("**Franchisor**") to initiate debit entries and/or credit correction entries to the undersigned's checking and/or savings account(s) indicated below and the depository designated below ("**Depository**") ("**Bank**") to debit or credit such account(s) pursuant to Franchisor's instructions.

Depository

Branch

City

State

Zip Code

Bank Transit/ABA Number

Account Number

This authorization is to remain in full and force and effect until sixty days after Franchisor has received written notification from Franchisee of its termination.

Depositor: _____

Signed By: _____

Printed Name: _____

Title: _____

Date: _____

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT D
ADA CERTIFICATION

Einstein and Noah Corp. (“Franchisor”) and _____ (“Franchisee”) are parties to a franchise agreement dated _____, 200____ (the “Franchise Agreement”) for the operation of a Restaurant at _____

(the “Restaurant”). In accordance with Section 5.3 of the Franchise Agreement, Franchisee certifies to Franchisor that, to the best of Franchisee’s knowledge, the Restaurant and its adjacent areas comply with all applicable federal, state and local accessibility laws, statutes, codes, rules, regulations and standards, including but not limited to the Americans with Disabilities Act. Franchisee acknowledges that it is an independent contractor and the requirement of this certification by Franchisor does not constitute ownership, control, leasing or operation of the Restaurant. Franchisee acknowledges that Franchisor has relied on the information contained in this certification. Furthermore, Franchisee agrees to indemnify Franchisor and the officers, directors, and employees of Franchisor in connection with any and all claims, losses, costs, expenses, liabilities, compliance costs, and damages incurred by the indemnified party(ies) as a result of any matters associated with Franchisee’s compliance with the Americans with Disabilities Act, as well as the costs, including attorneys’ fees, related to the same.

Franchisee:

By: _____

Printed Name: _____

Title: _____

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT E
LEASE RIDER

THIS LEASE RIDER is made and entered into _____, 200__ BY AND AMONG _____ (the "Landlord"), _____ (the "Tenant"), and Einstein and Noah Corp., a Delaware corporation whose principal place of business is 1687 Cole Boulevard, Golden, Colorado 80401 ("ENC").

RECITALS:

- A. This Lease Rider supplements and forms part of the attached Lease Agreement between the Landlord and the Tenant dated _____ (the "Lease") for the premises situated at _____ (the "Premises") to be used by the Tenant as an Einstein Bros Restaurant.
- B. This Lease Rider is entered into in connection with ENC's approval of the location of the Premises as an Einstein Bros Restaurant and the grant of a franchise to the Tenant pursuant to a Franchise Agreement dated _____, 200__ (the "Franchise Agreement").
- C. This Lease Rider is intended to provided ENC the opportunity to reserve the Premises as an Einstein Bros Restaurant under the circumstances set out below and to assure the Landlord that ENC exercises the option set out below on the basis that any defaults of the Tenant under the Lease will be cured by ENC before it takes possession of the Premises.
- D. The Landlord agrees that ENC shall have the right but not the obligation to assume the Lease of the Premises on the terms, covenants and conditions contained in this Lease Rider.

THE PARTIES HEREBY AGREE:

1. UPON DEFAULT OF TENANT UNDER THE LEASE

1.1 The Landlord agrees to send to ENC copies of any Notice of Default that are given to the Tenant concurrently with the giving of such Notices to the Tenant. If the Tenant fails to cure any defaults within the period specified within the Notices, the Landlord shall promptly give to ENC further written Notice specifying the defaults that the Tenant has failed to cure. ENC shall have forty-five (45) days following receipt of the second written Notice to exercise its right to enter a new Lease on the same terms as apply to this Deed of Lease by written notice to the Landlord and the Tenant and in the event that ENC does exercise such right, then the circumstances described in clause 1.2 below shall apply.

1.2 The provisions of this clause 1.2 shall take effect if and when ENC exercises its rights pursuant to clause 1.1 above. ENC shall cure the defaults and/or begin paying rent upon the Landlord delivering possession of the Premises to ENC. If it becomes necessary for the Landlord to pursue legal remedies in order to remove the Tenant and deliver possession of the premises, ENC shall, upon written request of the Landlord, pay into the trust account of the Landlord's lawyer to be held upon escrow on an "at call" interest-bearing account, such amounts as are necessary to cure the Tenant's defaults. If the Landlord is

unable to deliver possession of the Premises to ENC within nine (9) months following the date of exercise referred to in clause 1.0 above, ENC shall hereafter have the right, at any time, until the Landlord delivers possession of the Premises, to rescind the option exercise by written notice to the Landlord whereupon all amounts held in escrow including accrued interest shall be returned to ENC.

2. UPON TERMINATION OF THE FRANCHISE AGREEMENT

If the Franchise Agreement is terminated for any reason during the term of the Lease or any extension or renewal of the Lease, and if ENC shall desire to assume the Lease, ENC shall promptly give the Landlord written notice to this effect. Within thirty (30) days after receipt of such notice the Landlord shall give ENC written notice specifying any defaults of the Tenant under the Lease and the provisions of clause 4.3 below shall apply.

3. UPON NON-RENEWAL OF THE LEASE TERM

If the Lease contains term renewal or extension right(s) and if the Tenant allows the term to expire without exercising such right(s), the Landlord shall give ENC written notice to this effect and ENC shall have the option for thirty (30) days following receipt of such notice to exercise the Tenant's renewal or extension right(s) on the same terms and conditions as are contained in this Lease. If ENC elects to exercise such right(s) it shall notify the Landlord in writing whereupon the Landlord and ENC shall promptly execute and exchange an agreement whereby ENC assumes the Lease effective at the date of termination of any holding over period by the Tenant to the effect that such extension or renewal term shall have subtracted from it the number of days constituting such holding over period.

4. ADDITIONAL PROVISIONS

4.1 The Tenant agrees that termination of the Franchise Agreement shall be a default under the Lease. In the event of termination of the Franchise Agreement, or if the Tenant fails to timely cure any defaults under the Lease the Tenant shall within ten (10) days after written demand by ENC, assign all of its right, title and interest in and to the Lease to ENC. If the Tenant fails to do so within the said ten (10) days, the Tenant hereby designates ENC as its agent to execute any and all documents, agreements and to take all action as may be necessary or desirable to effect the assignment of the Lease and the relinquishment of any and all of the Tenant's rights thereunder. The Landlord hereby consents to such assignment subject to ENC executing an assignment of the Lease and curing all defaults of the Tenant under the Lease before taking possession of the Premises. The Tenant further agrees to promptly and peaceably vacate the Premises and to remove its personal property at the written request of ENC. Any property not so removed by the Tenant within ten (10) days following receipt of such written request shall be deemed abandoned by the Tenant and immediately and permanently relinquished to ENC. ENC acknowledges that where ENC enters into an assignment or sub-letting as referred to in clause 4.5 below it will attempt to procure, if the assignee is a company (other than a listed public company) a Deed of Guarantee in customary form approved or prepared by the landlord from the principal shareholders of the assignee company and (if required by the landlord) by the Directors of the assignee company.

4.2 The Tenant shall be and remain liable to the Landlord for all of its obligations under the Lease, notwithstanding any assignment of the Lease to ENC. ENC shall be entitled to recover from the Tenant all amounts it pays to the Landlord to cure the Tenant's defaults under the Lease including interest thereon and ENC's reasonable collection costs.

4.3 ENC, upon taking possession of the Premises, shall concurrently cure the defaults specified by the Landlord in its written notice and shall execute and deliver to the Landlord its assumption of the Tenant's rights and obligations under the Lease. ENC shall pay, perform and be bound by all of the duties and obligations under the Lease. ENC shall pay, perform and be bound by all of the duties and obligations of the Lease applicable to the Tenant. ENC may elect not to be bound by the terms of any amendment to the Lease executed by the Tenant without obtaining ENC's prior written approval to such amendment, which approval shall not be unreasonably withheld or delayed.

4.4 After ENC assumes the Tenant's interest under the Lease, ENC may, at any time, sublet the Premises to a ENC franchisee without having to obtain the prior written consent of the Landlord.

4.5 After ENC assumes the Tenant's interest under the Lease, ENC may, at any time, assign or sublet its interest under the Lease but only with the prior written consent of the Landlord and the usual provisions of the Lease concerning consent shall apply. Upon receipt by the Landlord of an assignment agreement pursuant to which the assignee agrees to assume the Lease and to observe the terms, conditions and agreements on the part of the tenant to be performed under the Lease, ENC shall thereupon be released from all liability as tenant under the Lease from and after the date of assignment, without any need of a written acknowledgment of such release by the Landlord.

4.6 If the Lease or Franchise Agreement is terminated and ENC fails to exercise its option as described above, the Tenant agrees, upon written demand by ENC to de-identify the Premises as an Einstein Bros Restaurant and to promptly remove signs, decor and other items which ENC reasonably requests be removed as being distinctive and indicative of an Einstein Bros Restaurant. ENC may enter upon the Premises without being guilty of trespass or tort to effect de-identification if the Tenant fails to do so within ten (10) days after receipt of written demand from ENC, following termination of the Franchise Agreement or Lease. the Tenant shall pay ENC for its reasonable costs and expenses in effecting the de-identification. The Landlord shall not be obligated to ENC for such costs unless the Landlord and the Tenant share one (1) or more common owners, partners, beneficiaries or shareholders (as the case may be). The Tenant agrees and accepts that its obligations to the Landlord in respect to the provisions of the Lease concerning the removal of signage and additions and alterations at the termination of the Lease subsist notwithstanding the right made available to ENC pursuant to this clause.

4.7 BY EXECUTING THIS LEASE RIDER TO THE LEASE, ENC DOES NOT ASSUME ANY LIABILITY WITH RESPECT TO THE PREMISES OR ANY OBLIGATION AS TENANT UNDER THE LEASE UNLESS AND UNTIL ENC EXPRESSLY ASSUMES SUCH LIABILITY AND/OR OBLIGATION AS DESCRIBED ABOVE.

[signature page to follow]

4.8 All notices pursuant to this Lease Rider shall be in writing and shall be personally delivered, sent by registered mail or reputable overnight delivery service or by other means which afford the sender evidence of delivery or rejected delivery to the addresses described above or to such other address as any party to this Deed may, either by written notice, instruct that notices be given.

EXECUTED by the parties as follows:

SIGNED by _____)
as Landlord by its Director)
in the presence of:)

Director
(Name of Signatory)

SIGNED by _____)
as Tenant by its Director)
in the presence of:)

Director
(Name of Signatory)

SIGNED by EINSTEIN AND NOAH)
CORP. by its duly authorized)
officer in the presence of:)

Officer
(Name of Signatory)

EINSTEIN AND NOAH CORP.
FRANCHISE AGREEMENT
EXHIBIT F
NON-DISCLOSURE AND NON-COMPETITION AGREEMENT

THIS NON-DISCLOSURE AND NON-COMPETITION AGREEMENT (“Agreement”) is made this _____ day of _____, 200__, by and between _____ (the “Franchisee”), and _____, who is a Principal, manager, supervisor, member, partner, or a person in a managerial position with, Franchisee (the “Member”).

RECITALS:

WHEREAS, Einstein and Noah Corp. (“ENC”) owns a format and system (the “System”) relating to the establishment and operation of businesses operating in buildings that bear ENC’s interior and exterior trade dress, under the “Einstein Bros Bagels” name and marks (“Restaurants”), and specializing in the sale of Proprietary Items including fresh-baked bagels, cream cheese and other spreads, specialty coffees and teas, and creative soups, salads and sandwiches, and other such additional products as ENC may specify from time to time, as well as non-Proprietary Items such as sandwiches, salads, soups, and other beverage items for on-premises and carry-out consumption (collectively, the “Products”);

WHEREAS, ENC and Franchisee have executed a Franchise Agreement (“Franchise Agreement”) granting Franchisee the right to operate a Restaurant and to produce and distribute the Proprietary Items and other ancillary products approved by ENC and use the Proprietary Marks in connection therewith under the terms and conditions of the Franchise Agreement;

WHEREAS, the Member, by virtue of his or her position with Franchisee, will gain access to certain of ENC’s Confidential Information, as defined herein, and must therefore be bound by the same confidentiality and non-competition agreement that Franchisee is bound by.

IN CONSIDERATION of these premises, the conditions stated herein, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Confidential Information.** Member shall not, during the term of the Franchise Agreement or thereafter, communicate, divulge, or use for the benefit of any other person, persons, partnership, entity, association, or corporation any confidential information, knowledge, or know-how concerning the methods of operation of the business franchised thereunder which may be communicated to Member or of which Member may be apprised by virtue of Franchisee’s operation under the terms of the Franchise Agreement. Any and all information, knowledge, know-how, and techniques which ENC designates as confidential shall be deemed confidential for purposes of this Agreement, except information which Franchisee can demonstrate came to its attention prior to disclosure thereof by ENC; or which, at or after the

time of disclosure by ENC to Franchisee, had become or later becomes a part of the public domain, through publication or communication by others.

2. Covenants Not to Compete.

(a) Member specifically acknowledges that, pursuant to the Franchise Agreement, and by virtue of its position with Franchisee, Member will receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of ENC and the System.

(b) Member covenants and agrees that during the term of the Franchise Agreement, except as otherwise approved in writing by ENC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity:

(i) Divert or attempt to divert any business or customer of the Restaurant or of any Restaurant using the System to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with ENC's Proprietary Marks and the System.

(ii) Employ or seek to employ any person who is at that time employed by ENC, Franchisee, any other franchisee, master franchisee, developer, or development agent, or otherwise directly or indirectly induce such person to leave his or her employment; or

(iii) Either directly or indirectly for him/herself or on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant.

(c) Member covenants and agrees that during the Post-Term Period (defined below), except as otherwise approved in writing by ENC, Member shall not, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, corporation, or entity, Member shall not own, maintain, operate, engage in, or have any interest in any business which is the same as or similar to the Restaurant and which business is, or is intended to be, located within a five (5) mile radius of either the Approved Location or any other Restaurant operating at the time that the obligations under this commence.

(d) As used in this Agreement, the term "same as or similar to the Restaurant" shall mean any other retail business that sells or offers bagels, cream cheese, and/or coffee products that separately or in the aggregate constitute or would constitute thirty percent (30%) or more of that business' gross revenues at any one or more retail location(s).

(e) As used in this Agreement, the term "Post-Term Period" shall mean a continuous uninterrupted period of two (2) years from the date of: (a) a transfer permitted under Section 13 of the Franchise Agreement; (b) expiration or termination of the Franchise Agreement (regardless of the cause for termination); (c) termination of Member's employment with

Franchisee; and/or (d) a final order of a duly authorized arbitrator, panel of arbitrators, or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing or with respect to the enforcement of this Agreement; either directly or indirectly (through, on behalf of, or in conjunction with any persons, partnership, corporation or entity).

3. Injunctive Relief. Member acknowledges that any failure to comply with the requirements of this Agreement will cause ENC irreparable injury, and Member agrees to pay all court costs and reasonable attorney's fees incurred by ENC in obtaining specific performance of, or an injunction against violation of, the requirements of this Agreement.

4. Severability. All agreements and covenants contained herein are severable. If any of them, or any part or parts of them, shall be held invalid by any court of competent jurisdiction for any reason, then the Member agrees that the court shall have the authority to reform and modify that provision in order that the restriction shall be the maximum necessary to protect ENC's and/or Franchisee's legitimate business needs as permitted by applicable law and public policy. In so doing, the Member agrees that the court shall impose the provision with retroactive effect as close as possible to the provision held to be invalid.

5. Delay. No delay or failure by the ENC or Franchisee to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right provided herein, and no waiver of any violation of any terms and provisions of this Agreement shall be construed as a waiver of any succeeding violation of the same or any other provision of this Agreement.

6. Third-Party Beneficiary. Member hereby acknowledges and agrees that ENC is an intended third-party beneficiary of this Agreement with the right to enforce it, independently or jointly with Franchisee.

[signature page to follow]

IN WITNESS WHEREOF, the Franchisee and the Member attest that each has read and understands the terms of this Agreement, and voluntarily signed this Agreement on this ____ day of _____, 200__.

FRANCHISEE

MEMBER

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____