

The Advertising Contribution will be paid to the Einstein Bros. national advertising fund (the "NAF"), or a market ad fund ("MAF"), in the proportions that we occasionally designate. There are different advertising needs in different types of markets. For example, Restaurants that operate in resort or vacation areas may need a different kind and volume of advertising than do Restaurants that operate in suburban areas or in cities. We reserve the right, in certain markets, to suspend a portion of these requirements (for example, the MAF requirement).

We will determine what proportion of the Advertising Contribution you must: (1) contribute to the NAF; or (2) contribute to an MAF (if one is established for your region). No matter how we determine to split your Advertising Contribution, the total amount you must pay or spend will not exceed the amount of the Advertising Contribution, and the portion that you will be required to pay to the NAF will not exceed 4% of the Gross Sales of your Restaurant. (Section 10.2 of Franchise Agreement).

Our NAF is new, and has not previously collected or spent funds, nor has it conducted advertising.

None of the amounts collected or held by the NAF will be used for advertising that is principally a solicitation for the sale of franchises. We do not receive payment for providing goods or services to the NAF. A statement of the NAF's operations, as shown on our books, will be prepared annually, and that statement will be made available to you upon request. As described below, we are not required to spend any particular amount on advertising in the area where your Restaurant is located. As also described below, if amounts are unspent in the NAF at fiscal year-end, those amounts will be carried over by the Fund for expenditure in the following year(s).

#### The NAF

We will establish a NAF for the System. The NAF, all contributions to and earnings from the NAF, will be used only (except as otherwise provided below) to meet any and all costs of maintaining, administering, directing, conducting, and preparing advertising, marketing, public relations and promotional programs and materials, and any other activities that we believe will enhance the image of the System. This includes, among other things, the costs of preparing and conducting media advertising campaigns; direct mail advertising; marketing research; public relations activities; developing and maintaining our Website (except for the portion, if any, specifically for soliciting franchisees); employing advertising or public relations agencies; purchasing promotional items, conducting and administering visual merchandising, point of sale, and other merchandising programs; and providing promotional and other marketing materials and services to the Restaurants operated under the System. We may also use the NAF to provide rebates or reimbursements to franchisees for local expenditures on products, services, or improvements, that we have approved in advance (we will have the right to determine which expenditures will appropriately promote general public awareness and favorable support for the System). We will have the sole right to decide how the NAF creates, places, and pays for advertising. We (or our designee, which might be a corporate subsidiary or an advertising agency) will maintain and administer the NAF, as follows:

- (a) We (or our designee) will direct all advertising programs, with the sole right to decide the concepts, materials, and media used in these programs and the placement and allocation of the programs. The NAF is intended to maximize general public recognition, acceptance, and use of the System. Neither we nor our designee will be obligated to make expenditures for you that are equivalent

or proportionate to your contribution, or to ensure that any particular franchisee benefits directly or *pro rata* from expenditures by the NAF.

- (b) The NAF, and all contributions to and earnings from the NAF, will be used exclusively to meet the costs of marketing and any other activities that we believe will enhance the System's image and, in our sole discretion, promote general public awareness of and favorable support for the System.
- (c) You must contribute to the NAF by EFT (electronic fund transfer) by the third business day of each week (see also Item 6, note 2). All sums you pay to the NAF will be maintained in an account separate from our other monies.
- (d) We will have the right to charge the NAF for the reasonable administrative costs and overhead that we incur in activities reasonably related to the direction and implementation of the NAF and advertising programs for you and the System (for example, costs of personnel for creating and implementing, associated overhead, advertising, merchandising, promotional and marketing programs). The NAF and its earnings will not otherwise inure to our benefit or be used to solicit the sale of franchises. We or our designee will maintain separate bookkeeping accounts for the NAF.
- (e) The NAF is not and will not be our asset.
- (f) Although the NAF is intended to be of perpetual duration, we maintain the right to terminate the NAF. The NAF will not be terminated, however, until all monies in the NAF have been spent for advertising or promotional purposes.

Because the NAF is new, the fund did not make expenditures in the past.

### MAFs

We will have the right, as we see fit, to establish an MAF for your region, and require you to contribute a portion of the Advertising Contribution to the MAF. The purpose of an MAF is to conduct advertising campaigns for the Restaurants located in that region.

If an MAF for your area was established before you began to operate your Restaurant, then when you open your Restaurant, you must immediately join and contribute to that MAF. If an MAF for your area is established after you begin to operate your Restaurant, then you will have thirty days to join and contribute to the new MAF. You will not be required to be a member of more than one MAF. The following provisions will apply to each MAF (if and when organized):

- (a) MAFs will be established, organized, and governed in the form and manner that we have approved in advance.
- (b) MAFs will be organized for the exclusive purpose of administering market level and regional advertising programs and developing (subject to our approval) standardized promotional materials for use by the members in local advertising and promotion.
- (c) MAFs may not use advertising, promotional plans, or materials without our prior written approval, as described below.

- (d) You must submit your required contribution to the MAF by the third business day of each week, based on your Gross Sales for the preceding week. At the same time, you will have to submit the reports that we or the MAF require. We may require you to submit this payment by EFT or by check. We also may require that your payments and reports to the MAF be made to us for distribution to the MAF.
- (e) Although, if established, an MAF is intended to be of perpetual duration, we maintain the right to terminate any MAF. An MAF will not be terminated, however, until all monies in that MAF have been expended for advertising or promotional purposes. If all Restaurants contributing to an MAF are closed, any balance remaining in that MAF will be transferred to the NAF.
- (f) We have the right to change or merge any MAF.

Our current policy is to contribute to the NAF and any MAF on the same basis as is required of our franchisees; however, we are not obligated to do so and reserve the right to change that policy. If we contribute to an MAF, we will have the same voting rights for our Restaurants as do our franchisees with respect to their Restaurants.

#### Local Advertising and Promotion

In addition to the Advertising Contribution, each month you may also spend a portion of the Gross Sales of your Restaurant during the preceding month on local advertising and promotion (the "**Local Advertising Expenditure**"). The Local Advertising Expenditure must be in a form that we approve. The proposed content of any local advertising and promotion will be subject to our review and may not be used without our prior written approval.

Certain criteria will apply to any local advertising and promotion that you conduct. All of your local advertising and promotion must be dignified, must conform to our standards and requirements, and must be conducted in the media, type, and format that we have approved. You may not use any advertising or promotional plans that we have not approved in writing. You must submit to us samples of all proposed plans and materials (unless, within the previous six months, we prepared or already approved the plans or materials). You are not required to obtain our approval of the prices you intend to charge. We will ordinarily provide you with our response (whether approval or disapproval) to the proposed plans or materials within two months; but if we do not give our approval within fifteen days, we will have been deemed to disapprove the plans or materials.

All copyrights in and to advertising and promotional materials you develop (or that are developed for you) will become our sole property. You must sign the documents (and, if necessary, require your independent contractors to sign the documents) that we deem necessary to implement this provision. (The requirements in this paragraph, as well as in the previous paragraph, will also apply to any MAFs.)

As discussed in Item 7, in addition to (and not in place of) the Advertising Contribution, you must spend at least \$5,000 on local advertising and promotion conducted for the Restaurant's grand opening advertising program (the "**Grand Opening Advertising Program**"), in accordance with our specifications for that program. You must complete the Grand Opening Advertising Program no later than three months after the Restaurant first opens for business. All materials used in the Grand Opening Advertising Program will be subject to our prior written approval, as

described above. The Grand Opening Advertising Program is considered "local advertising and promotion" and is therefore subject to the restrictions described below. We will work with you to tailor your Grand Opening Advertising Program to your market. We reserve the right to require you to deposit with us the funds for the Grand Opening Advertising Program so that we may distribute the funds for the Grand Opening Advertising Program, and if so, and funds not spent within six months after your Restaurant opening will be deposited in the MAF for your area.

In addition to the plans and promotions that we otherwise provide to you under the Franchise Agreement, we will periodically make available to you, for purchase, certain advertising plans and promotional materials for your use in local advertising and promotion.

As used in the Franchise Agreement, the term "local advertising and promotion" refers to only the direct costs of purchasing and producing advertising materials (such as camera-ready advertising and point of sale materials), media (space or time), promotion, and your direct out-of-pocket expenses related to costs of advertising and sales promotion in your local market or area. Local advertising and promotion also includes associated advertising agency fees and expenses, postage, shipping, telephone, and photocopying costs. "Advertising and sales promotion" does not, however, include any of the following:

- (a) Salaries, incentives or discounts offered to your employees, and your employees expenses;
- (b) Charitable, political, or other contributions or donations;
- (c) The value of discounts given to consumers; and
- (d) The cost of food items.

Websites (as defined below) are considered as "advertising" under the Franchise Agreement, and are subject (among other things) to our review and prior written approval before they may be used (as described above). As used in the Franchise Agreement, the term "Website" means an interactive electronic document, contained in a network of computers linked by communications software, that you operate or authorize others to operate and that refers to the Restaurant, Proprietary Marks, us, or the System. The term Website includes, but is not limited to, Internet and World Wide Web home pages. In connection with any Website, the Franchise Agreement provides that you may not establish a Website, nor may you offer, promote, or sell any products or services, or make any use of the Proprietary Mark, through the Internet without our prior written approval. As a condition to granting consent, we will have the right to establish any requirement that we deem appropriate, including for example a requirement that your only presence on the Internet will be through one or more webpages that we establish on our website.

#### Electronic Point-Of-Sale and Computer Systems

At this time, we require our franchisees to buy or lease an approved computer hardware and software point of sale (POS) system. The approved system must be maintained according to out hardware and software standards. The computer system will include an interface capability to communicate electronically with our own system (See chart that follows.)

Some of the hardware and software that you will use is the proprietary property of third parties, as described in the chart below. We have not approved any hardware or software in place of these systems and programs, although we reserve the right to do so in the future.

Vendor	Address	How the hardware or software will be used in your Restaurant, and the general type of data collected or generated	Length of time that we have made continuous use of the component or program
T160 POS Stations w/Dragonfly LCD customer displays Radiant Systems, Inc.	3925 Brookside Pkwy Alpharetta, GA 30022 Phone: 800.229.0991	Used to accumulate transaction data	4 years
Lighthouse POS Software Radiant Systems, Inc.	3925 Brookside Pkwy Alpharetta, GA 30022 Phone: 800.229.0991	Used to accumulate transaction data	4 years
Dell Optiplex DX280 w/17" monitor and dual 80GB harddrive	Dell, Inc. One Dell Way Round Rock, TX 78682 Phone: 830.234.9999	Use to order and receive products and to exchange inventory information	1 year
ReMACS for Windows software Radiant Systems, Inc.	3925 Brookside Pkwy Alpharetta, GA 30022 Phone: 800.229.0991	Use to order and receive products and to exchange inventory information	7 years
Xcellenet	Drawer CS 277010 Atlanta, GA 30384 Phone: 770.804.8100	Used to transfer data via phone lines	7 years
MS Outlook Windows Microsoft Corp.	One Microsoft Way Redmond, WA 98052 Phone: 425.882.8080	Operating systems and general office functions, including e-mail	7 years

Radiant Systems, Inc. charges approximately \$2,000 to \$3,000 per year for software and hardware maintenance. In addition, you will have to pay us a systems support fee (see Item 6 of this offering circular for a description of this fee).

We reserve the right to download sales and other data from your computer. There is no contractual limitation on our right to receive this information. We reserve the right to require you to bring any computer hardware and software, related peripheral equipment, communications systems, as well as the cash register system, into conformity with our then-current standards for new Restaurants. We have no obligation to assist you in obtaining hardware, software or related services and there are no contractual limits on the frequency or cost of your obligations to obtain these upgrades. (See Sections 2.2.2, 5.10, and 5.20 of the Franchise Agreement.)

### Manuals

The table of contents of the Manual is attached as Exhibit I.

## **ITEM 12** **TERRITORY**

### **Franchise Agreement**

During the term of the Franchise Agreement, and except as otherwise provided in that agreement, we will not establish or license anyone else to establish, another Einstein Bros. Restaurant at any location within the "Protected Territory" that is designated in your Franchise Agreement. The Protected Territory will typically be a circle, the center of which will be the front door of the Restaurant, and that circle will have a radius that is specified in your Franchise Agreement (but which will be a minimum of one-half of a mile, except in dense urban centers). We (and our affiliates) retain all other rights. Accordingly, we will have the right (among other things), on any terms and conditions that we deem advisable, and without granting you any rights, to do any or all of the following:

- establish, and license others to establish, Restaurants at any location outside the Protected Territory despite their proximity to the Protected Territory or the Approved Location or its actual or threatened impact on sales at your Restaurant;
- establish, and license others to establish, Restaurants at any Institutional Facility or Co-Branded Location (as those terms are defined below) within or outside the Protected Territory, despite these Restaurants' proximity to the Approved Location or their actual or threatened impact on sales at your Restaurant;
- establish, and license others to establish, restaurants under other systems or other proprietary marks, which restaurants may offer or sell products that are the same as, similar to, or different from the Products offered from the Restaurant, and which restaurants may be located within or outside the Protected Territory, despite these restaurants' proximity to the Approved Location or their actual or threatened impact on sales at your Restaurant;
- acquire and operate any business or store of any kind, whether located within or outside the Protected Territory despite these business' or restaurants' proximity to the Approved Location or its actual or threatened impact on sales at your Restaurant; and
- sell and distribute, directly or indirectly, or license others to sell and distribute, directly or indirectly, any Products, from any location or to any purchaser (including, among other methods, to sales made at retail locations, supermarkets, gourmet shops, mail order, and on the Internet), as long as these sales are not conducted from a Restaurant operated from a location inside the Protected Territory (excluding an Institutional Facility).

The term "**Co-Branded Location**" includes, among other things, businesses of any sort within which an "Einstein Bros." facility is established and operated, including for example book stores, department stores, restaurants, and supermarkets. The term "**Institutional Facility**" includes, among other things: airports; bus stations; factories; federal, state or local government facilities (including military bases); hospitals and other health-care facilities; recreational facilities; schools, colleges and other academic facilities; seasonal facilities; shopping malls; theaters; train stations; and workplace cafeterias.

You may offer and sell Products only from the Restaurant, only in accordance with the requirements of the Franchise Agreement and the Manuals, and only to: (a) retail customers for consumption on the Restaurant's premises or for personal, carry-out consumption; (b) delivery customers (for example, catering); and (c) wholesale customers. As used in the Franchise Agreement, the following terms are given the following definitions:

The term "**delivery customers**" means customers that are located within the Protected Territory that purchase products for delivery to (and consumption in) their home or office.

The term "**wholesale customers**" means customers that: (a) purchase products totaling \$1,000 or less a month from you; (b) are not in the business of selling bagels; and (c) do not, in turn, use any of our Proprietary Marks for serving or reselling Products that they buy from you. If you make a written request to us asking that we waive some or all of the conditions in the preceding sentence for one or more proposed wholesale customers, we will have the right to grant or withhold consent, in writing, to a waiver. We cannot guarantee, and will not be able to prevent, other operators of a Restaurant from selling to delivery customers in your Protected Territory.

Despite anything else in the Franchise Agreement: (a) you will have no rights regarding any other business that we (or our affiliates) operate, including for example Noah's New York Bagels, Chesapeake Bagels, Manhattan Bagel, and New World Coffee (the "**Other Brands**"); and (b) we will have the right to operate and license others to operate businesses under the Other Brands at any location whatsoever, even though those businesses (such as restaurants) may be near the Approved Location of your Restaurant or within the Protected Territory under your Franchise Agreement, and even though those restaurants may appear to (or actually) have an impact on sales at your Restaurant.

**ITEM 13**  
**TRADEMARKS, SERVICE MARKS, TRADE NAMES,**  
**LOGOTYPES, AND COMMERCIAL SYMBOLS**

We grant you the right to use certain Proprietary Marks under the Area Development Agreement and Franchise Agreement. ENBC registered (and we now own) the following Proprietary Marks with the U.S. Patent and Trademark Office (the "**USPTO**") on its Principal Register:

<b>Name or Mark</b>	<b>Registration/Application Number</b>	<b>Class</b>	<b>Registration Date</b>
Einstein Bros.	2,146,983	30	March 31, 1998
Einstein Bros.	2,092,522	29	September 2, 1997
Einstein Bros.	2,060,493	42	May 13, 1997

No affidavit or renewal filings are due at this time for these registrations. ENBC also registered the Proprietary Mark "Einstein Bros." in Utah on March 31, 1997 (Reg. No. 7091020055).

We are party to a co-existence agreement with HUU (the "**HUU Co-Existence Agreement**," as described in Item 1 above), under which ENBC (whose rights we acquired) and HUU agreed on the terms under which ENBC (and now, us) could use the name Einstein Bros. and the terms under which HUU could use the name and likenesses associated with the Estate of Albert

Einstein. The HUI Co-Existence Agreement is not a license agreement. Our grant of rights to you, under which you will be allowed to use the Einstein Bros. names and marks, will be restricted to those uses that ENBC agreed it would limit itself to under the HUI Co-Existence Agreement. For example, your rights to the Proprietary Marks under the Franchise Agreement will not include any right to use the name "Albert Einstein;" his likeness, image, caricature, photographs or signature; any indicia of Albert Einstein (including references to genius, human intelligence or IQ, and scientific or mathematical equations, formulas or theories); or the word "Einstein" alone, without another word or without a generic or descriptive word (such as "restaurant," "bagels" or "cream cheese").

Your right to use the Proprietary Marks is limited to the uses that are authorized under the Franchise Agreement, and any unauthorized use of the Proprietary Marks will infringe upon our rights. You may not use any Proprietary Mark: (1) as part of any corporate name or other business name; (2) with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any modified form; (3) in connection with performing or selling any unauthorized services or products; (4) as part of any domain name, electronic address or search engine or in any other manner in connection with a Website without our prior written approval; or (5) in any other manner that we do not expressly authorize in writing. You must identify yourself as the independent owner and operator of your business and Restaurants in the manner we specify (such as on invoices, order forms, receipts, and contracts). You must also give the trademark registration notices that we designate, and obtain any assumed business name registrations that applicable law requires.

After ENBC filed an application to register the service mark EINSTEIN'S with the USPTO for restaurant services in May 1995, Peach State Restaurants, Inc. ("**Peach State**"), which owns a restaurant in Atlanta that uses the EINSTEIN's name, filed a trademark registration application with the USPTO for the name EINSTEIN's (covering restaurant services) and filed an opposition to ENBC's application. In July 1996, ENBC entered into an agreement with Peach State under which Peach State withdrew its application, abandoned its opposition proceeding, and agreed not to object to, or interfere with, any of ENBC's (and now, our) trademark and service mark applications that include the name EINSTEIN'S. Peach State also agreed not to use any mark incorporating the name EINSTEIN'S for restaurant services outside of one Atlanta metropolitan address, and ENBC (and now, we) agreed not to use any mark incorporating the name EINSTEIN'S for restaurant services within a small radius surrounding that Peach State restaurants in the Georgia metro area (except for permitted national advertising and promotion and other agreed uses).

There are no currently effective material determinations of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition, or cancellation proceeding, or any pending material litigation, involving the Proprietary Marks. Except as described above in this Item 13, no agreement significantly limits our rights to use or license the Proprietary Marks in any state in a manner material to the franchise, and we know of no superior prior rights or infringing uses that could materially affect your use of the Proprietary Marks in any state.

You must immediately notify us of any apparent infringement of or challenge to your use of any Proprietary Mark or any person's claim of any rights in any Proprietary Mark. You may not communicate with anyone except us and our counsel (and, if applicable, our licensor and its counsel) regarding any infringement, challenge or claim. We will have discretion to take any action we deem appropriate and the right to control exclusively any settlement, litigation, or administrative or other proceeding regarding any infringement, challenge or claim or otherwise regarding any Proprietary Mark. You must render the assistance we require to protect and



maintain our interests in any litigation or proceeding or otherwise to protect and maintain our interests in the Proprietary Marks. We will reimburse you for the reasonable out-of-pocket expenses you incur and pay in complying with these requirements, except to the extent we recover money on your behalf in the action that exceeds your costs. In that case, you pay your own costs and share pro rata in our recovery up to the amount of your share of the recovery. We will defend and indemnify you for damages you incur in any claim, action or proceeding brought by any person claiming to have rights to the Proprietary Marks (other than a person's claims to prior common law trademark rights), but only if you complied with the Area Development Agreement or Franchise Agreement (as applicable) and that Agreement is still in effect.

If it becomes advisable at any time in our sole judgment for you to modify or discontinue using any Proprietary Mark or for you and the Restaurant to use one or more additional or substitute trade or service marks, you will have to immediately comply with our directions. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

#### **ITEM 14** **PATENTS, COPYRIGHTS, AND PROPRIETARY INFORMATION**

##### **Patents**

No patents are material to the operation of your Restaurant, although we own a patent on our bagel production process.

##### **Copyrights**

We claim copyright protection covering various materials used in our business and the development and operation of Einstein Bros. Restaurants, including the Operations Manual, advertising and promotional materials, and similar materials. We have not registered these materials with the United States Registrar of Copyrights but we are not required to do so.

There are no currently effective determinations of the United States Copyright Office or any court, nor any pending litigation or other proceedings, regarding any copyrighted materials. No agreement limits our rights to use or allow franchisees to use the copyrighted materials. We do not know of any superior prior rights or infringing uses that could materially affect your use of the copyrighted materials. No agreement requires us to protect or defend our copyrights or to indemnify you for any expenses or damages you incur in any judicial or administrative proceedings involving the copyrighted materials. No provision in the Area Development Agreement or Franchise Agreement requires you to notify us of claims by others of rights to, or infringements of, the copyrighted materials. If we require, you must immediately modify or discontinue using the copyrighted materials. Neither we nor our affiliates will have any obligation to reimburse you for any expenditures you make because of any discontinuance or modification.

##### **Confidential Information**

Except for the purpose of operating the Restaurant under the Franchise Agreement, you may never (during Franchise Agreement's term or later) communicate, disclose, or use for any person's benefit any of the confidential information, knowledge, or know-how concerning the

operation of the Restaurant that may be communicated to you or that you may learn by virtue of your operation of a Restaurant. You may divulge confidential information only to those of your employees who must have access to it in order to operate the Restaurant. Any and all information, knowledge, know-how, and techniques that we designate as confidential will be deemed confidential for purposes of the Franchise Agreement. However, this will not include information that you can show came to your attention before we disclosed it to you; or that at any time became a part of the public domain, through publication or communication by others having the right to do so.

In addition, we may require you, your Designated Principal, your Restaurant Manager, and your Assistant Manager(s) to sign a Non-Disclosure and Non-Competition Agreement. Every one of these agreements must provide that the person signing will maintain the confidentiality of information that they receive in their employment or affiliation with you or the Restaurant. These agreements must be in a form that we find satisfactory, and must include, among other things, specific identification of our company as a third party beneficiary with the independent right to enforce the covenants. Our current form for this Non-Disclosure and Non-Competition Agreement is attached to the Franchise Agreement as Exhibit F.

#### Confidential Manuals

In order to protect our reputation and goodwill and to maintain high standards of operation under our Proprietary Marks, you must conduct your business in accordance with the Manual. We will lend you one set of our Manual for the term of the Franchise Agreement.

You must always treat in a confidential manner the Manual, any other manuals we create (or that we approve) for use with the Restaurant, and the information contained in the Manual. You must use best efforts to maintain this information as secret and confidential. You may not copy, duplicate, record, or otherwise reproduce the Manual and the related materials, or any part (except for the parts of the Manual that are meant for you to copy, which we will clearly mark), nor may you otherwise let any unauthorized person have access to these materials. The Manual will always be our sole property. You must always keep the Manual in a secure place at the Restaurant's premises.

We may periodically revise the contents of the Manual, and you must make corresponding revisions to your copy of the Manual and comply with each new or changed standard. If there is ever a dispute as to the contents of the Manual, our master copy of the Manual (maintained at our home office) will be controlling.

### **ITEM 15** **OBLIGATION TO PARTICIPATE IN THE** **ACTUAL OPERATION OF THE FRANCHISED BUSINESS**

The Franchise Agreement requires that you or your Designated Principal devote full time, energy, and best efforts to the management of the Restaurant.

The Designated Principal must supervise the operation of the Restaurant and must be approved by us. The Restaurant Manager must also be approved by us. All persons that subsequently serve in the positions of Designated Principal and Restaurant Manager must be approved by us

and must attend and successfully complete our manager training program which is described in Item 11 of this offering circular.

The Franchise Agreement does not require you to participate personally in the direct operation of the Restaurant, although we encourage and recommend active participation by you. We do, however, require that you or your Designated Principal devote full time, energy, and best efforts to the management of the Restaurant.

If you are a corporation or a partnership, a Designated Principal must supervise the operation of the Restaurant and must be approved by us. The Restaurant Manager must also be approved by us. Our approval will be based on whether the proposed Designated Principal and Restaurant Manager have a good business reputation, are not competitors of ours, and whether they can successfully complete our training program. Designated Principals and Restaurant Managers must be able to speak the English language to attend and complete our training course. After the initial Designated Principal and Restaurant Manager, any replacements will also be subject to our reasonable approval, and are required to attend and successfully complete our training program. See Items 11 and 17 for a description of these obligations. We require your principals (including the Designated Principal), supervisors and managers to sign a non-disclosure and non-competition agreement, the form of which is attached to the Franchise Agreement as Exhibit F. We do not impose any other restrictions on your managers.

#### **ITEM 16**

#### **RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

You may sell and provide only products and services that conform to our standards and specifications (which are described in Item 8 above). You also will have certain obligations to offer for sale particular items (which are described in Item 9 above). We have the right, without limit, to change the types of authorized products and services.

As noted above in Item 12, you may only offer and sell products to retail customers for consumption on the Restaurant's premises, for personal carry-out consumption, and for delivery service (catering) in a manner that complies with our standards. You may also sell products to end-users and other entities that do not resell the products. You may not sell products to gift shops and similar type stores. We will have the right to review and approve (or not approve) any proposed sale of the products to a hotel or a restaurant (which may be required to comply with our standards in order to feature or give away Einstein Bros. brand products). All sales will be counted in "Gross Sales."

The Approved Location for the Restaurant will be specified in the Franchise Agreement. You may not relocate the Restaurant without our prior written approval.

**ITEM 17**  
**RENEWAL, TERMINATION, TRANSFER, AND DISPUTE RESOLUTION**

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

Provision	Section in Agreement	Summary *
a. Term of the franchise	§ 2.1 of Franchise Agreement; § 4 in Area Development Agreement	10 years
b. Renewal or extension of the term	§ 2.2 of Franchise Agreement; none in Area Development Agreement	One additional 10-year term
c. Requirements for you to renew or extend	§§ 2.2.1 - 2.2.8 of Franchise Agreement; none in Area Development Agreement	Notice, satisfaction of monetary obligations, compliance with Franchise Agreement, release, sign new Franchise Agreement, and others; see §§ 2.2.1 - 2.2.8 in Franchise Agreement.
d. Termination by you	None	
e. Termination by us without cause	None	
f. Termination by us with cause	§ 13 of Franchise Agreement; § 6 in Area Development Agreement	Default under the Franchise Agreement or the Development Agreement, bankruptcy, abandonment, and other grounds; see § 13 of the Franchise Agreement. (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.)
g. "Cause" defined - defaults which can be cured	§ 13.3 of Franchise Agreement; § 6.3 in Area Development Agreement	All other defaults not specified in §§ 13.1 and 13.2 of the Franchise Agreement
h. "Cause" defined - defaults which cannot be cured	§§ 13.1 and 13.2 of Franchise Agreement; §§ 6.1 and 6.2 in Area Development Agreement	Bankruptcy, abandonment, conviction of felony, and others; see § 13.2. of the Franchise Agreement (Under the U.S. Bankruptcy Code, we may be unable to terminate the agreement merely because you make a bankruptcy filing.)  Also failure to meet the development schedule under your Development Agreement .

	<b>Provision</b>	<b>Section in Agreement</b>	<b>Summary *</b>
i.	Your obligations on termination/ nonrenewal	§ 14 of Franchise Agreement; § 6.4 in Area Development Agreement	Cease operating Restaurant, payment of amounts due, and others; see §§ 14.1 - 14.9 of the Franchise Agreement.
j.	Assignment of contract by us	§ 12.1 of Franchise Agreement; § 7.1 in Area Development Agreement	There are no limits on our right to assign the Franchise Agreement.
k.	"Transfer" by you - definition	§§ 12.4.1 - 12.4.4 of Franchise Agreement; §§ 7.4.1 - 7.4.4 in Area Development Agreement	Includes transfer of any interest.
l.	Our approval of transfer by you	§ 12.4 of Franchise Agreement; § 7.4 in Area Development Agreement	We have the right to approve transfers.
m.	Conditions for our approval of transfer	§ 12.5 of Franchise Agreement; § 7.5 in Area Development Agreement	Release, signature of new Franchise Agreement, payment of transfer fee, and others; see §§ 12.5.1 - 12.5.10 of the Franchise Agreement.
n.	Our right of first refusal to acquire your business	§ 12.6 of Franchise Agreement; § 7.6 in Area Development Agreement	We can match any offer.
o.	Our option to purchase your business	§§ 14.4 and 14.9 of Franchise Agreement; none in Area Development Agreement	We can acquire any interest which you have in any lease or sublease for the premises and purchase your furnishings, equipment, material, or inventory at cost or fair market value.
p.	Your death or disability	§§ 12.7, 12.8 and 12.9 of Franchise Agreement; §§ 7.7, 7.8 and 7.9 in Area Development Agreement	Your estate must transfer your interest in the Franchised Business to a third party we have approved, within a year after death or six months after the onset of disability.
q.	Non-competition covenants during the term of the franchise	§§ 15.2, 15.3 and 15.4 of Franchise Agreement; §§ 8.2, 8.3 and 8.4 in Area Development Agreement	Includes prohibition on engaging in any other business which is the same or similar to the Restaurant and others; see §§ 15.2 - 15.4 of the Franchise Agreement.

Provision	Section in Agreement	Summary *
r. Non-competition covenants after the franchise is terminated or expires	§§ 15.3 and 15.4 of Franchise Agreement; §§ 8.3 and 8.4 in Area Development Agreement	Includes a eighteen month prohibition similar to "q" (above), within five miles of the Approved Location, or within five miles of any other Restaurant then-operating under the System.
s. Modification of the agreement	§ 21 of Franchise Agreement; § 13 in Area Development Agreement	Must be in writing signed by both parties.
t. Integration/ merger clause	§ 21 of Franchise Agreement; § 13 in Area Development Agreement	Only the final written terms of the Franchise Agreement are binding.
u. Dispute resolution by arbitration or mediation	§ 24.3 of Franchise Agreement; § 15.3 in Area Development Agreement	Before bringing an action in court, the parties must first submit the dispute to non-binding mediation (except for injunctive relief).
v. Choice of forum	§ 22.2 of Franchise Agreement; § 15.2 in Area Development Agreement	If we ever litigate, you must do so in the state and judicial district where we maintain our principal place of business, currently, Golden, Colorado.
w. Choice of law	§ 22.1 of Franchise Agreement; § 15.1 in Area Development Agreement	Colorado

These states have statutes which may supersede the Franchise Agreement in your relationship with us, including the areas of termination and renewal of your franchise: Arkansas [Ark. Code Sections 4-72-201 to 4-72-210]; California [Bus. & Prof. Code Sections 20000 to 20043]; Connecticut [Gen. Stat. Sections 42-133e to 42-133h]; Delaware [Code Sections 2551 to 2556]; Hawaii [Rev. Stat. Section 482E-6]; Illinois [815 ILCS 705/1-44]; Indiana [Stat. Sections 23-2.5-1 and 23-2-2.7]; Iowa [Code Sections 523H.1 to 523H.17]; Michigan [Stat. Section 19.854(27)]; Minnesota [Stat. Section 80C.14]; Mississippi [Code Sections 75-24-51 to 87-410]; Missouri [Rev. Stat. Sections 407.400 to 407.410]; Nebraska [Rev. Stat. Sections 87-401 to 87-410]; New Jersey [Rev. Stat. Section 56:10-1 to 56:10-12]; South Dakota [Codified Laws Section 37-5a-51]; Virginia [Code 13.1-557 through 13.1-574]; Washington [Code Section 19.100.180]; and Wisconsin [Stat. Section 135.01 to 135.07]. These and other states may have other statutes and court decisions that may supersede the franchise agreement in your relationship with us including the areas of termination and renewal of your franchise.

**\* Please refer to the disclosure addenda and contractual amendments appended to this offering circular for additional terms that may be required under applicable state law.**

**ITEM 18**  
**PUBLIC FIGURES**

We do not use any public figures to promote our franchise.

**ITEM 19**  
**EARNINGS CLAIMS**

We provide below historical data relating to the sales and certain types of expenses of Einstein Bros. restaurants that we own and operate. Please read the following information in conjunction with your review of the historical data.

Except for the data described below, we do not make any written or oral representations or statements of actual, average, projected, or forecasted sales, profits, or earnings to prospective franchisees or developers. We do not furnish any oral or other written information concerning the actual or potential sales, costs, or income of your business. We do not authorize any person representing us to furnish this information, or to represent or estimate to prospective franchisees or developers, any dollar figures relating to a franchisee's or developer's operation.

Your individual financial results are likely to differ from the results shown in the following Sales Distribution and Cost Factors. In providing this information, we are not making any representation or guarantee that you will or may achieve any level of sales shown in the Sales Distribution or experience costs comparable to those shown in the Cost Factors. We do not make any representation or guarantee of future sales, costs, or profits. The data used in preparing the Sales Distribution and Cost Factors has been prepared on a basis consistent with generally accepted accounting principals. The information presented in this Item 19 is a compilation of financial information that has not been audited.

The Sales Distributions and Cost Factors should be read together with all of the related information about the factual bases and material assumptions underlying them. You should construct your own pro forma cash flow statement and make your own financial projections regarding potential sales, operating cost factors, capital investment requirements and liquid cash requirements for your proposed restaurant.

Actual results vary from franchise to franchise and we cannot estimate or predict the results that you may experience as a franchisee. Your results will be affected by many factors (including, among others, prevailing economic or market area conditions, demographics, geographic location, commodity prices, interest rates, your capitalization level, the amount and terms of any financing that you secure, property values and lease rates, your business and management skills, staff strengths and weaknesses, restaurant design, and the costs and effectiveness of your marketing activities). You are strongly advised to perform an independent investigation of this opportunity to determine whether or not the franchise may be profitable, and to consult your attorney and other professional advisors before entering into a Franchise or Area Development Agreement. **A NEW FRANCHISEE IS LIKELY TO ACHIEVE FINANCIAL RESULTS THAT DIFFER FROM THE EXAMPLES BELOW.**

## Discussion of Historical Sales Distribution and Cost Factor Information for Einstein Bros. Restaurants

### Basis and Assumptions

The sales and expense information that follows has been compiled using unaudited financial data from 355 company-owned Einstein Bros. Restaurants (which represents 100% of those restaurants that were open during the full 52-week period that started on September 29, 2004, and that ended on September 27, 2005 ("Sales Distribution"), and selected cost factors for the same period ("Cost Factors"). Einstein Bros. Restaurants open for less than the full year were not included.

### Sales Distribution:

Table 1 below organizes the information based on the sales volume of the 355 company-owned Einstein Bros. Restaurants for the 52-week period that started on September 29, 2004, and that ended on September 27, 2005.

**Table 1:**  
(Please read Table 1 in conjunction with the notes that follow)  
Sales Distribution Information

Annual Net Revenue (Note A) Level during the 52-week period beginning September 29, 2004 and ending September 27, 2005	Percentage of Restaurants at Net Revenue Level	Number of Restaurants at Net Revenue Level
\$1,100,000 and Above	11.3%	40
\$1,000,000 - \$1,100,000	6.5%	23
\$900,000 - \$1,000,000	9.6%	34
\$800,000 - \$900,000	19.4%	69
\$700,000 - \$800,000	17.2%	61
\$600,000 - \$700,000	18.3%	65
Below \$600,000	17.7%	63

Median Net Revenue: ..... \$778,833

Average Net Revenue: ..... \$804,134

### Notes to Table 1:

- A. Net revenue includes all sales of food, beverages, and promotional items, but excludes all sales and service taxes, and the dollar amount of coupons, employee discounts, and other promotional discounts.



Cost Factors:

Table 2 below organizes the information based on the cost factors incurred at the 355 company-owned Einstein Bros. Restaurants for the 52-week period from September 29, 2004 to September 27, 2005.

**Table 2:**  
(Please read Table 2 in conjunction with the notes that follow.)  
Cost Factors (Note A)

Note	Reference and Item Description	Restaurants with Net Revenue over \$900,000		Restaurants with Net Revenue between \$700,000 - \$900,000		Restaurants with Net Revenue below \$700,000		Concept Average Restaurant	
		Avg Amount (\$)	% of Avg Net	Avg Amount (\$)	% of Avg Net	Avg Amount (\$)	% of Avg Net	Avg Amount (\$)	% of Avg Net
B	Gross Revenue	1,126,301	102.6	823,112	102.9	604,384	103.2	827,090	102.9
C	Discounts	<u>28,041</u>	2.6	<u>23,079</u>	2.9	<u>18,977</u>	3.2	<u>22,956</u>	2.9
D	Net Sales	1,098,260	100.0	800,033	100.0	585,407	100.0	804,134	100.0
E	Total Cost of Products Sold	<u>326,380</u>	29.7	<u>243,010</u>	30.4	<u>182,790</u>	31.2	<u>244,077</u>	30.4
	Gross Margin	771,880	70.3	557,024	69.6	402,618	68.8	560,058	69.6
F	Total Labor Expenses	286,727	26.1	244,228	30.5	205,112	35.0	241,737	30.1
G	Other Controllable Expenses	<u>86,269</u>	7.9	<u>75,103</u>	9.4	<u>66,305</u>	11.3	<u>74,981</u>	9.3
	Profit After Controllable Expenses	398,884	36.3	237,692	29.7	131,201	22.4	243,339	30.3
H	Non-Controllable Expenses	<u>106,365</u>	9.7	<u>89,894</u>	11.2	<u>81,029</u>	13.8	<u>91,198</u>	11.3
I	Store Cash Flow	<u>292,518</u>	26.6	<u>147,799</u>	18.5	<u>50,172</u>	8.6	<u>152,141</u>	18.9

Notes to Table 2:

- A. The information provided in the Cost Factors chart is for a total of 355 company-owned Einstein Bros. Restaurants during the 52-week period from September 29, 2004 to September 27, 2005. These cost factors are based on our experience operating company-owned restaurants, and should not be considered as the actual or potential costs that you will incur. The figures shown in the columns under the heading "Avg

Amount (\$) are the arithmetic mean (average) of the results of the cost factors (and other items listed in the first column).

- B. Gross revenue includes all sales of food, beverages, and promotional items, and the dollar amount of coupons, employee discounts, and other promotional discounts, but excludes all sales and service taxes.
- C. Discounts consist of the dollar amount of coupons, employee discounts, and other promotional discounts.
- D. Net revenue includes all sales of food, beverages, and promotional items, but excludes all sales and service taxes, and the dollar amount of coupons, employee discounts, and other promotional discounts.
- E. Total cost of products sold includes the cost of food, paper, other products, and Commissary costs.
- F. Labor includes hourly and salaried employee compensation, bonuses, taxes, and benefits.
- G. Other controllable expenses include utilities, ordinary operating maintenance and repairs, insurance, supplies, and other miscellaneous operating expenses.
- H. Non-controllable expenses includes rent and other occupancy expenses, advertising, and other miscellaneous expenses, but excludes depreciation. Advertising represents the actual amounts expended during the 52-week period, which amounted to 1.94% of net revenue.
- I. Store Cash Flow = Profit After Controllable Expenses less Non-Controllable Expenses, which is not a measure in accordance with generally accepted accounting principles.

Please note that your costs may differ, and may be affected by a variety of factors, including, among others, local costs and wage rates, availability of labor and materials in your market area, your involvement in the management of your Restaurant, and the size and professionalism of your management team.

Other costs, as described below, have been excluded from this discussion, as we consider that differences in accounting and business practices would make comparative analysis inconclusive or misleading. You will incur other substantial costs in the operation of your Restaurant that are not included in this discussion, including, among others, local marketing expenses, mortgage or other debt/financing costs, computer upgrades, renovations, improvements, and major repair/maintenance expenses, legal and professional fees, income and other non-real estate taxes, and various other expenses (together, these are referred to as "**Additional Costs**"). You will incur Additional Costs and should determine and account, for yourself, the Additional Costs that you will have to have to pay.

### Substantiation

Substantiation of the data used in preparing these statements is on file at our offices and will be made available to you upon reasonable request.

**ITEM 20**  
**LIST OF OUTLETS**

As described in Item 1, we acquired the Einstein Bros Bagels and Noah New York Bagels restaurant systems on June 19, 2001. While we do not currently have any franchisees or developers, ENBC previously franchised the Einstein Bros Bagels and Noah New York Bagels restaurant systems. However, ENBC had no franchisees as of January 1, 2001 and, in fact, had no franchisees or developers since December 1997. Therefore, there were no franchisees or developers who had an outlet, or who had an outlet that was terminated, canceled, transferred or not renewed, or otherwise voluntarily or involuntarily ceased to do business since the Acquisition. In addition, there were no franchisees in the system during ENBC's past three fiscal years.

Information about our company-owned Restaurants follows.

<b>Company-Owned Einstein Bros. Restaurant Activity Summary as of the end of the Third Quarter of Fiscal Year 2005 (9/27/05) and the end of Fiscal Years 2004/2003/2002*</b>			
State	Businesses Closed During Year	Businesses Opened During Year	Total Businesses Operating At Year-End*
	2005/2004/2003/2002	2005/2004/2003/2002	2005/2004/2003/2002
Arizona	-	0/0/0/2	22/22/22/22
California	-	0/0/1/0	18/18/18/17
Colorado	-	1/2/2/1	32/31/29/27
Connecticut	-	-	1/1/1/1
Delaware	-	-	2/2/2/2
District of Columbia	-	-	1/1/1/1
Florida	0/0/0/1	0/1/2/1	50/50/49/47
Georgia	0/0/0/1	-	13/13/13/13
Illinois	3/1/0/0	-	31/34/35/35
Indiana	1/0/0/0	-	10/11/11/11
Kansas	1/1/0/0	-	9/10/11/11
Maryland	0/0/1/0	-	11/11/11/12
Massachusetts	1/1/0/2	-	2/3/4/4
Michigan	0/0/0/1	-	18/18/18/18
Minnesota	0/1/0/0	-	9/9/10/10
Missouri	1/1/1/0	-	14/15/16/17
Nevada	-	-	9/9/9/9
New Hampshire	-	-	1/1/1/1
New Jersey	-	-	5/5/5/5
New Mexico	-	-	5/5/5/5
New York	0/1/0/0	-	0/0/1/1
North Carolina	-	-	2/2/2/2
Ohio	-	-	13/13/13/13
Pennsylvania	-	-	15/15/15/15

<b>Company-Owned Einstein Bros. Restaurant Activity Summary as of the end of the Third Quarter of Fiscal Year 2005 (9/27/05) and the end of Fiscal Years 2004/2003/2002*</b>			
State	Businesses Closed During Year	Businesses Opened During Year	Total Businesses Operating At Year-End*
Texas	1/0/0/0	0/1/1/1	25/26/25/24
Utah	1/0/0/1	-	19/20/20/20
Virginia	-	-	14/14/14/14
Wisconsin	-	-	12/12/12/12
<b>TOTAL</b>	<b>9/6/2/6</b>	<b>1/4/6/5</b>	<b>363/371/373/369</b>

<b>Company-Owned Noah's New York Bagels Restaurants Activity Summary as of the end of the Third Quarter of Fiscal Year 2005 (9/27/05) and the end of Fiscal Years 2004/2003/2002*</b>			
State	Businesses Closed During Year	Businesses Opened During Year	Total Businesses Operating At Year-End*
	2005/2004/2003/2002	2005/2004/2003/2002	2005/2004/2003/2002
California	4/4/0/0	0/0/0/0	64/68/72/72
Oregon	0/0/0/0	0/0/0/0	6/6/6/6
Washington	0/1/0/0	0/0/0/0	4/4/5/5
<b>TOTAL</b>	<b>4/5/0/0</b>	<b>0/0/0/0</b>	<b>74/78/83/83</b>

\* Note: The information is current through the end of ENBC's fiscal quarter ended September 27, 2005 and its fiscal years ended December 28, 2004 (which was the last day in ENBC's FY2004), December 30, 2003 (which was the last day in ENBC's FY2003); and December 31, 2002 (which was the last day in ENBC's FY2002).

#### PROJECTED EINSTEIN BROS. OPENINGS

State	Franchise Agreement Signed as of September 27, 2005 but, as of September 27, 2005, the Restaurant Was Not Yet Open	Projected Franchise Businesses To Be Opened (9/28/05 - 1/3/06)	Projected Company-Owned Businesses To Be Opened (9/28/05 - 1/3/06)
Colorado	0	0	1
<b>Totals</b>	<b>0</b>	<b>0</b>	<b>1</b>

We (as did ENBC in the past) have entered into license arrangements with large retailers to operate Einstein Bros. operations inside, and as a part of, these retailers' other food service operations. We have provided information about our licensees in the charts that follow.

Einstein Bros. Licenses																																		
3 <sup>rd</sup> Quarter 2005 (9/25/05) and Fiscal Years 2004, 2003 and 2002 (Note 1)																																		
State	Transfers				Canceled or Terminated				Not Renewed				Reacquired by Franchisor				Otherwise Left the System				Total from Left Columns				Licenses Operating at Year End (Note 2)									
	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002	09/27/05	2004	2003	2002						
Ala.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	0	0	0			
Ariz.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	2	2			
Calif.	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	3	3	3	0	
Colo.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	3	3	2			
D.C.	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	2	3	3	3
Fla.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	12	11	8	4			
Ga.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	3	1	0			
Ill.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	2	1	0			
Ind.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	1			
Mich.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	3	3	3			
Minn.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	1	1	0			
Miss.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	0	0			
N.J.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	1			
N.Y.	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	0	1	1	1
N.C.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	0	0			
Ohio	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	5	5	3	1
Penn.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	1	0		
S.C.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	1	1	0			
Tenn.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1	0	0			
Tex.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6	4	3	1			
Va	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	0	0			
Wis.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	2	2			
Total	-	2	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2	2	-	-	63	53	38	21



State	Einstein Bros. License Agreement Signed as of September 27, 2005 but, as of September 27, 2005, the Restaurant Was Not Yet Open	Projected Einstein Bros. Licensed Businesses To Be Opened During the Fourth Quarter of this Fiscal Year (9/28/05 – 1/3/06)
Indiana	0	0
Kentucky	1	0
Louisiana	1	0
Michigan	0	0
Minnesota	1	1
New Jersey	0	0
New York	0	0
Ohio	1	1
Texas	0	0
Virginia	1	0
Wisconsin	0	0
Totals	10	4

**Noah's New York Bagels**

State	Noah's License Agreement Signed as of September 27, 2005 but, as of September 27, 2005, the Restaurant Was Not Yet Open	Projected Noah's Licensed Businesses To Be Opened During the Fourth Quarter of this Fiscal Year (9/28/05 – 1/3/06)
California	0	0
Oregon	0	0
Totals	0	0

The names, addresses, and telephone numbers of our licensees as of September 27, 2005 are listed in Exhibit E.

The name and last known home address and telephone number of every one of our franchisees who has had an agreement terminated, canceled, not renewed, or who otherwise voluntarily or involuntarily ceased to do business under a Franchise Agreement during the period from December 31, 2003 through September 27, 2005, or who has not communicated with us within ten weeks of the date of this offering circular are also listed in Exhibit E.

**ITEM 21**  
**FINANCIAL STATEMENTS**

The financial statements listed below are attached as exhibits to this offering circular as Exhibits G and H:

- G. NWR's\* consolidated balance sheets as of December 28, 2004 (which was the last day in NWR's FY2004) and December 30, 2003 (restated) (which was the last day in NWR's FY2003); and NWR's\* consolidated statements of operations, statements of changes in stockholders' equity, and statements of cash flows for December 28, 2004, and December 30, 2003 (restated), and December 31, 2002 (restated) (which was the last day in NWR's FY2002). (NWR's fiscal year ends on the Tuesday that is closest to December 31st. As noted above, its fiscal year 2005 will end as of January 3, 2006.)
- H. NWR's unaudited balance sheet and profit and loss statement as of and for the period ended September 27, 2005.
- \* *NWR has absolutely and unconditionally guaranteed our obligations to our franchisees under the franchise agreements.*

**ITEM 22**  
**CONTRACTS**

The Franchise Agreement, Area Development Agreement, Electronic Debit Agreement, and Confidentiality Agreement are included in this offering circular under Exhibit B. Our current General Release language is included in this offering circular as Exhibit M.

**ITEM 23**  
**RECEIPT**

The last two pages of this offering circular (Exhibit N) are identical pages acknowledging receipt of this entire document (including the exhibits). Please sign and return to us one copy; please keep the other copy along with this offering circular.