

Franchisor adopts any of them as part of the System, they will be deemed to be Franchisor's sole and exclusive property (without compensation to Franchisee) and deemed to be works made-for-hire for Franchisor. Franchisee agrees to sign whatever assignment or other documents Franchisor requests to evidence Franchisor's ownership or to assist Franchisor in securing intellectual property rights in such ideas, concepts, techniques or materials.

**22.05 Severability.** 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 22 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 with the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant was separately stated in and made a part of this Section.

**22.06 Right to Reduce Covenants.** Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in Paragraphs 22.02B, 22.02C and 22.03B 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 22 hereof.

**22.07 Application of Restrictive Covenants to Franchisee's Personnel.** Franchisor shall have the right to require all of Franchisee's personnel performing managerial or supervisory functions and all personnel receiving special training from Franchisor to execute similar covenants in a form satisfactory to Franchisor.

**22.08 Injunctive Relief.** Franchisor, in addition to such other rights it may have, shall have the right to injunctive relief without posting bond to enforce its rights pursuant to this Section 22.

## 23. TAXES, PERMITS, AND INDEBTEDNESS

**23.01 Prompt Payment of Taxes and Other Indebtedness.** Franchisee shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment, sales and meal taxes, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the business franchised under this Agreement.

**23.02 Bona Fide Dispute.** In the event of any bona fide dispute as to 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 Franchised Business, or any improvement thereon.

**23.03 Compliance With All Laws.** 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 licensed under this Agreement, including, without limitation, building and other required construction permits, licenses to do business and fictitious name registrations, sales tax permits, health and sanitation permits and ratings and fire clearance. Copies of all subsequent inspection reports, warnings, certificates and

ratings issued by any governmental entity during the term of this Agreement in connection with the conduct of the Franchised Business which indicate Franchisee's failure to meet or maintain the highest governmental standards and ratings applicable to the operation of the Franchised Business or less than full compliance by Franchisee with any applicable law, rule or regulation shall be forwarded to Franchisor by Franchisee within five (5) days of Franchisee's receipt thereof.

## 24. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

**24.01 Independent Contractor.** 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 venture, partner, employee or servant of the other for any purpose whatsoever.

**24.02 Public Notice.** 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 affirmative action as may be necessary to do so, including, without limitation, exhibiting a notice of that fact in a conspicuous place at the Franchised Business, the content of which Franchisor reserves the right to specify.

**24.03 Indemnification.** 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, or by reason of any act or omission of Franchisee in its conduct of the Franchised Business or any claim or judgment arising therefrom against Franchisor. Franchisee shall indemnify and hold Franchisor harmless against any and all such claims arising directly or indirectly from, as a result of, or in connection with Franchisee's operation of the Franchised Business, as well as the costs, including attorneys' fees, of defending against them.

**24.04 Merger, Acquisition, Application.** Franchisee agrees that Franchisor has the right, now, or in the future, to purchase, merge, acquire, or affiliate with an existing competitive or non-competitive franchise network, chain, or any other business regardless of the location of that chain's or business' facilities, and to operate, franchise or license those businesses and/or facilities as the Franchised Business set out in Exhibit A operating under the Licensed Marks or any of their marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which Franchisee acknowledges may be proximate to the Approved Location, or proximate to any of the Franchisee's locations).

Franchisor will have the right to assign this agreement, and all of its rights and privileges under this agreement, to any person, firm, corporation or other entity.

Franchisee agrees and affirms that Franchisor may sell itself, its assets, its Licensed Marks and/or its system to a third party; may go public; may engage in a private placement of some or all of its securities; may merge, acquire other corporations, or be acquired by another corporation; and/or may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring. With regard to any of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands or damages

arising from or related to the loss of Franchisor's name, Licensed Marks (or any variation thereof) and system and/or the loss of association with or identification of the Franchised Business set out in Exhibit A as Franchisor under this Agreement. Franchisee specifically releases any and all other claims, demands or damages arising from or related to the foregoing merger, acquisition and other business combination activities including, without limitation, any claim of divided loyalty, breach of fiduciary duty, fraud, breach of contract or breach of the implied covenant of good faith and fair dealing.

If Franchisor assigns its rights in this agreement, nothing herein shall be deemed to require Franchisor to remain in the restaurant business or any business which it now conducts or to offer to sell any food items, products or services to Franchisee.

## 25. APPROVALS AND WAIVERS

**25.01 Approval in Writing.** Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor therefore, and such approval or consent shall be obtained in writing.

**25.02 No Warranties.** Franchisor makes no warranties or guaranties 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 therefore.

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

## 26. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered three (3) days after being placed in the United States Mail by certified mail, return receipt requested, or on the business day following the mailing of such notice by Federal Express or other receipted overnight delivery service, to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notice to Franchisor: Everything Yogurt Brands, LLC.  
25 Washington Street  
Morristown, New Jersey 07960

Notices to Franchisee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

27. ENTIRE AGREEMENT

This Agreement, the documents referred to herein, and the Exhibits hereto, if any, constitute the entire full and complete Agreement between Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior Agreement. No other representations have induced Franchisee to execute this Agreement. No representations, inducements, promises or Agreement, oral or otherwise, not embodied herein or attached hereto were made by either party, and none shall be of any force or effect with reference to this Agreement or otherwise. 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.

28. SEVERABILITY AND CONSTRUCTION

**28.01 Severability.** Except as expressly provided to the contrary herein, each 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. The remaining Agreement shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms and/or provisions shall be deemed not to be a part of this Agreement.

**28.02 Application to Parties Only.** Anything to the contrary herein notwithstanding, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisor or Franchisee and such of their respective successors and assigns as may be contemplated by Section 18 hereof, any rights or remedies under or by reason of this Agreement.

**28.03 Titles For Convenience.** All captions in the 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.

**28.04 References.** All references herein to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable, and all acknowledgments, promises, covenants, agreements and obligations herein made or undertaken by Franchisee shall be deemed jointly and severally undertaken by all the parties hereto on behalf of Franchisee.

**28.05 Duplicate Copies.** This Agreement may be executed in duplicate, and each copy so executed shall be deemed an original.

**28.06 Patent Errors and Blanks.** Franchisor may correct any and all patent errors and fill in all blanks in this Agreement or in any Collateral Schedule or Exhibit, consistent with the agreement of the parties.

## 29. APPLICABLE LAW

**29.01 Applicable Law.** Any and all disputes among Franchisor, Franchisee and any or all of their respective owners, affiliates, officers, directors, employees and agents shall be resolved in the State or Federal Courts of New Jersey (Morris County or Newark vicinage), and Franchise and each of its owners irrevocably submits to the jurisdiction of such court and waives any objection any of them may have to either the jurisdiction of or venue in such court.

**29.02 Cumulative Rights and Remedies.** 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.

**29.03 Right to Injunctive Relief.** Notwithstanding the provisions in Paragraph 29.06 below, Franchisor may obtain in any court of competent jurisdiction any injunctive relief, including temporary restraining orders and preliminary injunctions, against conduct or threatened conduct for which no adequate remedy at law may be available or which may cause it irreparable harm. Franchisor may have such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and Franchisee's sole remedy in the event of the entry of such injunction, shall be its dissolution, if warranted, upon hearing duly had (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived). Franchisee and each of its owners acknowledges that any violation of Sections 12, 13, 14, 18, 20 and 22 would result in irreparable injury to Franchisor for which no adequate remedy at law may be available. Accordingly, Franchisee and each of its owners consents to the issuance of an injunction prohibiting any conduct in violation of any of those sections and agrees that the existence of any claim Franchisee or any of its owners may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement of any of those Paragraphs.

**29.04 One Year Limitation.** Any and all claims and actions and setoffs arising out of or relating to this Agreement (including, but not limited to, the offer and sale of this Agreement), the relationship of Franchisee and Franchisor, or Franchisee's operation of the Franchised Business, brought by Franchisee shall be commenced within one (1) year from the occurrence of the facts giving rise to such claim or action, or such claim or action shall be barred. In the event that this provision is unenforceable under applicable law, then the limitation period shall be deemed to be the shortest limitation period to which the parties could agree to be bound.

**29.05 Exemplary Damages Waived.** Franchisor and Franchisee hereby waive to the fullest extent permitted by law any right to or claim of any consequential, 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.

**29.06 Exclusive Jurisdiction.** This Agreement shall be construed under the laws of the State of New Jersey, provided the foregoing shall not constitute a waiver of any of Franchisee's rights under any applicable franchise law of another state. Otherwise, in the event of any conflict of law, New Jersey law will prevail, without regard to its conflict of law principles. However, if any provision of this Agreement would not be enforceable under New Jersey law, and if the Franchised Business is located outside of New Jersey and such provision would be enforceable under the laws of the state in which the Franchised Business is located, then such provision shall

be construed under the laws of that state. Nothing in this Paragraph is intended to subject this agreement to any franchise or similar law, rule or regulation of the State of New Jersey to which it otherwise would not be subject.

**29.07 Limitations on Legal Actions.** Franchisee agrees that, for Franchisor's franchise system to function properly, Franchisor should not be burdened with the costs of litigating system-wide disputes. Accordingly, any disagreement between Franchisee (and its owners) and Franchisor shall be considered unique as to its facts and shall not be brought as a class action, and Franchisee (and each of its owners) waives any right to proceed against Franchisor or any of its affiliates, officers, directors, employees, agents, successors and assigns by way of class action. In any legal action between the parties, the court shall not be precluded from making its own independent determination of the issues in question, notwithstanding the similarity of issues in any other legal action involving Franchisor and any other franchisee, and each party waives the right to claim that a prior disposition of the same or similar issues preclude such independent determination.

Franchisee waives any and all rights, actions or claims for relief under the Federal act entitled "Racketeer Influence and Corrupt Organizations", 18 U.S.C. §1961 *et seq.*

### 30. TAXES

Franchisor will have no liability for any sales, use, service, occupation, excise, gross receipts, income, property or other taxes, whether levied upon the Franchised Business, Franchisee's property or upon Franchisor, in connection with sales made or business conducted by Franchisee (except any taxes Franchisor is required by law to collect from Franchisee). Payment of all such taxes shall be Franchisee's responsibility. In the event of a bona fide dispute as to Franchisee's liability for taxes, Franchisee may contest its liability in accordance with applicable law. In no event, however, will Franchisee permit a tax sale, seizure, or attachment to occur against the Franchised Business or any of its assets.

### 31. ACKNOWLEDGMENTS

**31.01 Independent Investigation.** Franchisee acknowledges that it has conducted an independent investigation of the business franchised hereunder, and 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 as an independent businessman. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received any warranty or guarantee, express or implied, as to the anticipated or potential volume, profits or success of the business venture contemplated by this Agreement. Franchisee represents that, except with respect to representations expressly made in the Uniform Franchise Offering Circular, Franchisee has not relied on any statement made by Franchisor or its representatives, including representations concerning the actual, anticipated or potential sales volume or profitability of any business including the Franchised Business, or the suitability of any lease terms of any site discussed or selected for the Franchised Business. Franchisee acknowledges that it is solely responsible for making an independent determination as to the suitability of any site and lease terms for the Franchise Business and that Franchisor's approval of a site does not constitute a representation of suitability.

**31.02 Review of Agreement.** Franchisee acknowledges that it has received, read and understood this Agreement, and the Exhibits hereto, if any, and that Franchisor has accorded

Franchisee ample time and opportunity to consult with advisors of its own choosing about the meaning of this agreement and the potential benefits and risks of entering into this Agreement.

**31.03 Initial Investment.** Franchisee recognizes and understands that it may incur other expenses and/or obligations as part of the initial investment in the Franchised Business which the terms of this Agreement may not address, and which include without limitation: opening advertising, equipment, fixtures, other fixed assets, construction, leasehold improvements and decorating costs as well as working capital necessary to commence operations.

**31.04 Receipt of Agreement and Disclosure Document.** Franchisee acknowledges that it has received this completed Agreement, and the Exhibits hereto, if any, at least five (5) business days prior to the date on which this Agreement is executed. Franchisee further acknowledges that it has received the disclosure document required by the trade regulation rule of the Federal Trade Commission at least ten (10) business days prior to the date on which this Agreement is executed.

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

ATTEST:

\_\_\_\_\_  
Witness

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**FRANCHISOR:**

**Everything Yogurt Brands, LLC.**

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

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

**FRANCHISEE:**

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

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

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

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

**EXHIBIT A**  
**To**  
**Franchise Agreement**

**LICENSED MARKS**

Pursuant to the provisions of the Franchise Agreement, Franchisee shall be authorized to use the following Licensed Mark(s) on the terms and conditions set forth in the Agreement:

Bananas Smoothies & Frozen Yogurt



**EXHIBIT B**  
**To**  
**Franchise Agreement**

**CONDITIONAL ASSIGNMENT OF LEASE**

THIS AGREEMENT, dated this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and among Everything Yogurt Brands, LLC, (the "Franchisor"), \_\_\_\_\_, (the "Landlord") and \_\_\_\_\_, (the "Franchisee/Tenant").

WHEREAS, the Landlord and the Franchisee/Tenant are parties to a certain Lease/Sublease Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 200\_ (the "Lease") relating to premises described in Exhibit E annexed hereto (the "Premises");

WHEREAS, the Franchisee/Tenant has entered into a Franchise Agreement (the "Franchise Agreement") with the Franchisor to operate a Franchised Business under the Licensed Marks (the "Franchised Business"); and

WHEREAS, in order to provide continuity of the Franchised Business, the Landlord desires to grant certain rights to the Franchisor under the Lease to protect Franchisor's interest under the Franchise Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties agree as follows:

1. Notwithstanding anything to the contrary contained in the Lease:

A. The premises shall be used solely for the purpose of operating the Franchised Business \_\_\_\_\_ (fill in Mark(s) set forth in Exhibit A to the Franchise Agreement) as set forth in the Franchise Agreement.

B. In the event the Franchise Agreement between the Franchisor and the Franchisee/Tenant shall expire or terminate, then the Franchisee/Tenant's rights pursuant to the Lease shall, at the option of the Franchisor, be assigned and transferred to it provided that the Franchisor shall assume and be liable for all of Franchisee/Tenant's obligations, duties, and liabilities pursuant to the Lease.

2. The Franchisor shall exercise said option by sending the Landlord written notice of its intention to succeed to Franchisee/Tenant's rights under the Lease by certified mail, return receipt requested within thirty (30) days after the expiration or termination of the Franchise Agreement. Said notice shall, without any further action, operate as an Assignment of Franchisee/Tenant's rights under the Lease and the assumption by the Franchisor of the obligations, liabilities, and duties of Franchisee/Tenant pursuant to the Lease. The Franchisor may thereafter assign the Lease to the Franchised Business, Franchisee, subject to Landlord's approval, which approval will not be unreasonably withheld or delayed.

3. Notices of Default

The Landlord shall mail, within five (5) days of receipt, by first class mail, postage prepaid, to the Franchisor at the address below, copies of all written notices sent to or received from the Franchisee/Tenant, including without limitation, all notices of default:

Everything Yogurt Brands, LLC  
25 Washington Street  
Morristown, New Jersey 07960  
Attn.:

4. Right to Cure

In the event the Franchisee/Tenant shall be in default under the Lease, the Franchisor may (but shall be under no obligation to), within thirty (3) days after receipt of written notice from the Landlord, cure such default (or such longer period of time if such default is not capable of being cured within thirty (30) days and the Franchisor is diligently proceeding to cure the default) and take immediate occupancy of the Premises without the Landlord's consent. The Franchisor may at any time before or after taking occupancy, relet the Premises to another Franchisee with the Landlord's written approval of the new Franchisee/Tenant, which consent shall not be unreasonably withheld or delayed.

5. Right to Assign

The Franchisee/Tenant shall be permitted to assign its interest under the Lease and all rights and obligations thereunder at any time to the Franchisor without the Landlord's consent. The Franchisor shall be permitted to assign the Lease and all rights and obligations thereunder to another Franchisee/Tenant upon the Landlord's written approval of the new Franchisee/Tenant, which approval shall not be unreasonably withheld or delayed.

6. Acknowledgment of Rights

The Landlord acknowledges the Franchisor's rights under the Franchise Agreement, upon reasonable notice to the Landlord, to enter the premises to take such steps as may be necessary to protect its interest under the Franchise Agreement including the removal of any signs and other proprietary marks of the Franchisor (without damage to the Premises).

7. Modification of Lease

The Landlord and the Franchisee/Tenant will not make any material modifications to the Lease without the Franchisor's prior written consent, which consent shall not be unreasonably withheld or delayed.

8. Conflict

In the event of any inconsistency between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall supersede and control.

9. Binding Effect

This Agreement shall be binding upon the personal representatives, heirs, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF, this Agreement has been executed the date and year here written.

**FRANCHISOR:**

**EVERYTHING YOGURT BRANDS,  
LLC**

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

**LANDLORD:**

\_\_\_\_\_

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

\_\_\_\_\_  
Address

\_\_\_\_\_

**FRANCHISEE/TENANT:**

\_\_\_\_\_

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

\_\_\_\_\_  
Address

\_\_\_\_\_

**EXHIBIT C**  
**To**  
**Franchise Agreement**

**CONFIDENTIALITY AND NON-COMPETITION AGREEMENT**

THIS AGREEMENT, made as of the \_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_ (hereinafter referred to as "Franchisee") and \_\_\_\_\_, with offices at \_\_\_\_\_ (hereinafter referred to as "Manager/Employee");

WHEREAS, Everything Yogurt Brands, LLC ("Franchisor") is the possessor of drawings, plans, specifications, experiences, technical knowledge recipes and know-how in the field of the construction and operation of restaurants offering food products with respect to the preparation of various food products that it considers to be confidential or proprietary information of value (hereinafter referred to as "Confidential Information");

WHEREAS, Franchisor has granted us a license to use the Confidential Information in connection with the contemplated ownership and/or operation of a Franchised Business located at \_\_\_\_\_ (hereinafter referred to as the "Project") that shall necessitate the release of Confidential Information, which information may be in oral, written or pictorial form; and

WHEREAS, we are willing to make certain confidential information available to you, the extent thereof to be determined solely by Franchisor, and for the purpose of the Project only, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual promises, the parties hereto agree as follows:

1. That Manager/Employee shall hold confidential all information transmitted to it by Franchisee, relating to the Project, whether in oral, written or pictorial form;
2. That all written and pictorial embodiments of all of the Confidential Information received by Manager/Employee, including copies thereof, are and shall remain the property of Franchisor and shall be surrendered to Franchisee upon the termination of Manager/Employee's employment or earlier, as directed by Franchisor;
3. That Manager/Employee shall not reproduce, copy or photograph in any manner or form, any documents, drawings or memoranda embodying the Confidential Information without the express consent of Franchisee, and then only for the purpose of carrying on the purposes of the Project;
4. That no Confidential Information imparted to Manager/Employee, and no technical data acquired by it by virtue of the utilization of Franchisor's services as aforesaid, shall be used by it during or subsequent Manager/Employee's employment with Franchisee for benefit of any other person, firm or corporation other than for Franchisee and/or Franchisor, in connection with the Project, unless it shall have first secured the written consent of an officer of Franchisee to such use;
5. That Manager/Employee shall limit dissemination of the Confidential Information of Franchisor, made available hereunder to the extent reasonably necessary for the performance of the aforesaid services on the Project;
6. That in the event of a breach or threatened breach of any of the terms and conditions of this Agreement by Manager/Employee, Franchisor shall be entitled to an injunction restraining said party about to commit any breach thereof, from committing same without first proving or showing any actual damages;

7. That Manager/Employee shall not, alone or with others, directly or indirectly, represent or accept employment by any other person, firm, association, partnership or corporation for compensation, nor shall they maintain any interest as owner, stockholder, partner, investor, consultant, officer, employee, director, lender or otherwise, directly or indirectly, in any business or enterprise whatsoever, that is in competition with Franchisor's principal business then being carried on without the prior written consent of Franchisor;

8. That the obligation of confidentiality shall survive the termination of employment by Franchisee, and shall continue indefinitely until the Confidential Information has been voluntarily disclosed to the public by Franchisor, independently developed and disclosed by others, or otherwise enters the public domain through lawful means;

9. This Agreement supersedes and replaces any and all prior confidentiality agreements, written or oral, between the parties hereto relating to the Confidential Information covered by this Agreement. No waiver of any provisions of this Agreement or any right hereunder, or any modification hereof, and no authorization of any act not in conformity herewith shall be deemed to amend or supersede this Agreement, in whole or in part, unless such waiver or authorization in writing, specifically so provides;

10. This Agreement is governed by the laws of the State in which the Project is located.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below. Upon execution and delivery by both parties, the effective date of this Agreement shall be deemed to be the day and year first above written.

**FRANCHISEE:**

\_\_\_\_\_

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

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

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

**MANAGER/EMPLOYEE:**

\_\_\_\_\_

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

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

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

**EXHIBIT D**  
**To**  
**Franchise Agreement**

**OWNERS' PERSONAL GUARANTY OF**  
**FRANCHISEE'S OBLIGATIONS**

In consideration of, and as an inducement to, the execution of the Everything Yogurt Brands, LLC Franchise Agreement dated as of \_\_\_\_\_, 200\_ (the "Agreement") by and between Everything Yogurt Brands, LLC ("Franchisor"), and \_\_\_\_\_ ("Franchisee"), each of the undersigned owners of an interest in Franchisee hereby personally and unconditionally: (1) guarantees to Franchisor and its successors and assigns, for the term of the Agreement and thereafter as provided in the Agreement, that Franchisee shall punctually pay and perform each and every undertaking, agreement and covenant set forth in the Agreement and that each and every representation of Franchisee made in connection with the Agreement are true, correct and complete in all respects at and as of the time given; and (2) agrees personally to be bound by, and personally liable for the breach of, each and every provision in the Agreement.

Each of the undersigned waives: (a) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; (b) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; (c) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; (d) any right he may have to require that an action be brought against Franchisee or any other person as a condition of liability; and (e) any and all other notices and legal or equitable defenses to which he may be entitled.

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

This guaranty shall be interpreted and construed under the laws of the State of New Jersey. In the event of any conflict of law, the laws of the State of New Jersey shall prevail. Any and all disputes shall be resolved in the State or Federal Courts of New Jersey (Morris County or Newark vicinage).

IN WITNESS THEREOF, each of the undersigned has hereunto affixed his signature, under seal, on the same day and year as the Agreement was executed.

**Percentage of ownership  
interests in Franchisee**

**GUARANTOR(S)**

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

\_\_\_\_\_

\_\_\_\_\_  
(Signature)

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

DATE: \_\_\_\_\_, 200\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**EXHIBIT E**  
**To**  
**Franchise Agreement**

**SUBLEASE AGREEMENT**

This **Sub-Lease Agreement** is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between Everything Yogurt Brands, LLC, a Delaware limited liability company, having an address at 25 Washington Street, Morristown, New Jersey 07960 ("Sub-Lessor") and \_\_\_\_\_, having an address at \_\_\_\_\_, ("Sub-Lessee").

**WHEREAS**, Sub-Lessor is the Tenant under that certain Lease Agreement, dated \_\_\_\_\_, by and between Sub-Lessor, as Tenant, and \_\_\_\_\_, as Landlord, (the "Lease") for Premises described in the Lease (the "Demised Premises"); and

**WHEREAS**, a copy of the form of Lease is attached hereto as Exhibit "A" and incorporated by reference for all purposes (excepted as stated herein); and

**WHEREAS**, Sub-Lessor has agreed with the Sub-Lessee to grant a Sub-Lease of the Demised Premises to Sub-Lessee subject to the terms of this Sublease; and

**WHEREAS**, Sub-Lessor and Sub-Lessee have previously executed the current Franchise Agreement (the "Franchise Agreement") between the Sub-Lessor as Franchisor, and the Sub-Lessee, as Franchisee, under which the Sub-Lessee will operate a franchised business as the term is defined in the Franchise Agreement subject to the terms of the Franchise Agreement and this Sublease.

**NOW, THEREFORE**, in consideration of the rents reserved under the Sub-Lease, the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1. The Sub-Lessor hereby sub-leases the entire Premises under the Lease to the Sub-Lessee for a term equal to the original term of the Lease less one (1) day, commencing on the date Sub-Lessee takes possession of the Demised Premises. Possession shall be defined as the date the Sub-Lessee takes actual possession of the Demised Premises, but in no event shall it be later than sixty (60) days after Sub-Lessee's graduation from the Franchisor's initial training course.
2. It is expressly agreed between the parties that in the event the Sub-Lessor is unable to obtain the written consent of the Landlord to this Sub-Lease (should such consent be required by the provisions of the Lease) this Sub-Lease will be null and void and of no further effect and the Sub-Lessee acknowledges and agrees that the Sub-Lessor shall not be responsible for any loss or damage occasioned to the Sub-Lessee by virtue of the refusal of the said Landlord to consent to this Sub-Lease.
3. The Sub-Lessee acknowledges and confirms all of the provisions of the Lease and agrees to be bound by the Lease as if all of the covenants of the Sub-Lessor as Tenant contained therein had been fully incorporated into the Sub-Lease as covenants of the Sub-Lessee (with the exception of the Term), including but not limited to the obligation to carry insurance pursuant to the Lease.
4. Sub-Lessee hereby acknowledges and agrees that: the Lease is fully negotiated. it has not been charged for said negotiations., it did not rely on the negotiations, it had its own counsel review the Sublease and Sub-Lessor and its attorneys, officers, representatives, general counsel and



employees represented only Sub-Lessor and not Sub-Lessee in the negotiations. Sub-Lessee hereby further agrees and acknowledges that it is accepting the Lease "as is", and that, consistent with paragraph 15 of this Sub-Lease, neither Sub-Lessor, nor any of its officers, employees, representatives, general counsel or attorneys have made any representations or promises upon which Sub-Lessee has relied in connection with the Lease and this Sub-Lease.

5. Sub-Lessee shall supply the Landlord and the Sub-Lessor with copies of the required Certificate of Insurance.
6. Where used in this Sublease any word or term that is specifically defined in the Lease shall have the same meaning as that ascribed to it in the Lease.
7. The Sub-Lessee will pay any and all rents and other charges due and owing under the Lease directly to the Landlord, pursuant to the terms and conditions of the Lease. The fees due under the Franchise Agreement will be paid to Franchisor pursuant to the terms of the Franchise Agreement.
8. Sub-Lessee acknowledges that Sub-Lessor and/or its affiliates has/have a long-standing relationship with the Landlord under the Lease. If, as a result of said relationship, Sub-Lessor achieves a rent credit or other savings under the Lease, Sub-Lessor will retain the benefit of said credit and/or savings, and Sub-Lessee will continue to pay Landlord the amounts due and owing on the attached Lease.
9. The Sub-Lessee covenants with the Sub-Lessor as follows:
  - (a) To pay rent as aforesaid; and
  - (b) To perform and observe all of the covenants on the part of the Sub-Lessor as tenant under the provisions of the Lease and to keep the Sub-Lessor fully and completely indemnified against all actions, claims, expenses and demands in respect to each and every of such covenants; and
  - (c) Not to assign, sublet or part with possession of all or any part of the Demised Premises without the prior consent in writing of the Sub-Lessor, which consent may be unreasonably withheld, or if granted, may be granted by the Sub-Lessor upon such terms and conditions as the Sub-Lessor may see fit; subject always to the prior consent of the Landlord in accordance with, and subject to, the terms of the Lease; and
  - (d) To pay when due all continuing franchise fees and advertising contributions as required by Sub-Lessee's Franchise Agreement; such payments being characterized as additional rent under this Sub-Lease Agreement; and
  - (e) To perform all of the covenants contained in the Franchise Agreement.
10. Sub-Lessor shall have no liability to Sub-Lessee with respect to any of the affirmative obligations of the Landlord under the Lease; but Sub-Lessor shall, upon request of Sub-Lessee and if required to do so by any applicable laws, codes or ordinances, bring any action or proceeding against the Landlord in Sub-Lessee's name upon satisfactory proof to Sub-Lessor's attorney from Sub-Lessee that an action or proceeding must be taken in the name of Sub-Lessor to cure or obtain any other relief on account of any breaches of the Lease on the part of the Landlord. Sub-Lessee shall cooperate with Sub-Lessor in any such action or proceeding. If not precluded from so doing by applicable law, Sub-Lessor may include Sub-Lessee as a party to any such action or proceeding, or may bring any such action or proceeding solely in the name of the Sub-Lessee.

Sub-Lessee may bring any such action or proceeding in its own name and on its own behalf provided Sub-Lessee shall have first requested Sub-Lessor to bring such action or proceeding and Sub-Lessor shall not have, within thirty (30) days of such request, commenced such action or proceeding.

Sub-Lessee agrees to indemnify Sub-Lessor and hold Sub-Lessor harmless and, immediately upon demand, to reimburse Sub-Lessor for all attorneys fees and other charges and expenses Sub-Lessor incurs as a result of any such action or proceeding brought by Sub-Lessee or by Sub-Lessor on behalf of the Sub-Lessee. If Sub-Lessor brings such action or proceeding as provided above, Sub-Lessor may require that Sub-Lessee pay in advance for the anticipated attorneys fees and other charges and expenses to be incurred.

11. In the event that the Sub-Lessor's affiliate terminates the Franchise Agreement for any reason whatsoever, this Sub-Lease shall be deemed to have been terminated on the same day as the date of termination of the Franchise Agreement. In addition, failure by the Sub-Lessee to make payments to the Sub-Lessor's affiliate as Franchisor of any- and all franchise fees, advertising contributions and other required payments, shall constitute a default under this Sub-Lease Agreement.

12. Proviso is made for re-entry by the Sub-Lessor on non-payment of rent or non-performance of the covenants or agreements, which right of re-entry may be exercised immediately upon default, having occurred and without prior notice to the Sub-Lessee. The Sub-Lessor shall in addition to such right of re-entry, have all the same rights as the Landlord under the Lease in the event of Default or non-performance by the Sub-Lessee of this provision of this Sub-Lease, all of which and all remedies available to the Landlord shall be considered to be incorporated in the Sub-Lease by reference.

13. Any notice in writing which either party may desire to give to the other may be validly effectually given by mailing the same by prepaid registered mail, return receipt requested, or by a reputable overnight delivery service, addressed, if intended for the Sub-Lessee to the Demised Premises, and if intended for the Sub-Lessor to:

25 Washington Street  
Morristown, NJ 07960  
Phone #: (973) 285-4800  
Fax #: (973) 285-5252

or to such other addresses as either party may notify the other by notice in writing.

Every such notice shall be considered to have been received on the third (3rd) business day following the date of which it was so mailed.

14. Where there is more than one Sub-Lessee, covenants and agreements of the Sub-Lessee shall be considered joint and several covenants and agreements. The provisions of this Sub-Lease shall be read with all the grammatical changes required if there is more than one (1) Sub-Lessee or if the Sub-Lessee is male, female or a corporation.

15. It is understood that there are no oral agreements between the parties hereto affecting this Sub-Lease, and this Sub-Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Sub-Lessor to Sub-Lessee with respect to the subject thereof, and none thereof shall be used to interpret or construe this Sub-Lease. This Sub-Lease is and shall be considered to be the only Sub-Lease agreement relative to the Premises between the parties hereto and their respective representatives and agents as of the date

hereof. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein, and no modification of this Sub-Lease shall be effective unless the same shall be in writing and be signed by the parties hereto or, as the case may be their respective successors or assigns.

16. Sub-Lessee shall not modify or seek to modify the Lease without Sub-Lessor's prior written consent, which consent may be withheld in its sole discretion.

17. This Agreement may be signed in any number of counterparts, all of which when taken together shall form one valid and effective agreement.

18. The individuals signing this Agreement on behalf of each of the parties represent that they have the authority to enter into this Agreement and to bind the respective parties.

19. This Sub-Lease shall be governed and construed in accordance with the law of the state in which the Demised Premises is located, without regard to such state's conflict of laws principles.

IN WITNESS WHEREOF, this Sub-Lease has been executed the date and year above written.

Witnessed by:

\_\_\_\_\_

**SUB-LESSOR:**

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

Name: \_\_\_\_\_

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

Witnessed by:

\_\_\_\_\_

**SUB-LESSEE:**

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

Name: \_\_\_\_\_

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

**EXHIBIT F**  
**To**  
**Franchise Agreement**

**GENERAL RELEASE**

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
AND FRANCHISOR CONSENT**

**THIS ASSIGNMENT AND ASSUMPTION AGREEMENT** is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among \_\_\_\_\_, a \_\_\_\_\_ corporation and \_\_\_\_\_, an individual, both having an address at \_\_\_\_\_ (collectively, hereinafter referred to as "**Purchaser**" or "**Assignee**"; EVERYTHING YOGURT BRANDS, LLC. assignee to EVERYTHING YOGURT BRANDS, INC. f/k/a Restaurant Systems International, Inc., a Delaware limited liability company with offices at 25 Washington Street, Morristown, New Jersey (hereinafter "**Franchisor**"); and \_\_\_\_\_ and \_\_\_\_\_, an individual ("**Assignor's owner**"), both with an address at \_\_\_\_\_ (hereinafter "**Assignor**").

**WHEREAS**, a franchise relationship exists between Assignor and Franchisor pursuant to a \_\_\_\_\_ Franchise Agreement dated \_\_\_\_\_, as amended by a \_\_\_\_\_ First Addendum (hereinafter referred to as the "**Franchise Agreement**"); and

**WHEREAS**, the Franchise Agreement grants Assignor the right to operate a \_\_\_\_\_ franchised business at \_\_\_\_\_ (hereinafter the "**Franchised Business**"); and

**WHEREAS**, Assignor wishes to assign to Assignee all of Assignor's right, title and interest in, to and under the Franchise Agreement and Assignee is willing to assume all of the obligations thereunder, all as set forth in a separate Contract of Purchase and Sale of Business dated \_\_\_\_\_ between Assignor and Assignee ("**Contract of Sale**"), a copy of which is attached hereto as **Exhibit A**; and

**WHEREAS**, the Franchise Agreement conditions any transfer of any interest in the Franchised Business on approval by Franchisor of the assignment; and

**WHEREAS**, Franchisor is willing to approve, in writing, the transfer from Assignor to Assignee upon the terms and conditions set forth herein.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions herein contained, and other good and valuable consideration, receipt of which is hereby acknowledged by each of the parties hereto, the parties agree as follows:

1. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in, to and under Assignor's Franchise Agreement and Assignee hereby accepts such assignment and assumes all of the liabilities thereunder. Assignor and Assignee acknowledge and agree that, notwithstanding the Contract of Sale to the contrary, Seller does not have the right to sell the trade name for the Franchised Business.

2. Franchisor consents to the within Assignment and Assumption, provided that all parties sign this Agreement and provided that Assignor or Assignee pays Franchisor \$\_\_\_\_\_, via certified funds or a cashier's check, the required **Transfer Fee** under the Franchise Agreement and any and all **Royalties and Ad Fund Fees** that are due through the date of Closing between Assignor and Assignee, which are estimated to be \$\_\_\_\_\_.

3. Assignee acknowledges that its decision to enter into the Contract of Sale and this Assignment and Assumption Agreement was based solely on representations made by Assignor, and that Franchisor has not made any representations to Assignee to induce the purchase of the Franchised Business or to enter into this Assignment and Assumption Agreement.

4. Assignee and Assignor acknowledge that Assignor's sale of the Franchised Business is being made to Assignee for Assignee's own account and that the sale is not being effectuated by or through Franchisor. Assignor and Assignor's owner indemnify and hold Franchisor harmless from any and all claims and/or causes of action resulting from its sale to Assignee, including the payment of any and all attorneys fees.

5. By executing this Assignment and Assumption Agreement, Assignor and Assignee for themselves and their respective successors, represent and warrant that their representations herein are true and correct and that each of them has the right and authority to enter into and to accept the terms and conditions of this Assignment and Assumption Agreement, that the execution, delivery and performance of this Assignment and Assumption Agreement has been duly authorized by all necessary action and this Assignment and Assumption Agreement constitutes the valid and binding agreement of each of them.

6. Assignor and Assignee shall cooperate fully with Franchisor and do all things necessary, including execution of appropriate documents in forms satisfactory in all respects to counsel for Franchisor, to satisfy their obligations under this Assignment and Assumption Agreement.

7. Assignor and Assignor's owner mutually release and forever discharge Franchisor, its heirs, successors, predecessors, representatives, assigns, agents, employees, attorneys, officers, and directors, owners and shareholders, members from any claims, debts, liabilities, demands, obligations, costs, expenses, actions, and causes of action of every nature, character, and description, known or unknown, vested or contingent, which each party hereto now owns or holds, or has at any time heretofore owned or held, or may at any time own or hold against the Franchisor, arising pursuant to the Franchise Agreement thereof prior to the date of this Assignment and Assumption Agreement.

8. Assignor and Assignor's owner shall remain jointly and severally liable to Franchisor in the event of any default by Assignee under the Franchise Agreement. If Assignee defaults under the Franchise Agreement, Franchisor will not first have to pursue performance and/or collection from Assignee, but instead may look solely and exclusively to the Assignor and/or Assignor's owner for performance and payment under the Franchise Agreement.

9. Assignor agrees to remain bound by the post-term restrictive covenants contained in the Franchise Agreement, which provisions shall survive Assignor's Assignment hereunder, even if those covenants vary in any way from Assignor's obligations under the Contract of Sale.

10. This Assignment and Assumption Agreement may not be modified except in writing signed by all parties. The provisions of this Assignment and Assumption Agreement are severable, and in the event that any of them is held void and unenforceable as a matter of law the remainder shall continue in full force and effect.

11. This Assignment and Assumption Agreement may be signed in any number of counterparts, all of which when taken together shall form one valid and effective agreement. Facsimile signatures will be valid to bind the parties under this Assignment and Assumption Agreement.

12. The individual signing this Assignment and Assumption Agreement on behalf of each of the parties represents that he/she has the authority to enter into this Assignment and Assumption Agreement and to bind the respective parties.

13. This Agreement shall be governed by the laws of the State of New Jersey and any actions or proceedings brought in connection with this Assignment and Assumption Agreement shall be filed in the Superior Court of New Jersey, Morris County or the United States District Court, District of New Jersey, Newark vicinage. The Parties and each of their respective owners irrevocably submit to the jurisdiction of such courts and waive any objection any of them may have to either the jurisdiction of or venue in such courts.

14. This Assignment and Assumption Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

15. Except as modified by this Agreement, all terms of the Franchise Agreement remain the same and in full force and effect.

16. This paragraph is applicable only to the State of Maryland: Pursuant to COMAR 02.02.08.16L, any general release, estoppel or waiver of liability required as a condition of purchase, renewal and/or assignment/transfer shall not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

IN WITNESS WHEREOF, intending to be bound hereby, the parties have affixed their signatures and seals on the day and year first above written.

ATTEST:

**ASSIGNOR**

\_\_\_\_\_

\_\_\_\_\_

**ASSIGNEE/PURCHASER**

Witness

\_\_\_\_\_

Witness

ATTEST

**FRANCHISOR  
EVERYTHING YOGURT BRANDS, LLC**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**EXHIBIT G**

**EVERYTHING YOGURT BRANDS, LLC**

**DEPOSIT AGREEMENT**

The enclosed check, in the amount of \$ \_\_\_\_\_ Dollars shall act as a deposit toward the payment of the Initial Franchise Fee of \$ \_\_\_\_\_ if box 1 is checked or the Purchase Price of the Everything Yogurt Brands, LLC company owned restaurant for the purchase price of \$ \_\_\_\_\_ if box 2 is checked.

Check the appropriate box in either 1 or 2 below:

1.  \$5,000 payable to Everything Yogurt Brands, LLC for a deposit toward the purchase of an Everything Yogurt Brands, LLC Franchise
2.  \$ \_\_\_\_\_ (10% of the Purchase Price) payable to Everything Yogurt Brands, LLC shall act as a deposit toward the purchase of the Everything Yogurt Brands, LLC company restaurant at the address set out below.

We understand that the above deposit, when accepted by Everything Yogurt Brands, LLC will allow us for a 3-month period to purchase a Everything Yogurt Brands Franchise for the Initial Franchise Fee specified above or when box 2 is checked we understand our deposit shall be applied to the purchase of a company restaurant at the location set out below.

We agree when box 1 is checked if we sign a Franchise Agreement within 3 months from the date our deposit is received the total deposit will be applied as a credit to the initial franchise fee. We further agree that when box 2 is checked we must complete the purchase by executing all closing agreements within 3 months from the date our deposit is received and if we do the total deposit will be applied as a credit to the Purchase Price. If we do not sign a Franchise Agreement or complete the purchase of the Everything Yogurt Brands, LLC company restaurant in 3 months we agree that Everything Yogurt Brands, LLC may retain 50% of our deposit and shall refund the balance of our deposit within 10 days after the expiration of the 3-month period.

We understand and agree that neither our deposit nor any rights associated with it are assignable without the prior written consent of Everything Yogurt Brands, LLC, which consent may be withheld by Everything Yogurt Brands, LLC at its sole and absolute discretion.

This deposit and other payments should be made payable to "EVERYTHING YOGURT BRANDS, LLC".

**[ The remainder of this page intentionally left blank ]**

By our signature below, we hereby acknowledge receipt of a completed copy of this document on the date and time indicated.

Agreed: (Prospective Franchisee(s)):

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**STORE LOCATION:**

Address: \_\_\_\_\_

**PROPOSED FRANCHISE LOCATION:**

Address: \_\_\_\_\_

Accepted: **EVERYTHING YOGURT BRANDS, LLC**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_



## EXHIBIT H

### SBA AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT is made this the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between Everything Yogurt Brands, LLC (hereinafter referred to as "Franchisor") and \_\_\_\_\_ (hereinafter referred to as "Franchisee"),

#### WITNESSETH:

WHEREAS, Franchisee and Franchisor heretofore entered into a Franchise Agreement on the \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_ (the "Franchise Agreement"). The Franchisee agreed among other things to operate and maintain a franchise located at \_\_\_\_\_ . Franchisee has obtained from a lender a loan (the "Loan") in which funding is provided with the assistance of the United States Small Business Administration ("SBA"). SBA requires the execution of this Addendum as a condition for obtaining the SBA assisted financing.

NOW, THEREFORE, in consideration of the mutual promises below, and for good and valuable considerations in hand paid by each of the parties to the others, the receipt and sufficiency of which all of the parties acknowledge, the parties agree as follows:

1. The Franchise Agreement is in full force and effect, and Franchisor has sent no official notice of default to Franchisee under the Franchise Agreement that remains uncured on the date hereof.
2. If the Franchise Agreement is terminated and all tangible assets of the Restaurant are to be sold under Section 20 of the Franchise Agreement and the parties are unable to agree as to a purchase price and terms, the fair market value of such premises and property shall be determined by three appraisers chosen in the following manner. Franchisee shall select one and Franchisor shall select one, and the two appraisers so chosen shall select a third appraiser. The decision of the majority of the appraisers so chosen shall be conclusive. The cost of the third appraiser shall be shared equally by the parties.
3. This Amendment shall automatically terminate on the earliest to occur of the following: (i) a termination occurs under the Franchise Agreement; (ii) the Loan is paid; or (iii) SBA no longer has any interest in the Loan.

IN WITNESS WHEREOF, the parties hereto have duly signed and executed this Amendment as of the day and year first above written.

This Amendment shall be considered an integral part of the Franchise Agreement. Except as modified or supplemented by this Amendment, all of the rights and obligations of the parties set out in the Franchise Agreement are binding on the parties hereto.

To the extent this Amendment shall be deemed to be inconsistent with any terms or conditions of the Franchise Agreement or Exhibits or Attachments thereto, the terms of this Amendment shall govern.

IN WITNESS WHEREOF, each of the undersigned hereby acknowledges having read this Amendment, understands and consents to be bound by all of the terms and agrees this Amendment and all of the terms added shall become effective on the day and year first above written.

ATTEST:

**EVERYTHING YOGURT BRANDS, LLC**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**FRANCHISEE**

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_

**EXHIBIT I  
To  
Franchise Agreement**

**EVERYTHING YOGURT BRANDS, LLC  
STATE REQUIRED AMENDMENT  
TO FRANCHISE AGREEMENT**

**[CALIFORNIA]**

None