



EXHIBIT C
MULTI-UNIT FRANCHISE AGREEMENT

This Multi-Unit Franchise Agreement is made and entered into between House of Bread Franchising, Inc., dba House of Bread, a California corporation (Franchisor) and _____ (Multi-Unit Franchisee).

The Franchisor as the result of the expenditure of time, skill, effort and money, has developed and owns a unique and distinctive system (System) relating to the establishment and operation of a bread bakery (Outlet) and identifies the System by a service mark for House of Bread Franchising (Proprietary Marks).

The Multi-Unit Franchisee wishes to obtain certain multi-unit rights to operate House of Bread Outlets under the System in the territory described in this Multi-Unit Franchise Agreement.

Therefore, the Parties, in consideration of the foregoing, agree as follows:

SECTION 1 - MULTI-UNIT FRANCHISE RIGHTS

1.1 **Grant of Multi-Unit Franchise Rights and Franchise Fee.** Franchisor hereby grants to Multi-Unit Franchisee, pursuant to the terms and conditions of this Agreement, multi-unit rights to obtain licenses to establish and operate a minimum of two (2) and a maximum of three (3) House of Bread Outlets, and to use the System solely in connection therewith, at specific locations to be designated in separate House of Bread Franchising, Inc. Franchise Agreements executed as provided in Section 3.1 hereof, and pursuant to the schedule set forth in Schedule A (Development Schedule) of this Agreement. Each House of Bread Outlet shall be located in the area described in Schedule B (Assigned Area) of this Agreement. The Initial License Fees for the House of Bread Outlets to be opened and operated by the Multi-Unit Franchisee shall be as described in Section 2 herein.

1.2 **Franchise Agreement Required.** Each House of Bread franchise for which a multi-unit right is granted hereunder shall be established and operated according to a Franchise Agreement to be entered into between the Multi-Unit Franchisee and Franchisor in accordance with Section 3.1 hereof.

1.3 **Protected Area.** Except as otherwise provided in this Agreement, Franchisor shall not establish, nor license anyone other than the Multi-Unit Franchisee to establish any House of Bread Outlet under the System in the Assigned Area during the term of this Agreement.

1.4 No Grant of Franchise Rights. This Agreement does not grant to the Multi-Unit Franchisee any right to use Franchisor's Proprietary Marks or System, which shall only be granted pursuant to a separate Franchise Agreement.

1.5 No Sublicensing. The Multi-Unit Franchisee shall not have the right under this Agreement to license others under the Proprietary Marks or System.

SECTION 2 - INITIAL FRANCHISE FEES

In consideration of the Multi-Unit Franchisee's Agreement to open and operate a minimum of two (2) and a maximum of three (3) House of Bread Outlets according to the development schedule attached hereto, the Franchisor shall reduce, as set forth below, the Initial License Fee otherwise payable under the Franchise Agreement for the House of Bread Outlets purchased. The Multi-Unit Franchisee shall pay to Franchisor upon execution of this Agreement, fifty percent of twenty eight thousand dollars (\$28,000) which is the franchise fee for the first Outlet. The remaining fifty percent payment of fourteen thousand dollars (\$14,000) for the first franchise shall be due and payable according to the terms of the franchise agreement executed for the first franchise. Fourteen thousand dollars (\$14,000) for the second franchise and fourteen thousand dollars (\$14,000) for the third franchise shall be paid at the time of payment of the first fifty percent payment for the first franchise. All Multi-Unit fees are paid in advance. The Initial Franchise Fee shall be fully earned by Franchisor upon execution of this Agreement and is not refundable in whole or in part, regardless of the number of House of Bread Franchising Outlets which may or may not be opened and operated under this Agreement.

SECTION 3 - EXERCISE OF MULTIPLE-UNIT FRANCHISE RIGHTS

3.1 Schedule and Manner of Exercising Multi-Unit Franchise Rights. The Multi-Unit Franchisee shall exercise each multi-unit franchise right granted herein only by executing a Franchise Agreement for each House of Bread Outlet for a location approved by Franchisor in the Assigned Area as hereinafter provided. The Franchise Agreement for the first multi-unit franchise right exercised hereunder shall be in the form of the Franchise Agreement to which this Multi-Unit Franchise Agreement is attached as Exhibit C. Except for the Initial License Fee, the Franchise Agreement for each additional multi-unit franchise right exercised hereunder shall be the form of the Franchise Agreement being offered by Franchisor at the time each multi-unit right is exercised.

3.2 Time is of the Essence. Recognizing that time is of the essence, the Multi-Unit Franchisee agrees to exercise each of the multi-unit franchise rights granted hereunder in the manner specified in Section 3.1 hereof, and to satisfy the multi-unit franchise schedule set forth in Schedule A. Failure by the Multi-Unit Franchisee to adhere to the multi-unit franchise schedule shall constitute a default under the Agreement as provided in Section 6 hereof.

3.3 Site Location. Prior to entering into an agreement to purchase or lease any site, the Franchisee must obtain Franchisor's prior written approval of the site and the terms of the purchase agreement or lease. After obtaining Franchisor's approval, the Multi-Unit Franchisee shall execute a lease (if the premises are to be leased) or binding agreement to purchase the site, and a Franchise Agreement relating to the approved site will be executed. The lease, if any, shall be subject to such terms and conditions as may be contained in the Franchise Agreement relating to that site.

SECTION 4 - TERM AND EXCLUSIVE TERRITORY

4.1 Term. Unless sooner terminated in accordance with the terms of this Agreement, the term of this Agreement and all rights granted hereunder shall expire on the latest date shown on the multi-unit franchise schedule attached hereto as Schedule A.

4.2 Multi-Unit Franchisee's Exclusive Territory. If the Multi-Unit Franchisee successfully and in a timely manner completes the multi-unit franchise schedule set forth in Schedule A, then, Franchisor shall not establish, nor license anyone other than the Multi-Unit Franchisee to establish any House of Bread Outlet under the System in the Assigned Area. In the event that Multi-Unit Franchisee at any time does not complete the multi-unit franchise schedule, such rights shall terminate, and Franchisor may thereafter establish additional House of Bread Outlets itself or license others to do so in the Assigned Area. However, such additional House of Bread Outlets shall not infringe upon any Exclusive Territory, if any, provided for in the Multi-Unit Franchisee's Franchise Agreement for Outlets already established according to the Development Schedule.

SECTION 5 - DUTIES OF THE PARTIES

5.1 Duties of Franchisor. Franchisor shall furnish to the Multi-Unit Franchisee the following:

- A. Market analysis and site selection guidance.

B. One (1) copy of each of Franchisor's Confidential Operating Manual (Manual) on loan for the term of this Agreement, subject to the following conditions:

The Multi-Unit Franchisee shall comply with all provisions, standards and procedures set forth in the Manual.

The Manual shall at all times remain the sole property of Franchisor, and shall be returned to Franchisor immediately upon expiration or termination of this Agreement.

Franchisor may from time to time revise the contents of the Manual and the Multi-Unit Franchisee expressly agrees to comply with each new or changed provision, standard or procedure which are incorporated herein by reference.

The Multi-Unit Franchisee shall at all times ensure that its copies of the Manual are kept current and up to date and, in the event of any dispute as to the contents of the Manual, the terms of the master copies maintained by Franchisor at Franchisor's home office shall be controlling.

5.2 Duties of the Multi-Unit Franchisee. The Multi-Unit Franchisee shall fulfill the following duties:

A. The Multi-Unit Franchisee shall comply with all terms and conditions set forth in this Agreement, the Franchise Agreement and any related agreements with the Franchisor or its Affiliates.

B. The Multi-Unit Franchisee shall ensure that its business complies with all requirements of federal, state and local laws, rules and regulations.

(c) The Multi-Unit Franchisee shall designate an individual to serve as Franchise Multi-Unit Manager who may be the Franchisee. The Multi-Unit Franchise Manager shall complete, to Franchisor's satisfaction, any continuing development training required by Franchisor hereunder and shall bear all expenses (including travel, lodging and food) of such training. The Multi-Unit Franchisee may attend such optional development training as Franchisor may offer from time to time.

SECTION 6 - DEFAULT AND TERMINATION

Multi-Unit Franchisee acknowledges and agrees that each of the Franchisee's obligations described in this Agreement is a material and essential obligation of Multi-Unit Franchisee; that nonperformance of such obligations will adversely and substantially affect the Franchisor and the System; and agrees that the exercise by Franchisor of the rights and remedies set forth herein are appropriate and reasonable.

6.1 Termination Without Notice or Opportunity to Cure. Multi-Unit Franchisee shall be deemed to be in default under this Agreement and all rights granted herein shall automatically terminate without notice to Multi-Unit Franchisee, if Multi-Unit Franchisee shall become insolvent or make a general assignment for the benefit of creditors; or if a petition in bankruptcy is filed under any Chapter of Title 11 of the United States Code by Multi-Unit Franchisee or such a petition is filed against and not opposed by Multi-Unit Franchisee; or if a bill in equity or other proceeding for the appointment of a receiver of Multi-Unit Franchisee or other custodian for Multi-Unit Franchisee's business or assets is filed and consented to by Multi-Unit Franchisee; or if a receiver or other custodian (permanent or temporary) of Multi-Unit Franchisee's assets or property, or any part thereof, is appointed by any court of competent jurisdiction and not dismissed within thirty (30) days; or if proceedings for a composition with creditors under any law should be instituted by or against Multi-Unit Franchisee; or if a final, non-appealable judgment remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or if execution is levied against Multi-Unit Franchisee's business or property; or if suit to foreclose any lien or mortgage against the premises or equipment is instituted against Multi-Unit Franchisee and not vigorously defended, or not dismissed or not satisfied within thirty (30) days after a final, non-appealable judgment; or if the real or personal property of the franchised business shall be sold after levy thereupon by any sheriff, marshal or constable.

6.2 Termination With Notice Without Opportunity to Cure. Multi-Unit Franchisee shall be deemed to be in default and Franchisor may, at its option, terminate this Agreement and all rights granted hereunder, without affording Multi-Unit Franchisee any opportunity to cure the default effective immediately upon notice to Multi-Unit Franchisee, upon the occurrence of any of the following events:

A. If Multi-Unit Franchisee ceases to do business or otherwise abandons the Facility, loses the right to possession of the premises or otherwise forfeits the right to do or transact business in the jurisdiction where the franchised business is located; provided, however, that if through no fault of Multi-Unit Franchisee, the premises are damaged or destroyed by an event such that it cannot reasonably be restored within ninety (90) days thereafter, then Multi-Unit Franchisee has sixty (60) days after such event in which to apply for the Franchisor's approval to

relocate and/or reconstruct the Facility, which approval shall not be unreasonably withheld.

B. If Multi-Unit Franchisee or any of Multi-Unit Franchisee's Principals (officers, directors, shareholders, general partners, members, managers, owners) plead nolo contendere to or are convicted of a felony or a crime involving moral turpitude or any other crime or offense that Franchisor believes is reasonably likely to adversely affect the System or the Proprietary Marks, or the goodwill associated therewith, or Franchisor's interest therein.

C. If Multi-Unit Franchisee or any of Multi-Unit Franchisee's Principals purport to transfer any rights or obligations under this Agreement to any third party without Franchisor's prior written consent, contrary to the terms of Section 7 of this Agreement.

6.3 Termination With Notice and Opportunity to Cure. Except as provided in Sections 6.1 and 6.2 of this Agreement, Multi-Unit Franchisee shall have ten (10) days with respect to monetary defaults and thirty (30) days with respect to non-monetary defaults (unless otherwise specifically stated below) after written notice to Multi-Unit Franchisee within which to remedy such default and provide evidence thereof to Franchisor. If any such default is not cured within the appropriate time period, or such longer period as applicable law may require, the Agreement shall terminate without further notice to Multi-Unit Franchisee effective immediately upon the expiration of the respective time period or such longer period as applicable law may require. Multi-Unit Franchisee shall be in default hereunder for any failure to substantially comply with any of the requirements imposed by this Agreement or to carry out the terms of this Agreement in good faith. Such defaults shall include, but shall not be limited to, the occurrence of any of the following events:

A. If Multi-Unit Franchisee fails, refuses or neglects promptly to pay any monies owing to Franchisor or Franchisor's subsidiaries or Affiliates when due.

B. If Multi-Unit Franchisee fails, refuses or neglects to submit the financial information or reports required by Franchisor or makes any false statements in connection therewith.

C. If Multi-Unit Franchisee fails to maintain the standards required by Franchisor.

D. A Multi-Unit Franchisee fails, refuses or neglects to obtain Franchisor's prior written approval or consent as required by any provision of this Agreement.

E. If Multi-Unit Franchisee fails to cure a default under any mortgage, lease or deed of trust relating to the Facility within thirty (30) days or fails to

properly contest same in a court of law, in which case said thirty (30) day cure period shall not apply until after a final, non-appealable judicial determination.

- F. If Multi-Unit Franchisee misuses or makes any unauthorized use of the Proprietary Marks or otherwise materially impairs the goodwill associated therewith or Franchisor's rights therein.
- G. If Multi-Unit Franchisee fails, refuses or neglects to commence construction of the Facility in accordance with the Franchise Agreement or to open a Facility for business in accordance with the Franchise Agreement.
- H. If Multi-Unit Franchisee fails, refuses or neglects to comply with the insurance requirements set forth in the Franchise Agreement.
- I. If Multi-Unit Franchisee breaches any of the material terms or conditions of this Agreement.
- J. If Multi-Unit Franchisee or any of Multi-Unit Franchisee's Principals violate or otherwise breach any covenants concerning confidentiality contained in the Franchise Agreement.
- K. If Multi-Unit Franchisee or any of Multi-Unit Franchisee's Principals breach the covenants against competition described in the Franchise Agreement.
- L. If Multi-Unit Franchisee fails to timely obtain the execution of confidentiality covenants pursuant to the Franchise Agreement or the covenants not to compete from the persons designated by Franchisor pursuant to the Franchise Agreement.
- M. If Multi-Unit Franchisee violates, breaches or fails to comply with any of the representations, warranties or covenants set forth in the Franchise Agreement.
- N. If an approved transfer is not effected within the time periods provided in the Franchise Agreement following the death or permanent disability of a person covered under such Section.

O. If in connection with the operation of the Outlet, Multi-Unit Franchisee repeatedly violates any law, ordinance, rule or regulation of a governmental agency, unless Multi-Unit Franchisee is involved in a good faith dispute over the application or legality of such law, rule or regulation or Multi-Unit Franchisee has promptly contacted the appropriate administrative or judicial forum for relief therefrom.

P. If Multi-Unit Franchisee fails to timely comply with the development schedule set forth as Schedule A hereto.

6.4 **Failure to Cure Default.** If the Multi-Unit Franchisee fails to diligently cure such a default after written notice of such default, which notice has either been personally delivered to the Multi-Unit Franchisee or sent to the Multi-Unit Franchisee postage prepaid by certified or registered mail, Franchisor, in its discretion, may do any one or more of the following:

A. Terminate this Agreement and all rights granted hereunder, upon the mailing of written notice of termination by Franchisor to the Multi-Unit Franchisee. Such notice shall be deemed effective when given in accordance with Paragraph 9.7 herein;

B. Reduce the number of Outlets which the Multi-Unit Franchisee may establish pursuant to Section 1 of this Agreement;

C. Terminate the territorial exclusivity granted the Multi-Unit Franchisee in Section 1.3 or reduce the area of territorial exclusivity granted the Multi-Unit Franchisee hereunder; or

D. Accelerate the Development Schedule.

6.5 **Effect of Termination.** Upon termination of this Agreement, the Multi-Unit Franchisee shall have no right to establish or operate any Outlet for which a Franchise Agreement has not been executed by Franchisor at the time of termination and Franchisor shall be entitled to establish and to license others to establish Outlets in the Assigned Area, except as may be otherwise provided under any other agreement which is then in effect between Franchisor and the Multi-Unit Franchisee.

6.6 **Default Limited to This Agreement.** No default under this Multi-Unit Franchise Agreement shall thereby constitute a default under any Franchise Agreement between Franchisor and the Multi-Unit Franchisee.

6.7 Non-Exclusivity of Remedies. No right or remedy conferred upon or reserved to Franchisor by this Agreement is exclusive of any other right or remedy provided or permitted by any Franchise Agreement or contained in law or in equity.

SECTION 7 - TRANSFERS OF INTEREST

7.1 Transfer by Franchisor. Franchisor shall have the right to transfer or assign all or any part of its rights or obligations herein to any person or legal entity.

7.2 Transfer by Multi-Unit Franchisee.

7.2.1 Multi-Unit Franchisee understands and acknowledges that the rights and duties set forth in this Agreement are personal to Multi-Unit Franchisee, and that Franchisor has granted this franchise in reliance on Multi-Unit Franchisee's business skill, financial capacity and personal character. Accordingly, neither Multi-Unit Franchisee nor any immediate or remote successor to any part of Multi-Unit Franchisee's interest in this franchise nor any individual, partnership, corporation or other legal entity which directly or indirectly controls Multi-Unit Franchisee shall sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any direct or indirect interest in this franchise without the prior written consent of Franchisor. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of Franchisor shall be null and void and shall constitute a material breach of this Agreement, for which Franchisor may then terminate without opportunity to cure pursuant to Section 6 of this Agreement.

7.2.2 Conditions for Transfer. Franchisor shall not unreasonably withhold its consent to a transfer of any interest in Multi-Unit Franchisee or in this franchise; provided, however, that if a transfer, alone or together with other previous, simultaneous or proposed transfers, would have the effect of transferring a controlling interest in the franchised business, Franchisor may, in its sole discretion, require as a condition of its approval that:

- A. All of Multi-Unit Franchisee's accrued monetary obligations to Franchisor, its subsidiaries and its Affiliates and all other outstanding obligations related to the Facility shall have been satisfied;
- B. Multi-Unit Franchisee is not in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Multi-Unit Franchisee and Franchisor, or its Subsidiaries and/or Affiliates;
- C. The transferor shall have executed a general release in a form satisfactory to Franchisor, of any and all claims against Franchisor and its officers, directors, independent consultants, shareholders and employees, in their corporate and

individual capacities, including, without limitation, claims arising under federal, state and local laws, rules and ordinances;

D. The transferee shall enter into a written assignment in a form satisfactory to Franchisor, assuming and agreeing to discharge all of Multi-Unit Franchisee's obligations under this Agreement;

E. The transferee shall demonstrate to Franchisor's satisfaction that transferee meets Franchisor's reasonable requirements for managerial and business standards; possesses a good moral character, business reputation and credit rating; has the aptitude and ability to conduct the franchised business and has adequate financial resources and capital to operate the business;

F. The transferee shall upgrade, at transferee's expense, the Facility to conform to the then-current standards and specifications of System Facilities, and shall complete the upgrading and other requirements within a time as reasonably specified by Franchisor;

G. Multi-Unit Franchisee and Multi-Unit Franchisee's Principals shall remain liable for all of the obligations to Franchisor in connection with the franchised business incurred prior to the effective date of the transfer, and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

H. At transferee's expense, transferee or transferee's manager shall complete any training programs then in effect for Multi-Unit Franchisees upon such terms and conditions as Franchisor may reasonably require;

Except in the case of a transfer to a corporation formed for the convenience of ownership, a transfer fee of up to Five Thousand Dollars (\$5,000.00), determined in the discretion of Franchisor, plus all actual expenses incurred by Franchisor in connection with the transfer shall have been paid.

7.2.3 Prohibition on Security Interests. Multi-Unit Franchisee shall grant no security interest in the franchised business without the prior written consent of Franchisor. Multi-Unit Franchisee shall grant no security interest in any of the assets of the franchised business unless the secured party also agrees that in the event of any default by Multi-Unit Franchisee under any documents related to the security interest, Franchisor shall have the right and option to purchase the rights of the secured party upon payment of all sums then due to such secured party.

7.2.4 Franchisee Acknowledgment. Multi-Unit Franchisee acknowledges and agrees that each condition which must be met by the transferee Multi-Unit Franchisee is necessary to assure such transferee's full performance of the obligations hereunder.

7.3 Right of First Refusal.

7.3.1 Any party holding any interest in Multi-Unit Franchisee or in this Agreement and who desires to accept any bona fide offer from a third party to purchase such interest shall notify Franchisor in writing of the terms of each such offer, and Franchisor shall have the right and option, exercisable within forty-eight (48) hours after receipt of such written notification, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. In the event that Franchisor elects to purchase the seller's interest, closing on such purchase must occur within sixty (60) days from the date of notice to the seller of the election to purchase by Franchisor or such later date as may have been provided in the offer. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same rights of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Section 7 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 7, with respect to a proposed transfer.

7.3.2 In the event the consideration, terms and/or conditions offered by a third party are such that Franchisor may not reasonably be required to furnish the same consideration, terms and/or conditions, then Franchisor may purchase the interest in the franchised business proposed to be sold for the reasonable equivalent in cash. If the parties cannot agree within a reasonable time on the reasonable equivalent in cash of the consideration, terms and/or conditions offered by the third party, an independent appraiser shall be designated, and his or her determination shall be binding.

7.4 Transfer Upon Death.

Upon the death of any person with an interest in the franchise or in Multi-Unit Franchisee, the executor, administrator or personal representative of such person shall transfer his or her interest to a third party approved by Franchisor within six (6) months after such death. However, in the case of transfer by devise or inheritance, if the heirs or beneficiaries of any such person are unable to meet the conditions in this Section 7, the personal representative of the deceased Multi-Unit Franchisee shall have a reasonable time to dispose of the deceased's interest in the franchise, which disposition shall be subject to all the terms and conditions for transfers contained in this Agreement. If the interest is not disposed of within a reasonable time, Franchisor may terminate this Agreement.

7.5 Transfer Upon Permanent Disability.

Upon the permanent disability of any person with an interest in this Agreement, the Facility or in Multi-Unit Franchisee, Franchisor may require such interest to be transferred to a third party approved by Franchisor within six (6) months after notice to Multi-Unit Franchisee.

A Permanent disability shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement for at least ninety (90) consecutive days and from which condition recovery within ninety (90) days from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician; or if the person refuses to submit to an examination, then such person shall be automatically deemed permanently disabled as of the date of such refusal for the purpose of this Section 7.5. The costs of any examination required by this Section shall be paid by Franchisor.

Upon the claim of permanent disability of any person with an interest in this Agreement, the franchised business or in Multi-Unit Franchisee, Multi-Unit Franchisee or a representative of Multi-Unit Franchisee must promptly notify Franchisor of claim of permanent disability. If an interest is not transferred upon death or permanent disability as required in this Section 7.5, in accordance with the terms and conditions of Section 7.2, such failure shall constitute a material event of default for which Franchisor may terminate this Agreement without opportunity to cure pursuant to this Agreement.

7.6 Notice. If the Multi-Unit Franchisee desires to make a transfer, the Multi-Unit Franchisee shall serve a written notice upon Franchisor at least sixty (60) days prior to the proposed closing date setting forth:

- A. The name and address of the proposed transferee;
- B. The price and all terms and conditions of the proposed transfer;
- C. The date and place of the proposed closing of the transfer;
- D. Financial statements of the proposed transferee for the preceding three (3) years; and
- E. Any other information reasonably requested by Franchisor.

Within forty-eight (48) hours of receipt of Multi-Unit Franchisee's Notice, Franchisor shall either approve or disapprove the transfer or notify the Multi-Unit Franchisee of Franchisor's election to exercise its right of first refusal pursuant to Section 7.4. If Franchisor fails to notify the Multi-Unit Franchisee of Franchisor's approval, disapproval or exercise of Franchisor's right of first refusal within the time specified, then the Multi-Unit Franchisee's proposed transfer shall be deemed granted.

7.7 Approval of Each Transfer. Any transfer approved by Franchisor (and for which Franchisor has failed to exercise its right of first refusal) shall be consummated on or before ninety (90) days after the date of Multi-Unit Franchisee's Notice. Should the transfer not be completed or should the terms and conditions thereof be altered in any way, Franchisor's right of approval and right of first refusal, if applicable, shall be reinstated.

Franchisor's approval of a transfer or its failure to exercise its right of first refusal shall not relieve the Multi-Unit Franchisee or any transferee from the requirement of obtaining Franchisor's approval of, or the giving Franchisor a right of first refusal for, any subsequent proposed transfer.

SECTION 8 - INDEPENDENT CONTRACTOR AND INDEMNIFICATION

8.1 Independent Contractor. It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them, that Multi-Unit Franchisee shall be an independent contractor, and that nothing in this Agreement or arising from the franchise relationship is intended to constitute either party an agent, legal representative, subsidiary, joint venturer, partner, employee, employer, joint employer, enterprise or servant of the other for any purpose whatsoever.

8.2 Identification. Franchisee shall hold itself out to the public to be an independent contractor operating the business pursuant to a franchise from Franchisor. Franchisee agrees to take such actions as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous space on the House of Bread Outlet, the content of which Franchisor reserves the right to specify in the Manuals or otherwise in writing.

8.3 No Liability. Franchisee and Franchisee's officers, directors, shareholders, members, managers, and partners understand and agree that nothing in this Agreement authorizes Franchisee to make any contract, agreement, warranty or representation on Franchisor's behalf, or to incur any debt or other obligation in Franchisor's name; and that Franchisor shall in no event assume liability for or be deemed liable hereunder as a result of any such action; nor shall Franchisor be deemed liable by reason of any act or omission of Franchisee in its conduct of the business franchised by this Agreement, or for any claim or judgment arising therefrom against Franchisor or Franchisee.

8.4 Indemnification. Franchisee and each of Franchisee's Principals will, at all times, indemnify and hold harmless to the fullest extent permitted by law Franchisor, its corporate Affiliates, successors and assigns and the respective directors, officers, employees, agents and representatives of each from all losses and expenses incurred in connection with any action, suit, proceeding, claim, demand, investigation or inquiry (formal or informal), or any settlement hereof

whether or not a formal proceeding or action has been instituted) which arises out of or is based upon any of the following:

- A. The infringement, alleged infringement or any other violation or alleged violation by Franchisee or any of Franchisee's Principals of any patent, mark or copyright or other proprietary right owned or controlled by third parties.
- B. The violation, breach or asserted violation or breach by Franchisee or any of Franchisee's Principals of any contract, federal, state or local law, regulation, ruling, standard or directive or any industry standard.
- C. Libel, slander or any other form of defamation of Franchisor or the System, by Franchisee or any of Franchisee's Principals.
- D. The violation or breach by Franchisee or any of Franchisee's Principals of any warranty, representation, agreement or obligation in this Agreement.
- E. Acts, errors or omissions of Franchisee or any of its agents, servants, employees, contractors, partners, Affiliates or representatives.

8.5 Notice and Procedure. Franchisee and each of Franchisee's Principals agree to give Franchisor immediate notice of any such action, suit, proceeding, claim, demand, inquiry or investigation. Provided the exercise of the rights reserved to Franchisor in this Section 8 does not materially and adversely affect the insurance coverage required to be maintained by Franchisee pursuant to the Franchise Agreement, at the expense and risk of Franchisee and each of Franchisee's Principals, Franchisor may elect to assume (but under no circumstances is obligated to undertake), the defense and/or settlement of any such action, suit, proceeding, claims, demand, inquiry or investigation. If the exercise of the rights reserved to Franchisor in this Section 8 would materially and adversely affect the insurance coverage required to be maintained by Franchisee pursuant to the Franchise Agreement hereof, then in that event Franchisor shall have the right, in place of other rights, to associate counsel of its own choosing to monitor the defense and/or settlement of any such action, suit, proceedings, claims, demand, inquiry or investigation; it being understood, however, that the foregoing is not intended to limit Franchisor's right to seek equitable relief by way of injunction or otherwise to take reasonable actions to mitigate damage, injury or harm to persons or property. Any such undertakings by Franchisor shall, in no manner or form, diminish the obligation of Franchisee and each of Franchisee's Principals to indemnify Franchisor and to hold it harmless.

8.6 Franchisor Resolution of Claims. Subject to the provisions of Section 8.5 above, in order to protect persons or property, or its reputation or goodwill, or the reputation or goodwill of others, Franchisor may, at any time and without notice, as it, in its judgment deems appropriate consent or agree to settlements or take such other remedial or corrective action as

deems expedient with respect to the action, suit, proceeding, claim, demand, inquiry or investigation if, in Franchisor's sole judgment, there are reasonable grounds to believe that:

- A. any of the acts or circumstances enumerated in this Section 8 have occurred; or
- B. any act, error or omission of Franchisee or any of Franchisee's Principals may result directly or indirectly in damage, injury or harm to any person or any property.

8.7 **Franchisee Liability for Losses and Expenses.** Subject to the provisions of Section 8.5 above, all losses and expenses incurred under this Section shall be chargeable to and paid by Franchisee or any of Franchisee's Principals pursuant to its obligations of indemnity under this Section, regardless of any actions, activity or defense undertaken by Franchisor or the subsequent success or failure of such actions, activity or defense.

8.8 **Definition of Losses and Expenses.** As used in this Section, the phrase losses and expenses shall include, without limitation, all losses, compensatory, exemplary or punitive damages, fines, charges, costs, expenses, lost profits, attorneys' fees, court costs, settlement amounts, judgments, compensation for damages to the Franchisor's reputation and goodwill, costs of or resulting from delays, financing, costs of advertising material and media time/space and costs of changing, substituting or replacing the same, and any and all expense of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

8.9 **No Requirement to Mitigate Losses.** Under no circumstances shall Indemnitee be required or obligated to seek recovery from third parties or otherwise mitigate their losses in order to maintain a claim against Franchisee or any of Franchisee's Principals. Franchisee and each of Franchisee's Principals agrees that the failure to pursue such recovery or mitigate loss will in no way reduce the amounts recoverable by Indemnitee from Franchisee or any of Franchisee's Principals.

SECTION 9 - MISCELLANEOUS

9.1 **Conflict with Other Agreements.** The Multi-Unit Franchisee represents and warrants that it is not a party to or subject to agreements which might conflict with the terms of this Agreement and shall not enter into any such agreements during the term hereof or any renewals or extensions thereof.

9.2 **Cost of Enforcement.** In any action at law or in equity based entirely or in part on the terms of this Agreement, the prevailing party shall be entitled to recover, in addition to any

judgment in its favor, reasonable attorneys' fees, court costs and all expenses incurred in connection with the litigation or arbitration.

9.3 **Non-Waiver.** No failure, forbearance, neglect or delay of any kind or to any extent on the part of Franchisor in connection with the enforcement or exercise of any rights under this Agreement shall affect or diminish Franchisor's rights to strictly enforce and take full benefit of each provision of this Agreement at any time, whether at law for damages, in equity for injunctive relief or specific performance, or otherwise. No custom, usage or practice with regard to this Agreement, or between the Multi-Unit Franchisee and Franchisor, or between Franchisor and its other Multi-Unit Franchisees shall preclude at any time the strict enforcement of this Agreement in accordance with its literal terms. No waiver by Franchisor of performance of any provision of this Agreement shall constitute or be implied as a waiver of Franchisor's right to enforce such provision at any future time.

9.4 **Entire Agreement; Amendments.** This Agreement together with all the related Agreements, Exhibits, and Schedules constitutes the entire understanding and agreement of the Parties with respect to the subject matter addressed herein and supersedes all prior and contemporaneous negotiations, understandings and agreements of the parties, whether oral or written, pertaining to this Agreement and subject matter. **The Multi-Unit Franchisee expressly acknowledges that no oral representations, promises or declarations were made to it which are not specifically set forth in this Agreement.** No modification, change, termination or waiver of any provision hereof shall be binding upon the other party or effective unless in writing signed by the Multi-Unit Franchisee and Franchisor, except that a waiver need be signed only by the Party waiving. No field representative of Franchisor has the right or authority to modify or waive, either orally or in writing, any portion of this Agreement, and any such modification or waiver shall not be binding upon either party hereto.

9.5 **Severability.** If any nonmaterial term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall be unaffected thereby and shall remain in full force and effect and each term and provision shall be valid and enforced to the fullest extent permitted by law. If any material term or provision of this Agreement or the application thereof to any person, property or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement may be terminated by either party upon sixty (60) days notice to the other. For purposes of this Section a material term or provision is one which goes to the essence of this Agreement, as determined by a court of competent jurisdiction.

9.6 **Construction of Agreement.** This Agreement has been made and accepted, in San Luis Obispo, California, and shall be interpreted in accordance with and governed by the internal laws of the State of California, County of San Luis Obispo.

The titles and subtitles of the various sections of this Agreement are inserted for convenience and shall not be deemed to affect the meaning or construction of any of the terms, provisions, covenants and conditions of this Agreement. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly for or against Franchisor or the Multi-Unit Franchisee.

It is the intention of the parties hereto that, if any provision of this Agreement is capable of two constructions, one which would render the provision valid, then the provision shall have the meaning which renders it valid.

The words Franchisor and the Multi-Unit Franchisee herein and all Exhibits and Schedules hereto may be applicable to one or more parties, as the case may be, and the singular shall include the plural and the neuter shall include the feminine and masculine.

If there shall be more than one party or persons executing this Agreement on behalf of the Multi-Unit Franchisee then, unless Franchisor otherwise agrees in writing, their obligations hereunder shall be joint and several.

The Multi-Unit Franchisee and Franchisor shall be excused from performing any obligation or undertaking provided for in this Agreement as long as such performance is prevented, delayed or hindered by acts of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, sabotage, laws, orders of government or any other cause whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, delayed or hindered thereby.

9.7 Notices. All notices and other communications provided for herein must be in writing and shall be sufficiently given if delivered in person or mailed by certified or other receipted mail, if to Franchisee, at the Multi-Unit Franchisee's address or, if to Franchisor, at Franchisor's address marked Attention: Franchising Department. Either party, by such notice, may change the address to which notices shall be sent. Notices delivered in person shall be deemed given when delivered and mailed notices shall be deemed given seventy-two (72) hours after being mailed. If the Multi-Unit Franchisee is a corporation, partnership or more than one individual, then the Multi-Unit Franchisee will authorize one natural person as correspondent with authority to bind the Multi-Unit Franchisee (except that all individuals, partners and/or shareholders holding ownership interests in the Multi-Unit Franchisee shall be required to execute the Agreement and any renewals thereof).

9.8 Certain References. References to weeks and months mean calendar weeks and calendar months. References to persons mean legal entities as well as natural persons. Except as otherwise specifically set forth in this Agreement and subject to the limitations and conditions contained in this Agreement, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

9.9 Taxes. Franchisee shall be liable for and shall pay Franchisor within ten (10) days after notice thereof, all license fees and all state, county, local and other municipal sales and use taxes, business profits taxes, gross receipt taxes and any and all other taxes levied on retail operations or on the account of same by the aforesaid jurisdictions in which the Outlet is located, and assessed upon Franchisor.

9.10 Acceptance by Franchisor. This Franchise Agreement shall not be binding upon Franchisor unless and until it shall have been accepted and signed by a duly authorized officer of Franchisor.

9.11 Arbitration and Mediation.

A. Mediation. Except as specifically modified by this Section 9.11, in the event that a controversy, claim or dispute should arise between the Parties in connection with the rights and/or obligations arising out of or relating to this Agreement or any breach thereof, and prior to the commencement of any lawsuit or arbitration by any Party, the Parties shall participate in a non-binding mediation in accordance with the commercial arbitration rules of the American Arbitration Association (AAA).

B. Binding Arbitration. Except as specifically modified by this Section 9.11 any claim that this Agreement, or any part thereof, is invalid, illegal or otherwise voidable or void, shall be submitted to neutral binding arbitration before AAA if such arbitration shall only be initiated after the parties have attempted mediation as set forth in the paragraph above. Franchisor and Franchisee agree to execute confidentiality agreements as provided by the Franchisor for both the mediation and arbitration, excepting only such public disclosures and filings required by law.

C. Federal Arbitration Act Governs. The provisions of this Section 9.11 shall be construed as independent of any other covenant or provision of this Agreement; provided that if a court of competent jurisdiction determines that any such provisions are unlawful in any way, such court shall modify or interpret such provisions to the minimum extent necessary to have them comply with the law. Notwithstanding any provision of this Agreement relating to under which state laws this Agreement shall be governed by and construed under, all issues relating to arbitrability or the enforcement of the agreement to arbitrate contained herein shall be governed by the Federal Arbitration Act (9 U.S.C. '1 et seq.) and the federal common law of arbitration.

D. **Waiver of Punitive and Similar Damages.** Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding, final and non-appealable. Franchisor and Franchisee (and their respective owners and guarantors, if applicable) hereby waive to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, multiple, pain and suffering, mental distress, incidental, consequential, lost income, profits and/or similar damages under any theory whatsoever, and agree that only actual financial losses may be recovered, which shall be the present value of any initial franchise fees, license fees and/or other payments Franchisee would be obligated to make to Franchisor, under the Agreement or otherwise.

SECTION 10 - BANKRUPTCY PROCEEDINGS

In the event that the Multi-Unit Franchisee should become subject to a proceeding (whether voluntary or involuntary) under the Bankruptcy Code and Franchisor does not exercise its right to terminate this Agreement as provided in this Agreement, the debtor in possession, trustee (or similar officer) appointed for the Multi-Unit Franchisee's estate shall either reject or assume this Agreement. If this Agreement is rejected, Franchisor shall continue to have and may exercise all remedies provided for herein or at law for a default by the Multi-Unit Franchisee under this Agreement. If this Agreement is assumed, the debtor in possession, trustee (or similar officer) must comply with all the requirements of this Agreement and must:

A. Perform in a timely and complete manner all obligations of the Multi-Unit Franchisee under this Agreement and all related agreements with Franchisor or its Affiliates from and after the date of such assumption;

B. Cure all defaults existing at the date of such assumption and compensate for any pecuniary loss to Franchisor and its Affiliates or provide adequate assurance that such defaults will be promptly cured;

C. Provide adequate assurance of full and complete future performance by the debtor in possession, trustee (or similar officer) under this Agreement. Such adequate assurance shall include adequate assurance of the source of all consideration (monetary or otherwise) due Franchisor under this Agreement and that the Continuing License Fee and other fees due hereunder will not decline; and

D. In no event shall this Agreement be assumed by or transferred to any individual or entity who does not comply with all requirements for assignment in this Agreement.



SECTION 11 - INFORMATION REGARDING THE MULTI-UNIT FRANCHISEE

The Multi-Unit Franchisee makes the following additional representations and warranties.

A. The Multi-Unit Franchisee is a _____ (insert partnership, limited liability company, corporation or sole proprietorship).

B. If the Multi-Unit Franchisee is a corporation, limited liability company or partnership, set forth below are the names and residential addresses of each shareholder, member and/or manager or partner holding an interest in the entity:

<u>NAME</u>	<u>ADDRESS</u>	<u>NUMBER OF SHARES OR UNITS HELD</u>	<u>PERCENTAGE INTEREST *</u>
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100%
=====

*As to a corporation, this amount shall indicate the percentage owned of outstanding voting stock of the corporation, and as to the partnership or limited liability company, this amount shall indicate the percent owned in the capital and profits of the limited liability company or partnership.

SECTION 12 - REPRESENTATIONS AND WARRANTIES

The Multi-Unit Franchisee and each person executing this Agreement as an owner of the Multi-Unit Franchisee represents and warrants that:

A. It received a copy of Franchisor's Franchise Offering Circular and this Agreement at the earlier of (i) the Multi-Unit Franchisee's first personal meeting with Franchisor's representatives held for the purpose of discussing the offer or sale of a franchise; or (ii) at least ten (10) days prior to the execution of this Agreement or any other agreement relative to the offering or sale of a franchise and the payment of any consideration in connection with such offer or sale;

B. It has not received from Franchisor any projections or representations regarding the amount of income the Multi-Unit Franchisee can expect to earn from developing franchise sites or entering into franchise agreements. Neither Franchisor nor any representative of Franchisor has made any representation or warranty inconsistent with the Franchise Offering Circular or this Agreement to induce the Multi-Unit Franchisee to execute this agreement. Neither Franchisor nor any other person can guarantee the success of the business contemplated herein or any franchise. The success of the Multi-Unit Franchisee and/or any franchise site is dependent upon the personal efforts of the Multi-Unit Franchisee and the Multi-Unit Franchisee's partners, members, managers, shareholders or officers, if the Multi-Unit Franchisee is a partnership, limited liability company or corporation; and

B. It is not becoming a Multi-Unit Franchisee for speculative purposes and has no present intention to sell or transfer this Agreement or any franchises developed pursuant to this Agreement or its ownership interest in the Multi-Unit Franchisee.

C. It has conducted an independent investigation of the business contemplated by this Agreement and recognizes that the business venture contemplated by this Agreement involves significant business risks and that its success will be dependent upon the ability of Franchisee as an independent businessperson. Franchisor expressly disclaims the making of, and Franchisee acknowledges that it has not received or relied upon, any representation, warranty or guarantee, express or implied, as to the potential volume, profits, if any, or success of the business venture contemplated by this Agreement.

D. Franchisee represents as an inducement to its entry into this Agreement, that it has made no misrepresentations or omitted information which may be material regarding its business or financial experience, qualifications, net worth, background, or those of its officers, directors, shareholders, members, managers, partners or Affiliates in obtaining this Agreement.

E. That the Franchisee has received, read and understood this Agreement, the attachments hereto, and that Franchisor has fully and adequately explained the provisions of each to its satisfaction. Prior to signing this Agreement, the Franchisee has had the opportunity to meet with Franchisor to ask questions and receive satisfactory answers about the franchise and related matters, and to obtain additional information for verification purposes.

F. That Franchisee understands the terms of this Agreement, and has been advised to seek independent legal and financial advice with respect to the franchise and this Agreement.

G. Franchisee, either alone or together with its legal and/or financial advisers, has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment in a House of Bread Franchise and protecting his interests, and in making an informed investment decision with respect thereto.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the _____ day of _____, 2006.

Franchisor: House of Bread Franchising, Inc.

_____ by:

its: _____

Franchisee:

_____ by:

its: _____

Franchisee:

_____ by:

its: _____

Franchisee:

_____ by:

its: _____



**HOUSE OF BREAD
MULTI-UNIT FRANCHISE AGREEMENT**

SCHEDULE A

DEVELOPMENT SCHEDULE

This Agreement authorizes and obliges the Multi-Unit Franchisee to establish and operate _____ House of Bread Outlets pursuant to a Franchise Agreement for each House of Bread Franchise. The following is the Multi-Unit Franchisee's Development Schedule:

Date on which each House of Bread Outlet shall be open and in operation:

1st Outlet _____
2nd Outlet _____
3rd Outlet _____

**HOUSE OF BREAD
MULTI-UNIT FRANCHISE AGREEMENT**

SCHEDULE B

ASSIGNED AREA

The following describes the Assigned Area within which the Multi-Unit Franchisee may locate the House of Bread Outlets under this Agreement:
