

**EXHIBIT G**  
**FRANCHISE OFFERING CIRCULAR**  
**FRANCHISE AGREEMENT**



## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, between NEW YORK NY FRESH DELI FRANCHISE, INC., a Delaware corporation located in 100 West Hoover Avenue, Suite 12-14, Mesa, Arizona 85210 (hereinafter called the "Franchisor"), and

### EMAIL:

(hereinafter called the "Franchisee"), for one (1) NEW YORK NY FRESH DELI franchise to be located in the State of (add state)

### RECITALS

Franchisor is the owner of the unique system (the "System") for the establishment, development and operation of Submarine sandwich and salad restaurants known as NEW YORK NY FRESH DELI (hereinafter the "COMPANY" or the "Franchised Restaurant") which it franchises on a wide-area basis for its own account to third party individuals and corporations. The NEW YORK NY FRESH DELI locations, either franchised or operated by the Franchisor, feature freshly made deli style hot and cold gourmet sandwiches, hot New York style sub sandwiches, specialty salads, pastries, specialty coffees and other related food items and beverages (the "Products"), utilizing distinctive trade dress, signs, logos, designs, decor, slogans, color schemes, trade names and service marks associated with the NEW YORK NY FRESH DELI System; and

Franchisee desires to enter into the Franchised Business and acquire a franchise to use the Franchisor's System and its Proprietary Marks to operate one (1) Franchised Restaurant acknowledging that Franchisee will, during the term of this Franchise Agreement, have access to the Franchisor's recipes, formulas, food preparation procedures, business methods and forms, business policies and body of knowledge pertaining to the operation of a Franchised Restaurant. In addition, the Franchisee desires access to information pertaining to new developments and techniques in the Franchisor's franchised restaurant business; and

Franchisee additionally desires to participate in the use of the Franchisor's rights in its service marks and trademarks in connection with the operation of one (1) franchise to be located at a site approved by the Franchisor and the Franchisee. The Franchisee knows that the Franchisor may, but is not obligated to, sell him additional franchises or to consent to his purchase of existing franchises at a reduced franchise fee.

Acknowledging the above recitals, the parties to this Franchise Agreement, in consideration of the undertaking and commitments set forth in this Franchise Agreement, hereby agree as follows:

## AGREEMENT

### 1

#### GRANT OF FRANCHISE; FEES

1. Check either A, B, C, D or E below:

       A. **Standard Initial Franchise Fee.** Upon execution of this Agreement, the Franchisee shall pay to the Franchisor a Franchise Fee of Seventeen Thousand Five Hundred Dollars (\$17,500), which shall not be refunded in any event.

       B. **Reduced Franchise Fee.** Upon execution of this Agreement Franchisee shall pay to the Franchisor a reduced Franchise Fee of Fifteen Thousand Dollars (\$15,000) which shall not be refunded in any event. This reduction is being made available because the Franchisee is currently a Franchisee and has been approved for additional franchises by the Franchisor and that Franchisee's existing franchises are in full compliance with the Franchisor's Operations Manual and there are no defaults existing under any of Franchisee's Franchise Agreements, or the Franchisee has demonstrated to the satisfaction of the Company that because of his past business experience he is capable of multi-unit development.

       C. **Extension Fee.** Upon execution of this Agreement, the Franchisee shall pay to the Franchisor a Franchise Agreement Extension Fee of Twenty Five Hundred Dollars (\$2,500), which shall not be refunded in any event. This extension fee is being paid because the Franchisee previously executed a Franchise Agreement with the Franchisor and paid a Franchise Fee but did not develop a restaurant within the time permitted. The original Franchise Agreement is amended and replaced by this Agreement. If this Section 1(C) is checked, the Franchisee agrees that he must develop his Franchised Restaurant within one (1) year from the date of this Agreement. No further extensions will be available under Section 3.2 of this Agreement.

       D. **Transfer.** The Transfer Fee is \$5,000. This Agreement is being executed as a result of the transfer of Franchise #        from                                  (Seller) to the Franchisee pursuant to a contract of sale between the Franchisee and the Seller

In consideration of the fee paid above, the Franchisor hereby grants and conveys to Franchisee the right to use, subject to the terms and conditions of this Franchise Agreement, the service marks, trademarks, trade names, copyrights, insignia, labels, designs, trade secrets and methods in the operation of one (1) NEW YORK NY FRESH DELI Restaurant in the territory set forth herein for so long as this Franchise Agreement is in full force and effect.

All franchise fees are payable in full when you sign the Franchise Agreement. No amount is considered as a deposit, is not refundable and is considered fully earned when paid.

### 2

#### TERRITORY

1. The Franchisor hereby grants to the Franchisee the right to develop one (1) NEW YORK NY FRESH DELI Franchised Restaurant in the following described area:

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The NEW YORK NY FRESH DELI Restaurant Franchise granted under this Agreement will be operated at the address set forth in the attached Exhibit A for so long as this Franchise Agreement is in full force and effect.

2. Franchisee will also be granted a territory for the Franchised Restaurant, the boundaries for which will be outlined in the attached Exhibit A. The territory so granted will be negotiated between the Franchisee and Franchisor upon final selection of the location for the Franchised Restaurant.

3. Franchisee agrees that he will operate the Franchised Restaurant only at the specific location approved by Franchisor, and Franchisee shall not relocate the Franchised Restaurant without the prior written approval of Franchisor.

4. For so long as this Agreement is in effect, the Franchisor will not grant anyone else the right to establish another NEW YORK NY FRESH DELI restaurant within the exclusive territory to be outlined in Exhibit A, however the Franchisor has the right to grant to others, or itself, the right to operate NEW YORK NY FRESH DELI Restaurants at such locations outside of the territory and on such terms and conditions as the Franchisor deems appropriate.

### 3

### FRANCHISED RESTAURANT DEFINED

1. A NEW YORK NY FRESH DELI is defined as a restaurant operating under and within the guidelines of the System from a location occupying approximately 1,200 to 2,000 square feet in a shopping mall, strip shopping center, or free standing building. Franchisee will submit to Franchisor, for its approval, specifications for a proposed site for the Franchised Restaurant. In determining whether the site meets Franchisor's approval, it will consider such matters as it deems material, including, without limitation, demographic characteristics of the site, traffic patterns, parking, the character of the neighborhood, the proximity to other business and other commercial characteristics, and the size of the premises, appearance and other physical characteristics. Franchisor may, but is not obligated to, assist Franchisee in locating an acceptable site for the Franchised Restaurant.

2. The Franchisee agrees that he will have a maximum of one (1) year from the date of this Franchise Agreement to have the Franchised Restaurant open and operating or this Agreement will automatically expire. Upon the written request of the Franchisee, this period may be extended for an additional year by payment of an extension fee of Twenty Five Hundred Dollars (\$2,500) and as outlined in Section 1(C) above. If an extension is desired, the Franchisee must notify the Franchisor within sixty (60) days of the expiration of the first year of this Franchise Agreement. During the term of this Franchise Agreement the premises shall only be used by the Franchisee to operate a NEW YORK NY FRESH DELI restaurant in accordance with this Agreement. If the premises from which the Franchised Restaurant is to be operated leased by the Franchisee, the lease shall contain provisions that allow the assignment of such lease to the Franchisor, at Franchisor's option.

3. Franchisee will operate the Franchised Restaurant only under the name "NEW YORK NY FRESH DELI" or "NEW YORK NEW YORK FRESH DELI" or such variant thereof as shall be approved in writing by Franchisor. Such name shall be prominently displayed with exterior and interior signage as required and approved by Franchisor.

4. To be in compliance, the appearance, design, color scheme, fixtures, equipment and furnishings of the Franchised Restaurant, both exterior and interior, and any material alterations thereof; the content, layout, colors and designs of any and all signage, placards, advertising or promotional materials of any kind, or other materials which Franchisee may propose to use on, in, or in conjunction with the operation of the Franchised Restaurant, either exterior or interior, permanent or temporary, shall be in accordance with the specifications of Franchisor as set forth from time to time in bulletins, reports and/or the Operations Manual. Any changes or alterations of the specifications which may be contemplated by Franchisee in use of such materials must be approved in writing by Franchisor prior to any use of same by Franchisee.

5. A list of the type of equipment, fixtures and furnishings which Franchisee is required to utilize at the Franchised Restaurant shall be provided by Franchisor in the Manuals or other bulletins and reports furnished by Franchisor from time to time.

6. After execution of this Agreement, Franchisor shall deliver to Franchisee copies of proprietary and confidential drawings and specifications of NEW YORK NY FRESH DELI restaurants which constitute a part of the Trade Secrets. These plans are to be used as a guideline for the design, development and construction of the Franchisee's NEW YORK NY FRESH DELI restaurant. Franchisee is responsible for any costs for architectural plans and drawings necessary for the development of his restaurant. To be in compliance, any such plans shall follow the guidelines as set forth in Franchisor's Operations Manual and Franchisee shall build-out his Restaurant in accordance with Franchisor's standard guidelines and specifications.

7. Franchisee, at its own expense, shall produce drawings for the construction or build-out of the Franchisee's restaurant as prepared by Franchisee's contractor, engineer, architect or the Franchisor and shall submit one (1) copy of such plans for approval by the Franchisor prior to the commencement of the build-out of Franchisee's restaurant. After approval by the Franchisor the plans specifications may not be altered without the written approval of the Franchisor.

8. Unless the Franchisor has agreed in a separate written agreement, executed by all parties herein, to lease any location from a third party or outside landlord or developer and to construct same for Franchisee's use as his Franchised premises, Franchisor shall have no such obligation and shall be obligated to act only in an advisory capacity to assist Franchisee in approving a location and the plans for the Franchised Restaurant. Franchisor shall provide, in its sole discretion, reasonable assistance to Franchisee in obtaining and approving a location and such assistance and approval is in no way to be considered a guarantee by Franchisor as to any sales volume or profits that may be attained at such location, whether developed by the Franchisor or not.

9. If the Franchisee chooses at his option to participate in the Franchisor's Construction and Site Development Program, whereby the Franchisor assists Franchisee in the development of his Franchised Restaurant, a Development Fee in the amount of \$10,000 is payable to the Franchisor. The Construction and Site Development Program includes the following:

- A. Visitation to the area and an initial on-site visit prior to site review and approval  
Hands on assistance in the selection and approval of a local architect if an architect is needed in the municipality where the Franchised Restaurant is to be located.
- B. Assistance with the selection and appointment of a General Contractor and assistance in the approval of sub-contractors for the construction of the Franchised Restaurant.
- C. Final on-site visit to verify built to approved plan specifications.
- D. The Company's Construction Coordinator will be on-site to oversee the delivery and placement of the equipment and furniture in the Franchised Restaurant.

Franchisee understands that during all phases of the Construction and Site Development Service, it remains the Franchisee's responsibility for all financial costs and any construction draw-down funds.

#### 4 TRAINING

1. The Franchisor provides a regularly scheduled formal training program at no charge for its franchisees. The initial training is for a period of five (5) days comprised of approximately forty (40) hours of classroom and on-the-job training sessions. The training will be held at the Franchisor's training center in Mesa, Arizona, or at another place designated by Franchisor. Each person signing this Franchise Agreement is expected to attend and successfully complete the training program prior

to the opening of his Franchised Restaurant. The Franchisee and each other person attending the training program, if any, shall be responsible for his own transportation, lodging and other out-of-pocket expenses while attending training.

2. The Franchisor, or the Franchisor's Development Agent, will also provide a representative for a total of forty (40) hours of on-the-job-training for Franchisee and its employees during the Franchisee's first month of operation. There is no charge for this in-store training. If this Franchise Agreement is for Franchisee's second or subsequent Franchised Restaurant, the initial on-the-job-training period will be twenty (20) hours.

## 5 CONTINUING EDUCATION

1. Franchisee may be required to attend additional training programs, workshops, and seminars as the Franchisor may, from time to time, offer at no cost to Franchisee, other than normal out-of-pocket expenses.

2. From time to time the Franchisor, at its sole discretion, may offer special meetings or national or regional conferences for the Franchisee and his employees. Such conferences will be optional regarding attendance and, as such, may require the payment of an attendance fee or other costs.

## 6 FRANCHISED OPERATIONS

1. Franchisee shall not open the Franchised Restaurant until Franchisee has received notification from Franchisor that all specifications and requirements have been satisfied, including, but not limited to the following:

A. The training requirements have been fulfilled by Franchisee and/or his designated manager or key employees.

B. The construction or build-out of the Franchised Restaurant is completed and local completion certificates are issued.

2. Franchisee is responsible for and shall hire all employees of the Franchised Restaurant and be exclusively responsible for the terms of their employment and compensation. Franchisee shall be responsible for the proper training, indoctrination and quality control practices of all personnel employed in connection with the production, preparation and sale of the Products at the Franchised Restaurant.

3. Additionally, the Franchisee shall comply with the following:

A. Franchisee shall operate the Franchised Restaurant in compliance with applicable laws and governmental regulations including but not limited to labor, health and safety laws and regulations. The Franchisee will obtain at his expense, and keep in force, any permits, licenses, or other consents required for the leasing, construction or operation of his business. In addition, the Franchisee shall operate his Franchised Restaurant in accordance with the Franchisor's Operations Manual which may be updated from time to time as a result of experience, changes in the law or marketplace and shall make any changes necessary, at his sole expense, to conform to the Operations Manual including repairing any items that are not in good condition or functioning properly. The Franchisee acknowledges that these requirements are necessary and reasonable to preserve the identity, reputation, and goodwill developed by the Franchisor and the value of the franchise. Changes may include upgrading and remodeling the restaurant and signage, and the Franchisee agrees to conform to such changes, and to make all reasonable expenditures necessitated,

within time periods reasonably established by the Franchisor. The Franchisee shall use the Proprietary Marks only in accordance with Franchisor's Operations Manual and other specifications, and as the same may be modified from time to time.

B. Franchisee shall maintain the Franchised Restaurant and all equipment, supplies, fixtures, furniture, interior and exterior decor, signs and other items used in the Franchised Restaurant in good repair and in a high degree of cleanliness and sanitation. As equipment, furniture, fixtures, signs and items of the interior and exterior decor become obsolete or inoperable, Franchisee shall replace such items with the type and kind as specified and required by Franchisor for new franchisees.

C. Franchisee shall staff the Franchised Restaurant at all times with personnel who observe the highest standards of cleanliness, service and courtesy to customers. Such staff, and the Franchisee, shall observe the dress code and personal hygiene standards as outlined in the Franchisor's Operations Manual, and as the same may be changed from time to time.

D. The Franchised Restaurant shall be open, at a minimum, from 7:00 AM until 10:00 PM, or at such other hours as required by the rules of a shopping mall (if the restaurant is in such a location), for each day of the year excepting Thanksgiving Day, Christmas Day and Easter Sunday. Franchisee may, at his discretion, choose to be either open or closed on Sundays (subject to shopping mall restrictions and requirements), and upon written approval by Franchisor, the Franchisee may open for shortened or extended hours of the day for Franchisee's particular situation.

E. There shall be no vending or game machines or pay telephones of any type upon the premises of the Franchised Restaurant, nor shall there be any contest items, free promotional literature or newspapers devoted primarily to advertising, give-aways, or other like items unless Franchisor has given prior written approval of such items. If such items are found to be on the premises, the Franchisee shall immediately remove such unapproved items upon notice.

4. Franchisor or its representative will periodically visit Franchisee's Franchised Restaurant to visually inspect the Restaurant and Franchisee's compliance with Franchisor's operating standards, and to generally confer with Franchisee or Franchisee's manager.

## 7

### OPERATIONS MANUAL/S

1. The Franchisor shall loan to the Franchisee, for the duration of this Agreement, Operations Manual/s covering operating techniques and procedures in the operation of the Franchised Restaurant.

2. For the purpose of enhancing the value and good will of the products, trademarks, trade names and service marks of the Franchisor and to be certain that the public may rely upon said products, trademarks, trade names and service marks of the Franchisor as identifying quality products and services, this Franchise Agreement is subject to the continued faithful adherence by the Franchisee to the standards, specifications and procedures as set forth in the Operations Manual. Franchisee agrees that the Franchisor may from time to time change or modify the Operations Manual as conditions dictate and that Franchisee will, accordingly, comply with such changes within a reasonable time thereafter.

3. Franchisee shall not, at any time, without the Franchisor's prior written consent, copy, duplicate, record, or otherwise reproduce the Manuals, in whole or in part, nor otherwise make the same available to any unauthorized person.

4. In the event that Franchisee requests a replacement copy of the Operations Manual, Franchisee shall remit to Franchisor One Thousand Dollars (\$1,000), upon demand, as a replacement fee.

5. To protect the reputation and goodwill of Franchisor and to maintain high standards of operation under Franchisor's Proprietary Marks, Franchisee shall conduct his business in accordance with the Manuals, other written directives which Franchisor may issue to Franchisee from time to time, whether or not such directives are included in the Manuals, and any other manuals and materials created or approved for use in the operation of the Franchised Restaurant.

6. Franchisee shall at all times treat the Manuals, any written directives of Franchisor and any other manuals and materials, and the information contained therein, as confidential and shall maintain such information as trade secret and confidential in accordance with this Section 7. Franchisee shall divulge and make such materials available only to such of Franchisee's employees as must have access to it in order to operate the Restaurant. Franchisee shall not at any time copy, duplicate, record or otherwise reproduce these materials, in whole or in part, or otherwise make the same available to any person other than those authorized above.

7. The Operations Manuals, written directives, other manuals and materials and any other confidential communications provided or approved by Franchisor shall at all times remain the sole property of Franchisor, shall at all times be kept in a secure place on the Restaurant premises, and shall be returned to Franchisor immediately upon request or upon termination or expiration of this Agreement.

8. The Manuals, any written directives, and any other manuals and materials issued by Franchisor and any modifications to such materials shall supplement this Agreement.

9. Franchisor may from time to time revise the contents of the Manuals and the contents of any other manuals and materials created or approved for use in the operation of the Franchised Restaurant. Franchisee shall remove and return to Franchisor all pages of the Manual that have been replaced or updated by Franchisor. Franchisee expressly agrees to comply with each new or changed standard.

10. Franchisee shall at all times ensure that the Manuals are kept current and up to date. In the event of any dispute as to the contents of the Manuals, the terms of the master copy of the Manuals maintained by Franchisor at Franchisor's corporate office shall control.

11. Franchisee shall not, during the term of this Agreement or thereafter, communicate, divulge or use for the benefit of any other person, persons, partnership, association or corporation and, following the expiration or termination of this Agreement, they shall not use for their own benefit any confidential information, knowledge or know-how concerning the methods of operation of the Franchised Restaurant which may be communicated to them or of which they may be apprized in connection with the operation of the Restaurant under the terms of this Agreement. Franchisee shall divulge such confidential information only to such of Franchisee's employees as must have access to it in order to operate the Restaurant. Any and all information, knowledge, know-how, techniques and any materials used in or related to the System which Franchisor provides to Franchisee in connection with this Agreement shall be deemed confidential for purposes of this Agreement. Franchisee shall not at any time, without Franchisor's prior written consent, copy, duplicate, record or otherwise reproduce such materials or information, in whole or in part, nor otherwise make the same available to any unauthorized person. The covenant in this Section shall survive the expiration, termination or transfer of this Agreement or any interest herein and shall be perpetually binding upon Franchisee.

12. If Franchisee develops any new concept, process, product, recipe, or improvement in the operation or promotion of the Restaurant, Franchisee is required to promptly notify Franchisor and provide Franchisor with all necessary related information, without compensation. Franchisee



acknowledges that any such concept, process, product, recipe, or improvement will become the property of Franchisor, and Franchisor may use or disclose such information to other franchisees or developers as it determines to be appropriate.

8

**ADVERTISING MATERIAL**

1. In order to maintain a standard of quality and uniformity that is necessary to promote the goodwill and public image associated with the System, products, trademarks and trade names, the Franchisee agrees to use only that advertising material that is either provided or approved in writing by the Franchisor. In the event the Franchisee wishes to expand upon the advertising material so provided by the Franchisor and desires to create his own advertising and promotional material, the Franchisee must first submit such material to the Franchisor for its written approval.

9

**ROYALTY FEES**

1. A. During the term of this Agreement, Franchisee shall pay to Franchisor, in partial consideration for the rights herein granted, a continuing royalty fee of six percent (6%) of Gross Sales, as defined in Section 11. Such royalty fee shall be due and payable each week ("Accounting Period") based on the Gross Sales for the preceding week (the first such Accounting Period beginning on the Opening Date and ending on the Sunday that corresponds to the end of the then-current Accounting Period as determined in accordance with Franchisor's Manuals) so that it is received by Franchisor by electronic funds transfer on or before the Wednesday following the end of each Accounting Period, provided that such day is a business day. A business day for the purpose of this Agreement means any day other than Saturday, Sunday or the following national holidays: New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving and Christmas. If the date on which such payments would otherwise be due is not a business day, then payment shall be due on the next business day.

B. Each such royalty fee shall be preceded by a royalty report itemizing the Gross Sales for the preceding Accounting Period ("Royalty Report") and any other reports required hereunder. Notwithstanding the foregoing, Franchisee shall provide Franchisor with such Gross Sales information on the Monday of each week following the Accounting Period (or next business day if the Monday is not a business day) by modem or, if not reasonably available, by facsimile transmission or such other method of delivery as Franchisor may reasonably direct.

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**PAYMENT SCHEDULE**

1. A. By executing this Agreement, Franchisee agrees that Franchisor shall have the right to withdraw funds from Franchisee's designated bank account each Accounting Period by electronic funds transfer ("EFT") in the amount of the royalty fee described above. Provided such day is a business day (and if not a business day, on the next succeeding business day), such withdrawals shall be drawn on the Wednesday of each week for the amount of the royalty due with respect to Franchisee's Gross Sales for the preceding Accounting Period, as evidenced by the Royalty Report. If the Royalty Report has not been received within the time period required by this Agreement, then Franchisor may process an EFT for the royalty for the subject Accounting Period based on (a) information regarding Franchisee's Gross Sales for the preceding Accounting Period obtained by Franchisor in the manner contemplated by this Agreement, or (b) the most recent Royalty Report provided to Franchisor by Franchisee; provided that if a Royalty Report for the subject Accounting Period is subsequently received and reflects (i) that the actual amount of the royalty due was more than the amount of the EFT by Franchisor, then Franchisor shall be entitled to withdraw additional funds through EFT from Franchisee's designated bank account for the difference; or (ii) that the actual amount of the royalty due was less than the amount of the EFT by Franchisor, then

Franchisor shall return the excess amount to Franchisee within five (5) business days of notice by Franchisee or discovery by Franchisor if the excess is greater than One Hundred Fifty Dollars (\$150), if the excess withdrawn by Franchisor is One Hundred Fifty Dollars (\$150) or less, then Franchisor will credit the excess amount to the payment of Franchisee's future royalty obligations. Franchisee shall, upon execution of this Agreement or at any time thereafter at Franchisor's request, execute such documents or forms as Franchisor determines are necessary for Franchisor to process EFTs from Franchisee's designated bank account for the payments due hereunder. Should any EFT not be honored by Franchisee's bank for any reason, Franchisee agrees that he shall be responsible for that payment plus a service charge applied by Franchisor and the bank, if any. Franchisee further agrees that he shall at all times throughout the term of this Agreement maintain a minimum balance of One Thousand Dollars (\$1,000) in the Franchisee's bank account against which such EFTs are to be drawn for the Franchised Restaurant operated under this Agreement. If royalty payments are not received when due, interest may be charged by Franchisor in accordance with Section 10.1(B) below. Upon written notice to Franchisee, Franchisee may be required to pay such royalty fees directly to Franchisor in lieu of EFT, at Franchisor's sole discretion.

B. Franchisee shall not be entitled to withhold payments due Franchisor under this Agreement on grounds of alleged non-performance by Franchisor hereunder. Any payment or report not actually received by Franchisor on or before such date shall be deemed overdue. Time is of the essence with respect to all payments to be made by Franchisee to Franchisor. All unpaid obligations under this Agreement shall bear interest from the date due until paid at the lesser of (i) eighteen percent (18%) per annum; or (ii) the maximum rate allowed by applicable law. Notwithstanding anything to the contrary contained herein, no provision of this Agreement shall require the payment or permit the collection of interest in excess of the maximum rate allowed by applicable law. If any excess of interest is provided for herein, or shall be adjudicated to be so provided in this Agreement, the provisions of this paragraph shall govern and prevail, and Franchisee shall not be obligated to pay the excess amount of such interest. If for any reason interest in excess of the maximum rate allowed by applicable law shall be deemed charged, required or permitted, any such excess shall be applied as a payment and reduction of any other amounts which may be due and owing hereunder, and if no such amounts are due and owing hereunder then such excess shall be repaid to the party that paid such interest.

C. If the payments or reports required by Section 9 or 10 are not received by Franchisor as required by this Section, Franchisee shall pay to Franchisor, in addition to the overdue amount, a fee of Fifty (\$50) Dollars per day for each day that the royalty is unpaid or the report is not received. This fee is reasonably related to Franchisor's costs resulting from the delay in payment and/or receipt of any report, is not a penalty, and is in addition to any other remedy available to Franchisor under this Agreement for Franchisee's failure to pay royalties and/or submit reports in accordance with the terms of this Agreement. If for any reason the fee of Fifty Dollars (\$50) is deemed to be interest charged, required or permitted, in excess of the maximum rate allowed by applicable law, any such excess shall be applied as a payment and reduction of any other amounts which may be due and owing hereunder, and if no such amounts are due and owing hereunder, then such excess shall be repaid to the party that paid such amount.

2. Franchisee shall pay such other fees or amounts described in this Agreement.

## 11

### GROSS SALES DEFINED

1. For the purposes of determining the royalties to be paid hereunder, "Gross Sales" shall mean the total selling price of all services and products and all income of every other kind and nature related to the Restaurant (including, without limitation, income related to catering and delivery activities, and any sales or orders of food products or food preparation services provided from or related to the Restaurant), whether for cash or credit and regardless of collection in the case of credit, less any monies such as returns and discount coupons from retail prices of food products. In the

event of a cash shortage, the amount of Gross Sales shall be determined based on the records of the electronic cash register system and any cash shortage shall not be considered in the determination. Gross Sales shall expressly exclude the following:

A. Receipts from the operation of any public telephone installed in the Restaurant, except for any amount representing Franchisee's share of such revenues;

B. Sums representing sales taxes collected directly from customers, based upon present or future laws of federal, state or local governments, collected by Franchisee in the operation of the Restaurant, and any other tax, excise or duty which is levied or assessed against Franchisee by any federal, state, municipal or local authority, based on sales of specific merchandise sold at or from the Restaurant, provided that such taxes are actually transmitted to the appropriate taxing authority;

C. Returns to customers; and

D. Proceeds from isolated sales of trade fixtures not constituting any part of Franchisee's products and services offered for resale at the Restaurant nor having any material effect upon the ongoing operation of the Restaurant required under this Agreement.

2. Franchisor may, from time to time, authorize certain other items to be excluded from Gross Sales. Any such permission may be revoked or withdrawn at any time in writing by Franchisor in its discretion. In addition to the foregoing, the following are included within the definition of "Gross Sales" described, except as noted below:

A. The full value of meals furnished to Franchisee's employees as an incident to their employment, except that the value of any discounts extended to such employees may be credited against Gross Sales during the Accounting Period in which the meals were furnished for the purpose of determining the amount of Gross Sales upon which the royalty fee is due; and

B. All proceeds from the sale of coupons, gift certificates or vouchers; provided that at the time such coupons, gift certificates or vouchers are redeemed the retail price thereof may be credited against Gross Sales during the Accounting Period in which such coupon, gift certificate or voucher is redeemed for the purpose of determining the amount of Gross Sales upon which the royalty fee is due.

## 12

### ADVERTISING PERCENTAGE AND CO-OP PROGRAM

1. **ADVERTISING PERCENTAGE:** The Franchisee agrees to spend annually an amount equal to two percent (2%) of Gross Sales, less taxes paid, to promote the Franchised Restaurant and that such local advertising shall be as approved by Franchisor as outlined herein. Franchisee agrees to provide proof of such expenditures as requested by Franchisor.

2. **ADVERTISING COOPERATIVE:** At the request of Franchisor, the Franchisee agrees to promptly join, participate in and make contributions to an approved Advertising Co-op program. Each Advertising Co-op approved will be within a specific marketing area where a concentration of franchisee or Franchisor operated NEW YORK NY FRESH DELI restaurants make such a Co-op feasible. Each Co-op formed will be comprised of NEW YORK NY FRESH DELI franchisees who will elect officers among the group consisting of a Chairperson, Vice-Chairperson and a Co-op Secretary. The method of administration of Co-op monies, selection of an advertising agency and other matters shall be determined by a majority vote of its members. All advertising and/or the agency which the Co-op proposes to utilize shall be submitted to Franchisor for approval prior to use or hire. Any advertising contributions made by the Franchisee to a Co-op will be considered as all, or a portion of, Franchisee's overall required advertising expenditures as outlined above.

3. GRAND OPENING ADVERTISING: Franchisee agrees to spend the minimum amount of Two Thousand Five Hundred Dollars (\$2,500) during the period comprising thirty (30) days before and thirty (30) days after the opening of the Franchised Restaurant. Advertising may include newspaper advertisements, direct mail or other media.

4. ADVERTISING FUND: Franchisor reserves the right to establish and administer an advertising fund for the purpose of advertising the System on a regional or national basis (the "Fund"). When such Fund is established, Franchisee agrees to contribute one percent (1%) of the Gross Sales of the Franchised Restaurant for each week to the Fund, such fee to be paid to Franchisor by EFT on or before the Wednesday following each Accounting Period, provided that such day is a business day. If that date is not a business day, then payment shall be due on the next business day. During the term of this Agreement, Franchisor may, in its sole discretion, review and modify the amount of the continuing advertising fee up to three and one-half of one percent (3½%) of the Gross Sales of the Restaurant for each week and may require Franchisee to allocate to the Fund all or any portion of Franchisee's required contributions to a Cooperative, as described in Section 12.2 above, or expenditures for Local Advertising, as described in Section 12.1 above. Franchisor shall not, however, increase the amount of the Fund contribution more than one percent (1%) per year. In reviewing and modifying the advertising fee, Franchisor shall consider the level of advertising expenditures by NEW YORK NY FRESH DELI Restaurants operated by Franchisor or its affiliates and by competitors of the System, media costs, available marketing resources, population changes, changes in market conditions, the degree of market penetration of the System, and such other factors as Franchisor deems relevant to the operation of the Fund. Franchisee shall be provided with thirty (30) days' prior written notice of any such change in the advertising fee. Each Fund contribution shall be accompanied by an advertising report itemizing the Gross Sales for the preceding Accounting Period. Notwithstanding the foregoing, Franchisee shall provide Franchisor with such information on the Monday of each week following the Accounting Period (or next business day if the Monday is not a business day) by modem or, if not reasonably available, by facsimile transmission, or such other method specified by Franchisor.

Franchisee agrees that the Fund shall be maintained and administered by Franchisor or its designee as follows:

A. Franchisor shall direct all advertising programs and shall have sole discretion to approve or disapprove the creative concepts, materials and media used in such programs and the placement and allocation thereof. Franchisee agrees and acknowledges that the Fund is intended to maximize general public recognition and acceptance of the Proprietary Marks and enhance the collective success of all Restaurants operating under the System. Franchisor shall, with respect to Restaurants operated by Franchisor or any affiliate, contribute to the Fund generally on the same basis as Franchisee. In administering the Fund, Franchisor and its designees undertake no obligation to make expenditures for Franchisee which are equivalent or proportionate to Franchisee's contribution or to ensure that any particular Franchisee benefits directly or pro rata from the placement of advertising.

B. Franchisee agrees that the Fund may be used to satisfy any and all costs of maintaining, administering, directing and preparing advertising (including, without limitation, the cost of preparing and conducting television, radio, magazine and newspaper advertising campaigns; direct mail and outdoor billboard advertising; public relations activities; employing advertising agencies to assist therein; and costs of Franchisor's personnel and other departmental costs for advertising that is internally administered or prepared by Franchisor). All sums paid by Franchisee to the Fund shall be maintained in a separate account by Franchisor and may be used to defray any of Franchisor's general operating expenses, if any, as Franchisor may incur in activities reasonably related to the administration or direction of the Fund and advertising programs for franchisees and the System. The Fund and its earnings shall not otherwise inure to the benefit of Franchisor. The Fund is operated solely as a conduit for collecting and expending the advertising fees as outlined above.

C. A statement of the operations of the Fund shall be prepared annually by Franchisor and shall be made available to Franchisee upon request.

D. Although the Fund is intended to be of perpetual duration, Franchisor may terminate the Fund. The Fund shall not be terminated, however, until all monies in the Fund have been expended for advertising or promotional purposes or returned to contributing Franchised Restaurants or those operated by Franchisor or any affiliate, without interest, on the basis of their respective contributions.

### 13 QUALITY CONTROL; REQUIRED PRODUCTS

1. In order to maintain the goodwill and prestige which the Franchisor enjoys with the public and in order to maintain uniformly high levels of quality service and products and supplies sold through the Franchised Restaurant, and in order to maintain the integrity of the Proprietary Marks, Franchisee agrees that he shall purchase all products or supplies from suppliers or manufacturers approved in advance by the Franchisor and as outlined in Franchisor's Uniform Franchise Offering Circular. The Franchisor shall, when requested by the Franchisee, promptly make available to Franchisee specifications and levels of performance of the products or supplies to be used and sold by Franchisee through his Franchised Restaurant. The Franchisor shall not unreasonably withhold its approval of a supplier of Franchisee's choosing, provided that such supplier meets the published standards regarding the products or supplies to be purchased. The Franchisor reserves the right to change the published standards regarding any products or supplies used and/or offered for sale by the Franchised Restaurant from time to time upon thirty (30) days' written notice to Franchisee.

### 14 INSPECTION

1. The Franchisor shall have the right to enter and inspect the premises from which the Franchised Restaurant is being conducted for the purpose of ascertaining that the Franchisee is operating in accordance with the terms of this Agreement and the standards and procedures as provided in the Operations Manual. The Franchisor shall notify the Franchisee of any deficiencies detected during an inspection and the Franchisee shall proceed to correct any such deficiencies.

### 15 RETAIL PRICES FOR PRODUCTS

1. The Franchisor may from time to time advise or offer guidance to Franchisee relative to retail pricing for the Products. The Franchisee is not obligated to accept any such advice or guidance and has the sole right to determine the prices to be charged and no such advice or consultation by the Franchisor shall be deemed or construed to impose upon Franchisee any obligation to charge any fixed, minimum price for any products or services offered for sale through the Franchised Restaurant. However, in order to foster competition, the Franchisor maintains the right to impose maximum prices that Franchisee must charge its customers.

### 16 FRANCHISEE RIGHTS TO PROPRIETARY MARKS

1. The Franchisee recognizes and acknowledges that the Franchisor is the sole and exclusive owner of the trademarks, trade names and service marks provided for herein and hereby agrees not to register or attempt to register the same in the name of the Franchisee or that of any other person, firm or corporation which the Franchisee is associated with either directly or indirectly. Nothing contained in the Franchise Agreement shall give the Franchisee any right, title or interest in or to said trademarks, trade names, insignia, labels or designs or trade secrets except the privilege and

license during the term of this Franchise Agreement to display and use same according to the terms and conditions contained herein. Furthermore, Franchisee agrees that he shall not use said trademarks, etc. in any manner except in connection with the operation of the Franchised Restaurant, nor shall he use any other name or symbol in conjunction with the use of such trademarks.

2. Upon the termination of this Agreement for any reason, Franchisee's right and license to use and exploit the Franchisor's trade name, trademarks and copyrighted materials shall cease at once. All copyrighted materials and materials bearing the trade name or trademarks shall be returned to the Franchisor. Any sale, distribution, use, or exploitation following the termination of this Agreement shall be deemed an infringement of the Franchisor's trade name, trademarks and copyright for which the Franchisor may seek relief in equity and law.

3. Franchisee must immediately notify Franchisor of any apparent infringement or challenge to Franchisee's use of the trademarks, trade names and service marks licensed to Franchisee under this Agreement. Franchisor will have sole discretion to take such action as it deems appropriate in connection with any such infringement or challenge, and the sole right to exclusively control any litigation or other proceeding arising out of any infringement or challenge. Franchisee must execute any and all instruments and documents, give such assistance, and do such acts and things as may, in the opinion of Franchisor's counsel, be necessary or advisable to assist in any such litigation or proceeding. Franchisor will indemnify and hold Franchisee harmless from any cost or expense related to any such litigation or proceeding; provided, however, that Franchisee is in full compliance with its responsibilities under this Agreement regarding the use and protection of the trademarks, trade names and service marks.

#### 17

### STANDARDS OF UNIFORMITY

1. In recognition of the mutual benefits accruing from maintaining standard uniformity of service and Products, the Franchisee agrees to follow and strictly adhere to those standards as established by the Franchisor and provided to the Franchisee, and as are outlined in the Operations Manual prepared by the Franchisor. Franchisee further agrees that changes in such standards of uniformity of service or products may become necessary from time to time and agrees to accept as reasonable such modifications, revisions or additions to the Operations Manual which the Franchisor believes, in good faith, are necessary.

#### 18

### FINANCIAL REVIEW

1. The Franchisee shall maintain financial and tax records of the Franchised Restaurant on the restaurant premises and shall maintain such records for a period of five (5) years. Franchisee shall submit an annual financial statement as to Gross Sales for the Franchised Restaurant within ninety (90) days after the close of the Franchisee's fiscal year. Further, Franchisee agrees to allow the Franchisor the right to review the financial books and records which shall include sales tax returns of the Franchised Restaurant at any time during regular business hours. If review of the Franchisee's financial books and records reveals that he has under reported his Gross Sales of the Franchised Restaurant by five percent (5%) or more, then the Franchisee shall pay for all costs incurred by the Franchisor in determining the actual Gross Sales of the Franchised Restaurant and all legal and court costs incurred in collecting the actual amount due the Franchisor.

#### 19

### TERM OF AGREEMENT

1. Unless sooner terminated as provided herein, the term of this Agreement shall continue from the date stated on the first page hereof until the earlier of (i) ten (10) years from the date of this

Agreement or (ii) the expiration or termination of Franchisee's right to possess the Restaurant premises.

2. Franchisee may, at its option, renew the rights under this Agreement for additional terms of ten (10) years (provided that such renewal term shall automatically terminate upon the expiration or termination of Franchisee's right to possess the Restaurant premises), subject to any or all of the following conditions which must, in Franchisor's discretion, be met prior to and at the time of renewal:

A. Franchisee shall give Franchisor written notice of Franchisee's election to renew not less than seven (7) months nor more than twelve (12) months prior to the end of the initial term;

B. Franchisee shall repair or replace, at Franchisee's cost and expense, equipment (including electronic cash register or computer hardware or software systems, inclusive of any software upgrades), signs, interior and exterior decor items, fixtures, furnishings, catering or delivery vehicles, if applicable, supplies and other products and materials required for the operation of the Restaurant as Franchisor may reasonably require and shall obtain, at Franchisee's cost and expense, any new or additional equipment, fixtures, supplies and other products and materials which may be reasonably required by Franchisor for Franchisee to offer and sell new menu items from the Restaurant or to provide the Restaurant's services by alternative means such as through carry-out, catering or delivery arrangements and shall otherwise modernize the Restaurant premises, equipment (including electronic cash register or computer hardware or software systems), signs, interior and exterior decor items, fixtures, furnishings, catering or delivery vehicles, if applicable, supplies and other products and materials required for the operation of the Restaurant, as reasonably required by Franchisor to reflect the then-current standards and image of the System as contained in the Manuals or otherwise provided in writing by Franchisor;

C. Franchisee shall not be in default of any provision of this Agreement, any amendment hereof or successor hereto, or any other agreement between Franchisee or any of its affiliates and Franchisor or any of its affiliates; and Franchisee shall have substantially and timely complied with all the terms and conditions of such agreements during the terms thereof;

D. Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its affiliates under this Agreement and any other agreement between Franchisee or any of its affiliates and Franchisor or any of its affiliates, and shall have timely met those obligations throughout the terms thereof;

E. Franchisee shall present satisfactory evidence that Franchisee has the right to remain in possession of the Restaurant premises or obtain Franchisor's approval of a new site for the operation of the Restaurant for the duration of the renewal term of this Agreement;

F. Franchisee shall execute Franchisor's then-current form of renewal franchise agreement, which agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms of this Agreement, including, without limitation, a higher percentage royalty fee, advertising contribution or expenditure requirement; provided, however, that Franchisee shall not be obligated to pay to Franchisor a renewal fee; and

G. Franchisee shall comply with Franchisor's then-current qualification and training requirements.

## 20 ASSIGNMENT

1. Franchisor shall have the right, without the need for Franchisee's consent, to assign, transfer or sell its rights under this Agreement to any person, partnership, corporation or other legal

entity, provided that the transferee agrees in writing to assume all obligations undertaken by Franchisor herein and Franchisee receives a statement from both Franchisor and its transferee to that effect. Upon such assignment and assumption, Franchisor shall be under no further obligation hereunder, except for accrued liabilities, if any. Franchisee further agrees and affirms that Franchisor 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, Proprietary Marks (or any variation thereof) and System and/or the loss of association with or identification of New York NY Fresh Deli Franchise, Inc. as Franchisor under this Agreement. Franchisee specifically waives 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.

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 NEW YORK NY FRESH DELI operating under the Proprietary Marks or any other marks following Franchisor's purchase, merger, acquisition or affiliation, regardless of the location of these facilities (which Franchisee acknowledges may be within its Territory, proximate thereto, or proximate to any of Franchisee's locations).

If Franchisor assigns its rights in this Agreement, nothing herein shall be deemed to require Franchisor to remain in NEW YORK NY FRESH DELI restaurant business or to offer or sell any products or services to Franchisee.

2. This Franchise Agreement is a personal contract, being entered into in reliance upon and in consideration of the skill, qualifications and representations of the Franchisee who will actively participate in the management and supervision of the Franchised Restaurant herein outlined. Therefore, except upon the death of the Franchisee, this Franchise Agreement cannot be sold, assigned or conveyed to any other person, corporation or other legal entity without the prior written consent of the Franchisor. Consent by the Franchisor shall not be unreasonably withheld, but may be conditioned upon criteria as adopted from time to time by the Franchisor, as same would be applicable if the assignee were acquiring the franchise directly from the Franchisor. To effectuate any such assignment, the Franchisee shall pay to the Franchisor a transfer fee of Five Thousand Dollars (\$5,000).

## 21

### RIGHT OF FIRST REFUSAL

1. In the event the Franchisee wishes to sell the rights of this Franchise Agreement, as personified in the Franchised Restaurant, to any third party, the Franchisee hereby grants to the Franchisor a ten (10) day right of first refusal to purchase such Franchised Restaurant on the same terms and conditions as are contained in the written offer to purchase such Franchised Restaurant submitted to the Franchisee by the proposed purchaser.

2. In the event that the Franchisor fails to respond to such written offer within the ten (10) day period from the date it receives such offer, then the Franchisee is free to proceed in selling the Franchised Restaurant to the proposed purchaser in accordance with the terms of this Franchise Agreement relating to such event.



## INDEMNITY AND INSURANCE

1. The Franchisee will carry all necessary insurance policies which will provide complete indemnification of the Franchisor during the term of this Agreement and hold the Franchisor harmless from and against all claims for damages to persons or property arising from or out of any occurrence on Franchisee's, or any customer's premises, or as a result of any acts of omissions of the Franchisee. Franchisee shall pay all costs, damages and reasonable attorneys' fees incurred by the Franchisor in connection with any such claim.

2. The minimum insurance requirements are as follows:

A. Comprehensive General Liability Insurance, including broad form contractual liability, broad form property damage, personal injury, advertising injury, completed operations, products liability and fire damage coverage, in the amount of One Million Dollars (\$1,000,000) combined single limit;

B. "All Risks" coverage for the full cost of replacement of the Restaurant premises and all other property in which Franchisor may have an interest with no coinsurance clause;

C. Crime insurance for employee dishonesty in the amount of Ten Thousand Dollars (\$10,000) combined single limit;

D. Business Interruption insurance in a sufficient amount to cover profit margins, maintenance of competent and desirable personnel and fixed expenses for a period of at least ninety (90) days;

E. Automobile liability coverage, including coverage of owned, non-owned and hired vehicles, with coverage in amounts not less than One Million Dollars (\$1,000,000) combined single limit;

F. Workers' compensation insurance in amounts provided by applicable law or, if permissible under applicable law, any legally appropriate alternative providing substantially similar compensation to injured workers; and

G. Other insurance required by the state or locality in which the Franchised Restaurant is located and operated.

Franchisee may, with the prior written consent of Franchisor, elect to have reasonable deductibles in connection with the coverage required under Sections 23.2(A)-(F) hereof. Such policies shall also include a waiver of subrogation in favor of Franchisor, its affiliates and partners and the respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them. In connection with any construction, renovation, refurbishment or remodeling of the Restaurant, Franchisee shall maintain Builder's Risks/installation insurance in forms and amounts, and written by a carrier or carriers, reasonably satisfactory to Franchisor. The Franchisee, or his insurance carrier, will provide copies of all current insurance policies to the Franchisor. The insurance carrier(s) will also be required to provide notice within thirty (30) days of any of Franchisee's insurance policies being cancelled.

## DEATH OF FRANCHISEE

1. In the event of the death of the Franchisee, his rights to this Franchise Agreement shall pass to his next of kin or legatee within one (1) year, provided such next of kin or legatee agrees in writing to assume the Franchisee's obligations hereunder and to attend the Franchisor's next training

session. The next of kin or legatee must then successfully complete the Franchisor's training program or shall be in default under this Agreement.

## 24

### TERMINATION OF FRANCHISE

1. **BANKRUPTCY:** The Franchisor has the option of terminating this Franchise Agreement in the event the Franchisee is adjudicated a bankrupt, becomes insolvent, or if a receiver is appointed to take possession of its property or any part thereof, if Franchisee shall make a general assignment for the benefit of creditors, or if a judgment is obtained against the Franchisee which remains unsatisfied for a period of more than thirty (30) days after all rights of appeal have been exhausted, or if execution is levied against Franchisee's Franchised Restaurant or property, or suit to foreclose any lien or mortgage against the premises or equipment is instituted against Franchisee and not dismissed within thirty (30) days.

2. **NOTICE OF TERMINATION:** In the event the Franchisor discovers that the Franchisee has violated any of the terms of this Franchise Agreement, the Franchisor shall give the Franchisee written notice outlining in detail those specific provisions that the Franchisee has failed to comply with. The Franchisee must then correct those specific deficiencies so listed within thirty (30) days from the date of the notice. If such corrections are not made to the satisfaction of the Franchisor, then the Franchisor can disenfranchise the Franchisee.

3. **ABANDONMENT OF FRANCHISE:** If the Franchisee fails, for whatever reason, except for an act of God, to maintain his Franchised Restaurant for a period of ten (10) consecutive days, this franchise is automatically terminated and all rights granted hereunder shall be automatically forfeited to the Franchisor.

## 25

### POST TERMINATION

1. Upon any termination, expiration or abandonment of this Franchise Agreement, all rights granted hereunder to the Franchisee will terminate and the Franchisee agrees to immediately discontinue the use of any of the trademarks, trade names, service marks and other identifying symbols of the Franchisor, turn over to the Franchisor the Operations Manual which was on loan to the Franchisee and to discontinue to operate in any manner that might tend to give the public the impression that the Franchisee is still a franchisee of the Franchisor.

2. If this Franchise Agreement is terminated, the Franchisee must promptly pay, within fifteen (15) days after termination, all sums owing to the Franchisor. In addition, the Franchisee shall also be obligated to pay all damages, costs and expenses, including reasonable attorneys' fees, incurred by the Franchisor as a result of the default and subsequent termination.

## 26

### COVENANT NOT TO COMPETE

1. Franchisee specifically acknowledges that, pursuant to this Agreement, Franchisee will receive valuable training, trade secrets and confidential information, including, without limitation, information regarding the operational, sales, promotional and marketing methods and techniques of Franchisor and the System, which are beyond the present skills and experience of Franchisee and Franchisee's managers and employees. Franchisee acknowledges that such specialized training, trade secrets and confidential information provide a competitive advantage and will be valuable to them in the development and operation of the Restaurant, and that gaining access to such specialized training, trade secrets and confidential information is, therefore, a primary reason why they are entering into this Agreement. In consideration for such specialized training, trade secrets, confidential information and rights, Franchisee covenants that with respect to Franchisee, during the term of this

Agreement except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for himself or through, on behalf of or in conjunction with any person(s), partnership or corporation:

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

B. Own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to any business located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor has used, sought registration of or registered the same or similar Proprietary Marks or operates or licenses others to operate a business under the same or similar Proprietary Marks, which business is of a character and concept similar to the Restaurant.

2. With respect to Franchisee, and for a continuous uninterrupted period commencing upon the expiration, termination, or transfer of all of Franchisee's interest in this Agreement and continuing for two (2) years thereafter, except as otherwise approved in writing by Franchisor, the Franchisee shall not, directly or indirectly, for himself, or through, on behalf of or in conjunction with any person, persons, partnership, or corporation:

A. Divert, or attempt to divert, any business or customer of the Franchised Business hereunder to any competitor, by direct or indirect inducement or otherwise, or do or perform, directly or indirectly, any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System.

B. Employ, or seek to employ, any person who is at that time or was within the preceding ninety (90) days employed by Franchisor, any of its affiliates or by any other franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave that person's employment, except as may be permitted under any existing development agreement or franchise agreement between Franchisor and Franchisee.

C. Own, maintain, operate, engage in, or have any financial or beneficial interest in (including any interest in corporations, partnerships, trusts, unincorporated associations or joint ventures), advise, assist or make loans to any business that is of a character and concept similar to the Restaurant, including a restaurant or deli business which offers and sells submarine or deli type sandwiches similar to NEW YORK NY FRESH DELI, which business is, or is intended to be, located within the Territory assigned to Franchisee or within a one hundred (100) mile radius of the location of the Franchisee's restaurant or of any NEW YORK NY FRESH DELI Restaurant food service facility in existence or any NEW YORK NY FRESH DELI Restaurant location leased and/or under construction at any given time during such period.

3. The parties acknowledge and agree that each of the covenants contained herein are reasonable limitations as to time, geographical area, and scope of activity to be restrained and do not impose a greater restraint than is necessary to protect the goodwill or other business interests of Franchisor. The parties agree that each of the covenants herein 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 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Franchisor is a party, Franchisee expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law as if the resulting covenant were separately stated in and made a part of this Section.

4. Franchisee understands and acknowledges that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Section 27 in this Agreement, or any portion thereof, without his consent, effective immediately upon notice to Franchisee; and Franchisee agrees that he shall comply forthwith with any covenant as so modified, which shall be fully enforceable.

5. Franchisee expressly agrees that the existence of any claims he may have against Franchisor, whether or not arising from this Agreement, shall not constitute a defense to the enforcement by Franchisor of the covenants in this Section.

6. Franchisee acknowledges that any failure to comply with the requirements of this Section shall constitute a material event of default under Section 25 hereof. Franchisee acknowledges that a violation of the terms of this Section would result in irreparable injury to Franchisor for which no adequate remedy at law may be available, and Franchisee accordingly consents to the issuance of an injunction prohibiting any conduct by Franchisee in violation of the terms of this Section. Franchisee agrees to pay all court costs and reasonable attorneys' fees incurred by Franchisor in connection with the enforcement of this Section, including payment of all costs and expenses for obtaining specific performance of, or an injunction against violation of, the requirements of such Section.

#### 27

### USE OF CORPORATE NAME

1. The Franchisee hereby agrees that in the event he is operating or will operate as a corporation, the Franchisee shall not use the Franchisor's name or any derivative thereof, or similar name, or any of the words contained in such name in Franchisee's corporate name, including NEW YORK NY FRESH DELI, NEW YORK NEW YORK FRESH DELI, or the name NEW YORK NY FRESH DELI FRANCHISE, INC.

#### 28

### PERMITS, RULES AND CODES

1. Franchisee shall, at his own cost and expense, comply with all federal, state and local laws, rules, and regulations, and shall timely obtain, and shall keep in force as required throughout the term of this Franchise Agreement, all permits, certificates, and licenses necessary for the full and proper conduct of the business hereunder, including, but not limited to, any building or other required construction permits, business, fictitious name registrations, sales tax permits, and fire clearances, if required.

#### 29

### RELATIONSHIP OF THE PARTIES

1. Franchisee is and shall be an independent contractor at all times in his relationship to Franchisor, suppliers and others during the term of this Franchise Agreement and any extension hereof. The conduct of the Franchised Restaurant shall be determined by the Franchisee's own judgment and discretion, subject only to the terms and conditions of this Franchise Agreement and the policies and procedures of the Franchisor's Operation Manual, as same shall be adopted or revised from time to time. Neither party hereto shall be liable for the debts or obligations of the other.

#### 30

### NOTICES

1. Any notice required or permitted to be given under this Agreement shall be in writing and shall be served upon the other party, personally or by United States mail, postage prepaid. Such notice shall be sent to each party at the address listed within this Agreement. Each party may

designate another address at any time after the execution of this Agreement by appropriate written notice to the other party.

31

**DISPUTE RESOLUTION**

1. The parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement (and attachments) or the relationship created by this Agreement to non-binding mediation prior to bringing such claim, controversy or dispute in a court or before any other tribunal. The mediation shall be conducted through either an individual mediator or a mediator appointed by a mediation services organization or body experienced in the mediation of disputes between franchisors and franchisees, agreed upon by the parties and, failing such agreement, within a reasonable period of time after either party has notified the other of its desire to seek mediation of any claim, controversy or dispute (not to exceed fifteen (15) days), by the American Arbitration Association in accordance with its rules governing mediation, at Franchisor's corporate headquarters in Mesa, Arizona. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), shall be borne by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the mediator has been chosen, then the matter shall be submitted to arbitration in accordance with Section 31.2 below to resolve such claim, controversy or dispute unless such time period is extended by written agreement of the parties. Notwithstanding the foregoing, Franchisor may bring an action (1) for monies owed, (2) for injunctive or other extraordinary relief, or (3) involving the possession or disposition of, or other relief relating to, real property in a court having jurisdiction and in accordance with Section 31.3 below without first submitting such action to mediation or arbitration.

2. Except as provided in this Agreement, Franchisor and Franchisee agree that any claim, controversy or dispute arising out of or relating to the Franchise, Franchisee's establishment or operation of any Restaurant under this Agreement (and any amendments thereto) including, but not limited to, any claim by Franchisee, or persons claiming on behalf of Franchisee, concerning the entry into, the performance under or the termination of the Agreement, or any other agreement between Franchisor, or its affiliates, and Franchisee, any claim against a past or present officer, director, employee or agent of Franchisor, including those occurring subsequent to the termination of this Agreement, that cannot be amicably settled among the parties or through mediation shall, except as specifically set forth herein, be referred to arbitration, the arbitration shall be conducted through an organization or body experienced in the arbitration of disputes between franchisors and franchisees designated by Franchisor. If Franchisor fails to designate an organization or body within a reasonable time after the dispute has been referred for arbitration (not to exceed fifteen (15) days), arbitration shall be conducted by the American Arbitration Association in accordance with the rules of the American Arbitration Association, as amended, except that the arbitrator shall apply the federal rules of evidence during the conduct of the hearing sessions with respect to the admissibility of evidence. If such rules are in any way contrary to or in conflict with this Agreement, the terms of the Agreement shall control. Only claims, controversies or disputes involving Franchisee may be brought hereunder. No claim for or on behalf of any other franchisee or supplier, or class, representative or association thereof, may be brought by Franchisee hereunder.

A. The parties shall agree on an arbitrator within fifteen (15) days of the filing of arbitration. If the parties cannot agree on a single arbitrator, Franchisor and Franchisee shall each select one (1) arbitrator. If the party upon whom the demand for arbitration is served fails to select an arbitrator within fifteen (15) days after the receipt of the demand for arbitration, then the arbitrator so designated by the party requesting arbitration shall act as the sole arbitrator to resolve the controversy at hand. The two (2) arbitrators designated by the parties shall select a third arbitrator. If the two arbitrators designated by the parties fail to select a third arbitrator within fifteen (15) days, the third arbitrator shall be selected by the organization agreed upon or the American Arbitration Association, or any successor thereto, upon application by either party. All of the arbitrators shall be experienced in the arbitration of disputes between franchisors and franchisees.

The arbitration shall take place at Franchisor's corporate offices. The award of the arbitrators shall be final and judgment upon the award rendered in arbitration may be entered in any court having jurisdiction thereof. The costs and expenses of arbitration may be entered in any court having jurisdiction thereof. The arbitrators shall be required to submit written findings of fact and conclusions of law within thirty (30) business days following the final hearing session of the arbitration. The costs and expenses of arbitration, including compensation and expenses of the arbitrators, shall be borne by the parties as the arbitrators determine.

3. Notwithstanding the above, the following shall not be subject to arbitration:

A. Disputes and controversies arising from the Sherman Act, the Clayton Act or any other federal or state antitrust law;

B. Disputes and controversies based upon or arising under the Lanham Act, as now or hereafter amended, relating to the ownership or validity of the Proprietary Marks;

C. Disputes and controversies relating to actions to obtain possession of the premises of the Restaurant under lease or sublease.

4. If Franchisor shall desire to seek specific performance or other extraordinary relief including, but not limited to, injunctive relief under this Agreement, and any amendments thereto, or to collect monies due, then any such action shall not be subject to arbitration and Franchisor shall have the right to bring such action as described below.

5. In proceeding with arbitration and in making determinations hereunder, the arbitrators shall not extend, modify or suspend any terms of this Agreement or the reasonable standards of business performance and operation established by Franchisor in good faith. Notice of or request to or demand for arbitration shall not stay, postpone or rescind the effectiveness of any termination of this Agreement. The arbitrators shall apply Arizona law and the terms of this Agreement in reaching their decision.

6. With respect to any claims, controversies or disputes which are not finally resolved through mediation or arbitration, or as otherwise provided above, Franchisee hereby irrevocably submits himself to the jurisdiction of the state courts of Maricopa County, Arizona and the Federal District Court for the District of Arizona. Franchisee hereby waives all questions of personal jurisdiction for the purpose of carrying out this provision. Franchisee hereby agrees that service of process may be made upon him in any proceeding relating to or arising out of this Agreement or the relationship created by this Agreement by any means allowed by Arizona or Federal law. Franchisee further agrees that venue for any proceeding relating to or arising out of this Agreement shall be Maricopa County, Arizona; provided, however, with respect to any action (1) for monies owed, (2) for injunctive or other extraordinary relief or (3) involving possession or disposition of, or other relief relating to, real property, Franchisor may bring such action in any state or federal district court which has jurisdiction. With respect to all claims, controversies, disputes or actions related to this Agreement or the relationship created thereby, this Agreement and any such related claims, controversies, disputes or actions shall be governed, enforced and interpreted under Arizona law (except for Arizona choice of law rules).

7. Franchisee, and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth in Section 31.6 above provide each of the parties with the mutual benefit of uniform interpretation of this Agreement and any dispute arising out of this Agreement or the parties' relationship created by this Agreement. The Franchisee and Franchisor further acknowledge the receipt and sufficiency of mutual consideration for such benefit and that each party's agreement regarding applicable state law and choice of forum have been negotiated for in good faith and are part of the benefit of the bargain reflected by this Agreement.

8. Franchisee and Franchisor acknowledge that the execution of this Agreement and acceptance of the terms by the parties occurred in Mesa, Arizona, and further acknowledge that the performance of certain obligations of Franchisee arising under this Agreement, including, but not limited to, the payment of monies due hereunder and the satisfaction of certain training requirements of Franchisor, shall occur in Mesa, Arizona.

9. Without limiting any of the foregoing, Franchisor reserves the right, at any time, to create a dispute resolution program and related specifications, standards, procedures and rules for the implementation thereof to be administered by Franchisor or its designees for the benefit of all franchisees conducting business under the System. The standards, specifications, procedures and rules for such dispute resolution program shall be made part of the Manuals and if made part of the Manuals, on either a voluntary or mandatory basis, Franchisee shall comply with all such standards, specifications, procedures and rules in seeking resolution of any claims, controversies or disputes with or involving Franchisor or other franchisees, if applicable, under the program. If such dispute resolution program is made mandatory, then Franchisee and Franchisor agree to submit any claims, controversies or disputes arising out of or relating to this Agreement (and attachments) or the relationship created by this Agreement for resolution in accordance with such dispute resolution program prior to seeking resolution of such claims, controversies or disputes in the manner described in this Section 31 (provided that the provisions of Section 31 concerning Franchisor's right to seek relief in a court for certain actions including for injunctive or other extraordinary relief shall not be superseded or affected by this Section 31.9), or if such claim, controversy or dispute relates to another franchisee, Franchisee agrees to participate in the program and submit any such claims, controversies or disputes in accordance with the program's standards, specifications, procedures and rules prior to seeking resolution of such claim by any other judicially or legally available means.

10. Franchisee hereby waives, to the fullest extent permitted by law, any right to or claim for any punitive, exemplary, incidental, indirect, special, consequential or other damages (including, without limitation, loss of profits) against Franchisor, its affiliates, and their respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees, in their corporate and individual capacities, arising out of any cause whatsoever (whether such cause be based in contract, negligence, strict liability, other tort or otherwise) and agrees that in the event of a dispute, Franchisee shall be limited to the recovery of any actual damages sustained by it. If any other term of this Agreement is found or determined to be unconscionable or unenforceable for any reason, the foregoing provisions of waiver by agreement of punitive, exemplary, incidental, indirect, special, consequential or other damages (including, without limitation, loss of profits) shall continue in full force and effect.

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#### ENTIRE AGREEMENT

1. This Franchise Agreement and the Exhibits attached hereto constitute the entire, full, and complete agreement between the Franchisor and Franchisee concerning the subject matter hereof, and supersede all prior agreements, and no other representations, either in writing or orally, have been made to induce Franchisee to execute this Franchise Agreement. This Franchise Agreement may be amended only by written agreement executed by each party hereto.

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#### SEVERABILITY AND CONSTRUCTION

1. Each covenant and provision of this Franchise Agreement shall be construed as independent of any other covenant or provision of this Agreement. The provisions of this Franchise Agreement shall be deemed severable.

2. All captions in this Franchise 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.

3. 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 those executing this Franchise Agreement on behalf of Franchisee.

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**INDEPENDENT INVESTIGATION**

1. FRANCHISEE ACKNOWLEDGES THAT HE HAS CONDUCTED AN INDEPENDENT INVESTIGATION OF THE FRANCHISOR'S OPERATION, AND RECOGNIZES THAT THE BUSINESS CONTEMPLATED BY THIS AGREEMENT INVOLVES BUSINESS RISKS AND THAT THE SUCCESS OF THE BUSINESS IS DEPENDENT UPON THE PERSONAL EFFORTS OF THE FRANCHISEE. FRANCHISOR EXPRESSLY DISCLAIMS THE MAKING OF, AND FRANCHISEE ACKNOWLEDGES THAT HE HAS NOT RECEIVED ANY, WARRANTY OR GUARANTEE AS TO THE POTENTIAL SALES VOLUME OR PROFIT OF THE FRANCHISED BUSINESS CONTEMPLATED BY THIS AGREEMENT. THIS AGREEMENT CANNOT BE AMENDED BY ANY ORAL STATEMENT, BUT ONLY BY A WRITTEN INSTRUMENT SIGNED BY ALL PARTIES HERETO.

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**REVIEW OF AGREEMENT**

1. FRANCHISEE ACKNOWLEDGES THAT HE HAS HAD A COPY OF THIS FRANCHISE AGREEMENT AT LEAST FIVE (5) BUSINESS DAYS PRIOR TO THE DATE IT WAS EXECUTED.

IN WITNESS WHEREOF, the parties hereto set their hands and seals the day and year as set forth above.

**FRANCHISOR:**

NEW YORK NY FRESH DELI FRANCHISE, INC.

By \_\_\_\_\_

Date Signed \_\_\_\_\_

Title \_\_\_\_\_

**FRANCHISEE :**

By \_\_\_\_\_



**EXHIBIT A**

The following shall be the location of Franchisee's Franchised Restaurant: