

## ITEM 1

### FRANCHISOR, ITS PREDECESSORS AND AFFILIATES

#### Franchisor

Up the Creek Restaurants of America, Inc. Up the Creek Restaurants of America, Inc. f/k/a was incorporated as UTC, Inc. on September 10, 2004 and effective September 30, 2004 merged with Up The Creek Restaurants of America, LLC (referred to in this Offering Circular as "UTC," "we," "us," or "our") which was organized as a Georgia Limited Liability Company on September 17, 1999. As part of the merger the name of the surviving entity was changed to Up the Creek Restaurants of America, Inc. (referred to in this Offering Circular as "UTC," "we," "us," or "our"). We maintain our principal place of business at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, and do business under our corporate name and the Marks as described below. The Marks are licensed to UTC by Up The Creek Restaurants, Inc., a member of UTC, with the ability to sublicense the Marks to Franchisees. Except for UTC, Inc. and Up the Creek Restaurants of America, LLC, we have no predecessors. The person or legal entity that will sign the Franchise Agreement and Development Agreement (defined below) is referred to in this Offering Circular as 'you,' or "your." In this Offering Circular, the terms you and your also include the "Developer" under the Development Agreement, unless we have noted otherwise. Controlling principals shall be required to sign and guarantee the Development and Franchise Agreements.

Since September 30, 1999, we have offered franchises under the names Up The Creek Fish Camp & Southern Grill and Up The Creek Fish Camp & Grill Restaurants (or "Restaurants"). The Restaurants feature fish, seafood, and other proprietary cuisine, a full-service bar with specialty drinks and a casual dining atmosphere. The Up The Creek Fish Camp & Grill Restaurants are generally located within high traffic areas or near shopping malls or other similar facilities with a large customer base (see Item 11). The Restaurants operate under the service mark "Up The Creek Fish Camp & Grill" and other principal marks identified in Item 13. These principal marks and other trademarks, trade names, logos, emblems and indicia of origin which we now use or may designate in the future for use with the System (defined below) are referred to in this Offering Circular as the "Marks."

We do not own or operate any Up The Creek Fish Camp & Grill Restaurants but our affiliate company currently owns and operates five (5) Up The Creek Fish Camp & Grill Restaurants, as described below. Neither we nor our affiliates have offered franchises in any other line of business and we do not engage in any other business activity. Where the context requires in this Offering Circular, "we," "us" and "our" also refers to us together with our affiliates (as that term is described in Item 12) that own and operate Up The Creek Fish Camp & Grill Restaurants and that provide services for us, our affiliate and our franchisees as described below (e.g., in this Offering Circular we refer to the Restaurants owned by our affiliate, as our company-owned Restaurants).

Our agents for service of process are listed in Exhibit J.

## **Our Affiliates**

We are one of a number of Affiliate companies controlled by our Chief Executive Officer, William F. Palmer, Jr. Other companies in the control group are: Café Ventures, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, Apple Restaurants, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, South Coast Cantinas, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, Up The Creek Restaurants, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, South Coast Cantinas of Georgia, L.P., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, South Coast Cantinas of Carolina, L.P., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, Apple Properties, Inc., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097, and Up The Creek Restaurants of Georgia, Inc., f/k/a Up The Creek Restaurants of Georgia, L.L.C., located at 6620 McGinnis Ferry Road, Duluth, Georgia 30097. Café Ventures, Inc. has eleven (11) Applebee's Neighborhood Grill and Bar Restaurants. Apple Restaurants, Inc. owns twenty-seven (27) Applebee's Neighborhood Grill and Bar Restaurants. Up The Creek Restaurants of Georgia, Inc., f/k/a Up The Creek Restaurants of Georgia, L.L.C., operates five (5) Up The Creek Fish Camp & Grill Restaurants. Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., was formed to provide operational services for the other Affiliates and franchise restaurants. The services we are obligated to provide under the agreements may be provided by Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc. None of the Affiliates has offered franchises in any other line of business.

## **Description of Franchise**

We offer franchises to establish and operate Up The Creek Fish Camp & Grill Restaurants under the Marks and the System under the terms of the Franchise Agreement and Development Agreement defined below. The franchise offered is for the right to establish and operate full-service Up The Creek Fish Camp & Grill Restaurants. Generally, we anticipate that you will construct a building from which to operate the Restaurant that meets our specifications as described in Item 7 of this Offering Circular. As noted above, the Restaurant will feature fish, seafood, and other proprietary cuisine, and a full-service bar with specialty drinks. The Restaurant will have a casual dining atmosphere and seating for approximately one hundred fifty (150) to three hundred (300) customers, including seating in the bar area, and the outside covered patio. The building will contain approximately four thousand (4,000) to seven thousand (7,000) square feet of interior space. Characteristic of its fish and seafood cuisine, the building, where code permits, will have intermittent strands of brightly colored exposed neon. We will consider existing facilities to convert to an Up The Creek Fish Camp & Grill Restaurant, as well as sites that may be larger or smaller than our prototype on a case by case basis; provided the location can be transformed to meet the look and feel of the Up The Creek Fish Camp & Grill concept.

The "System" includes distinctive signage, interior and exterior design, decor and color scheme; special recipes and menu items, including proprietary ingredients; uniform standards, specifications, and procedures for operations; quality and uniformity of products and services offered; inventory, management and financial control

procedures (including point of sale tracking systems); training and assistance; and advertising and promotional programs; all of which we may change, improve, and further develop, in our discretion (see Items 7, 11, 13 and 14).

We will primarily offer the right to enter into a development agreement to develop three (3) to ten (10) Restaurants within a specifically described geographic territory (the "Development Agreement"). The form of Development Agreement you will sign is attached as Exhibit B to this Offering Circular. We will determine the territory (the "Territory") before you sign the Development Agreement and it will be described in Attachment D to the Development Agreement. The Development Agreement will require you to establish more than one (1) Restaurant within the Territory according to a development schedule (the "Development Schedule"), and to enter into a separate Franchise Agreement relating to each Restaurant you establish under the Development Agreement (see Item 12). The form of Franchise Agreement for the first Restaurant you develop is attached as Exhibit C to this Offering Circular. For each additional Restaurant developed under the Development Agreement, you must sign the form of Franchise Agreement that we are then offering to new franchisees. The size of the Territory will vary depending on local market conditions and the number of Restaurants to be developed (see Item 12). We may under certain limited circumstances enter into arrangements to develop fewer or a greater number of Restaurants than that described above.

Under the Development Agreement and Franchise Agreement (collectively, the "Agreements"), certain parties are characterized as "Developer's Principals" or "Franchisee's Principals," as applicable (referred to in this Offering Circular as "your Principals"). If you are an individual, your Principals include your spouse, if you are married. If you are not an individual, your Principals include those of your officers and directors (including the officers and directors of your general partner) whom we designate as your Principals and all holders of an ownership interest in you and in any entity that directly or indirectly controls you. The Agreements are signed by us, by you, and by those of your Principals whom we designate as Controlling Principals. In most instances, we will designate your principal equity owners and executive officers as Controlling Principals. By signing the Agreements, your Controlling Principals agree to be individually bound by certain obligations in the Agreements, including covenants concerning confidentiality and noncompetition, and to personally guarantee your performance under the Agreements.

You must also designate an "Operating Principal". Your Operating Principal will be the main individual responsible for your business. If you are an individual, you will be the Operating Principal. If you are not an individual, the person you designate as your Operating Principal must maintain an equity interest in you. The Operating Principal must sign the Agreements as the Operating Principal and as one of your Controlling Principals (see Item 15). The Operating Principal must individually make certain covenants in the Agreements and must personally guarantee your performance under the Agreements.

The market for the food products and services the Restaurants offer is highly competitive, as is the market for obtaining locations for the Restaurants. However, we believe our competitive position is enhanced by our operational format and by the food and beverage products the Restaurants offer. We plan to continue controlled expansion

into areas that can support the Restaurants to improve name recognition and the reputation of the System through both franchised businesses and our affiliate-owned Up The Creek Fish Camp & Grill Restaurants. We believe that our competitive position will be improved based on that expansion, and that our concept will be able to attract customers consistently in those markets (see Item 20).

### **Industry Regulations**

In addition to the laws, regulations and ordinances applicable to businesses generally, such as the Americans with Disabilities Act, Federal Wage and Hour Laws, and the Occupation, Health and Safety Act you should consider that certain aspects of the restaurant and related bar business are heavily regulated by federal, state and local laws, rules and ordinances. The U.S. Food and Drug Administration, the U.S. Department of Agriculture, as well as state and local departments of health and other agencies have laws and regulations concerning the preparation of food and sanitary conditions of restaurant facilities. State and local agencies routinely conduct inspections for compliance with these requirements. Under the Clean Air Act and state implementing laws, certain state and local areas are required to attain, by the applicable statutory guidelines, the national air quality standards for ozone, carbon monoxide and particulate matters. Certain provisions of those laws impose caps on emissions resulting from commercial food preparation.

To operate the restaurant, you will also need to obtain a liquor license. State and local laws, regulations and ordinances vary significantly in the procedures, difficulty and cost associated with obtaining a license to sell liquor, the restrictions placed on the manner in which liquor may be sold, and the potential liability imposed by dram shop laws involving injuries, directly and indirectly, related to the sale of liquor and its consumption. You will need to understand and comply with those laws in operating the Restaurant.

## **ITEM 2**

### **BUSINESS EXPERIENCE**

#### **Manager, Chief Executive Officer: William F. Palmer, Jr.**

Mr. Palmer was the President of Up the Creek Restaurants of America, Inc. since its incorporation on September 10, 2004 and was Manager of Up The Creek Restaurants of America, L.L.C the predecessor of UTC since its inception on September 17, 1999. He is currently Chief Executive Officer of Apple Restaurants, Inc. and Café Ventures, Inc. which owns and operates Applebee's Restaurants, Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., South Coast Cantinas, Inc., Up The Creek Restaurants of Georgia, Inc., and Up The Creek Restaurants, Inc., all of which are Affiliates of UTC. He has held these positions since inception of the companies, and with respect to Apple Restaurants, Inc. since 1988.

#### **President: Steve Gonzalez**

Mr. Gonzalez became President of Up the Creek Restaurants of America, Inc. on August 31, 2006. Prior to his promotion, he was Vice President of Development (VP) of

Up the Creek Restaurants of America, Inc. since its incorporation on September 10, 2004 and of UTC's Affiliates Apple Creek Management Company, Inc. f/k/a Apple-Rio Management Company, Inc., Café Ventures, Inc., and Apple Restaurants, Inc. since 1997. Prior to becoming VP, Mr. Gonzalez was Director of Development from 1994 to 1997 and District Manager from 1990 to 1994.

**Vice President of Operations: Stanley Klaus**

Mr. Klaus has been Vice President of Operations (VPO) of Up the Creek Restaurants of America, Inc. since its incorporation on September 10, 2004 and was VPO of Up The Creek Restaurants of America, L.L.C the predecessor of UTC since its inception on September 17, 1999 and of UTC's affiliates Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., Café Ventures, Inc., and Apple Restaurants, Inc. since 1997. Prior to becoming Vice President, Mr. Klaus was Director of Operations of Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., Apple Restaurants, Inc., and Café Ventures, Inc. from 1989 to 1997.

**Chief Financial Officer: Jerry G. Killinger**

Jerry G. Killinger, CPA joined Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., an Affiliate of UTC, January 1, 1999 as Chief Financial Officer. Prior to that time since June of 1990 Mr. Killinger was a founding partner of Laney, Boteler & Killinger, a private practice certified public accounting firm.

**General Counsel: William M. Davidson**

Mr. Davidson has been General Counsel (GC) of Up the Creek Restaurants of America, Inc. since its incorporation on September 10, 2004 and was GC of Up The Creek Restaurants of America, L.L.C the predecessor of UTC since its inception on September 17, 1999 and has represented Affiliates including Apple Restaurants, Inc. since 1989. He is a founding partner in the law firm of Davidson, Fuller & Sloan, L.L.P.

**Director of Operations: Freddie Fonzo**

Mr. Fonzo has been Director of Operations (DO) of Up the Creek Restaurants of America, Inc. since its incorporation on September 10, 2004 and was DO of Up The Creek Restaurants of America, L.L.C the predecessor of UTC since September 1999. From April 1992 until July 1996, Mr. Fonzo was both an Assistant Manager and a General Manager for Apple Creek Management Company, Inc., f/k/a Apple-Rio Management Company, Inc., in Applebee's Restaurants. From August 1996 until December 1998 Mr. Fonzo was General Manager for South Coast Cantinas of Georgia, L.P. in its Rio Bravo Restaurant. In January 1999 Mr. Fonzo was promoted to District Manager for South Coast Cantinas of Georgia, L.P. and District Manager for Up The Creek Restaurants of Georgia, Inc., f/k/a Up The Creek Restaurants of Georgia, L.L.C.

### ITEM 3

#### LITIGATION

No litigation is required to be disclosed in this Offering Circular.

### ITEM 4

#### BANKRUPTCY

No person previously identified in Items 1 or 2 of this Offering Circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code or comparable foreign law required to be disclosed in this Item.

### ITEM 5

#### INITIAL FRANCHISE FEE

**Development Fee, Initial Franchise Fee and Application Fee:** We charge a Six Thousand Dollar (\$6,000.00) nonrefundable application fee that is paid prior to execution of a Development Agreement or a Franchise Agreement which you must submit with the Application Agreement attached to this Offering Circular as Exhibit F. If we accept you as a Franchisee, we will credit the application fee against the development fee you pay, if a Development Agreement is signed or the franchise fee if no Development Agreement is signed. If you have the right to construct more than one (1) restaurant, a Development Agreement must be signed. This fee is uniformly imposed and nonrefundable.

If you sign a Development Agreement, you must pay a development fee calculated by multiplying the number of Franchise Agreements to be signed under the Development Schedule by Five Thousand Dollars (\$5,000.00) which is paid at the time of execution of the Development Agreement. Any application fee that you paid to us before signing the Development Agreement will be credited against the development fee and if the application fee exceeds the development fee, the remaining part of the application fee will be credited against the franchise fee. You must pay the development fee when you sign the Development Agreement. It is not refundable. We charge the development fee uniformly to all franchisees, however, the amount you pay will vary depending on how many Restaurants you commit to develop.

You must pay to us an initial franchise fee of Thirty-Five Thousand Dollars (\$35,000.00) for each Restaurant to be developed under the Development Agreement, or if no Development Agreement is signed for the approved restaurant. The Franchise Agreement is signed subsequent to the Development Agreement, if a Development Agreement is required. We will credit Five Thousand Dollars (\$5,000.00) of the development fee to each Restaurant against the first installment of the initial franchise fee due for that Restaurant. You must pay the initial franchise fee to us as follows: (i) Fifty percent (50%) on the commencement of construction, and (ii) the remaining fifty percent (50%) one (1) week before the date we have scheduled the training crew to arrive to conduct opening training (as described in Item 11). The Franchise Agreement is signed prior to beginning of construction, so franchise fees will be due after signing

the Franchise Agreement. All franchise fees are nonrefundable and are imposed uniformly.

**Site Evaluation Costs:** If we determine that on-site evaluations are necessary, or you reasonably request additional on-site evaluations, we have the right to require you to reimburse us for all of our reasonable expenses (including, the cost of travel, lodging, meals and wages) we incur performing the evaluation. This fee is charged uniformly to all franchisees, but the amount of any expenses we incur performing the services will vary. Site evaluation expenses are nonrefundable. The initial on-site evaluation is covered by the Franchise Fee. To date no Franchisee has incurred additional charges for additional on-site evaluations.

**Training Supplies:** You must purchase uniforms for your management employees to wear during training which cost between Ninety-Five Dollars (\$95.00) and One Hundred Twenty-Five Dollars (\$125.00) per person. The required number of uniformed management employees is five (5) or six (6). The cost of the uniform is imposed uniformly on franchisees and is nonrefundable (see Item 11).

**Software:** We may require you to obtain point of sale software from a designee (the "Software"); however, if we require you to do so, we will charge you an amount not to exceed list price of software performing similar functions in the restaurant industry. We currently estimate that the initial license fee per restaurant will be in the range of One Thousand Five Hundred Dollars (\$1,500.00) to Six Thousand Dollars (\$6,000.00) for the Software. The software license fee will be uniformly imposed on franchisees and is nonrefundable, if we require you to use it.

## ITEM 6

### OTHER FEES

<u>FEES</u> <sup>(1)</sup>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>REMARKS</u>
Royalty Fees <sup>(2)</sup>	Four percent (4%) of Gross Sales	Twelfth (12 <sup>th</sup> ) day after end of Accounting Period	If you do not pay amounts when due, we may withdraw payments by EFT from your designated bank account
National Advertising Fund <sup>(3)</sup>	One percent (1%) to three percent (3%) of Gross Sales	Twelfth (12 <sup>th</sup> ) day after end of Accounting Period	We have the right to allocate Local Advertising to the National Fund (see Item 11).
Local Advertising	Two percent (2%) of Gross Sales	Annually - As incurred	See Item 11.

<u>FEES</u> <sup>(1)</sup>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>REMARKS</u>
Advertising & Promotional Materials	Varies, depending on your advertising needs.	When billed.	See Items 7 and 11.
Interest	Lesser of prime rate plus four percent (4%) or highest rate allowed by applicable law.	On demand.	Interest may be charged on all overdue amounts. Rate will be at least twelve percent (12%) per annum.
Transfer Fee	Ten Thousand Dollars (\$10,000.00) or any greater amount necessary to reimburse us for our reasonable costs and expenses in reviewing the transfer application.	Submitted with transfer application.	No fee is charged to an individual or partnership franchisee that transfers its rights to a corporation controlled by the same interest holders. A transfer fee of a similar amount is charged under both the Franchise Agreement and the Development Agreement.
Public Offering	Ten Thousand Dollars (\$10,000.00) or any greater amount necessary to reimburse us for our reasonable costs and expenses in reviewing the proposed securities offering.	When billed.	This covers our cost in reviewing the proposed offering of your securities. The offering fee is the same amount under both the Franchise Agreement and the Development Agreement.
Renewal Fee	Twenty percent (20%) of then current franchise fee.	On signing renewal franchise agreement.	You must give us at least seven (7) months notice. No renewal fee charged for second renewal term.
Site Evaluation	First one free. Additional expenses range from \$500 to \$4,500.	Fifteen (15) days after billing	We provide one (1) site evaluation without charge. For additional site selection visits we may charge costs (see Items 5 & 11).

<u>FEES</u> <sup>(1)</sup>	<u>AMOUNT</u>	<u>DUE DATE</u>	<u>REMARKS</u>
Inspection and Testing	Cost of inspection or testing.	When billed.	We may require you to pay us or an independent laboratory for the cost of inspection or testing if you purchase or lease items used in the Restaurant from sources we have not previously approved (see Item 8).
Indemnification	Varies according to loss.	On demand.	You must indemnify us when certain of your actions result in loss to us under the Agreements (see Item 9).
Audit Fee	Cost of audit.	When billed.	Payable only if we find, after an audit, that you have understated any amount owed to us by more than two percent (2%).
Psychological Testing Fees	Cost of test. Approximately One Hundred Dollars (\$100.00) to Three Hundred Fifty Dollars (\$350.00) per person.	When billed.	We may require you to have your Director of Operations, General Manager and other management and supervisory personnel successfully complete our interview process and psychological profile test. You must pay the cost of testing charged by the designated agency.
Software License Fee <sup>(4)</sup>	To be determined by Licensor of Software. Approximately, One Thousand Five Hundred Dollars (\$1,500.00) to Six Thousand Dollars (\$6,000.00).	When billed.	Our Affiliate is reviewing certain point of sale and inventory control software systems. Once a system is established, you may be required to obtain the Software at fair market cost for software performing similar functions (see Item 5).

**Notes:**

1. All fees and expenses described in this Item 6 are non-refundable. Except as otherwise indicated in the chart above, we impose all the fees and expenses listed, and they are payable to us. Except as specifically stated above, the amounts given may be subject to increases based on changes in market conditions, our cost of providing services and future policy changes. At the present time, we have no plans to increase payments over which we have control.

2. For the purposes of determining the royalties to be paid under the Franchise Agreement. "Gross Sales" means the total selling price of all services and

products and all income of every other kind and nature related to the Restaurant (including, income related to catering and permitted wholesale activities, and any sales or orders of food products or food preparation services provided from or related to the Restaurants), whether for cash or credit and regardless of collection in the case of credit. If a cash shortage occurs, the amount of Gross Sales will be determined based on the records of the electronic cash register system or point of sale system and any cash shortage will not be considered in determining the amount due. Gross Sales expressly excludes the following:

- A. Receipts from any public telephone installed in the Restaurant, or products from vending or gaming machines located at the Restaurant except for any amount representing your share of the revenues;
- B. Sums representing sales taxes collected directly from customers, based on present or future laws of federal, state or local governments, collected by you in the operation of the Restaurant, and any other tax, excise or duty which is levied or assessed against you by any federal, state, municipal or local authority, based on piece of specific merchandise sold at or from the Restaurant, provided that the taxes are actually transmitted to the appropriate taxing authority;
- C. Returns to shippers or manufacturers;
- D. Proceeds from isolated sales of trade fixtures not constituting any part of your products and services offered for resale at the Restaurant nor having any material effect on the ongoing operation of the Restaurant required under the Franchise Agreement; and
- E. The full value of meals furnished to your 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.

We may authorize certain other items to be excluded from Gross Sales. We may revoke or withdraw any exclusion at any time in writing.

If you fail to pay the royalty fee timely, the royalty fee will be withdrawn from your designated bank account by electronic fund transfer (EFT) each Accounting Period based on Gross Sales from the preceding Accounting Period (see Section IV.B. (3) of the Franchise Agreement), unless we require otherwise. You must maintain a minimum balance of Fifteen Thousand Dollars (\$15,000.00) in your designated bank account.

3. We have the right to allocate certain of our administrative expenses for marketing activities related to the National Fund (see Item 11).

4. We may be developing and we may implement a point of sale, accounting and inventory control tracking system that will permit us to gather information concerning the Restaurant's operation. Once implemented, we may require you to obtain certain Software that we, or another designee will license to you (see Item 7 and 11). If we require you to do so, we will charge you an amount not to exceed list price of software performing similar functions in the restaurant industry. We currently estimate that the initial license fee per restaurant will be in the range of One Thousand Five Hundred Dollars (\$1,500) to Six Thousand Dollars (\$6,000.00) for the Software (see Item 5). We may also charge a reasonable fee to compensate us for our costs in preparing the updates and maintaining the Software in the future. Currently, we estimate the annual update cost for the Software to be between One Thousand Dollars (\$1,000.00) and Two Thousand Five Hundred Dollars (\$2,500.00) per restaurant (see Item 6).

### ITEM 7

#### INITIAL INVESTMENT (1)

Expenditure*	Actual or Estimated (Low)	Estimated High	When Payable	Method of Payment	Whether Refundable	To Whom Paid
Application Fee	\$6,000	\$6,000	On signing of the Application Agreement	As Incurred	No	Us
Development Fee	\$5,000	\$5,000 per Authorized Restaurant	\$6000.00 upon signing the Application Agreement. If a single unit Development Agreement is signed an additional \$1,000.00 will be credited to the initial Franchise Fee. The balance, if any, on signing of the Development Agreement	As Incurred	No	Us

Expenditure*	Actual or Estimated (Low)	Estimated High	When Payable	Method of Payment	Whether Refundable	To Whom Paid
Initial Franchise fee (2)	\$35,000	\$35,000	\$6,000.00 upon signing the Application Agreement. If no Development Agreement, or a single unit Development Agreement is signed, the \$6,000 application fee will be credited to the first 50% of the franchise fee. If a multi unit Development Agreement is signed, the \$6,000 application fee will be credited to the development fee of \$5,000.00 per Restaurant on signing of Development Agreement the amount necessary to equal 50% on start of construction after crediting the application fee or development fee and 50% before training.	Installments	No	us
Site Preparation Costs (3)	\$10,000	\$250,000	As Arranged	As Invoiced	No	Independent Contractors

<b>Expenditure*</b>	<b>Actual or Estimated (Low)</b>	<b>Estimated High</b>	<b>When Payable</b>	<b>Method of Payment</b>	<b>Whether Refundable</b>	<b>To Whom Paid</b>
Construction costs (4) (Exclusive of site)	\$400,000	\$800,000	As Arranged	As Invoiced	No	Independent Contractors
Furniture, Fixtures and Equipment (5)	\$250,000	\$550,000	As Arranged	As Invoiced	No	Approved Vendors
Signage (6)	\$20,000	\$50,000	As Arranged	As Invoiced	No	Approved Vendors
POS and Back Office System (7)	\$30,000	\$42,000	As Arranged	As Invoiced	No	Approved Vendors
Business licenses, permits, etc. (for first year) (8)	\$1,000	\$25,000	As Arranged	As Incurred	No	Various Agencies
Architectural and Professional Services (9)	\$20,000	\$50,000	As Arranged	As Invoiced	No	Independent Suppliers
Sub Total	\$777,000	\$1,813,000				
Initial Inventory (10)	\$25,000	\$50,000	As Arranged	As Invoiced	No	Approved Vendors
Smallwares (11)	\$25,000	\$40,000	As Arranged	As Invoiced	No	Approved Vendor
Travel, lodging and meals for initial training (12)	\$20,000	\$30,000	As Incurred	As Incurred	No	Independent Suppliers
Insurance deposits and premiums (for first six months) (13)	\$18,000	\$55,000	As Arranged	As Invoiced	No	Independent Carrier
Additional Funds (14)	\$250,000	\$500,000	During start-up phase generally considered the first 3 months			Landlord, Employee and Other Suppliers

Expenditure*	Actual or Estimated (Low)	Estimated High	When Payable	Method of Payment	Whether Refundable	To Whom Paid
Initial Advertising Expense (15)	\$0	\$10,000	As Arranged	As Invoiced	No	Vendors
Total	1,115,000	2,498,000				

**Notes:**

(1) The estimated initial investment figures shown above for constructing a Restaurant are based primarily on the costs we incurred constructing Applebee's Restaurants owned by one of our Affiliates. This Restaurant is similar to the prototype you will build. Certain aspects of the estimate are also based on the CEO's experience in constructing Applebee's and Rio Bravo restaurants (see Item 20). The total actual cost to construct and finish out each Restaurant has varied from the estimated cost shown above to construct the prototype as many of the Restaurants established by our affiliate have varied in size, several were conversions of existing restaurant facilities, and no particular Restaurant has experienced the low or the high estimate for every category shown in the chart above.

(2) You must pay an initial franchise fee of Thirty-Five Thousand Dollars (\$35,000.00). The initial franchise fee is non-refundable under the terms of the Franchise Agreement (see Item 5). No amounts for a separate development fee charged to develop Restaurants in addition to the first Restaurant is included in the estimate, because any development fee paid will be credited against the franchise fee due.

(3) Site costs will vary depending on numerous factors, including: (i) pre-construction costs (e.g., demolition of existing walls and removal of existing improvements and fixtures); (ii) site improvements and preparation costs (including utility extensions, paving of parking areas, pouring sidewalks and installation of outdoor lighting); (iii) availability of cross-access parking (see note 4); and (iv) landscaping and building exterior which will vary by region and specification.

(4) The construction costs will vary depending on numerous factors, including: (i) the size and configuration of the premises; and (ii) cost of materials and labor for constructing the building. These amounts are based on the cost of adapting our prototypical architectural and design plans to construct the Restaurant from the ground up (including the cost of leasehold improvements). Our current prototype will have between four thousand (4,000) to seven thousand (7,000) square feet of interior space. The Restaurant will seat approximately one hundred fifty (150) to three hundred (300) people including in the bar. The costs shown do not include the costs to purchase or lease the site for the Restaurant. The sites can range in size from eighteen thousand (18,000) to eighty thousand (80,000) square feet depending on the availability of cross-access parking. The Restaurant must have the functional equivalent of at least one hundred fifteen (115) parking spaces. Pad site leases will typically range from Fifty Thousand Dollars (\$50,000.00) to One Hundred Fifty Thousand Dollars (\$150,000.00) per year. The cost to purchase real estate may range from Four Hundred Thousand Dollars (\$400,000.00) to One Million Dollars (\$1,000,000.00). These are our best

estimates based on remodeling/finish-out rates and conditions in the Southeast. Your experience may vary substantially based on local conditions, including the availability and prices of labor and materials.

(5) The estimate includes the following furniture for the Restaurant: Table tops and bases, booths and booth packages, bar and millwork, chairs, bar stools, guest wait furniture, hostess stand, and other furnishings specified in the Manuals (as defined in Item 11). The fixtures in the estimate include sea form artifacts; metal blinds; interior signs and painted graphic decorations; lighting fixtures; and other items that make up the Up The Creek Fish Camp & Grill decor package. You must purchase certain restaurant equipment meeting our specifications to be used in the Restaurant, including, the approved drink machines, ice machines, walk-in coolers, freezers, refrigerators, microwave ovens, coffee machines, work tables, shelving, range, dish machine, convection oven, broiler, charbroiler, fryer, and other items listed in the Manual. You will also need to purchase certain other operational equipment, such as a pager system, phone system, water softener and purification system, safe, security system and fire alarm system, and television and stereo system.

(6) These amounts represent your cost for an exterior sign package. The lower estimate assumes a small pylon sign (50 to 75 square feet) and no other exterior signage. The higher estimate assumes you will have a large pylon sign and reader boards, exterior building signs and exposed neon. Each locality has different restrictions and ordinances on exterior signage which may affect your costs.

(7) You must obtain and use in the Restaurant a point of sale and back of the house computer system that we approve (as described in Item 11). Typically, you will use five (5) to six (6) terminals and ten (10) to twelve (12) remote printers per Restaurant. We or our designee may provide you certain point of sale Software for the Up The Creek Fish Camp & Grill Restaurant. We or our designee will charge you an amount not to exceed the list price of software performing similar functions in the restaurant industry. We currently estimate that the initial license fee per Restaurant will range from One Thousand Five Hundred Dollars (\$1,500.00) to Six Thousand Dollars (\$6,000.00) for the Software, if we require you to use it (see Item 11).

(8) Costs for obtaining local business licenses (which typically remain in effect for one (1) year) will vary substantially depending on the location of the Restaurant. The estimate includes the range of costs our affiliates have incurred in establishing its Restaurants. Depending on your location and whether you currently have a liquor license, the cost of a liquor license can be as high as Two Hundred Fifty Thousand Dollars (\$250,000.00).

(9) These fees are estimates of your costs to obtain any architectural and design services necessary to construct the Restaurant. You must adapt our prototypical plans and specifications for constructing the Restaurant. You may also hire accounting and legal advisors to assist you in establishing and operating the Restaurant, and also incur expenses of professionals to conduct environmental impact studies for the Restaurant, if a study is required. We have not included any estimate for your legal, accounting or other professional consulting costs.

(10) These amounts represent your initial inventory of food and beverage supplies (including liquor and bar supplies), and paper goods for use in opening the Restaurant as specified in the Manual.

(11) The estimate includes your Restaurant smallwares, such as glasses, plates, silverware and other serving, cooking and food preparation utensils as specified in the Manual.

(12) We provide initial training to your Operating Principal and General Manager and four (4) additional managers at no additional charge. These estimates include your out-of-pocket costs associated with their training (including travel, lodging, meals and wages). Training is for a eight (8) week period (see Item 11). These costs will vary depending on your selection of lodging and dining facilities and mode and distance of transportation. These amounts also include uniforms and training materials for those persons attending training.

(13) These figures are estimates of the cost for 6 months of premiums for the insurance you are required to obtain and maintain for the Restaurant as described in Item 8. The cost of insurance will vary substantially depending on your location, previous claims experience and whether you have additional Restaurants. The amounts shown do not include any health or life insurance for your employees.

(14) These figures are estimates of the amounts needed to cover your expenses for the startup phase of your business, including: three (3) months' lease payments; the cost of three (3) months' advertising and promotional expenditures; three (3) months payroll for managers, and hourly employees; utilities and telephone service for three (3) months and other inventory costs. We estimated the start-up phase to be three (3) months from the date the Restaurant opens for business. These figures are estimates and we cannot assure you that you will not have additional expenses starting the Restaurant. Your actual costs will depend on factors such as your management skill, experience and business acumen; local economic conditions; the local market for products; the prevailing wage rate; competition; and the sales level reached during the start-up phase. These amounts do not include any estimates for debt service. These amounts are based on the combined operating experience of several Restaurants that are of a size similar to the prototype and are not reflective of any particular Restaurant.

(15) We do not require you to conduct any particular amount of opening advertising for the Restaurant.

Except as specifically stated above, the amounts given may be subject to increases based on changes in market conditions, our cost of providing services and future policy changes. At the present time, we have no plans to increase payments over which we have control.

## **ITEM 8**

### **RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

You must purchase or lease and install all fixtures, furnishings, equipment (including electronic cash registers, computer hardware and software), decor items, signs and related items we require, all of which must conform to the standards and specifications in our Manuals or otherwise in writing. Without first obtaining our written consent, you may not install or permit to be installed on the Restaurant premises any fixtures, furnishings, equipment, decor items, signs, games, vending machines or other items. If you lease any of the property described above from a third party, we must approve the lease in writing before it is signed. We will not approve the lease unless it permits your interest in the lease to be assigned to us if the Franchise Agreement terminates or expires and unless the lease prohibits the lessor from imposing an assignment or related fee on assignment.

To ensure that the highest degree of quality and service is maintained in the Restaurant, you must operate the Restaurant in strict conformity with the methods, standards and specifications that we provide in the Manuals or otherwise in writing. You must maintain in sufficient supply and use and sell at all times only those food and beverage items, ingredients, products, materials, supplies and paper goods that meet our standards and specifications (including products specified by name or brand). You must prepare all menu items according to the recipes and procedures we specify in the Manuals or other written materials. You must not deviate from these standards and specifications by using or offering non-conforming items or differing amounts of any items, without obtaining our written consent first. You must sell and offer for sale only those menu items, products and services that we have expressly approved for sale in writing. You must sell and offer for sale all products and services we require in the method, manner and style we request, including dine-in, carry-out or catering services and the sale of pre-packaged food products, if we authorize you to do so. You must not deviate from our standards and specifications without obtaining our written consent first. You must discontinue any method, manner or style of selling or offering for sale any items, products and services that we disapprove of in writing at any time. We can, and expect to, modify our standards and specifications as we determine necessary. We will provide you notice of any changes in the Manuals. We anticipate that lists of approved suppliers and changes in that list will be provided approximately every six (6) months.

You have sole discretion in the prices you charge customers for all menu items, products, merchandise and services you offer for sale.

You must permit us or our agents, at any reasonable time, to remove a reasonable number of samples of food or non-food items from your inventory or from the Restaurant for testing by us or by an independent laboratory, to determine whether the samples meet our then-current standards and specifications. We will pay you an amount equal to your cost of the samples taken for testing. Besides any other remedies we may have, we may require you to pay for the testing if we have not previously approved the supplier of the item or if the sample fails to conform to our specifications (see Item 6).

Except for proprietary products, promotional materials and Software provided by us (or our Affiliates) or our designated suppliers, you must obtain all food and beverage items, ingredients, supplies, materials, fixtures, furnishings, equipment (including electronic cash register, computer hardware and software), and other products used or offered for sale at the Restaurant solely from suppliers who demonstrate, to our continuing reasonable satisfaction, the ability to meet our then-current standards or in

accordance with our standards and specifications. Our criteria for supplier approval may be found in the Manuals or otherwise in writing. Among other things, the suppliers must have adequate quality controls and the capacity to supply your needs promptly and reliably. If you wish to purchase, lease or use any products or other items from an unapproved supplier, you must submit a written request for approval, or must request the supplier to do so. We must approve any supplier in writing before you make any purchases from that supplier. We can require that our representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered, either to us or to an independent laboratory for testing. Your supplier must pay the cost of the inspection, and the actual cost of the test, or if the supplier is unwilling to do so, and you wish to use the supplier, you must pay the costs (see Item 6). We reserve the right to reinspect the facilities and products of any approved supplier and to revoke our approval if the supplier fails to continue to meet any of our then-current standards. Our supplier approval procedure does not obligate us to approve any particular supplier. However, we will notify you within thirty (30) days after we complete the inspection and evaluation process of our approval or disapproval of any proposed supplier. Approval or disapproval is in our sole discretion.

We do not require, and will not permit you, to offer catering services until we authorize you to do so. However, if you choose and are authorized to do so, any vehicle that you use to cater Restaurant products and services to customers must meet our standards with respect to appearance and ability to satisfy the requirements imposed on you under the Franchise Agreement. You must place the signs and decor items on the vehicle we require and must at all times keep the vehicle clean and in good working order. You must require each person providing those services to comply with all laws, regulations and rules of the road and to use due care and caution operating and maintaining the motor vehicles. You also must obtain any automobile insurance we require, as describe below. Except as noted above, we do not have any standards or exercise control over any motor vehicle that you utilize.

We have and may continue to develop for use in the System certain products which are prepared from confidential secret recipes and other proprietary products which bear our Marks. Because of the importance of quality and uniformity of production and the significance of those products in the System, it is to our mutual benefit that we closely control the production and distribution of those products. Accordingly, if those products become a part of the System, you will use only our secret recipe and other proprietary products and will purchase those items solely from us or a source we designate all of your requirements for those products. We have arranged for more than one supplier for most of these items. We or an affiliate may be the designated supplier for particular items in the future.

We may negotiate purchase arrangements, including price terms, with suppliers on behalf of our company-owned Restaurants and the System. We receive discounts and rebates on purchases for our company-owned Restaurants, and may receive rebates or discounts based on your purchases. You will have to contact those suppliers and request any rebates or discounts you may be entitled to through those suppliers based on the terms of their discount or rebate program. We may enter agreements with certain suppliers to subsidize the cost of printing menus or for other subsidies, rebates or incentives to use their products in the System, which may be shared with you in our sole discretion.

All advertising and promotional materials, signs, decorations, paper goods (including menus and all forms and stationery used in the Restaurant) and other items we designate must bear the Marks (see Item 13) in the form, color, location and manner we prescribe. In addition, all your advertising and promotion in any medium must be conducted in a dignified manner and must conform to the standards and requirements in the Manuals or otherwise. You must obtain our approval before you use any advertising and promotional materials and plans if we have not prepared or approved them during the twelve (12) months before their proposed use.

You must obtain our approval of the site for the Restaurant before you acquire the site. You must also obtain our approval of any contract of sale or lease for the Restaurant before you execute the contract or lease. We will not approve any lease unless a rider to the lease containing substantially the same provisions as those outlined in Attachment B to the Franchise Agreement is signed by you, by us and by the landlord.

Before you open the Restaurant for business, you must obtain the type and amount of insurance coverage for the Restaurant we specify in the Franchise Agreement and the Manuals, or otherwise in writing. You must obtain and maintain the specified insurance coverage during the term of the Franchise Agreement from a responsible carrier or carriers we find acceptable. The types of coverage include:

1. Comprehensive General Liability Insurance.
2. "All Risks" coverage for the full cost of replacement of the Restaurant.
3. Automobile liability coverage.
4. Employer's liability.
5. Workers' compensation or legally appropriate alternative.
6. An umbrella policy covering excess claims.
7. Other insurance required by the state or locality.

You may, after obtaining our written consent, elect to have reasonable deductibles under the coverage required. You must maintain builder's risks insurance and performance and completion bonds related to any construction, renovation or remodeling of the Restaurant in forms and amounts and written by a carrier or carriers, satisfactory to us. All of the policies must name us, our affiliates and the respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees of each of them, as additional insureds and must include a waiver of subrogation in favor of all those parties.

We do not require that you purchase any goods or services necessary to operate the Restaurants from us or our affiliates, none of which are being provided currently. We can, and do, require you to purchase or lease One Hundred Percent (100%) of all goods and services necessary to establish and operate the Restaurants from suppliers approved by us, or according to our specifications. UTC and its affiliates do not and will not derive any revenue or other material consideration as a result of the provision of goods and services from our designees, from suppliers approved by us, or according to our specifications.

Other than as described above, we do not provide any material benefits to you

based on the use of designated or approved suppliers. When determining whether to grant new or additional franchises, we consider many factors, including whether you have complied with the requirements described above.

## ITEM 9

### FRANCHISEE'S OBLIGATIONS

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

<u>Obligation</u>	<u>Section in Agreement</u>	<u>Item in Offering Circular</u>
a. Site selection and acquisition/lease	Section II, of Franchise Agreement	Items 8 and 11
b. Pre-opening purchases/leases	Sections VI, VII and VIII of Franchise Agreement	Items 5, 6, 7, 8 and 11
c. Site development and other pre-opening requirements	Section II of Franchise Agreement	Items 1, 8 and 11
d. Initial and ongoing training	Section VI of Franchise Agreement	Items 5, 6 and 11
e. Opening	Section VI of Franchise Agreement	Items 7 and 11
f. Fees	Section IV and VIII of Franchise Agreement and Section II of Development Agreement	Items 5 and 6
g. Compliance with standards and policies/ Manuals	Sections II, III, VI, VII, VIII, IX, X, XI and XII of Franchise Agreement	Items 11 and 14
h. Trademarks and proprietary information	Section IX and X and Attachment D of Franchise Agreement, Attachment B of Development Agreement	Items 11, 13 and 14
i. Restrictions on products/services offered	Section VII of Franchise Agreement	Items 8 and 16
j. Warranty and customer service requirements	Section VII of Franchise Agreement	Item 8
k. Territorial development and sales quotas	Section III of Development Agreement	Item 12
l. Ongoing product/service purchases	Section VII of Franchise Agreement	Items 6 and 8

<u>Obligation</u>	<u>Section in Agreement</u>	<u>Item in Offering Circular</u>
m. Maintenance, appearance and remodeling requirements	Sections II, VII and XIV of Franchise Agreement	Items 8 and 11
n. Insurance	Section XII of Franchise Agreement	Items 7 and 8
o. Advertising	Section VIII of Franchise Agreement	Items 6, 8 and 11
p. Indemnification	Section XV of Franchise Agreement and Section IX of Development Agreement	Item 6
q. Owner's participation/management/staffing	Section VI, XIV, XV and XIX of Franchise Agreement and Section V of Development Agreement	Items 1, 11 and 15
r. Records and reports	Sections IV, VII and XI of Franchise Agreement	Item 6
s. Inspections and audits	Sections II, VII and XI of Franchise Agreement	Items 6, 8 and 11
t. Transfer	Section XIV of Franchise Agreement and Section VII of Development Agreement	Items 6 and 17
u. Renewal or Extension of Rights	Section III of Franchise Agreement and Section VI of Development Agreement	Items 6 and 17
v. Post-termination obligations	Section XVIII of Franchise Agreement and Section VI of Development Agreement	Items 6 and 17
w. Non-competition covenants	Section X and Attachment D of Franchise Agreement, Section VIII and Attachment B of Development Agreement	Item 17
x. Dispute resolution	Section XIX of Franchise Agreement and Section XIV of Development Agreement	Items 6 and 17

## ITEM 10

### FINANCING

We do not offer direct or indirect financing. We do not guarantee your notes, leases or other obligations.

## ITEM 11

### FRANCHISOR'S OBLIGATIONS

**EXCEPT AS LISTED BELOW, WE NEED NOT PROVIDE ANY ASSISTANCE TO YOU. SERVICES WE ARE OBLIGATED TO PROVIDE UNDER THE AGREEMENTS MAY BE PROVIDED BY OUR AFFILIATE, APPLE CREEK MANAGEMENT COMPANY, INC., F/K/A APPLE-RIO MANAGEMENT COMPANY, INC., SERVICES WE ARE OBLIGATED TO PROVIDE, EXCEPT WITH RESPECT TO THE APPLICATION AGREEMENT ARE PROVIDED SUBSEQUENT TO SIGNING OF THE FRANCHISE AGREEMENT.**

**Application Agreement:** The Application Agreement requires us to evaluate you as a potential Franchisee and determine whether you are eligible to receive a Franchise from us.

**Development Agreement:** We are obligated to preserve the territory described in the Development Agreement for you and to prohibit others, including ourselves and our affiliates, from developing Up The Creek Restaurants in the area of the Development Agreement.

**Pre-Opening Obligations:** Before you open a Restaurant we will provide the following assistance and services:

1. Our written site selection guidelines and the site selection assistance we deem advisable (see below for description of evaluations and assistance). (Franchise Agreement, Section V. A and Section II.(A)).

2. Any on-site evaluations and additional on-site evaluations that we determine are necessary or in response to your reasonable request for site approval (see below for description of evaluations and assistance). (Franchise Agreement, Section V. B).

3. On loan, one (1) set of prototypical architectural and design plans and specifications for a Restaurant. If you request, we may provide Diazo Mylars, Erasable Vellums, Paper Sepias and Autocad discs for your architect to use. We will provide the prototype drawings and Autocad discs at no additional charge, but you must pay our cost for any of the other items listed above. You must independently, and at your expense, have the architectural and design plans and specifications adapted to construct the Restaurant. (Franchise Agreement, Section V. C).

4. On loan, one (1) set of the Manuals (as described below) which we may revise during the term of the Franchise Agreement. (Franchise Agreement, Section V. D).

5. In our discretion, we may loan one (1) copy of the Software to be used in operating the Restaurant, which will be licensed to you by us or our designee under a separate software license agreement. We or our designee will also make available to you enhancements or replacements to the Software that are developed by or for us. We reserve the right to charge a reasonable fee for the initial license of the Software, and any upgrades, enhancements or replacements. (Franchise Agreement, Section V. N).

6. A list of our approved suppliers. (Franchise Agreement, Section V. I).
7. An initial training program for your Operating Principal, General Manager and other Restaurant personnel (see description of training below). (Franchise Agreement, Section V. J).
8. On-site assistance in opening the Restaurant (see description of assistance below). (Franchise Agreement, Section V. K).
9. Advertising and promotional materials to use in the pre-opening promotion of the Restaurant. (Franchise Agreement, Section V. F).

We are not required to provide any other service or assistance to you before you open the Restaurant.

**Post-Opening Obligations** We provide the following services and assistance after you open the Restaurant:

1. As we reasonably determine necessary, visit and evaluate the Restaurant and the products and services provided there to ensure that you maintain the high standards of quality, appearance and service of the System. (Franchise Agreement, Section V. E).
2. Advertising and promotional materials for you to use conducting local advertising for the Restaurant. We reserve the right to charge you a reasonable amount for the cost of the materials. (Franchise Agreement, Section V. F).
3. In our discretion, advice and written materials (including updates to the Manuals) concerning techniques of managing and operating the Restaurant, including new developments and improvements in equipment, food products, packaging and preparation. (Franchise Agreement, Section V. G).
4. At a reasonable cost, make available to you certain merchandise, including prepackaged food products and promotional products and memorabilia, for use in the Restaurant and for resale to your customers, in quantities sufficient to meet your customer demand. (Franchise Agreement, Section V. H).
5. Training programs and seminars and other related activities regarding operating the Restaurant, which your Operating Principal, General Manager and other Restaurant personnel may be required to attend. (Franchise Agreement, Section VI. E(2)).
6. Certain on-site remedial assistance for your Restaurant personnel when you reasonably request it or we find it appropriate. If you request the remedial training, we may require you to pay our reasonable expenses to provide the training. (Franchise Agreement, Section VI.E(4)).
7. Administration of the advertising fund. (Franchise Agreement, Sections V. L and VIII. C & D).

8. If we require you to use the Software obtained from us or our designee, we or our designee will provide you any enhancements or updates as they become available. (Franchise Agreement, V. N)

9. At our discretion, coordinate an annual convention to which each franchisee in good standing will be invited. Attendance at the convention will not be mandatory. Based on our annually published schedule, you will be entitled to bring a specified number of persons per Restaurant that you operate to the convention without additional charge. Any attendees in excess of that number must pay a registration fee to compensate us for the costs we incur with coordinating and holding the convention. You are responsible for all your personnels' expenses attending the convention, including, travel, meals and lodging. (Franchise Agreement, V. M)

10. Indemnify against and reimburse you for all damages for which you are held liable in any proceeding arising out of your use of any of the Marks (including settlement amounts), provided that you and your Controlling Principals' conduct and use of the Marks complied with the Franchise Agreement. (Franchise Agreement, Section IX. D).

We are not required to provide any other service or assistance to you for the continuing operation of the Restaurant.

**Advertising:** You must spend, annually throughout the term of the Franchise Agreement, two percent (2%) of the Gross Sales of the Restaurant on advertising for the Restaurant in its Assigned Area (see Item 12) for Local Advertising. We must approve all advertising before you use it. You must provide us with an advertising expenditure report to show that you have complied with the Local Advertising requirement before the twelfth (12<sup>th</sup>) day following our request; provided that day is a business day. If it is not a business day, then the report is due on the next business day. We will not request the report more often than every ninety (90) days. You can not include any costs and expenditures you incur for any of the following in your expenditures on Local Advertising unless we approve in writing:

1. Incentive programs for your employees or agents, including the cost of honoring any coupons distributed in the programs;
2. Food and beverage research expenditures;
3. Food and beverage costs incurred in any promotion, except as we may authorize in the Manuals;
4. Salaries and expenses of any of your employees or agents, including salaries or expenses for attendance at advertising meetings or activities;
5. Charitable, political or other contributions or donations, unless the amounts are otherwise related to promotional events;
6. In-store materials consisting of fixtures or equipment; and
7. Your employees' seminar and educational costs. (Franchise Agreement, Section VIII. B.).

You must contribute to an advertising fund (the "Fund") to advertise the System on a regional or national basis. You must contribute up to three percent (3%) of the Gross Sales of the Restaurant for each Accounting Period, which must be paid in the same manner as the royalty payments. During the term of the Franchise Agreement, for certain special promotions, we may require you to allocate to the Fund all or part of your required Local Advertising expenditures (described above). Any amount we allocate will be

credited against your Local Advertising contribution obligations. You must provide us with an advertising contribution report on the twelfth (12<sup>th</sup>) day following the Accounting Period (or next business day if the twelfth (12<sup>th</sup>) day is not a business day) by facsimile transmission, telephone, or any other method of delivery that we may reasonably direct. As of the year 2004 the income received in the Fund was allocated as follows:

Salaries - Marketing	21.6%
Marketing <sup>1</sup>	33.6%
Television Production	0%
Radio Media	21.6%
Radio Production	5.5%
Direct Mail	2.8%
Newspaper	0%
LSM Design/Printing	0.1%
Sponsorships	0.8%
Point of Purchase	1.2%
Corporate Marketing <sup>2</sup>	11.7%
Outdoor	0.7%
Total	100%

We direct all advertising programs and have sole discretion to approve the creative concepts, materials and media used in the programs and their placement and allocation. The Fund is intended to maximize general public recognition and acceptance of the Marks and improve the collective success of all Restaurants operating under the System. For Restaurants we, or our affiliates operate, we, or our affiliates, will contribute to the Fund generally on the same basis as you. In administering the Fund, we and our designees will use reasonable commercial efforts in each calendar year to ensure that the expenditures for advertising placement are approximately proportional to each franchisee's contributions to the Fund within any given territory (as that term is defined in each franchisee's respective Development Agreement) during that twelve (12) month period.

We or our designee may use the Fund to satisfy the costs of developing new menus or other items that enhance the System or Marks, maintaining, administering, directing and preparing advertising, including the cost of preparing and conducting television, radio, magazine and newspaper advertising campaigns; direct mail and

<sup>1</sup> Includes production costs other than television.

<sup>2</sup> Does not include production costs.

outdoor billboard advertising; public relations activities; employing advertising agencies; and costs of our personnel and other departmental costs for advertising that we administer or prepare internally and any other expenditures for marketing activities including, but not limited to, point of sale promotional materials and premiums used for merchandising purposes; customer satisfaction activities; conducting and administering in-store promotions; and marketing research and activities. We will keep all sums you pay to the Fund in a separate account and will not use them to defray any of our general operating expenses, except for reasonable administrative costs and overhead, if any, that we may incur in the administration or direction of the Fund and advertising programs for you and the System. We operate the Fund solely as a conduit for collecting and expending the advertising fees as outlined above. We will spend any sums paid to the Fund that are not spent in the year they are collected in the following year.

It is in UTC's sole discretion to determine whether or not the expenditures are used to enhance the System and the Marks. UTC has, under the terms of the Franchise Agreement, no obligation to make expenditures in administering the Fund which are equivalent or proportionate to your contribution, or to ensure that you benefit directly or pro rata from expenditures by the Fund. The Fund is not and shall not be an asset of UTC. You acknowledge and agree that the Fund is not a trust fund; you have no third party beneficiary rights with respect to the Fund; UTC is not a fiduciary of monies in the Fund; and that UTC has no fiduciary obligations to you with respect to the Fund.

We will prepare an annual unaudited statement of the operations of the Fund that will be made available to you if you request it. We are not required to have the Fund statements audited.

Although the Fund is intended to be perpetual, we may terminate the Fund at any time. The Fund will not be terminated, however, until all monies in the Fund have been spent for advertising or promotional purposes or returned to contributors (including those Restaurants operated by us or our affiliates) without interest, on the basis of their respective contributions. (Franchise Agreement, Section VIII. C.)

We currently advertise on a very local basis the Restaurants and the products offered by the Restaurants in various forms of media. Our advertising may be developed by members of our affiliates' staff or we may use an advertising agency to assist us in the development and placement of advertising. Advertising presently is conducted on a local basis by our affiliate. We contemplate advertising on a national, regional and local basis through the use of the Fund and Local Advertising (described below).

We presently do not have a franchise advertising council. We anticipate that we will form a Franchise Business Council once we have a sufficient number of franchisees. The Franchisee Business Council will have approximately three (3) to seven (7) franchisee members. Each franchisee will have 1 vote to elect a council member, regardless of the number of Restaurants the franchisee operates. Only one person from each franchisee (corporate, partnership or other legal entity) may serve on the council. The council will serve in an advisory capacity only. Once formed, we will have the right to modify or dissolve the council.

We have the right to increase or decrease your required advertising contributions or payments to the Fund or for Local Advertising. However, we will not increase the total

amount of your required contributions or payments more than five percent (5%) of Gross Sales. (Franchise Agreement, Section VIII. E)

The Fund will not use any funds for advertising that is principally a solicitation for the sale of franchises for Restaurants.

You must also pay your pro rata share of the cost of a Yellow Pages trademark or other business listings we place on behalf of all Up The Creek Fish Camp & Grill Restaurants in your Up The Creek Fish Camp & Grill Restaurants local market area. If you operate the only Up The Creek Fish Camp & Grill Restaurant under the System in the local market area, you will be responsible for full payment of any Yellow Pages trademark advertising or other business listing, unless we determine, in our sole discretion, that placement of a Yellow Pages trademark listing or other business listings for the local market area is not economically justified. You may apply any amount you pay for Yellow Pages trademark or other business listings toward satisfying your Local Advertising requirement. (Franchise Agreement, Section VIII. G.)

In your discretion, you may plan and conduct, at your expense, a grand opening campaign for the Restaurant opening, according to the Manuals. We must approve all advertising materials and methods you use in the grand opening campaign. You may not credit any amounts you pay for the grand opening campaign toward any of your other advertising obligations. (Franchise Agreement, Section VIII. F.)

Except as described above, we have no obligation to spend any amount on advertising in the area where your Restaurant is located.

**Training:** Before the date the Restaurant begins operation, your Operating Principal, General Manager and other Restaurant personnel we designate must attend and complete, to our satisfaction, our initial training program. At your discretion, and with our consent, you may select four (4) additional persons to attend and complete the initial training program, who must complete the program to our satisfaction. If the Restaurant is the first Up The Creek Fish Camp & Grill Restaurant you establish, (a) we or our designee will conduct training at one of our affiliate-operated Restaurants or another location we designate, and (b) we will provide instructors and training materials for the initial training of the Operating Principal, General Manager, and the other Restaurant personnel we designate to attend training at no additional charge to you (except for the cost of uniforms and MIT workbooks described in Item 5). We, however, also have the right to charge you for the cost of written training materials and other technology provided to the additional personnel attending training at your request. You are responsible for any and all expenses incurred by you or your Operating Principal, General Manager and other Restaurant personnel attending the initial training program, including, costs of travel, lodging, meals and wages. (Franchise Agreement, Section VI.E.(1))

We will conduct this training at our office and/or a Restaurant operated by our affiliate near our headquarters or at another location we designate. We will offer the initial training programs continuously during the year depending on the number of new franchisees entering the System, replacement operating principals and general managers and other personnel needing training, the number of new Restaurants being opened by our affiliates and the timing of the scheduled openings of Restaurants to be operated by our affiliates and franchisees generally. You must provide us at least two (2) weeks

notice before you wish to attend training. In addition to the Operating Principal and General Manager, two (2) assistant managers, one (1) kitchen manager, and one (1) assistant kitchen manager must attend our eight (8) weeks of on the job training, which includes training in each position in the Restaurant and the following subjects, including shift training in each of the managerial positions, bartender, server, expediter, host, dishwasher, back office administration, and kitchen operations (including middle, grill, oven, fry and salad). Each trainee will spend approximately one (1) week of training in each position and subject. In addition to the personnel listed above, the Director of Operations who will oversee operations for all of your Restaurants must attend the eight (8) week Restaurant operations training portion of the initial training program. The Director of Operations need not attend the management shift training. The instructional materials used in the initial training consist primarily of our Manuals, marketing and promotion materials, videos and other handouts. Our confidential operations manuals as of this time consist of the Server Manual, Host/Hostess Manual, General Utility Manual, Bartender Manual, Cook's Manuals, Manager Training Manual, Management Benefits and Policies Manual, Employee Handbook, Mate Training Manual, Mate Testing Manual, Steward Training Manual, Steward Testing Manual, Wheel Training Manual, Buoy Training Manual, Wheel & Buoy Testing Manual, BOH Training Manual, BOH Testing Manual, other suggested readings and written directives, and other information communicated through other means, including electronic media (e.g., CD Rom, computer disk or video and audio tape) (the "Manuals").

Our affiliate has an operations and training staff that is currently used for training Restaurant personnel for our affiliate owned Restaurants. The Director of Training, who will oversee all training programs, has substantial experience in developing training programs for management and hourly employees in the restaurant business. Certain Area Directors and other persons who have been certified as trainers in a specific subject matter, as well as other Restaurant personnel of our affiliates, will conduct the initial training program and the opening assistance described below.

The subjects and time periods allocated to the subjects actually taught to a specific franchisee and its personnel may vary based on the experience of those persons being trained. The entire training program is subject to change due to updates in materials, methods, manuals and personnel without notice to you. You may review the manuals before purchase of the Franchise.

Subject	Time Begun <sup>3</sup>	Instructional Material <sup>4</sup>	Hours of Classroom Training	Hours of on the job training	Instructor <sup>5</sup>
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<sup>3</sup>Time begun prior to store opening.

<sup>4</sup>Instructional Material is supplied by Franchisor or its affiliates.

<sup>5</sup>Instructor is supplied by Franchisor or its affiliates.

Subject	Time Begun <sup>3</sup>	Instructional Material <sup>4</sup>	Hours of Classroom Training	Hours of on the job training	Instructor <sup>5</sup>
Each managerial <sup>6</sup> position	9 weeks <sup>7</sup>	Manuals	50	430	Trainers
Bartender	1 week	Manuals	24	12	Trainers
Server	1 week	Manuals	24	12	Trainers
Expediter	1 week	Manuals	24	12	Trainers
Host	1 week	Manuals	24	12	Trainers
Dishwasher	1 week	Manuals	1	25	Trainers

<sup>6</sup>Managerial positions include the Operating Principal, General Manager, two (2) assistant managers, one (1) kitchen manager, and one (1) assistant kitchen manager.

<sup>7</sup>Management positions train for ten (10) hour days as follows. **Training Breakdown**

Total Number of Weeks for Front of House Manager: 9 weeks

Total Number of Weeks for Back of House Manager: 5 weeks

Training Program Breakdown: 4 ½ weeks BOH Training also completed by FOH Manager  
4 ½ weeks FOH Training

Station Breakdown: JOB	TIME	MATERIALS	CLASSROOM	ON THE JOB
<b>Kitchen Manager/Station Training:</b>				
Prep/Dish:	3 days	MIT Manual	5 Hours	25 Hours
Fry Station:	5 days	MIT Manual	5 Hours	45 Hours
Broil Station:	5 days	MIT Manual	5 Hours	45 Hours
Sauté/Mid Station:	5 days	MIT Manual	5 Hours	45 Hours
Expo:	6 days	MIT Manual	5 Hours	55 Hours
<b>Front of House Stations:</b>				
Server:	4 days	Server/MIT Manual	8 Hours	32 Hours
Bar:	3 days	Bar/MIT Manual	3 Hours	27 Hours
Host:	3 days	Host/MIT Manual	2 Hours	28 Hours
Opening FOH Manager:	4 days	MIT Manual	4 Hours	36 Hours
Mid FOH Manager:	4 days	MIT Manual	4 Hours	36 Hours
Closing FOH Manager:	6 days	MIT Manual	4 Hours	56 Hours
Total:	48 days		50 Hours	430 Hours

All Station Training for BOH is conducted by either a Kitchen Manager or Certified BOH Trainer.  
All Kitchen Manager Training is conducted by the Training Store Kitchen Manager.  
All Station Training for FOH is conducted by either the General Manager or Certified FOH Trainer  
All FOH Manager Training is conducted by the Training Store General Manager.