

Exhibit B



BLENDZ FRANCHISE SYSTEM, INC.

FRANCHISE AGREEMENT

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ATTACHMENTS:

- Attachment A: Location, Authorized Territory, Area of Primary Responsibility and Opening Date
- Attachment B: Description of Marks
- Attachment C: Lease Rider
- Attachment D: Statement of Ownership Interests, Principals and Controlling Principals
- Attachment E: Confidentiality Agreement and Ancillary Covenants Not to Compete
- Attachment F: Electronic Funds Transfer Authorization
- Attachment G: Guaranty

BLENDZ FRANCHISE SYSTEM, INC.

FRANCHISE AGREEMENT

This Franchise Agreement (“**Agreement**”) is entered into on the Effective Date specified in the signature block of this Agreement between Blendz Franchise System, Inc., a California corporation (“**Franchisor**”), and the individual or business entity identified as Franchisee in the signature block of this Agreement.

WITNESSETH:

WHEREAS, as the result of the expenditure of time, skill, effort and money, Blendz, L.L.C., Franchisor’s affiliate and Franchisor developed a distinctive system, identified by means of certain marks that governs the establishment and operation of a quick service restaurant with a unique menu featuring tossed-to-order salads, grilled Panini sandwiches, blended smoothies, gourmet soups and specialty coffees and espresso that operate under the BLENDZ® name and in association with the Marks identified in **Attachment B** to this Agreement; and

WHEREAS, the distinguishing characteristics of the System include distinctive exterior and interior design, decor, color scheme and furnishings; special recipes and menu items; a prescribed beverage selection; uniform standards, specifications, and procedures for operations; quality and uniformity of products and services; procedures for inventory, management and financial control; training and assistance; and advertising and promotional programs, all of which Franchisor may change, improve and further develop from time to time; and

WHEREAS, Franchisor has a license to use and sublicense the use of the Marks and to franchise the operation of Blendz® Stores; and

WHEREAS, Franchisee has applied for a franchise to operate a Blendz® Store, and Franchisor has approved Franchisee’s application; and

WHEREAS, Franchisee understands and acknowledges the importance of Franchisor’s high standards of quality, cleanliness, appearance and service and the necessity of operating a Blendz® Store in conformity with Franchisor’s standards and specifications.

NOW, THEREFORE, the parties, in consideration of the mutual undertakings and commitments set forth herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following are hereby defined:

(a) “**Agreement**” - means this agreement, attachments, and all instruments in amendment hereof.

(b) **“Affiliate”** - means any person or entity that controls, is controlled by, or is in common control with, the Franchisor.

(c) **“Area Development Agreement”** - means an agreement between Franchisor and Franchisee or one of its Affiliates pursuant to which Franchisee or its Affiliate undertake the development of more than 1 Blendz® Store in the market in which the Blendz® Store is located.

(d) **“Blendz® Store”** - means the business operations conducted or to be conducted by the Franchisee consisting of a quick service restaurant with a unique menu featuring tossed-to-order salads, grilled Panini sandwiches, blended smoothies, gourmet soups and specialty coffees and espresso, and the sale of related products using the Franchisor’s System and in association with the Marks.

(e) **“Controlling Interest”** - means (a) if Franchisee is a corporation, that the Controlling Principals, either individually or cumulatively, (i) directly or indirectly own at least 51% of the shares of each class of Franchisee’s issued and outstanding capital stock and (ii) are entitled, under its governing documents or under any agreements among shareholders, to cast a sufficient number of votes to require the corporation to take or omit to take any action that such Franchisee is required to take or omit to take under this Agreement; or (b) if Franchisee is a partnership, that the Controlling Principals (i) own at least a 51% interest in the profits and losses of the partnership, as well as at least a 51% ownership interest in the partnership (and at least a 51% interest in the shares of each class of capital stock of any corporate general partner) and (ii) are entitled under its partnership agreement or applicable law to act on behalf of the partnership without the approval or consent of any other partner or are able to cast a sufficient number of votes to require the partnership to take or omit to take any action that Franchisee is required to take or omit to take under this Agreement.

(f) **“Controlling Principal”** - means and includes, collectively and individually, any Franchisee's Principals who has been designated by Franchisor as a Controlling Principal.

(g) **“Confidential Information”** - means all knowledge, know-how, standards, methods and procedures related to the establishment and operation of the System and includes all records pertaining to customers, suppliers, and other service providers of, and/or related in any way to, Franchisee’s Blendz® Store including, without limitation, all recipes, databases (whether in print, electronic or other form), all names, addresses, phone numbers, e-mail addresses, customer purchase records, manuals, promotional and marketing materials, marketing strategies and any other data which the Franchisor designates as confidential.

(h) **“Electronic Commerce”** - means advertising and promoting merchandise and services, and accepting orders and receiving payment for merchandise and services by means of electronic communication.

(i) **“Franchisor’s System” or “System”** - means the standards, systems, concepts, identifications, methods, and procedures developed or used by the Franchisor, or which may hereafter be developed or used by the Franchisor, for the sales and marketing of the Franchisor’s Products.

(j) **“Franchise”** - shall mean the business operations conducted or to be conducted using the Franchisor’s System and in association therewith the Marks.

(k) **“Franchisee’s Principals”, “Owners”, “Developer”** - means and includes, collectively and individually, Franchisee’s spouse, if Franchisee is an individual; all officers and directors of Franchisee (including the officers and directors of any general partner of Franchisee) whom Franchisor designates as Franchisee’s Principals; all holders of an ownership interest in Franchisee and in any entity directly or indirectly controlling Franchisee; and any other person or entity that controls, is controlled by, or is under common control with Franchisee. The initial Franchisee’s Principals are listed on **Attachment D**.

(l) **“Lease”** - means any agreement (whether oral or written) under which the right to occupy a Training Facility has been obtained, and any amendment made thereto from time to time, including without limitation, any offer to lease or license a Franchised Location. Franchisee acknowledges and agrees that before any Lease will be accepted by Franchisor, the Lease must incorporate the terms of the Lease Rider attached to this Agreement as **Attachment C**.

(m) **“Marks”** - means the trademark **“Blendz®”** to the extent of the Franchisor’s rights to same, together with such other trade names, trademarks, symbols, logos, distinctive names, service marks, certification marks, logo designs, insignia or otherwise which may be designated by the Franchisor from time to time as part of the System for use by Franchisees, and not thereafter withdrawn.

(n) **“Opening Date”** - means the date the Blendz® Store opens for business to the public in the Franchised Location.

(o) **“Operations Manual”** - means, but is not limited to, collectively, all directives, books, pamphlets, bulletins, memoranda, order forms, packing slips, invoices, letters, e-mail, Internet or intranet data, or other publications, documents, software programs, video tapes, transmittances or communications, in whatever form (including electronic form) prepared by or on behalf of the Franchisor for use by the franchisees generally or for the Franchisee in particular, setting forth information, advice and standards, requirements, marketing information and procedures, operating procedures, instructions or policies relating to the operation of the Blendz® Store or the operation of Franchises, as same may be added to, deleted or otherwise amended by the Franchisor from time to time. The form and content of the Operations Manual maintained by Franchisor shall prevail in the event of any dispute regarding the form of or content of the Operations Manual between Franchisor and Franchisee.

(p) **“Products”** - means all supplies, material and equipment sold, prepared or otherwise dealt with in connection with the Blendz® Store and associated with the Marks.

(q) **“Publicly-held Corporation”** - means a corporation registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended, or a corporation subject to the requirements of Section 15(d) of that Act.

(r) **“Sales Period”** - means the period from the 20th day of a proceeding month through the 4th day of the current month (**“First Sales Period”**) and the period from the 5th day of the current month through the 19th day of the current month (**“Second Sales Period”**). The First Sales Period and the Second Sales Period are collectively, the **“Sales Period”**.

(s) **“Express Unit”** - means a business location, which due to a number of possible reasons, does not offer the full menu sold at a Blendz® Store.

(t) **“Software”** - means the software that Franchisor requires Franchisee to license to operate the Blendz® Store.

(u) **“Trade Secret(s)”** - means information, including a formula, pattern, compilation, program, device, method, training technique or process related to the System that both derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1. GRANT

1.1 Grant and License. In reliance on the representations and warranties of Franchisee and its Controlling Principals, and subject to the terms and conditions of this Agreement, Franchisor grants to Franchisee the right and license, and Franchisee accepts the right and obligation, to operate 1 Blendz® Store under the Marks and in accordance with the System and the provisions of this Agreement at the location (**“Franchised Location”**) specified in **Attachment A** only. Franchisee acknowledges that the rights granted in this Agreement pertain only to the operation of 1 Blendz® Store at the Franchised Location.

(a) The license does not include the right to sell products to any vendor who would in turn sell to consumers.

(b) The Franchisee recognizes that variations and additions to the System may be required from time to time in order to preserve and/or enhance the System. Therefore, the Franchisor expressly reserves the right to add to, subtract from, revise, modify or change from time to time the System or any part thereof, and the Franchisee agrees to promptly accept and comply with any such addition, subtraction, revision, modification or change and to make such reasonable expenditures as may be necessary to comply.

(c) Franchisee recognizes that the rights that are granted to the Franchisee are for the specific Authorized Territory, defined in Section 2.1 below and no other, and cannot be transferred to an alternate Authorized Territory, without the prior written approval of the Franchisor, which approval may be granted or withheld in Franchisor’s sole discretion.

1.2 Grant and License Non-Exclusive. The Franchisee acknowledges that the Franchise granted hereunder is non-exclusive and that the Franchisor and its Affiliates retain the exclusive right among other:

(i) Advertise and promote the System in the Authorized Territory (defined in Section 2.1(b)) and fill customer orders, or grant others the right to fill customer orders, by providing catering, take-out and delivery services to customers who reside or work in the Authorized Territory;

(ii) Market ancillary products, gift cards and other merchandise via the Internet, catalogues, phone solicitation and other direct-selling techniques to customers who reside in the Authorized Territory;

(iii) Offer and sell, or grant others the right to offer or sell products under the Marks, that are the same as or similar to those products sold at a Blendz® Store, through alternative channels of distribution, including without limitation, at sports and entertainment facilities, events, supermarkets, transportation facilities, kiosks, food concessions, hospitals and schools;

(iv) Offer and sell, or grant others the right to offer or sell, products and services under the Marks in the Authorized Territory through Express Units;

(v) Offer and sell any products and services, that are the same as or similar to the products and services offered at Blendz® Stores, under any names and marks other than the Marks;

(vi) Use or license others to use the Marks and System for operation of a Blendz® Store at any location outside the Authorized Territory regardless of proximity to the Authorized Territory;

(vii) Purchase, be purchased by, merge or combine with any other business, including a business that competes directly with Franchisee's Blendz® Store, wherever located; and

(viii) Establish any websites utilizing a domain name incorporating the words "**Blendz**" or similar derivatives thereof. The Franchisor retains the sole right to market on the Internet and use the Marks on the Internet, including all use of websites, domain names, URL's, directory addresses, metatags, linking, advertising, and co-branding and other arrangements. The Franchisee may not independently market on the Internet, or use any domain name, address, locator, link, metatag, or search technique, with words or symbols similar to the Marks or otherwise establish any presence on the Internet;

(ix) Implement multi-area marketing programs (including over the Internet and national accounts) which may allow us or others to solicit or sell to customers anywhere. Franchisor reserves the right to issue mandatory policies to coordinate such multi-area marketing programs; and

1.3 Express Unit. After Franchisee opens its Blendz® Store, Franchisee may apply in writing to Franchisor for the right to operate an Express Unit. Franchisor may approve or deny Franchisee's request in Franchisor's sole discretion. Franchisor shall have 30 days to approve or

reject Franchisee's written request. If Franchisor fails to respond to Franchisee within 30 days, Franchisee's request shall be deemed denied. If Franchisor approves Franchisee's request to operate an Express Unit, Franchisee will construct and operate such Express Unit pursuant to the Operations Manual and Franchisor's guidelines. No Authorized Territory will apply to any Express Unit and Franchisor may own, franchise or operate Blendz® Stores or other Express Units regardless of the proximity to the Franchisee's Express Unit. If Franchisor approves Franchisee's request to operate an Express Unit, Franchisee will pay Franchisor the Express Unit Fee set out in Section 4.2 and the Initial Training, Site Selection and Architectural and Marketing Fee set out in Section 4.1 and pay for all construction, licensing, permitting and any and all other costs incurred to open and operate the Express Unit. Notwithstanding anything herein to the contrary, Franchisee must operate a Blendz® Store prior to and thereafter at all times while operating an Express Unit.

1.4 Catering Service. After operating a Blendz® Store for at least 4 months, Franchisee may apply in writing to Franchisor for the right to provide catering services. Franchisor may approve or deny Franchisee's request in Franchisor's sole discretion. Franchisor shall have 30 days to approve or reject Franchisee's written request. If Franchisor fails to respond to Franchisee within 30 days, Franchisee's request shall be deemed denied. If Franchisor approves Franchisee's request to offer catering services, Franchisor will designate a non-exclusive catering service area ("**Catering Service Area**") in which Franchisee may offer catering services. Franchisee will be required, at its sole cost and expense, to obtain a vehicle, insurance, catering equipment and menus, approved by Franchisor, as set forth in the Operations Manual prior to offering catering services within its Catering Service Area. Notwithstanding anything herein to the contrary, Franchisee must operate a Blendz® Store at all times while providing catering services. Franchisee must provide catering services pursuant to the Operations Manual and Franchisor's guidelines.

2. **SITE SELECTION, PLANS AND CONSTRUCTION**

2.1 Site Selection Area and Authorized Territory.

(a) The site selection area ("**Site Selection Area**") designated by Franchisor is described in **Attachment A**. Unless otherwise approved by the Franchisor in its sole determination, Franchisee must obtain a Franchised Location within the Site Selection Area. Franchisee will not have any exclusive rights to the Site Selection Area.

(b) Upon Franchisor's review and evaluation of the Franchised Location and Franchisee's acquisition of the Franchised Location in accordance with Section 2.2 of this Agreement, Franchisor will assign Franchisee a primary area of operation ("**Authorized Territory**") that will be described in **Attachment A**. Except as provided in this Agreement, and subject to Franchisee's full compliance with this Agreement and any other agreement between Franchisee or any of its affiliates and Franchisor or any of its Affiliates, neither Franchisor nor any of its Affiliates will establish, or authorize any person or entity other than Franchisee to establish, a Blendz® Store in the Authorized Territory during the Initial Term of this Agreement or any Interim Period. Notwithstanding anything herein to the contrary, Franchisee

acknowledges that it will not have any exclusive rights within the Authorized Territory to provide catering, take-out or delivery services or to open and operate Express Units.

(c) Franchisee acknowledges that Franchisor's Affiliate operates a Blendz® Store and Express Units under the Marks and may at some point in the future operate restaurants under other names and marks.

2.2 Site Selection.

(a) Notwithstanding the site selection assistance provided by Franchisor (as more specifically set out in Section 5.1(b) and (c)), Franchisee assumes all cost, liability, expense and responsibility for locating, presenting for Franchisor's prior review, securing and developing a site for the Blendz® Store within the Site Selection Area and that in discharging such responsibility, Franchisee may consult with real estate and other professionals identified by the Franchisor. Franchisor's evaluation of a prospective site and the rendering of assistance in the selection of a site does not constitute a representation, promise, warranty or guarantee, express or implied, by Franchisor that a Blendz® Store operated at that site will be profitable or otherwise successful. Franchisee further assumes all cost, liability, expense and responsibility for constructing and equipping the Blendz® Store at the Franchised Location. Franchisee shall not make any binding commitment to a prospective vendor or lessor of real estate with respect to a site for the Blendz® Store until the site is reviewed and evaluated in accordance with this Section 2.

(b) Prior to securing a site for the Blendz® Store by lease or purchase, Franchisee, with Franchisor's site selection assistance set out in Section 5.1(b) and (c), shall locate a site that satisfies the site selection guidelines that Franchisor provides to Franchisee pursuant to Section 5.1(b) and shall submit to Franchisor, in the form Franchisor specifies, a description of the site, including evidence satisfactory to Franchisor that the site satisfies Franchisor's site selection guidelines, together with such other information and materials as Franchisor may reasonably require, including a letter of intent or other evidence satisfactory to Franchisor that confirms Franchisee's favorable prospects for obtaining the site and the landlord's willingness to sign the rider attached to this Agreement as **Attachment C**. Recognizing that time is of the essence, Franchisee agrees that it will submit such information and materials to Franchisor for its review and approval no later than 60 days after the execution of this Agreement. Franchisor shall have 10 days after receipt of this information and materials to approve or disapprove, in its sole discretion, the proposed site as the location for the Blendz® Store. No site may be used for the location of the Blendz® Store unless it is first reviewed and evaluated in writing by Franchisor, and any objections thereto contained in such writing are resolved by Franchisee to the satisfaction of Franchisor.

2.3 Timing for Franchised Location Acquisition.

(a) Within 30 days after Franchisor has evaluated the site for the Blendz® Store, Franchisee shall acquire the site by purchase or lease, at Franchisee's expense. Franchisee's failure to acquire the site within the required time and in accordance with the prescribed procedures will constitute a material event of default under this Agreement.

(b) After a site for the Blendz® Store is approved by Franchisor and acquired by Franchisee, the site shall be described as the Franchised Location in **Attachment A**.

2.4 Franchisor's Approval of Lease or Purchase Agreement. If Franchisee purchases the Franchised Location, Franchisee shall submit a copy of the proposed contract of sale to Franchisor for its review prior to the contract's execution and shall furnish to Franchisor a copy of the executed contract of sale within 10 days after execution. If Franchisee leases the Franchised Location, Franchisee shall submit a copy of the proposed lease to Franchisor for its review prior to the lease's execution and shall furnish to Franchisor a copy of the executed lease within 10 days after execution. Any lease for a Franchised Location must include a rider to the lease, prepared by Franchisor and executed by Franchisor, Franchisee and the Landlord in substantially the form attached as **Attachment C**. Franchisor will have 10 days after receipt of the proposed lease or the proposed contract of sale to review and evaluate.

2.5 Permits and Licenses. Notwithstanding the site selection assistance and design assistance provided by the Franchisor pursuant to Sections 5.1(b), (c) and (e), Franchisee shall be responsible for obtaining all zoning classifications, permits, variances, certificates of occupancy and clearances, that may be required by state or local laws, ordinances or regulations or that may be necessary as a result of any restrictive covenants relating to the Franchised Location. Prior to beginning construction of the Blendz® Store, Franchisee shall (i) obtain all permits (including, but not limited to, health code permits and building permits), licenses and certifications required for the lawful construction or remodeling and operation of the Blendz® Store, and (ii) certify in writing to Franchisor that the insurance coverage specified in Section 12 is in full force and effect and that all required approvals, clearances, permits and certifications have been obtained. Franchisee shall provide to Franchisor copies of Franchisee's insurance policies or certificates of insurance and copies of all such approvals, clearances, permits and certifications prior to beginning construction of the Blendz® Store. Franchisee will provide Franchisor with a copy of its certificate of occupancy prior to opening the Blendz® Store.

2.6 Design Plans for the Franchised Location. Franchisor will provide Franchisee with the design and pre-construction assistance set out in Sections 5.1(e). Franchisee must independently obtain any additional architectural, engineering and design services it deems necessary for the construction of the Blendz® Store at its own expense from an architectural design firm approved by Franchisor. Any adaptations to the design plans for the Franchised Location provided by the Franchisor shall be at Franchisee's sole expense and subject to Franchisor's approval, in its sole determination. If Franchisor determines, in its sole discretion, that any such plans do not satisfy Franchisor's architectural or design standards and specifications for a Blendz® Store or are not consistent with the best interests of the System, Franchisor may prohibit the implementation of such plans, and in this event will notify Franchisee of any objections within 15 days of receiving such plans. If Franchisor fails to notify Franchisee of an objection to the plans within this time period, Franchisee may use such plans. If Franchisor objects to any such plans, it shall provide Franchisee with a reasonably detailed list of changes necessary to make the plans acceptable. Franchisor shall, upon a resubmission of the plans with such changes, notify Franchisee within 10 days of receiving the resubmitted plans whether the plans are acceptable. If such changes are not acceptable, Franchisor shall notify Franchisee of such objections as described above, and Franchisee shall resubmit such plans in

accordance with the procedures described above until such plans are approved by Franchisor. If Franchisor fails to notify Franchisee of any objection within such time period, Franchisee may use the resubmitted plans. Franchisee acknowledges that providing the design plans to the Franchisee and/or accepting changes to such design plans does not constitute a representation, warranty, or guarantee, express or implied, by Franchisor that such plans are free of architectural or design errors or that they comply with applicable legal requirements (including the requirements of the Americans With Disabilities Act) and Franchisor shall have no liability to Franchisee or any other party with respect thereto.

2.7 Timing for Construction. Franchisee shall commence and diligently pursue construction or remodeling (as applicable) of the Blendz® Store. Commencement of construction shall be defined as the time when any site work is initiated by or on behalf of Franchisee at the Franchised Location. Site work includes, but is not limited to, removing prior tenant improvements, demising of interior walls, and installation of tenant improvements. During the time of construction or remodeling, Franchisee shall provide Franchisor with such periodic reports regarding the progress of the construction or remodeling as may be reasonably requested by Franchisor. In addition, Franchisor shall make such on-site inspections as it may deem reasonably necessary to evaluate such progress. If during such inspections, Franchisor identifies instances where Franchisee's construction or remodeling is inconsistent with, or does not meet, Franchisor's standards, Franchisor shall notify Franchisee in writing of such deficiencies, and Franchisee shall correct such deficiencies prior to opening. Franchisee shall notify Franchisor of the scheduled date for completion of construction or remodeling no later than 30 days prior to such date. Within a reasonable time after the date of completion of construction or remodeling, Franchisor shall, at its option, conduct an inspection of the completed Blendz® Store. Franchisee acknowledges and agrees that Franchisee will not open the Blendz® Store for business without the written authorization of Franchisor and that authorization to open shall be conditioned upon Franchisee's strict compliance with this Agreement.

2.8 Timing for Opening the Blendz® Store. Franchisee acknowledges that time is of the essence. Subject to Franchisee's compliance with the conditions stated below, Franchisee shall open the Blendz® Store and commence business within 8 months after the execution of this Agreement, unless Franchisee obtains a written extension of such deadline from Franchisor, or unless this Agreement is executed pursuant to an Area Development Agreement, in which case the date for opening shall be set forth in Section 3.C. of the Area Development Agreement. The Opening Date for the Blendz® Store shall be set forth in **Attachment A**. Prior to opening, Franchisee shall complete all exterior and interior preparations for the Blendz® Store, including installation of equipment, fixtures, furnishings and signs, pursuant to the standards and specifications approved by Franchisor, and shall comply with all other pre-opening obligations of Franchisee, including those obligations described in Sections 6.2, 6.3 and 6.4, to Franchisor's satisfaction. If Franchisee fails to comply with any of these obligations, Franchisor shall have the right to prohibit Franchisee from opening the Blendz® Store for business. Franchisee's failure to open the Blendz® Store and commence business in accordance with this Section 2 shall be deemed a material event of default under this Agreement.

2.9 Relocation of Franchised Location.

(a) Franchisee shall not relocate the Blendz® Store without the prior written consent of Franchisor. This Agreement does not grant Franchisee the right or license to operate the Blendz® Store from any location except the Franchised Location or to use the System or the Marks to offer or sell any products, merchandise or services through any channel of distribution except the Blendz® Store.

(b) If Franchisee is unable to continue the operation of the Blendz® Store at the Franchised Location because a force majeure event (as described in Section 19.6) casualty, or condemnation, Franchisee may request Franchisor's approval to relocate the Blendz® Store to another location in the Authorized Territory (defined in Section 2.1(b)). Any other request to relocate the Blendz® Store shall also be subject to the same procedures. If Franchisor elects to grant Franchisee the right to relocate the Blendz® Store, Franchisee shall comply with the site selection and construction procedures set forth in Section 2 with respect to the new Franchised Location. Franchisor shall be under no obligation to adjust the boundaries of the Authorized Territory, or to grant Franchisee additional territory in the Authorized Territory, in the event that Franchisor relocates its Blendz® Store.

3. **TERM AND SUBSEQUENT TERM**

3.1 Term. Unless sooner terminated as provided in Section 17, the initial term of this Agreement ("**Initial Term**") shall continue from the Effective Date until the earlier of (i) 10 years from the Opening Date, or (ii) the expiration or termination of Franchisee's right to possess the Franchised Location.

3.2 Subsequent Term. Franchisee may, at its option, extend its rights to operate the Blendz® Store for 1 additional term of 10 years ("**Subsequent Term**"), subject to any or all of the following conditions which must, in Franchisor's discretion, be met prior to and at the time of the extension of Franchisee's rights to operate the Blendz® Store:

(a) Franchisee shall give Franchisor written notice of Franchisee's intention to extend its rights to operate the Blendz® Store not less than 7 months nor more than 12 months prior to the end of the Initial Term;

(b) Franchisee shall repair or replace, at Franchisee's expense, all equipment (including POS systems, computer hardware, or software systems, including any software licensed to Franchisee, signs, interior and exterior decor items, fixtures, furnishings, any catering vehicles, supplies and other products and materials required for the operation of the Blendz® Store as Franchisor may reasonably require and shall obtain, at Franchisee's expense, any new or additional equipment, fixtures, supplies and other products and materials that may be reasonably required by Franchisor for Franchisee to offer and sell new menu items from the Blendz® Store or to provide the Blendz® Store's Products by alternative means, such as carry-out, catering, or other manner specified by Franchisor, and shall otherwise modernize the Franchised Location, equipment (including POS systems, computer hardware and software systems), signs, interior and exterior decor items, fixtures, furnishings, supplies and other products and materials required

for the operation of the Blendz® Store, as reasonably required by Franchisor to reflect the then-current standards and image of the System as contained in the Operations Manual;

(c) Franchisee shall not be in default of any provision of this Agreement or any other agreement between Franchisee and any of its affiliates and suppliers 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 their terms;

(d) Franchisee shall have satisfied all monetary obligations owed by Franchisee to Franchisor and its affiliates under this Agreement and under any other agreement between Franchisee and any of its affiliates and Franchisor or its affiliates and shall have substantially and timely met those obligations throughout the terms of the related agreements;

(e) Franchisee shall have met, throughout the Initial Term, the Minimum Quarterly Sales Quota as set out in Section 7.7;

(f) Franchisee shall present satisfactory evidence that Franchisee has the right to remain in possession of the Franchised Location or obtain Franchisor's approval of a new site for the operation of the Blendz® Store for the duration of the Subsequent Term of this Agreement;

(g) Franchisee shall execute Franchisor's then-current form of Franchise Agreement ("**Subsequent Franchise Agreement**"), which agreement shall supersede this Agreement in all respects, and the terms of which may materially differ from the terms of this Agreement, including, without limitation, a higher percentage Royalty Fee and advertising contribution or expenditure requirement, except that Franchisee shall pay to Franchisor, in lieu of an Initial Franchise Fee, a subsequent franchise fee ("**Subsequent Franchise Fee**") equal to \$2,500;

(h) Franchisee and the Controlling Principals shall execute a general release of any and all claims against Franchisor and its affiliates, and each such entity's respective officers, directors, shareholders, partners, agents, representatives, independent contractors, servants and employees, in their corporate and individual capacities, including, without limitation, claims arising under this Agreement or under federal, state or local laws, rules, regulations or orders;

(i) Franchisee shall satisfy Franchisor's then-current qualification and training requirements; and

(j) Franchisee has not committed and received notice of 3 or more breaches of this Agreement in the 24 months prior to the end of this Agreement, even if such breaches were timely remediated.

4. FEES

4.1 Initial Franchise Fee. Franchisee shall pay to Franchisor an Initial Franchise Fee of \$25,000 and an Initial Training, Site Development and Architectural Design and Marketing Fee in the amount of \$40,000 for each Blendz® Store, which shall be paid in full upon the execution of this Agreement if it pertains to the first store under the Area Development Agreement. If the Franchise Agreement pertains to the second Blendz® Store and beyond pursuant to an Area Development Agreement, the Initial Franchise Fee and Initial Training, Site Development and Architectural Design and Marketing Fee is due at the time the Franchise Agreement is signed for each additional Blendz® Store, and shall be payable in accordance with the terms set forth in the Area Development Agreement. The Initial Franchise Fee and Initial Training, Site Development and Architectural Design and Marketing Fee when paid shall be deemed fully earned, in partial consideration of the administrative and other expenses incurred by Franchisor in granting the franchise and for its lost or deferred opportunity to grant the franchise to another party. The Initial Franchise Fee and Initial Training, Site Development and Architectural Design and Marketing Fee shall be nonrefundable.

4.2 Express Unit Fee. If Franchisee received Franchisor's approval to open an Express Unit pursuant to Section 1.5 of this Agreement, Franchisee shall pay to Franchisor an Express Unit Fee in the amount of \$10,000 and the Initial Training, Site Development and Architectural Design and Marketing Fee in the amount of \$25,000 for each Express Unit, which shall be paid in full within 15 days of Franchisor's approval of Franchisee's request to open an Express Unit. The Express Unit Fee and the Initial Training, Site Development and Architectural Design and Marketing Fee (as defined in Section 4.1) when paid shall be deemed fully earned, in partial consideration of the administrative and other expenses incurred by Franchisor in granting the Franchisee the right to open an Express Unit and for its lost or deferred opportunity to grant the Express Unit opportunity to another party. The Express Unit Fee and the Initial Training, Site Development and Architectural Design and Marketing Fee (as defined in Section 4.1) shall be nonrefundable.

4.3 Fees.

(a) During the Initial Term of this Agreement and any Interim Period, Franchisee shall pay to Franchisor, in consideration for the continuing right to use the System and the Marks, a continuing royalty fee ("**Royalty Fee**") in an amount equal to the greater of 6% of Gross Sales or \$900 per month ("**Minimum Royalty Fee**").

(b) During the Initial Term of this Agreement and any Interim Period, Franchisee shall also pay to Franchisor a continuing marketing fund contribution ("**Marketing Fund Contribution**") in an amount of 1% of Gross Sales.

4.4 Payment Terms.

(a) The Royalty Fee, Marketing Fund Contribution and any other fee required by this Agreement to be calculated on the basis of Gross Sales shall be payable bi-monthly on the 5th day of each month for the First Sales Period and the 20th day of each month for the

Second Sales Period, and will be paid, if required by Franchisor, by Franchisee to Franchisor by electronic funds transfer (“EFT”) from Franchisee’s designated bank account on the date due or the next following business day or any succeeding business day, if the due date is not a business day. “**Business Day**” means any day other than Saturdays, Sundays or national holidays on which federally chartered banks are authorized to close.

(b) Each Royalty Fee and Marketing Fund Contribution payment shall be preceded or accompanied by a report (“**Gross Sales Report**”) that itemizes Gross Sales for the related Sales Period and by any other reports Franchisor may require.

(c) Franchisee’s failure to establish and fund an EFT account accessible by Franchisor shall constitute a material event of default of this Agreement and shall entitle Franchisor to all remedies contained in this Agreement or otherwise available in law or in equity. With respect to Royalty Fees and Marketing Fund Contributions, the amount of the withdrawal shall be based on Gross Sales for the applicable Sales Period, as evidenced by the Gross Sales Report. If Franchisor has not received the relevant Gross Sales Report, the amount of the withdrawal shall be based on, in Franchisor’s determination (a) information regarding Gross Sales for the applicable Sales Period that Franchisor obtains in the manner Section 7.2(j) contemplates, (b) the Minimum Royalty Fee, or (c) the most recent Gross Sales Report provided to Franchisor by Franchisee. If Franchisor subsequently receives a Gross Sales Report for the subject Sales Period and it reflects (i) that the actual amount of the Royalty Fee and Marketing Fund Contribution due was more than the amount Franchisor withdrew, Franchisor shall be entitled to withdraw from Franchisee’s designated bank account additional funds representing the amount of the difference; or (ii) that the actual amount of the Royalty Fee or Marketing Fund Contribution due was less than the amount Franchisor withdrew, Franchisor shall credit the excess amount to the payment of Franchisee’s next maturing Royalty Fee and/or Marketing Fund Contribution obligation. For any other monetary obligation not paid when due, Franchisor shall have the right to withdraw such amounts on the 5th or later Business Day after such amount becomes past due. Franchisee shall, upon execution of this Agreement or 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 payments due hereunder, including **Attachment G** to this Agreement. Franchisee agrees that it shall be responsible for (i) any EFT transfer fee or similar charge imposed by the bank, and (ii) should any EFT not be honored by Franchisee’s bank for any reason, for that payment plus any service charge applied by Franchisor and/or the bank. Franchisee further agrees that it shall at all times throughout the Initial Term of this Agreement and any Interim Period maintain a minimum balance of \$5,000 in the bank account against which such EFTs are to be drawn. It shall be a material event of default if Franchisee closes the designated bank account without Franchisor’s consent, or if Franchisee closes the designated bank account with Franchisor’s consent and fails within a reasonable time thereafter, not to exceed 5 Business Days, to establish another account and execute all documents necessary for Franchisor to process such payments by EFT for the new designated account.

(d) Franchisee shall not be entitled to withhold payments due Franchisor under this Agreement on grounds of alleged nonperformance by Franchisor. Any payment or report not actually received by Franchisor on or before its specified due date shall be deemed

overdue. Time is of the essence with respect to all payments to be made (and reports to be submitted) by Franchisee. If Franchisee fails to make a payment when due or submit a report or provide documentation to Franchisor when due, Franchisee shall pay Franchisor, upon demand, a late charge in the amount of \$100 (“**Late Fee**”). All unpaid obligations under this Agreement shall also bear interest from the date due until paid at the lesser of (i) 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 in such respect is herein provided for, or shall be adjudicated to be so provided in this Agreement, the provisions of this paragraph shall govern and prevail, and neither Franchisee nor Franchisee’s Principals shall 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. Franchisor may assess a \$25.00 insufficient funds charge for the first NSF check or withdrawal by EFT and \$35.00 insufficient funds charge for the second and any proceeding NSF check or withdrawal by EFT.

4.5 Gross Sales. “**Gross Sales**” means the total selling price of all food, beverages, services and merchandise at or from a Blendz® Store and all income of every other kind and nature related to the Blendz® Store’s (including any income from an Express Unit, if any) operation (including income related to catering and delivery at the Blendz® Store or Express Unit, if any), whether for cash, credit or trade and regardless of collection in the case of credit. However, Gross Sales shall exclude:

- (a) Revenues from any public telephone or vending machines located at the Blendz® Store and Express Unit, if any, except for Franchisee’s share of such revenues;
- (b) Sales taxes collected from customers and actually transmitted to the appropriate taxing authority;
- (c) Tips or gratuities paid directly to Blendz® Store’s and Express Unit’s, if any, employees or paid to Franchisee and turned over to the Blendz® Store’s and Express Unit’s, if any, employees;
- (d) Proceeds from isolated sales of used or obsolete Blendz® Store or Express Unit’s, if any, fixtures and equipment;
- (e) The 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, up to a maximum of \$500 per any applicable Sales Period, against Gross Sales during the period in which the meals were furnished for the purpose of determining the amount of Gross Sales upon which the Royalty Fee and Marketing Fund Contribution is due; and
- (f) That portion of the normal full menu price of any item which is not collected by the Franchisee as a result of Franchisor-approved promotions (whether local or

system-wide, including coupons) and manager discounts (collectively, “**Sales Discounts**”). Sales Discounts must be fully disclosed on all reports submitted to the Franchisor by the Franchisee and Franchisor reserves the right, in its sole discretion, to disallow any Sales Discounts not meeting the requirements set forth in the Operations Manual. Sales Discounts may not exceed 5% of Gross Sales.

5. FRANCHISOR’S OBLIGATIONS

5.1 Initial and Continuing Services. The Franchisor shall offer the Franchisee initial and continuing services, as the Franchisor deems necessary or advisable in furthering the Franchisee’s Blendz® Store and the business of the System as a whole and in connection with protecting the Marks and goodwill of the Franchisor. Failure by the Franchisor to provide any particular service, either initial or continuing, shall not excuse the Franchisee from any of its obligations under this Agreement.

5.2 Initial Services. Currently, initial services provided by the Franchisor prior to Franchisee opening the Blendz® Store shall include:

(a) Designating Franchisee’s Site Selection Area, Authorized Territory and Local Area (defined in Sections 2.1 and 8.1);

(b) On loan, Franchisor’s written site selection guidelines and criteria and such site selection assistance as Franchisor or its affiliate deems appropriate, in Franchisor’s discretion. Such site selection assistance may include market and real estate analysis of the Site Selection Area, reports containing demographic information for the Site Selection Area, assistance identifying suitable sites that meet Franchisor’s criteria, and designating a local broker for Franchisee to assist in site selection, negotiating LOI terms and identifying Franchisor’s lease parameter requirements with potential landlords.

(c) After receipt from Franchisee of the site-specific information and materials required by Section 2, such evaluation of the proposed Blendz® Store site as Franchisor deems appropriate, in Franchisor’s discretion, including 1 on-site visit by Franchisor or its affiliate for purposes of site evaluation. Franchisor reserves the right to visit the Blendz® Store site at any other time at its own expense. If Franchisee requests that Franchisor or its affiliate visit the Blendz® Store site at any time other than as set forth above, Franchisor may require Franchisee to pay or reimburse the reasonable expenses that Franchisor or its affiliate incurs in connection with such on-site visits, including the costs of travel, lodging and meals.

(d) Approving the site for the Blendz® Store and the lease or purchase agreement for the Blendz® Store site. Franchisor or its affiliate may also, at Franchisee’s request and sole cost and expense, provide lease negotiation services.

(e) On loan, Franchisor’s standards and specifications for the construction of the Blendz® Store site, including interior and exterior design, layout, floor plans, signs, color, décor, equipment and fixtures and such design and permit guidance as Franchisor or its affiliate deems appropriate, in Franchisor’s discretion. Such design and permit guidance may include

layout analyses, preliminary design meeting for the layout of the Blendz® Store site approved by Franchisor, layout design plans for the Blendz® Store site approved by Franchisor, and permit process guidance market. Franchisee is solely responsible for all expenses for permitting, construction, architectural and engineering requirements incurred to construct and open its Blendz® Store.

(f) On loan, a list of Franchisor's approved suppliers, vendors and contractors for the build-out of the Blendz® Store, as revised from time to time.

(g) At Franchisor's sole discretion, conducting a pre-opening inspection of Franchisee's Blendz® Store and providing pre-opening assistance of the type determined by Franchisor.

(h) On loan, 1 copy of the Operations Manual, together with updates and supplements to the Operations Manual.

(i) On loan, 1 copy of the home-study materials for the initial training program (as described in Section 6.4).

(j) Conducting an initial training program for the Franchisee or its Designated Store Manager or Operating Principal (as described in Sections 6.2, 6.3 and 6.4) and 1 additional person. Franchisor will also provide such other initial and on-going training as it considers appropriate, including the training programs contemplated by Section 6.5. Franchisor will pay for Franchisee's airfare, hotel and some meals incurred by a total of 2 people attending the initial training program on behalf of the Franchisee.

(k) At Franchisor's sole discretion, attending the Franchisee's grand opening of its Blendz® Store.

(l) On loan, a list of approved suppliers as described in Section 7.3, updated from time to time, and minimal criteria for designation of approved suppliers.

(m) Consultation regarding the selection and installation of the computer system, including the POS system, required by Franchisor for the Blendz® Store.

(n) Providing Franchisee with the initial marketing materials for advertising and promotional programs determined in Franchisor's sole discretion. Additional marketing and promotional materials will be provided to Franchisee at Franchisee's expense.

(o) Providing Franchisee with an initial set of branded supplies, which may include at Franchisor's discretion, branded paper products, menus, an event tent, signage for the event tent, uniforms and gift cards. Additional branded supplies will be provided to Franchisee at Franchisee's expense.

5.3 Ongoing Services. Currently, the services provided by the Franchisor to the Franchisee after Franchisee opens the Blendz® Store shall include:

(a) Making a representative reasonably available to the Franchisee via the telephone or e-mail during the Franchisor's normal business hours, as the Franchisor determines is necessary to discuss Franchisee's operational and marketing issues.

(b) Copies of advertising and promotional materials and information that Franchisor develops from time to time for use by operators of Blendz® Stores in local marketing and advertising, including formats for classified directory advertising. Franchisor shall have the right to charge Franchisee a reasonable fee for such advertising and promotional materials.

(c) Providing guidance on advertising, marketing, hiring techniques and pricing and developing advertising and promotional materials for use in marketing and conducting advertising for the Blendz® Store. Franchisor shall have the right to charge Franchisee a reasonable fee for developing such advertising and promotional materials.

(d) Establishing an advertising cooperative in accordance with Section 8, if any.

(e) Maintaining the marketing fund ("**Marketing Fund**") (as described in Section 8.2).

(f) Information on new mandatory specifications, equipment, fixtures, furnishings, signs, promotions, products, materials, supplies, standards, recipes, procedures for the operation of a Blendz® Store, including new developments and improvements in equipment, food products, packaging and preparation as they are developed.

(g) Providing additional assistance or remedial training, if determined necessary by Franchisor or if requested by Franchisee. Additional assistance or remedial training will be provided at Franchisee's sole cost and expense, including Franchisor's daily training fee charged at the time and Franchisor's travel expenses and room and board.

(h) Providing continuing national, regional or location workshops at Franchisor's discretion.

5.4 Franchisor's Failure to Perform Initial Services. If Franchisee believes Franchisor has failed to adequately provide pre-opening services to Franchisee as provided in this Agreement, including Sections 5.2, Franchisee shall notify Franchisor in writing within 30 days following the opening of the Blendz® Store. Absent the timely provision of such notice to Franchisor, Franchisee shall be deemed to conclusively acknowledge that all pre-opening required to be provided by Franchisor were sufficient and satisfactory in Franchisee's judgment.

5.5 Franchisor's Manner of Performing Initial and Ongoing Services. Franchisor is not obligated to perform services set forth in this Agreement to Franchisee's particular level of satisfaction, but as a function of Franchisor's experience, knowledge and judgment. Franchisor does not represent or warrant that any other services will be provided to Franchisee, other than as set forth in this Agreement. To the extent any other services, or any specific level or quality of service is expected, Franchisee must obtain a commitment to provide such service or level of

service in writing signed by an authorized officer of Franchisor, otherwise Franchisor shall not be obligated to provide any other services or specific level or quality of services.

6. FRANCHISEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Franchisee's Representations, Warranties and Covenants. Franchisee and each of the Owners, Developers and Controlling Principals represents, warrants and covenants that:

(a) they shall make all commercially reasonable efforts to operate the Blendz® Store so as to achieve optimum sales.

(b) If Franchisee is a business entity, Franchisee and the Owners, Developers and Controlling Principals represent, warrant and covenant that:

(i) Franchisee is duly organized and validly existing under the laws of the state of its formation;

(ii) Franchisee's charter documents (no matter how named) shall at all times provide that Franchisee's permitted purposes shall be confined exclusively to the operation of Blendz® Stores, unless otherwise consented to in writing by Franchisor;

(iii) Franchisee has provided Franchisor true and correct copies of the documents that define Franchisee's purposes and authority and that govern Franchisee's business activities (whether called articles of incorporation, articles of organization, bylaws, operating agreement, regulations or partnership agreement), together with resolutions of Franchisee's Board of Directors or other governing body that authorize Franchisee to enter into and perform this Agreement;

(iv) The ownership interests in Franchisee are accurately and completely described in **Attachment D**. Further, Franchisee shall maintain at all times a current list of all record and beneficial owners of equity interests in Franchisee and shall immediately provide a copy of an updated list to Franchisor upon request;

(v) Each certificate representing an equity interest in Franchisee shall have conspicuously endorsed upon it a statement in a form satisfactory to Franchisor that it is held subject to restrictions that Section 14 of this Agreement imposes;

(c) Franchisee and each of the Controlling Principals have provided Franchisor with their most recent financial statements. Such financial statements present fairly the financial position of Franchisee and each of the Controlling Principals at the dates indicated therein and, with respect to Franchisee, the results of its operations and its cash flow for the period then ended. Franchisee agrees that it shall maintain at all times during the Initial Term of this Agreement and any Interim Period sufficient working capital to fulfill its obligations under this Agreement. Each of the financial statements mentioned above shall be certified as true, complete and correct by Franchisee's treasurer or chief financial officer, and shall have been prepared in conformity with generally accepted accounting principles consistently applied during

the periods involved. No material liabilities, adverse claims, commitments or obligations of any nature exist as of the date of this Agreement, whether accrued, unliquidated, absolute, contingent or otherwise, that are not reflected as liabilities on the financial statements of Franchisee or the Controlling Principals; and

(d) Each of Franchisee's Principals and Designated Store Managers, except those designated as Controlling Principals, shall execute and bind themselves to the confidentiality and noncompetition covenants set forth in the Confidentiality Agreement and Ancillary Covenants Not to Compete which forms **Attachment E** to this Agreement. The Controlling Principals shall, jointly and severally, guarantee Franchisee's performance of all of Franchisee's obligations, covenants and agreements hereunder pursuant to the terms and conditions of the guaranty contained herein, and shall otherwise bind themselves to the terms of this Agreement as stated herein.

(e) They shall comply with all requirements of federal, state and local laws, rules, regulations, and orders.

(f) They shall comply with all other requirements and perform such other obligations that this Agreement provides.

(g) They shall comply with and/or to assist Franchisor to the fullest extent possible in Franchisor's efforts to comply with Anti Terrorism Laws (as defined below). In connection with such compliance, Franchisee and each of the Owners, Developers and Controlling Principals certify, represent, and warrant that none of their property or interests is subject to being "blocked" under any of the Anti Terrorism Laws and that Franchisee and each of the Owners, Developers and Controlling Principals are not otherwise in violation of any of the Anti Terrorism Laws.

(h) Franchisee and each of the Owners, Developers and Controlling Principals certify that none of them, their respective employees, or anyone associated with Franchisee and each of the Owners, Developers and Controlling Principals is listed in the Annex to Executive Order 13224 (which can be accessed at <http://www.treasury.gov/offices/enforcement/ofac/sanctions/terrorism.html>). Franchisee and each of the Owners, Developers and Controlling Principals agree not to hire (or, if already employed, retain the employment of) any individual who is listed in the Annex.

(i) Franchisee and each of the Owners, Developers and Controlling Principals certifies that it has no knowledge or information that, if generally known, would result in Franchisee, its Owners, Developers and Controlling Principals, their employees, or anyone associated with Franchisee, its Owners, Developers and Controlling Principals to be listed in the Annex to Executive Order 13224.

(j) Franchisee is solely responsible for ascertaining what actions it must take to comply with the Anti Terrorism Laws, and Franchisee specifically acknowledges and agrees that its indemnification responsibilities set forth in this Agreement pertain to its obligations under this Section 6.1(g) through (l).

(k) Any misrepresentation under this Section 6.1 or any violation of the Anti Terrorism Laws by Franchisee, its Owners, Developers and Controlling Principals, agents, or employees shall constitute grounds for immediate termination of this Agreement and any other agreement Franchisee has entered with Franchisor or any of Franchisor's affiliates.

(l) **"Anti Terrorism Laws"** means Executive Order 13224 issued by the President of the United States, the Terrorism Sanctions Regulations (Title 31, Part 595 of the U.S. Code of Federal Regulations), the Foreign Terrorist Organizations Sanctions Regulations (Title 31, Part 597 of the U.S. Code of Federal Regulations), the Cuban Assets Control Regulations (Title 31, Part 515 of the U.S. Code of Federal Regulations), the USA PATRIOT Act, and all other present and future federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority (including, without limitation, the United States Department of Treasury Office of Foreign Assets Control and any government agency outside the U.S.) addressing or in any way relating to terrorist acts and/or acts of war.

(m) They have received, have had ample time to read, and have read this Agreement, and all related agreements with the Franchisor. They acknowledge that the Franchisor has advised them to obtain independent legal and accounting advice with respect to this Agreement and the transactions arising out of this Agreement. They further acknowledge that they have had an adequate opportunity to be advised by legal, accounting and other professional advisors of their own choosing regarding all pertinent aspects of the Blendz® Store, the Franchisor and this Agreement.

(n) All statements made by them in writing in connection with their application for this franchise were, to the best of their knowledge, true when made and continue to be true as of the date of this Agreement.

(o) They are not a party to or subject to any court or administrative order or action of any governmental authority which would limit or interfere in any way with the performance by the Franchisee of its obligation hereunder.

(p) They are not a party to any litigation or legal proceedings other than those which have been disclosed to the Franchisor by the Franchisee in writing.

(q) They represent that they are not a party to or subject to agreements that might conflict with the terms of this Agreement and agree not to enter into any conflicting agreements during the Initial Term or any Interim Period.

(r) They have not been induced to enter into this Agreement in reliance upon, nor as a result of, any statements, representation, warranties, conditions, covenants, promises or inducements, whatsoever, whether oral or written, and whether directly related to the contents hereof or collateral thereto, made by the Franchisor, its officers, directors, agents, employees or contractors except as provided herein. They acknowledge that the Franchise has been granted in reliance upon the information supplied to the Franchisor in the Franchisee's application for a Franchise.

Franchisee and the Controlling Principals acknowledge and agree that the representations, warranties and covenants set forth above are continuing obligations of Franchisee and the Controlling Principals, respectively, and that any failure to comply with such representations, warranties and covenants shall constitute a material event of default under this Agreement. Franchisee will cooperate with Franchisor in any efforts made by Franchisor to verify compliance with such representations, warranties and covenants.

6.2 Operating Principal. Upon the execution of this Agreement, Franchisee shall designate and retain an individual to serve as the Operating Principal of Franchisee (“**Operating Principal**”). If Franchisee is an individual, Franchisee shall perform all obligations of the Operating Principal. The Operating Principal shall, during the entire period he or she serves as such, meet the following qualifications:

(a) The Operating Principal must, at Franchisee’s option, either serve as the Designated Store Manager (defined in Section 6.3) or, subject to the approval of Franchisor, Franchisee must designate another individual to serve as the Designated Store Manager.

(b) The Operating Principal must maintain a direct or indirect ownership interest in Franchisee. Except as may otherwise be provided in this Agreement, the Operating Principal’s interest in Franchisee shall be and shall remain free of any pledge, mortgage, hypothecation, lien, charge, encumbrance, voting agreement, proxy, security interest or purchase right or options. The Operating Principal shall execute this Agreement as one of the Controlling Principals, and shall be individually, jointly and severally, bound by all obligations of Franchisee, the Operating Principal and the Controlling Principals.

(c) The Operating Principal shall devote substantial full time and best efforts to the supervision and conduct of Franchisee’s Blendz® Stores.

(d) The Operating Principal shall meet Franchisor’s standards and criteria for such individual, as set forth in the Operation Manual or otherwise in writing by Franchisor, and shall satisfy the training requirements set forth in Section 6.4.

(e) If, during the Initial Term of this Agreement or any Interim Period, the Operating Principal is not able to continue to serve in the capacity of Operating Principal or no longer qualifies to act as such in accordance with this Section, Franchisee shall promptly notify Franchisor and designate a duly qualified replacement Operating Principal, subject to Franchisor’s approval, within 30 days after the Operating Principal ceases to serve or be so qualified. Any failure to comply with the requirements of this Section 6.2(e) shall be deemed a material event of default under this Agreement. The newly designated Operating Principal must attend and satisfactorily complete, in Franchisor’s determination, the initial training program within 45 days after being so designated, at Franchisee’s sole cost and expenses, including but not limited to all travel expenses, salaries, and training fees. Franchisee will pay Franchisor a training fee in the amount of Franchisor’s then-current training rate.

6.3 Designated Store Manager. If the Franchisee (if an individual) or the Operating Principal is not responsible for the day to day operations of the Blendz® Store, the Franchisee must designate and retain at all times a designated store manager (“**Designated Store Manager**”) and such other personnel as Franchisor deems reasonably necessary for the operation and management of the Blendz® Store. Franchisee's Designated Store Manager must be approved by the Franchisor and must complete, to Franchisor's satisfaction, Franchisor's initial training program. The Designated Store Manager shall be responsible for the daily operation of the Blendz® Store. The Designated Store Manager, during the entire period that he or she serve as such, shall meet the following qualifications:

(a) The Designated Store Manager shall satisfy Franchisor's educational and business experience criteria, as set forth in the Operations Manual or otherwise in writing by Franchisor;

(b) The Designated Store Manager shall be full-time employees who shall devote their full time and best efforts to their respective duties; and

(c) The Designated Store Manager shall complete, to Franchisor's satisfaction, the initial training program. If, during the Initial Term of this Agreement or any Interim Period, the Designated Store Manager is not able to continue to serve in such capacity or no longer qualifies to act as such, Franchisee shall promptly notify Franchisor and designate a duly qualified replacement, subject to Franchisor's approval, within 30 days after the affected individual ceases to serve. Any failure to comply with the requirements of this Section 6.3(c) shall be deemed a material event of default under this Agreement. The new Designated Store Manager must attend and satisfactorily complete the initial training program within 45 days after being so designated, at Franchisee's sole cost and expenses, including but not limited to all travel expenses, salaries, and training fees. Franchisee will pay Franchisor a training fee in the amount of Franchisor's then-current training rate.

6.4 Initial Training Program. Franchisee agrees that it is necessary for the efficient operation of the Blendz® Store that the Franchisee, Operating Principal or Designated Store Manager and 1 additional person receive such training as Franchisor may require. Accordingly Franchisee agrees:

(a) Not later than 7 weeks prior to the date that the Blendz® Store is scheduled to open, the Franchisee, Operating Principal or Designated Store Manager and 1 additional person (at Franchisee's option for a total 2 people) shall attend and complete, to Franchisor's satisfaction, Franchisor's initial training program (“**Initial Training Program**”). The Initial Training Program will be conducted by Franchisor or its designee at Franchisor's head quarters or such other location as the Franchisor may designate. Franchisor shall provide instructors and training materials for the initial training of such persons. Franchisee shall pay the fee set forth in Section 4.1 for the Franchisee, Operating Principal or Designated Store Manager and 1 additional person to attend the Initial Training Program. Franchisor will pay for air fare, hotel and some meals incurred by Franchisee for the Principal or Designated Store Manager and 1 additional person to attend the Initial Training Program. If Franchisee desires additional persons to attend the Initial Training Program, Franchisee will pay Franchisor a fee in the

amount of \$2,000 for each additional attendee and such person's travel, lodging and meals. In addition, Franchisor reserves the right to charge \$1,300 per person for any initial training provided by Franchisor to any replacement or successor Operating Principal or Designated Store Manager. Franchisee shall also pay such replacement or successor Operating Principal or Designated Store Manager's travel, lodging and meals incurred to attend such initial training. Franchisee shall be responsible for any and all personal expenses, salaries and benefits incurred by Franchisee or Franchisee's personnel in connection with the Initial Training Program.

(b) Franchisor shall determine, in its sole discretion, whether any Franchisee, Operating Principal or Designated Store Manager has satisfactorily completed the Initial Training Program. If the Initial Training Program is not satisfactorily completed by the Franchisee, Operating Principal or Designated Store Manager, or if Franchisor in its reasonable business judgment based upon observation of any such person's performance, determines that such person cannot satisfactorily complete the Initial Training Program, Franchisee shall designate a replacement to satisfactorily complete such training. Any replacement designated by Franchisee shall also receive and complete such Initial Training Program.

6.5 Additional Training Programs. The Franchisee, Operating Principal, Designated Store Manager and such other Blendz® Store personnel as Franchisor may designate, shall attend such additional training programs and seminars as Franchisor may offer from time to time. For all such programs and seminars, Franchisor will provide the instructors and training materials. However, Franchisor reserves the right to impose a reasonable fee for such additional training programs and seminars. Franchisee shall be responsible for any and all expenses incurred by Franchisee and its Operating Principal, Designated Store Manager and other Blendz® Store personnel in connection with such additional training, including costs of travel, lodging, meals and wages.

6.6 Training for Additional Blendz® Stores. Franchisee shall pay Franchisor the then-current Initial Training, Site Development and Architectural Design and Marketing Fee for each additional Blendz® Stores Franchisee opens under any Area Development Agreement between Franchisor and Franchisee as set forth in Section 4.1.

6.7 Remedial Training. Upon the reasonable request of Franchisee or as Franchisor shall deem appropriate, Franchisor shall, subject to the availability of personnel, provide Franchisee with additional trained representatives who shall provide remedial training to Franchisee's Blendz® Store personnel. Franchisee shall pay the per diem fee then being charged to franchisees under the System for the services of such trained representatives, plus their costs of transportation, lodging and meals.

6.8 Hiring Other Franchisee's Designated Store Manager. Franchisee and the Controlling Principals understand that compliance by all franchisees operating under the System with Franchisor's training, development and operational requirements is an essential and material element of the System and that all operators of Blendz® Stores consequently expend substantial time, effort and expense in training their Designated Store Manager. Accordingly, Franchisee and the Controlling Principals agree that if Franchisee or any of the Controlling Principals shall, during the Initial Term of this Agreement or any Interim Period, designate or employ in a

managerial position any individual who is at the time, or has been within the preceding 180 days, employed as a Designated Store Manager by Franchisor or any of its affiliates, or by any other franchisee, then the former employer of such individual shall be entitled to be compensated for the reasonable costs and expenses, of whatever nature or kind, incurred by such employer in connection with the training of such employee. The parties agree that such expenditures may be uncertain and difficult to ascertain and therefore agree that the compensation (including, salary, bonuses and benefits) specified in the following sentence reasonably represents such expenditures and is not a penalty. The employing Franchisee or Controlling Principals shall pay an amount equal to the amount charged by Franchisor to train the replacement Designated Store Manager, the travel, lodging and meal expenses incurred during the training period for the replacement Designated Store Manager and the replacement Designated Store Manager's salary and benefits during the training period. Such amount shall be paid by Franchisee or the applicable Controlling Principal prior to such individual's assuming his or her new position, unless Franchisee or the applicable Controlling Principal and the former employer otherwise agree in writing. Franchisor expressly disclaims any representations and warranties regarding the performance of any employee or former employee of Franchisor or its affiliates who is employed by Franchisee or any Controlling Principal in any capacity, and Franchisor shall not be liable for any losses, of whatever nature or kind, incurred by Franchisee or any Controlling Principal in connection therewith. In seeking any individual to serve in a managerial position, Franchisee and the Controlling Principals shall not discriminate in any manner whatsoever against any individual to whom the provisions of this Section apply, on the basis of the compensation required to be paid hereunder. The parties expressly acknowledge and agree that no current or former employee of Franchisor, any of its affiliates, Franchisee, or of any other entity operating under the System shall be a third party beneficiary of this Agreement or any provision hereof.

7. FRANCHISED RESTAURANT OPERATIONS

7.1 Compliance with Franchisor's Standards and Specifications. Franchisee understands the importance of maintaining uniformity among all of the Blendz® Stores and the importance of complying with all of Franchisor's standards and specifications relating to the operation of the Blendz® Store and agrees to comply with those standards and specifications. As such, Franchisee agrees to:

(a) Maintain the Blendz® Store in a high degree of sanitation, repair and condition, and in connection therewith shall make such additions, alterations, repairs and replacements to the Blendz® Store as may be required for sanitation purposes (but no others without Franchisor's prior written consent), including such periodic repainting or replacement of worn or obsolete signs, furnishings, equipment and decor as Franchisor may reasonably direct, at Franchisee's cost and expense. Franchisee shall also obtain, at its expense, any new or additional equipment, fixtures, supplies and other products and materials that may be reasonably required by Franchisor for Franchisee to offer and sell new menu items from the Blendz® Store or to provide the Blendz® Store's services by alternative means, such as through carry-out, catering, or such other manner specified by Franchisor. Except as may be expressly provided in the Operations Manual, no alterations or improvements or changes of any kind in design, equipment, signs, interior or exterior decor items, fixtures or furnishings shall be made in or about the Blendz® Store or its Franchised Location without the prior written approval of Franchisor.

(b) Upon the request of Franchisor, make other improvements to modernize the Franchised Location, equipment, signs, interior and exterior decor, fixtures, and furnishings to comply with Franchisor's then-current standards and specifications. Franchisee agrees that it will make such capital improvements or modifications described in this Section 7.1(b) if so requested by Franchisor at the earlier of (i) 5 years after the Blendz® Store opens, or (ii) such time as a majority of the Blendz® Stores operated by Franchisor or its affiliates have undertaken to make such improvements or modifications. Notwithstanding anything herein to the contrary, Franchisor will not require Franchisee to make capital improvements or modifications described in this Section until Franchisee has operated its Blendz® Store for at least 5 years.

(c) Comply with all of Franchisor's standards and specifications (including brand specifications) relating to the purchase of all food and beverage inventory, ingredients, supplies, materials, fixtures, furnishings, equipment and other merchandise used or offered for sale at the Blendz® Store. Except as provided in Sections 7.2, 7.3 and 7.4, Franchisee shall obtain such items only from suppliers who continue to demonstrate the ability to meet Franchisor's then-current standards and specifications for such items, who possess adequate quality controls and capacity to supply Franchisee's needs promptly and reliably, who have been approved in writing by Franchisor, and not later disapproved by Franchisor. If Franchisee desires to purchase, lease or use any products or other items from an unapproved supplier, Franchisee shall submit to Franchisor a written request for such approval, or shall request the supplier itself to do so. Franchisee shall not purchase or lease from any supplier until and unless such supplier has been approved in writing by Franchisor. Franchisor shall have the right to require that its representatives be permitted to inspect the supplier's facilities, and that samples from the supplier be delivered either to Franchisor or to an independent laboratory designated by Franchisor for testing. A charge not to exceed the reasonable cost of the inspection and the actual cost of the test shall be paid by Franchisee or the supplier. Franchisor reserves the right, at its option, to re-inspect from time to time the facilities and products of any approved supplier and to revoke its approval upon the supplier's failure to continue to meet any of Franchisor's then-current criteria. Nothing in the foregoing shall be construed to require Franchisor to approve any particular supplier.

7.2 Compliance with Franchisor's Quality Standards. To ensure that the highest degree of quality and service is maintained, Franchisee shall operate the Blendz® Store in strict conformity with such methods, standards and specifications of Franchisor set forth in the Operations Manual and as may from time to time otherwise be prescribed in writing any other manuals, and materials created or approved for use in the operation of the Blendz® Store. In particular, Franchisee agrees:

(a) To sell or offer for sale all menu items, merchandise and services required by Franchisor and in the manner and style prescribed by Franchisor, including dine-in, carry out, catering, and delivery as expressly authorized by Franchisor in writing in the manner prescribed in the Operations Manual or otherwise, and to execute such documents or instruments that Franchisor may deem necessary to facilitate the providing of such services.

(b) To sell and offer for sale only the menu items, merchandise and services that have been expressly approved for sale in writing by Franchisor; to refrain from deviating from Franchisor's standards and specifications without Franchisor's prior written consent; and to discontinue selling and offering for sale any menu items, merchandise or services, or providing such menu items, merchandise or services in any manner or through any method of distribution, which Franchisor may, in its sole discretion, disapprove in writing at any time. Franchisee shall have discretion regarding the prices it charges customers for menu items, products, merchandise or services. Franchisor shall have the right to set maximum resale prices for any menu items, products, merchandise or services sold from Franchisee's Blendz® Store in connection with any national, regional, or multi-area marketing or special price promotion program developed and implemented by Franchisor for the System.

(c) To maintain in sufficient supply and to use and sell at all times only such food and beverage items, ingredients, products, materials, supplies and paper goods that conform to Franchisor's standards and specifications (including products specified by name or brand); to prepare all menu items in accordance with Franchisor's recipes and procedures for preparation contained in the Operations Manual or other written directives; and to refrain from deviating from Franchisor's standards and specifications by the use or offer of non-conforming items or differing amounts of any items, without Franchisor's prior written consent.

(d) To permit Franchisor or its agents, at any reasonable time, to remove a reasonable number of samples of food or non-food items from Franchisee's inventory, or from the Blendz® Store, without payment therefor, in amounts reasonably necessary for testing by Franchisor or an independent laboratory to determine whether such samples meet Franchisor's then-current standards and specifications. In addition to any other remedies it may have under this Agreement, Franchisor may require Franchisee to bear the cost of such testing if the supplier of the item has not previously been approved by Franchisor or if the sample fails to conform to Franchisor's specifications.

(e) To purchase or lease and install, at Franchisee's expense, all fixtures, furnishings, equipment, decor items, signs, catering vehicles (if Franchisor approves Franchisee to perform catering services), and related items as Franchisor may reasonably direct from time to time in the Operations Manual or otherwise in writing; and to refrain from installing or permitting to be installed on or about the Blendz® Store premises, without Franchisor's prior written consent, any fixtures, furnishings, equipment, catering vehicles, decor items, signs, games, vending machines or other items not previously approved as meeting Franchisor's standards and specifications. If any of the property described above is leased by Franchisee from a third party, such lease shall be approved by Franchisor, in writing, prior to execution. Franchisor's approval shall be conditioned upon such lease containing a provision which permits any interest of Franchisee in the lease to be assigned to Franchisor upon the termination or expiration of this Agreement and which prohibits the lessor from imposing an assignment or related fee upon Franchisor in connection with such assignment.

(f) To grant Franchisor and its agents the right to enter upon the Blendz® Store premises at any time for the purpose of conducting inspections; to cooperate with Franchisor's representatives in such inspections by rendering such assistance as they may

reasonably request; and, upon notice from Franchisor or its agents and without limiting Franchisor's other rights under this Agreement, to take such steps as may be necessary to correct immediately any deficiencies detected during any such inspection. Should Franchisee, for any reason, fail to correct such deficiencies within a reasonable time as determined by Franchisor, Franchisor shall have the right and authority (without, however, any obligation to do so) to correct such deficiencies and charge Franchisee a reasonable fee for Franchisor's expenses in so acting, payable by Franchisee immediately upon demand.

(g) To maintain a competent, conscientious, trained staff and to take such steps as are necessary to ensure that its employees preserve good customer relations and comply with such dress code as Franchisor may prescribe. Franchisee shall also require its employees to wear the standard seasonal attire or uniforms which have been approved by Franchisor in writing. Franchisee shall also provide uniforms to its employees for any special events or promotions designated by Franchisor.

(h) To maintain in sufficient supply and prominently display and make available such customer satisfaction forms as Franchisor may require and to forward all completed customer satisfaction forms to Franchisor or to Franchisor's designee at such times as Franchisor may direct.

(i) To play in the Blendz® Store such recorded or programmed music and television programming as Franchisor may from time to time require in the Operations Manual or otherwise in writing and to offer wireless Internet access to customers. Franchisee is responsible for obtaining and paying for any copyright licenses as may be necessary to authorize the playing of such recorded music and television programming.

(j) To install and maintain equipment in accordance with Franchisor's standards and specifications to permit Franchisor to access and retrieve by electronic means any information stored on POS systems and other computers that Franchisee is required to maintain as specified in the Operations Manual, thereby permitting Franchisor to inspect and monitor electronically information concerning Franchisee's Blendz® Store, Gross Sales and such other information as may be contained or stored in such equipment. Franchisor shall have telephone line access and at a minimum DSL access as provided herein at such times and in such manner as Franchisor shall from time to time specify. It shall be a material default under this Agreement if Franchisee fails to maintain such equipment and lines in operation and accessible to Franchisor at all times throughout the Initial Term of this Agreement and any Interim Period. Franchisor shall have the right to specify computer, information and communication systems and to require Franchisee to utilize specified Internet service providers or communications software. Franchisee acknowledges and agrees that it is solely responsible for protecting Franchisee's computer point-of-sale equipment, electronic equipment, and communications systems from viruses, computer hackers, and other computer-related and technology-related problems, and Franchisee hereby releases Franchisor from any and all claims it may have as a result of viruses, hackers, or other computer-related or technology-related problems.

7.3 Franchisor's Suppliers. Franchisee acknowledges that Franchisor has and may continue to develop for use in the System certain products, including products that are prepared

from highly confidential secret recipes and that are trade secrets of Franchisor. Because of the importance of quality and uniformity of production and the significance of such products in the System, it is to the mutual benefit of the parties that Franchisor closely controls the production and distribution of such products. Accordingly, Franchisee agrees that Franchisee shall use Franchisor's secret recipes and other proprietary products, and shall purchase solely from Franchisor or from a source designated by Franchisor all of Franchisee's ingredients and supplies for such products. Franchisee further agrees to purchase from Franchisor for resale to Franchisee's customers certain Blendz® brand promotional merchandise as Franchisor shall require, when and if available, such as T shirts, sweatshirts and caps, in amounts sufficient to satisfy Franchisee's customer demand.

7.4 Advertising and Promotional Materials. Franchisor shall require all advertising and promotional materials, signs, decorations, paper goods (including menus and all forms and stationery used in the Blendz® Store), and other items that may be designated by Franchisor to bear the Marks in the form, color, location and manner prescribed by Franchisor.

7.5 Customer Satisfaction. Franchisee shall process and handle all consumer complaints connected with or relating to the Blendz® Store, and shall promptly notify Franchisor by telephone and in writing of all of the following complaints: (i) food related illnesses, (ii) safety or health violations, (iii) claims exceeding \$1,000, (iv) dram shop violations, and (v) any other material claims against or losses suffered by Franchisee. Franchisee shall maintain for Franchisor's inspection any inspection reports affecting the Blendz® Store or equipment located in the Blendz® Store during the Initial Term of this Agreement and any Interim Period for 30 days after the expiration or earlier termination this Agreement.

7.6 Attorney-in-Fact. Upon the execution of this Agreement or at any time thereafter, Franchisee shall, at the option of Franchisor, execute such forms and documents as Franchisor deems necessary to appoint Franchisor its true and lawful attorney-in-fact with full power and authority for the sole purpose of assigning to Franchisor all rights to the telephone numbers of the Blendz® Store and any related and other business listings upon the termination or expiration of this Agreement as required under Section 18. Upon execution of this Agreement or at any time thereafter, Franchisee shall also, at the option of Franchisor, execute such forms and documents as Franchisor deems necessary to irrevocably appoint Franchisor its true and lawful attorney-in-fact with full power and authority for the sole purpose of obtaining any and all returns and reports filed by Franchisee with any state or federal taxing authority.

7.7 Minimum Quarterly Sales Quota. Beginning 6 months after the Opening Date, Franchisee must meet the Minimum Quarterly Sales Quota. The Minimum Quarterly Sales Quota is \$45,000 in Gross Sales per quarter. Franchisee's failure to satisfy the Minimum Quarterly Sales Quota may result in the reduction or elimination of the Authorized Territory or the termination of this Agreement, in Franchisor's sole discretion. The parties agree that this Minimum Quarterly Sales Quota is in no way intended to imply or guarantee that Franchisee will generate Gross Sales of any particular level. For purposes of this Section 7.7 a quarter is the period from January through March, April through July, August through September and October through December.

8. ADVERTISING AND RELATED FEES

8.1 Pre-Operating Advertising and Local Advertising.

(a) Unless Franchisor specifies a lesser amount, Franchisee agrees to spend a minimum of \$1,500 on pre-opening advertising at least 30 days prior to opening the Blendz® Store and a minimum of \$2,500 on the grand opening advertising and promotion of the Blendz® Store.

(b) Unless Franchisor specifies a lesser amount, Franchisee agrees to spend the local advertising expense (“**Local Advertising Expense**”) each month equal to the greater of 3% of Gross Sales or \$450 (“**Minimum Local Advertising Expense**”) on local advertising and promotions within the appropriate boundaries of a local area, determined by the Franchisor, in its sole determination, (“**Local Area**”) in accordance with local restaurant marketing (“**LRM**”) guidelines set forth in the Operations Manual. Franchisee will receive dollar-for-dollar credit against this obligation for all contributions that Franchisee makes to a Local Advertising Cooperative in accordance with Section 8.3. Expenditures Franchisee incurs for any of the following shall not qualify as local advertising for purposes of this Section 8.1, unless approved in advance by Franchisor in writing:

(i) Salaries, expenses or benefits of any employees of Franchisee, including expenses for attendance at advertising meetings or activities;

(ii) In-store materials consisting of fixtures or equipment;

(iii) Seminar and educational costs and expenses of Franchisee’s employees.

(c) Franchisee shall pay its pro rata share of the cost of a classified directory listings and/or Yellow Pages ad to be placed by Franchisor, or at Franchisor’s option, Franchisee, on behalf of all Blendz® Stores in the Franchisee’s Blendz® Store’s Local Area. If Franchisee operates the only Blendz® Store in the Local Area, Franchisee shall be responsible for full payment of the classified directory advertisement.

(d) Franchisee agrees to participate in all system-wide promotions and advertising campaigns that Franchisor creates. Except for Franchisee’s commitments to participate in system-wide promotions and advertising campaigns and to pay its share of the cost of a classified directory advertisement, Franchisee will initially have discretion, subject to Section 8.1(e), over the approach Franchisee, subject to Franchisor’s approval, takes to local advertising and promotions. This discretion will continue until a Local Advertising Cooperative is established in the Blendz® Store’s Designated Market Area (“**DMA**”), under Section 8.3, or until Franchisor establishes the Marketing Fund described in Section 8.2. As provided in Section 8.2(e), Franchisor reserves the right to approve in advance of use by Franchisee any graphic or electronic materials or commercials developed by Franchisee for the Blendz® Store.

(e) All advertising and promotion by Franchisee shall be conducted in a dignified manner and shall conform to the standards and requirements set forth in the Operations Manual or otherwise. Franchisee shall obtain Franchisor's prior approval of all advertising and promotional plans and materials prior to use if such plans and materials were not been prepared by Franchisor or previously approved by Franchisor during the 6 months prior to their proposed use. Franchisee shall submit such unapproved plans and materials to Franchisor, and Franchisor shall approve or disapprove such plans and materials within 14 days of Franchisor's receipt. Franchisee shall not use unapproved plans or materials until they have been approved by Franchisor, and shall promptly discontinue use of any advertising or promotional plans or materials, whether or not previously approved, upon notice from Franchisor.

(f) Within 30 days after the end of each fiscal quarter, Franchisee shall submit a local area marketing report ("**Local Marketing Report**") to Franchisor on a form Franchisor provides. Each Local Marketing Report shall show the amount Franchisee spent for local advertising and promotions during the preceding month and the way Franchisee spent those funds. Upon Franchisor's request, Franchisee shall also submit documents substantiating that Franchisee incurred and paid particular expenditures during the month.

8.2 Marketing Fund.

(a) Franchisee agrees to pay Franchisor continuing marketing fees equal to 1% ("**Marketing Fund Contribution**") of Gross Sales at the time and in the manner Section 4.1(b) prescribes. The Marketing Fund Contribution will be posted to the marketing fund account ("**Marketing Fund**"). The Marketing Fund will be held in a separate account, maintained and managed by Franchisor.

(b) Franchisor will use the Marketing Fund Contribution it collects from franchisees (i) to create marketing materials relating to the System and the products Blendz® Stores sell; (ii) to pay for public relations projects intended to enhance the goodwill and public image of the System; (iii) to assist franchisees in developing local marketing programs in their respective Authorized Territory's; (iv) to undertake such other marketing efforts as Franchisor deems necessary or beneficial to the System, in Franchisor's sole discretion; and (v) to reimburse Franchisor or its affiliates (a) for salaries and other overhead expenses that are directly related to projects of a character described in clauses (i),(ii), (iii) and (iv), (b) for administrative costs, independent audits, reasonable accounting, bookkeeping, reporting and legal expenses, taxes and all other reasonable direct or indirect expenses that may be incurred by Franchisor or its affiliates and associated with the programs funded by the Marketing Fund Contributions; and (c) for part of the cost of maintaining a Blendz® website, as authorized in Section 8.4. Franchisor reserves the right to allocate the Marketing Fund Contributions to various permitted uses as it sees fit and does not guarantee that all Blendz® Stores will receive equal or any benefits or identical coverage.

(c) If the Marketing Fund operates at a deficit or requires additional funds at any time, Franchisor may loan such funds to the Marketing Fund in such amounts and on such

terms including such repayment terms, as Franchisor deems necessary or advisable in Franchisor's sole discretion.

(d) Franchisor will furnish Franchisee one slick, master or other "suitable for reproduction" sample of all newspaper inserts, direct mail flyers, point-of-purchase promotional pieces, television and radio commercials, and other marketing and product identification materials that Franchisor creates and approves for system-wide use, if any. Franchisee must pay to reproduce and use these materials in Franchisee's local advertising campaigns.

8.3 Local Advertising Cooperatives.

(a) At the time the DMA in which the Blendz® Store is located encompasses Blendz® Stores operated by at least 2 other franchisees or Blendz® Store operators (including Franchisor's parent or affiliates), the owners in the DMA will, at Franchisor's request and with its advice and assistance, form a cooperative advertising association among themselves ("**Local Advertising Cooperative**" or "**Cooperative**") for the purpose of jointly advertising and promoting their Blendz® Stores.

(b) If, in connection with a Cooperative's formation or functioning, its members are unable to reach agreement with respect to any disagreement over organization, administration, "spill" policy, contribution waivers or exceptions, budget or other matters that the members cannot resolve within 45 days, the issue will be referred to Franchisor for resolution. Franchisor's decision with respect to the issue's resolution will be binding on all members of the Cooperative. In addition, Franchisor reserves the right to review each Cooperative's contribution rate on an annual basis and to disapprove a rate of less than 1% of Gross Sales. Franchisee's contributions to a Cooperative will be credited to Franchisee's Local Advertising Expense requirements set out in Section 8.1(a) up to a maximum of 3%. The members of the Cooperative may approve a contribution rate up to 6% of Gross Sales.

(c) Franchisee agrees (i) to join, participate in, and actively support any Cooperative established in the Blendz® Store's DMA, and (ii) to make contributions to each Cooperative on the payment schedule adopted by the Cooperative's members and at the contribution rate Franchisor approves.

(d) Franchisor shall have the sole right, in its discretion, to form, change, dissolve or merge any Cooperative.

8.4 Internet Website.

(a) Franchisor may establish and maintain an Internet website that provides information about the Blendz® System and the food, services and merchandise that Blendz® Stores offer. Franchisor will have sole discretion and control over the website's design and contents. Franchisor may use part of the marketing fees it collects under Section 8.2 and part of the Marketing Fund's revenues to pay or reimburse itself for the costs of maintaining and updating the website, except that Franchisor may not use marketing fees or Marketing Fund

Contributions to pay for those components of the website that are devoted to the sale of Blendz® Stores.

(b) The website may include a section that provides the address, telephone number and e-mail address of each Blendz® Store in the Blendz® chain, including Franchisee's Blendz® Store.

(c) Franchisee will not have any right to advertise its Blendz® Store on the Internet.

9. MARKS

9.1 License to Use the Marks. Franchisor grants Franchisee the right to use the Marks during the Initial Term of this Agreement and any Interim Period in accordance with the System and related standards and specifications. The license of the Marks granted to Franchisee is nonexclusive and Franchisor and its affiliates thus have and retain the following rights, among others, subject only to the limitations of Section 1:

(a) To grant other licenses for use of the Marks;

(b) To develop and establish other systems using the Marks or other names or marks and to grant licenses thereto without providing any rights to Franchisee; and

(c) To engage, directly or indirectly, through its employees, representatives, licensees, assigns, agents and others, at wholesale, retail or otherwise, in (1) the production, distribution, license and sale of products and services, and (2) the use in connection with such production, distribution and sale, of the Marks and any and all trademarks, trade names, service marks, logos, insignia, slogans, emblems, symbols, designs and other identifying characteristics as may be developed or used from time to time by Franchisor.

9.2 Ownership of the Marks. As between Franchisor and Franchisee, Franchisor or its affiliate is the owner of all right, title and interest in and to the Marks and the good will associated with and symbolized by them. Franchisee covenants, represents and warrants that:

(a) Neither Franchisee nor the Controlling Principals shall take any action that would prejudice or interfere with the validity of Franchisor's or its affiliate's rights with respect to the Marks. Nothing in this Agreement shall give Franchisee any right, title, or interest in or to any of the Marks or any of Franchisor's or its parent's or affiliate's service marks, trademarks, trade names, trade dress, logos, copyrights or proprietary materials, except the right to use the Marks and the System in accordance with the terms and conditions of this Agreement for the operation of the Blendz® Store and only at or from its Franchised Location, or in approved advertising related to the Blendz® Store.

(b) Franchisee understands and agrees that any and all goodwill arising from Franchisee's use of the Marks and the System shall inure solely and exclusively to Franchisor's or its affiliate's benefit, and upon expiration or termination of this Agreement and the license

herein granted, no monetary amount shall be assigned as attributable to any goodwill associated with Franchisee's use of the Marks.

(c) Franchisee shall not contest the validity of or Franchisor's or any affiliate's interest in the Marks or assist others to contest the validity of or Franchisor's or any affiliate's interest in the Marks.

9.3 Use of the Marks. With respect to Franchisee's licensed use of the Marks, Franchisee agrees that:

(a) Unless otherwise authorized or required by Franchisor, Franchisee shall operate and advertise the Blendz® Store only under the name "Blendz®" without prefix or suffix. Franchisee shall not use the Marks as part of its corporate or other legal name, and shall obtain the Franchisor's approval of such corporate or other legal name prior to applying for or filing it with the applicable government authority.

(b) Throughout the Initial Term of the Agreement and any Interim Period, Franchisee shall identify itself as the owner of the Blendz® Store, and a franchisee of Franchisor, in conjunction with any use of the Marks, including uses on invoices, order forms, receipts and contracts, as well as the display of a notice in such content and form and at such conspicuous locations on the Franchised Location or any Blendz® Store catering and delivery vehicles as Franchisor may designate.

(c) Franchisee shall not use the Marks to incur any obligation or indebtedness on behalf of Franchisor or its affiliates.

(d) Franchisee shall comply with Franchisor's instructions in filing and maintaining the requisite trade name or fictitious name registrations, and shall execute any documents deemed necessary by Franchisor or its counsel to obtain protection of the Marks or to maintain their continued validity and enforceability.

(e) Franchisee acknowledges that any unauthorized use of the Marks shall constitute an infringement of Franchisor's or its parent's or affiliate's rights in the Marks and a material event of default hereunder. Franchisee agrees that it shall provide Franchisor or its affiliate (as designated) with all assignments, affidavits, documents, information and assistance Franchisor reasonably requests to fully vest in Franchisor or its affiliate all such rights, title and interest in and to the Marks, including all such items as are reasonably requested by Franchisor to register, maintain and enforce such rights in the Marks.

(f) Franchisor reserves the right to substitute different Marks for use in identifying the System and the Blendz® Store if Franchisor's current Marks no longer can be used, or if Franchisor, in its sole discretion, determines that substitution of different Marks will be beneficial to the System. In such event, Franchisor may require Franchisee, at Franchisee's expense, to discontinue or modify Franchisee's use of any of the Marks or to use one or more additional or substitute Marks. Franchisor shall reimburse Franchisee up to \$5,000 of Franchisee's actual costs of compliance due to Franchisor's substitution of Marks, but Franchisor

shall have no other obligation or liability to Franchisee as a result of such substitution, including, but not limited to, no obligation to reimburse Franchisee for any promotion or advertising expenses associated with the modified or substituted signs, materials and Marks.

9.4 Infringement. Franchisee shall notify Franchisor within 3 days by telephone, and thereafter in writing, of any apparent infringement of or challenge to Franchisee's use of any Mark, of any claim by any person of any rights in any Mark, and Franchisee and the Controlling Principals shall not communicate with any person other than Franchisor or any designated affiliate thereof, their counsel and Franchisee's counsel in connection with any such infringement, challenge or claim. Franchisor or its affiliates shall have complete discretion to take such action as it deems appropriate in connection with the foregoing, and the right to control exclusively, or to delegate control to any of its affiliates of, any settlement, litigation or Patent and Trademark Office proceeding or other proceeding arising out of any such alleged infringement, challenge or claim or otherwise relating to any Mark. Franchisee agrees to execute any and all instruments and documents, render such assistance, and do such acts or things as may, in the opinion of Franchisor, reasonably be necessary or advisable to protect and maintain the interests of Franchisor or any affiliate in any litigation or other proceeding or to otherwise protect and maintain the interests of Franchisor or any other interested party in the Marks.

9.5 Electronic Commerce.

(a) Franchisee will not use the Marks to advertise, promote or sell any merchandise or services through the World Wide Web, the Internet, or any other facility that makes use of electronic communication, nor will Franchisee offer or sell any merchandise that bears the Blendz® trademark or any service that is identified with the BlendzSM service mark through the World Wide Web, the Internet or any other facility that makes use of electronic communication. Franchisee's breach of this restriction will constitute willful trademark infringement and a material breach of this Agreement.

(b) Franchisor may, at its discretion, use the website described in Section 8.4 or establish another facility on the World Wide Web, the Internet, or any other facility that makes use of electronic communication for the purpose of engaging in Electronic Commerce with respect to merchandise that bears the Blendz® trademark and services that are identified with the BlendzSM service mark.

10. CONFIDENTIALITY AND NONCOMPETITION COVENANTS

10.1 Compliance with Operations Manual.

(a) Franchisee and the Owners, Developers, Controlling Principals, and Operating Principals, shall at all times treat the Operations Manual, 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 10. Franchisee, Owners, Developers, Controlling Principals, and Operating Principals shall use all reasonable efforts to maintain this information as secret and confidential, and Franchisee, Owners, Developers, Controlling Principals, and Operating Principals 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 Blendz® Store, or to such other persons authorized by Franchisor in writing. Franchisee, Owners, Developers, Controlling Principals, and Operating Principals 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.

(b) The Operations Manual, 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 at the Franchised Location, and shall be returned to Franchisor immediately upon request or upon termination or expiration of the franchise.

(c) The Operations Manual, any written directives, and any other manuals and materials issued by Franchisor and any modifications to such materials shall supplement this Agreement.

(d) Subject to the limitation set out in Section 7.1(b) Franchisor may from time to time revise the contents of the Operations Manual and the contents of any other manuals and materials created or approved for use in the operation of the Blendz® Store. Franchisee expressly agrees to comply with each new or changed standard.

(e) Franchisee shall at all times ensure that the Operations Manual is kept current and up to date. In the event of any dispute as to the contents of the Operations Manual, the terms of the master copy of the Operations Manual maintained by Franchisor at Franchisor's corporate office shall control.

(f) Franchisor will charge Franchisee its cost for any replacement Operations Manual requested by Franchisee in the amount of \$500 plus shipping and handling.

(g) Franchisor reserves the right to convert the Operations Manual into an exclusively electronic document and to require Franchisee to access the Operations Manual through the Internet or an intranet developed and supported by Franchisor.

10.2 Confidential Information and Trade Secrets.

(a) During the Initial Term and any Interim Period, Franchisee, and the Franchisees' Owners, Developers, Controlling Principals, Operating Principals, and employees who have access to the Confidential Information and Trade Secrets agree that they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information and Trade Secrets; and (4) will adopt and implement all reasonable procedures the Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring employees, Designated Store Managers, training class attendees, and Franchisees' Owners, Developers, Controlling Principals, Operating

Principals who have access to the Confidential Information and Trade Secrets to execute such nondisclosure and noncompetition agreements as the Franchisor may require periodically, and provide the Franchisor, at the Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(b) After the Agreement expires or is terminated, Franchisee, and Franchisees' Owners, Developers, Controlling Principals, Operating Principals, Designated Store Managers and employees who have access to the Confidential Information and Trade Secrets agree that for a period of 2 years after the termination or expiration of the Agreement (unless such information is a Trade Secret in which case the requirements in this Section 10.2(c) will remain in place for as long as such information constitutes a Trade Secret) they: (1) will not use the Confidential Information or Trade Secrets in any other business or capacity or for their own benefit; (2) will maintain the absolute confidentiality of the Confidential Information and Trade Secrets; (3) will not make unauthorized copies of any portion of the Confidential Information or Trade Secrets; and (4) will adopt and implement all reasonable procedures the Franchisor periodically requires to prevent unauthorized use or disclosure of the Confidential Information and Trade Secrets including requiring written non-disclosure and noncompetition agreements for those individuals as the Franchisor may require and provide the Franchisor, at the Franchisor's request, with signed copies of each of those agreements. Franchisor will be named as a third party beneficiary on such nondisclosure and noncompetition agreements.

(c) Notwithstanding the foregoing, the restrictions on the disclosure and use of the Confidential Information will not apply to the following: (a) Confidential Information in the public domain after it was communicated to the Franchisee through no fault of the Franchisee, its owners, Designated Business Managers or employees; (b) Confidential Information in the Franchisee's possession free of any obligation of confidence at the time it was communicated to the Franchisee; or (c) the disclosure of the Confidential Information in judicial or administrative proceedings to the extent that the Franchisee is legally compelled to disclose the information, if the Franchisee has notified the Franchisor before disclosure and used the Franchisee's best efforts, and afforded the Franchisor the opportunity, to obtain an appropriate protective order or other assurance satisfactory to the Franchisor of confidential treatment for the information required to be so disclosed.

(d) Franchisee shall require and obtain the execution of covenants similar to those set forth in Section 10.2 from its Designated Store Manager and any other personnel of Franchisee who receive or will have access to Confidential Information and Trade Secrets. Such covenants shall be substantially in the form set forth in **Attachment E**. All of Franchisee's Principals not required to sign this Agreement as a Controlling Principal also must execute such covenants.

(e) If Franchisee during the Initial Term of the franchise relationship or any Interim Period, conceives or develops any improvements or additions to the System, Confidential Information, Trade Secrets, website or any other documents or information pertaining to or relating to the System or the Blendz® Store, or any new trade names, trade and service marks, logos, or commercial symbols related to the Blendz® Store or any advertising and promotional

ideas or inventions related to the Blendz® Store (collectively, the “**Improvements**”) Franchisee shall fully disclose the Improvements to Franchisor, without disclosure of the Improvements to others, and shall obtain Franchisor’s written approval prior to using such Improvements. Any such Improvement may be used by Franchisor and all other franchisees without any obligation to Franchisee for royalties or other fees. Franchise shall assign and does hereby assign to Franchisor, all right, title and interest in and to the Improvements, including the right to grant sublicenses to any such Improvement. Franchisor, at its discretion, may make application for and own copyrights, patents, trade names, trademarks and service marks relating to any such Improvement and Franchisee shall cooperate with Franchisor, in securing such rights. Franchisor may also consider such Improvements as the property and Trade Secrets of Franchisor. In return, Franchisor shall authorize Franchisee to utilize any Improvement that may be developed by other franchisees and is authorized generally for use by other franchisees.

10.3 Non-Competition.

(a) During the Initial Term of this Agreement. Franchisee and the Controlling Principals and Operating Principals specifically acknowledge that, pursuant to this Agreement, Franchisee and the Controlling, Designated Store Manager and Operating Principals will receive valuable training, Trade Secrets and Confidential Information, including information regarding the operational, sales, promotional and marketing methods and techniques of Franchisor and the System, all of which are beyond the present skills and experience of Franchisee, the Controlling Principals, and Franchisee’s Designated Store Manager and employees. Franchisee and the Controlling Principals acknowledge 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 Blendz® Store, and that gaining access to such specialized training, Trade Secrets and Confidential Information is, therefore, a primary reason that they are entering into this Agreement. In consideration for such specialized training, Trade Secrets, Confidential Information and rights, Franchisee and the Controlling Principals covenant that during the Initial Term of this Agreement and any Interim Period (or with respect to each of the Controlling Principals, during the Initial Term of this Agreement and any Interim Period for so long as such individual or entity satisfies the definition of “the Controlling Principals,” except as otherwise approved in writing by Franchisor), neither Franchisee nor any of the Controlling Principals shall, either directly or indirectly, for themselves or through, on behalf of or in conjunction with any person or entity:

(i) Divert, or attempt to divert, any business or customer of the Blendz® Store 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 Marks and the System.

(ii) 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 Blendz® Store. As used herein, the term “**similar**” means a business that looks like, copies, imitates, or operates in a manner similar to a Blendz® Store, including, but not limited to, any quick service restaurant which bases all or a significant portion of its

menu offerings on tossed-to-order salads, grilled Panini sandwiches, blended smoothies, gourmet soups and specialty coffees and espresso, and which business is located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor or its affiliates have used, sought registration of or registered the same or similar Marks or operates or licenses others to operate a business under the same or similar Marks.

(b) After the Term of this Agreement. 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 or, with respect to each of the Controlling Principals, commencing upon the earlier of: (i) the expiration, termination, or transfer of all of Franchisee's interest in this Agreement or (ii) the time such individual or entity ceases to satisfy the definition of "the Controlling Principals" and continuing for 2 years thereafter, except as otherwise approved in writing by Franchisor, neither Franchisee, nor any of the Controlling Principals shall, directly or indirectly, for themselves, or through, on behalf of, or in conjunction with any person, persons, partnership, or corporation:

(i) Divert, or attempt to divert, any business or customer of the Blendz® Store 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 Marks and the System.

(ii) Employ, or seek to employ, any person who is at that time, or has been within the preceding 180 days, employed by Franchisor 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 Area Development Agreement or Franchise Agreement between Franchisor and Franchisee.

(iii) 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 Blendz® Store. As used herein, the term "similar" means a business that looks like, copies, imitates, or operates in a manner similar to a Blendz® Store, including, but not limited to, any quick service restaurant which bases all or a significant portion of its menu offerings on tossed-to-order salads, grilled Panini sandwiches, blended smoothies, gourmet soups and specialty coffees and espresso, and which business is, or is intended to be, located within a 10 mile radius of any Blendz® Store or food service facility in existence or under construction (or where land has been purchased or a lease has been executed) at any given time during such period.

(iv) At Franchisor's request, Franchisee shall require and obtain execution of covenants similar to those set forth in this Section 10.3 (including covenants applicable upon the termination of a person's employment with Franchisee) from its Designated Store Manager and any personnel of Franchisee who have received or will have access to training from Franchisor. Such covenants shall be substantially in the form set forth in **Attachment E**. All of Franchisee's Principals not required to sign this Agreement as a

Controlling Principal also must execute such covenants. Notwithstanding the foregoing, Franchisor reserves the right, in its sole discretion, to decrease the period of time or geographic scope of the non-competition covenant set forth in **Attachment E** or eliminate such non-competition covenant altogether for any party that is required to execute such agreement under this Section 10.3(b)(5).

(c) Ownership in a Publicly Held Corporation. Section 10.3 shall not apply to ownership of less than a 5% beneficial interest in the outstanding equity securities of any publicly-held corporation.

(d) Reasonable Scope. The parties acknowledge and agree that each of the preceding covenants contains 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 10 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 and the Controlling Principals expressly agree 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.

10.4 Franchisor's Right to Modify. Franchisee and the Controlling Principals understand and acknowledge that Franchisor shall have the right, in its sole discretion, to reduce the scope of any covenant set forth in this Section 10 without their consent, effective immediately upon notice to Franchisee; and Franchisee and the Controlling Principals agree that they shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 19.2.

10.5 No Defense to Enforcement. Franchisee and the Controlling Principals expressly agree that the existence of any claims they 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 10.

10.6 Right to Injunctive Relief, Damages, and Election of Remedies. Failure to comply with the requirements of this Section shall constitute a material event of default under Section 17 of this Agreement. Franchisee and the Controlling Principals acknowledge 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 and the Controlling Principals accordingly consent to the issuance of an injunction prohibiting any conduct by Franchisee or the Controlling Principals in violation of the terms of this Section 10. Franchisee and the Controlling Principals agree 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.

10.7 Damages, Liquidated Damages, and Election of Remedies.

(a) For breach of the covenants in Section 10.2, which is made in consideration of the Confidential Information and Trade Secrets described therein, and due to the difficulty of establishing the precise amount of damages for breach of this covenant, in addition to the other remedies provided for in this Agreement or otherwise available to Franchisor, Franchisee and Franchisee's Controlling Principals who committed such breach jointly and severally agree to pay Franchisor an amount equal to the greater of (i) \$75,000 or (ii) the decrease in operating profits (e.g., operating revenues minus operating expenses) or increase in operating losses experienced by those Blendz® Stores affected by the breach of such covenant ("**Affected Restaurants**"), and caused by breach of such covenant.

(b) For breach of the covenants in Sections 10.3(a)(i) and (ii) and 10.3(b)(i) and (iii), which are made in consideration of the specialized training, Trade Secrets and Confidential Information described therein, and due to the difficulty of establishing the precise amount of damages for breach of these covenants, in addition to the other remedies provided for in this Agreement or otherwise available to Franchisor, Franchisee and Franchisee's Controlling Principals who committed such breach jointly and severally agree to pay Franchisor an amount equal to the greater of (i) \$1,000 per day for each day the breach continues or (ii) the decrease in operating profits or increase in operating losses experienced by the Affected Restaurants, and caused by breach of such covenants.

(c) In either case, if the decrease in operating profits or increase in operating losses cannot be reasonably estimated on a timely basis, then Franchisor may elect to take immediate payment of the fixed per diem amount. The decrease in operating profits or increase in operating losses experienced by the Affected Restaurants during the period of breach will be determined by extrapolating from the results of the Affected Restaurants over the 2-year period immediately preceding the date of the initial breach (or such shorter periods of time during which the Affected Restaurants shall have been open), and calculating what the Affected Restaurants' operating profits or operating losses would have been during the period of breach but for such breach. Due regard shall be given to operating revenue and operating expense trends. Franchisee and Franchisee's Controlling Principals agree that each of them shall be liable under this Section regardless of whether the breach was negligently or willfully caused. The parties agree that the foregoing amounts are a reasonable estimation of the damages that would be incurred by Franchisor and the Affected Restaurants for breach of such covenants. The parties further agree that Franchisor shall be entitled to select among the alternative damage formulae provided above, or pursue any other right or remedy provided or permitted by law or this Agreement and that, in any event, payment to Franchisor of any amount provided for under this paragraph shall not constitute an election of remedies by Franchisor or excuse to the performance of Franchisee's obligations under this Agreement.

11. **BOOKS AND RECORDS**

11.1 Retention of Books and Records. Franchisee shall maintain during the Initial Term of this Agreement and any Interim Period, and shall preserve for at least 5 years from the

dates of their preparation, full, complete and accurate books, records and accounts, including sales slips, coupons, purchase orders, credit card transmission records, payroll records, employee meal records, check stubs, bank statements, deposit slips, sales tax records and returns, cash receipts and disbursements, journals and ledgers, records of EFT transactions, and backup or archived records of information maintained on any computer system. Franchisee shall use the chart of accounts that Franchisor specifies, shall prepare its financial records in accordance with generally accepted accounting principles, and shall presents its financial reports in the form and manner that Franchisor prescribes from time to time in the Operations Manual or otherwise in writing.

11.2 Reporting Requirements. In addition to the remittance reports required by Sections 4 and 8, Franchisee shall comply with the following reporting obligations:

(a) Franchisee shall submit to Franchisor, in the form prescribed by Franchisor, a balance sheet and profit and loss statement for each month (which may be unaudited) for Franchisee within 30 days after the end of each month during the Initial Term of the franchise and any Interim Period. Each set of such financial statements shall be signed by attesting that it is true, complete and correct.

(b) Franchisee shall provide to Franchisor a complete set of annual financial statements for Franchisee within 90 days after the end of each fiscal year of Franchisee during the Initial Term of the franchise. Franchisor reserves the right, in Franchisor's sole discretion, to request in writing that Franchisee provide Franchisor with year-end financial statements which include a "review level" opinion prepared in accordance with generally accepted accounting principles ("GAAP") and issued by an independent certified public accountant.

(c) Franchisee shall also submit to Franchisor, for review or auditing, such other forms, reports, records, information and data as Franchisor may reasonably designate, in the form and at the times and places reasonably required by Franchisor, upon request and as specified from time to time in writing.

11.3 Audit. Franchisor or its designees shall have the right at all reasonable times to review, audit, examine and copy any or all the books and records of Franchisee as Franchisor may require. Franchisee shall make such books and records available to Franchisor or its designees immediately upon request. If any required royalty payments to Franchisor are delinquent, or if an inspection should reveal that such payments have been understated in any report to Franchisor, then Franchisee shall immediately pay to Franchisor the amount overdue or understated upon demand with interest determined in accordance with the provisions of Section 4.4(d). If an inspection discloses an understatement in any report of 2% or more, Franchisee shall, in addition, reimburse Franchisor for all costs and expenses connected with the inspection (including reasonable accounting and legal fees). These remedies shall be in addition to any other remedies Franchisor may have at law or in equity.

11.4 Waiver. Franchisee understands and agrees that the receipt or acceptance by Franchisor of any of the statements furnished or royalties paid to Franchisor (or the cashing of any royalty checks, or processing of electronic fund transfers) shall not preclude Franchisor from

questioning the correctness thereof at any time and, in the event that any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified by the Franchisee and the appropriate payment shall be made by the Franchisee.

11.5 Franchisee's Authorization. Franchisee authorizes (and agrees to execute any other documents deemed necessary to effect such authorization) all banks, financial institutions, businesses, suppliers, manufacturers, contractors, vendors and other persons or entities with which Franchisee does business to disclose to Franchisor any requested financial information in their possession relating to Franchisee or the Blendz® Store. Franchisee authorizes Franchisor to disclose data from Franchisee's reports, if Franchisor determines, in its sole discretion, that such disclosure is necessary or advisable, which disclosure may include disclosure to prospective or existing franchisees or other third parties.

11.6 Attorney-in-Fact. Notwithstanding any forms and documents that may have been executed by Franchisee under Section 7.6, Franchisee irrevocably appoints Franchisor its true and lawful attorney-in-fact with full power and authority, for the sole purpose of obtaining any and all returns and reports filed by Franchisee with any state or federal taxing authority. This power of attorney shall survive the expiration or termination of this Agreement.

11.7 Franchisee acknowledges and agrees that the Franchisor owns all business records ("**Business Records**") with respect to customers and other service professionals of, and related to, the Blendz® Store including, without limitation, all databases (whether in print, electronic or other form), including all names, addresses, phone numbers, e-mail addresses, customer purchase records, and all other records contained in the database, and all other Business Records created and maintained by Franchisee. Franchisee further acknowledges and agrees that, at all times during and after the termination, expiration or cancellation of this Agreement, Franchisor may access such Business Records, and may utilize, transfer, or analyze such Business Records as Franchisor determines to be in the best interest of the System, in Franchisor's sole discretion.

12. **INSURANCE**

12.1 Insurance Obligation. Upon execution of this Agreement, Franchisee shall procure and shall maintain in full force and effect at all times during the Initial Term of the franchise and any Interim Period at Franchisee's expense, insurance policies protecting Franchisee, Franchisor and their respective affiliates, successors and assigns and each such entity's officers, directors, shareholders, partners, agents, representatives, independent contractors and employees against any demand or claim with respect to personal injury, death or property damage, or any loss, liability or expense whatsoever arising or occurring upon or in connection with the Blendz® Store and any insurance required in the Operations Manual.

12.2 Insurance Requirements. Such policies shall be written by responsible carriers with A. M. Best Insurance Guide Ratings of A/V III or better and otherwise reasonably acceptable to Franchisor and shall include, at a minimum (except as additional coverages and higher policy limits may reasonably be specified by Franchisor from time to time), in accordance with standards and specifications set forth in writing, the following:

(a) Liability Insurance. Comprehensive commercial general liability insurance, providing coverage on an occurrence form basis, with limits of not less than \$1,000,000 each occurrence for bodily injury and property damage combined, \$2,000,000 annual general aggregate, and \$2,000,000 products and completed operations annual aggregate. All such liability insurance policy or policies shall:

(i) include premises and operations liability coverage, products and completed operations liability coverage, and broad form property damage coverage including completed operations;

(ii) include blanket contractual liability coverage including, to the maximum extent possible, coverage for your indemnification obligations under the Franchise Agreement or Agreements and the Area Development Agreement;

(iii) include personal and advertising injury coverage;

(iv) provide that the insurance company has the duty to defend all parties insured under the policy;

(v) provide that defense costs are paid in addition to, and not in depletion of, any of the policy limits, and;

(vi) cover liabilities arising out of or incurred in connection with Franchisee's use, operation, occupancy, franchising, licensing, leasing or ownership of a Blendz® Store.

(b) Property Insurance. "All risk" insurance covering fire and extended coverage, vandalism and malicious mischief, sprinkler leakage and all other perils of direct physical loss or damage under the ISO "Special Causes of Loss" form, for the full replacement value of all Franchisee's property or equipment of any nature located at, on, in, or about the Blendz® Store, or in any way used in the operation of the Blendz® Store, including all contents, awnings, signs, and glass with reasonable deductibles acceptable to Franchisor.

(c) Umbrella Policy. Umbrella policy, providing per occurrence coverage limits of not less than \$2,000,000 and annual aggregate limits of not less than \$5,000,000.

(d) Workers Compensation Insurance. Workers' compensation insurance, if required by applicable law, in amounts specified by applicable law.

(e) Theft Insurance. Crime (inside/outside money and securities) and employee dishonesty insurance with minimum per occurrence coverage of \$15,000.

(f) Business Interruption Insurance. Business interruption insurance to cover Franchisee's loss of revenue and ongoing expenses and to cover any amounts owing to Franchisor under this Agreement (including, in the case of a casualty loss, the Royalty Fee Franchisor would have received had the casualty loss not occurred) or any other agreement

between Franchisee and Franchisor or its affiliates, in an amount not less than \$30,000 per month for a minimum of 6 months.

(g) Automobile Insurance. Automobile liability coverage, including coverage of owned, non-owned and hired vehicles with coverage in amounts not less than \$1,000,000 with combined single limit per occurrence for bodily injury and property damage.

(h) Builder's Risk Insurance. For any construction, renovation or remodeling of the Blendz® Store, Franchisee must maintain builder's risks insurance and performance and completion bonds in forms and amounts and written by a carrier or carriers satisfactory to Franchisor.

(i) Other. Any insurance which may be required by statute or rule of the state or locality in which the Blendz® Store is located.

12.3 Deductibles. Franchisee may, with the prior written consent of Franchisor, elect to have reasonable deductibles in connection with the coverage required under Section 12.2. Such policies shall also include a waiver of subrogation in favor of Franchisor and its affiliates and each of their officers, directors, shareholders, partners, employees, representatives, independent contractors and agents.

12.4 Additional Insureds. All insurance policies required hereunder, with the exception of workers' compensation, shall name Franchisor, its affiliates, and their respective directors, officers, shareholders, partners, employees, representatives, independent contractors and agents, as additional insureds, and shall expressly provide that any interest of same therein shall not be affected by any breach by Franchisee of any policy provisions. All general liability and property damage policies shall contain a provision that Franchisor and its directors, officers, shareholders, partners, employees, representatives, independent contractors and agents, although named as insureds, shall nevertheless be entitled to recover under such policies on any loss occasioned to Franchisor or its servants, agents or employees by reason of the negligence of Franchisee or its servants, agents or employees. Franchisee's obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by Franchisor, nor shall Franchisee's performance of that obligation relieve it of liability under the indemnity provisions set forth in Section 15 of this Agreement.

12.5 Proof of Insurance. Upon execution of this Agreement, and thereafter in accordance with this Section 12. and not less than 30 days prior to the expiration of any such policy, Franchisee shall deliver to Franchisor Certificates of Insurance evidencing the existence and continuation of proper coverage with limits not less than those required hereunder. In addition, if requested by Franchisor, Franchisee shall deliver to Franchisor a copy of each required insurance policy. Further, each such insurance policy shall expressly provide that no less than 30 days' prior written notice shall be given to Franchisor if the insurer proposes a material alteration to, cancellation, or nonrenewal of the policy.

12.6 Franchisor's Right to Cure. If Franchisee, for any reason, fails to procure or maintain the insurance required by this Agreement, Franchisor shall have the right and authority (but no obligation) to procure such insurance and to charge the premiums to Franchisee, which charges, together with a reasonable fee for Franchisor's expenses in so acting, shall be payable by Franchisee immediately upon notice. The foregoing remedies shall be in addition to any other remedies Franchisor may have at law or in equity.

13. DEBTS AND TAXES

13.1 Taxes. Franchisee shall promptly pay when due all Taxes (defined below) levied or assessed, and all accounts and other indebtedness of every kind incurred by Franchisee in the conduct of the Blendz® Store. Without limiting the provisions of Section 15, Franchisee shall be solely liable for the payment of all Taxes and shall indemnify Franchisor for the full amount of all such Taxes imposed on Franchisor, and for any liability (including penalties, interest and expenses) arising from or concerning the payment of Taxes, whether Taxes were correctly or legally asserted or not.

(a) Each payment made to Franchisor hereunder shall be made free and clear and without deduction for any Taxes. "Taxes" means any present or future taxes, levies, imposts, duties or other charges of whatsoever nature, including any interest or penalties thereon, imposed by any government or political subdivision of such government on or relating to the operation of the Blendz® Store, the payment of monies, or the exercise of rights granted pursuant to this Agreement, except Taxes imposed on or measured by Franchisor's net income.

(b) If any Taxes are, directly or indirectly, imposed on Franchisor with respect to any payments to Franchisor required under this Agreement, unless the Taxes are credited against the income tax otherwise payable by Franchisor, Franchisee shall pay an amount to Franchisor equal to the Taxes so imposed.

13.2 Tax Dispute. In the event of any bona fide dispute as to Franchisee's liability for Taxes assessed or other indebtedness, Franchisee may contest the validity or the amount of the tax or indebtedness in accordance with the procedures of the taxing authority or applicable law. However, in no event shall Franchisee permit a tax sale or seizure by levy of execution or similar writ or warrant or attachment by a creditor, to occur against the premises of the Blendz® Store or any improvements thereon.

13.3 Action Adversely Affecting the Blendz® Store. Franchisee shall notify Franchisor in writing within 5 days of the commencement of any action, suit or proceeding and of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect the operation or financial condition of the Blendz® Store.

14. TRANSFER OF INTEREST

14.1 Franchisor's Right to Transfer or Assign. Franchisor shall have the right to transfer or assign this Agreement and all or any part of its rights or obligations herein to any

person or legal entity. Specifically, and without limitation to the foregoing, Franchisee agrees that Franchisor may sell its assets and/or its rights in the Marks or the System to a third party; may offer its securities privately or publicly; may merge, spin-off, acquire other corporations or be acquired by another corporation; may undertake a refinancing, recapitalization, leveraged buyout or other economic or financial restructuring; and with regard to any or all of the above sales, assignments and dispositions, Franchisee expressly and specifically waives any claims, demands, or damages against Franchisor and its affiliates arising from or related to the transfer of the Marks or the System, or any rights of Franchisor therein, from Franchisor or its affiliates to any other party. Nothing contained in this Agreement shall require Franchisor to continue offering any services or products, whether or not bearing the Marks, to Franchisee after Franchisor assigns its rights in this Agreement.

14.2 Transfer by Franchisee or Controlling Principals.

(a) Franchisee and the Controlling Principals understand and acknowledge that the rights and duties set forth in this Agreement are personal to Franchisee, and that Franchisor has granted rights under this Agreement in reliance on the business skill, financial capacity and personal character of Franchisee and the Controlling Principals. Accordingly, neither Franchisee nor any Controlling Principal, nor any successor or assignee of Franchisee or any Controlling Principal shall sell, assign, transfer, convey, give away, pledge, mortgage or otherwise encumber any direct or indirect interest in this Agreement, in the assets of the Blendz® Store or any direct or indirect interest that will effect any change in the Controlling Interest in Franchisee without the prior written consent of Franchisor. Any purported assignment or transfer, by operation of law or otherwise, made in violation of this Agreement shall be null and void and shall constitute a material breach of this Agreement.

(b) If Franchisee wishes to transfer all or part of its interest in the assets of the Blendz® Store in this Agreement, or if Franchisee or a Controlling Principal wishes to transfer any interest that will effect a change in the Controlling Interest in Franchisee, transferor and the proposed transferee shall apply to Franchisor for its consent. Franchisor may, in its sole and absolute discretion, require any or all of the following as conditions of its approval:

(i) All of the accrued monetary obligations of Franchisee and its affiliates and all other outstanding obligations to Franchisor and its affiliates arising under this Agreement or any other agreement shall have been satisfied and Franchisee shall have satisfied all trade accounts and other debts, of whatever nature or kind;

(ii) Franchisee and its affiliates shall not be in default of any provision of this Agreement or any other agreement between Franchisee or its affiliates and Franchisor or its affiliates, and Franchisee shall have substantially and timely complied with all the terms and conditions of such agreements during the terms thereof;

(iii) The transferor and its principals shall have executed a general release, in a form satisfactory to Franchisor, of any and all claims against Franchisor, its affiliates and each of their respective officers, directors, shareholders, partners, agents, representatives,

independent contractors and employees, in their corporate and individual capacities, including claims arising under this Agreement and federal, state and local laws, rules and regulations;

(iv) The transferee shall demonstrate to Franchisor's satisfaction that transferee meets the criteria considered by Franchisor when reviewing a prospective franchisee's application for a license, including, but not limited to, Franchisor's educational, managerial and business standards; transferee's good moral character, business reputation and credit rating; transferee's aptitude and ability to operate the Blendz® Store; transferee's financial resources and capital for operation of the Blendz® Store; and the geographic proximity and number of other Blendz® Stores owned or operated by transferee, if any. In addition, the transferee shall not be a competitor of Franchisor;

(v) The transferee or the Franchisee, as the case may be, shall execute, for an Initial Term ending on the expiration date of this Agreement, the standard form Franchise Agreement then being offered to new System franchisees and other ancillary agreements as Franchisor may require for the Blendz® Store, which agreements shall supersede this Agreement and its ancillary documents in all respects and the terms of which agreements may differ from the terms of this Agreement, including, without limitation, a higher percentage Royalty Fee, advertising contribution or expenditure requirement; provided, however, that the transferee shall not be required to pay any Initial Franchise Fee;

(vi) If the transferee is a corporation or a partnership, those of transferee's principals as Franchisor may designate shall execute such agreement as transferee's controlling principals and guarantee the transferee's performance of all such obligations, covenants and agreements;

(vii) The transferee, at its expense, shall renovate, modernize and otherwise upgrade the Blendz® Store and, if applicable, any Blendz® Store catering vehicles to conform to the then-current standards and specifications of the System, and shall complete the upgrading and other requirements within the time period reasonably specified by Franchisor;

(viii) The transferor shall remain liable for all of the obligations to Franchisor in connection with the Blendz® Store incurred prior to the effective date of the transfer and shall execute any and all instruments reasonably requested by Franchisor to evidence such liability;

(ix) At the transferee's expense, the transferee, the transferee's Operating Principal, Designated Store Manager any other applicable Blendz® Store personnel, shall complete any training programs then in effect for franchisees of Blendz® Stores upon such terms and conditions as Franchisor may reasonably require, including but not limited to, paying a training fee in the amount of \$3,500;

(x) Franchisee shall pay a transfer fee of \$5,000 to Franchisor to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the application to transfer, including legal and accounting fees;

(xi) If the transferee is a corporation or a partnership, the transferee shall make and will be bound by any or all of the representations, warranties and covenants set

forth at Section 6 as Franchisor requests. Transferee shall provide to Franchisor evidence satisfactory to Franchisor that the terms of such Section have been satisfied and are true and correct on the date of transfer; and

(xii) Franchisee shall have opened the Blendz® Store for business with the public under Section 2 of this Agreement.

(c) Franchisee acknowledges and agrees that each condition which must be met by the transferee is reasonable and necessary to assure the transferee's full performance of the obligations hereunder.

14.3 Transfer for Convenience of Ownership. If the proposed transfer is to a corporation formed solely for the convenience of ownership, Franchisor's consent may be conditioned upon fulfillment of any of the requirements set forth in Section 14.2(b), except that the requirements of Sections 14.2(b)(iv), (vii), (ix), (x) and (xii) shall not apply. With respect to a transfer to a corporation formed for the convenience of ownership, Franchisee shall be the owner of all of the voting stock or interest of the corporation and if Franchisee is more than one individual, each individual shall have the same proportionate ownership interest in the corporation as he or she had in Franchisee prior to the transfer. Provided that such transfer, sale or assignment shall not effect a change in the Controlling Interest in Franchisee, the Controlling Principals may transfer, sell or assign their respective interests in Franchisee by and among themselves with Franchisor's prior written consent, which shall not be unreasonably withheld but which may be conditioned on compliance with Section 14.2(b), except that such transfer, sale or assignment shall not be subject to Sections 14.2(b)(iv), (vii), (ix), (x) and (xii).

14.4 Franchisor's Right of First Refusal.

(a) If Franchisee wishes to transfer all or part of its interest in the assets of the Blendz® Store or this Agreement or if Franchisee or a Controlling Principal wishes to transfer a Controlling Interest in Franchisee (including any transfers that, whether individually or in the aggregate, would effect a change in Controlling Interest) pursuant to any bona fide offer received from a third party to purchase such interest, the proposed seller shall promptly notify Franchisor in writing of such offer, and shall provide such information and documentation relating to the offer as Franchisor may require. Franchisor shall have the right and option, exercisable within 30 days after receipt of such written notification and copies of all documentation requested by Franchisor describing the terms of such offer, to send written notice to the seller that Franchisor intends to purchase the seller's interest on the same terms and conditions offered by the third party. In the event that Franchisor elects to purchase the seller's interest, closing on such purchase must occur within the later of 60 days from the date of notice to the seller of the election to purchase by Franchisor, 60 days after the date Franchisor receives and obtains all necessary permits and approvals, or such other date as the parties agree upon in writing. Any material change in the terms of any offer or any change in the identity of the proposed purchaser prior to closing shall constitute a new offer subject to the same right of first refusal by Franchisor as in the case of an initial offer. Failure of Franchisor to exercise the option afforded by this Section 14.4 shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of Section 14.2, with respect to a proposed transfer.

(b) In the event an offer from a third party provides for payment of consideration other than cash or involves certain intangible benefits, Franchisor may elect to purchase the interest proposed to be sold for the reasonable cash equivalent. If the parties cannot agree within a reasonable time on the reasonable cash equivalent of the non-cash part of the offer, then such amount shall be determined by two appraisers, with each party selecting one appraiser, and the average of their determinations shall be binding. In the event of such appraisal, each party shall bear its own legal and other costs and divide the appraisal fees equally. In the event that Franchisor exercises its right of first refusal, it shall have the right to set off against the purchase price (i) all fees for any such independent appraiser due from Franchisee, and (ii) all amounts due from Franchisee or any of its affiliates.

(c) Failure to comply with the provisions of this Section prior to the transfer of any interest in Franchisee, the Blendz® Store or this Agreement shall constitute a material breach of this Agreement.

14.5 Death or Disability of Franchisee or a Controlling Principal.

(a) Upon the death of Franchisee (“**Deceased**”), or any Controlling Principal who owns all or a part of the Controlling Interest in Franchisee the distributee of such interest must be approved by Franchisor. If the distributee is not approved by Franchisor, then the distributee or, if a personal representative is appointed or probate proceedings are instituted with respect to the estate of the Deceased, the executor, administrator or other personal representative of the Deceased, shall transfer such interest to a third party approved by Franchisor within 12 months after the death of the Deceased.

(b) Upon the permanent disability of Franchisee or any Controlling Principal who owns all or a part of the Controlling Interest in Franchisee, Franchisor may, in its sole discretion, require such interest to be transferred to a third party in accordance with the conditions described in this Section 14 within 6 months after notice to Franchisee. “**Permanent disability**” shall mean any physical, emotional or mental injury, illness or incapacity which would prevent a person from performing the obligations set forth in this Agreement or in the guaranty made part of this Agreement for at least 90 consecutive days and from which condition recovery within 90 days from the date of determination of disability is unlikely. Permanent disability shall be determined by a licensed practicing physician selected by Franchisor, upon examination of the person. If the person refuses to submit to an examination, such person shall automatically be deemed permanently disabled as of the date of such refusal for the purpose of this Section 14.5. The costs of any examination required by this Section shall be paid by Franchisor.

(c) Upon the death or claim of permanent disability of Franchisee or any Controlling Principal who owns all or a part of the Controlling Interest in Franchisee, Franchisee or a representative of Franchisee must promptly notify Franchisor of such death or claim of permanent disability within 15 days of its occurrence. Any transfer upon death or permanent disability shall be subject to the same terms and conditions as described in this Section for any inter vivos (lifetime) transfer. If an interest is not transferred upon death or permanent disability as required in this Section, such failure shall constitute a material event of default under this

Agreement. Franchisee and each Controlling Principal who owns all or a part of the Controlling Interest in Franchisee, shall have the right to seek approval of their respective proposed successors prior to death or permanent disability, as applicable. In that case, Franchisee or the Controlling Principal, as applicable, shall submit to Franchisor such information and documentation concerning such proposed successor as may be required by Franchisor in the Operations Manual or other written directives. Further, as a condition to approval, Franchisor may, in its sole discretion, require compliance with any of the terms and conditions described in this Section for any inter vivos transfer. Franchisor at its option may elect to operate (or appoint a designee to operate) the Blendz® Store during the interim 12 months following such death or the interim 6 months following such permanent disability, as applicable, until the interest of such person is transferred in accordance with this Section 14, or until the applicable interim period expires, whichever comes first. As compensation for managing the Blendz® Store, Franchisor will charge a management fee equal to \$200 per day plus the Franchisor's travel, lodging and meals. Franchisee will execute any agreements or other documents required by Franchisor to effect the foregoing and shall remain responsible for payment of employee salaries, taxes, rent, utilities, supplies and all other costs and expenses associated with the operation of the Blendz® Store. Franchisor shall exercise its best efforts in managing the Blendz® Store, but shall not be liable for any losses incurred by the Blendz® Store during the time of such management or thereafter.

14.6 Waiver. Franchisor's consent to a transfer of any interest described herein shall not constitute a waiver of any claims that Franchisor may have against the transferring party, nor shall it be deemed a waiver of Franchisor's right to demand exact compliance with any of the terms of this Agreement by the transferee.

14.7 Public Offering. Stock, partnership interests, or other securities in Franchisee may be offered to the public only with the prior written consent of Franchisor, which consent shall not be unreasonably withheld. As a condition of its approval of such offering, Franchisor may, in its sole discretion, require that immediately after such offering (whether registered or exempt) the Controlling Principals retain a Controlling Interest in Franchisee. All materials required for such offering by federal or state law shall be submitted to Franchisor for a review limited solely to the subject of the relationship between Franchisee and Franchisor prior to being filed with any governmental agency. Any materials (including any private placement memorandum) to be used in any exempt offering or private placement shall be submitted to Franchisor for such review prior to their use. No offering shall imply (by use of the Marks or otherwise) that Franchisor is participating in an underwriting, issuance or offering of securities of Franchisee, Franchisor, or any affiliate of Franchisor. Franchisor may, at its option, require Franchisee's offering materials to contain a written statement prescribed by Franchisor concerning the limitations described herein. Franchisee, its Controlling Principals, and the other participants in the offering must fully indemnify Franchisor and its affiliates, and each of their respective officers, directors, shareholders, partners, agents, representatives, independent contractors and employees in connection with the offering. For each proposed offering, Franchisee shall pay to Franchisor a non-refundable fee of \$7,500, or such greater amount as is necessary to reimburse Franchisor for its reasonable costs and expenses associated with reviewing the proposed offering, including legal and accounting fees. Franchisee shall give

Franchisor written notice at least 30 days prior to the date of commencement of any offering or other transaction covered by this Section 14.7.

14.8 Other Principal's Transfer. If any Principal (including any Controlling Principal) holding an interest in Franchisee, the transfer of which is not subject to the preceding provisions of this Section 14, proposes to transfer such interest, then Franchisee shall promptly notify Franchisor of such proposed transfer in writing and shall provide such information relative thereto as Franchisor may reasonably request. The transferee may not be one of Franchisor's competitors. The transferee will become a Franchisee's Principal and as such shall execute a confidentiality agreement and ancillary covenants not to compete in the form then required by Franchisor, which form shall be in substantially the same form attached as **Attachment E**. Franchisor also reserves the right to designate the transferee as one of the Controlling Principals.

15. INDEMNIFICATION

15.1 Franchisee's Indemnification. Franchisee and each of the Controlling Principals shall, at all times, indemnify and hold harmless to the fullest extent permitted by law Franchisor, its affiliates, successors and assigns and their respective officers, directors, shareholders, partners, agents, representatives, independent contractors and employees ("**Indemnitees**"), from all "losses and expenses" (as defined in Section 15.4(b)) incurred in connection with any action, suit, proceeding, claim, demand, investigation or inquiry (formal or informal), or any settlement thereof (whether or not a formal proceeding or action has been instituted) which arises out of or is based upon any of the following:

(a) The infringement, alleged infringement, or any other violation or alleged violation by Franchisee or any of the Controlling Principals of any patent, mark or copyright or other proprietary right owned or controlled by third parties (except as such may occur with respect to any right to use the Marks, any copyrights or other proprietary information granted hereunder pursuant to Section 9);

(b) The violation, breach or asserted violation or breach by Franchisee or any of the Controlling Principals of any federal, state or local law, regulation, ruling, standard or directive or any industry standard;

(c) Libel, slander or any other form of defamation of Franchisor, the System or any developer or franchisee operating under the System, by Franchisee or by any of the Controlling Principals;

(d) The violation or breach by Franchisee or by any of the Controlling Principals of any warranty, representation, agreement or obligation in this Agreement or in any other agreement between Franchisee, and its affiliates, and Franchisor or its affiliates; and

(e) Acts, errors, or omissions of Franchisee, any of Franchisee's affiliates and any of the Controlling Principals and the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of Franchisee and its affiliates in connection with the establishment and operation of the Blendz® Store, including any acts, errors

or omissions of any of the foregoing in the operation of any motor vehicle. The parties understand and agree that Franchisor cannot and does not exercise control over the manner of operation of any motor vehicles used by, or on behalf of, Franchisee or any employee, agent or independent contractor of Franchisee and that the safe operation of any motor vehicle is therefore Franchisee's responsibility.

(f) The Indemnitees do not assume any liability whatsoever for acts, errors, or omissions of any third party with whom Franchisee, any of the Controlling Principals, Franchisee's affiliates or any of the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of Franchisee or its affiliates may contract, regardless of the purpose. Franchisee and each of the Controlling Principals shall hold harmless and indemnify the Indemnitees for all losses and expenses that may arise out of any acts, errors or omissions of Franchisee, the Controlling Principals, Franchisee's affiliates, the officers, directors, shareholders, partners, agents, representatives, independent contractors and employees of Franchisee and its affiliates and any such other third parties, without limitation and without regard to the cause or causes thereof or the negligence (whether such negligence be sole, joint or concurrent, active or passive) or strict liability of Franchisor or any other party or parties arising in connection therewith.

15.2 Notice. Franchisee and each of the Controlling Principals agree to give Franchisor immediate notice of any such action, suit, proceeding, claim, demand, inquiry, or investigation. At the expense and risk of Franchisee and each of the Controlling Principals, Franchisor may elect to assume (but under no circumstance is obligated to undertake) or associate counsel of its own choosing with respect to the defense and/or settlement of any such action, suit, proceeding, claim, demand, inquiry or investigation. Such an undertaking by Franchisor shall, in no manner or form, diminish the obligation of Franchisee and each of the Controlling Principals to indemnify the Indemnitees and to hold them harmless.

15.3 Franchisor's Right to Settle. In order to protect persons or property, or its reputation or goodwill, or the reputation or goodwill of others, Franchisor may, at any time and without notice, as it, in its judgment deems appropriate, consent or agree to settlements or take such other remedial or corrective action as it deems expedient with respect to the action, suit, proceeding, claim, demand, inquiry or investigation if, in Franchisor's sole judgment, there are reasonable grounds to believe that:

(a) any of the acts or circumstances enumerated in Section 15.4(a) through (d) have occurred; or

(b) any act, error, or omission as described in Section 15.4(e) may result directly or indirectly in damage, injury, or harm to any person or any property.

15.4 Payment of Losses and Expenses; Losses and Expenses Defined.

(a) All losses and expenses incurred under this Section 15 shall be chargeable to and paid by Franchisee or any of the Controlling Principals pursuant to its obligations of

indemnity under this Section, regardless of any actions, activity or defense undertaken by Franchisor or the subsequent success or failure of such actions, activity, or defense.

(b) As used in this Section 15, “**losses and expenses**” means and includes, without limitation, all losses, compensatory, exemplary, incidental, consequential or punitive damages, fines, charges, costs, expenses, lost profits, reasonable attorneys’ fees, court costs, settlement amounts, judgments, compensation for damages to the Franchisor’s reputation and goodwill, costs of or resulting from delays, financing, costs of advertising material and media time/space, and costs of changing, substituting or replacing the same, and any and all expenses of recall, refunds, compensation, public notices and other such amounts incurred in connection with the matters described.

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

15.6 Survival. Franchisee and the Controlling Principals expressly agree that the terms of this Section 15 shall survive the termination, expiration or transfer of this Agreement or any interest herein.

16. RELATIONSHIP OF THE PARTIES

16.1 Relationship of the Parties. The parties acknowledge and agree that this Agreement does not create a fiduciary relationship between them, that Franchisee shall be an independent contractor, and that nothing in this Agreement is intended to constitute either party an agent, legal representative, affiliate, joint venturer, partner, employee, joint employer or servant of the other for any purpose. Franchisee understands and agrees that nothing in this Agreement authorizes Franchisee or any of the Controlling Principals to make any contract, agreement, warranty or representation on Franchisor’s behalf, or to incur any debt or other obligation in Franchisor’s name, and that Franchisor shall in no event assume liability for, or be deemed liable under this Agreement as a result of, any such action, or for any act or omission of Franchisee or any of the Controlling Principals or any claim or judgment arising therefrom.

16.2 Independent Contractor. During the Initial Term of this Agreement and any Interim Period, Franchisee shall hold itself out to the public as an independent contractor conducting its Blendz® Store operations pursuant to the rights granted by Franchisor. Franchisee agrees to take such action as shall be necessary to that end, including, without limitation, exhibiting a notice of that fact in a conspicuous place in the Franchised Location, on any Blendz® Store catering vehicle, on all letterhead, business cards and forms, and as further described in the Operations Manual, the content and form of which Franchisor reserves the right to specify in writing.

17. TERMINATION AND DEFAULT REMEDIES

17.1 Defaults with Limited or No Cure Rights.

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

(b) Franchisee shall be in default under this Agreement, and all rights granted herein shall automatically terminate without notice to Franchisee:

(i) if Franchisee becomes insolvent or makes a general assignment for the benefit of creditors;

(ii) if Franchisee files a voluntary petition under any chapter of the U.S. Bankruptcy Code or under any similar law or statute of the United States or any state, or admits in writing its inability to pay its debts when due;

(iii) if Franchisee is adjudicated bankrupt or insolvent in proceedings filed against Franchisee under any chapter of the U.S. Bankruptcy Code or under any similar law or statute of the United States or any state; or if a bill in equity or other proceeding for the appointment of a receiver of Franchisee or other custodian for Franchisee's business or assets is filed and consented to by Franchisee; or if a receiver or other custodian (permanent or temporary) of any part of Franchisee's assets or property is appointed by any court of competent jurisdiction;

(iv) if proceedings for a composition with creditors under any state or federal law should be instituted by or against Franchisee;

(v) if a final judgment against Franchisee or a Controlling Principal for an amount in excess of \$10,000 remains unsatisfied or of record for 30 days or longer (unless superseded bond is filed);

(vi) if Franchisee is dissolved;

(vii) if execution is levied against Franchisee's business or property;

(viii) if suit to foreclose any lien or mortgage against the Franchised Location or equipment is instituted against Franchisee and not dismissed within 30 days; or

(ix) if the real or personal property of Franchisee's Blendz® Store shall be sold after levy by any sheriff, marshal or constable.

(c) Franchisee shall be in material default under this Agreement and Franchisor may, at its option, (i) suspend performance of certain or all of its services to the Franchisee during the time period Franchisee is in default of this Agreement; or (ii) terminate this Agreement and all rights granted the Franchisee hereunder, (subject to the provisions of applicable state law governing franchise termination and renewal), effective upon receipt of notice by the Franchisee, addressed as provided in Section 19.1, upon the occurrence of any of the following events:

(i) If Franchisee operates the Blendz® Store or sells any Products or services authorized by Franchisor for sale at the Blendz® Store at any location except the Franchised Location or Express Unit, if any;

(ii) If Franchisee fails to acquire a Franchised Location for the Blendz® Store within the time and in the manner specified in Section 2;

(iii) If Franchisee fails to construct or remodel the Blendz® Store in accordance with the standards and specifications provided to Franchisee under Section 5.2(c), as such may be adapted with Franchisor's approval in accordance with Sections 2.5 and 2.6;

(iv) If Franchisee fails to obtain all licenses required to operate the Blendz® Store as a full-service Blendz® Store or fails to open the Blendz® Store for business as a full-service Blendz® Store within the period specified in Section 2.4;

(v) If Franchisee at any time ceases to operate or otherwise abandons the Blendz® Store, or loses the right to possession of the premises, or otherwise forfeits the right to do or transact business in the jurisdiction where the Blendz® Store is located; provided that this provision shall not apply in cases of Force Majeure (acts of God, strikes, lockouts or other industrial disturbances, war, riot, terrorist attack, epidemic, fire or other catastrophe or other forces beyond Franchisee's control), if through no fault of Franchisee, the premises are damaged or destroyed by an event as described above and if Franchisee applies within 30 days after such event for Franchisor's approval to relocate or reconstruct the premises (which approval shall not be unreasonably withheld but may be conditioned upon the payment of an agreed minimum fee to Franchisor during the period in which the Blendz® Store is not in operation) and Franchisee diligently pursues such reconstruction or relocation;

(vi) If Franchisee or any of the Controlling Principals is convicted of, or has entered a plea of *nolo contendere* (no contest) to, a felony, a crime involving moral turpitude, or any other crime or offense that Franchisor believes is reasonably likely to have an adverse effect on the System, the Marks, the goodwill associated with them, or Franchisor's interests in them, including any violation of any nature whatsoever of any laws, statutes, ordinances or regulations pertaining to the purchase, storage, sale, taxation, reporting of sales and service of alcoholic beverages and any suspension, revocation or other disciplinary action with respect thereto;

(vii) If a threat or danger to public health or safety results from the construction, maintenance or operation of the Blendz® Store;

(viii) If Franchisee fails to propose a qualified replacement or successor Operating Principal or Designated Store Manager within the time required under Sections 6.2(e) and 6.3(c), respectively;

(ix) If Franchisee or any of the Controlling Principals purports to transfer any rights or obligations under this Agreement or any interest in Franchisee or the assets of the Blendz® Store to any third party contrary to the terms of Section 14 or prior to the construction and opening of the Blendz® Store for business to the public under Section 2;

(x) If Franchisee or any of its affiliates fails, refuses, or neglects promptly to pay any monies owing to Franchisor or its affiliates, when due under this Agreement or any other agreement, or to submit the financial or other information required by Franchisor under this Agreement and does not cure such default within five days following notice being sent by Franchisor (or such other applicable cure period contained in such other agreement or required by law);

(xi) If Franchisee or any of the Controlling Principals fails to comply with the in-term covenants in Section 10.3(a) or Franchisee fails to obtain execution of the covenants and related agreements required under Section 10.3(b)(iv) within 30 days after being requested to do so by Franchisor;

(xii) If, contrary to the terms of Section 10.2(a), Franchisee or any of the Controlling Principals discloses or divulges any Confidential Information or Trade Secrets provided to Franchisee or the Controlling Principals by Franchisor, or fails to obtain execution of covenants and related agreements required under Section 10.2(d) within 30 days after being requested to do so by Franchisor;

(xiii) If a transfer upon death or permanent disability is not made in accordance with Section 14;

(xiv) If Franchisee knowingly maintains false books or records, or submits any false reports to Franchisor;

(xv) If Franchisee or any of the Controlling Principals breaches any of the covenants in any material respect set forth in Section 6 or have falsely made any of the representations or warranties set forth in Section 6;

(xvi) If Franchisee fails to procure and maintain the insurance coverage required by Section 12 and Franchisee fails to cure such default within 7 days following notice from Franchisor;

(xvii) If Franchisee misuses or makes any unauthorized use of the Marks or otherwise materially impairs the goodwill associated with them or Franchisor's rights in them; provided that Franchisee shall be entitled to notice of such event of default and shall have 24 hours to cure such default;

(xviii) If Franchisee fails to obtain, install and maintain the hardware, software and communication lines required pursuant to Section 7.2(j), and Franchisee fails to cure such default within 24 hours following notice from Franchisor;

(xix) If Franchisee or any of the Controlling Principals repeatedly commits or allows to occur a material default under this Agreement, whether or not such defaults are of the same or different nature and whether or not such defaults have been cured by Franchisee after notice by Franchisor; or

(xx) If Franchisee or any of its affiliates fails or refuses to comply with any terms and conditions of any sublease or related agreement between Franchisor or its affiliates and Franchisee or its affiliates, and does not cure such default within any notice and cure period provided for in such sublease or related agreement following notice from Franchisor of such default (unless no cure period is specified in the sublease or other agreement, in which case the notice and cure period provided in Section 17.2 shall apply).

17.2 Curable Defaults. Except as provided in Sections 17.1(b) and (c) upon any default by Franchisee that is susceptible of being cured, Franchisor may terminate this Agreement by giving written notice of termination stating the nature of such default to Franchisee at least 30 days prior to the effective date of termination. Franchisee may avoid termination by immediately initiating a remedy to cure such default and curing it to Franchisor's satisfaction within the 30-day period and by promptly providing proof of the cure to Franchisor. If any such default is not cured within the specified time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Franchisee effective immediately upon the expiration of the 30-day period or such longer period as applicable law may require. Defaults that are susceptible of cure include, but are not limited to, the following illustrative events:

(a) If Franchisee fails to comply with any of the requirements imposed by this Agreement, as it may from time to time be amended or reasonably be supplemented by Franchisor through the Operations Manual or otherwise, or fails to carry out the terms of this Agreement in good faith.

(b) If Franchisee fails to maintain or observe any of the standards, specifications or procedures prescribed by Franchisor in this Agreement, the Operations Manual or otherwise in writing.

(c) If Franchisee fails, refuses, or neglects to obtain Franchisor's prior written approval or consent as required by this Agreement.

17.3 Damages. In the event this Agreement is terminated by Franchisor pursuant to this Section 17, or if Franchisee breaches this Agreement by a wrongful termination or a termination that is not in accordance with the terms and conditions of this Section 17, then Franchisor will be entitled to seek recovery from Franchisee for all of the damages that Franchisor has sustained and will sustain in the future as a result of Franchisee's breach of this Agreement, which will include damages based upon the Continuing Fees, Advertising Fees and

other fees that would have been payable by Franchisee for the remaining Initial Term of this Agreement.

17.4 Letter of Credit. If Franchisee breaches this Agreement by failing to timely pay any of its uncontested obligations or liabilities due and owing to a supplier (which may include Franchisor), then Franchisor will have the right to require Franchisee, in addition to paying any amounts owed, to provide a Letter of Credit to the supplier in order to correct the breach.

18. POST-TERMINATION

18.1 Franchisee's Post-Termination/Expiration Obligations. Upon termination or expiration of this Agreement, all rights granted hereunder to Franchisee shall immediately terminate, and:

(a) Franchisee shall immediately cease to operate the Blendz® Store under the System and in association with the Marks, and shall not afterwards, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of Franchisor.

(b) Franchisee shall immediately and permanently cease to use, in any manner whatsoever, any Confidential Information, Trade Secrets, methods, computer software, procedures, and techniques associated with the System; and the mark "Blendz®" and all other Marks and distinctive forms, slogans, signs, symbols, and devices associated with the System. In particular, Franchisee shall cease to use all signs, advertising materials, displays, stationery, forms and any other articles which display any of the Marks.

(c) Franchisee shall take such action as may be necessary to cancel any assumed name or equivalent registration that contains the mark "Blendz®" or any other service mark or trademark of Franchisor or its affiliates, and Franchisee shall furnish Franchisor with evidence satisfactory to Franchisor of compliance with this obligation within 5 days after termination or expiration of this Agreement.

(d) Franchisee and the Controlling Principals shall promptly pay all sums owing to Franchisor and its affiliates. Such sums shall include all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor as a result of any default by Franchisee, which obligation shall give rise to and remain, until paid in full, a lien in favor of Franchisor against any and all of the personal property, furnishings, equipment, signs, fixtures, and inventory owned by Franchisee and on the Franchised Location at the time of default.

(e) Franchisee and the Controlling Principals shall pay to Franchisor all damages, costs and expenses, including reasonable attorneys' fees, incurred by Franchisor in connection with obtaining any remedy available to Franchisor for any violation of this Agreement and subsequent to the termination or expiration of this Agreement in obtaining injunctive or other relief for the enforcement of any provisions of this Section 18.

(f) Franchisee shall immediately deliver to Franchisor the Operations Manual and all Business Records, files, instructions and correspondence related to operating the Blendz®

Store, any computer software licensed by Franchisor and associated computer files and customer files generated and/or maintained by such software, all materials related to operating the Blendz® Store, including agreements, invoices, and any and all other materials relating to the operation of the Blendz® Store in Franchisee's possession or control, and all copies thereof (all of which are acknowledged to be Franchisor's property), and shall retain no copy or record of any of the foregoing, except Franchisee's copy of this Agreement and of any correspondence between the parties and any other documents that Franchisee reasonably needs for compliance with any provision of law.

(g) Franchisee and the Controlling Principals shall comply with the non-competition covenants and the restrictions on Confidential Information and Trade Secrets contained in Section 10. Any other person required to execute similar covenants pursuant to Section 10 shall also comply with such covenants.

(h) Franchisee shall immediately furnish Franchisor an itemized list of all advertising and sales promotion materials bearing the Marks or any of Franchisor's distinctive markings, designs, labels, or other Marks, whether located on the Franchised Location or under Franchisee's control at any other location. Franchisor shall have the right to inspect these materials. Franchisor shall have the option, exercisable within 30 days after such inspection, to purchase any or all of the materials at Franchisee's cost, or to require Franchisee to destroy or properly dispose of such materials. Materials not purchased by Franchisor shall not be used by Franchisee or any other party for any purpose unless authorized in writing by Franchisor.

(i) If Franchisee operates the Blendz® Store under a lease for the Franchised Location with a third party or, with respect to any lease for equipment used in the operation of the Blendz® Store, Franchisee shall, at Franchisor's option, assign to Franchisor any interest which Franchisee has in any lease or sublease for Franchised Location or any equipment related thereto. Franchisor may exercise such option at or within 30 days after either termination or (subject to any existing right to extend Franchisee's rights to operate the Blendz® Store) expiration of this Agreement. In the event Franchisor does not elect to exercise its option to acquire the lease or sublease for the Franchised Location, Franchisee shall make such modifications or alterations to the Franchised Location as are necessary to distinguish the appearance of the Blendz® Store from that of other stores operating under the System and shall make such specific additional changes as Franchisor may reasonably request. If Franchisee fails or refuses to comply with the requirements of this Section 18.1, Franchisor shall have the right to enter upon Franchised Location, without being guilty of trespass or any other crime or tort, to make or cause to be made such changes as may be required, at the expense of Franchisee, which expense Franchisee agrees to pay upon demand.

(j) Franchisee, at the option of Franchisor, shall assign to Franchisor all rights to the telephone numbers of the Blendz® Store and any related Yellow Pages or other business listings and execute all forms and documents required by Franchisor and any telephone company at any time to transfer such service and numbers to Franchisor. Notwithstanding any forms and documents that may have been executed by Franchisor under Section 7.6, Franchisee hereby irrevocably appoints Franchisor its true and lawful agent and attorney-in-fact with full power and authority, for the sole purpose of taking such action as is necessary to complete such assignment.

This power of attorney shall survive the expiration or termination of this Agreement. Franchisee shall thereafter use different telephone numbers at or in connection with any subsequent business conducted by Franchisee.

18.2 Franchisor's Option to Purchase Blendz® Store Assets or Premises.

(a) Except as provided in Section 18 Franchisor shall have the option, to be exercised within 30 days after termination or expiration of this Agreement, to purchase from Franchisee any or all of the furnishings, equipment, signs, fixtures, motor vehicles, supplies, and inventory of Franchisee related to the operation of the Blendz® Store at Franchisee's cost or fair market value, whichever is less. Franchisor shall be purchasing Franchisee's assets only and shall be assuming no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If the parties cannot agree on the fair market value within 30 days of Franchisor's exercise of its option, fair market value shall be determined by 2 appraisers, with each party selecting one appraiser, and the average of their determinations shall be binding. In the event of such appraisal, each party shall bear its own legal and other costs and shall split the appraisal fees equally. If Franchisor elects to exercise any option to purchase herein provided, it shall have the right to set off all amounts due from Franchisee to Franchisor or any of its affiliates (including any costs for the appraisal) and any costs incurred in connection with any escrow arrangement (including reasonable legal fees) against any payment therefor and shall pay the remaining amount in cash.

(b) In addition to the options described above and if Franchisee owns the Franchised Location, Franchisor shall have the option, to be exercised at or within 30 days after termination or expiration of this Agreement, to purchase the Franchised Location for the fair market value of the land and building. Franchisor shall purchase assets only and shall assume no liabilities whatsoever, unless otherwise agreed to in writing by the parties. If Franchisee owns the building, but not the land on which the Franchised Location is operated, and Franchisor exercises its option for an assignment of the lease, Franchisor may exercise this option for the purpose of purchasing the building. If the parties cannot agree on fair market value within 30 days of Franchisor's exercise of its option, fair market value shall be determined in accordance with appraisal procedure described above.

(c) With respect to the options described in Sections 18.1 and 18.2(a) and (b), Franchisee shall deliver to Franchisor in a form satisfactory to Franchisor, such warranties, deeds, releases of lien, bills of sale, assignments and such other documents and instruments which Franchisor deems necessary in order to perfect Franchisor's title and possession in and to the properties being purchased or assigned and to meet the requirements of all tax and government authorities. If, at the time of closing, Franchisee has not obtained all of these certificates and other documents, Franchisor may, in its sole discretion, place the purchase price or rent in escrow pending issuance of any required certificates or documents.

(d) The time for closing of the purchase and sale of the properties described in Section 18.2(a) and (b) shall be a date not later than 60 days after the purchase price is determined by the parties or the determination of the appraisers, or such date Franchisor receives and obtains all necessary permits and approvals, whichever is later, unless the parties mutually agree to designate another date. The time for closing on the assignment of the lease described in

Section 18.1(i). shall be a date no later than 10 days after Franchisor's exercise of its option thereunder unless Franchisor is exercising its options under either Section 18.2(a) and (b), in which case the date of the closing shall be on the same closing date prescribed for such option. Closing shall take place at Franchisor's corporate offices or at such other location as the parties may agree.

18.3 Assignment by Franchisee. Franchisor shall be entitled to assign any and all of its options in this Section to any other party without the consent of Franchisee.

19. GENERAL PROVISIONS; CHOICE OF LAW; DISPUTE RESOLUTION

19.1 Notices. Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by expedited or overnight delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by prepaid facsimile, telegram or telex (provided that the sender confirms the facsimile, telegram or telex by sending an original confirmation copy by certified or registered mail or expedited or overnight delivery service within 3 business days after transmission) to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other party:

Notices to Franchisor: Blendz Franchise System, Inc.
267 E. Campbell Avenue, Suite 200
Campbell, California 95008
Attention: Vice President
Telephone: (866) 4-BLENDZ
Facsimile: (408)273-6766

With a copy (which shall not constitute notice) to: Jennifer F. Wisniewski, Esq.
Snell & Wilmer L.L.P.
1200 17th Street, Suite 1900
Denver, Colorado 80202
Telephone: (303) 634-2011
Facsimile: (303) 634-2020

Notices to Franchisee and the Controlling Principals: _____
Attention: _____
Telephone: _____
Facsimile: _____

Any notice shall be deemed to have been given at the time of personal delivery or, in the case of facsimile, telegram or telex, upon transmission (provided confirmation is sent as described above) or, in the case of expedited or overnight delivery service or registered or certified mail the earlier of actual receipt or three business days after the date and time of mailing or delivery pick up.

19.2 Entire Agreement. This Agreement, the documents referred to herein, and the Attachments hereto, constitute the entire, full and complete agreement between Franchisor, Franchisee and the Controlling Principals concerning the subject matter hereof and supersede all prior related agreements between Franchisor and Franchisee or the Controlling Principals. Except for those permitted to be made unilaterally by Franchisor hereunder, no amendment, change or variance from this Agreement shall be binding on either party unless mutually agreed to by the parties and executed by their authorized officers or agents in writing.

19.3 Waiver. No delay, waiver, omission or forbearance on the part of Franchisor to exercise any right, option, duty or power arising out of any breach or default by Franchisee or the Controlling Principals under this Agreement shall constitute a waiver by Franchisor to enforce any such right, option, duty or power against Franchisee or the Controlling Principals, or as to a subsequent breach or default by Franchisee or the Controlling Principals. Acceptance by Franchisor of any payments due to it hereunder subsequent to the time at which such payments are due shall not be deemed to be a waiver by Franchisor of any preceding breach by Franchisee or the Controlling Principals of any terms, provisions, covenants or conditions of this Agreement.

19.4 Consent. Whenever this Agreement requires the prior approval or consent of Franchisor, Franchisee shall make a timely written request to Franchisor, and such approval or consent shall be obtained in writing.

19.5 No Warranties. Franchisor makes no warranties or guarantees upon which Franchisee may rely and assumes no liability or obligation to Franchisee or any third party to which it would not otherwise be subject, by providing any waiver, approval, advice, consent or suggestion to Franchisee in connection with this Agreement, or by reason of any neglect, delay or denial of any request therefor.

19.6 Force Majeure. If a Force Majeure event shall occur, then, in addition to payments required under Section 17.1(c)(v), Franchisee shall continue to be obligated to pay to Franchisor any and all amounts that it shall have duly become obligated to pay in accordance with the terms of this Agreement prior to the occurrence of any Force Majeure event, and the Indemnitees shall continue to be indemnified and held harmless by Franchisee in accordance with Section 15. Except as provided in Section 7.1(c)(v) and the immediately preceding sentence, none of the parties shall be held liable for a failure to comply with any terms and conditions of this Agreement when such failure is caused by an event of Force Majeure. Upon the occurrence of any event of the type referred to herein, the party affected thereby shall give prompt notice thereof to the other parties, together with a description of the event, the duration for which the party expects its ability to comply with the provisions of the Agreement to be affected thereby and a plan for resuming operation under the Agreement, which the party shall promptly undertake and maintain with due diligence. Such affected party shall be liable for failure to give timely notice only to the extent of damage actually caused.

19.7 Applicable Law.

(a) This Agreement takes effect upon its acceptance and execution by Franchisor. This Agreement shall be interpreted and construed under the laws of the State of California, without regard to conflict of laws principals, except to the extent governed by the United States Trademark Act of 1946 (Lanham Act, 15 U.S.C. Section 1051 et seq.).

(b) Except as set forth in Section 15, Franchisor, Franchisee, and the Controlling Principals agree that any claim, controversy or dispute brought by any party against the other shall be brought in San Jose, California, and Franchisor, Franchisee, and the Controlling Principals do hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

(c) No right or remedy conferred upon or reserved by Franchisor, Franchisee, or the Controlling Principals by this Agreement is intended and it shall not be deemed to be exclusive of any other right or remedy provided or permitted herein, by law or at equity, but each right or remedy shall be cumulative of every other right or remedy.

(d) Nothing herein contained shall bar Franchisor's right to obtain injunctive relief against threatened conduct that will cause it loss or damage under the usual equity rules, including the applicable rules for obtaining restraining orders and preliminary injunctions.

(e) Franchisee, the Controlling Principals and Franchisor acknowledge that the parties' agreement regarding applicable state law and forum set forth in this Section 19.7(e) provides 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. Each of Franchisee, the Controlling Principals and Franchisor further acknowledges the receipt and sufficiency of mutual consideration for such benefit.

19.8 Arbitration.

(a) Except in the case of any Franchisor-sponsored dispute resolution program created in accordance with Section 19.9, the parties agree that any and all controversies, claims and disputes between them arising out of or related to this Agreement that cannot be amicably settled shall be finally resolved by submitting such matter to the American Arbitration Association ("AAA") in San Jose, California for binding arbitration under the AAA's Commercial Arbitration Rules. A single arbitrator shall be selected in accordance with standard AAA procedure. In accordance with the terms of the Federal Arbitration Act, the arbitrator shall hear the dispute in San Jose, California. Each party shall bear all of its own costs and attorneys' fees and one-half of the arbitrator's expenses. The decision of the arbitrator shall be final and binding. Franchisee and its Controlling Principals know, understand and agree that it is the intent of the parties that any arbitration between Franchisor and Franchisee or its Controlling Principals shall be of Franchisee's (or its Controlling Principals') individual claims and that the claims subject to arbitration shall not be arbitrated in conjunction with the claims of other developers, franchisees or on a class-wide basis and Franchisee and the Controlling Principals hereby waive

any right it or they may assert to have its claims arbitrated in conjunction with the claims of other developers, franchisees or on a class-wide basis.

(b) Notwithstanding any provision contained in this Section 19, the Franchisor may, at its sole option, institute an action or actions for temporary or preliminary injunctive relief or seeking any other temporary or permanent equitable relief against Franchisee or its Controlling Principals that may be necessary to protect its trademarks or other rights or property. However, in Franchisor's sole discretion, the final right of determination of the ultimate controversy, claim or dispute shall be decided by arbitration as aforesaid and recourse to the courts shall thereafter be limited to seeking an order to enforce an arbitral award. In no event shall Franchisee or the Controlling Principals be entitled to make, Franchisee or the Controlling Principals shall not make, and Franchisee and the Controlling Principals hereby waive, any claim for money damages by way of set off, counterclaim, defence or otherwise based upon any claim or assertion by Franchisee or the Controlling Principals that Franchisor has unreasonably withheld or unreasonably delayed any consent or approval to a proposed act by the Franchisee or the Controlling Principals under any of the terms of this Agreement. The Franchisee's and the Controlling Principals' sole remedy for any such claim shall be an action or proceeding to enforce any such provisions, for specific performance or declaratory judgment.

(c) The Franchisee and the Controlling Principals agree that if, notwithstanding the limitation on liability referred to in Section 18.1(d), a court asserts jurisdiction over Franchisor's affiliate or parent with respect to any controversy, claim or dispute concerning any conduct, service, act, transaction of, or other matters relating to Parent arising out of or related to this Agreement, the System, the Marks, or the Blendz® Store, at Franchisor parent's or affiliate's request, Franchisee will arbitrate such controversy, claim or dispute in accordance with this Section 19.8. Parent shall be a third party beneficiary of this Section 19 and, as such, shall be able to enforce this arbitration agreement against Franchisee and its Controlling Principals.

19.9 Other Dispute Resolution Mechanism. 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 developers and franchisees conducting business under the System. The standards, specifications, procedures and rules for such dispute resolution program shall be made part of the Operations Manual, and 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 developers or franchisees, if applicable under the program. If Franchisor, in its sole discretion, makes such dispute resolution program mandatory, Franchisee, the Controlling Principals 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, or in lieu of, seeking resolution of such claims, controversies or disputes in the manner described in Sections 19.7 through 19.9 (provided that the provisions of Section 19.8 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 19.9) or if such claim, controversy or dispute relates to another developer or franchisee,

Franchisee and Controlling Principals agree 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 judicial or legally available means.

19.10 Waiver of Damages. Franchisee and the Controlling Principals waive, to the fullest extent permitted by law, any right to or claim of 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 agree that in the event of a dispute, Franchisee and the Controlling Principals shall be limited to the recovery of any actual damages sustained by it or them. 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 shall continue in full force and effect.

19.11 Limitation of Claims. Franchisor, Franchisee and the Controlling Principals agree that no form of proceeding will be maintained by any party to enforce any liability or obligation of the other party, whether arising from this Agreement or otherwise, unless brought before the expiration of the earlier of: (i) 1 year after the date of discovery of the facts resulting in such liability or obligation, or (ii) 2 years after the date of the first act or omission giving rise to the alleged liability or obligation, except that where state or federal law mandate or make possible by notice or otherwise a shorter period, such shorter period shall apply.

19.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which when so executed shall be an original, and all of which shall constitute one and the same instrument.

19.13 Headings. The captions used in connection with the sections and subsections of this Agreement are inserted only for purpose of reference. Such captions shall not be deemed to govern, limit, modify or in any other manner affect the scope, meaning or intent of the provisions of this Agreement or any part thereof nor shall such captions otherwise be given any legal effect.

19.14 Survival. Any obligation of Franchisee or the Controlling Principals that contemplates performance of such obligation after termination or expiration of this Agreement or the transfer of any interest of Franchisee or the Controlling Principals therein, shall be deemed to survive such termination, expiration or transfer, including the provisions of this Section 19.

19.15 Severable. Except as expressly provided to the contrary in this Agreement, each portion, section, part, term and provision of this Agreement shall be considered severable. If, for any reason, any portion, section, part, term or provision of this Agreement is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, this shall not impair the operation of, or have any other effect upon, the other portions, sections, parts, terms or provisions of this Agreement that may remain

otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties. The invalid portions, sections, parts, terms or provisions shall be deemed not to be part of this Agreement, and there shall be automatically added such portion, section, part, term or provision as similar as possible to that which was severed which shall be valid and not contrary to or in conflict with any law or regulation.

19.16 Gender. All references in this Agreement to the masculine, neuter or singular shall be construed to include the masculine, feminine, neuter or plural, where applicable. Without limiting the obligations individually undertaken by the Controlling Principals under this Agreement, all acknowledgments, promises, covenants, agreements and obligations made or undertaken by Franchisee in this Agreement shall be deemed, jointly and severally, undertaken by all of the Controlling Principals.

19.17 Remedies. All rights and remedies of the parties to this Agreement shall be cumulative and not alternative, in addition to and not exclusive of any other rights or remedies which are provided for herein or which may be available at law or in equity in case of any breach, failure or default or threatened breach, failure or default of any term, provision or condition of this Agreement or any other agreement between Franchisee, and Franchisor or their respective affiliates. The rights and remedies of the parties to this Agreement shall be continuing and shall not be exhausted by any one or more exercises thereof, and may be exercised at any time or from time to time as often as may be expedient; and any option or election to enforce any such right or remedy may be exercised or taken at any time and from time to time. The expiration, earlier termination or exercise of Franchisor's rights pursuant to Section 14 shall not discharge or release Franchisee or any of the Controlling Principals from any liability or obligation then accrued, or any liability or obligation continuing beyond, or arising out of, the expiration, the earlier termination or the exercise of such rights under this Agreement.

19.18 Corporations, Partnerships, Limited Liability Companies. Each reference in this Agreement to a corporation or partnership shall be deemed to also refer to a limited liability company and any other similar entity or organization. Each reference to the organizational documents, equity owners, directors, and officers of a corporation in this Agreement shall be deemed to refer to the functional equivalents of such organizational documents, equity owners, directors, and officers, as applicable, in the case of a limited liability company or any other similar entity or organization.

19.19 Rights Under Agreement. Except as expressly provided to the contrary, nothing in this Agreement is intended, nor shall be deemed, to confer upon any person or legal entity other than Franchisee, Franchisor, and their respective permitted successors and assigns, any rights or remedies under or as a result of this Agreement.

19.20 Effective Upon Execution. This Agreement shall not become effective until signed by an authorized officer of Franchisor.

20. ACKNOWLEDGMENTS

20.1 Franchisee's Acknowledgements. Franchisee acknowledges:

(a) that it has conducted an independent investigation of the business venture contemplated by this Agreement and recognizes that the success of this business venture involves substantial business risks and will largely depend upon the ability of Franchisee. Franchisor expressly disclaims making, and Franchisee acknowledges that it has not received or relied on, any warranty or guarantee, express or implied, as to the potential volume, profits or success of the business venture contemplated by this Agreement.

(b) that Franchisee has received, read and understands this Agreement and the related Attachments and agreements and that Franchisor has afforded Franchisee sufficient time and opportunity to consult with advisors selected by Franchisee about the potential benefits and risks of entering into this Agreement.

(c) that it received a complete copy of this Agreement and all related Attachments and agreements at least 5 business days prior to the date on which this Agreement was executed. Franchisee further acknowledges that it has received and carefully read the disclosure document required by the Trade Regulation Rule of the Federal Trade Commission entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative as of the date first above written.

FRANCHISOR:

BLENDZ FRANCHISE SYSTEM, INC.,
a California corporation

By: _____

Name: _____

Title: _____

*Date: _____

FRANCHISEE:

Name: _____

Title: _____

Date: _____

* Considered the Effective Date of this Agreement.

ATTACHMENT A

FRANCHISED LOCATION, AUTHORIZED TERRITORY, AREA OF PRIMARY RESPONSIBILITY, AND OPENING DATE

1. SITE SELECTION AREA

Pursuant to Section 2.1(a) of the Franchise Agreement, the Site Selection Area shall be:

2. FRANCHISED LOCATION

Pursuant to Section 2.1(a) of the Franchise Agreement, the Blendz® Store shall be located at the following location:

2. AUTHORIZED TERRITORY

Pursuant to Section 2.2 of the Franchise Agreement, the Authorized Territory shall be:

3. LOCAL AREA

Pursuant to Section 8.1(b) of the Franchise Agreement, the Local Area shall be:

4. OPENING DATE

Pursuant to Section 2.8 of the Franchise Agreement, the Opening Date of the Blendz® Store is on or before _____, 20__.

ATTACHMENT B
DESCRIPTION OF MARKS

Mark	Application Filing or Registration Date	Status	Serial No.	Registration No.
BLENDZ® (Restaurant Services)	July 14, 1998	Registered Live	75/303,119	2,172,840
BLENDZ (Frozen Smoothies)	October 25, 2005	Pending	78/740,242	N/A
BLENDZ (Franchise Services)	November 16, 2005	Pending	78/755,474	N/A

ATTACHMENT C

LEASE RIDER

This Lease Rider is made and entered into this ____ day of _____, 20____ by and between Blendz Franchise System, Inc., a California corporation ("**Franchisor**"), _____ ("**Franchisee**"), and _____ ("**Landlord**").

WHEREAS, Franchisor and Franchisee are parties to that certain Franchise Agreement dated _____, 20____ ("**Franchise Agreement**");

WHEREAS, Franchisee and Landlord desire to enter into a lease ("**Lease**") pursuant to which Franchisee will occupy the premises located at _____ ("**Premises**") for an Blendz® Store ("**Blendz® Store**") licensed under the Franchise Agreement; and

WHEREAS, as a condition to entering into the Lease, the Franchisee is required under the Franchise Agreement to execute this Lease Rider along with the Landlord and Franchisor;

NOW, THEREFORE, in consideration of the mutual undertakings and commitments set forth herein and in the Franchise Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. During the term of the Franchise Agreement, the Premises shall be used only for the operation of the Blendz® Store;
2. Landlord consents to the Franchisee's use of such Franchisor's proprietary marks ("**Marks**") and signs, decor, color scheme and related components of the System as Franchisor may prescribe for the Blendz® Store;
3. Landlord agrees to furnish Franchisor with copies of any and all letters and notices sent to Franchisee pertaining to the lease and the Premises, at the same time that such letters and notices are sent to Franchisee. Franchisor shall have the right, but not the obligation, to cure any of Franchisee's defaults and to thereby assume Franchisee's occupancy rights in accordance with Section 6 of this Lease Rider;
4. That Franchisee may not sublease or assign all or any part of its occupancy rights, or extend the term of or renew the lease, without Franchisor's prior written consent, which shall not be unreasonably withheld;
5. That Franchisor shall have the right to enter the premises to make any modification necessary to protect Franchisor's Marks or to cure any default under the lease or under the Franchise Agreement or the Area Development Agreement, without being guilty of trespass or any other crime or tort, and the Landlord shall not be responsible for any expense or damages arising from Franchisor's action in connection therewith;

6. That Franchisee shall have the right to assign the lease to the Franchisor, and the Franchisor shall have the option to assume Franchisee's occupancy rights, and the right to sublease, for all or any part of the term of the lease, without the Landlord having any right to impose conditions on such assignment or assumption or to obtain payment in connection therewith;

7. That Franchisee and Landlord shall not amend or otherwise modify the lease in any manner that would materially affect any of the foregoing requirements without Franchisor's prior written consent; and

8. That Landlord acknowledges and agrees that any furniture, fixtures, equipment or personal property maintained by Franchisee on the leased Premises, whether leased or owned by Franchisee, are not the property of Landlord and shall be subject to Franchisor's purchase option provided for herein or in the Franchise Agreement for such Franchised Location in the event of Franchisee's default under the lease or the Franchise Agreement, and may be removed at expiration or termination of the lease, so long as such removal is accomplished without damage to the leased facility. Landlord agrees that it shall not assert or claim any lien rights against any furniture, fixtures, equipment or personal property maintained by Franchisee at the Premises at any time or for any reason.

9. The terms of this Lease Rider will supersede any conflicting terms of the Lease.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Lease Rider as of the date first above written.

BLENDZ FRANCHISE SYSTEM, INC.
a California corporation

By: _____
Name: _____
Title: _____

FRANCHISEE:

By: _____
Name: _____
Title: _____

LANDLORD:

By: _____
Name: _____
Title: _____

ATTACHMENT D

**STATEMENT OF OWNERSHIP INTERESTS,
PRINCIPALS AND CONTROLLING PRINCIPALS**

- A. The following is a list of stockholders, partners or other investors in Franchisee, including all investors who own or hold a direct or indirect equity interest in Franchisee, and a description of the nature of their interests:

<u>Name</u>	<u>Percentage of Ownership/ Nature of Interest</u>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

- B. The following is a list of all of Franchisee's Principals described in and designated pursuant to the Franchise Agreement, except those who have been designated as Controlling Principals:

- C. The following is a list of all of Franchisee's Controlling Principals described in and designated pursuant to the Franchise Agreement:

ATTACHMENT E

CONFIDENTIALITY AGREEMENT AND ANCILLARY COVENANTS NOT TO COMPETE

Delete this agreement

This Agreement is made and entered into this ____ day of _____, 20____,
between Blendz Franchise System, Inc., a California corporation ("**Franchisor**"),

("**Franchisee**"), and _____ ("**Employee**").

RECITALS

WHEREAS, Franchisor's parent has developed, and Franchisor has acquired the right to use and license the use of a distinctive system ("**System**") for the development and operation of _____ related food items in a casual dining atmosphere and that operate under the name BLENDZ® ("**Blendz® Stores**"); and

WHEREAS, the System includes, but is not limited to, certain trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin, including, but not limited to, the mark BLENDZ® and such other trade names, service marks, trademarks, symbols, logos, emblems and indicia of origin as Franchisor may develop in the future to identify for the public the source of services and products marketed under such marks ("**Marks**") and under the System and representing the System's high standards of quality, appearance and service and distinctive exterior and interior design, decor, color scheme, and furnishings; special recipes and menu items; prescribed beverage selection; uniform standards, specifications, and procedures for operations; quality and uniformity of products and services offered; procedures for inventory, management and financial control; training and assistance; and advertising and promotional programs; all of which may be changed, improved and further developed by Franchisor from time to time and are used by Franchisor in connection with the operation of the System ("**Trade Secrets**"); and

WHEREAS, the Marks and Trade Secrets provide economic advantages to Franchisor, and the Trade Secrets are not generally known to, and are not readily ascertainable by proper means by, Franchisor's competitors who could obtain economic value from knowledge and use of the Trade Secrets; and

WHEREAS, Franchisor has taken and intends to take all reasonable steps to maintain the confidentiality and secrecy of the Trade Secrets; and

WHEREAS, Franchisor has granted Franchisee the right to operate a Blendz® Store using the System and the Trade Secrets for the period defined in the Franchise Agreement dated _____, 20____ ("**Franchise Agreement**"), between Franchisor and Franchisee; and

WHEREAS, Franchisor and Franchisee have agreed in the Franchise Agreement on the importance to Franchisor and to Franchisee and other licensed users of the System of restricting the use, access and dissemination of the Trade Secrets; and

WHEREAS, it will be necessary for certain employees, agents, independent contractors, officers, directors and interest holders of Franchisee, or any entity having an interest in Franchisee ("**Covenantor**") to have access to and to use some or all of the Trade Secrets in the management and operation of Franchisee's business using the System; and

WHEREAS, Franchisee has agreed to obtain from those Covenantors written agreements protecting the Trade Secrets and the System against unfair competition; and

WHEREAS, Covenantor wishes to remain, or wishes to become, employed by or associated with Franchisee; and

WHEREAS, Covenantor wishes and needs to receive and use the Trade Secrets in the course of his or her employment or association in order to effectively perform his or her services for Franchisee; and

WHEREAS, Covenantor acknowledges that receipt of and the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises and covenants made by Covenantor herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

CONFIDENTIALITY AGREEMENT

1. Franchisor and/or Franchisee shall disclose to Covenantor some or all of the Trade Secrets relating to the System. All information and materials, including, without limitation, any manuals, drawings, specifications, techniques and compilations of data which Franchisor provides to Franchisee and/or Covenantor shall be deemed confidential Trade Secrets for the purposes of this Agreement.

2. Covenantor shall receive the Trade Secrets in confidence and shall, at all times, maintain them in confidence, and use them only in the course of his or her employment by or association with Franchisee and then only in connection with the development and/or operation by Franchisee of a Blendz® Store using the System for so long as Franchisee is licensed by Franchisor to use the System.

3. Covenantor shall not at any time make copies of any documents or compilations containing some or all of the Trade Secrets without Franchisor's express written permission.

4. Covenantor shall not at any time disclose or permit the disclosure of the Trade Secrets except to other employees of Franchisee and only to the limited extent necessary to train

or assist other employees of Franchisee in the development or operation of a Blendz® Store using the System.

5. Covenantor shall surrender any material containing some or all of the Trade Secrets to Franchisee or Franchisor, upon request, or upon termination of employment by or association with Franchisee, or upon conclusion of the use for which such information or material may have been furnished to Covenantor.

6. Covenantor shall not at any time, directly or indirectly, do any act or omit to do any act that would or would likely be injurious or prejudicial to the goodwill associated with the Trade Secrets and the System.

7. All manuals are loaned by Franchisor to Franchisee for limited purposes only and remain the property of Franchisor and may not be reproduced, in whole or in part, without Franchisor's written consent.

COVENANTS NOT TO COMPETE

1. In order to protect the goodwill and unique qualities of the System, and the confidentiality and value of the Trade Secrets, and in consideration for the disclosure to Covenantor of the Trade Secrets, Covenantor further agrees and covenants as follows:

(a) Not to divert, or attempt to divert, directly or indirectly, any business, business opportunity, or customer of the Franchisee's Blendz® Store to any competitor.

(b) Not to employ, or seek to employ, any person who is at the time (or has been within the preceding six months) employed by Franchisor, or any of its affiliates, or any franchisee or developer of Franchisor, or otherwise directly or indirectly induce such person to leave that person's employment except as may occur in connection with Franchisee's employment of such person if permitted under the Franchise Agreement.

(c) Except with respect to the Blendz® Store described in the Franchise Agreement and other stores operated under Franchise Agreements between Franchisee and its affiliates and Franchisor or its affiliates, not to directly or indirectly, for himself or herself or through, on behalf of, or in conjunction with any person, partnership or corporation, without the prior written consent of Franchisor, 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 store business that is of a character and concept similar to the Blendz® Store. The term "**similar**" means a business that looks like, copies, imitates, or operates in a manner similar to a "**Blendz**" store, including, but not limited to, any food service business which bases all or significant portion of its menu offerings of fruit smoothies and fresh squeezed juices, freshly made sandwiches and salads, gourmet soups and soft drinks and which business is located within the United States, its territories or commonwealths, or any other country, province, state or geographic area in which Franchisor or its affiliates have used, sought registration of or registered the same or similar Marks or operates or licenses others to operate a business under the same or similar Marks.

2. In further consideration for the disclosure to Covenantor of the Trade Secrets and to protect the uniqueness of the System, Covenantor agrees and covenants that for one year following the earlier of the expiration, termination or transfer of all of Franchisee's interest in the Franchise Agreement or the termination of his or her employment by or association with Franchisee, Covenantor will not without the prior written consent of Franchisor:

(a) Divert, or attempt to divert, directly or indirectly, any business, business opportunity or customer of the Blendz® Store to any competitor.

(b) Employ, or seek to employ, any person who is at the time (or has been within the preceding six months) employed by Franchisor, or any of its affiliates, or any franchisee or developer of Franchisor, or otherwise directly or indirectly induce such persons to leave that person's employment.

(c) Except with respect to other Blendz® Store operated under Franchise Agreements between Franchisee and its affiliates and Franchisor or its affiliates, directly or indirectly, for himself or herself or through, on behalf of or in conjunction with any person, partnership or corporation, 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 store business that is of a character and concept similar to the Blendz® Store. The term "**similar**" means a business which looks like, copies, imitates, or operates in a manner similar to a "**Blendz**" store, including, but not limited to, any food service business which bases all or a significant portion of its menu offerings of fruit smoothies and fresh squeezed juices, freshly made sandwiches and salads, gourmet soups and soft drinks, or any similar programs, and which business is, or is intended to be, located within the Authorized Territory of any Blendz® Store (as such Authorized Territory is defined in the applicable Franchise Agreement for the Blendz® Store) established pursuant to the Area Development Agreement (as defined in the Definition section of the Franchise Agreement) or within a 10 mile radius of the location of any Blendz® Store or food service facility in existence or under construction (or where land has been purchased or a lease has been executed) at any given time during such period.

MISCELLANEOUS

1. Franchisee shall make all commercially reasonable efforts to ensure that Covenantor acts as required by this Agreement.

2. Covenantor agrees that in the event of a breach of this Agreement, Franchisor would be irreparably injured and be without an adequate remedy at law. Therefore, in the event of such a breach, or threatened or attempted breach of any of the provisions hereof, Franchisor shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies which are made available to it at law or in equity, including the right to terminate the Franchise Agreement, to a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm and without being required to furnish a bond or other security.

3. Covenantor agrees to pay all expenses (including court costs and reasonable attorneys' fees) incurred by Franchisor and Franchisee in enforcing this Agreement.

4. Any failure by Franchisor or the Franchisee to object to or take action with respect to any breach of any provision of this Agreement by Covenantor shall not operate or be construed as a waiver of or consent to that breach or any subsequent breach by Covenantor.

5. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO CALIFORNIA CHOICE OF LAW PRINCIPLES. COVENANTOR HEREBY IRREVOCABLY SUBMITS HIMSELF OR HERSELF TO THE JURISDICTION OF THE STATE COURTS OF SANTA CLARA COUNTY, CALIFORNIA AND THE FEDERAL DISTRICT COURT FOR CALIFORNIA. COVENANTOR HEREBY WAIVES ALL QUESTIONS OF PERSONAL JURISDICTION OR VENUE FOR THE PURPOSE OF CARRYING OUT THIS PROVISION. COVENANTOR HEREBY AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON HIM OR HER IN ANY PROCEEDING RELATING TO OR ARISING UNDER THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS ALLOWED BY CALIFORNIA OR FEDERAL LAW. COVENANTOR FURTHER AGREES THAT VENUE FOR ANY PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE SANTA CLARA COUNTY, CALIFORNIA OR THE FEDERAL COURT LOCATED IN SAN JOSE, CALIFORNIA; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION WHICH INCLUDES INJUNCTIVE RELIEF OR OTHER EXTRAORDINARY RELIEF, FRANCHISOR OR FRANCHISEE MAY BRING SUCH ACTION IN ANY COURT IN ANY STATE WHICH HAS JURISDICTION.

6. 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 foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in any unappealed final decision to which Franchisor is a party, Covenantor 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 Agreement.

7. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

8. All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, recognized overnight delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, facsimile, telegram or telex (provided that the sender confirms the facsimile, telegram or telex by sending an original confirmation copy by certified or registered mail, overnight delivery service,

or expedited delivery service within three business days after transmission), to the respective parties at the following addresses unless and until a different address has been designated by written notice to the other parties.

If directed to Franchisor, the notice shall be addressed to:

Blendz Franchise System, Inc.
267 E. Campbell Avenue, Suite 200
Campbell, CA 95008
Attention: Vice President
Telephone: (866) 4-BLENDZ
Facsimile: (408) 273-6766

With a copy (which shall not constitute notice) to:

Jennifer F. Wisniewski, Esq.
Snell & Wilmer L.L.P.
1200 17th Street, Suite 1900
Denver, Colorado 80202
Telephone: (303) 634-2011
Facsimile: (303) 634-2020

If directed to Franchisee, the notice shall be addressed to:

Attention: _____
Facsimile: _____

If directed to Covenantor, the notice shall be addressed to:

Attention: _____
Facsimile: _____

Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by telex or facsimile shall be deemed given upon transmission, provided confirmation is made as provided above. Any notice sent by expedited delivery service, overnight delivery service or registered or certified mail shall be deemed given the earlier of actual receipt or three business days after the time of mailing. Any change in the foregoing addresses shall be effected by giving 15 days written notice of such change to the other parties. **"Business Day"** for the purpose of this Agreement excludes Saturdays, Sundays and national holidays on which federally chartered banks are authorized to close.

9. The rights and remedies of Franchisor under this Agreement are fully assignable and transferable and shall inure to the benefit of its respective affiliates, successors and assigns. The respective obligations of Franchisee and Covenantor hereunder may not be assigned by Franchisee or Covenantor, without the prior written consent of Franchisor.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

FRANCHISOR:

ATTEST:

BLENDZ FRANCHISE SYSTEM, INC.
a California corporation

Witness

By: _____
Name: _____
Title: _____

FRANCHISEE

Witness

By: _____
Name: _____
Title: _____

COVENTOR:

Witness

By: _____
Name: _____
Title: _____

ATTACHMENT F

ELECTRONIC FUND TRANSFER AUTHORIZATION

Depositor hereby authorizes and requests the bank named below ("**Depository**") to initiate debit and credit entries to Depositor's ☐ checking account ☐ savings account (*select one*) indicated below drawn by and payable to the order of Franchisor by Electronic Fund Transfer, provided there are sufficient funds in said account to pay the amount upon presentation.

Depositor agrees that the Depository's rights with respect to each such charge shall be the same as if it were a check drawn by the Depository and signed by Depositor. Depositor further agrees that if any such charge is dishonored, whether with or without cause and whether intentionally or inadvertently, the Depository shall be under no liability whatsoever.

Depository Name: _____

City: _____ State: _____ Zip Code: _____

Transit/ABA Number: _____ Account Number: _____

This authority is to remain in full force and effect until Franchisor and Depository have received at least 30 days' written notification from Depositor of its termination, to afford Franchisor and Depository a responsible opportunity to act on such request.

Depositor's Name Printed: _____

Date Signed: _____

Signature(s) of Depositor: _____
(as printed above)

(Please attach a voided blank check, for purpose of setting up Bank and Transit Numbers)

ATTACHMENT G

ACKNOWLEDGEMENTS AND GUARANTY BY CONTROLLING PRINCIPALS

Each of the undersigned acknowledges and agrees as follows:

1. That he or she has read the terms and conditions of the Franchise Agreement and acknowledges that the execution of this Guaranty and the undertakings of the Controlling Principals in the Franchise Agreement are made in partial consideration for, and a condition to the granting of the franchise, and that Franchisor would not have granted the franchise without the execution of this Guaranty and such undertakings by each of the undersigned;

2. That he or she is included in the term “**Controlling Principals**” as described in the Definitions section of the Franchise Agreement;

3. That he or she individually makes all of the covenants, representations, warranties and agreements of the Controlling Principals set forth in the Franchise Agreement and is obligated to perform thereunder; and

4. That he or she jointly and severally, unconditionally and irrevocably guarantees to Franchisor and its successors and assigns that all of Franchisee’s obligations under the Franchise Agreement will be punctually paid and performed. Upon default by Franchisee or upon notice from Franchisor, he or she will immediately make each payment and perform each obligation required of Franchisee under the Franchise Agreement. Without affecting the obligations of any of the Controlling Principals under this Guaranty, Franchisor may, without notice to the Controlling Principals, waive, renew, extend, modify, amend or release any indebtedness or obligation of Franchisee or settle, adjust or compromise any claims that Franchisor may have against Franchisee. Each of the Controlling Principals waives all demands and notices of every kind with respect to the enforcement of this Guaranty, including, without limitation, notice of presentment, demand for payment or performance by Franchisee, any default by Franchisee or any guarantor and any release of any guarantor or other security for this Guaranty or the obligations of Franchisee. Franchisor may pursue its rights against any of the Controlling Principals without first exhausting its remedies against Franchisee and without joining any other guarantor, and no delay on the part of Franchisor in the exercise of any right or remedy shall operate as a waiver of such right or remedy, and no single or partial exercise by Franchisor of any right or remedy shall preclude the further exercise of such right or remedy. Upon receipt by Franchisor of notice of the death of any of the Controlling Principals, the estate of the deceased will be bound by the foregoing Guaranty, but only for defaults and obligations under the Franchise Agreement existing at the time of death, and in such event the obligations of the remaining Controlling Principals shall continue in full force and effect.

Additionally, with respect to the individual designated as Operating Principal, Operating Principal acknowledges that the undertakings by Operating Principal under this Guaranty are made and given in partial consideration of, and as a condition to, Franchisor’s grant of rights to operate the Blendz® Store as described in the Franchise Agreement; Operating Principal

individually, jointly and severally, makes all of the covenants, representations and agreements of Franchisee and Operating Principal set forth in the Franchise Agreement and is obligated to perform hereunder.

ATTEST:

CONTROLLING PRINCIPALS

Witness

*Name, printed: _____

Witness

Name, printed: _____

Witness

Name, printed: _____

Witness

Name, printed: _____

* Denotes Operating Principal