

***EXHIBIT A
TO FRANCHISE
OFFERING CIRCULAR***

**THE COFFEE BEANERY, LTD.
FRANCHISE AGREEMENT**

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THE COFFEE BEANERY, LTD.

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("**Agreement**") made and entered into on _____, 20____, ("**Effective Date**") by and between The Coffee Beanery, Ltd., a Michigan corporation, with its principal place of business at 3429 Pierson Place, Flushing, Michigan 48433 ("**CBL**"), and _____, a _____, with its principal place of business at _____ ("**Store Owner**").

RECITALS

A. CBL, as the result of the expenditure of time, skill, effort, and money, has developed and owns a unique and distinctive system relating to the selling of coffee, coffee beans, tea, spices and related products and food items, including prepared coffee for on or off site consumption ("**Products**") and has developed and owns a unique system relating to the establishment, development and operation of specialty coffee businesses including Traditional Coffee Beanery Store and Cafes, devoted exclusively to the sale, at retail, of the Products ("**System**");

B. The distinguishing characteristics of the System include, without limitation, a distinctive design and layout, and training, management, and promotional assistance, in connection with the establishment and ongoing operation of specialty coffee businesses, all of which may be changed, improved, and further developed by CBL from time to time;

C. CBL identifies the System by means of certain trade names, service marks, trademarks, logos, emblems, and indicia of origin, including the mark THE COFFEE BEANERY and such other trade names, service marks, and trademarks as are now designated, or may hereafter be designated by CBL in writing, for use in connection with the System ("**Proprietary Marks**");

D. Store Owner wishes to obtain a franchise to operate a specialty coffee business, either as a Traditional Coffee Beanery Store or as a Coffee Beanery Café using the System and Proprietary Marks ("**Stores**"), as well as to receive the training and other assistance provided by CBL in connection therewith; and

E. Store Owner understands and acknowledges the importance of CBL's high standards of quality, appearance, and service, and the necessity of operating the Store in conformity with CBL's standards and specifications.

NOW, THEREFORE, the parties agree as follows:

1. GRANT

1.1 CBL grants to Store Owner the right, and Store Owner accepts the obligation, to use the Proprietary Marks and System, solely in connection with the operation of a Store as indicated below:

_____ Traditional Coffee Beanery
_____ Coffee Beanery Café

If Coffee Beanery Café has been selected, the Protected Territory shall be as follows:

CBL shall not enter into a franchise agreement to own, acquire, establish, and/or operate, or license others to establish and operate a Coffee Beanery Store to any person within the Protected Territory during the term of this Agreement.

1.2 The Store shall be located at _____

(“Approved Location”). Store Owner shall not relocate the Store without the prior written approval of CBL. If, on the Effective Date, a location for the Store has not been approved by CBL, CBL shall assist Store Owner in selecting a location, as set forth in Section 4 of this Agreement. Store Owner shall not lease or otherwise acquire a location without CBL’s prior approval, which approval shall be furnished by CBL to Store Owner in a site approval letter.

1.3 Store Owner expressly acknowledges and agrees that the franchise is non-exclusive. Except as may be restricted by Section 1.1 of this Agreement for Café Stores, CBL shall retain the right, among others, for itself or through any affiliate, and in any manner and on any terms and conditions CBL deems advisable, and without granting Store Owner any rights therein:

- (a) to own, acquire, establish, and/or operate, and license others to establish and operate, Stores regardless of their proximity to the Approved Location or their impact on the Store Owner’s Store;
- (b) to own, acquire, establish and/or operate, and license others to establish and operate, businesses under other proprietary marks or other systems, including (i) businesses which provide products and/or services similar to those provided by a Store; and/or (ii) Stores, at any location regardless, in either circumstance, of their proximity to the Approved Location or their impact on the Store Owner’s Store; and
- (c) to sell or distribute, at retail or wholesale, directly or indirectly including internet sales, fund raising sales or mail order sales, or license others to sell or distribute, any products which bear any proprietary marks, including the Proprietary Marks, regardless of their proximity to the Approved Location or their impact on the Store Owner’s Store.

1.4 Store Owner shall have the right to sign additional franchise agreements during the term of this Agreement under the following terms and conditions:

1.4.1 Store Owner shall not be in default of any provision of this Agreement, or any other agreement between Store Owner and CBL or CBL’s affiliates, or of any standards set forth in the Manual (as the term “Manual” is defined in Section 4.2), and Store Owner shall have complied with all such agreements and the Manual since the Effective Date;

1.4.2 Store Owner shall be current with respect to its obligations to its lessor, suppliers, and any others with whom it does business;

1.4.3 Store Owner shall execute CBL’s then-current form of franchise agreement, the terms of which may differ from the terms hereof, except that (i) the initial franchise fee payable for the franchise agreement for the second and each subsequent Store shall be twenty-five percent (25%) of the

then-current agreement, and (ii) the initial training program to be provided by CBL under each additional franchise agreement shall consist of a minimum of one (1) and a maximum of three (3) calendar days, at CBL's discretion;

1.4.4 In the event that a transfer of a type described by Section 12.2 of this Agreement occurs within one (1) year of the date of opening of any Store established pursuant to an additional franchise agreement, then, in such event, Store Owner shall refund to CBL at the time of transfer the amount equal to the discount from the initial franchise fee received at the time the additional franchise agreement was executed.

2. TERM AND RENEWAL

2.1 Except as otherwise provided herein, the initial term of this Agreement shall expire fifteen (15) years from the Effective Date.

2.2 Store Owner may, at its option, renew this franchise for consecutive terms of fifteen (15) years each, subject to the following preconditions:

2.2.1 Store Owner shall give CBL written notice of Store Owner's election to renew no fewer than nine (9) months nor more than twelve (12) months prior to the end of the then-current term and complete and provide CBL with a renewal application on its then-current form;

2.2.2 Store Owner shall make such reasonable repairs and/or renovations to the Store as CBL may reasonably require, to reflect the then-current standards and image of the System;

2.2.3 Store Owner shall not be in default of any provision of this Agreement, or any other agreement between Store Owner and CBL or CBL's affiliates, or of any standards set forth in the Manual (as the term "Manual" is defined in Section 4.2), and Store Owner shall have complied with all such agreements and the Manual throughout the term of this Agreement;

2.2.4 Store Owner shall be current with respect to its obligations to its lessor, suppliers, and any others with whom it does business;

2.2.5 Store Owner shall execute CBL's then-current form of renewal franchise agreement, which agreement shall supersede this Agreement in all respects, and the terms of which may differ from the terms hereof, except that Store Owner's renewal rights shall be governed by this Agreement;

2.2.6 Store Owner and CBL shall execute a mutual general release, in a form prescribed by CBL, of any and all claims which each may have against the other and their affiliates (except as to amounts then due to CBL for royalties, brand building contributions, materials, and the like), and their respective shareholders, directors, employees, and agents in their corporate and individual capacities; and

2.2.7 Store Owner shall pay a renewal fee of Fifteen Hundred Dollars (\$1,500) .

3. FEES

3.1 Store Owner shall pay to CBL an initial franchise fee of Twenty Seven Thousand Five Hundred Dollars (\$27,500) for any type of Store licensed under this Agreement.

3.1.1 Upon execution of this Agreement for either a Café or Traditional Store, a payment of Seventeen Thousand Five Hundred Dollars (\$17,500.00) will be made, receipt of which is hereby acknowledged by CBL. Upon execution of the lease agreement for the Store premises, or at the time that CBL approves a location, pursuant to Section 1.2, which is not leased, the remainder of the balance of the initial franchise fee, Ten Thousand Dollars (\$10,000.00), will be paid by Store Owner.

3.1.2 Upon execution of this Agreement in conjunction with a Conversion Addendum or a Co-Branded Addendum, the full initial franchise fee provided by the Conversion Addendum or Co-Branded Addendum, as the case may be, will be made, receipt of which is hereby acknowledged by CBL.

3.1.3 Each payment shall be fully earned and non-refundable when paid, in consideration of the administrative and other expenses incurred by CBL in entering into this Agreement, and for CBL's lost or deferred opportunity to enter into this Agreement with others.

3.2 During the term of this Agreement, Store Owner shall pay to CBL a continuing weekly royalty fee in an amount equal to six percent (6%) of the Gross Sales for the Store. "Gross Sales" shall mean revenue from the sale of all products and services, and all other income or consideration of every kind and nature, received by the Store, whether for cash or credit, and regardless of collection in the case of credit, less: (i) any sales taxes or other taxes collected by Store Owner from its customers and thereafter paid directly to the appropriate taxing authority; and (ii) any customer refunds. The royalty payment is not refundable. If Store Owner fails to maintain proper sales records or report Gross Sales to CBL, CBL has the right to estimate Gross Sales and invoice Store Owner for such amounts.

3.3 Store Owner shall make weekly contributions to brand building, advertising and promotion as specified in Section 9.1 hereof.

3.4 All payments made pursuant to Sections 3.2 and 3.3 shall be made on or before Wednesday for the week ending on the preceding Sunday, on Gross Sales for the preceding week. Any royalty payment or brand building contributions not made on or before the due date shall be deemed to be overdue; in such event, Store Owner shall pay CBL, in addition to the overdue amount, interest on such amount from the date it was due until paid, at eighteen percent (18%) per annum or the maximum rate permitted by law, whichever is less, calculated on a daily basis. Entitlement to such interest shall be in addition to any other remedies CBL may have. You are required to make any payments required in this Section 3 directly to CBL or to a bank account specified by CBL, by electronic fund transfer ("EFT"), pre-authorized auto-draft arrangement, or other such means as CBL may specify from time to time in writing. Store Owner shall furnish CBL, CBL's bank, and any other recipients of payment with such information and authorizations as may be necessary to permit such persons to make withdrawals by electronic fund transfer ("EFT") or auto-draft arrangement. Store Owner shall bear all expenses, if any, associated with such authorizations and payments.

4. DUTIES OF CBL

4.1 CBL shall offer such assistance to Store Owner, as CBL deems reasonable and necessary, in selecting a site for the Approved Location, and in assisting the Store Owner and their counsel in negotiating an acceptable lease agreement for the Store premises to the extent CBL deems appropriate, provided however, that Store Owner shall remain solely responsible for selection of the site for the Approved Location, the negotiation of the lease and all development relating to the Store. Store Owner acknowledges and agrees that CBL's approval of a site for Store Owner's Store or any assistance relating to the lease for the Store is not, and shall not be construed as, a guarantee or assurance that the Store will be profitable or successful or that the terms of the lease are beneficial or appropriate.

4.2 CBL shall loan to Store Owner for the duration of this Agreement one copy of CBL's Operating Manual and one copy of CBL's Construction Manual and Maintenance Manual (which, at CBL's sole discretion, may be in a written or electronic format or a combination thereof), and such other manuals as CBL may develop and issue, all of which are collectively referred to as the "Manual."

4.3 CBL shall offer such guidance to Store Owner and/or Store Owner's architect, contractor, and/or designer, as CBL deems reasonable and necessary, relating to the design and/or construction of Store Owner's Store. CBL will make available, at no charge to Store Owner, a design development set of drawings with the basic specifications, equipment and architectural layout and elevations for the development of the construction drawings for the Store.

4.4 CBL shall offer "Operations Training", which shall consist of both classroom and in store training to Store Owner covering basic Store operations and management. Such training, depending on concept, shall consist of a maximum of twenty-eight (28) calendar days, at CBL's discretion.

4.5 CBL shall offer an "On Site Training" ("OST") program to Store Owner and to those employees selected by Store Owner who will be involved in the daily operation of the Store. Such training, depending upon concept, shall consist of a maximum of fourteen (14) calendar days, at CBL's discretion, of on-site assistance at the Store Owner's Store immediately prior and subsequent to the commencement of business.

4.6 CBL shall provide assistance to Store Owner in connection with coordinating and implementing the grand opening of the Store, including the grand opening promotion.

4.7 CBL shall furnish to Store Owner, prior to the opening of the Store, our specifications for personalized forms, stationery, marketing materials and CBL logo apparel.

4.8 CBL shall provide such initial and continuing advice and assistance to Store Owner in the operation and promotion of the Store as CBL deems appropriate.

4.9 CBL shall offer, at its discretion, a follow-up training visit by a CBL representative within one hundred and eighty (180) days following the opening of the Store. Such training shall consist of a minimum of one and one half (1-1/2) calendar days and a maximum of two (2) calendar days and shall be on-site at the Store Owner's Store.

4.10 CBL shall conduct, when and as frequently as it deems advisable, inspections of Store Owner's business premises and evaluations of the Store's management and operations, in order to assist Store Owner and to maintain the System's standards of quality, appearance, and service. During the term of this Agreement, CBL also shall, at the time(s) and location(s) selected by it, make available such other required and optional training programs, seminars, and workshops as it deems necessary and appropriate.

4.11 Store Owner acknowledges and agrees that any duty or obligation imposed on CBL by this Agreement may be performed by any designee of CBL, as CBL may direct.

5. DUTIES OF STORE OWNER

5.1 Store Owner understands and acknowledges that every detail of the System and the Store is essential to Store Owner, CBL, and other System franchisees in order to: (i) develop and maintain quality operating standards; (ii) increase the demand for the products and services sold by all franchisees operating under the System; and (iii) protect CBL's reputation and goodwill. Store Owner shall maintain CBL's high standards with respect to facilities, services, products, and operations.

5.2 Store Owner shall use and occupy the Store premises solely for the operation of the business franchised hereunder and unless otherwise approved in writing by CBL, shall refrain from using or permitting the use of the premises for any other purpose or activity, and shall keep the Store open and in normal operation for at least such minimum hours and days as CBL may specify in the Manual or otherwise in writing, and as may be required by the lease for the Store premises.

5.3 To ensure that the highest degree of quality and service is maintained, Store Owner shall operate the Store in strict conformity with such methods, standards, and specifications as CBL may from time to time prescribe in the Manual or otherwise in writing. Store Owner shall refrain from: (a) deviating from such standards, specifications, and procedures without CBL's prior written consent; and (b) otherwise operating in any manner which reflects adversely on CBL's Proprietary Marks or the System.

5.3.1 Store Owner shall purchase and install, at Store Owner's expense, and shall maintain in sufficient supply and use at all times, only such fixtures, furnishings, equipment, signs, and supplies which conform to CBL's standards and specifications as set forth in the Manual or otherwise in writing; and shall refrain from using non-conforming items.

5.3.2 Store Owner shall sell or offer for sale only such products as have been expressly approved for sale by CBL in the Manual or otherwise in writing, shall discontinue selling any products which CBL may, in its sole discretion, determine may adversely affect the System; and shall refrain from offering any unapproved products.

5.3.3 Store Owner acknowledges and agrees that CBL may, from time to time in its sole discretion, revise the Manual to incorporate System changes. Store Owner shall implement any System changes upon receipt of notice thereof from CBL, and shall complete their implementation within such time as CBL may reasonably specify.

5.3.4 The System may include standards relating to safety, maintenance, cleanliness, sanitation, function, hours and days of operation, appearance, uniforms, employee appearance and cleanliness, Product shelf life and portion control, customer relations procedures, marketing and promotion (including gift card and similar promotions), forms, use of the Marks, signage, lighting, internet connections, background music and other site amenities, displays, complaint handling, and many other matters.

5.4 Store Owner shall purchase all products, equipment, supplies, and materials used or sold by the Store solely from suppliers (including manufacturers, wholesalers and distributors) who demonstrate, to CBL's continuing reasonable satisfaction, the ability to meet CBL's reasonable standards and specifications for such items; who possess adequate quality controls and capacity to supply Store Owner's needs promptly and reliably; whose approval would enable the System, in CBL's sole opinion, to take advantage of marketplace efficiencies; and who have been approved by CBL in the Manual or otherwise in writing and not thereafter disapproved. If Store Owner desires to make purchases from other than an approved supplier, Store Owner shall submit to CBL a written request to approve the proposed supplier, together with such evidence of conformity with CBL's specifications as CBL may reasonably require. CBL may revoke its approval at any time if CBL determines, in its sole discretion, that the supplier no longer meets CBL's standards. Upon receipt of written notice of such revocation, Store Owner shall cease purchasing from any disapproved supplier and selling such supplier's disapproved products or services.

5.4.1 Store Owner shall maintain a balanced inventory of approved products specified by CBL in its Stores in quantities sufficient to satisfy customer needs. The inventory shall at all times be equal to or greater than the minimum inventory level set forth in the Manual or otherwise in writing. CBL may also require that Stores stock new and additional products in such minimum quantities as CBL may determine to be desirable.

5.4.2 In order to maintain consistency of product, quality, taste and identity of Products, CBL will be the only approved source for coffee, coffee related products and certain CBL logo Products, except for such Products specifically designated in writing by CBL. CBL will use its best efforts to provide quality Products at competitive prices. The inventory of Stores shall always contain a representative number of each of the Products, which shall be given prominent display.

5.5 Store Owner shall maintain the Store premises (including adjacent public areas) in a clean, orderly condition and in excellent repair; and, at its expense, perform any required maintenance or repairs, as CBL may reasonably direct by written notice to Store Owner, in a timely manner. Store Owner agrees to maintain the Store premises consistent with then current System standards. No alcohol, drugs, or pets shall at any time be permitted on the Store premises, and the premises shall not be used for child care, baby sitting, or similar activities.

5.6 Store Owner shall grant CBL and its agents the right to enter upon the Store premises during normal business hours for the purpose of conducting inspections; shall cooperate with CBL's representatives in such inspections by rendering such assistance as they may reasonably request; and, upon written notice from CBL or its agents and without limiting CBL's other rights hereunder, shall promptly correct any deficiencies discovered during any such inspection.

5.7 Prior to the opening of the Store, Store Owner (or, if Store Owner is a corporation or partnership, a principal of Store Owner acceptable to CBL) and/or Store Owner's designated store manager, shall attend and complete to CBL's satisfaction, its required training programs. First, within six (6) weeks of the date of execution of this Agreement, Store Owner shall attend "Orientation Training" which will include training on system requirements, business planning and site construction. Thereafter, thirty (30) to sixty (60) days prior to the date Store is scheduled to open, Store Owner must attend "Operations Training", which shall consist of both classroom and in store training covering business basics, customer service and store operations. Such training, depending on concept, shall consist of a maximum of twenty-eight (28) calendar days, at CBL's discretion. Store Owner shall also attend CBL's "On Site Training" provided to Store Owner and those employees selected by Store Owner who will be involved in the daily operation of the Store. Such training, depending upon concept, shall consist of a maximum of fourteen (14) calendar days, at CBL's discretion, of on-site assistance at the Store Owner's Store immediately prior and subsequent to the commencement of business. If, at any time during the term of this Agreement, we are unable to complete the on-site training due to your lack of preparation or if Store Owner wishes CBL to train additional employees (with CBL's prior consent), Store Owner shall pay CBL a fee of Three Hundred Fifty Dollars (\$350) per day plus reasonable reimbursement for the trainer's cost of transportation, meals, and lodging. If CBL determines that Store Owner's Stores are not performing to their potential given its market conditions, Store Owner agrees to attend refresher training for such term and at such times and locations as CBL determines. Store Owner shall also complete to CBL's satisfaction the follow-up training visit. CBL shall provide the instructor, training and other materials for the follow-up training visit without charge. Except as specifically provided by this Agreement, Store Owner shall be responsible for any and all other expenses incurred during training.

5.7.1 Each Store must employ a manager (who can be the Store Owner) who has satisfactorily completed CBL's training program, been certified and who is dedicated to that Store and

who works at that Store on substantially a full-time basis. Each person may be the designated manager for one Store only.

5.7.2 Store Owner must attend at least two-thirds (2/3) of the supplemental training and development programs and seminars that may be presented by CBL and shall not employ anyone who fails to complete such development and training programs and seminars to CBL's satisfaction.

5.8 Store Owner shall maintain a competent, conscientious, and trained staff, and shall take such steps as are necessary to ensure that its employees preserve good customer relations; render competent, prompt, courteous, and knowledgeable service; and meet such minimum standards as CBL may establish from time to time in the Manual or otherwise in writing. Store Owner shall be solely responsible for all employment decisions of the Store, including, without limitation, those related to hiring, firing, training, wage and hour requirements, recordkeeping, supervision, and discipline of employees.

5.9 Store Owner shall attend CBL's annual national convention of franchisees, as well as such additional training programs, seminars, and workshops as CBL may reasonably require from time to time and at any time. CBL may, at its discretion, charge a reasonable fee for those attending required additional training programs. Additionally, the Store Owner will be required to pay a Two Hundred Dollar (\$200.00) annual fee for attending CBL's annual national convention. Store Owner shall be responsible for any and all other expenses incurred in connection with attending the national convention, including the costs of transportation, lodging, and meals.

5.10 Store Owner shall comply with all terms of its lease and shall refrain from any activity which may jeopardize Store Owner's right to remain in possession of the Store premises. Store Owner shall, prior to the execution of any lease, submit it to CBL for its written approval. CBL's approval may be conditioned upon the inclusion of any one or more of the following terms and conditions:

5.10.1 That the initial term of the lease, or the initial term together with renewal terms, shall be for at least ten (10) years;

5.10.2 That the lessor consents to Store Owner's use of such Proprietary Marks and signage as CBL may now or hereinafter prescribe for the Store;

5.10.3 That the use of the leased premises be restricted solely to the operation of the Store;

5.10.4 Except as otherwise approved in writing by CBL, that Store Owner be prohibited from subleasing or assigning all or any part of its occupancy rights or extending the term of or renewing the lease without CBL's prior written consent;

5.10.5 That the lessor provide to CBL copies of any and all notices of default given to Store Owner under the lease;

5.10.6 That CBL have the right to enter the premises to make reasonable modifications necessary to protect the Proprietary Marks or the System or to cure any default under the Agreement or under the lease; and

5.10.7 That, in the event of a default, expiration, or termination of the Agreement or the lease, CBL (or CBL's designee) shall have the option, upon notice to the lessor, to assume all of Store Owner's rights under the lease terms, including the right to assign or sublease.

5.11 Store Owner shall furnish CBL with a copy of any executed lease within ten (10) days after execution thereof.

5.12 Store Owner shall furnish to CBL, within three (3) days after receipt thereof, a copy of any notice alleging Store Owner's failure to comply with any law, ordinance, or regulation.

5.13 Store Owner shall actively and continuously engage in local promotional activities designed to increase the Store's Gross Sales. CBL shall have the right to specify, in the Manual or otherwise in writing, a minimum amount of monthly time as well as the types of promotional activities required to satisfy this obligation.

5.14 Store Owner shall have the right to offer its goods and services at any prices Store Owner may determine, but CBL may set maximum prices which may be charged based on an analysis of the market and to facilitate advertising and competitive strategies.

6. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS

6.1 Store Owner shall, at its expense, construct all leasehold improvements to the Store premises in conformance with specifications furnished by CBL pursuant to Section 4.3 of this Agreement.

6.2 Store Owner shall be responsible for obtaining all zoning classifications and clearances, permits, licenses, and certifications required for the lawful construction, occupancy, and operation of the Store, and shall certify in writing to CBL that all such items have been obtained.

6.3 Store Owner shall employ a qualified architect or engineer, with previous experience in venues and construction similar to CBL stores, to prepare final plans and specifications for constructing the leasehold improvements based upon the plans and specifications furnished by CBL and CBL's consulting architect. Store Owner's architect and engineers shall coordinate all field inspections and verifications and create existing condition drawings from which CBL's consulting architect will create design development drawings. Store Owner's architect shall complete construction drawings from the supplied design development set as they relate to local code and engineering requirements, obtain permits, coordinate with CBL and Store Owner to coordinate the bidding process, oversee and verify compliance of the construction with the construction drawings and provide notice to CBL and CBL's consulting architect of any discrepancy which affects the design and/or standard specifications. Store Owner shall not deviate from any approved plans and specifications without CBL's prior written approval.

6.4 Unless the requirement is waived by CBL in writing, Store Owner shall obtain bids for construction from not less than three (3) licensed general contractors experienced in the type of construction required to complete the Store. Store Owner shall submit such final plans, bids and contracts to CBL and shall not proceed with construction until CBL's written approval has been received, shall employ a qualified, licensed general contractor to perform all construction, installation and coordination with outside vendors, and Store Owner shall provide to CBL such periodic progress reports as CBL may require. During construction, CBL shall have the right to inspect the premises at all reasonable times for the purpose of ascertaining that all work complies with the final plans approved by CBL, and Store Owner shall cooperate and cause its employees and agents to cooperate fully with CBL's inspections.

6.5 Construction shall commence promptly, after CBL's written approval of Store Owner's final plans is received, and continue uninterrupted until all necessary work is completed in accordance with the approved plans. Within five (5) days after work is completed, Store Owner shall submit a

written request to CBL to conduct a final inspection of the Store premises and, upon receipt of such request, CBL shall promptly conduct a final inspection. Within thirty (30) days after completion of the Store, Store Owner shall provide CBL with a complete and accurate accounting of the full cost incurred by Store Owner in development of the Store along with copies of documents evidencing a full and complete release of all construction, materialmen or mechanics liens arising from development of the Store. Store Owner shall not open the Store for business without the written authorization of CBL, which authorization may be conditioned upon Store Owner's strict compliance with the specifications of the approved final plans and System standards and completion of any pre-opening training required by CBL.

6.6 CBL and Store Owner agree that time is of the essence in connection with the construction and opening of the Store. Store Owner shall open the Store to the public no later than one hundred and twenty (120) days from the date that it obtains possession of the Store premises unless otherwise approved in writing by CBL.

6.7 Store Owner shall procure, prior to the commencement of any construction, and shall maintain in full force and effect at all times during any construction, at Store Owner's expense, an insurance policy or policies protecting Store Owner, CBL and its affiliates, and their respective shareholders, directors, employees and agents, against any demand or claim with respect to personal and bodily injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring upon or in connection with the construction of the Store. Such policy or policies shall be written by a responsible insurer or insurers acceptable to CBL, and shall comply with the requirements set forth in Section 10 of this Agreement.

7. PROPRIETARY MARKS

7.1 CBL represents with respect to the Proprietary Marks that:

7.1.1 CBL owns the Proprietary Marks;

7.1.2 CBL shall take all steps reasonably necessary to preserve and protect the validity of the Proprietary Marks; and

7.1.3 CBL shall permit Store Owner to use the Proprietary Marks only in accordance with the System and the standards and specifications attendant thereto which underlie the goodwill associated with and symbolized by the Proprietary Marks.

7.2 With respect to Store Owner's use of the Proprietary Marks, Store Owner agrees that:

7.2.1 Store Owner shall use only the Proprietary Marks designated by CBL, and shall use them only in the manner authorized and permitted by CBL;

7.2.2 Store Owner shall use the Proprietary Marks only for the operation of the Store, and only at the Approved Location or in CBL-approved advertising for the Store;

7.2.3 Unless otherwise authorized or required by CBL, Store Owner shall operate and advertise the Store only under the name "Coffee Beanery" or "The Coffee Beanery" without prefix or suffix;

7.2.4 Store Owner shall identify itself as an independent franchisee-owner of the Store in conjunction with any use of the Proprietary Marks or the operation of the Store, and shall place a written notice to such effect, in a form approved by CBL, in a conspicuous location on the Store premises;

7.2.5 Store Owner's right to use the Proprietary Marks is limited to such uses as are authorized under this Agreement, and any unauthorized use thereof shall constitute an infringement;

7.2.6 Store Owner shall not use the Proprietary Marks to incur any obligation or indebtedness on behalf of CBL;

7.2.7 Store Owner shall execute any documents deemed necessary by CBL or its affiliates to obtain protection for the Proprietary Marks or to maintain their continued validity and enforceability;

7.2.8 Store Owner shall promptly notify CBL of any suspected unauthorized use of, or any challenge to the validity or use of, the Proprietary Marks. Store Owner acknowledges that CBL (or the owner of the Proprietary Marks) shall have the sole right to direct and control any administrative proceeding or litigation involving the Proprietary Marks, including any settlement thereof. CBL shall have the right, but not the obligation, to take action against uses by others that may constitute infringement of the Proprietary Marks. CBL (or the owner of the Proprietary Marks) shall defend Store Owner against any third-party claim, suit, or demand arising out of Store Owner's use of the Proprietary Marks. If CBL, in its sole discretion, determines that Store Owner has used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by CBL. If CBL, in its sole discretion, determines that Store Owner has not used the Proprietary Marks in accordance with this Agreement, the cost of such defense, including the cost of any judgment or settlement, shall be borne by Store Owner. In the event of any litigation relating to Store Owner's use of the Proprietary Marks, Store Owner shall execute any and all documents and do such acts as may, in the opinion of CBL, be necessary to carry out such defense or prosecution including, but not limited to, becoming a nominal party to any legal action. Except to the extent that such litigation is the result of Store Owner's use of the Proprietary Marks in a manner inconsistent with the terms of this Agreement, CBL agrees to reimburse Store Owner for its out-of-pocket litigation costs in cooperating with CBL with respect to the litigation; and

7.2.9 Store Owner shall not use the Proprietary Marks as part of its corporate or other legal name.

7.3 Store Owner expressly understands and acknowledges that:

7.3.1 The Proprietary Marks are valid and serve to identify the System and those who are franchised under the System;

7.3.2 During the term of this Agreement and after its expiration or termination, Store Owner shall not directly or indirectly contest the validity or ownership of the Proprietary Marks, nor take any other action which may tend to jeopardize CBL's interest therein, or CBL's right to use and to license others to use, the Proprietary Marks;

7.3.3 Store Owner's use of the Proprietary Marks does not give Store Owner any ownership interest or other interest in or to the Proprietary Marks, other than the license granted by this Agreement;

7.3.4 Any and all goodwill arising from Store Owner's use of the Proprietary Marks shall inure solely and exclusively to the benefit of CBL and its affiliates and, upon expiration or termination of this Agreement, no monetary amount shall be assigned as attributable to any goodwill associated with Store Owner's use of the System or the Proprietary Marks;

7.3.5 CBL and its affiliates shall have and retain the rights, among others: (a) to use the Proprietary Marks themselves in connection with selling products and services; (b) to grant other licenses for the Proprietary Marks, in addition to those licenses already granted to existing franchisees; and (c) to develop and establish other systems using the Proprietary Marks, similar proprietary marks, or any other proprietary marks, and to grant licenses or franchises thereto without providing any rights therein to Store Owner; and

7.3.6 CBL reserves the right to substitute different proprietary marks for use in identifying the System and the businesses operating thereunder if the Proprietary Marks no longer can be used, or if CBL, in its sole discretion, determines that substitution of different proprietary marks will be beneficial to the System. In such circumstances, the use of the substituted proprietary marks shall be governed by the terms of this Agreement, and CBL shall not compensate Store Owner for such substitution and shall bear only the costs of modifying Store Owner's signs and advertising materials to conform to CBL's new proprietary marks. Store Owner shall implement promptly any such substitution.

8. CONFIDENTIAL MANUALS AND INFORMATION

8.1 In order to protect the reputation and goodwill of CBL and to maintain high standards of operation under the Proprietary Marks and the System, Store Owner shall conduct its business in accordance with the Manual. Store Owner shall treat the Manual, and the information contained therein, as confidential, and shall use all reasonable efforts to maintain such information as secret and confidential. Store Owner shall not at any time copy, duplicate, record, or otherwise reproduce the foregoing materials, in whole or in part, nor otherwise make the same available to any unauthorized person. The Manual shall at all times remain the sole property of CBL.

8.2 Store Owner shall insure that its Manual is kept current; and in the event of any dispute as to the contents of the Manual, the terms of the master copy of the Manual maintained by CBL shall be controlling.

8.3 Store Owner shall not, during or after the term hereof, communicate, divulge, or use for the benefit of any other person, persons, partnership, association, or corporation, any confidential information, knowledge, or know-how concerning the methods of operation of the Store which may be communicated to Store Owner or of which Store Owner may be apprised by virtue of Store Owner's operation hereunder. Store Owner shall divulge such confidential information only to those employees who must have access to it in order to perform their employment responsibilities. Any and all information, knowledge, know-how, and techniques which CBL designates as confidential shall be deemed confidential for purposes hereof unless and until Store Owner shall demonstrate that the information has become public knowledge.

8.4 Store Owner acknowledges that any failure to comply with the requirements of this Section 8 will cause CBL irreparable injury for which no adequate remedy at law may be available, and Store Owner agrees that CBL may seek, and Store Owner agrees to pay, all court costs and reasonable attorneys' fees incurred by CBL in obtaining, without posting a bond, an *ex parte* order for injunctive or other legal or equitable relief with respect to the requirements of this Section 8.

8.5 Store Owner shall require anyone who may have access to confidential information to execute covenants that they shall maintain the confidentiality of information they receive in connection with their association with Store Owner. Such covenants shall be in a form satisfactory to CBL including, without limitation, specific identification of CBL as a third party beneficiary of such covenants with the independent right to enforce them.

9. BRAND BUILDING

Recognizing the value of brand building (including advertising and promotion), and the importance of the standardization of brand building, advertising and promotional programs to the furtherance of the goodwill and public image of the System, the parties agree as follows:

9.1 Store Owner shall contribute, each week, two percent (2%) of its Gross Sales to the System-wide fund described in Section 9.3 hereof ("Brand Building Fund" or the "Fund").

9.2 Each unit owned by CBL or an affiliate of CBL that has an initial opening date of October 1, 2002 or later shall contribute, each week, two percent (2%) of its Gross Sales to the Brand Building Fund.

9.3 CBL shall have the right to maintain and administer the Brand Building Fund, in its sole discretion. The following provisions shall apply to the Fund:

9.3.1 The Brand Building Fund, all contributions thereto, and any earnings thereon, shall be used exclusively to meet any and all costs of maintaining, administering, directing, conducting, and developing the preparation of advertising, marketing, public relations, and/or promotional programs and materials, and any other activities which CBL believes will benefit the System, including, among other things, the costs of preparing and conducting Brand Building campaigns in various media; preparation of direct mail advertising; market research; employing advertising and/or public relations agencies to assist therein; purchasing promotional items; conducting and administering in-store promotions; providing promotional and other marketing materials and services to the businesses operating under the System; and point-of-purchase materials. The Brand Building Fund is not a trust fund, and CBL shall not have any fiduciary duty to Store Owner with regard to the Brand Building Fund's administration, activities, or expenditures;

9.3.2 CBL shall direct all brand building, advertising and promotional programs, with sole discretion over the creative concepts, materials, and media used in such programs, and the placement and allocation thereof. Store Owner agrees and acknowledges that among the Brand Building Fund's objectives is to maximize general public recognition and acceptance of the Proprietary Marks for the benefit of the System; and that CBL is not obligated, in administering the Brand Building Fund, to make expenditures for Store Owner which are equivalent or proportionate to Store Owner's contribution, or to ensure that any particular franchisee benefits directly or *pro rata* from the advertising or promotion conducted under the Brand Building Fund;

9.3.3 All contributions to the Brand Building Fund, shall be made by Store Owner in conformance with Section 3.4 of this Agreement. All sums paid to the Brand Building Fund shall be segregated for accounting purposes from the other monies of CBL and shall not be used to defray any expenses of CBL, except for such reasonable costs and overhead, if any, as may be incurred in activities reasonably related to the administration or direction of the advertising programs and Brand Building Fund, including, among other things, costs of personnel and/or agency for creating and implementing advertising, promotional, and marketing programs. The Brand Building Fund and any earnings thereon shall not otherwise inure to the benefit of CBL. CBL shall maintain separate bookkeeping accounts for the Brand Building Fund; and

9.3.4 A summary of the operations of the Brand Building Fund as shown on the books of the Fund shall be prepared annually by CBL and furnished upon request to each Store Owner.

9.4 CBL reserves the right to require Store Owner to participate in local and regional advertising cooperatives in connection with the advertising and promotional programs administered by CBL or by other franchisees of the System or in the event no such cooperative has been established, to require Store Owner to conduct local advertising for the Store. In addition to the brand building contribution payable by you under Section 9.1, Store Owner agrees to pay any contributions that CBL requires Store Owner to make for expenditures by these local or regional cooperatives or that may be otherwise approved by these cooperatives or for local advertising if no cooperative exists. If a cooperative exists and sixty-five percent (65%) or more of the CBL Stores voting agree to contribute or are contractually obligated to contribute a specified percentage of Gross Sales to the cooperative, then CBL can require Store Owner to make the same contribution to the cooperative, although CBL can require Store Owner to contribute no less than two percent (2%) of the Gross Sales of the Store to the cooperative notwithstanding the amount specified by the cooperative. All Stores which are contractually obligated to contribute the specified percentage of royalty sales voted upon by the cooperative shall be counted as a favorable vote, whether or not they attend or vote at the meeting. If there is no advertising cooperative or if the local Stores have not agreed upon a percentage of Gross Sales to be contributed to the cooperative, Store Owner must expend or contribute to the cooperative an amount we specify up to and including two percent (2%) of sales. We agree that the maximum aggregate amount we can obligate you to contribute for advertising and promotion under this Section 9.4 will be eight percent (8%) of the Gross Sales of your Store. All contributions payable under this Section 9.4 must be paid in a manner identical to payments to the Brand Building Fund. Nothing contained in this Section 9.4 shall limit, affect or supersede any obligation on your part to contribute a greater percentage of the Gross Sales of the Store pursuant to any separate agreement or understanding Store Owner may have with any such local or regional advertising or promotional cooperative. CBL reserves the right to engage the services of an advertising source or sources to formulate, develop, produce and conduct the advertising and promotion programs for the cooperatives or for local advertising if no cooperatives exists with the cost of these services payable from the cooperative advertising budget or contributions made by Store Owner in accordance with this provision.

All local advertising and promotion by Store Owner, shall be conducted in a dignified manner, conform to such standards as CBL shall establish in the Manual or otherwise in writing, and not be used without CBL's prior approval. Store Owner shall submit to CBL (in the manner prescribed in Section 20) samples of all advertising and promotional plans and materials prior to their use, and may commence use of such plans or materials seven (7) days after CBL's receipt unless, prior thereto, CBL shall have furnished written notice to Store Owner prohibiting such use. CBL also shall have the right at any time after Store Owner commences use of such material to prohibit further use, effective immediately upon receipt of written notice by Store Owner. Store Owner is not permitted to establish an independent computer website including Internet and World Wide Web home pages. Store Owner will however, be provided the opportunity to establish a link on CBL's the home web site, to its independent home page. Such independent home page must first be approved by CBL prior to link being provided.

9.5 Store Owner shall conduct an initial local advertising and grand opening promotion program. Store Owner shall spend the minimum amount described below depending upon the type of Store licensed under this Agreement:

Café	\$7,500.00
Converting / Cobranded	\$2,500.00
Traditional Store	\$2,500.00 and \$7,500.00 as we direct.

Store Owner shall conduct the grand opening promotion program within the two (2) month period before and the six (6) month period following the opening of the Store for business. At CBL's request, Store Owner shall furnish to CBL, such evidence as CBL may reasonably require to verify that the required expenditures are being made and the promotional programs are being conducted. In addition, Store

Owner will deposit a sum we require, not to exceed the sum required above, to be used to pay for grand opening expenses you are required to expend pursuant to this Section.

9.6 Store Owner shall, at its expense, in accordance with any standards established in the Manual, and in addition to its contributions to the Brand Building Fund as required by Section 9.1 hereof, obtain advertisements in the white and yellow pages of the principal telephone directory serving its marketing area. This expenditure shall not be less than the cost of a "Trademark Ad" based on rates published by the Yellow Pages Publisher's Association (or comparable organization). In the event that more than one Store is located within the geographic area served by the principal telephone directory then, in such event, Store Owner shall join with other Stores (whether franchised or owned by CBL or an affiliate) in a shared directory advertisement of all Stores, and pay the *pro rata* share of the cost of such advertising. The "principal telephone directory" shall mean the directory with the highest distribution serving all or part of the area that the Store is located in.

9.7 Store Owner shall fully participate in all multi-area marketing programs, and the introduction of new Products. Store Owner agrees that for promotional programs required by CBL, CBL or the designated program provider may, without request from Store Owner, ship any materials associated with the promotion to Store Owner and Store Owner agrees to pay all charges associated with materials and their shipment.

10. INSURANCE

10.1 Store Owner shall procure, prior to the opening of the Store, and shall maintain in full force and effect at all times during the term of this Agreement, at Store Owner's expense, an insurance policy or policies protecting Store Owner, CBL and its affiliates, and their respective shareholders, directors, employees, and agents against any demand or claim with respect to personal and bodily injury, death, or property damage, or any loss, liability, or expense whatsoever arising or occurring at or in connection with the Store. Such policy or policies shall: (i) be written by insurer(s) acceptable to CBL; (ii) name CBL and its shareholders, directors, employees, and agents, as additional insureds; (iii) comply with the requirements prescribed by CBL at the time such policies are obtained; (iv) provide at least the types and minimum amounts of coverage specified in the Manual; and (v) contain a waiver by Store Owner and its insurers of their subrogation rights against CBL and its affiliates, and their respective shareholders, directors, employees and agents.

10.2 All public liability and property damage policies shall contain a provision that CBL, although named as an additional insured, shall nevertheless be entitled to recover under such policies on any loss occasioned to CBL or its shareholders, directors, employees, and agents by reason of Store Owner's negligence.

10.3 At least ten (10) days prior to the time any insurance is first required to be carried by Store Owner, and thereafter at least thirty (30) days prior to the expiration of any policy, Store Owner shall deliver to CBL Certificates of Insurance evidencing the proper types and minimum amounts of coverage. All Certificates shall expressly provide that no less than thirty (30) days prior written notice shall be given CBL in the event of material alteration to or cancellation or non-renewal of the coverages evidenced by such Certificates. Certificates evidencing the insurance required by this Section shall name CBL and its affiliates, and their respective shareholders, directors, employees, and agents, as additional insureds, and shall expressly provide that any interest of each shall not be affected by any breach by Store Owner of any policy provisions for which such Certificates evidence coverage.

11. COMPUTERS, RECORDS, AND REPORTING REQUIREMENTS

11.1 Store Owner, at its expense, shall purchase or lease, and thereafter maintain, such computer hardware (including laptops), software, and firmware, required dedicated telephone and power lines, modem(s), printer(s), and other computer-related accessories or peripheral equipment as CBL specifies in the Manuals or otherwise in writing. Store Owner's computer systems shall have the capacity

to electronically exchange information, messages, and other data with other computers, by such means (including but not limited to the Internet), and using such protocols (e.g., TCP/IP), as CBL may reasonably prescribe in the Manual or otherwise in writing. CBL shall have the right from time to time and at any time to retrieve data and information from Store Owner's computer system and use it for any purpose both during and after the term of this Agreement. Store Owner shall keep its computer system in good maintenance and repair and, at its expense, shall promptly install such additions, changes, modifications, substitutions, and/or replacements to the computer hardware, software, firmware, telephone and power lines, and other computer-related facilities, as CBL directs. Store Owner shall not update, modify, enhance, or upgrade any computer hardware or software without CBL's prior written consent.

11.2 Store Owner shall not establish any independent computer website including Internet and World Wide Web home pages, except as permitted under Section 9.4.

11.3 Store Owner shall prepare, during the term of this Agreement, and shall preserve for at least five (5) years from the dates of their preparation, complete and accurate books, records, and accounts in accordance with generally accepted accounting principles and in the form and manner prescribed by CBL from time to time in the Manual or otherwise in writing.

11.4 Store Owner shall, at its expense, provide CBL with a copy of Store Owner's financial statements showing the results of operations of the Store for each fiscal year during the term of this Agreement. The statements shall include a statement of income, balance sheet, and a statement of cash flows, accompanied by a review report, prepared by an independent accountant using generally accepted accounting principles, and shall be furnished to CBL within ninety (90) days after the end of each fiscal year of the Store.

11.5 Store Owner shall, at its expense, provide CBL, on forms and other documentation prescribed by CBL, with a weekly statement of Gross Sales, and such other information regarding the operation of the Store as CBL may reasonably request, including information concerning local promotional activities required by Section 5.13. The weekly statement shall be due at the same time as Store Owner's royalty payment. Each statement shall be signed by Store Owner attesting that it is true and correct.

11.6 Store Owner also shall provide to CBL, for review or auditing, such other information as CBL may reasonably designate, including but not limited to cash register double Z tapes, or other forms and in the manner as are reasonably designated by CBL.

11.7 CBL or its designated agents shall have the right at all reasonable times to examine and copy, at CBL's expense, the books, records, accounts, and business tax returns of Store Owner. CBL shall also have the right, at any time, to have an independent audit made of the books and records of Store Owner. If an inspection or audit reveals that any payments due to CBL have been understated in any report to CBL, then Store Owner shall immediately pay to CBL the amount understated upon demand, in addition to interest from the date such amount was due until paid, at the rate of eighteen percent per annum calculated monthly, or the maximum rate permitted by law, whichever is less. If an inspection or audit discloses an understatement in any report of five percent or more, Store Owner shall, in addition to repayment of monies owed with interest, reimburse CBL for any and all costs and expenses connected with the inspection (including, without limitation, travel, lodging and wage expenses, and reasonable accounting and legal costs). The foregoing remedies shall be in addition to any other remedies CBL may have as a result of such underreporting.

12. TRANSFER OF INTEREST

12.1 CBL shall have the right to transfer or assign all or any part of its rights or obligations under this Agreement to any person or legal entity. With respect to any assignment which results in the

subsequent performance by the assignee of all of CBL's obligations under this Agreement, the assignee shall expressly assume and agree to perform such obligations, and shall become solely responsible for all obligations of CBL under this Agreement from the date of assignment. In addition, and without limitation to the foregoing, Store Owner expressly affirms and agrees that CBL may sell its assets, its Proprietary Marks, or its System; may sell its securities in a public offering or in a private placement; may permit and participate in any transfer or distribution of its securities in connection with a spin-off; may merge, acquire other corporations, or be acquired by another corporation; and may undertake a financing, recapitalization, leveraged buy-out, or other economic or financial reorganization or restructuring.

12.2 Store Owner understands and acknowledges that its rights and duties are personal and that CBL has granted this franchise in reliance on Store Owner's business skill, financial capacity, and personal character. Accordingly, neither Store Owner nor any immediate or remote successor to any part of Store Owner's interest in this Agreement, nor any individual, partnership, corporation, or other legal entity which directly or indirectly owns any interest in Store Owner shall, without the prior written consent of CBL, sell, assign, transfer, convey, give away, pledge, mortgage, or otherwise encumber: (i) any direct or indirect interest in the rights granted in this Agreement; (ii) any direct or indirect interest which would effect a change of control of Store Owner, if Store Owner is a corporation or partnership; or (iii) all or substantially all of the assets of the Store. Any purported assignment or transfer, by operation of law or otherwise, not having the written consent of CBL required by this Section 12.2, shall be null and void and shall constitute a material breach hereof, for which CBL may then terminate without an opportunity to cure pursuant to Section 13.2.4 hereof.

12.2.1 CBL shall not unreasonably withhold its consent when required pursuant to Section 12.2 provided, however, that CBL shall have the right to require any or all of the following as conditions of its consent:

12.2.1.1 All of the transferor's accrued monetary obligations and all other outstanding obligations to CBL and CBL's affiliates shall have been satisfied;

12.2.1.2 CBL and the transferor shall have executed a mutual general release, in a form prescribed by CBL, of any and all claims which each may have against the other and their affiliates, and their respective shareholders, directors, employees, and agents in their corporate and individual capacities;

12.2.1.3 The transferee shall sign CBL's standard form franchise agreement then being offered to new Store Owners (including the execution of personal guarantees); provided, however, that the transferee shall not be required to pay an initial franchise fee;

12.2.1.4 The transferee (and, if the transferee is other than an individual, such owners of a beneficial interest in the transferee as CBL may request) shall demonstrate to CBL's satisfaction that it meets CBL's educational, managerial, and business standards; possesses a good moral character (if an individual), business reputation, and credit rating; has the aptitude and ability to operate the Store, as may be evidenced by prior related business experience or otherwise; and has adequate financial resources and liquid capital available to successfully operate the Store given the financial obligations associated with the Store;

12.2.1.5 The transferee, at its expense, shall within the time specified by CBL, upgrade the Store premises to conform to the then-current standards and specifications of the System;

12.2.1.6 At transferee's expense, the transferee and its manager shall successfully complete such training as CBL may deem necessary in order to properly operate the Store;

12.2.1.7 The transferor shall reimburse CBL for its reasonable legal, accounting, management, training, and incidental expenses (not to exceed twenty-five percent (25%) of the then-current initial franchise fee but in no event less than an administrative fee of \$2,500) incurred in reviewing and approving the transfer and providing such training to the transferee as CBL deems necessary; provided, however, that no reimbursement shall be required for: (i) transfers to a corporation formed for the convenience of ownership, where the ownership of such corporation is in the same proportion as the ownership of Store Owner before such transfer; and (ii) transfers made pursuant to Section 12.3 hereof; and

12.2.1.8 Store Owner shall not be in default of any provision of this Agreement or any other agreement between the Store Owner and CBL or its affiliates.

12.2.2 Store Owner shall grant no security interest in any of the assets of the Store unless the secured party agrees that in the event of any default by Store Owner under any documents related to the security interest, CBL shall have the right and option to be substituted as obligor to the secured party and to cure any default of Store Owner, except any acceleration of indebtedness due to Store Owner's default shall be void.

12.3 Upon the death or mental incapacity of Store Owner (if an individual) or of any person with a controlling interest in Store Owner or this Agreement, the executor or administrator of the estate of such person, or the personal representative of such person, shall transfer, within six (6) months after such death or mental incapacity, such interest to a third party approved by CBL. Such transfers, including, without limitation, transfers by devise or inheritance, shall be subject to the same conditions for transfer as are provided in Sections 12.2 or 12.3, as the case may be. However, in the case of a transfer by devise or inheritance governed by Section 12.2, if the heirs or beneficiaries are unable to meet the conditions in Section 12.2 hereof, the executor or administrator of the deceased Store Owner shall have a reasonable time to dispose of the deceased's interest in the franchise, which disposition shall be subject to all the terms and conditions for transfers contained herein. If the interest is not disposed of within a reasonable time, CBL may terminate this Agreement pursuant to Section 13.2.7 hereof.

12.4 CBL's consent to a transfer which is the subject of this Section 12 shall not constitute a waiver of any claims it may have against the transferring party, nor shall it be deemed a waiver of CBL's right to demand exact compliance with any of the terms hereof by transferee.

12.5 If, for any reason, this Agreement is not terminated pursuant to Section 13.1 and this Agreement is assumed or assignment of the same to any person or entity who has made a bona fide offer to accept an assignment of this Agreement is contemplated, pursuant to the United States Bankruptcy Code, then notice of such proposed assignment or assumption, setting forth: (a) the name and address of the proposed assignee; and (b) all of the terms and conditions of the proposed assignment and assumption; shall be given to CBL within twenty (20) days after receipt of such proposed assignee's offer to accept assignment of this Agreement, and, in any event, within ten (10) days prior to the date that the application is made to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and CBL shall thereupon have the prior right and option, to be exercised by notice given at any time prior to the effective date of such proposed assignment and assumption, to accept an assignment of this Agreement to CBL itself, upon the same terms and conditions and for the same consideration, if any, as in the bona fide offer made by the proposed assignee, less any brokerage commissions which may be payable by Store Owner out of the consideration to be paid by such assignee for the assignment of this Agreement.

13. DEFAULT AND TERMINATION

13.1 Store Owner shall be deemed to be in default hereunder, and all rights granted herein shall automatically terminate without notice to Store Owner, if Store Owner shall become insolvent or makes a general assignment for the benefit of creditors; or, if a petition in bankruptcy is filed by Store Owner or such a petition is filed against and not opposed by Store Owner; or, if Store Owner is adjudicated as bankrupt or insolvent; or, if a bill in equity or other proceeding for the appointment of a receiver of Store Owner or other custodian for Store Owner's business or assets is filed and consented to by Store Owner; or, if a receiver or other custodian (permanent or temporary) of Store Owner's assets or property, or any part thereof, is appointed by any court of competent jurisdiction; or, if proceedings for a composition with creditors under any state or federal law should be instituted by or against Store Owner; or, if a final judgment remains unsatisfied or of record for thirty (30) days or longer (unless a supersedeas bond is filed); or, if Store Owner is dissolved; or, if execution is levied against Store Owner's business or property; or, if the real or personal property of the Store shall be sold after levy thereupon by any sheriff, marshal, or constable.

13.2 Upon the occurrence of any of the following events, Store Owner shall be deemed to be in default and CBL may, at its option, terminate this Agreement and all rights granted hereunder, without affording Store Owner any opportunity to cure the default, effective immediately upon the provision of notice to Store Owner (in the manner set forth under Section 20 of this Agreement):

13.2.1 If Store Owner fails to open the Store within the timeframe provided in Section 6.6 of this Agreement;

13.2.2 If Store Owner at any time ceases to operate or abandons the Store for a period of seven (7) consecutive days, or otherwise forfeits the right to do or transact business in the jurisdiction where the Store is located; provided, however, that if through no fault of Store Owner, the premises are damaged or destroyed, then Store Owner shall have thirty (30) days within which to apply for CBL's approval to relocate or reconstruct the premises, which approval shall not be unreasonably withheld;

13.2.3 If Store Owner, or any officer, director, or partner of Store Owner, is convicted of a felony, a crime involving moral turpitude, or any other crime or offense that CBL believes is reasonably likely to have an adverse effect on the System, the Proprietary Marks, the goodwill associated therewith, or CBL's interest therein;

13.2.4 If Store Owner or any partner or shareholder in Store Owner purports to transfer any rights or obligations hereunder, or any interest in Store Owner or the assets of the Store to any third party without CBL's prior written consent or notice, contrary to the terms of Section 12 of this Agreement;

13.2.5 If Store Owner fails to comply with the covenants in Section 15.2 of this Agreement or fails to deliver to CBL executed covenants required under Section 15.9 of this Agreement;

13.2.6 If, contrary to the terms of Section 8, Store Owner or any principal of Store Owner discloses or divulges the contents of the Manual or other confidential information provided to Store Owner by CBL;

13.2.7 If an approved transfer is not effected following Store Owner's death or mental incapacity as required by Section 12.3 of this Agreement;

13.2.8 If Store Owner fails to comply with any provision of this Agreement or any specification, standard or operating procedure or rule prescribed by Coffee Beanery which relates to the use of any Mark, the quality of authorized food products or any beverages sold by Store Owner or the cleanliness and sanitation of the Store, or if Store Owner fails to comply with any applicable health code relating to the operation of the Store and Store Owner does not correct such failure within three (3) calendar days after written notice is delivered to Store Owner;

13.2.9 If Store Owner knowingly maintains false books or records, or knowingly submits any false reports to CBL;

13.2.10 If the lease for the Store premises expires without being renewed or for any reason is terminated;

13.2.11 If Store Owner, after curing a default pursuant to Section 13.3 of this Agreement, commits a similar or different default within two (2) years thereafter, whether or not cured after notice;

13.2.12 If Store Owner does not pay any monies owing to CBL or CBL's affiliates, or Store Owner's suppliers, at the time that payment is required;

13.2.13 If Store Owner or any principal of Store Owner has made any material misrepresentations in connection with Store Owner's application to CBL for the franchise granted herein;

13.2.14 If Store Owner understates any payment to CBL by five percent (5%) or more, or understates any such payment in any amount, twice in any two (2) year period;

13.2.15 If Store Owner fails to obtain or maintain required insurance coverage;

13.2.16 If Store Owner permits alcohol, drugs, or pets on the Store premises, or the Store premises is used for any activities prohibited by Section 5.5;

13.2.17 If Store Owner fails to attend any required training or CBL's annual convention for franchisees, as specified in Section 5.9;

13.2.18 If Store Owner or any affiliate of Store Owner commits any act of default under any other franchise agreement with CBL for which such agreement is terminated; or

13.2.19 If Store Owner or any affiliate of Store Owner commits any act of default under any other agreement with CBL for which such agreement is terminated, except that this provision shall not apply to a default by Store Owner or its affiliate under any Area Development Agreement.

13.3. Except as provided in Sections 13.1 and 13.2 of this Agreement, Store Owner shall have thirty (30) days after CBL provides written notice of termination (in the manner specified in Section 20, of this Agreement) within which to remedy any default hereunder and to provide evidence thereof to CBL. If any such default is not cured within such time, or such longer period as applicable law may require, this Agreement shall terminate without further notice to Store Owner, effective immediately upon expiration of such period. Store Owner shall be in default hereunder for any failure to substantially comply with any of the requirements imposed by this Agreement, as they may from time to time be supplemented in writing as permitted herein, or to carry out the terms hereof in good faith.

13.4 If an Approved Location for the Store has not been obtained within one (1) year after the Effective Date, or Store Owner has not either obtained CBL's written approval of a lease for the Store

premises, as described in Section 5.10 of this Agreement, or otherwise acquired the right to operate a Store at the premises, then either party may, by written notice to the other, terminate this Agreement, effective three (3) days after notice has been given. Upon such termination, both parties shall be relieved of any further obligations under this Agreement, but no refund of the initial installment of the initial franchise fee shall be made.

13.5 CBL shall have the discretion, but not the obligation, to rescind any termination implemented pursuant to this Section 13. If CBL determines, in the exercise of its sole discretion, to rescind the termination of this Agreement (which action shall be reflected in writing), then, in addition to engaging in such acts and making such payments as will result in Store Owner's full compliance with all terms of this Agreement through to the date of the proposed rescission of termination, Store Owner agrees to pay CBL a reinstatement fee of Two Thousand Five Hundred Dollars (\$2,500) as a condition to such rescission. In no event shall Store Owner have any entitlement to reinstatement whether or not defaults that have led to the termination shall have been cured and all such rescission of termination shall occur solely with CBL's prior written consent which may be withheld in the exercise of its sole discretion.

14. OBLIGATION UPON TERMINATION OR EXPIRATION

Upon termination or expiration of this Agreement, all rights granted hereunder to Store Owner shall forthwith terminate and:

14.1 Store Owner shall immediately cease to operate the Store, and shall not thereafter, directly or indirectly, represent to the public or hold itself out as a present or former franchisee of CBL.

14.2 Store Owner shall immediately and permanently cease to use, in any manner whatsoever, any confidential methods, procedures, and techniques associated with the System; the Proprietary Marks; and all other proprietary marks and distinctive forms, slogans, signs, symbols, and devices associated with the System.

14.3 Store Owner shall take such action as may be necessary to cancel any assumed name or equivalent registration which contains the Proprietary Marks, and Store Owner shall furnish CBL with evidence satisfactory to CBL of compliance with this obligation within thirty (30) days after termination or expiration hereof.

14.4 Store Owner shall, at CBL's option, immediately assign to CBL any interest which Store Owner has in any lease for the Store premises. In the event CBL does not elect to exercise its option to acquire the lease for the Store premises, Store Owner shall make such modifications or alterations to the premises (including, at CBL's option, the assignment of the telephone number to CBL) immediately upon termination or expiration hereof as may be necessary to distinguish the appearance of such premises from that of other Stores operating under the System and Proprietary Marks, and shall make such specific additional changes thereto as CBL may reasonably request for that purpose. In the event Store Owner fails or refuses to comply with the requirements of this Section 14.4, CBL shall have the right to enter upon the Store premises without being guilty of trespass or any other tort, for the purpose of making or causing to be made such changes as may be required, at the expense of Store Owner, which expense Store Owner agrees to pay upon demand.

14.5 Store Owner agrees, in the event it continues to operate or subsequently begins to operate any other business, not to use any reproduction, counterfeit copy, or colorable imitation of the Proprietary Marks, either in connection with such other business or the promotion thereof, which is likely to cause confusion, mistake, or deception, or which is likely to dilute CBL's rights in and to the Proprietary Marks, and further agrees not to use any designation of origin, description, representation, trademark, or

tradename which suggests or represents a past or present association or connection with CBL, the System, or the Proprietary Marks.

14.6 Store Owner shall promptly pay all sums owing to CBL and its affiliates. In the event of termination for any default of Store Owner, such sums shall include all damages, costs, and expenses, including reasonable attorneys' fees, incurred by CBL as a result of the default, which obligation shall give rise to and remain, until paid in full, a lien in favor of CBL against any and all of the personal property, furnishings, equipment, signs, and fixtures, owned by Store Owner and on the Store premises at the time of default. Store Owner shall pay to CBL all damages, costs, and expenses, including reasonable attorneys' fees, incurred by CBL, subsequent to the termination or expiration hereof in obtaining injunctive or other relief for the enforcement of any provisions of this Agreement.

14.7 Store Owner agrees that any termination of this Agreement by Store Owner before the expiration of the initial term will deprive CBL of the benefit of the bargain it is entitled to receive under this Agreement. If this Agreement terminates for any reason other than a material breach by CBL, Store Owner shall pay CBL, as liquidated damages for the loss of the benefit of the bargain CBL is entitled to receive, and not as a penalty, a lump sum payment equal to royalty fees Store Owner owed CBL during the preceding sixty (60) months before the termination date. If less than sixty (60) months have lapsed between the date the Store Owner commenced operations and the termination date, the liquidated damages will be the average monthly royalty fees during the period from commencement of Store operations and the termination multiplied by sixty (60). If the balance of the initial term of this Agreement is less than sixty months, the amount of the liquidated damages shall be determined by multiplying the average monthly royalty fees during the preceding sixty (60) months by the number of months remaining in the initial term of this Agreement. If the termination occurs prior to the commencement of Store operations, Store Owner will forfeit the initial franchise fee paid but will not owe CBL any further damages. Store Owner will pay all amounts due under this section within thirty (30) days after termination of this Agreement. Store Owner agrees, and will direct any party construing this Agreement to conclusively presume, that the damages stated in this section: (i) are true liquidated damages; (ii) are intended to compensate CBL for the harm that CBL will suffer; (iii) are not a penalty; (iv) are a reasonable estimate of our probable loss resulting from the Store Owner defaults, viewed as of the effective date of this Agreement; and (v) will be in addition to all other rights we have to obtain legal or equitable relief.

14.8 Store Owner shall immediately return the Manual and all other documents which contain confidential information relating to the operation of the Store.

14.9 CBL shall have the option, to be exercised within thirty (30) days after termination or expiration hereof, to purchase from Store Owner any or all of the furnishings, equipment, signs, fixtures, or supplies related to the operation of the Store, at their fair market value. If the parties cannot agree on the price of any such items within fifteen (15) days after the exercise of the option, an independent appraiser shall be designated by CBL and Store Owner and his determination shall be binding. If CBL and Store Owner cannot agree on an appraiser within fifteen (15) days, each party shall designate an independent appraiser, and the two designated independent appraisers shall select a third independent appraiser. The determination of fair market value of the third appraiser so chosen shall be binding. CBL and Store Owner shall share equally in the cost of any independent appraiser(s). If CBL elects to exercise any option to purchase herein provided, the closing shall take place within fifteen (15) days after the purchase price shall have been established. CBL shall have the right to set off all amounts due from Store Owner, and the cost of the appraisal, if any, against the payment price of such items.

14.10 In the event Store Owner (or Store Owner's affiliates) owns the realty on which the Store is located, CBL will also have the option to purchase the real estate for a period of thirty (30) days

following expiration or termination of this Agreement. The purchase price shall be fair market value. The purchase price of the realty will be payable in full at the closing, or, if elected by CBL in the exercise of its sole discretion payable over a term as follows: ten percent (10%) of the purchase price at the time of closing and the remainder (minus customary prorations including the pay discharge of existing mortgage liens) in sixty (60) equal monthly installments of principal plus interest at a rate equal to the lower of the rate charged for thirty (30) year fixed loans or prime rate as then charged by CBL's primary bank. If CBL does not elect to purchase the real property, it or its designee will have the option to enter into a lease for a term of ten (10) years with an option by the lessee to extend the term of the lease for an additional term of five (5) years. The lease shall contain the terms and conditions contained in the form of lease then used by CBL in connection its corporately owned Stores. The rental under the lease for the initial term shall be the fair rental value of the property. The rental shall be adjusted during the five (5) year option term by the percentage that the National Consumer Price Index for Urban Wage Earnings and Clerical Workers as determined by the United States Department of Labor for the region in which the Store is located (or a comparable index if such Index is not then being issued) has increased or decreased from the commencement date of the initial term until the last day of the initial term of the lease up to a maximum increase or decrease of five percent (5%) during the option period.

14.11 All covenants, obligations, and agreements of Store Owner which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination or expiration of this Agreement, shall survive such termination or expiration.

14.12 Store Owner shall comply with the covenants contained in Section 15.3 of this Agreement.

15. COVENANTS

15.1 Store Owner covenants that during the term hereof, except as otherwise approved in writing by CBL, Store Owner (or if Store Owner is a corporation or partnership, a principal of Store Owner) or Store Owner's manager shall devote its full time and best efforts to the management and operation of the Store.

15.2 Store Owner acknowledges that it shall receive valuable specialized training and confidential information, including, without limitation, information regarding the operational, sales, promotional, and marketing methods and techniques of CBL and the System. Store Owner covenants that during the term hereof it shall not, either directly or indirectly, except as otherwise approved in writing by CBL, for itself, or through, on behalf of, or in conjunction with, any person, persons, or legal entity:

15.2.1 Divert or attempt to divert any business or customer of the Store to any competitor by inducement or otherwise, or do or perform any other act injurious or prejudicial to the goodwill associated with the Proprietary Marks and the System; and

15.2.2 Own, maintain, advise, operate, engage in, be employed by, make loans to, have any interest in or relationship or association with, a business which offers the same or similar products or services as those offered by the Store.

15.3 Store Owner covenants that it shall not, without CBL's prior written consent, for a continuous, uninterrupted one (1) year period commencing upon the date of: (a) a transfer permitted under Section 12 of this Agreement; (b) expiration of this Agreement; (c) termination of this Agreement (regardless of the cause for termination); or (d) a final decision of an arbitrator or a court of competent jurisdiction (after all appeals have been taken) with respect to any of the foregoing events or with respect to enforcement of this Section 15.3; either directly or indirectly, for itself, or through, on behalf of, or in

conjunction with any person, persons, or legal entity, own, maintain, advise, operate, engage in, be employed by, make loans to, or have any interest in or relationship or association with a business (including, without limitation, as a lessor of personal or real property) which offers the same or similar products or services as those offered by the Store, and which is located: (i) at the Approved Location; or (ii) within a ten (10) mile radius of Store Owners location(s).

15.4 Sections 15.2 and 15.3 shall not apply to the beneficial ownership by Store Owner of less than a five percent (5%) of the outstanding equity securities of any company registered under the Securities Act of 1933 or the Securities Exchange Act of 1934.

15.5 The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision hereof. If all or any portion of a covenant in this Section 15 is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which CBL is a party, Store Owner expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Section 15.

15.6 Store Owner agrees and acknowledges that CBL shall have the right, in its sole discretion, to reduce the scope of any covenant or any portion thereof set forth in Sections 15.2 and 15.3 of this Agreement, without Store Owner's consent, effective immediately upon receipt by Store Owner of written notice thereof; and Store Owner agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 21 of this Agreement.

15.7 Store Owner expressly agrees that the existence of any claims it may have against CBL, whether or not arising hereunder, shall not constitute a defense to the enforcement by CBL of the covenants in this Section 15.

15.8 Store Owner acknowledges that Store Owner's violation of the terms of Sections 14 or 15 of this Agreement would result in irreparable injury to CBL for which no adequate remedy at law may be available. Store Owner hereby consents to the issuance by a court of competent jurisdiction of an injunction prohibiting any conduct by Store Owner violative of the obligations in Sections 14 or 15 of this Agreement, including such issuance on an ex-parte basis. Store Owner hereby waives the requirement that CBL post any bond relating to such injunctive relief, or, if such bond may not be legally waived by Store Owner, Store Owner agrees that a bond in the amount of \$1,000 is sufficient. Store Owner, and agrees to pay all court costs and reasonable attorneys' fees incurred by CBL in obtaining any injunctive or other equitable or legal relief with respect to such conduct or action.

15.9 At CBL's request, Store Owner shall obtain execution of covenants similar to those set forth in this Section 15 (including covenants applicable upon the termination of a person's relationship with Store Owner and covenants incorporating the terms of Section 14 of this Agreement, as modified to apply to an individual) from any or all of the following persons: (1) all employees of Store Owner who have received training from CBL; (2) all officers, directors, and holders of a beneficial interest of five (5%) percent or more of the securities of Store Owner, and of any corporation directly or indirectly controlling Store Owner, if Store Owner is a corporation; and (3) the general partners (including any corporation, and the officers, directors, and holders of a beneficial interest of five percent (5%) or more of the securities of any corporation which controls, directly or indirectly, any general partner), if Store Owner is a partnership. Store Owner shall furnish copies of such covenants to CBL upon request. Every covenant required by this Section 15.9 shall be in a form approved by CBL, including, without limitation, specific identification of CBL as a third party beneficiary of such covenants with the independent right to enforce them.

16. STORE OWNER AS A CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY

16.1 Except as otherwise approved in writing by CBL, if Store Owner is a corporation, it shall: (i) confine its activities, and its governing documents shall at all times provide that its activities are confined, exclusively to operating the Store; (ii) maintain stop transfer instructions on its records (unless Store Owner is publicly held) against the transfer of any equity securities and shall only issue securities upon the face of which a legend, in a form satisfactory to CBL, appears which references the transfer restrictions imposed by this Agreement; and (iii) maintain a current list of all owners of record and all beneficial owners of any class of voting stock of Store Owner and furnish the list to CBL upon request.

16.2 If Store Owner is a partnership it shall (i) furnish CBL with its partnership agreement as well as such other documents as CBL may reasonably request, and any amendments thereto; and (ii) prepare and furnish to CBL, upon request, a current list of all general and limited partners in Store Owner.

16.3 If Store Owner is a limited liability company, it shall: (i) confine its activities exclusively to operating the Store; (ii) furnish CBL with its articles of organization and operating agreement, as well as such other documents as CBL may reasonably request and any amendments thereto; (iii) prepare and furnish to CBL, upon request, a current list of all members and managers in Store Owner; and (iv) maintain stop transfer instructions on its records against the transfer of any equity securities and shall only issue securities which bear a legend, in a form satisfactory to CBL, which references the transfer restrictions imposed by this Agreement.

16.4 Each present and future shareholder or member, and each present and future general and limited partner, of Store Owner shall jointly and severally guarantee Store Owner's performance of each and every provision of this Agreement, by executing a Guarantee in the form annexed hereto as Attachment A.

17. TAXES, PERMITS, AND INDEBTEDNESS

17.1 Store Owner shall promptly pay when due all taxes levied or assessed, including, without limitation, unemployment and sales taxes, and all accounts and other indebtedness of every kind incurred by Store Owner in the conduct of the Store. Store Owner shall pay to CBL an amount equal to any sales tax, gross receipts tax, or similar tax (other than income tax) imposed on CBL with respect to any payments to CBL required hereunder, unless the tax is credited against income tax otherwise payable by CBL.

17.2 In the event of any bona fide dispute as to Store Owner's liability for taxes assessed or other indebtedness, Store Owner 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 Store Owner permit a tax sale or seizure by levy of execution or similar writ or warrant, or attachment by a creditor, to occur against the Store premises, or any improvements thereon.

17.3 Store Owner shall comply with all federal, state, and local laws, rules, and regulations, and shall timely obtain any and all permits, certificates, or licenses necessary for the full and proper conduct of the Store, including, without limitation, licenses to do business, fictitious name registrations, sales tax permits, and fire clearances.

17.4 Store Owner shall notify CBL in writing within five (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 Store.

18. INDEPENDENT CONTRACTOR AND INDEMNIFICATION

18.1 It is understood and agreed by the parties hereto that this Agreement does not create a fiduciary relationship between them; that Store Owner shall be an independent contractor; and, that nothing herein is intended to constitute either party as an agent, legal representative, subsidiary, joint venturer, partner, employee, employer, joint employer, enterprise, or servant of the other for any purpose whatsoever.

18.2 During the term hereof, Store Owner shall hold itself out to the public as an independent contractor operating the business pursuant to a franchise from CBL. Store Owner agrees to take such action as may be necessary to do so, including, as set forth in Section 7.2.4, exhibiting a notice of that fact in a conspicuous place on the Store premises.

18.3 Store Owner acknowledges and agrees that it is not authorized to make any contract, agreement, warranty, or representation on CBL's behalf, or to incur any debt or other obligation in CBL's name; and that CBL shall in no event assume liability for, or be deemed liable hereunder as a result of, any such action; nor shall CBL be liable by reason of any act or omission of Store Owner in its conduct of the Store or for any claim or judgment arising therefrom against Store Owner or CBL. Store Owner shall indemnify and hold CBL and its affiliates, and their respective shareholders, directors, employees, and agents harmless against any and all claims arising directly or indirectly from, as a result of, or in connection with Store Owner's operation of the Store, as well as the costs, including attorneys' fees, of defending against them.

19. APPROVALS AND WAIVERS

19.1 CBL makes no warranties or guarantees upon which Store Owner may rely, and assumes no liability or obligation to Store Owner, by providing any waiver, approval, consent, or suggestion to Store Owner in connection with this Agreement, or by reason of any neglect, delay, or denial of any request therefor. No delay, waiver, omission, or forbearance on the part of CBL to exercise any right, option, duty, or power arising out of this Agreement against Store Owner, or any other franchisee, or any breach or default by Store Owner, or by any other franchisee, of any of the terms, provisions, or covenants thereof, shall constitute a waiver by CBL to enforce any such right, option, or power as against Store Owner, or as to a subsequent breach or default by Store Owner. Subsequent acceptance by CBL of any payments due to it hereunder shall not be deemed to be a waiver by CBL of any preceding or succeeding breach by, or obligations of, Store Owner of any terms, covenants, or conditions of this Agreement.

20. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be personally delivered, sent by Fax, mailed by certified mail, return receipt requested, or dispatched by overnight delivery envelope, to the respective parties at the addresses set forth on the signature page of this Agreement unless and until a different address has been designated by written notice to the other party. Notices shall be deemed to have been received as follows: by personal delivery or fax -- at the time of delivery; by overnight delivery service -- on the next business day following the date on which the Notice was given to the overnight delivery service; by certified mail -- three (3) days after the date of mailing.

21. ENTIRE AGREEMENT

21.1 This Agreement, and any attachments hereto, constitute the entire and complete agreement between CBL and Store Owner concerning the subject matter hereof, and supersede any and all prior agreements. Except for those permitted hereunder to be made unilaterally by CBL, 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.

22. SEVERABILITY AND CONSTRUCTION

22.1 Except as expressly provided to the contrary herein, each portion, section, part, term, and/or provision hereof shall be considered severable; and if, for any reason, any portion, section, part, term, and/or provision herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such shall not impair the operation of, or have any other effect upon, such other portions, sections, parts, terms, and/or provisions hereof as may remain otherwise intelligible; and the latter shall continue to be given full force and effect and bind the parties hereto; and the invalid portions, sections, parts, terms, and/or provisions shall be deemed not to be a part hereof.

22.2 Store Owner expressly agrees to be bound by any promise or covenant imposing the maximum duty permitted by law which is subsumed within the terms of any provision hereof, as though it were separately articulated in and made a part hereof, that may result from striking from any of the provisions hereof any portion or portions which a court may hold to be unreasonable and unenforceable in a final decision to which CBL is a party, or from reducing the scope of any promise or covenant to the extent required to comply with such court order.

22.3 Any provision or covenant of this Agreement which expressly or by its nature imposes obligations beyond the expiration or termination of this Agreement shall survive such expiration or termination.

23. APPLICABLE LAW

23.1 This Agreement takes effect upon its acceptance and execution by CBL in Michigan, and any claim or controversy arising out of or related to this Agreement, or the making, performance, breach, interpretation, or termination thereof, shall be interpreted and construed exclusively under the laws of Michigan. In the event of any conflict of law, the laws of Michigan shall prevail, without regard to the application of Michigan conflict of law rules. If, however, any provision of this Agreement would not be enforceable under the laws of Michigan, and if the Store is located outside of Michigan and such provision would be enforceable under the laws of the state in which the Store is located, then such provision shall be interpreted and construed under the laws of that state. Nothing in this Section 23.1 is intended by the parties to subject this Agreement to any franchise or similar law, rule, or regulation of the State of Michigan to which it would not otherwise be subject.

23.2 Except as otherwise provided in this Agreement, any claim or controversy arising out of or related to this Agreement, or the making, performance, breach, interpretation, or termination thereof, except for any actions brought with respect to: (i) ownership or use of the Proprietary Marks; (ii) issues concerning the alleged violations of federal or state antitrust laws; (iii) securing injunctive relief pursuant to Section 23.7 of this Agreement; or (iv) the right to indemnification or the manner in which it is exercised, shall first be subject to non-binding mediation in Flushing, Michigan, or, if CBL's principal place of business shall be at another location at the time that arbitration is sought, in the city of CBL's

then principal place of business. Mediation shall not defer or suspend CBL's exercise of any termination right under Section 13.

23.3 No arbitration or litigation may be commenced on any claim which is subject to mediation under Section 23.2 prior to the mediation termination date, as defined in Section 23.3.3, whether or not the mediation has been commenced. Mediation under this Section 23.3 is not intended to alter or suspend the rights or obligations of the parties under this Agreement or to determine the validity or effect of any provision of this Agreement, but is intended to furnish the parties an opportunity to resolve disputes amicably, expeditiously and in a cost-effective manner on mutually acceptable terms.

23.3.1 The non-binding mediation provided for hereunder shall be commenced by the party requesting mediation giving written notice of the request for mediation to the party with whom mediation is sought. The request shall specify with reasonable particularity the matters for which non-binding mediation is sought.

23.3.2 Non-binding mediation hereunder shall be conducted by a mediator or mediation program designated by CBL in writing. CBL shall make the designation within a reasonable time after issuance of the request.

23.3.3 Non-binding mediation hereunder shall be concluded within sixty (60) days of the issuance of the request, or such longer period as may be agreed upon by the parties in writing ("mediation termination date"). All aspects of the mediation process shall be treated as confidential, shall not be disclosed to others, and shall not be offered or admissible in any other proceeding or legal action whatsoever. The parties shall bear their own costs of mediation, and shall share equally in the cost of the mediator or mediation service.

23.4 Except for any actions brought with respect to: (i) ownership or use of the Proprietary Marks; (ii) issues concerning the alleged violations of federal or state antitrust laws; (iii) securing injunctive relief or specific performance pursuant to Section 23.7 of this Agreement; or (iv) the right to indemnification or the manner in which it is exercised, any claim or controversy arising out of or related to this Agreement, or the making, performance, breach, interpretation, or termination thereof, shall be finally settled by arbitration pursuant to the then-prevailing Commercial Arbitration Rules of the American Arbitration Association or any successor thereto, by one arbitrator appointed in accordance with such rules. Any award of the arbitrator shall be in writing, shall state the reasons for the award (including any findings of fact and conclusions of law) and shall explain the manner in which any awarded damages are calculated. CBL and Store Owner waive, to the fullest extent permitted by law, any right or claim to any punitive or exemplary damages against the other, and agree that any award shall be limited to the recovery of any actual damages sustained by them. The prevailing party also shall be entitled to recover its expenses, including fees paid to the American Arbitration Association or any arbitrator, reasonable attorneys' fees and accounting fees, in addition to any other relief to which it is found entitled. All arbitration proceedings shall take place in Flushing, Michigan, or, if CBL's principal place of business shall be at another location at the time that mediation is sought, in the city of CBL's then principal place of business. The arbitration award shall be binding upon the parties and may be entered and enforced in any court of competent jurisdiction. Any arbitration proceeding shall be limited to controversies between CBL and Store Owner and shall not be expanded to include any other licensee as a party, or include the adjudication of class action claims.

23.5 To the extent that a judicial action is permitted by the Agreement, any such action brought by Store Owner against CBL shall be brought exclusively, and any such action brought by CBL against Store Owner may be brought, in the federal district court covering the location at which CBL has its principal place of business at the time the action is commenced; provided, however, that if the federal