

## FRANCHISE DISCLOSURE DOCUMENT



**Tropical Smoothie Café, LLC**  
(a Georgia limited liability company)  
1117 Perimeter Center West  
Suite W200  
Atlanta, Georgia 30338  
(770) 821-1900 phone  
(770) 821-1895 fax  
E-mail: [info@tropicalesmoothie.com](mailto:info@tropicalesmoothie.com)  
[www.tropicalesmoothiecafe.com](http://www.tropicalesmoothiecafe.com)  
[www.facebook.com/tropicalesmoothiecafe](https://www.facebook.com/tropicalesmoothiecafe)

The franchise is for the establishment and operation of a café offering customers a variety of premium quality real fruit smoothies blended fresh in the store using proprietary recipes, as well as specialty sandwiches, gourmet wraps, salads, soups and coffee drinks (a “**Tropical Smoothie Café® franchise**” or “**Franchised Business**”).

The total investment necessary to begin operation of a single-unit Tropical Smoothie Café® franchise ranges from \$165,940 to \$414,685. This includes a \$25,000 initial franchise fee that must be paid to us. If a franchisee chooses to develop multiple units, a \$15,000 initial franchise fee must be paid for the second and each additional unit.

This disclosure document summarizes certain provisions of your Franchise Agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no governmental agency has verified the information contained in this document.**

You may wish to receive your Disclosure Document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Charles Watson at 1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30328 and (770) 821-1900.

The terms of your contract will govern your franchise relationship. Don’t rely on the Disclosure Document alone to understand your contract. Read all of your contract carefully. Show your contract and this Disclosure Document to an advisor, like a lawyer or accountant.

Buying a franchise is a complex investment. The information in this Disclosure Document can help you make up your mind. More information on franchising, such as “*A Consumer’s Guide to Buying a Franchise*,” which can help you understand how to use this Disclosure Document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC’s home page at [www.ftc.gov](http://www.ftc.gov) for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Date of Issuance: April 15, 2014

## STATE COVER PAGE

Your state may have a franchise law that requires a franchisor to register or file with a state franchise administrator before offering or selling in your state. REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.

Call the state franchise administrator listed in Exhibit A for information about the franchisor or about franchising in your state.

MANY FRANCHISE AGREEMENTS DO NOT ALLOW YOU TO RENEW UNCONDITIONALLY AFTER THE INITIAL TERM EXPIRES. YOU MAY HAVE TO SIGN A NEW AGREEMENT WITH DIFFERENT TERMS AND CONDITIONS IN ORDER TO CONTINUE TO OPERATE YOUR BUSINESS. BEFORE YOU BUY, CONSIDER WHAT RIGHTS YOU HAVE TO RENEW YOUR FRANCHISE, IF ANY, AND WHAT TERMS YOU MIGHT HAVE TO ACCEPT IN ORDER TO RENEW.

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY MEDIATION OR LITIGATION ONLY IN GEORGIA. OUT OF STATE MEDIATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO MEDIATE OR LITIGATE WITH US IN GEORGIA THAN IN YOUR OWN STATE.
2. THE FRANCHISE AGREEMENT STATES THAT GEORGIA LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
3. UPON EARLY TERMINATION OF THE FRANCHISE, YOU MUST PAY US LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO THE AVERAGE MONTHLY ROYALTY FEES DURING THE TWELVE MONTHS PRIOR TO TERMINATION MULTIPLIED BY 18 OR THE NUMBER OF MONTHS REMAINING IN THE FRANCHISE AGREEMENT, WHICHEVER IS LESS.
4. OUR DECEMBER 29, 2013 AUDITED FINANCIAL STATEMENTS SHOW THAT WE HAD A WORKING CAPITAL DEFICIENCY OF \$1,208,955, AND A DEFICIT IN MEMBERS' EQUITY OF \$6,882,483, WHICH INDICATE WE MAY NOT BE ABLE TO MEET OUR OBLIGATIONS.
5. AS PER THE AUDITED BALANCE SHEET DATED DECEMBER 29, 2013, THE FRANCHISOR HAD A NET WORTH DEFICIENCY OF (\$6,882,483).
6. THE FRANCHISEE WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM \$165,940 TO \$414,685. THIS AMOUNT EXCEEDS THE FRANCHISOR'S STOCKHOLDERS EQUITY AS OF DECEMBER 29, 2013, WHICH IS (\$6,882,483).
7. THE FRANCHISOR HAS BEEN IN EXISTENCE FOR A SHORT PERIOD OF TIME, SINCE JUNE 25, 2013. THEREFORE, THERE IS ONLY A BRIEF OPERATING HISTORY TO ASSIST YOU IN JUDGING WHETHER OR NOT TO MAKE THIS INVESTMENT.
7. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

We use the services of one or more FRANCHISE BROKERS or referral sources to assist us in selling our franchise. A franchise broker or referral source represents us, not you. We pay this person a fee for selling our franchise or referring you to us. You should be sure to do your own investigation of the franchise.

The effective dates of this Disclosure Document in the states with franchise registration laws in which we have sought registration appear on the following page.

**TROPICAL SMOOTHIE CAFÉ, LLC  
STATE REGISTRATIONS**

This Franchise Disclosure Document is registered, on file, exempt from registration, or otherwise effective in the following states with franchise registration and/or disclosure laws:

California	Effective date: May 30, 2014
Hawaii	Effective date: _____, 2014
Illinois	Effective date: April 21, 2014
Indiana	Effective date: August 16, 2014
Maryland	Effective Date: July 29, 2014
Michigan	Effective date: September 10, 2014
Minnesota	Effective date: April 22, 2014
New York	Effective date: May 15, 2014
North Dakota	Effective Date: May 7, 2014
Rhode Island	Effective date: April 21, 2014
South Dakota	Effective date: April 21, 2014
Virginia	Effective date: May 7, 2014
Washington	Effective date: November 6, 2014
Wisconsin	Effective date: April 17, 2014

**THE STATE OF MICHIGAN PROHIBITS CERTAIN UNFAIR PROVISIONS THAT ARE SOMETIMES IN FRANCHISE DOCUMENTS. IF ANY OF THE FOLLOWING PROVISIONS ARE IN THESE FRANCHISE DOCUMENTS, THE PROVISIONS ARE VOID AND CANNOT BE ENFORCED AGAINST YOU.**

Each of the following provisions is void and unenforceable if contained in any documents relating to a franchise:

1. A prohibition on the right of a franchisee to join an association of franchisees.
2. A requirement that a franchisee assent to a release, assignment, novation, waiver, or estoppel which deprives a franchisee of rights and protections provided in this act. This shall not preclude a franchisee, after entering into a franchise agreement, from settling any and all claims.
3. A provision that permits a franchisor to terminate a franchise before the expiration of its term except for good cause. Good cause shall include the failure of the franchisee to comply with any lawful provision of the franchise agreement and to cure such failure after being given written notice thereof and a reasonable opportunity, which in no event need be more than 30 days, to cure such failure.
4. A provision that permits a franchisor to refuse to renew a franchise without fairly compensating the franchisee by repurchase or other means for the fair market value at the time of expiration of the franchisee's inventory, supplies, equipment, fixtures, and furnishings. Personalized materials which have no value to the franchisor and inventory, supplies, equipment, fixtures, and furnishings not reasonably required in the conduct of the franchise business are not subject to compensation. This subsection applies only if: (i) the term of the franchise is less than 5 years and (ii) the franchisee is prohibited by the franchise or other agreement from continuing to conduct substantially the same business under another trademark, service mark, trade name, logotype, advertising, or other commercial symbol in the same area subsequent to the expiration of the franchise or the franchisee does not receive at least 6 months advance notice of franchisor's intent not to renew the franchise.
5. A provision that permits the franchisor to refuse to renew a franchise on terms generally available to other franchisees of the same class or type under similar circumstances. This section does not require a renewal provision.
6. A provision requiring that arbitration or litigation be conducted outside this state. This shall not preclude the franchisee from entering into an agreement, at the time of arbitration, to conduct arbitration at a location outside this state.
7. A provision which permits a franchisor to refuse to permit a transfer of ownership of a franchise, except for good cause. This subdivision does not prevent a franchisor from exercising a right of first refusal to purchase the franchise. Good cause shall include, but is not limited to:
  - (a) The failure of the proposed transferee to meet the franchisor's then-current reasonable qualifications or standards.
  - (b) The fact that the proposed transferee is a competitor of the franchisor or subfranchisor.
  - (c) The unwillingness of the proposed transferee to agree in writing to comply with all lawful obligations.
  - (d) The failure of the franchisee or proposed transferee to pay any sums owing to the franchisor or to cure any default in the franchise agreement existing at the time of the proposed transfer.

8. A provision that requires the franchisee to resell to the franchisor items that are not uniquely identified with the franchisor. This subdivision does not prohibit a provision that grants to a franchisor a right of first refusal to purchase the assets of a franchise on the same terms and conditions as a bona fide third party willing and able to purchase those assets, nor does this subdivision prohibit a provision that grants the franchisor the right to acquire the assets of a franchise for the market or appraised value of such assets if the franchisee has breached the lawful provisions of the franchise agreement and has failed to cure the breach in the manner provided in subdivision (c).

9. A provision which permits the franchisor to directly or indirectly convey, assign, or otherwise transfer its obligations to fulfill contractual obligations to the franchisee unless provision has been made for providing the required contractual services.

If the franchisor's most recent financial statements are unaudited and show a net worth of less than \$100,000.00, the franchisee may request the franchisor to arrange for the escrow of initial investment and other funds paid by the franchisee until the obligations, if any, of the franchisor to provide real estate, improvements, equipment, inventory, training or other items included in the franchise offering are fulfilled. At the option of the franchisor, a surety bond may be provided in place of escrow.

THE FACT THAT THERE IS A NOTICE OF THIS OFFERING ON FILE WITH THE ATTORNEY GENERAL DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION, OR ENDORSEMENT BY THE ATTORNEY GENERAL.

Any questions regarding this notice should be directed to:

Michigan Department of Attorney General  
G. Mennen Williams Building, 7th Floor  
525 W. Ottawa St.  
P.O. Box 30212  
Lansing, MI 48909  
(517) 373-7117

# TROPICAL SMOOTHIE CAFÉ, LLC

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APPLICABLE STATE LAW MAY REQUIRE ADDITIONAL DISCLOSURES RELATED TO THE INFORMATION CONTAINED IN THIS DISCLOSURE DOCUMENT. THESE ADDITIONAL DISCLOSURES, IF ANY, APPEAR IN EXHIBIT J.

## **ITEM 1. THE FRANCHISOR AND ANY PARENTS, PREDECESSORS AND AFFILIATES**

To simplify the language in this Disclosure Document, “**Tropical Smoothie Café**” or “**we**” or “**us**” or “**our**” mean Tropical Smoothie Café, LLC, the franchisor. “**You**” or “**your**” means the person who is awarded the franchise rights. If you are a corporation, partnership, limited liability company or other legal entity, certain provisions of the Franchise Agreement and related agreements will apply to your shareholders, partners, members, and owners, as applicable. Those provisions will be noted where applicable.

### **The Franchisor**

We are a Georgia limited liability company, organized on June 25, 2012. Our principal place of business is 1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338, and our telephone number is (770) 821-1900. We do business under our corporate name and under the trade names TROPICAL SMOOTHIE® and TROPICAL SMOOTHIE CAFÉ®. If we have agents in your state for service of process, they are disclosed in Exhibit “A” to this Disclosure Document. We have offered Tropical Smoothie Café® franchises since September 4, 2012. We have never offered franchises in any other line of business. We do not engage in any business other than the offer and sale of Tropical Smoothie Café® franchises.

Our principals are partners of BIP Opportunities Fund, LP (“**BIP**”), an Atlanta, Georgia-based investment firm focused on providing capital and operational support to emerging, high-growth companies. BIP is our parent. BIP’s principal business address is 3575 Piedmont Road, Building 15, Suite 730, Atlanta, Georgia 30305.

On August 16, 2012, we acquired substantially all of the assets, and all of the franchise and related agreements, from our affiliate and predecessor, Tropical Smoothie Franchise Development Corporation (“**TSFDC**”) in exchange for issuing membership interests in us to it, and other consideration. TSFDC is a Florida corporation incorporated on July 2, 1997. Its principal place of business is 12598 U.S. Highway 98 West, Suite 200, Destin, Florida 32550. TSFDC offered Tropical Smoothie Café® franchises from 1997 through August 15, 2012, when it had 310 franchises in operation and 30 sold and under development. TSFDC never offered franchises in any other line of business and did not engage in any business other than the offer and sale of Tropical Smoothie Café® franchises. TSFDC remains our affiliate because it is also one of our members, although it no longer will offer Tropical Smoothie Café® franchises for sale.

Through common ownership, our affiliate is Tin Drum Asiacafo, LLC, a Georgia limited liability company, with its principal place of business at 200 Mansell Court East, Suite 300, Roswell, Georgia 30076 (“**Tin Drum**”). Tin Drum operates and franchises restaurants featuring fast-casual, Pan-Asian cuisine. It has offered franchises since April 1, 2011, and has sold 17 franchises. It does not offer products or services to our franchisees.

We are also affiliated, through common ownership, with BIP Franchise Finance, LLC (“**BIP Franchise Finance**”). BIP Franchise Finance is a Delaware limited liability company with its principal place of business at 3575 Piedmont Road, Building 15, Suite 730, Atlanta, Georgia 30305. BIP Franchise Finance provides financing to Tropical Smoothie Café® franchisees that meet its qualifications. You are not required to obtain financing from BIP Franchise Finance. BIP Franchise Finance does not operate any Tropical Smoothie Café® franchises or engage in any other business activities.

Except as described above, we have no affiliates that offer franchises in any line of business or provide products or services to Tropical Smoothie Café® franchisees.



## **The Franchise**

We grant Tropical Smoothie Café® franchises to qualified candidates for the right to develop and operate a Tropical Smoothie Café® store (each a “**Tropical Smoothie Café® Store**” or a “**Store**”), which is a customer-driven business that sells a variety of premium quality proprietary real fruit smoothies, specialty sandwiches, gourmet wraps, salads, soups and coffee drinks, all which are made on the premises of each Store. We refer to this business as the “**Franchised Business**” in this Disclosure Document. You must sign our standard Franchise Agreement (the “**Franchise Agreement**”) in the form attached as Exhibit “B” to this Disclosure Document. The Franchise Agreement grants you the right to develop and operate a single Tropical Smoothie Café® Store at an approved location.

The Franchised Business will operate under the trade names and service marks TROPICAL SMOOTHIE® and TROPICAL SMOOTHIE CAFÉ®, and will use other trade names, service marks, trademarks, logos, emblems and indicia of origin that we designate for use by Tropical Smoothie Café® businesses (the “**Proprietary Marks**”). We use and license others to use the Proprietary Marks and our proprietary operating system, which includes trade secret recipes (the “**System**”), developed for the operation of a Franchised Business.

## **Area Developers**

We also grant area representative rights to individuals called “**Area Developers**” by a separate Disclosure Document. An Area Developer acts as our sales representative within a defined geographic area to solicit prospective single-unit and multi-unit franchisees and to provide support before, during and after a franchisee begins operations. An Area Developer identifies and qualifies potential franchisees. The Franchise Agreement is signed by the franchisee and us after we have approved the franchisee and timely provided the Franchise Disclosure Document. We have offered area representative rights since August 16, 2012, and TSFDC did so from 1997 until August 15, 2012. (See Exhibit “C” for information regarding our Area Developers and the Illinois Addendum in Exhibit “J.”)

## **The Tropical Smoothie Café® Business**

A Tropical Smoothie Café® is a better-for-you, fast casual restaurant business offering freshly prepared food and smoothies served in a fun, friendly environment. We offer breakfast, lunch and dinner. Tropical Smoothie Café® is a destination for flavor. Our customers enjoy great tasting, toasted wraps, sandwiches and flatbreads, and gourmet salads. Our products are made with quality meats and cheese, and bold, flavorful sauces. Our hand-crafted smoothies are made with select fruit and vegetables to deliver that fresh, better-for-you experience our consumers seek.

The Tropical Smoothie Café® mission is to inspire a healthier lifestyle by serving amazing food and smoothies with a bit of tropical fun. The values on which we operate our business are: solid relationships, creative spirit, live better, and play to win.

Each Tropical Smoothie Café® focuses on generating sales inside and outside of the Café’s four walls. We offer many local store marketing programs designed to build solid relationships in our communities and drive sales and traffic. Our catering program delivers the “tropical experience” direct to the consumer, whether they are at work or at home. Consumers can enjoy our wrap and sandwich trays, salads, box lunches, and smoothies at any time of the day.

Tropical Smoothie Café® has supplemental programs to introduce our brand to new consumers through our fundraising program, which allows us to give back to our local communities. Organizations can eat well, make some friends, and enjoy giving during our fundraisers. They bring their friends and

family in to enjoy an evening of fun and food at their local Tropical Smoothie Café® and earn a percentage of the event's sales.

Our primary customers are consumers seeking better-for-you offerings in every age group, both female and male. Our products inspire a healthy lifestyle.

We support our franchise community with innovative leadership and tools focusing on sales building and profitability through our proprietary systems.

The Franchised Business will occupy approximately 1,200 to 1,800 square feet and will seat approximately 10 to 40 customers. We have developed a design package and have mandatory interior décor specifications for Tropical Smoothie Café Stores. These specifications are brand specific and are designed to ensure uniformity in the presentation of the Tropical Smoothie Café® System to customers.

### **The Market and Competition**

The smoothie business and the restaurant business are both highly developed and competitive. You will have to compete with other businesses offering smoothie beverages, as well as juice bars, and national and local restaurants that offer smoothie beverages as additional menu items, and businesses offering sandwiches, wraps, salads, soups and coffee drinks as menu items. Many of our competitors are well-established national, regional or local chains which may have substantial financial, marketing, or other resources. Other competitors include health food and general nutrition businesses. You may also encounter competition from other Tropical Smoothie Café® Stores operated by us or other franchisees.

We believe that strong brand recognition, attractive price-value relationship, and the quality of our products and our service enable us to differentiate ourselves from our competitors.

### **Regulations Specific to the Industry**

You should consider that certain aspects of the restaurant business are heavily regulated by federal, state and local laws, rules and ordinances. The U.S. Food and Drug Administration, the U.S. Department of Agriculture, and various state and local health departments administer and enforce laws and regulations that govern food preparation and service, and sanitary conditions. State and local agencies inspect restaurants for compliance with these requirements. Certain provisions of these laws impose limits on emissions resulting from commercial food preparation. Some states have also adopted or are considering proposals to regulate indoor air quality.

You will also have to comply with laws and regulations of the U.S. Food and Drug Administration and Federal Trade Commission that relate to the presentation of nutritional information. Some states and local governments may require you to comply with laws relating to the labeling that is included on your menus, menu boards, and related materials. Some state and local authorities have also adopted, or are considering adopting, laws or regulations that would affect the content or make-up of food served in restaurants, such as the level of transfat contained in a food item.

Since you must accept credit cards as a method of payment at your Tropical Smoothie Café® Store, you must also comply with payment card industry ("PCI") compliance standards to protect personal information and ensure security when customer transactions are processed using a credit card. PCI compliance standards apply to all organizations that store, process, or transmit cardholder data, and cover technical and operational payment system components involving cardholder data.

You must also comply with laws and regulations that apply to businesses generally (such as workers' compensation, Occupational Safety and Health Act (OSHA), and Americans with Disabilities Act (ADA) requirements).

There may be other laws applicable to your business. It is your responsibility to investigate any applicable laws as they relate to operating a Tropical Smoothie Café® franchise. You should consider these laws and regulations when evaluating your purchase of a franchise.

## **ITEM 2. BUSINESS EXPERIENCE**

### **CHAIRMAN OF THE BOARD: H. Scott Pressly**

Scott Pressly has been our Chairman since August 16, 2012. From November 2008 to the present, he has been a partner in BIP Opportunities Fund, LP, an Atlanta, Georgia-based investment firm. From July 2007 to the present, he has been managing partner of Van Ness Capital Advisors in Atlanta, Georgia.

### **DIRECTOR AND CHIEF EXECUTIVE OFFICER: Mike Rotondo**

Mike Rotondo has been our Chief Executive Officer since August 16, 2012. He has been one of our Directors since July 2013. Prior to joining us, he was TSFDC's Chief Operating Officer from January 2011. He had been TSFDC's Vice President of Operations from February 2008 through December 2010. From October 2006 to January 2008, he served as Vice President of Operations for Great Wraps in Atlanta, Georgia.

### **CHIEF MARKETING OFFICER: Lisa Wenda**

Lisa Wenda has been our Chief Marketing Officer LLC since April 1, 2013. Prior to joining us, she was Vice President Field Marketing, US & Canada, for Arby's Restaurant Group in Atlanta, Georgia from November 2010 to April 2013. From November 2006 to November 2010, she was Senior Director, Field Marketing for Wendy's/Arby's Group, Inc. in Atlanta, Georgia.

### **VICE PRESIDENT OF FRANCHISE DEVELOPMENT: Charles L. Watson**

Charles Watson has been our Vice President of Franchise Development since August 16, 2012. Prior to joining us, he was TSFDC's Vice President of Franchise Development since January 2010. From February 2009 until August 2009, he was an independent contractor for Hotel Real Estate Counselors in Atlanta, Georgia as a Senior Broker.

### **VICE PRESIDENT OF FINANCE: Timothy Tanguay**

Tim Tanguay has been our Vice President of Finance since January 21, 2013. Prior to joining us, he was Director of Financial Planning and Analysis for Benchmark Brands in Norcross, Georgia, from September 2011 to January 2013. From December 2010 until August 2011, he was Director of Business Planning and Analysis for CIBA Vision in Johns Creek, Georgia. From January 2008 to November 2010, he was Director of Finance for Georgia Pacific in Atlanta, Georgia.

### **VICE PRESIDENT OF ORGANIZATIONAL SERVICES: Robin Willis**

Robin Willis has been our Vice President of Organizational Services since September 12, 2012. Prior to joining us, she was TSFDC's Director of Training from August 2011 to September 12, 2012.

From October 2007 until August 2011, she was the founder and President of Creating Simplicity, LLC, an Atlanta, Georgia-based consulting company providing consulting services in the areas of training, project management and event planning services.

**DIRECTOR OF FRANCHISE DEVELOPMENT: Philip Watson**

Philip Watson has been our Director of Franchise Development since August 16, 2012. Prior to joining us, he was TSFDC's Director of Franchise Development since October 2011. From August 2009 until June 2011, he was in various restaurant management positions for the Cox Restaurant Group in Valdosta, Georgia. Previous to that, he attended Valdosta State University in Valdosta, Georgia from September 2007 until September 2009.

**DIRECTOR OF FRANCHISE DEVELOPMENT: Christopher Schaeffer**

Chris Schaeffer has been our Director of Franchise Development since September 1, 2013. Prior to joining us, he was a Sales and Service Representative for Sunbelt Rental in Atlanta, Georgia since March 2010. From January 2009 until January 2010, he held positions as Certified Professional Guide and Lake Manager with ACE Adventure Resort in Minden, West Virginia, and as Director of Group Sales for The Ski Barn in Ghent, West Virginia.

**DIRECTOR OF CONSTRUCTION AND DESIGN: Gordon Meehl**

Gordon Meehl, AIA, has been our Director of Construction and Design since October 24, 2013. Prior to joining us, he was founder and manager of 4 Tokens, LLC, a Cumming, Georgia-based architectural consulting firm from January 2011 to October 2013. From August 2009 to December 2010, he was founding partner and principal manager with IDStudio4, a Dallas, Texas-based company.

**REGIONAL DIRECTOR OF FRANCHISE OPERATIONS: Troy Godbee**

Troy Godbee has been our Regional Director of Franchise Operations since August 16, 2012. Prior to joining us, Troy was TSFDC's Director of Operations since February 2011. Before that, he had been one of TSFDC's Regional Directors of Franchise Operations since January 2006.

**REGIONAL DIRECTOR OF FRANCHISE OPERATIONS: Robert Fischer**

Robert Fischer has been one of our Regional Directors of Franchise Operations since August 16, 2012. In this capacity, he consults with both our area developers and our franchisees. Prior to joining us, he was one of TSFDC's Regional Directors of Franchise Operations since November 2009. Prior to joining TSFDC, he was, from March 2006 to November 2009, Vice President of Operations for Promus Restaurants LLC, owner and operator of Cold Stone Creamery and BD's Mongolian Grill franchises located in the Cincinnati, Ohio and Lexington, Kentucky areas.

**REGIONAL DIRECTOR OF FRANCHISE OPERATIONS: Gregg Kocenko**

Gregg Kocenko has been one of our Regional Directors of Franchise Operations since August 16, 2012. Prior to joining us, he was one of TSFDC's Regional Directors of Franchise Operations since August 2011. Prior to that, from January 2005 through December 2010, he was a regional director for Jamba Juice in Wellington, Florida.

**SR. MANAGER ORGANIZATIONAL SERVICES: Dana Lockyear**

Dana Lockyear has been our Sr. Manager of Organizational Services since November 1, 2012. Previously, she was one of our Regional Directors of Franchise Operations from August 16, 2012 to November 1, 2012. Prior to joining us, she had been one of TSFDC's Regional Directors of Franchise Operations since July 2011. Prior to that, she was an Area Manager for TSFDC since May 2010, consulting with TSFDC franchisees in the territory comprising the southern part of Virginia. Prior to joining TSFDC, she was staffing coordinator for Randstad North America in Virginia Beach, Virginia from September 2009 through May 2010, and in Portsmouth, Virginia from September 2007 through June 2008.

**SR. MANAGER OPERATIONS INTEGRATION: Mary Anne Weigle**

Mary Anne Weigle has been our Sr. Manager of Operations Integration since September, 2013. Prior to joining us, she was Strategic Technology Manager for HoneyBaked Ham in Alpharetta, Georgia from October 2012 to August 2013. Prior to that, from January 2009 to October 2012, she was Associate Training and Communications for Manager HoneyBaked Ham in Alpharetta, Georgia.

**DIRECTOR OF FRANCHISE ADMINISTRATION: Dana L. Lodridge**

Dana Lodridge has been our Director of Franchise Administration since November 8, 2013. Prior to that, she was our Sr. Manager of Franchise Administration since September 10, 2012. Previously, she was with US Franchise Systems, Inc. in Atlanta, Georgia as Manager of Franchise Services from January 2000 to January 2007, Director of Franchise Services from January 2007 to February 2008, and Director of FF&E/Capital Planning from February 2008 to October 2008. Prior to joining us, she returned to the workforce as Brand Consistency Coordinator for Primrose School Franchising Company in Acworth, Georgia from June 2011 to September 2012.

**DIRECTOR: Eric Jenrich**

Eric Jenrich has been one of our Directors since August 16, 2012. Prior to joining us, he was, and continues to be, TSFDC's Chief Executive Officer and one of its Directors since its inception on July 2, 1997 in Destin, Florida. In January 2011, he was named President of TSFDC. He had also been TSFDC's President from its inception through August 19, 2008. Mr. Jenrich has also been Chief Executive Officer and a Director of 2 of TSFDC's now dormant subsidiaries, Café Management, Inc. and Tropical Smoothie Café, LLC ("TSC") in Destin, Florida, for more than the past 5 years; both previously owned and operated Tropical Smoothie Café® restaurants. Eric Jenrich is an owner and CEO of Island Wing Franchise Company LLC in Destin, Florida since November 2011.

**DIRECTOR: David W. Walker**

David Walker has been one of our Directors since August 16, 2012. Prior to joining us, he was, and continues to be, TSFDC's Executive Vice President and one of its Directors since its inception on July 2, 1997 in Destin, Florida.

**DIRECTOR: Shawn B. Welch**

Shawn Welch has been one of our Directors since August 16, 2012. From November 2008 to the present, he has been a partner in BIP Opportunities Fund, LP, an Atlanta, Georgia-based investment firm. From November 2006 to the present, he has been managing partner of Midtown Capital Advisors, LLC in Atlanta, Georgia.

### ITEM 3. LITIGATION

The following matters relate to our predecessor and affiliate, TSFDC.

#### **Prior Actions:**

**Commonwealth Of Virginia Vs. Tropical Smoothie Franchise Development Corporation (State Corporation Commission At Richmond, Virginia; Case No. Sec-2002-00039)**. In February 2003, TSFDC agreed to a consent order, without admitting or denying allegations by the Virginia State Corporation Commission, Division of Securities and Retail Franchising (the “**Commission**”), with respect to allegations of sales of unregistered area sales developer master franchise and single unit franchises in the Commonwealth of Virginia. In September 2002, the Commission alleged that TSFDC offered for sale and sold two area sales developer/master franchises in the Commonwealth of Virginia, and that it offered for sale and sold five single unit franchises in the Commonwealth of Virginia. On February 12, 2003, the Commission entered a Settlement Order, whereby TSFDC agreed to offer rescission to all Virginia franchises, pay the Commission’s investigation costs of \$750, pay a \$2,500 penalty, complete the Alternative Franchise Sales Law Enforcement Program offered by the National Franchise Council, and to not violate the Virginia Retail Franchising Act in the future. One franchisee opted to rescind.

**Commonwealth Of Virginia Vs. Tropical Smoothie Franchise Development Corporation And Eric Jenrich (State Corporation Commission At Richmond, Virginia, Case No. Sec-2007-00084)**. In 2007, the Commission initiated a second investigation (Case No. SEC-2007-00084) relating to the lack of disclosure of the prior investigation in the offering circulars that had been registered in Virginia between 2002 and 2007. On January 14, 2008, the Commission entered a Settlement Order, whereby TSFDC and Eric Jenrich admitted to the allegations and agreed to pay \$25,000 to the Treasurer of Virginia, to pay the Commission the amount of \$1,000 for the cost of investigation, offered rescission to identified Virginia franchisees, and agreed not to violate the Virginia Retail Franchising Act in the future. Four franchisees who had not yet opened their stores opted to rescind. The Commission dismissed the case on March 4, 2008, finding that TSFDC had fulfilled the requirements of the Order.

**In the Matter of Tropical Smoothie Franchise Development Corporation, Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2008-0329**. As a result of an investigation into the franchise related activities of Tropical Smoothie Franchise Development Corporation (“**TSFDC**”), the Maryland Securities Commissioner (“**Commissioner**”) concluded that grounds existed to allege that TSFDC violated the registration and disclosure provisions of the Maryland Franchise Law and a previous agreement with the Commissioner, in relation to the offer and sale of Tropical Smoothie unit and area franchises. In responding to inquiries from the Maryland Securities Division, TSFDC disclosed that it sold an area franchise to a Maryland resident, during the time it was not registered to offer and sell area franchises in Maryland. In addition, TSFDC failed to include required disclosure regarding litigation in its Uniform Franchise Offering Circular that it provided to prospective unit franchisees and to the area franchisee with the offer to rescind the area franchise pursuant to the previous agreement with the Commissioner. This failure to disclose violated the Maryland Franchise Law and the terms of a previous agreement with the Commissioner. On September 23, 2008, the Commissioner and TSFDC agreed to enter into a consent order whereby TSFDC, without admitting or denying any violations of the law, agreed to: immediately and permanently cease from the offer and sale of unit and area franchises in violation of the Maryland Franchise Law; complete its pending renewal applications to register its unit and area franchise offerings in Maryland; implement new compliance procedures; engage a franchise law compliance program to monitor its sales activities in Maryland and to Maryland residents for a period of two years; and, offer rescission to the unit and area franchisees who

were sold franchises in Maryland in violation of the Maryland Franchise Law. Four franchisees holding two franchise agreements opted to rescind.

**In the Matter of Tropical Smoothie Franchise Development Corporation, Administrative Proceeding Before the Securities Commissioner of Maryland, Case No. 2008-0329.** In 2010, the Maryland Securities Division initiated a second investigation into the franchise related activities of Tropical Smoothie Franchise Development Corporation (“TSFDC”) following its review of the compliance Monitor’s 2010 Report that was prepared in connection with the requirements of the September 23, 2008 Consent Order disclosed above. Based upon its investigation, the Maryland Securities Commissioner (“Commissioner”) concluded that grounds existed to allege that TSFDC violated the registration and disclosure provisions of the Maryland Franchise Law, the 2008 Consent Order, and an Agreement with the Commissioner, in relation to a 2009 offer and sale of a Tropical Smoothie franchise in Maryland. The Monitor’s 2010 Report disclosed that TSFDC sold a franchise in Maryland without providing the franchisee with the required Maryland Addendum. The Monitor also noted that TSFDC provided the Maryland franchisee with advertising in the form of a business plan template and break even analysis that had not been filed with the Division, as required. In responding to inquiries from the Maryland Securities Division in connection with TSFDC’s amendment application of its franchise registration, TSFDC acknowledged that it failed to comply with the Commissioner’s requirement to defer the collection of all initial fees received from the franchisee to whom it sold the franchise. On March 10, 2011, the Commissioner and TSFDC agreed to enter into a consent order whereby TSFDC, without admitting or denying any violations of the law, agreed to: immediately and permanently cease from the offer and sale of franchises in violation of the Maryland Franchise Law; diligently pursue the completion of its pending application to amend the franchise offering in Maryland; implement new compliance procedures; pay the Office of the Attorney General a civil monetary penalty of \$10,000 and, offer rescission to the franchisee who was sold a franchise in Maryland in violation of the Maryland Franchise Law.

**Pacheco v. Tropical Smoothie Franchise Development Corporation, Case No. 10-33167-18), (Circuit Court of the 17th Judicial Circuit, Broward County, Fla., filed July 27, 2010).** Plaintiff, Victor Pacheco, was formerly the area developer for the Counties of Bronx, New York, Queens and Richmond territory in the State of New York. On June 26, 2007, TSFDC terminated Pacheco’s area sales development agreement based on his (a) failure to conduct himself in a manner consistent with TSFDC’s missions, principles and values; and (b) engaging in behavior that presented a health or safety hazard to customers, employees or the general public. Over 3 years later, Pacheco sued TSFDC alleging breach of contract and breach of the implied covenant of good faith and fair dealing arising out of the wrongful termination of the area sales development agreement with TSFDC. Pacheco claims that TSFDC did not have sufficient grounds to terminate the contract and that TSFDC’s decision to do so violated the implied covenant of good faith and fair dealing. He seeks an unspecified amount of compensatory damages, lost profits and attorneys’ fees. TSFDC denies the claims and has moved to stay the lawsuit pending arbitration in compliance with the contract. TSFDC’s motion to compel arbitration and stay the lawsuit was granted by Order dated February 8, 2011. A demand for arbitration in this matter alleging essentially the same facts and claims was filed against TSFDC on June 15, 2012. While denying any liability, to avoid further defense costs, we settled the claim on September 27, 2012 by agreeing to pay Pacheco \$75,000 in exchange for his release of all claims and dismissal of the arbitration with prejudice.

**Pending Actions:**

**Michael J. Hunter, Suzanne J. Hunter and Frederick & Friends, Atlanta, LLC v. Tropical Smoothie Franchise Development Corporation, Tropical Smoothie Café, LLC, Tropical Smoothie, Inc., Eric Jenrich and James Valentino (Case No. 2008CA3779),** filed in the Circuit Court of the 2<sup>nd</sup> Judicial Circuit Court, Leon County, Florida. This lawsuit was filed on November 18, 2008, and

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amended in April 2010, alleging breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, promissory estoppel, conversion and unjust enrichment and constructive trust. The lawsuit resulted from action TSFDC took in January 2008 to terminate the area development agreement with the Plaintiff, Fredrick & Friends, Atlanta, LLC, the area developer for the Atlanta, Georgia territory (the “**LLC**”). The LLC had assumed the area sales development agreement, dated July 9, 2004 (the “**ASDA**”) in September 2007 from Robert Frederick, the original signatory of the ASDA (“**Frederick**”). Frederick owned 50% of the LLC and the individual Plaintiffs, Michael Hunter and Suzanne Hunter (the “**Hunters**”), owned the other 50%. In December 2007, the Hunters had entered into an agreement to purchase Frederick’s 50% interest in the LLC and TSFDC’s consent to that transfer was requested. TSFDC informed Frederick that its consent to the proposed transfer was conditioned on Frederick maintaining one of TSFDC’s franchised stores in the Atlanta market that Frederick owned personally (the “**Frederick Café**”), and that if he closed the Frederick Café TSFDC would not consent to the transfer and, in addition, TSFDC would exercise its right, pursuant to the ASDA, to terminate the ASDA. When Frederick closed the Frederick Café in early January 2008, TSFDC terminated the ASDA. The Hunters claim TSFDC breached its agreement to approve their purchase of Frederick’s interest in the LLC and that TSFDC fraudulently induced them to enter into the purchase agreement with Frederick. They are seeking an unspecified amount of compensatory damages, recovery of their investment and unspecified amounts that would be due them if they acquired the ASDA, prejudgment interest and any other relief allowed by the court. TSFDC denies all of Plaintiffs’ claims and denies that it made any fraudulent statements or misrepresentations of any kind, whether in violation of a statute or common law. TSFDC has counterclaimed against the Plaintiffs for Plaintiffs’ actions which resulted in a diminution in the value of the Atlanta, Georgia market for TSFDC’s business, and for libel. Discovery is currently in progress. The case is set for trial on October 20, 2014.

Other than these actions, no litigation is required to be disclosed in this Item.

See Exhibit “C” for any required disclosure relating to Area Developers.

#### **ITEM 4.      BANKRUPTCY**

No bankruptcy information is required to be disclosed in this Item. See Exhibit “C” for any required disclosure relating to Area Developers.

#### **ITEM 5.      INITIAL FEES**

##### **Initial Franchise Fee**

The initial franchise fee for a single Franchised Business is \$25,000, payable in full upon execution of the Franchise Agreement. A franchisee that desires to open more than one Franchised Business, if approved by us, will be given a discount on the initial franchise fees paid for the additional Franchised Businesses. The initial franchise fee for the second and each subsequent Franchised Business developed will be \$15,000, due at the time you sign the Franchise Agreement for each location.

From time to time, we may discount or reduce the initial franchise fees for certain prospects due to special circumstances (e.g., re-opening a closed Store, a franchisee with multiple units who does not need initial training or support, etc.). During 2013, the initial franchise fees paid to us ranged from \$1 to \$25,000. In all cases, the initial franchise fee is deemed fully earned by us upon receipt and is non-refundable. We use the initial franchise fee to provide training and other services to our franchisees.

We are a member of the International Franchise Association (“**IFA**”) and participate in the IFA’s VetFran program, which provides financial incentives to qualified veterans to help them acquire



franchised businesses. In support of this program, we currently reduce the initial franchise fee for qualified veterans, to \$12,500 for the first and each subsequent Franchised Business developed.

**Incentive Referral Program**

From time to time, we and our Area Developers may utilize incentive referral programs for our existing franchisees and their employees to refer franchise prospects to us. Under these programs, which may exist from time to time, we may pay cash compensation or provide other benefits and inducements for the referral of qualified franchise prospects. In many cases, the compensation or benefit will not be paid unless the franchise prospect enters into a franchise agreement with us. These referral programs may be altered, modified, suspended or terminated at any time.

Except as described above, we charge the initial franchise fee uniformly to all franchisees.

**ITEM 6. OTHER FEES**

<b>Type of Fee <sup>(1)</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Royalty Fee	6% of Gross Sales <sup>(2)</sup>	Payable on Wednesday of each week for the prior week's Gross Sales <sup>(2)</sup>	You must pay the Royalty Fee by electronic funds transfer. (Franchise Agreement, Section 4.B.)
National Marketing Fee	2% of Gross Sales <sup>(2)</sup>	Payable on Wednesday of each week for the prior week's Gross Sales	We may use these funds to create marketing, advertising and promotional materials for your use, or we may use these funds for marketing, advertising and public relations programs and materials on a system-wide basis. You must pay the National Marketing Fee by electronic funds transfer. (Franchise Agreement, Section 4.E.)
Local Advertising Cooperative Contribution	2% of Gross Sales <sup>(2)</sup>	Payable on Wednesday of each week for the prior week's Gross Sales	We (or our designee) administer these funds in accordance with the direction of the cooperative members. You must pay the Local Advertising Cooperative Contribution by electronic funds transfer. (Franchise Agreement, Section 4.F.)
MIS Fees	Currently \$50 to \$100 per month per Store	Payable the 3rd week of each month	You must pay us the amount we designate for the use of our mandated management information system, which includes auto-polling services of the POS System that you review via the Internet. We deduct the MIS Fee from your account by electronic funds transfer. (Franchise Agreement, Section 4.C.)
PCI Compliance Fee	Currently \$100 per month per Store	Payable the 3rd week of each month	You must pay us the amount we designate for the use of our mandated PCI Compliance System to ensure your compliance with Payment Card Industry Data Security Standards ("PCIDSS"), currently administered by TrustWave. We deduct the PCI Compliance Fee from your account by electronic funds transfer. (Franchise Agreement, Section 4.D.)

<b>Type of Fee <sup>(1)</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Additional Training	\$1,000 per person	Before training	Payable in the event that more than 3 people attend initial training at your request. (Franchise Agreement, Section 3.A.5.) (See Item 11)
Interest Charge on Late Payments	The lower of (i) 18% per annum, or (ii) the highest rate permitted by applicable state law	On demand	Only required if payment is late. (Franchise Agreement, Section 4.G.)
Late Fee	\$25 per week (or portion thereof)	On demand	Only required if any payment is late. (Franchise Agreement, Section 4.G.)
Non-Compliance Fee	Up to \$500 each time you default and for each week (or portion thereof) that the default continues.	As stated in our notice	Only required, at our option, if we reasonably believe you have committed an event of default under the Franchise Agreement. (Franchise Agreement, Section 4.H.)
Reimbursement	Our out-of-pocket expenses	Within 15 days of request	Only required if we pay (or have become obligated to pay) monies that you owed to a third party or that you were obligated to pay a third party as part of our system. (Franchise Agreement, Section 4.I.)
Audit Fee	Cost of audit plus interest on late payment	Immediately upon determination by audit	Payable only if (i) we conduct an audit of your business because you failed to submit required reports or were otherwise not in compliance with our system, or (ii) we find, based on an audit, that you have understated amounts owed to us by 2% or more. (Franchise Agreement, Section 10.H.)
Transfer Fee	5% of the total sales price or \$10,000, whichever is greater	Before transferring	Payable when Franchised Business is transferred to an unrelated 3 <sup>rd</sup> party. (Franchise Agreement, Section 13.B.)
Management Fee	10% of Gross Sales for the period in which we operate the Franchised Business	As agreed	Payable during the period that our appointed manager manages the Franchised Business to avoid interruption of business operations, at our option, in the event that (i) you or your majority owner dies or becomes disabled, (ii) we elect to purchase the business assets upon expiration or termination of the Franchise Agreement, or (iii) you operate the Franchised Business in a manner that presents a danger to the health or safety of any person. Our management of the Franchised Business will not exceed 90 days without your consent. We will account to you for all income of the Franchised Business during the period in which our manager manages the business. (Franchise Agreement, Section 13.F.)

<b>Type of Fee <sup>(1)</sup></b>	<b>Amount</b>	<b>Due Date</b>	<b>Remarks</b>
Default Cure	Our costs and expenses (including the allocation of any internal costs) for such action, plus 10% as an administrative fee.	Upon demand	Payable if you breach or default under any provision of the Franchise Agreement, and we take action to cure the default on your behalf. (Franchise Agreement, Section 14.D.)
Supplier Approval	Reasonable costs and expenses of inspection and testing estimated to range from \$500 to \$2,000	As invoiced	We may require you to pay us for our reasonable costs and expenses if we evaluate a proposed product, service or supplier at your request. (Franchise Agreement, Section 6.J.)
Indemnification	Will vary under circumstances	On demand	You must indemnify us when certain of your actions result in loss or damages to us. (Franchise Agreement, Section 17)
Liquidated Damages	Amount equal to the average Royalty Fees for the last 12 months (or shorter period, if Franchised Business has been in operation less than 12 months), multiplied by the lesser of: (i) 18 or (ii) the number of months remaining in the term.	On demand	We may require you to pay us this amount in the event you terminate the Franchise Agreement without cause or we terminate the Franchise Agreement for cause (Franchise Agreement, Section 15.D.)
Costs and Attorneys' Fees	Will vary under circumstances	On demand	The prevailing party in any legal proceeding is entitled to reimbursement of its costs and expenses, including reasonable accounting and attorneys' fees. (Franchise Agreement, Section 18.K.)

**NOTES:**

(1) All fees and expenses described in this Item 6 are non-refundable. All fees are uniformly imposed. Except as otherwise indicated in the chart above, we impose all of the fees and expenses listed, and they are payable to us. We may require you to pay any or all periodic or recurring fees to us by electronic funds transfer. We require you to sign the Pre-Authorized Bank Form attached as Exhibit "D" to this Disclosure Document.

(2) "**Gross Sales**" means all sales generated through the Franchised Business, whether for cash or credit, and income of every kind or nature related to the Franchised Business including barter, trade, and off-site catering. Gross Sales does not include (i) bona fide refunds to customers, (ii) sales taxes collected by you, (iii) sales of used equipment not in the ordinary course of business, or (iv) sales of prepaid cards or similar products (but the redemption of any such card or product will be included in Gross Sales).

**ITEM 7. ESTIMATED INITIAL INVESTMENT**

**YOUR ESTIMATED INITIAL INVESTMENT**

<b>Type of expenditure</b>	<b>Amount</b>	<b>Method of payment</b>	<b>When due</b>	<b>To whom payment is to be made</b>
INITIAL FRANCHISE FEE <sup>(1)</sup>	\$25,000	Lump sum	When the Franchise Agreement is signed	Us
REAL ESTATE BROKER <sup>(2)</sup>	\$0 to \$4,000	As arranged	As arranged	Designated Real Estate Broker
ARCHITECT <sup>(3)</sup>	\$4,500 to \$10,000	As arranged	Before opening	Architect
STORE FIXTURES, FURNITURE, AND EQUIPMENT (including point of sale/cash register system) <sup>(4)</sup>	\$57,000 to \$115,000	Lump sum	As arranged	Designated Source
LEASEHOLD IMPROVEMENTS <sup>(5)</sup>	\$50,500 to \$140,000	Lump sum	Before opening	Contractor or Designated Source
SIGNAGE	\$4,000 to \$10,335	Lump sum	Before opening	Suppliers
UNIFORMS	\$350 to \$4,800	Lump sum	Before opening	Suppliers
INITIAL INVENTORY	\$5,000 to \$10,500	Lump sum	Before opening	Suppliers
INITIAL TRAINING EXPENSES <sup>(6)</sup>	\$5,000 to \$10,100	Lump sum	As incurred	Airlines, Hotels, etc.
INSURANCE DEPOSITS <sup>(7)</sup>	\$500 to \$3,000	As arranged	As incurred	Insurance Companies
INITIAL DEPOSITS <sup>(7)</sup>	\$725 to \$7,650	As arranged	As incurred	Landlord & Utility Providers
LICENSES, BONDING & PERMITS <sup>(8)</sup>	\$1,000 to \$11,000	As incurred	Before opening	Government Agencies
LEGAL/ACCOUNTING	\$365 to \$6,000	As arranged	As incurred	Attorney Accountant
GRAND OPENING MARKETING <sup>(9)</sup>	\$2,000 to \$7,300	As arranged	Before opening	Suppliers, Media
ADDITIONAL FUNDS (WORKING CAPITAL) (3 to 6 months) <sup>(10)</sup>	\$10,000 to \$50,000	As needed	As needed	Third parties
<b>TOTAL <sup>(11)</sup></b>	<b>\$165,940 to \$414,685</b>			

**NOTES:**

1. Franchisees wishing to open more than one Franchised Business must sign a Franchise Agreement and pay an initial franchise fee for each additional location. The initial franchise fee for the second and each subsequent Franchised Business is \$15,000.

2. You must use one of our designated national site selection and real estate services provider in connection with site selection and lease negotiations for your Franchised Business. You must sign the form of exclusive representation agreement attached as Exhibit “E” to this Disclosure Document. Commissions are typically paid to the real estate broker by the landlord of the premises; however, you are

responsible for any commissions due and not otherwise paid by the landlord. You may not use the services of any other real estate broker without our prior written consent.

3. You will be provided a set of plans for recommended construction in conformity with mandatory design specifications. You may be required by local codes and regulations to retain an architect or equivalent professional to review or certify the plans and/or to oversee construction. The lower ranges assume that the site was formerly used as a restaurant so that the plans can utilize existing plumbing, electrical, etc.

4. Furniture and equipment needed to operate the Franchised Business includes (without limitation) tables and chairs, ice machine, blenders, refrigerators, mixing bar, ice wells, freezers, menu boards, artwork and point of sale/cash register system. Grand Restaurant / Hockenbergs Foodservice Equipment & Supply (“**Grand Equipment**”) and TriMark USA, LLC (“**TriMark**”) are our designated suppliers for these items. You must purchase the equipment, furnishings and other items from Grand Equipment and/or TriMark before your Franchised Business opens. The cost of these items, purchased new, ranges from \$68,000 to \$100,000, depending on type and quantity of equipment as well as freight and storage costs. Your cost will be lower if you purchase used equipment. The low end of this estimate assumes the purchase of some pre-owned equipment. The types of costs are uniform among franchisees, but may vary depending on factors like the size and layout of the Franchised Business and whether new or used fixtures and equipment are utilized. For instance, in certain areas of the country, to the extent available and subject to our approval, we may allow you to purchase pre-owned equipment that meets our specifications and standards, and thus, reduce the cost of these items. Also, as stated in note 5, landlord improvement incentives are sometimes available for fixtures and equipment. Likewise, for sites recovered from closed restaurants, leftover fixtures and equipment held by the landlord that meets our specifications and standards can be utilized. This may include kitchen equipment, seating, bathroom fixtures, air conditioning and other items. Payment is due upon receipt of invoice and is nonrefundable.

5. These amounts are our best estimate of finish-out costs only. Labor and material costs may vary significantly in accordance with local variations in wage rates, labor efficiency, union restrictions and availability, and price of materials. Finish-out costs are based on leasing unfinished space that consists of walls, plumbing, concrete slab, lighting, HVAC, and electricity. We are unable to calculate the exact real estate investment required of each franchisee for a Franchised Business due to the many factors which influence the total project costs, such as location, amount of space leased (1,400 to 2,400 sq. ft.), amount of remodeling needed and so forth. In addition, due to the softness in the retail store leasing market in some areas of the country, you may be able to negotiate certain incentives from your landlord in the form of tenant improvement dollars and initial free rent, which, if available, will reduce the effective cost of your build-out. The lower range of the estimates anticipates that landlord improvement incentives will be available to construct much of the improvements. The amount of landlord incentives can vary widely depending on many factors including, without limitation: financial capacity of the landlord; competitive retail leasing locations; market conditions for rental rates; occupancy of the site and status of other leases and others. The use of landlord improvement money may also result in higher rent or occupancy costs. Also, some sites may have shells left vacant from prior tenants so that it costs less to convert the Stores to conform to our specifications. This includes the possibility that existing walls, plumbing, concrete slab, lighting, HVAC and electricity can be utilized. The availability of such sites may be limited or absent in your market. There is no assurance that you will be able to find sites that have these options available to you. The amount does not reflect an investment in real estate, since it is assumed that you will lease your premises. The expenditures described above assume that your Franchised Business does not include a drive-thru option for customers. If your Franchised Business includes a drive-thru, the additional expense (including the cost of leasehold improvements, store fixtures and equipment, and other costs) would be approximately \$25,000 to \$40,000.

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6. You are responsible for all transportation, meal and other expenses associated with the initial training program for you and/or your managers, designees and employees. The cost will depend on the distance you must travel and the type of accommodations you choose.

7. See Item 8 for a description of the current insurance requirements for a TROPICAL SMOOTHIE CAFÉ® Store.

8. This may include building inspection fees, occupational license fees, food service licenses, and the like, and will vary from one jurisdiction to the other.

9. You must spend at least \$2,000 (exclusive of the cost of food and smoothies) on a grand opening marketing program for the Franchised Business during the first 60 days of operations. The grand opening program will use the marketing, advertising and public relations programs, media and materials we have developed or approved, and is separate from your other marketing and advertising requirements. We may require you to submit expenditure report(s) to us, accurately reflecting your grand opening marketing expenditures.

10. This estimates your start-up expenses. The estimate is intended to cover items such as possible initial operating losses, additional insurance, rent and security deposits, miscellaneous additional pre-opening costs, payroll, utilities, additional legal and accounting fees, and payments to any governmental agency that are necessary to open the Franchised Business. In addition, you should be prepared to have cash available to pay your personal living expenses during the first 3 to 6 months of operation. This is only an estimate however, and the necessary amount of working capital will vary considerably with each franchisee. We cannot guarantee that this amount is sufficient. You may require additional working capital over and above this estimated amount if your sales are low or if your fixed costs are high.

11. Your initial investment will vary depending upon the method and amount of financing that you use. The initial franchise fee, equipment, and other items are shown in full, although they may be financed or leased through third parties, and except where the low ranges are based in part on either landlord incentives, conversions of prior tenant's locations, and used fixtures and equipment. We have relied on historical experience provided by our franchisees and data from our predecessor, TSFDC, to compile these estimates. The total actual cost to construct and operate each Tropical Smoothie Café® Store has varied from the estimates shown above, and no particular outlet has experienced the high or low estimate for every category. The amounts shown are estimates only and may vary for many reasons, including, without limitation, your management skill and experience, your business acumen, local economic conditions, and sales reached during the initial operating period. **Estimated initial investment costs may be substantially higher in certain states and locations, including New York, California, Nevada and Hawaii.** You should review these figures carefully with a business advisor before making any decision to purchase the Franchised Business.

Our affiliate, BIP Franchise Finance, provides financing of the initial investment to franchise owners that meet its qualifications. See Item 10 for a description of the amount it will finance, the required down payment, the annual interest rate, rate factors, estimated loan repayments, and additional information about the financing terms.

The amounts described above are not refundable unless otherwise stated.

**ITEM 8. RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

In order to maintain the reputation, goodwill, high standards, quality and uniformity of the System, the Franchise Agreement restricts the sources of products and services you utilize in establishing and operating your Franchised Business. We have the right to require some items to be purchased only from us or our affiliates. Some items can only be purchased from suppliers we have designated or approved, and others only in accordance with our standards and specifications. The following table summarizes the approximate percentages of your purchase of goods and services through sourcing restrictions, based on the nature of the restriction. The source for virtually all of your purchases is restricted in some way.

<b>Required Purchases from Us or Our Affiliates</b>	<b>Required Purchases from Approved Suppliers</b>	<b>Required Purchases In Accordance with Our Specifications and Standards</b>
Establishment – 0%	Establishment – 15%	Establishment – 25%
Operation – 0%	Operation – 90%	Operation – 5%

**Purchases from Us**

You may be required to purchase certain products, equipment or services directly from us or our affiliates. Currently, we do not require you to purchase any items from us or our affiliates. During 2013, we did not derive any revenue from direct sales of equipment, products or services to franchisees.

There are no suppliers in which any of our officers own an interest.

**Purchases from Approved Suppliers**

To maintain the superior quality of the goods and services sold by Tropical Smoothie Café® businesses and the reputation of the Tropical Smoothie Café® franchise network, you must purchase or lease fixtures, equipment and supplies, furnishings, products and services, and related items from suppliers that we designate or approve. Examples of designated or approved suppliers are Micros (data polling services, point-of-sale/register systems), The Windsor Realty Group (real estate brokerage services), Javelin Solutions (real estate brokerage services), Bialow Real Estate LLC (real estate brokerage services), Sysco (food and beverage products and supplies), Grand Equipment and/or TriMark (equipment, furnishings, interior signage, and smallwares) and HMI Hospitality Marketing (marketing and promotional materials).

We may change approved suppliers periodically upon written notice to you. We will identify all designated and approved suppliers in our Manuals or other written or electronic communications. We do not make any express or implied warranties for any products or goods that we recommend for your use.

**Purchases According to Standards and Specifications**

In order to maintain the uniformly high standards and reputation of the System, you are required to purchase or lease certain items in accordance with the specifications and guidelines issued by us. This requirement applies to design and build-out standards, computerized point-of-sale and cash register system, signage, menu boards, uniforms, beverage and food products, branded paper goods, and supplies to be used in developing and operating the Franchised Business (some of which must be purchased from approved suppliers). Specifications may include minimum standards for quality, quantity, delivery,

performance, design, appearance, durability, style, warranties, price range, and other related restrictions. We consider these specifications to be of critical importance to the success of the System. (All of these specifications and guidelines are more fully described in our Manuals).

Site Selection – The location for your Franchised Business must satisfy our site selection criteria, which we may modify. You must utilize the services of one of our designated national site selection and real estate services provider to assist with site selection and lease negotiations. Before you acquire the premises for the Franchised Business, you must submit to us all information that we request. We will have 30 days after we receive the information from you to determine whether the proposed site meets our site selection criteria. We will not unreasonably withhold our approval, but no site will be deemed to conform to our criteria unless we have expressly indicated that in writing. We have the right to ensure that the proposed lease or sublease for the premises satisfied the leasing standards we prescribe before you sign it. We require you and your landlord to sign our standard Addendum to Lease Agreement/Conditional Assignment of Lease.

Construction and Opening – You are responsible for developing the Franchised Business in compliance with our standards and specifications. We will furnish you with mandatory and suggested specifications and layouts for a Tropical Smoothie Café® Store, including requirements for dimensions, design, color scheme, image, interior layout, décor, fixtures, equipment, signs and furnishings. You are obligated, at your expense, to have an architect prepare all required construction plans and specifications to suit the shape and dimensions of the accepted site and to ensure that the plans and specifications comply with applicable ordinances, building codes, permit requirements, lease requirements and restrictions, and the mandatory specifications and layout provided by us. Design quality is important to us, and we have the right to review and accept all plans and specifications and to confirm that construction is completed in conformance with our architectural and design standards and specifications for a Tropical Smoothie Café® Store. You must complete construction and begin operations of the Franchised Business within 12 months of the date that you sign the Franchise Agreement. You may not open the Franchised Business to the public until you have received our approval.

Computer Hardware and Software – You are required to purchase the point-of-sale system and computer hardware and software described in Item 11 of this Disclosure Document.

Advertising and Promotional Materials – All of your advertising and promotions must conform to our standards and requirements. We must approve all advertising and promotional materials before you use them. You must submit to us samples of all promotional and marketing materials in whatever form you propose to use them at least 15 days before their intended use, and we will make reasonable efforts to approve or disapprove them within 10 days after we receive them. You must not use the advertising or marketing materials until we have approved them, and must promptly discontinue using any advertising or promotional materials if we notify you to do so.

Insurance – You must obtain and maintain, at your own expense, insurance coverage that we require periodically. We may regulate the types, amounts, terms and conditions of insurance coverage required for your Franchised Business, and standards for underwriters of policies providing required insurance coverage, including (a) our protection and rights under these policies as an additional insured; (b) required or permissible insurance contract provisions; (c) assignment of policy rights to us; (d) periodic verification of insurance coverage that must be furnished to us; (e) our right to obtain insurance coverage at your expense if you fail to obtain required coverage; and (f) similar matters relating to insured and uninsured claims.



All policies must be written by an insurance company satisfactory to us in accordance with the standards and specifications we prescribe in the Manuals or otherwise in writing. You are currently required to purchase and maintain throughout the term of the Franchise Agreement:

1. Comprehensive general liability insurance, including contractual liability, broad form property damage, personal injury, advertising injury, product liability, employee liability, completed operations and independent contractors coverage, and fire damage coverage in the amount of \$1,000,000 per occurrence, with \$2,000,000 aggregate coverage (or such higher amount as required by the lease for the premises);
2. Worker's compensation and employer's liability insurance, as well as such other insurance as may be required by applicable law;
3. Fire, vandalism and extended coverage insurance with primary and excess limits of at least the full replacement value of the Franchised Business and its furniture, fixtures and equipment;
4. Business interruption and extra expense insurance for a minimum of 6 months to cover net profits and continuing expenses, including royalty fees; and
5. Employment practices liability insurance.

The cost of these coverages will vary depending on the insurance carrier's charges, terms of payments, and your history. All insurance policies, except workers' compensation policies, must name us and your Area Developer (if any) as an additional insured party. You must provide us with a copy of each certificate of insurance at least 15 days before the opening of the Franchised Business and on each policy renewal date. No policy may be cancelled or materially altered without 30 days advance written notice to us. We do not derive revenue as a result of your purchase of insurance.

In connection with any construction, leasehold improvements, renovation, refurbishment or remodeling of the premises of the Franchised Business, your general contractor must maintain comprehensive general liability insurance (with comprehensive automobile liability coverage for both owned and non-owned vehicles, builder's risk, product liability and independent contractors coverage) in at least the amount of \$1,000,000, with us named as an additional insured, as well as worker's compensation and employer's liability insurance as required by state law.

### **Supplier Approval Procedure**

If you propose to purchase or lease any services or products not previously approved by us in writing (for services and products that require supplier approval), you must first notify us. We may require (among other things) submission of sufficient information, specifications and/or samples for us to determine whether the product or service complies with our standards and specifications, or whether the supplier meets our approved supplier criteria. We generally apply the following criteria (among others) in considering whether the supplier will be designated as an approved supplier:

1. Ability to produce the products, services, supplies, or equipment and meet our standards and specifications for quality and uniformity;
2. Production and delivery capabilities and ability to meet supply commitments;
3. Integrity of ownership (to assure that its association with us would not be inconsistent with our image or damage our goodwill); and

4. Financial stability.

You are responsible for all reasonable expenses incurred by us in connection with evaluating the product, service or supplier. Although we are not required to approve or disapprove supplier requests within any particular time period, we generally respond within 30 days after we receive your written request. Suppliers must maintain our standards in accordance with written specifications and any modifications. Failure to correct a deviation from the System's specifications will result in the termination of status as an approved supplier.

**Purchasing Arrangements**

We may (but are under no responsibility to) negotiate with suppliers and manufacturers to receive discounts or rebates on certain items you must purchase. For the fiscal year ended December 29, 2013, we received rebates of \$1,433,404 in connection with purchases by franchisees of certain items from approved or designated suppliers; these items included potato chips, chicken, frozen fruit, tortillas, yogurt and Sysco purchases. This amounted to approximately 9.38% of our total revenues of \$15,269,532. We used some of these rebates for the benefit of our franchisees (although we are under no obligation to do so), including (but not limited to) annual convention costs, road shows, marketing promotional materials, and a portion of administrative salaries for those individuals responsible for distribution and production that benefit the entire System. Our rebate programs may vary depending on the supplier and the nature of the product or service.

<b>PRODUCT</b>	<b>BASIS FOR REBATE</b>
Chips	\$0.25 to \$2.56 per case
Fruit	\$0.05 per pound
Tortillas	\$2.00 per case
Chicken	\$0.15 per pound
Yogurt	\$5.00 per case
Sysco	0.25% of Total System Purchases
Chocolate and caramel sauce	\$1.00 per case
Logo Cups	\$4.00 per case for 24 oz. cups
Food	\$0.01 to \$2.59 per package
Beverages	\$0.10 to \$0.45 per package
Paper Products	\$0.02 to \$3.12 per package

**Miscellaneous**

There currently are no purchasing or distribution cooperatives. We currently negotiate purchase arrangements with suppliers (including price terms) for most of the products and services you will purchase for use in operating the Franchised Business. In doing so, we seek to promote the overall interests of the Tropical Smoothie Café® franchise system and company-owned operations. We do not provide material benefits to you (for example, renewal or granting additional franchises) for purchasing particular products or services or using a particular supplier.

Except as described above, neither we nor our affiliates currently derive revenue or other material consideration as a result of your required purchases or leases.

## ITEM 9. FRANCHISEE’S OBLIGATIONS

This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this Disclosure Document.

OBLIGATION	SECTION IN AGREEMENT	DISCLOSURE DOCUMENT ITEM
a. Site selection and acquisition/lease	Sections 5.A. and 5.B.	Items 7, 8 and 11
b. Pre-opening purchases/leases	Sections 5.C., 5.G., 5.H., 6.A., 6.J., and 6.O.	Items 5, 7, 8 and 11
c. Site development	Sections 5.C. and 5.H.	Items 5, 7, 8 and 11
d. Initial and ongoing training	Sections 5.F., 5.H., and 6.D.	Item 11
e. Opening	Sections 5.E. and 5.H.	Item 11
f. Fees	Sections 4, 6.Q., 10.H., 11.D., 13.B., 13.F., 14. D., 15.D., 17, and 18.K.	Items 5 and 6
g. Compliance with standards and policies/operating manuals	Sections 5, 6, 8, and 10	Item 11
h. Trademarks & proprietary information	Sections 7 and 9	Items 13 and 14
i. Restrictions on Products and Services Offered	Section 6	Items 8 and 16
j. Warranty and customer service requirements	Not applicable	Not applicable
k. Territorial development and sales quota	Not applicable	Not applicable
l. Ongoing product/service purchases	Section 6	Item 8
m. Maintenance, appearance and remodeling requirements	Sections 6.A., 6.I., 6.L., and 13.B.	Item 11
n. Insurance	Section 12	Items 7 and 8
o. Advertising	Section 11	Items 6, 8 and 11
p. Indemnification	Section 17	Item 6
q. Owners participation/management/staffing	Sections 1.H. and 6.A.	Items 11 and 15
r. Records and reports	Section 10	Item 17
s. Inspections and audits	Sections 6.L. and 10.H.	Items 6 and 11
t. Transfer	Section 13	Items 6 and 17
u. Renewal	Section 2.B.	Items 6 and 17
v. Post-termination obligations	Sections 15 and 16.B.	Item 17
w. Non-competition covenants	Section 16	Item 17
x. Dispute resolution	Section 18	Item 17
y. Owner’s Guaranty	Section 1.G.; Exhibit “I” to this Disclosure Document	Item 15

## ITEM 10. FINANCING

Except as set forth below, neither we nor any of our agents or affiliates offers direct or indirect financing to you, or guarantees any note, lease or obligation. Our affiliate, BIP Franchise Finance, provides financing to franchise owners that meet its qualifications. You are not required to obtain financing from BIP Franchise Finance. The following summarizes the financing terms (see Exhibit “N” for Financing Documents):

04/15/2014

### SUMMARY OF FINANCING OFFERED

<b>Term/Condition</b>	<b>Description</b>	<b>Agreement and Section</b>
Lender	BIP Franchise Finance	Loan Agreement and Security Agreement
Item Financed	Development of a Tropical Smoothie Café, including franchise fees, leasehold improvements; equipment, fixtures, and signage; inventory and supplies; development soft costs (see Note 1)	Loan Agreement, § 1(f)
Source of Financing	Our affiliate – BIP Franchise Finance, LLC	
Down Payment	20%	Loan Agreement, § 1(f)
Amount Financed	Up to 80% of total project cost (see Note 1)	Loan Agreement, § 1(a)
Term	5 years (60 monthly payments) (see Notes 2 and 6)	Loan Agreement, § 1(a)
Interest Rate	Currently, 9.75% per annum (see Note 3)	Loan Agreement, § 1(d)
Monthly Payment	Will depend on principal amount of loan (see Note 4)	Loan Agreement, § 1(c)
Prepayment Penalty	None	Loan Agreement, § 2
Security Required	Lien on all assets of the Franchised Business (see Note 5)	Loan Agreement, § 1(f) Security Agreement § 2(a)
	Personal guaranty by your owners (see Notes 6 and 7)	Loan Agreement, § 1(e) Guaranty Agreement
Your Liability Upon Default	Accelerated obligation to pay entire amount of loan	Loan Agreement, § 7
	Interest rate increases 2% (subject to state law)	Loan Agreement, § 1(d)
	Collection costs, including attorneys' fees	Loan Agreement, §§ 7, 8 Security Agreement, §§ 10, 13
	Loss of franchise and termination of Franchise Agreement, with all liabilities resulting under the Franchise Agreement	Franchise Agreement, § 14(a)
	BIP Franchise Finance or its designee may take possession of your business assets and take over operation of your Franchised Business (see Note 8)	Loan Agreement, § 7 Security Agreement, § 23(e)
	Each of your owners is equally liable as a guarantor	Guaranty Agreement
Governing Law	Georgia law applies (see Note 9)	Loan Agreement, § 8(g) Security Agreement, § 26 Guaranty Agreement, § 12
Jurisdiction	Fulton County, Georgia (see Note 10)	Loan Agreement, § 8(g) Security Agreement, § 26 Guaranty Agreement, § 13

**Notes:**

1. You will typically receive your loan in three separate disbursements. The first disbursement is made on day you close the loan. The final disbursement is made no later than 180 days later.

2. Monthly payments of principal plus interest are due and payable beginning on the first day of the second calendar month following the month during which the Store opens for business and continuing on the first day of each month thereafter. However, you must also make monthly payments of interest on the first day of each calendar month from the date of the initial disbursement (on the closing date of the loan) until the first payment of principal plus interest is due after you begin operations of the Store. (Loan Agreement, § 1(c))

3. As of the date of this disclosure document, BIP Franchise Finance offers loans at an annual interest rate of 9.75% (computed on the basis of the actual number of days elapsed in a year consisting of 360 days). In its discretion, BIP Franchise Finance may offer a higher or lower interest rate, except that the rate of interest will not exceed the maximum rate allowed under applicable state law.

4. In addition to your obligation to repay the principal and interest on the loan, you will also pay a loan origination fee equal to 1.5% of the principal amount of the loan. The loan origination fee may be paid by you when incurred, or you may have it deducted from the loan proceeds disbursed to you on the closing date of your loan. You must also pay BIP Franchise Finance all of its transaction related expenses, including legal fees, evaluation costs, and due diligence costs. (Loan Agreement, § 1(g))

5. At the option of the lender, you must also obtain and deliver executed deposit account control agreements from all financial institutions in which you maintain deposit accounts as additional security for the loan. (Loan Agreement, § 1(e)) Until the loan has been paid in full, you must deliver financial statements to the lender, maintain minimum amounts and types of insurance, and comply with certain other covenants, as described in the Loan Agreement. (Loan Agreement, § 4)

6. Upon the death or permanent disability of any guarantor, the lender may, at its option, accelerate the amount due under the loan documents. (Loan Agreement, § 4(g))

7. We guaranty your debt to BIP Franchise Finance. If you are in an Area Developer territory, the Area Developer will also be required to guaranty your debt to BIP Franchise Finance. In that case, our guaranty will be a "last loss" guaranty, which may not be called by the lender until all other remedies have been exhausted.

8. Upon an event of default, the lender will consult with us and with your Area Developer, if applicable, to determine what actions are necessary or appropriate to maintain and continue the operation of your Franchised Business. We or your Area Developer, if applicable, may take over the operation of the Store during any period that you are in default under the loan documents or your Franchise Agreement. (Loan Agreement, § 7; Addendum to Lease Agreement/Conditional Assignment of Lease, § 3) If an event of default has occurred under the loan documents or you are not in material compliance with all Franchise Agreements, then you may not: (a) make any cash distributions to your owners or (b) develop any additional Tropical Smoothie Café® franchises. (Loan Agreement, §§ 5(f)-(g))

9. The loan documents require you (and any guarantor) to waive certain defenses and legal rights. You waive demand for payment, presentment, protest and notice of dishonor, notice of protest,

and notice of default, except as otherwise specified in the Loan Agreement, and all suretyship defenses. (Loan Agreement, §8(d)) Each guarantor waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the franchisee, and protest or notice of the obligations and all demands whatsoever. Each guarantor also waives the right to participate in any security or collateral given by the franchisee to the lender until the lender has been paid all amounts owed. (Guaranty Agreement, §§ 3-4) If the lender exercises any rights to the collateral, you waive all damages occasioned by the lender or its designee taking possession of the collateral, all rights of redemption, appraisal, valuation, stay, extension or moratorium to prevent or delay the lender's enforcement of the Security Agreement or the sale of the collateral, and all other requirements as to the time, place and terms of such sale. (Security Agreement, § 16)

10. You waive right to a trial by jury, to the extent such rights can be waived under applicable state law. (Loan Agreement, § 8(f); Security Agreement, § 29)

BIP Franchise Finance currently intends to sell, assign or discount the financing to an affiliate. If it does so, you will lose all of your defenses against BIP Franchise Finance as a result of the sale or assignment. However, BIP Franchise Finance will not assign the financing before the final disbursement has been made to you under the loan. BIP Franchise Finance will continue to serve as the agent for the loan.

We do not receive any payments from BIP Franchise Finance or any other person, for any placement of financing.

We participate in the IFA's VetFran program, which provides financial incentives to qualified veterans to help them acquire franchised businesses.

## **ITEM 11. FRANCHISOR'S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS, AND TRAINING**

**Except as listed below, we are not required to provide you with any assistance.**

Pre-Opening Obligations: Before you open your Franchised Business:

1. If the location for your Franchised Business has not been approved at the time you sign the Franchise Agreement, we will designate a geographic area ("**Designated Area**") within which the Franchised Business is to be located. The Designated Area for your Franchised Business will be inserted into the Franchise Agreement before you sign the Franchise Agreement. The Designated Area is delineated for the sole purpose of site selection and does not confer any territorial exclusivity or protection. (Section 5.A. of the Franchise Agreement)
2. We will provide to you our criteria for Tropical Smoothie Café® locations. We will review and advise you regarding potential locations that you submit to us. (Section 3.A.1. of the Franchise Agreement) Generally, we do not own the premises and do not lease it to you.
3. We will approve or disapprove your site for the Franchised Business in the Designated Area. (Section 5.A. of the Franchise Agreement) We will approve or disapprove a site that you propose within 30 days after we receive from you a complete site report and any other materials that we may require for assessing potential. If you have not heard from us

within such 30 day period, the proposed site is deemed disapproved. The factors that will affect our approval are demographic characteristics of the proposed site, traffic patterns, parking, the predominant character of the neighborhood, competition from other businesses providing similar services within the area, the proximity to other businesses (including other Tropical Smoothie Café® Stores), the nature of other businesses in proximity to the proposed site, and other commercial characteristics (including the purchase price or rental obligations and other lease terms for the proposed site) and the size of the premises, appearance and other physical characteristics of the premises, financing, building permits, zoning, local ordinances, and anticipated timetable for the installation of equipment, furniture and signs. You must acquire your site (by purchase, lease, or sublease) within 180 days of the date of your Franchise Agreement. You must open your Franchised Business within one year of the date of your Franchise Agreement. If you fail to do so, we may terminate the Franchise Agreement. (Sections 5.A. and 5.C. of the Franchise Agreement)

If you commit to develop more than one Tropical Smoothie Café® Store under a Multi-Unit Development Addendum in the form attached as Exhibit B-1 to this Disclosure Document, the site acquisition and opening deadlines are as follows:

<b>Site Acquisition Deadline</b>	<b>Opening Deadline</b>
180 days from Effective Date	1st anniversary of the Effective Date
180 days from opening Café #1	2nd anniversary of the Effective Date
180 days from opening Café #2	3rd anniversary of the Effective Date
180 days from opening Café #3	4th anniversary of the Effective Date
180 days from opening Café #4	5th anniversary of the Effective Date

4. We will review and approve or disapprove the lease for your site. (Section 5.B. of the Franchise Agreement)

You must obtain our approval of the lease or sublease (or any modification or amendment) for the location before you sign it, or any renewal of it. A condition to our approval of the lease (or sublease) is the execution by you, the landlord and us of the Addendum to Lease Agreement/Conditional Assignment of Lease (a copy of which is attached as Exhibit “F” to this Disclosure Document).

5. We will provide to you our mandatory and suggested specifications and layouts for a Tropical Smoothie Café®, including requirements for dimensions, design, color scheme, image, interior layout, décor, furnishings, equipment, signs, fixtures, opening inventory, and supplies. (Section 3.A.2. of the Franchise Agreement)

You are solely responsible for developing and constructing the Site for your Franchised Business, for all expenses associated with it, for conforming the premises to local ordinances and building codes and obtaining any required permits, and for compliance with the requirements of any applicable federal, state or local law

6. We will provide, or grant access, to you our lists of approved suppliers. (Section 3.A.3. of the Franchise Agreement).

7. Upon your request, we will review and advise you regarding your pre-opening business plan. (Section 3.A.4. of the Franchise Agreement).
8. If the Franchise Agreement relates to your first Tropical Smoothie Café® franchise, we will provide you with our initial training program, which is described below. (Section 3.A.5. of the Franchise Agreement).
9. We will have a representative support your business opening with at least 7 days onsite pre-opening and opening assistance (except that if you already have 2 or more Tropical Smoothie Cafés® in operation, then we are not obligated to provide onsite pre-opening and opening assistance). (Section 3.A.6. of the Franchise Agreement).
10. We will loan to you (or provide access to) a single set of our Operating Manuals (the “**Manuals**”), which will include specifications for equipment, supplies, inventory, management, and operation. The Manuals are confidential and remain our property. (Section 3.A.7. of the Franchise Agreement). A copy of the Table of Contents of our Manuals is attached as Exhibit “G” to this Disclosure Document.

Continuing Obligations: During the operation of the Franchised Business:

1. We will provide such general advisory assistance and field support deemed by us to be helpful to you in the ongoing operation, advertising and promotion of the Franchised Business. (Section 3.B.1. of the Franchise Agreement)
2. We will seek to improve and develop the System, including the refinement of existing products, services, techniques and methods, and/or the development of new products, services, techniques and methods. (Section 3.B.2. of the Franchise Agreement)
3. We will provide recommended prices for certain products offered by franchisees of the System, and may specify required prices for certain products at certain times. (Section 3.B.3. of the Franchise Agreement)
4. We will provide you with our recommended procedures for administration, bookkeeping, accounting, and inventory control. We may make any such procedures required (and not merely recommended) as part of the System. (Section 3.B.4. of the Franchise Agreement)
5. We will provide updates, revisions and amendments to our Manuals (including corporate policy directives) when we deem appropriate. (Section 3.B.5. of the Franchise Agreement)
6. On a periodic basis, we will conduct (as we deem advisable) quality control reviews of the Franchised Business. (Section 3.B.6. of the Franchise Agreement).
7. We will manage the National Marketing Fee Account and oversee advertising, promotion and marketing programs. (Section 3.B.7. of the Franchise Agreement)
8. We will maintain the website for Tropical Smoothie Café®, which will include your location and telephone number. (Section 3.B.8. of the Franchise Agreement)
9. We will provide, or grant access, to you our lists of approved suppliers, as changed from time to time. (Section 3.B.9. of the Franchise Agreement)



We may delegate certain of our duties and responsibilities to an Area Developer (see Item 2 and Exhibit “C” of this Disclosure Document for Area Developers in your State). Although we may voluntarily provide additional services, no additional duties may be implied because we provide those additional services (if any). We have no implied duties or other duties not expressly stated in the Franchise Agreement.

### **Advertising and Promotion**

**Approval of Advertising.** All promotional and marketing materials that you propose to use must conform to our standards and requirements as specified in our Manuals. You must provide us with all samples of promotional and marketing materials in whatever form you desire to use for our approval at least 15 days before your proposed use of the materials. We will notify you of our approval or disapproval of the materials within 10 days of receiving them. If you do not receive our written approval within this time period, we will be deemed to have disapproved the materials. You cannot use any advertising or promotional plans or materials that we have not approved. (Section 11.A. of the Franchise Agreement.)

**Grand Opening Advertising.** You must spend at least \$2,000 (exclusive of the cost of food and smoothies) on a grand opening marketing program for your Franchised Business during the first 60 days of operations. The grand opening program must use marketing, advertising and public relations programs, media and materials that we develop or approve, and is in addition to your other marketing and advertising requirements under the Franchise Agreement. We may, at our option, require you to submit expenditure reports to us detailing your grand opening marketing expenditures.

**National Advertising Program.** You will be charged a non-refundable national marketing and advertising fee (“**National Marketing Fee**”) equal to 2% of Gross Sales each week. The National Marketing Fee is placed in the National Marketing Fee account (“**NMF Account**”) and we use it in part to cover the costs incurred by us and/or our affiliates in designing and creating promotional, marketing and advertising resources, including, but not limited to, in-store point of purchase materials, flyers, radio and television commercials and other materials that we, in our sole discretion, deem appropriate. The NMF Account may be used by us to duplicate or distribute these materials; otherwise it is your cost to do so. We may also use funds in the NMF Account for media placement. However, you are responsible for some of these costs if you elect to use the materials created in your own market and the NMF Account does not do so. We may elect in the future to use the NMF Account in connection with advertising with different media outlets, including print, radio, television and/or online on a national and/or regional level. We (or our designee) administer and maintain the NMF Account in the following manner:

1. We (or our designee) oversee all advertising, promotion and marketing programs, with sole discretion over the creative concepts, materials and media used in the programs, and the geographic, market and media placement and allocation thereof. We do not warrant that any particular franchisee will benefit directly or pro rata from expenditures of the NMF Account. The NMF Account may be used to satisfy all costs of maintaining, administering, directing, preparing and producing marketing, promotion and advertising resources, including, but not limited to, the cost of preparing and producing television, radio, magazine and newspaper advertising campaigns; the cost of direct mail and outdoor billboard advertising; the cost of marketing and promotion activities, including advertising and marketing agencies; the cost of public relations activities, including advertising and public relations agencies; the cost of developing and maintaining an Internet website; the cost of providing promotional and/or other marketing materials to franchisees; and personnel and other departmental costs for advertising, promotion and marketing that we internally administer or prepare.

2. The NMF Account is accounted for separately from our other funds and is not used to defray any of our general operating expenses, except for the reasonable salaries, administrative costs and overhead that we may incur in activities reasonably related to the administration or direction of our marketing programs.

3. It is anticipated that NMF Account contributions will be expended for programs during the fiscal year in which the contributions to it are made. If excess amounts remain at the end of the fiscal year, all expenditures in the following fiscal year(s) will be made first out of the excess amounts, including any interest or other earnings on the NMF Account, and next out of current contributions. We may, in our sole discretion, spend in any fiscal year an amount greater or less than NMF Account contributions in that year, and we may lend money to cover any deficits.

4. Each company-owned Tropical Smoothie Café® Store will contribute to the NMF Account at the same rate as franchised locations.

5. An accounting of the NMF Account will be prepared annually and will be made available to you upon request. We retain the right to have the collections and expenditures of the NMF Account audited, at the expense of the NMF Account, by an independent certified public accountant we select.

We assume no fiduciary duty in administering the NMF Account. We are under no obligation to ensure that expenditures of the NMF Account are or will be proportionate or equivalent to contributions of National Marketing Fees by Tropical Smoothie Café® Stores operating in any geographic area or that any Tropical Smoothie Café® Store will benefit directly or in proportion to the amount of National Marketing Fees it has paid. (Section 11.C. of the Franchise Agreement)

The National Marketing Fees are deposited in our operating account, but are accounted for separately in our financial statements. During its fiscal year ended December 29, 2013, we used all of the National Marketing Fees as follows:

<b>Item</b>	<b>% Spent</b>
Production	61.93%
Media Placement	1.71%
Administrative Expenses	22.64%
Other	13.72%
<b>Total</b>	<b>100.00%</b>

We do not currently have a franchisee advertising council.

Local Advertising Cooperative. You will be required to participate in a local advertising cooperative with other franchisees in your area and to pay 2% of Gross Sales each week into a fund to be used by the cooperative in accordance with mandatory administrative oversight by us in our sole discretion. We have contracted with an outside independent accounting firm to administer the funds in accordance with the direction of the cooperative members. Cooperatives will usually be based on practical geographic divisions like cities, counties and states, and we reserve the right to designate the geographic area for establishing each cooperative. Each cooperative will allow franchisee members to coordinate advertising and marketing efforts and programs, and to maximize the efficient use of local advertising media. No money may be spent, nor will any promotional or advertising plans or materials be

used by a cooperative or its members without our prior written approval. (Section 11.D. of the Franchise Agreement)

We reserve the right to require cooperative members to adhere to governing documents that we develop. You may also be required to submit monthly financial statements for the cooperative. We will have the power to require a cooperative to be changed, dissolved or merged. Activities of the cooperative will generally be determined by its members, except that we reserve the right to exercise sole decision-making power over the cooperative funds if we determine, in our sole discretion, that the cooperative is not functioning properly either due to a lack of participation or an impasse among the members. Company-owned locations may participate in the cooperatives and, if they do so, they will be subject to the same fees and voting powers as franchisee members. (Section 11.D. of the Franchise Agreement.)

Internet Advertising. In addition to our general rights over all advertising, promotion and marketing, we have the exclusive right to conduct and manage all marketing on the Internet or other electronic medium, including all websites and "social media" marketing related to the Tropical Smoothie Café® brand. You may not conduct such marketing, or establish any website or social media presence independently, except as we may specify, and only with our written consent. We retain the right to approve any linking to or other use of our website. You must comply with any Internet and social media policy that we may prescribe. (Section 11.B. of the Franchise Agreement)

**Training Program**

**TRAINING**

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
<b><u>Franchise Basics – Two Weeks in Café</u></b>			
Week One: 5 Days			
Complete Café Basics Orientation, Safety & Security, Cleaning & Sanitation and Unparalleled Hospitality Modules, observation & clean up.	–	8	Existing Tropical Smoothie Café® restaurant as selected by your Area Developer ("AD") or Regional Director ("RD").
Complete Café Basics & Food Safety and Product Preparation Modules, prep products as needed & clean up.	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
Complete Café Basics: One Perfect Smoothie and Café Menu Module, prep products, work the smoothie & food line	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
Complete Café Basics Catering Module, prep products, work the smoothie & food line and assemble catering order	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.

<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b>
Complete Café Basics Register Operations Module, ring orders on the register	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
<b>Week Two: 5 Days</b>			
Scheduling and Stat Book	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
Food Vendors, Inventory and Food Ordering	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
Prep, POS System & Order Taking, BOH Cash Management	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
AM Prep, POS System & Order Taking, BOH Cash Management	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
Complete Break Even Analysis, comparing actual to targeted numbers; Discuss principal of contribution margin ratio; BOH Cash Management	–	8	Existing Tropical Smoothie Café® restaurant as selected by your AD or RD.
<b><u>Franchise Leadership – Approximately 60 Days Before Opening</u></b>			
<b><u>One Week of Classroom Training</u></b>			
<b>Subject</b>	<b>Hours of Classroom Training</b>	<b>Hours of On-the-Job Training</b>	<b>Location</b>
Welcome & Our Brand	2	–	Support Center/Atlanta, GA
FranConnect Introduction	1	–	Support Center/Atlanta, GA
MyMicros Introduction	1	–	Support Center/Atlanta, GA
People Plan Part #1: Planning Your Team	2	–	Support Center/Atlanta, GA
People Plan Part #2: Building Your Team	2	–	Support Center/Atlanta, GA
People Plan Part #3: Training Your Team	2	–	Support Center/Atlanta, GA
People Plan Part #4: Leading Your Team	2	–	Support Center/Atlanta, GA
People Plan Part #5: Managing Your Team	2	–	Support Center/Atlanta, GA
Supporting Your Team: Micros	2	–	Support Center/Atlanta, GA
Growing Sales: Micros	2	–	Support Center/Atlanta, GA

Subject	Hours of Classroom Training	Hours of On-the-Job Training	Location
Marketing including TSC marketing overview, Grand Opening, Vendor Support & Tools	5	–	Support Center/Atlanta, GA
MyInventory: Micros	2	–	Support Center/Atlanta, GA
Tropical Report	1	–	Support Center/Atlanta, GA
Profitability	2	–	Support Center/Atlanta, GA
Distribution	1	–	Support Center/Atlanta, GA
Sysco	2	–	Support Center/Atlanta, GA
Catering	1	–	Support Center/Atlanta, GA
Final Exam & Review	2	–	Support Center/Atlanta, GA
<b>NEW STORE OPENING</b>			
When the Store is ready to open, your Regional Director or Area Developer will assist with opening the Store.	–	50	Your Franchised Business
<b>TOTALS</b>	<b>34</b>	<b>130</b>	

The time periods allocated to the subjects listed above are approximations, and the time actually spent by you and your personnel may vary based on the experience and performance of those persons being trained. The instructional materials used in the initial training program will consist primarily of our Manuals, marketing and promotional materials, videos and other handouts. Our training is conducted by the following employees. Their experience relating to the subjects taught and our operations are as follows:

**Robin Willis** has been our Vice President of Organizational Services since August 2012, and prior to that was TSFDC’s Director of Training since August 2011. See Item 2 for additional information regarding her experience.

**Dana Lockyear** has been our Sr. Manager of Organizational Services since November 2012 and prior to that was TSFDC’s Regional Director of Franchise Operations. See Item 2 for additional information regarding her experience.

**Mary Anne Weigle** has been our Sr. Manager of Operations Integration since September 2013 and prior to that was HoneyBaked Ham Company’s Strategic Technology Manager. See Item 2 for additional information regarding her experience.

**Dawn Suhail-Lewis** has been our Human Resource Consultant since August 2012 and prior to that was Director of Human Resources with HoneyBaked Ham Company. Dawn is the founder and President of New Dawn Consulting, an Atlanta, Georgia-based consulting company

providing consulting services in the areas of human resources, leadership development and training. She has 16 years of experience in this field.

The initial training is mandatory for you (or, if you are entity, one owner designated as your **“Operating Principal”**) and your approved manager, and must be successfully completed within 15 days before opening the Franchised Business. Initial training consists of Franchise Basics (approximately 2 weeks), followed by Franchise Leadership (approximately 1 week) and then New Store Opening (approximately 1 week). In-store training is conducted by our Area Developer (if any) who is responsible for the area where your Franchised Business is located or by an existing franchisee, at an existing Store. There is no fee for initial training for you (or your Operating Principal) and your approved manager. Additional persons may attend initial training, with our consent, for a fee of \$1,000 per person. In all cases, you are responsible for the travel and living expenses of any persons who attend initial or other training.

We will (in our sole discretion) make available other ongoing continuing education and training programs, meetings or seminars (on an optional or mandatory basis), that we deem advisable. We may also host one or more conventions per calendar year, as well as conference telephone calls, which may include education and training. You and your designated employees must attend and successfully complete all ongoing continuing education and training programs, and must attend all meetings, seminars, conventions and conference telephone calls, as we may require. We may charge a reasonable fee for instruction and training materials; you are responsible for all other expenses, including travel, lodging and meals, incurred by you and your employees. (Sections 6.D. and 6.E. of the Franchise Agreement).

### **Computer and Point-of-Sale Systems**

You must, at your sole cost, purchase, use, maintain and update the point-of-sale system (**“POS System”**) and other computer systems that we specify for use in the operation of the Franchised Business, and must follow all policies and procedures that we specify in the Manuals or otherwise in writing. (Section 6.O. of the Franchise Agreement)

You must maintain the POS System and other computer systems in good working order at all times, and upgrade or update the computer hardware and software during the term of the Franchise Agreement, as we may require. You must enter into contracts for the maintenance, support, upgrades and updates to the POS System and other computer systems with approved suppliers described in the Manuals, and you must purchase any updated software upgrades for the POS System or other computer systems. (Section 6.O. of the Franchise Agreement)

The POS System and all other computer systems must be capable of connecting with our computer systems. To this end, you must maintain a high-speed Internet connection (including e-mail capabilities) and participate in our mandated management information system (the **“MIS System”**), which allows us to communicate with you, and poll and review the results of your Franchised Business’ operations, including (without limitation) sales data, consumer trends, food and labor costs, and other financial and marketing information. You must purchase the MIS System from Micros. We may distribute this data on a confidential basis to our network of franchisees. (Section 6.O. of the Franchise Agreement).

We estimate that the cost of the POS System will be approximately \$9,000 to \$21,000, depending on the size of your Tropical Smoothie Café® Store and the number of terminals that you require. Micros (our designated software provider) provides one year of hardware and software technical support with the purchase of the POS System. Optional maintenance and support contracts can be obtained from Micros for an annual cost that ranges from approximately \$600 to \$3,000, depending on the system configuration.

In addition, there is a \$50 per month charge for My Micros, a web service that allows us to poll and review Store level information online. During the term of the Franchise Agreement, we (or our designee) will provide you with limited programming support, including menu updates and promotions.

Except as described above (a) neither we, our affiliates, nor any third parties are required to provide ongoing maintenance, repairs, upgrades, or updates to your computer system; and (b) there are no optional or required maintenance/upgrade contracts for the point-of-sale or computer system.

You must install any other hardware or software for the operation of the Franchised Business that we may require in the future, including any enhancements, additions, substitutions, modifications, and upgrades. Specifically, we may require that you install and maintain systems that permit us to access and retrieve electronically any information stored in your computer systems, including information regarding your Store's Gross Sales, at the times and in the manner we specify. There is no contractual limitation on the frequency or cost of these obligations. We may also require you to license from us, or others we designate, any computer software we develop or acquire for use by Tropical Smoothie Café® Stores.

### **Typical Length of Time Before You Open Your Franchised Business**

The typical length of time between the signing of the Franchise Agreement and the opening of the Franchised Business is 6 to 12 months. Factors affecting this range include site acquisition, lease negotiation and construction timetable. You are responsible and the Franchised Business must be open for business within 12 months from the date of execution of the Franchise Agreement. If you sign a Multi-Unit Development Addendum, then the initial Store must open for business within 12 months from the Effective Date of the Franchise Agreement and each subsequent Store must open on the respective anniversary of the Effective Date of the Franchise Agreement. For example, the second Tropical Smoothie Café® Store must be open for business no later than the second anniversary of the Effective Date, the third Tropical Smoothie Café® Store must be open for business no later than the third anniversary of the Effective Date, and so on for each additional Store that you commit to develop.

### **ITEM 12. TERRITORY**

You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.

You will operate the Franchised Business at a specific location that we approve. You may operate the Franchised Business only at the approved premises and may not relocate without our prior approval.

We will grant you a protected area consisting of a geographical area within a one-half (½) mile radius around the site of your TROPICAL SMOOTHIE CAFÉ® Store (the "**Protected Area**"). As long as you are in substantial compliance with the Franchise Agreement, we will not operate or grant to others the right to operate a TROPICAL SMOOTHIE CAFÉ Store from a location within your Protected Area.

The territorial rights granted to you are not dependent on your achievement of a certain sales volume, market penetration, or other contingency. We have the right to grant additional franchised businesses or establish company-owned units at any time and at any location, in our sole discretion, except within your Protected Area. We may establish policies regarding your off-site marketing and promotion, and catering and delivery services, which will be set forth in the Manuals or otherwise in writing. Currently, you may solicit customers and advertise your Store anywhere you choose. There are no restrictions on you, any of our other franchisees, any of our affiliates, or us to prevent any soliciting or

advertising in another person's Protected Area. No party is obligated to pay compensation to any other party for soliciting customers from the other party's Protected Area.

The location of your Franchised Business may be changed only with our prior written consent and upon the following conditions: (a) you are in good standing under your franchise agreement and current in your financial obligations to us and our affiliates; (b) you are good standing under the lease for the current location; (c) you provide us with a financial statement covering the previous 12 months; (d) you provide us with a copy of the proposed lease for the new location; (e) you comply with required site selection and construction procedures; (f) the new location is constructed, furnished and equipped in accordance with our then-current design specifications and standards; (g) you give us 90-days written notice of the proposed relocation; and (h) at our option, you enter into our then-current form of franchise agreement, including our then-current royalty rate, except that the term of the new franchise agreement will expire on the date of the prior franchise agreement and no new initial franchise fee will be required. The Franchised Business must be open at the new location within 30 days of the closing of the prior location, unless we consent to a 30-day extension.

If, through no fault of your own, you lose possession of the premises due to an event of force majeure, we will allow you to relocate the Franchised Business to another location, which we must approve within 60 days of the event of force majeure. You must reopen for business at the new location within 5 months after we approve the location, and we may charge you an agreed minimum royalty fee during the period in which the Franchised Business is not in operation.

We reserve the right to establish company-owned or franchisee-operated businesses that sell similar products and/or services under different trade names or trademarks other than the Proprietary Marks. We may also sell products or services under the Proprietary Marks, or any other marks, through any other retail outlets, and we may establish other channels of distribution providing the same or similar services under the same or a different trade name or trademark.

Our affiliate, Tin Drum, franchises a full-service restaurant concept specializing in fast-casual, Pan-Asian cuisine (see Item 1). Tin Drum restaurants will not feature smoothies and so are not "competitive restaurants." It will have a separate management team and will have separate training facilities. Tin Drum restaurants may be located within, and solicit and accept orders from, the same market area as Tropical Smoothie Café® Stores. However, we do not believe these restaurants offer goods and services substantially similar to those offered by Tropical Smoothie Café® Stores, since each restaurant concept has its own unique menu and business format, and because only Tropical Smoothie Café® Stores feature smoothies. Therefore, we do not expect any conflicts to arise regarding territories or customers.

You have no right of first refusal or similar rights to acquire additional franchises or establish additional Tropical Smoothie Café® Stores. If we grant you an additional franchise, you must enter into a separate Franchise Agreement with us.

You may use the Internet to advertise only in compliance with the Franchise Agreement.

We do not generally grant options, rights of first refusal or similar rights to acquire additional franchises, as each franchise is awarded on a franchise-by-franchise basis. Accordingly, you may only acquire additional franchised Tropical Smoothie Café® Stores from us if you meet our qualifications at the time you apply. And we may limit the number of Tropical Smoothie Café® Stores owned by any franchise owner or its affiliates. You may only relocate your Tropical Smoothie Café® Stores with our approval, both for the relocation and for the new site. We apply the same considerations for evaluating



relocation of a Tropical Smoothie Café® Stores and the leasing of the additional site as we do for Tropical Smoothie Café® Stores and sites generally.

**ITEM 13. TRADEMARKS**

Pursuant to the terms of the Franchise Agreement, we grant you the right and license to operate a Franchised Business pursuant to the System and using the Proprietary Marks and related names and marks that may be developed in the future and used as part of the System. TSI assigned to TSFDC the trade name and trademark/service mark TROPICAL SMOOTHIE® on March 3, 2000, and in turn, TSFDC assigned all of its trademarks to us on August 16, 2012. The following are our principal marks, which are registered on the Principal Register of the United States Patent and Trademark Office (“USPTO”):

TRADEMARK	REGISTRATION NUMBER	REGISTRATION DATE
TROPICAL SMOOTHIE	2,103,370	October 7, 1997 (renewed October 23, 2007)
TROPICAL SMOOTHIE CAFÉ AND DESIGN	2,763,722	September 16, 2003
TROPICAL SMOOTHIE CAFÉ	2,892,598	October 12, 2004
TROPICAL SMOOTHIE CAFÉ AND COLOR DESIGN	2,918,995	January 18, 2005

All required affidavits have been filed for the registered trademarks. We intend to renew the registrations and file all appropriate affidavits for the marks at the times required by law.

Registration of the following trademark has been applied for:

TRADEMARK	APPLICATION NO.	APPLICATION DATE
TROPICAL SMOOTHIE CAFÉ (New Logo Color)	86,065,647	September 16, 2013

We do not have a federal registration for the TROPICAL SMOOTHIE CAFÉ (New Color Logo) mark. Therefore, this trademark does not have as many legal benefits and rights as a federally registered trademark. If our right to use this trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.

You must use all names and marks in full compliance with provisions of the Franchise Agreement and in accordance with the rules we periodically prescribe. You may not use any name or mark as a part of any corporate name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed by us to you). In addition, you may not use any name or mark for the sale of any unauthorized product or services, or in any other manner not explicitly authorized in writing by us.

There is no currently effective material determination of the USPTO, the Trademark Trial and Appeal Board, the trademark administrator of any state, or any court, and no pending infringement, opposition or cancellation proceeding or any pending material litigation involving the principal trademarks.

There are no agreements currently in effect which significantly limit our rights to use or license the use of the trademarks, service marks, trade names, logotypes or other commercial symbols in any manner material to the Franchised Business.

If there is any infringement of, or challenge to, your use of any name, mark or symbol, you must immediately notify us, and we will have the sole discretion to take any action as we deem appropriate, in order to fulfill our obligation to preserve and protect the ownership, identity and validity of the Proprietary Marks. We are not obligated to protect your rights in the Proprietary Marks, nor are we obligated to indemnify you for losses associated with any infringement of, or challenge to, our rights in the Proprietary Marks. If it becomes advisable at any time, in our sole discretion, to modify or discontinue the use of any name or mark and/or use one or more additional or substitute names or marks, you must pay for the tangible costs (such as replacing signs and materials) associated with a change.

We are not obligated to participate in your defense and/or indemnify you for expenses or damages if you are party to an administrative or judicial proceeding involving the Proprietary Marks if the proceeding is resolved unfavorable to you.

You may not contest, directly or indirectly, our ownership, title, right or interest in any of our names or marks, trade secrets, methods, procedures, and advertising techniques which are part of the System, or contest our sole right to register, use or license others to use such names, marks, trade secrets, methods, procedures, or techniques.

We do not actually know of either superior or infringing uses that could materially affect your use of such trademarks, service marks, trade names, logotypes or other commercial symbols in this state or any state in which a Franchised Business is to be located.

#### **ITEM 14. PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION**

We do not own any patents that are material to the franchise. We do claim copyright protection and proprietary rights to the confidential information contained in our Manuals. The Manuals are described in Item 11. We claim common law copyrights on our operational materials and on other proprietary materials specifically created by us in connection with the System, including the proprietary advertisements, all of our materials presented to your prospective customers, printed materials, and forms used in connection with the operation of a Franchised Business. The Manuals and other proprietary materials have not been registered with any copyright office, but we reserve the right to register these copyrights in the future.

There currently are no effective determinations of the Copyright Office (Library of Congress) or any court regarding any of the copyrighted materials. Nor are there any agreements currently in effect that significantly limit our right to use or authorize franchisees to use the copyrighted materials. Furthermore, there are no infringing uses actually known to us that could materially affect a franchisee's use of the copyrighted materials in any state.

You and your employees must keep the Manuals confidential. You must also promptly tell us when you learn about unauthorized use of this proprietary information. We are not obligated to take any action but will respond to this information as we deem appropriate. We will not indemnify you for losses brought by a third party concerning your use of this information. If you develop any new concept, process or improvement in the operation or promotion of your Franchised Business, you must promptly notify us and give us all necessary information about the new process or improvement, without compensation. You agree that any of these concepts, processes or improvements will become our property, and we may use or disclose them to other franchisees, as we deem appropriate.

**ITEM 15. OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS**

You are not required to participate personally in the direct operation of your business. However, we recommend that you participate.

You must designate one person as your “Operating Principal” under your Franchise Agreement. Your Operating Principal is the executive primarily responsible for the Franchised Business. Your Operating Principal must have and maintain at least 5% ownership of the Franchised Business and have decision-making authority about the Franchised Business. We must approve your Operating Principal, and you must designate a qualified replacement from among your owners if your Operating Principal can no longer fulfill its responsibilities under the Franchise Agreement.

The Franchised Business must be under the direct, on-site supervision of you (or your Operating Principal) or a manager who has been selected by you and approved by us. You (or your Operating Principal) and your approved manager must successfully complete our initial training program.

You must obtain covenants against the use and disclosure of any confidential information and covenants not to compete from your managers and any other employees or agents who have received or will have access to our training or Confidential Information. All of the required covenants must be in substantially the form of Nondisclosure and Noncompetition Agreement attached as Exhibit “H” to this Disclosure Document.

Each owner of the Franchised Business must guaranty your obligations under the Franchise Agreement and be personally bound by each term of the Franchise Agreement. Our current form of Owners’ Guaranty is attached as Exhibit “I” to this Disclosure Document.

Unless your spouse is an owner of the Franchised Business or an owner of the Business Entity that owns the Franchised Business, he or she will not be required to sign the Franchise Agreement or a personal guaranty.

**ITEM 16. RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

The Franchise Agreement provides that you must offer only the products and services that conform to our standards and specifications. These are described in our Manuals and other writings, as they may be updated periodically. Unless you obtain our prior written approval, you are prohibited from (a) offering or selling products or services not authorized by us; (b) using the premises of the Franchised Business for any purpose not related to the Franchised Business; and (c) soliciting other franchisees either directly or indirectly for any other business or investment activity. You must prepare all menu items using the procedures for preparation contained in our Manuals or other written instructions, and the smoothies, specialty sandwiches, and gourmet wraps must be sold immediately after their preparation. You may not advertise, offer for sale, or sell any products that are damaged, deteriorated, or “out-of-date,” as provided in the Manuals or as specified on the product itself. All such inferior or nonconforming items must be withdrawn from sale and removed from the premises of the Franchised Business. We have the right to add or delete items, products, merchandise or services and you must do the same on notice from us. There are no limits in our right to do so.

There are no limitations imposed by us on the persons to whom you may provide products and services.

**ITEM 17. RENEWAL, TERMINATION, TRANSFER & DISPUTE RESOLUTION**

**THE FRANCHISE RELATIONSHIP**

**This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

<b>Provision</b>	<b>Section In Franchise Agreement</b>	<b>Summary</b>
a. Length of the franchise term	Section 2.A.	15 years.
b. Renewal or extension of the term	Section 2.B.	If you are in good standing and satisfy certain conditions, you may renew for one additional 10 year term.
c. Requirements for franchisee to renew or extend	Section 2.B.	Your renewal right permits you to remain as a franchisee after the initial term of your Franchise Agreement expires. However, to remain a franchisee, you must meet all required conditions to renewal, including signing our then-current form of Franchise Agreement, which may be materially different than the form attached to this Disclosure Document.  Other conditions are: Give us advance written notice; if required by us, remodel the business to our then-current brand image for new Tropical Smoothie Café® Stores; not be in default; be in compliance with all system requirements; satisfy all monetary obligations to us and suppliers; sign general release. There are no renewal fees.
d. Termination by franchisee	Not Applicable	Not Applicable
e. Termination by franchisor without cause	Not Applicable	Not Applicable
f. Termination by franchisor with cause	Sections 14.A., 14.B., and 14.C.	We can terminate only if you default.
g. “Cause” defined – curable defaults	Sections 14.A. and 14.B.	You have 10 days to cure the following: fail to pay amounts owed to us or our affiliate when due; non-compliance with our product specifications or quality control standards; use of unapproved supplier; fail to offer required menu item; or offer unapproved menu item.  You have 30 days to cure any other breach of the Franchise Agreement, except for non-curable defaults.
h. “Cause” defined – non-curable defaults	Section 14.C.	Non-curable defaults include: you made any material misrepresentation or omission when applying to be a franchisee; you violated a non-compete agreement by signing the Franchise Agreement; insolvency, general assignment for the benefit of creditors, bankruptcy,

Provision	Section In Franchise Agreement	Summary
		<p>appointment of a receiver or custodian, or final judgment remains unsatisfied for 30 days or more; fail to acquire your site or open for business within the required time periods; cease operation for three consecutive days; lose possession of your site; relocate the Franchised Business without our approval; any violent or threatening act towards an employee, customer or other person; danger to health or safety of any person; guilty of a crime or offense likely to have an adverse effect, or a felony; materially violate laws or materially breach confidentiality; violate prohibition on transfers; violate covenants against competition; violate any other provision of the Franchise Agreement which by its nature cannot be cured; you knowingly maintain false books or knowingly submit false information, understate gross sales by more than 5%; you default on any loan past any applicable grace period; we terminate any other agreement between you (or your affiliate) and us (or our affiliate) for your default; you violate the Franchise Agreement after receiving two or more defaults notices within 24 months.</p>
i. Franchisee’s obligations on termination/ non-renewal	Section 15	<p>Obligations include, among others: You must cease operating the Franchised Business and cease using the Proprietary Marks; completely de-identify the business; pay all amounts due to us or our affiliates and suppliers; return all Manuals and other proprietary materials; assign telephone numbers, domain names and listings to us or our designee; and comply with confidentiality requirements and post-term restrictive covenants. If we terminate the Franchise Agreement for cause prior to expiration, you must pay us liquidated damages to compensate us for your failure to continue operating the business for the remainder of the term.</p>
j. Assignment of contract by franchisor	Section 13.A.	<p>No restriction on our right to assign as long as the transferee or assignee assumes our obligations under the Franchise Agreement.</p>
k. “ <b>Transfer</b> ” by franchisee – defined	Section 22	<p>“<b>Transfer</b>” means for you (or any direct or indirect owner of the Franchised Business) to transfer, sell, or dispose of, in any single or series of transactions, (i) substantially all of the assets of the Franchised Business, (ii) the Franchise Agreement, (iii) direct or indirect ownership interest of more than 25% of the Franchised Business,</p>

Provision	Section In Franchise Agreement	Summary
		or (iv) control of the Franchised Business.
l. Franchisor approval of transfer by franchisee	Sections 13.B. and 13.C.	We have the right to approve all transfers (except that you may transfer the Franchised Business to an entity you own and control), but will not unreasonably withhold approval.
m. Conditions for franchisor approval of transfer	Section 13.B.	We may impose conditions on our consent, including, that you (a) pay the transfer fee; (b) pay all amounts due us or our affiliates; (c) not otherwise be in default; (d) pay all suppliers and vendors; (e) sign a general release; and (f) ensure the Franchised Business complies with all of our requirements. If required by us you, you or the transferee must remodel the Franchised Business to our then-current image for new Tropical Smoothie Café® Stores. The proposed transferee must meet our criteria, assume all of your obligations, attend training, and sign our then-current form of Franchise Agreement (which may contain materially different provisions, and which will have a new 15-year term).
n. Franchisor's right of first refusal to acquire franchisee's business	Section 13.D.	We can match any offer for sale of your business or any ownership interest in you.
o. Franchisor's option to purchase franchisee's business	Section 15.G.	We have the right to purchase any or all of the tangible assets of the Franchised Business at your cost or fair market value, whichever is less, by written notice to you within 30 days after termination or expiration of the Franchise Agreement.
p. Death or disability of franchisee	Section 13.E.	The interest must be assigned to an approved transferee within nine months. The transfer is subject to our approval. If the transfer is to a family member of yours, then (i) we will approve the transfer so long as the family member meets our standards for new franchisees and completes our training, and (ii) the transfer will not be subject to our right of first refusal.
q. Non-competition covenants during the term of the franchise	Section 16.A.	You and your owners may not: (a) divert any business or customer to a competitor, or do or perform any act injurious or prejudicial to the goodwill of the Proprietary Marks and System; (b) recruit or hire any person employed by us or our franchisees or area developers; (c) solicit other franchisees or area developers, nor use available lists of franchisees or area developers, for any commercial purpose unrelated to the operation of the Franchised Business; or (d) have any involvement or interest in a competitive

Provision	Section In Franchise Agreement	Summary
		business.
r. Non-competition covenants after the franchise is terminated or expires	Section 16.B.	You and your owners may not, for 2 years after expiration or termination of the Franchise Agreement: (a) divert any business or customer to a competitor; (b) recruit or hire any person employed by us or our franchisees or area developers; (c) solicit other franchisees or area developers, nor use available lists of franchisees or area developers, for any commercial purpose; or (d) have any involvement or interest in a competitive business located within a 5-mile radius of the premises of the Franchised Business or the location of any Tropical Smoothie Café® location in existence on the date of termination or expiration of the Franchise Agreement.
s. Modification of the Agreement	Section 21.J	You must comply with the Manuals as amended. Franchise Agreement may not be modified unless mutually agreed to in writing.
t. Integration/merger clause	Section 21.J	Only the terms of the Franchise Agreement and other related written agreements are binding (subject to applicable state law). No other representations or promises will be enforceable. Nothing in the Franchise Agreement or any related agreement is intended to disclaim our representations made in this Disclosure Document.
u. Dispute resolution by arbitration or mediation	Sections 18.A. and 18.B.	Except for certain claims, all disputes must be mediated at our headquarters. Before you take any legal or other action against us, whether for damages, injunctive, equitable or other relief (including rescission), upon any alleged act or omission of ours, you must first give us 90 days prior written notice and an opportunity to cure such alleged act or omission or otherwise resolve such matter.
v. Choice of forum	Section 18.D.	Litigation in the state and federal courts with jurisdiction over the City of Atlanta, Georgia (subject to applicable state law).
w. Choice of law	Section 18.C.	Georgia law applies (subject to applicable state law).

Please refer to the disclosure addenda and contractual amendments appended to this Disclosure Document for additional terms that may be required under applicable state law. These additional disclosures, if any, appear in an addendum or rider in Exhibit “J.” Please note, though, that if you would not otherwise be covered under those state laws by their own terms, then you will not be covered merely because we have given you an addendum that describes the provisions of those state laws.

## ITEM 18. PUBLIC FIGURES

We currently do not use any public figures to promote our franchise.

## ITEM 19. FINANCIAL PERFORMANCE REPRESENTATIONS

The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and the information is included in the Disclosure Document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

### **FINANCIAL PERFORMANCE REPRESENTATIONS: INDIVIDUAL UNIT TROPICAL SMOOTHIE CAFÉ FRANCHISES**

The following tables provide historical sales information for Tropical Smoothie Café® franchised stores ("Stores") that were open at least one full year as of: (a) the calendar year 2013 for 309 Stores; (b) the calendar year 2012 for 261 Stores; and (c) the calendar year 2011 for 245 Stores. The tables do not include any financial performance information for any other types of franchises, such as non-traditional locations (i.e. college campus or other captive locations) or seasonal locations, and do not include any franchises of any type that had not been open for at least one year on December 29, 2013, December 30, 2012 and December 31, 2011, respectively. The information presented is not a forecast of future potential performance. The gross revenue figures are based on the same computation for computing royalties as required under the Franchise Agreement.

The tables provide the average gross revenues for the following categories of Stores in 2013, 2012 and 2011 on a category and cumulative basis: (a) our top 10% revenue producing Stores (meaning the average gross revenue for the number of Stores that were in the top 10% of gross revenues for that year); (b) our top 25% revenue producing Stores (which includes the Stores that are in the top 10%); (c) our top 50% revenue producing Stores (which includes the Stores that are in the top 10% and the top 25%); and (d) our top 75% revenue producing Stores. We present the average gross sales for the year in that category as well as the number and percentage achieving or surpassing the average gross sales in that category alone and cumulative for all Stores. For example, 22 of the 61 Stores in the top 25% for 2011 (or 37%), and 106 of the 245 total Stores for 2011 (or 43%) achieved or surpassed that average.

#### **Average Gross Revenues in 2013**

	<b><u>Top 10%</u></b>	<b><u>Top 25%</u></b>	<b><u>Top 50%</u></b>	<b><u>Top 75%</u></b>	<b><u>Total</u></b>
No. of Stores	28	71	142	212	283
Avg. Gross Revenues	\$907,812	\$775,639	\$669,054	\$597,406	\$526,403
No. that Attained or Surpassed Stated Result in Category (Cumulative)	9	24	61	83	134
Percent that Attained or Surpassed Stated Result in Category (Cumulative)	32%	34%	43%	39%	47%

As of December 29, 2013, there were 359 franchised Stores and 1 company-owned Store. Of the 359 franchised Stores, 309 were franchised Stores that had been open for at least 12 months as of 04/15/2014



December 29, 2013. Of the 309 Stores, 26 Stores were excluded since they were non-traditional locations. Of the 283 Stores referenced in the above table, all reported sufficient financial performance information to be included in this financial performance representation.

#### Average Gross Revenues in 2012

	<b>Top 10%</b>	<b>Top 25%</b>	<b>Top 50%</b>	<b>Top 75%</b>	<b>Total</b>
No. of Stores	26	66	130	195	261
Avg. Gross Revenues	\$882,011	\$743,762	\$640,600	\$569,739	\$500,050
No. that Attained or Surpassed Stated Result in Category (Cumulative)	11	24	49	76	117
Percent that Attained or Surpassed Stated Result in Category (Cumulative)	42%	36%	38%	39%	45%

As of December 30, 2012, there were 329 franchised Stores and 0 company-owned Stores. Of the 329 franchised Stores, 261 were franchised Stores that had been open for at least 12 months as of December 30, 2012. Of the 329 Stores, 3 Stores were excluded since they were non-traditional locations. Of the 261 Stores referenced in the above table, all reported sufficient financial performance information to be included in this financial performance representation.

#### Average Gross Revenues in 2011

	<b>Top 10%</b>	<b>Top 25%</b>	<b>Top 50%</b>	<b>Top 75%</b>	<b>Total</b>
No. of Stores	25	61	122	184	245
Avg. Gross Revenues	\$829,297	\$710,319	\$608,796	\$540,516	\$477,463
No. that Attained or Surpassed Stated Result in Category (Cumulative)	10	22	47	75	106
Percent that Attained or Surpassed Stated Result in Category (Cumulative)	40%	37%	39%	41%	43%

As of December 31, 2011, there were 301 franchised Stores and 4 company-owned Stores. Of the 301 franchised Stores, 261 were franchised Stores that had been open for at least 12 months as of December 31, 2011. Of the 261 Stores, 16 Stores were excluded since they were non-traditional locations. Of the 245 Stores referenced in the above table, all reported sufficient financial performance information to be included in this financial performance representation.

As stated, the sales for each of the Stores presented are limited to the sales results for Stores that had been open for a full 12 months of operations as of December 29, 2013, December 30, 2012 and December 31, 2011, respectively. Sales during the first year of operations are likely to be significantly less than for those that have been open for a year or more.

All Tropical Smoothie Café® Stores offer substantially the same products and services to the public. None of the franchised Tropical Smoothie Café® Stores received any services not generally available to other franchisees and substantially the same services will be offered to new franchisees.

We obtained these historical financial results from the information submitted by our franchisees. Neither we nor an independent certified public accountant has independently audited or verified the information. Some Stores have sold the amounts shown in the tables. Your individual results may differ. There is no assurance you will sell as much.

**YOUR INDIVIDUAL FINANCIAL RESULTS MAY DIFFER SUBSTANTIALLY FROM THE RESULTS DISCLOSED IN THIS ITEM 19.**

The foregoing data relates to revenues only; we are not presenting any information on the costs and expenses of operating a Store. Operating a Store incurs a wide variety of expenses that will reduce the Store's income from the revenue levels shown. Examples of the types of these expenses include, without limitation, rent and occupancy expenses; food and beverage product and supply costs; salaries, wages and other personnel-related expenses; federal, state and local taxes and fees; utilities; financing costs (including on loans and leases); royalties and other amounts due us.

CHARACTERISTICS OF THE INCLUDED FRANCHISED STORES MAY DIFFER SUBSTANTIALLY FROM YOUR STORE DEPENDING ON YOUR PREVIOUS BUSINESS AND MANAGEMENT EXPERIENCE, COMPETITION IN YOUR AREA, LENGTH OF TIME THAT THE INCLUDED STORES HAVE OPERATED COMPARED TO YOUR STORE, AND THE SERVICES OR GOODS SOLD AT YOUR STORE COMPARED TO THE INCLUDED STORES. THE SALES, PROFITS AND EARNINGS OF AN INDIVIDUAL FRANCHISEE MAY VARY GREATLY DEPENDING ON THESE AND A WIDE VARIETY OF OTHER FACTORS, INCLUDING THE LOCATION OF THE STORE, POPULATION AND DEMOGRAPHICS IN YOUR MARKET AREA, ECONOMIC AND MARKET CONDITIONS, LABOR AND PRODUCT COSTS, ETC.

WE HAVE WRITTEN SUBSTANTIATION IN OUR POSSESSION TO SUPPORT THE INFORMATION APPEARING IN THIS FINANCIAL PERFORMANCE REPRESENTATION. WRITTEN SUBSTANTIATION WILL BE MADE AVAILABLE TO YOU ON REASONABLE REQUEST.

We recommend that you make your own independent investigation to determine whether or not the franchise may be profitable, and consult with an attorney and other advisors prior to executing the franchise agreement.

Other than the preceding financial performance representation, we do not make any financial performance representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to our management by contacting Mike Rotondo, our CEO at 1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338 and 770-821-1900, the Federal Trade Commission, and the appropriate state regulatory agencies.

**ITEM 20. OUTLETS AND FRANCHISEE INFORMATION**

**Table No. 1  
Systemwide Outlet Summary  
For Years Ending December 31, 2011, December 30, 2012 and December 29, 2013**

<b>Outlet Type</b>	<b>Year</b>	<b>Outlets at the Start of the Year</b>	<b>Outlets at the End of the Year</b>	<b>Net Change</b>
Franchised	2011	289	302	+13
	2012	302	329	+27
	2013	329	359	+30
Company- Owned	2011	2	4	+2
	2012	4	0	-4
	2013	0	1	+1
<b>Total Outlets</b>	<b>2011</b>	<b>291</b>	<b>306</b>	<b>+15</b>
	<b>2012</b>	<b>306</b>	<b>329</b>	<b>+23</b>
	<b>2013</b>	<b>329</b>	<b>360</b>	<b>+31</b>

**Table No. 2  
Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)  
For Years Ending December 31, 2011, December 30, 2012 and December 29, 2013**

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Alabama	2011	1
	2012	0
	2013	0
Alaska	2011	0
	2012	0
	2013	0
Arizona	2011	0
	2012	2
	2013	1
Arkansas	2011	0
	2012	4
	2013	2
California	2011	0
	2012	0
	2013	0
Colorado	2011	0
	2012	0
	2013	0
Connecticut	2011	0
	2012	0
	2013	0
Delaware	2011	0
	2012	0
	2013	0
District of Columbia	2011	0
	2012	0
	2013	0

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Florida	2011	6
	2012	14
	2013	13
Georgia	2011	0
	2012	0
	2013	0
Hawaii	2011	0
	2012	0
	2013	0
Idaho	2011	0
	2012	0
	2013	0
Illinois	2011	0
	2012	0
	2013	1
Indiana	2011	0
	2012	0
	2013	0
Iowa	2011	0
	2012	0
	2013	0
Kansas	2011	0
	2012	0
	2013	0
Kentucky	2011	0
	2012	0
	2013	0
Louisiana	2011	0
	2012	2
	2013	1
Maine	2011	0
	2012	0
	2013	0
Maryland	2011	0
	2012	0
	2013	1
Massachusetts	2011	0
	2012	0
	2013	0
Michigan	2011	2
	2012	0
	2013	0
Minnesota	2011	0
	2012	0
	2013	0
Mississippi	2011	0
	2012	0
	2013	0
Missouri	2011	0
	2012	0
	2013	0

<b>State</b>	<b>Year</b>	<b>Number of Transfers</b>
Montana	2011	0
	2012	0
	2013	0
Nebraska	2011	0
	2012	0
	2013	0
Nevada	2011	5
	2012	4
	2013	2
New Hampshire	2011	0
	2012	0
	2013	0
New Jersey	2011	0
	2012	0
	2013	0
New Mexico	2011	0
	2012	0
	2013	0
New York	2011	1
	2012	1
	2013	1
North Carolina	2011	0
	2012	0
	2013	0
North Dakota	2011	0
	2012	0
	2013	0
Ohio	2011	0
	2012	0
	2013	0
Oklahoma	2011	0
	2012	0
	2013	0
Oregon	2011	0
	2012	0
	2013	0
Pennsylvania	2011	0
	2012	1
	2013	0
Rhode Island	2011	0
	2012	0
	2013	0
South Carolina	2011	0
	2012	0
	2013	0
South Dakota	2011	0
	2012	0
	2013	0

State	Year	Number of Transfers
Tennessee	2011	0
	2012	1
	2013	1
Texas	2011	0
	2012	0
	2013	0
Utah	2011	0
	2012	0
	2013	0
Vermont	2011	0
	2012	0
	2013	0
Virginia	2011	6
	2012	3
	2013	11
Washington	2011	0
	2012	0
	2013	0
West Virginia	2011	0
	2012	0
	2013	0
Wisconsin	2011	0
	2012	0
	2013	0
Wyoming	2011	0
	2012	0
	2013	0
<b>Total</b>	<b>2011</b>	<b>21</b>
	<b>2012</b>	<b>32</b>
	<b>2013</b>	<b>34</b>

**Table No. 3**  
**Status of Franchised Outlets**  
**For Years Ending December 31, 2011, December 30, 2012 and December 29, 2013**

State	Year	Outlets at the Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Alabama	2011	6	2	0	0	0	0	8
	2012	8	1	0	0	0	0	9
	2013	9	2	0	0	0	0	11
Alaska	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Arizona	2011	4	0	0	0	0	0	4
	2012	4	0	0	0	0	0	4
	2013	4	3	0	0	0	0	7
Arkansas	2011	9	3	0	0	0	0	12
	2012	12	3	0	0	0	1	14
	2013	14	3	0	0	0	0	17

State	Year	Outlets at the Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
California	2011	3	0	2	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	1	0	0	0	0
Colorado	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
Connecticut	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Delaware	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
District of Columbia	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Florida	2011	103	4	1	0	1	0	105
	2012	105	5	2	0	0	2	106
	2013	106	8	0	0	0	2	112
Georgia	2011	3	0	0	0	0	0	3
	2012	3	0	1	0	0	0	2
	2013	2	1	0	0	0	0	3
Hawaii	2011	1	0	0	0	0	0	1
	2012	1	0	1	0	0	0	0
	2013	0	0	0	0	0	0	0
Idaho	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Illinois	2011	2	3	0	0	0	0	5
	2012	5	2	0	0	0	0	7
	2013	7	0	0	0	0	2	5
Indiana	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	1	0	0	0	0	2
Iowa	2011	2	0	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
Kansas	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Kentucky	2011	1	0	0	0	0	0	1
	2012	1	1	0	0	0	0	2
	2013	2	0	1	0	0	0	1
Louisiana	2011	4	0	2	0	0	0	2
	2012	2	1	0	0	0	0	3
	2013	3	0	0	0	0	0	3
Maine	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	1	0	0	0	0	2

State	Year	Outlets at the Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Maryland	2011	1	1	0	0	0	0	2
	2012	2	0	0	0	0	1	1
	2013	1	0	0	0	0	0	1
Massachusetts	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	1	0	0	0	0	2
Michigan	2011	12	0	0	0	0	0	12
	2012	12	4	0	0	0	1	15
	2013	15	3	0	0	0	0	18
Minnesota	2011	1	0	0	0	0	0	1
	2012	1	1	0	0	0	0	2
	2013	2	0	0	0	0	1	1
Mississippi	2011	1	1	0	0	0	0	2
	2012	2	0	0	0	0	0	2
	2013	2	0	0	0	0	0	2
Missouri	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Montana	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	1	0
Nebraska	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Nevada	2011	20	0	2	0	0	0	18
	2012	18	3	0	0	0	0	21
	2013	21	2	0	0	0	1	22
New Hampshire	2011	0	1	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
New Jersey	2011	0	0	0	0	0	0	0
	2012	0	1	0	0	0	0	1
	2013	1	0	0	0	0	0	1
New Mexico	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
New York	2011	4	4	0	0	0	0	8
	2012	8	3	0	0	0	0	11
	2013	11	1	0	0	0	0	12
North Carolina	2011	5	0	0	0	0	0	5
	2012	5	2	0	0	0	0	7
	2013	7	4	0	0	0	0	11
North Dakota	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Ohio	2011	7	3	1	0	0	0	9
	2012	9	2	0	0	0	0	11
	2013	11	1	1	0	0	0	11



State	Year	Outlets at the Start of Year	Outlets Opened	Terminations	Non-Renewals	Reacquired by Franchisor	Ceased Operations - Other Reasons	Outlets at End of the Year
Oklahoma	2011	0	1	0	0	0	0	1
	2012	1	2	0	0	0	0	3
	2013	3	2	0	0	0	0	5
Oregon	2011	1	0	0	0	0	0	1
	2012	1	0	1	0	0	0	0
	2013	0	0	0	0	0	0	0
Pennsylvania	2011	3	0	0	0	0	0	3
	2012	3	1	0	0	0	0	4
	2013	4	2	0	0	0	0	6
Rhode Island	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
South Carolina	2011	2	0	1	0	0	0	1
	2012	1	1	0	0	0	0	2
	2013	2	2	0	0	0	0	4
South Dakota	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Tennessee	2011	8	0	2	0	0	0	6
	2012	6	0	2	0	0	0	4
	2013	4	0	2	0	0	0	2
Texas	2011	3	0	0	0	0	0	3
	2012	3	0	0	0	0	0	3
	2013	3	1	0	0	0	0	4
Utah	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	2	0	0	0	0	2
Vermont	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
Virginia	2011	74	2	0	0	0	0	76
	2012	76	3	0	0	0	0	79
	2013	79	1	0	0	0	1	79
Washington	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
West Virginia	2011	1	0	0	0	0	0	1
	2012	1	0	0	0	0	0	1
	2013	1	0	0	0	0	0	1
Wisconsin	2011	2	0	0	0	0	0	2
	2012	2	2	0	0	0	0	4
	2013	4	0	0	0	0	0	4
Wyoming	2011	0	0	0	0	0	0	0
	2012	0	0	0	0	0	0	0
	2013	0	0	0	0	0	0	0
<b>Totals US</b>	<b>2011</b>	<b>289</b>	<b>25</b>	<b>11</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>302</b>
	<b>2012</b>	<b>302</b>	<b>39</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>329</b>
	<b>2013</b>	<b>329</b>	<b>43</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>359</b>

**Table No. 4**  
**Status of Company-Owned Outlets**  
**For Years Ending December 31, 2011, December 30, 2012 and December 29, 2013**

State	Year	Outlets at Start of Year	Outlets Opened	Outlets Reacquired From Franchisee	Outlets Closed	Outlets Sold to Franchisee	Outlets at End of Year
Arizona	2011	1	0	1	0	0	2
	2012	2	0	0	0	2	0
	2013	0	0	0	0	0	0
Florida	2011	1	0	1	0	0	2
	2012	2	0	0	0	2	0
	2013	0	0	0	0	0	0
Georgia	2011	0	0	0	0	0	0
	2012	0	0	0	0	0	0
	2013	0	1	0	0	0	1
<b>Totals</b>	<b>2011</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>4</b>
	<b>2012</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>
	<b>2013</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

**Table No. 5**  
**Projected Openings as of December 29, 2013**

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet In the Next Fiscal Year (2014)	Projected New Company-Owned Outlet In the Next Fiscal Year (2014)
Alabama	0	0	0
Alaska	0	0	0
Arizona	2	2	0
Arkansas	4	4	0
California	1	1	0
Colorado	1	1	0
Connecticut	2	2	0
Delaware	0	0	0
District of Columbia	0	1	0
Florida	15	10	0
Georgia	2	1	0
Hawaii	0	0	0
Idaho	1	0	0
Illinois	1	0	0
Indiana	0	0	0
Iowa	0	0	0
Kansas	0	0	0
Kentucky	1	0	0
Louisiana	0	0	0
Maine	0	0	0
Maryland	2	3	0
Massachusetts	1	0	0
Michigan	9	5	0
Minnesota	0	0	0

State	Franchise Agreements Signed But Outlet Not Opened	Projected New Franchised Outlet In the Next Fiscal Year (2014)	Projected New Company-Owned Outlet In the Next Fiscal Year (2014)
Mississippi	0	0	0
Missouri	0	0	0
Montana	0	0	0
Nebraska	0	0	0
Nevada	4	4	0
New Hampshire	0	0	0
New Jersey	1	1	0
New Mexico	0	0	0
New York	8	3	0
North Carolina	13	6	0
North Dakota	0	1	0
Ohio	1	1	0
Oklahoma	0	0	0
Oregon	0	0	0
Pennsylvania	0	0	0
Rhode Island	1	1	0
South Carolina	1	1	0
South Dakota	0	0	0
Tennessee	0	0	0
Texas	0	3	0
Utah	0	0	0
Vermont	0	0	0
Virginia	6	4	0
Washington	0	0	0
West Virginia	0	0	0
Wisconsin	0	0	0
Wyoming	0	0	0
<b>Totals</b>	<b>77</b>	<b>55</b>	<b>0</b>

Exhibit “K” attached to this Disclosure Document lists the names of all current franchisees with their business address and business telephone number as of December 29, 2013.

The name, city, state, and current business telephone number (or, if unknown, the last known home telephone number) of 47 franchisees who had an outlet terminated, cancelled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the Franchise Agreement during the most recently completed fiscal year, or has not communicated with us within 10 weeks of the issuance date of this Disclosure Document, are listed on Exhibit “K.”

**If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.**

As of the date of this Disclosure Document, we are not offering any existing franchised outlets to prospective franchisees, including those that either have been reacquired by us or are still being operated by current franchisees pending a transfer. If we begin to offer any such outlet, specific information about the outlet will be provided to you in a separate supplement to this Disclosure Document.

We have no current or former franchisees who have signed provisions during the last 3 fiscal years restricting their ability to speak openly to you about their experience with the Tropical Smoothie Café® franchise system.

As of the date of this Disclosure Document, there are no franchisee organizations sponsored or endorsed by us and no independent franchisee organizations have asked to be included in this Disclosure Document.

## **ITEM 21. FINANCIAL STATEMENTS**

Our audited financial statements the year ended December 29, 2013 and December 30, 2012 are attached as Exhibit “L” to this Disclosure Document. Our unaudited financial statements as of June 29, 2014, are also attached as Exhibit "L." Since we were formed on June 25, 2012, and did not begin doing business until August 16, 2012, when we acquired substantially all of the assets, and all of the franchise and related agreements of TSFDC, we do not have audited financial statements for prior years.

## **ITEM 22. CONTRACTS**

Copies of the following forms, contracts and/or agreements are attached as exhibits to this Disclosure Document:

Exhibit B	Franchise Agreement (with attachments)
Exhibit B-1	Multi-Unit Development Addendum to Franchise Agreement
Exhibit D	Pre-Authorized Bank Form
Exhibit E	Exclusive Real Estate Services Representation Agreements
Exhibit F	Addendum to Lease Agreement/Conditional Assignment of Lease
Exhibit H	Nondisclosure and Noncompetition Agreement
Exhibit I	Owners’ Guaranty
Exhibit M	TrustWave Agreement
Exhibit N	Form of Financing Program Documents
	N-1 - Loan Agreement
	N-2 - Security Agreement
	N-3 - Personal Guaranty
Exhibit O	Franchisee Disclosure Questionnaire

## **ITEM 23. RECEIPTS**

You will find 2 copies of a detachable Receipt in Exhibit “P” at the end of the Disclosure Document. One Receipt must be signed, dated and delivered to us. The other Receipt should be retained for your records.

**EXHIBIT A TO THE DISCLOSURE DOCUMENT**

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**STATE AGENCIES AND ADMINISTRATORS/AGENTS FOR SERVICE OF PROCESS**

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If a state is not listed, we have not appointed an agent for service of process in that state in connection with the requirements of the franchise laws. There may be states in addition to those listed below in which we have appointed an agent for service of process. There also may be additional agents appointed in some of the states listed below.

Our registered agent in the State of Georgia is:

Christy Johnson  
3575 Piedmont Road  
Building 15, Suite 730  
Atlanta, Georgia 30305

STATE	STATE REGULATORY AGENCY	AGENT TO RECEIVE PROCESS IN STATE, IF DIFFERENT THAN THE STATE REGULATORY AGENCY
California	Department of Business Oversight <i>Los Angeles</i> 320 West 4 <sup>th</sup> Street Suite 750 Los Angeles, CA 90013-2344 (213) 576-7500 <i>Sacramento</i> 1515 K Street Suite 200 Sacramento, CA 95814-4052 (916) 445-7205 <i>San Diego</i> 1350 Front Street, Room 2034 San Diego, CA 92101-3697 (619) 525-4233 <i>San Francisco</i> One Sansome Street, Suite 600 San Francisco, CA 94104-4428 (415) 972-8565	
Hawaii	Department of Commerce and Consumer Affairs Business Registration Division Commissioner of Securities P.O. Box 40 Honolulu, Hawaii 96810 (808) 586-2744	Commissioner of Securities Department of Commerce and Consumer Affairs Business Registration Division Securities Compliance Branch 335 Merchant Street, Room 203 Honolulu, Hawaii 96813
Illinois	Franchise Bureau Office of Attorney General 500 South Second Street Springfield, IL 62706 (217) 782-4465	
Indiana	Franchise Section Indiana Securities Division Secretary of State Room E-111 302 W. Washington Street Indianapolis, Indiana 46204 (317) 232-6681	
Maryland	Office of the Attorney General Securities Division 200 St. Paul Place Baltimore, MD 21202-2020 (410) 576-7042	Maryland Securities Commissioner 200 St. Paul Place Baltimore, Maryland 21202-2020

STATE	STATE REGULATORY AGENCY	AGENT TO RECEIVE PROCESS IN STATE, IF DIFFERENT THAN THE STATE REGULATORY AGENCY
Michigan	Michigan Attorney General's Office Consumer Protection Division Attn: Franchise Section 525 W. Ottawa Street Williams Building, 1st Floor Lansing, MI 48933 (517) 373-7117	
Minnesota	Minnesota Department of Commerce Market Assurance Division 85 7 <sup>th</sup> Place East, Suite 500 St. Paul, Minnesota 55101-2198 (651) 296-6328	
New York	New York State Department of Law Bureau of Investor Protection and Securities 120 Broadway, 23rd Floor New York, NY 10271 (212) 416-8211	Secretary of State The Division of Corporations One Commerce Plaza 99 Washington Avenue Albany, NY 12231-0001
North Dakota	Office of Securities Commissioner Fifth Floor 600 East Boulevard Bismarck, ND 58505-0510 (701) 328-4712	
Oregon	Department of Consumer & Business Services Division of Finance and Corporate Securities Labor and Industries Building Salem, Oregon 97310 (503) 378-4140	
Rhode Island	Department of Business Regulation Securities Division 1511 Pontiac Avenue John O. Pastore Complex-69-1 Cranston, RI 02920-4407 (401) 462-9527	
South Dakota	Division of Securities 445 East Capitol Avenue Pierre, SD 57501-3185 (605) 773-4823	

STATE	STATE REGULATORY AGENCY	AGENT TO RECEIVE PROCESS IN STATE, IF DIFFERENT THAN THE STATE REGULATORY AGENCY
Virginia	State Corporation Commission 1300 East Main Street 9th Floor Richmond, VA 23219 (804) 371-9051	Clerk State Corporation Commission 1300 East Main Street, 1st Floor Richmond, VA 23219
Washington	Department of Financial Institutions Securities Division P.O. Box 9033 Olympia, WA 98507-9033 (360) 902-8760	
Wisconsin	Division of Securities Department of Financial Institutions Post Office Box 1768 Madison, Wisconsin 53701 (608) 266-2801	



**EXHIBIT B TO THE DISCLOSURE DOCUMENT**

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**FORM OF FRANCHISE AGREEMENT**

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04/15/2014

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**TROPICAL SMOOTHIE CAFÉ, LLC**

**FRANCHISE AGREEMENT**

**Franchisee:** \_\_\_\_\_

**Café Number:** \_\_\_\_\_

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## FRANCHISE AGREEMENT

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) between Tropical Smoothie Café, LLC, a Georgia limited liability company (“we” or “us”) and \_\_\_\_\_, a \_\_\_\_\_ (“you”).

### Background Statement

A. We have developed a proprietary system (the “System”) through significant expenditures of time, skill, effort and money relating to the development and operation of a Tropical Smoothie Café® business, which offers premium quality smoothies made fresh in the store using proprietary recipes, specialty sandwiches, gourmet wraps, salads, soups, and other menu items (the “Franchised Business”).

B. The System is identified by means of certain trade names, service marks, trademarks, logos, emblems and indicia of origin owned by us, including TROPICAL SMOOTHIE® and TROPICAL SMOOTHIE CAFÉ® (collectively, the “Marks”).

C. Under this Agreement, we license the Marks and the System to you, and you agree to develop and operate a Franchised Business.

D. Certain terms are defined in Section 22.

The parties agree as follows:

### 1. GRANT OF FRANCHISE

**A. Grant.** We grant to you the right to operate one Franchised Business solely at the site specified on Exhibit A (or, if no site is specified on Exhibit A on the Effective Date, then the site shall be determined in accordance with Section 5.A) (the “Site”). You shall develop, open, and then operate the Franchised Business at the Site for the entire term of this Agreement.

**B. Protected Area.** We will not operate, nor license another franchisee the right to operate, a Tropical Smoothie Café® store located within 1/2 mile (as measured by us) from the front door of the Site (the “Protected Area”).

**C. Exceptions to Protected Area.** Notwithstanding Section 1.B, we retain the right to: (i) establish and license others to establish and operate Tropical Smoothie Café® businesses outside the Protected Area; (ii) operate and license others to operate businesses anywhere that do not operate under the TROPICAL SMOOTHIE CAFÉ® brand name; (iii) sell products and services through channels of distribution (including the Internet) other than Tropical Smoothie Café® businesses within the Protected Territory; and (iv) operate and license others to operate Tropical Smoothie Café® businesses at venues that primarily serve the customers located within a facility, such as enclosed shopping centers, universities, captive audience facilities (examples include parks charging admission, stadiums, and amusement parks), special purpose facilities (examples include airports, transportation centers, and hospitals), and limited access facilities (examples include military complexes, buyer’s club businesses, educational facilities, business and industrial complexes), and other types of institutional accounts.

**D. Your Investigation of the Franchise.** You acknowledge that you have conducted an independent investigation of the business contemplated by this Agreement and recognize that an investment in a Tropical Smoothie Café® store involves business risks, that your success is largely dependent on your own abilities, efforts and active participation in the daily affairs of the Franchised Business, and that the nature of operating a Tropical Smoothie Café® store may change over time.

**E. Your Representations.** You represent, on behalf of you and your owners, that (i) your entering into this Agreement or operating the Franchised Business does not violate any confidentiality or non-competition agreement by which you or your owners are bound, and (ii) you and your owners are not listed or “blocked” in connection with, and are not in violation under, any anti-terrorism law, regulation, or executive order.

**F. Your Organization.** If you are a corporation, limited liability company, or other entity:

1. Charter Documents. If we request, you will provide to us complete, correct and up-to-date copies of your articles of incorporation and bylaws or, as applicable, your articles of organization or limited liability company agreement, other governing documents and agreements among owners, any amendments to them, resolutions authorizing your entry into and performance of this Agreement, and any documents restricting the sale or transfer of your stock or other ownership interests.

2. Owners, Officers, and Directors. You represent that Exhibit B completely and accurately (i) identifies each your owners, officers and directors, and (ii) describes the nature and extent of each owner’s interest. If any information on Exhibit B changes (regardless of whether such change is a Transfer requiring our approval), you will provide an updated Exhibit B to us within 10 days.

**G. Guaranty.** If you are corporation, limited liability company, or other entity you shall have each of your owners sign our standard form of Owners’ Guaranty, agreeing to be bound, jointly and severally, by all provisions of this Agreement.

**H. Operating Principal.** You agree that the person designated as the “Operating Principal” on Exhibit B is the executive primarily responsible for the Franchised Business and has decision-making authority on your behalf. The Operating Principal must have at least 5% ownership interest in the Franchised Business. The Operating Principal does not have to serve as a day-to-day general manager of the Franchised Business. If the Operating Principal dies, becomes incapacitated, transfers his/her interest in the Franchised Business, or otherwise ceases to be the executive primarily responsible for the Franchised Business, you must promptly designate a new Operating Principal, subject to our reasonable approval.

## 2. TERM AND RENEWAL

**A. Initial Term.** The term of this Agreement will be for 15 years commencing on the Effective Date.

**B. Successor Agreement.** After the initial term expires, you may continue to operate the Franchised Business for one additional 10-year term under a successor franchise agreement, but only if you meet the following conditions:

1. You give us notice of your election to enter into a successor franchise agreement between 6 and 12 months before the end of the term of this Agreement.

2. If required by us, you Remodel the Franchised Business to our then-current brand image for Tropical Smoothie Café® stores.

3. At the time you give notice of your election and on the last day of this Agreement, you (and your affiliates) are not in default of this Agreement or any other agreement with us (or our affiliates); your Franchised Business is in compliance with the System; and you are current with all suppliers.

4. You sign our then-current form of Franchise Agreement, which may be materially different than this form (including, without limitation, higher and/or different fees), except that: (1) you will not pay another initial franchise fee; receive another renewal or successor term, nor complete initial training; and (2) we will not have any Pre-Opening Obligations as described in Section 3.A.

5. You and each owner of your Franchised Business executes a general release (on our then-standard form) of any and all claims against us, our affiliates, and our respective owners, officers, directors, agents and employees.

### **3. OUR DUTIES**

#### **A. Pre-Opening Obligations.**

1. Site Criteria and Review. We will provide to you our criteria for Tropical Smoothie Café® locations. We will review and advise you regarding potential locations that you submit to us. Our approval of a prospective site and assisting you in selecting a site does not constitute a representation or promise by us that the Franchised Business operated at that site will be profitable or otherwise successful.

2. Development Plans and Specifications. We will provide to you our mandatory and suggested specifications and layouts for a Tropical Smoothie Café® store, including requirements for dimensions, design, color scheme, image, interior layout, décor, furnishings, equipment, signs, fixtures, opening inventory, and supplies.

3. Vendor Lists. We will provide, or grant access, to you our lists of Approved Vendors.

4. Business Plan Review. Upon your request, we will review and advise you regarding your pre-opening business plan.

5. Pre-Opening Training. We will provide an initial training program which you must complete (the “Initial Training Program”). As of the Effective Date, the Initial Training

Program consists of our “Franchise Basics Program” (approximately 2 weeks), “Franchise Leadership Program” (approximately 1 week) and “New Store Opening” (approximately 1 week). You must complete the Franchise Basics Program and Franchise Leadership Program at least 15 days before the opening of the Franchised Business. You must complete the New Store Opening Program in the week of the opening. We may change the Initial Training Program. We will provide this training through a combination of classroom and on-the-job training at our franchise support center and/or an existing Tropical Smoothie Café® business. Up to 3 people may attend the Initial Training Program at no charge before you open. Additional persons may attend the Initial Training Program for a non-refundable fee of \$1,000 per person. You will be responsible for all meals, lodging and other travel expenses incurred in attending the Initial Training Program.

6. Opening Assistance. We will have a representative support your business opening with at least 7 days onsite pre-opening and opening assistance (except that if you already have 2 or more Franchised Businesses in operation, then we are not obligated to provide onsite pre-opening and opening assistance).

7. Manual. We will loan you (or provide you access to) a single set of our Manuals.

## **B. Post-Opening Obligations.**

1. Generally. We will provide such general advisory assistance and field support deemed by us to be helpful to you in the ongoing operation, advertising and promotion of the Franchised Business.

2. Continued Development of the System. We will seek to improve and develop the System, including the refinement of existing products, services, techniques and methods, and/or the development of new products, services, techniques and methods.

3. Pricing. We will provide recommended prices for certain products offered by franchisees of the System, and may specify required prices for certain products at certain times.

4. Procedures. We will provide you with our recommended procedures for administration, bookkeeping, accounting, and inventory control. We may make any such procedures required (and not merely recommended) as part of the System.

5. Updates to Manual. We will provide updates, revisions and amendments to our Manuals when we deem appropriate, including Corporate Policy Directives which may be provided to you from time to time and automatically included in the Manuals.

6. Quality Control Reviews. We will, on a periodic basis as we deem advisable, conduct quality control reviews of the Franchised Business.

7. Marketing. We will manage the NMF Account (as defined in Section 11.C) and oversee advertising, promotion and marketing programs.

8. Internet. We will maintain the website for Tropical Smoothie Café®, which will include your location and telephone number.

9. Vendor Lists. We will provide, or grant access, to you our lists of Approved Vendors as changed from time to time.

**C. Delegation.** We may delegate performance of any of our obligations under this Agreement to third parties, including our Area Developers.

#### **4. FEES**

**A. Initial Franchise Fee.** You will pay us an initial franchise fee of \$25,000 upon execution of this Agreement. The initial franchise fee is non-refundable and fully earned upon receipt by us.

**B. Royalty Fee.** You will pay to us a continuing nonrefundable weekly royalty fee (the "Royalty Fee") of 6% of Gross Sales (as that term is defined in Section 22).

**C. MIS Fee.** You will pay to us a monthly \$50 fee for the use of our mandated management information system (the "MIS Fee"), as described in Section 6.O. We may raise the MIS Fee no more than once per year, in an amount reasonably commensurate with our internal and out-of-pockets costs.

**D. PCI Compliance Fee.** You will pay to us a monthly \$100 fee for the use of our mandated system for data security, including Payment Card Industry Data Security Standards (the "PCI Compliance Fee"), as described in Section 6.O. We may raise the PCI Compliance Fee no more than once per year, in an amount reasonably commensurate with our internal and out-of-pockets costs.

**E. National Marketing and Advertising Fees.** You will pay to us a continuing nonrefundable weekly national marketing and advertising fee (the "National Marketing Fee") of 2% of Gross Sales.

**F. Local Advertising Cooperative Contribution.** You will pay to us a continuing nonrefundable weekly cooperative contribution (the "Local Advertising Cooperative Contribution") of 2% of Gross Sales.

**G. Late Fees.** If we debit your account for payment of any amount you owe us, and there are not sufficient funds in your account to pay such amount, or your bank refuses to clear the withdrawal in our favor, the unpaid amount will be considered late. We may assess a late fee of \$25 for each week (or portion thereof) that any payment is delinquent. In addition, all overdue amounts will bear interest, until paid, at a rate equal to the lower of (i) 18% per annum or (ii) the highest rate permitted by applicable state law, whichever is less. Interest shall be calculated on a daily basis.

**H. Non-Compliance Fee.** If we reasonably believe that you have committed an event of default under this Agreement (including any failure to comply with any requirement set forth in the Manual or any Corporate Policy Directive), we may assess you a fee up to \$500 (the



“Non-Compliance Fee”) per week or portion thereof. We may assess a Non-Compliance Fee regardless of whether we send you a notice to cure or termination notice, so long as we notify you in writing of our decision to charge you a Non-Compliance Fee, the amount of the Non-Compliance Fee, and the reason we believe you have committed a default (the “Non-Compliance Notice”). Assessment and/or payment of a Non-Compliance Fee does not constitute a waiver of any other rights or remedies we may have in connection with the event of default or otherwise under this Agreement.

**I. Payments By Us On Your Behalf.** You shall pay to us, within 15 days after any written request by us which is accompanied by reasonable documentation, any monies which we have paid (or have become obligated to pay) that you owed to a third party or that you were obligated to pay a third party as part of the System.

**J. Payment Procedures.** All weekly payments and any late fees and interest charges required by this Agreement shall be paid through our direct debit program each Wednesday, or such other payment schedule and method as prescribed by us, following the preceding week for which the applicable fee is being paid (on Gross Sales made during the preceding week which is defined as beginning on Monday and ending on Sunday). All other payments that you owe to us shall be paid by direct debit when due. At our request, you will execute our standard form of pre-authorized bank form and all other documents necessary to permit us to withdraw funds from your designated bank account by electronic funds transfer (“EFT”) for payment of all amounts you owe to us or our affiliates. Should any EFT not be honored by your bank for any reason, you will be responsible for that payment and any service charge. Upon written notice to you, we may designate another method of payment.

**K. Application of Payment.** Notwithstanding any designation you might make, we have sole discretion to apply any of your payments to any of your past due indebtedness to us.

**L. Obligations Independent; No Set-Off.** Your obligations to pay us any fees or amounts described in this Agreement are not dependent on our performance and are independent covenants by you. You must make all such payments without offset or deduction for any amounts that are owed to you.

## **5. DEVELOPMENT AND OPENING**

**A. Site Approval.** If Exhibit A does not specify your Site on the Effective Date, then you must lease or purchase a location for your Franchised Business within the designated area described on Exhibit A. You have no exclusive rights to the area designated. Your Site is subject to our approval and you must not move or relocate the Franchised Business without our approval. Our approval of the proposed site as being suitable for a Franchised Business is not to be deemed to be a representation or warranty as to the likelihood of your success. You must engage the commercial real estate broker that we designate to help you select and acquire a Site. You are responsible for any commissions due to the real estate broker and not otherwise paid by the landlord or seller.

**B. Lease Approval.** You must obtain our approval of the lease or sublease (or any modification or amendment) for the Site before you sign it. Our review and approval of the lease

or sublease is solely to ensure that the lease or sublease contains terms that we accept or require for our benefit and the franchise system; it is not a substitute for careful review by you and your advisors. Our approval of the lease or sublease does not constitute a warranty or assurance that the lease or sublease contains terms and conditions for your benefit. You must obtain the landlord's signature to our standard Addendum to Lease Agreement/Conditional Assignment of Lease. You must deliver a copy of the signed lease or sublease to us within 10 days after it is signed by both you and the landlord.

**C. Site Acquisition.** You must acquire your Site (by purchasing, leasing or subleasing the Site) within 180 days after the Effective Date.

**D. Construction and Finish Out.** You are solely responsible for developing and constructing the Site for your Franchised Business, at your expense, and in compliance with all applicable laws and regulations. You must have a licensed architect prepare all required construction plans and specifications to suit the shape and dimensions of the Site and to ensure that such plans and specifications comply with applicable laws and regulations, lease requirements, and the mandatory specifications and layout provided by us. We have the right to review and accept all plans and specifications and to confirm that construction is completed in conformance with our architectural and design standards and specifications for a Tropical Smoothie Café® store. You will use in the development and operation of your Franchised Business only those (and each of those) brands, types and/or models of equipment, furniture, fixtures and signs specified by us and using only suppliers designated or approved by us, which may include and/or be limited to us and/or our affiliates.

**E. Business Plan.** If required by us, you shall submit an initial business plan for the Franchised Business prior to commencing operations for our review.

**F. Opening Date.** You must open the Franchised Business on or before the first anniversary of the Effective Date.

**G. Initial Training.** You (or your Operating Principal) and your general manager must attend and complete to our reasonable satisfaction our Initial Training Program prior to the opening of the Franchised Business.

**H. "Grand Opening" Marketing.** You must spend at least \$2,000 (not counting cost of food and smoothies), on a grand opening marketing program for the Franchised Business before or during the first 60 days of operations. The grand opening program will use the marketing, advertising and public relations programs, media and materials we have developed or approved, and is separate from your other marketing and advertising requirements. We may require you to submit expenditure report(s) to us to confirm your compliance with this Section.

**I. Conditions To Opening.** You must notify us at least 30 days before you intend to open the Franchise Business to the public. Before opening, you must satisfy all of the following conditions: (1) you are in compliance with this Agreement, (2) you have obtained all applicable governmental permits and authorizations, (3) the Franchised Business conforms to all applicable System specifications, (4) we have inspected and approved the Franchised Business, (5) you have hired sufficient employees, (6) you have completed our required Initial Training Program,

(7) you have submitted insurance certificates, a copy of the your executed lease, your EFT, and all other documents and information required by this Agreement or by us, (8) you have begun the grand opening marketing campaign required under Section 5.H; and (9) we have given our written approval to open (which will not be unreasonably withheld or delayed).

## **6. YOUR DUTIES**

**A. Compliance with System.** You must operate the Franchised Business in conformity with our System (as set forth in the Manuals, any Corporate Policy Directives, or otherwise), including such methods, standards and specifications as we may from time to time prescribe for Tropical Smoothie Café® stores to ensure that the highest degree of product quality and service is uniformly maintained. Pursuant to this ongoing responsibility, you agree:

1. To sell all menu items, products and services required by us, utilizing the method and manner that we prescribe; to offer for sale only such menu items, products and services which have been expressly approved for sale in writing by us; to refrain from any deviation from our standards and specifications for serving or selling such menu items, products or services; and to discontinue selling any such menu items, products or services as we may disapprove in writing at any time;

2. To use such off-site distribution methods (such as catering, delivery, and other off-site distribution methods) as we require, and for off-site distribution methods which we do not require, to use such distribution methods only if we expressly authorize you to do so; and to comply with our specifications for any such distribution program method;

3. To maintain in sufficient supply as we may prescribe in the Manuals or otherwise in writing and use at all times only such products and supplies as conform to our standards and specifications in the Manuals and Corporate Policy Directives;

4. To lease or purchase and install at your expense all fixtures, furnishings, décor, signs and equipment we may reasonably specify from time to time in the Manuals or otherwise in writing, and to refrain from installing or permitting to be installed on or about the Franchised Business without our prior written consent any fixtures, furnishings, signs, décor, equipment or other items not previously specifically approved as meeting our standards and conforming to our specifications;

5. To employ such minimum number of employees, and to staff the Franchised Business at all times with any minimum number of employees, as may be prescribed by us;

6. To maintain a competent, conscientious staff, including a General Manager of the Franchised Business, that has been trained to our requirements;

7. To comply with such maximum or minimum pricing requirements that we may determine, and to offer menu items at specific prices we determine if we are promoting such items on a national or regional basis, for the duration of the promotion (but only to the extent permitted by applicable law);

8. To keep the Franchised Business open and in normal operation for such minimum, maximum, and/or specific hours and days as we may from time to time prescribe; and

9. To keep the Franchised Business at all times under the direct, on-premises supervision of you (or your Operating Principal), or the supervision of a manager approved by us who has attended and successfully completed our training program.

**B. Manuals.** You agree that the Manuals are proprietary and owned solely by us. You agree that the Manuals and their contents are confidential information that belong to us under Section 9. We may revise or change the Manuals at any time in our discretion. You shall ensure that your set of the Manuals are kept current and up-to-date. In the event of any dispute as to the contents of the Manuals, the terms contained in the master set of the Manuals maintained by us at our headquarters shall be controlling.

**C. Compliance With Law.** You and the Franchised Business shall comply with all laws and regulations. You and the Franchised Business shall obtain and keep in force all governmental permits and licenses necessary for the Franchised Business.

**D. Ongoing Training.** You and your employees must attend and complete, to our reasonable satisfaction, such additional training programs as we may require from time to time. We may charge a reasonable fee for such programs in an amount reasonably commensurate with our internal and out-of-pocket costs. You will be responsible for any and all other expenses incurred in training, including, without limitation, the costs of meals, lodging, and travel.

**E. Meetings and Conferences.** You and your managers (if required by us) must attend all in-person meetings and remote meetings (such as telephone conference calls) that we require. We may require you to attend one or more regional or national conventions or conferences, and we may charge a reasonable fee to fund such conventions or conferences, regardless of attendance, in an amount reasonably commensurate with our internal and out-of-pocket costs. You will be responsible for all travel and other expenses of attending any meeting, convention or conference.

**F. Use of Site.** You must use the Site solely for the operation of the Franchised Business, and not use or permit the Site to be used for any other purpose or activity without first obtaining our written consent.

**G. Maintenance.** You must continuously maintain the Franchised Business in the highest degree of sanitation, repair and condition as we reasonably require.

**H. Health and Safety Standards.** You must meet and maintain the highest safety standards and ratings applicable to the Franchised Business and its personnel as we may reasonably require.

**I. Remodel.** We may require you to Remodel the Franchised Business periodically, but we will not require you to do so more than once every five years.

**J. Designated and Approved Products and Suppliers.**

1. You shall offer for sale at the Franchised Business, and you shall use in your Franchised Business, only those menu items, ingredients, vitamin and nutritional supplements, food, beverages, packaging, supplies, signs, equipment, service providers, distributors, and other items and services that we from time to time approve (and which are not thereafter disapproved) and that comply with our specifications and quality standards. If required by us, any such items or services shall be purchased only from “Approved Suppliers” that we designate or approve (which might include and/or be limited to us and/or our affiliates). You shall not offer for sale, sell or provide through the Franchised Business or from the Site, any products or services that we have not approved.

2. We will provide you, in the Manuals or other written or electronic form, with a list of specifications and, if applicable, a list of Approved Suppliers for some or all of these items and may from time to time issue revisions thereto. If you desire to utilize any services or products that we have not approved (for services and products that require supplier approval), you must first send us sufficient information, specifications and/or samples for us to determine whether the product or service complies with our standards and specifications, or whether the supplier meets our Approved Supplier criteria.

3. You will bear all reasonable expenses incurred by us in connection with determining whether we will approve an item, service or supplier. We will decide within a reasonable time (usually 30 days) after receiving the required information whether you may purchase or lease such items or services or from such supplier. Approval of a supplier may be conditioned on requirements related to the frequency of delivery, standards of service, consistency, reliability and general reputation. Nothing in this Section will be construed to require us to approve any particular supplier, or to require us to make available to prospective suppliers, standards and specifications that we, in our discretion, deem confidential.

4. Notwithstanding anything contrary in this Agreement, we have the right to review from time to time our approval of any items, services or suppliers. We may revoke our approval of any item, service or supplier at any time, in our sole discretion, by notifying you and/or the supplier. You shall, at your own expense, promptly cease using, selling or providing any items or services disapproved by us and shall promptly cease purchasing from suppliers disapproved by us.

5. We have the right to retain volume rebates, markups and other benefits from suppliers or distributors, or in connection with purchases by you. You will have no entitlement to or interest in such benefits, unless otherwise agreed to by us in writing.

6. You must pay all amounts owed to Approved Suppliers when due.

**K. Market Research.** We may conduct market research and testing to determine consumer trends and the salability of new menu items, food products and services. You agree to participate in such market research programs as may be conducted by us, in our sole discretion, by test marketing new menu items and products and services in the Franchised Business. You agree to provide us with timely reports and other relevant information regarding market research.

You agree to purchase a reasonable quantity of the tested products and effectively promote and make a reasonable effort to sell the products and/or services.

**L. Inspection of Premises.** You must permit us or our agents or representatives, including, but not limited to, your Area Developer (if any) and his employee(s), to enter the Franchised Business at any time with or without prior notice to you, for purposes of conducting inspections, taking photographs and recordings, interviewing employees and customers, and/or evaluating any aspect of the Franchised Business. You will cooperate fully with us or our agents or representatives in such inspections by rendering such assistance as they or we may reasonably request. Upon notice from us or our agents or representatives, and without limiting our other rights under this Agreement, you shall immediately correct any deficiencies detected during such inspections, including, without limitation, immediately ceasing and preventing the further use of any products, equipment, inventory, advertising materials, supplies or other items that do not conform to our then current specifications, standards or requirements. In the event you fail or refuse to correct such deficiencies, we shall have the right to enter upon the premises of the Franchised Business, without being guilty of trespass or any other tort, for the purpose of making or causing to be made such corrections as may be required, at your sole expense which you agree to pay upon demand.

**M. Lease.** You must comply with your lease or sublease for the Site. You must submit to us any renewals, amendments, default notices, or other material documents related to your lease within 10 days of your receipt or issuances thereof.

**N. Display of Marks.** You must display our Marks at the Franchised Business, on uniforms and otherwise in the manner prescribed by us. The color, design and location of said displays shall be specified by us and may be changed from time to time in our sole discretion.

**O. Computerized Point-of-Sale System.**

1. You must, at your sole cost, purchase, use, maintain and update the computer systems (collectively, the “Computer System”) we specify from time to time for use in the operation of the Franchised Business, and will follow the procedures related thereto that we specify in the Manuals or otherwise in writing. The Computer System has various components, including (without limitation), designated computer hardware and software, a computerized point-of-sale system (the “POS System”), and related services, such as maintenance, service and support, Internet access and data polling. You may be required to obtain some of these components and services directly from us, our affiliates or designated or approved suppliers. You may incur monthly fees for ISP, ASP, data polling services and the like.

2. You must maintain the Computer System in good working order at all times and upgrade, update or otherwise change the Computer System during the term of this Agreement, as we require. Our modifications and specifications for components of the Computer System may require you to incur costs to purchase, lease or license new or modified computer hardware and software or to obtain service and support for the Computer System during the term of this Agreement. You agree to comply with modifications to the Computer System within thirty (30) days after you receive notice of such modifications.

3. We may require you to participate in a mandated management information system, which includes certain Internet and/or intranet networks that are capable of connecting with our computer systems (collectively, the “MIS System”). The MIS System may allow us to review the results of your Franchised Business’ operations, provide you information, and otherwise facilitate communications among us and our area developers and franchisees. You must pay our then-current fees to participate in the MIS System, at the times and in the manner we designate in the Manuals or otherwise in writing. We reserve the right to poll (via modem or otherwise) your POS System in order to compile sales data, consumer trends, food and labor costs, and other such financial and marketing information as we deem appropriate, and you acknowledge that we may distribute this data on a confidential basis to our network of franchisees.

4. We may require you to participate, at your expense, in mandated data security programs, including programs for compliance with Payment Card Industry Data Security Standards, as such standards may change from time to time.

5. Your Computer System must be capable of connecting with our computer systems, performing the functions we designate for the Franchised Business, permitting us to review the results of your Franchised Business’ operations, and engaging in any e-commerce activities that we designate. In addition to any access we may have to your Computer System through the MIS System, you must: (a) supply us with any and all codes, passwords and information necessary to have access to your Computer System, and not change them without first notifying us; and (b) not load or utilize any software on the Computer System that we have not specified or approved for use. You will continuously comply with each of our then-current terms of use and privacy policies (and all other requirements) regarding the Computer System, including (but not limited to) Internet use.

**P. Supplemental Marketing Programs.** We may establish supplemental marketing programs (such as limited time offers, gift cards, gift certificates, coupons, loyalty programs, and customer relationship management) from time to time as part of the System, and you must participate in (and comply with) such supplemental marketing programs at your expense.

**Q. Customer Satisfaction and Franchise Compliance Programs.** You must participate, at your own expense, in programs we may require from time to time regarding customer satisfaction and/or your compliance with the System, which may include (but are not limited to) a guest feedback system, guest survey programs, and mystery shopping. We may require you to reimburse us for the cost of such programs. We will share the results of these programs with you, as they pertain to your Franchised Business. You must meet or exceed any minimum score requirements set by us from time to time for such programs.

**R. Customer Complaints.** You must promptly respond to, and reasonably attempt to resolve, any complaints or negative feedback received by us or you from any customers. If you fail to respond to and resolve any customer complaint or negative feedback, we may do so on your behalf, and you will reimburse us upon request for any costs or expenses associated with our action.

**S. Identification of Independent Ownership.** You shall hold yourself out to the public as an independent contractor operating the Franchised Business pursuant to a license from us and as an authorized user of the System and the Marks which are owned by us. You agree to take such action as we reasonably request to do so, including, without limitation, exhibiting to customers and others such notices of independent ownership as we may require from time to time, in a conspicuous place on the premises of the Franchised Business and on such forms, business cards, stationery and advertising and other materials as we may specify.

**T. Conduct.** You must conduct your business at all times in a manner that reflects favorably on the System and the Marks. You shall at no time engage in deceptive, misleading or unethical practices, or conduct any other act (or failure to act) which has a material negative impact on our reputation and goodwill or that of any other franchisee operating under the System.

## **7. MARKS**

**A. Grant of License.** We grant you a license to use the Marks solely in connection with the operation of your Franchised Business.

**B. Conditions for Use.** With respect to your use of the Marks pursuant to the license granted under this Agreement, you agree that:

1. You must use only the Marks designated by us and shall use them only in the manner required or authorized and permitted by us.

2. You must use the Marks only in connection with the license to operate the Franchised Business.

3. You must identify yourself as a licensee of the Marks on all invoices, order forms, receipts, business stationery and contracts, as well as at the Franchised Business on a sign that is conspicuously displayed to customers, in each case using such language as we may prescribe.

4. You shall not use “Tropical Smoothie” as part of your corporate or other legal name.

5. You must comply with our instructions in filing and maintaining the requisite trade name or fictitious name registrations, and must execute any documents our counsel or we deem necessary to obtain protection for the Marks or to maintain their continued validity and enforceability.

6. If you become aware of any infringement of the Marks or if your use of the Marks is challenged by a third party, then you must immediately notify us, and we will have sole discretion to take such action as we deem appropriate. You will cooperate and assist as required by us in any enforcement activities or litigation as we deem necessary to fully protect all our interests in the Marks, including any state and federal trademark and service mark registrations for the Marks, or to protect the System. If we determine that no action to protect the



Marks is necessary, then you may take any action you deem necessary to protect your own interest, at your own expense.

7. If we modify or discontinue the use of any Proprietary Mark and/or require the use of one or more additional or substitute names or marks, you will modify or discontinue the use of any such name or mark, within a reasonable time after receiving notice, and use such additional or substitute name or mark, at your expense.

8. You shall not establish a website on the Internet using any domain name or uniform resource locator containing any of the Marks or the words “TROPICAL SMOOTHIE” or “TROPICAL SMOOTHIE CAFÉ” or any variation thereof without our prior written consent. We retain the sole right to advertise on the Internet and to create a website using the “TROPICAL SMOOTHIE CAFÉ” domain name. We are the sole owner of all right, title and interest in all domain names related to the System.

**C. Acknowledgements.** You agree that (i) we (or our affiliates) own all right, title and interest in and to the Marks and the goodwill associated with and symbolized by them; (ii) your use of the Marks pursuant to this Agreement does not give you any ownership interest or other interest in or to the Marks, except the nonexclusive license granted in this Agreement, (iii) any and all goodwill arising from your use of the Marks and/or the System shall inure solely and exclusively to our benefit, and upon expiration or termination of this Agreement no monetary amount shall be assigned as attributable to any goodwill associated with your use of the System or the Marks; and (iv) you shall not register or attempt to register the Marks in your name or that of any other person or entity.

## **8. CHANGES TO THE SYSTEM**

**A. Changes By Us.** We have the right to change or modify the System from time to time, including, without limitation, the adoption and use of new or modified Marks or copyrighted materials, and new or additional menu items, recipes, computer hardware, software, equipment, inventory, supplies, procedures, techniques, standards, and specifications. You will comply with any such changes or modifications to, the System at your expense. We may communicate such changes or modifications by incorporating them into the Manuals, through Corporate Policy Directives, or other method we reasonably deem appropriate (which need not qualify as “notice” under Section 19).

**B. Improvements.** In the event that any improvement or addition to the Manuals, the System or the Marks is developed by you or your employees, such improvement or addition is automatically owned by us. If the foregoing provision is invalid or otherwise unenforceable, you will grant to us an irrevocable, world-wide, exclusive, royalty-free license, with the right to sublicense such improvement or addition.

**C. Variance.** We have the right, in our sole discretion, to vary standards or specifications for any franchisee based upon that particular franchisee’s qualifications, the peculiarities of a particular site or circumstances, the demographics of the trade area, business potential, existing business practices, or any other condition which we deem to relevant to a

particular Tropical Smoothie Café® store or group of stores. We will not be required to disclose or grant to you the same or a similar variance.

## **9. CONFIDENTIAL INFORMATION**

With respect to all Confidential Information, (i) you shall treat and maintain the Confidential Information as confidential both during the term of this Agreement and thereafter, (ii) you shall use the Confidential Information only for your operation of the Franchised Business under this Agreement, and not in any other business or capacity; (iii) you shall not make unauthorized copies of any portion of the Confidential Information (whether disclosed via electronic medium or in written or other intangible form), including, for example, the Manuals; (iv) you shall disclose the Confidential Information only as necessary to your employees or agents who have a demonstrable and valid need-to-know the Confidential Information, and not to anyone else; (v) you shall advise your employees or agents of the confidential nature of such information and the requirements of nondisclosure thereof; (vi) you shall promptly inform us of any unauthorized disclosure or use of Confidential Information; and (vii) you shall implement all reasonable procedures that we prescribe from time to time to prevent the unauthorized use or disclosure of the Confidential Information, including, without limitation, restrictions on disclosure of Confidential Information to your employees and the use of nondisclosure and noncompetition agreements we may prescribe for employees or others who have access to the Confidential Information. We shall be designated a third-party beneficiary of such nondisclosure and noncompetition agreements, with the independent right to enforce such agreements. This Section shall survive the expiration, termination or transfer of this Agreement indefinitely.

## **10. RECORDS AND REPORTS**

**A. Maintenance of Books and Records.** You shall maintain complete books, records and accounts for at least seven years from the date of preparation, in accordance with the System and in the form and manner prescribed by us.

**B. Weekly Reports.** You shall submit to us, at the same time that Royalty Fees are payable, a weekly statement (in a form prescribed by us) of Gross Sales during the preceding week, together with such other data or information as we may require.

**C. Financial Statements.** You shall submit to us, on such forms and in such format that we prescribe:

1. within 10 days of the end of each month, a profit and loss statement for the Franchised Business for the immediately preceding month; and

2. within 90 days of the completion of your fiscal year, an annual financial statement for the Franchised Business, which shall include an income statement and balance sheet prepared in accordance with generally accepted accounting principles.

We may require the financial statements to be prepared on a consolidated basis for each Franchised Business that you and your affiliates own. We may require that annual financial statements be compiled by an independent certified public accounting firm. We also reserve the

right to require you to submit to us financial statements for any period or periods of any fiscal year.

**D. Annual Business Plan.** If required by us, you shall submit an annual business plan and forecast by such date that we determine.

**E. Other Submissions.** You shall also submit to us such other forms, reports, and data, records, contracts, tax returns, governmental permits and other documents and information related to you or the Franchised Business as we may reasonably designate, in the form and at the times and places reasonably required by us

**F. Legal Actions and Investigations.** You shall notify us in writing within three days of any legal action (including any lawsuit or governmental investigation) or threatened legal action by any customer or other third party against you or the Franchised Business, or otherwise involving you or the Franchised Business. You shall provide to us such documents and information related to any such action as we may request.

**G. Government Inspections.** You shall give us copies of all inspection reports, warnings, certificates and ratings, issued by any governmental entity with respect to the Franchised Business within three days of your receipt thereof.

**H. Audit.** We or our designated agents shall have the right at all reasonable times to examine and copy, at our expense, your books, records, receipts and tax returns. If an audit reveals that any payments to us have been understated in any report to us, then you shall immediately pay to us, upon demand, the amount understated plus interest calculated on a late payment. You shall also reimburse us for all costs and expenses of the audit if (i) we conducted the audit because you failed to submit required reports or were otherwise not in compliance with the System, or (ii) if the understatement exceeded 2% or more for the audited period.

## **11. ADVERTISING**

**A. Approval of Marketing Materials.** You must conduct all advertising, promotion and marketing in dignified and honest manner, and in accordance the marketing policies which we prescribe from time to time. You must submit to us samples of all such materials at least 15 days before their intended use. If you do not receive our written approval within 10 days, we will be deemed to have disapproved the materials. You shall not use any advertising, marketing or promotional plans or materials, which have not been approved in writing by us, and you shall cease to use any plans or materials promptly upon notice by us.

**B. Internet.** In addition to our general rights over all advertising, promotion and marketing set forth in Section 11.A, you acknowledge that we have the exclusive right to conduct and manage all marketing on the Internet or other electronic medium, including all websites and “social media” marketing related to the TROPICAL SMOOTHIE CAFÉ® brand. You shall not conduct such marketing or establish any website or social media presence independently, except as we may specify, and only with our consent. We retain the right to approve any linking to or other use of our website. You must comply with any Internet and social media policy that we may prescribe.

**C. National Marketing and Advertising Program.** We will deposit your National Marketing Fee in an account (the National Marketing Fee Account, or “NMF Account”). We will use the NMF Account in part to design and create promotional, marketing and advertising resources, including, but not limited to, in-store point of purchase materials, flyers, radio and television commercials and other materials for your use, as we deem appropriate in our sole discretion. All costs associated with your duplication or distribution of these materials, or with media placement, must be borne by you. We will use the NMF Account in connection with advertising with different media outlets, including print, radio, television and/or online on a national and/or regional level for such advertising, marketing and public relations programs and materials as we deem necessary or appropriate, in our sole discretion. We (or our designee) will maintain and administer the NMF Account in the following manner:

1. We (or our designee) will oversee all advertising, promotion and marketing programs, with sole discretion over the creative concepts, materials and media used in such programs, and the geographic, market and media placement and allocation thereof. The NMF Account may be used to satisfy any and all costs of maintaining, administering, directing, preparing and producing promotional, marketing and advertising resources, including, but not limited to, the cost of preparing and producing television, radio, magazine and newspaper advertising campaigns; the cost of direct mail and outdoor billboard advertising; the cost of marketing and promotion activities, including advertising and marketing agencies; the cost of public relations activities, including advertising and public relations agencies; the cost of developing and maintaining an Internet website; the cost of providing advertising, promotional and/or other marketing materials to franchisees; and personnel and other departmental costs for advertising, promotion and marketing that we internally administer or prepare.

2. The NMF Account will be accounted for separately from our other funds and will not be used to defray any of our general operating expenses, except for such reasonable salaries, administrative costs and overhead that we may incur in activities reasonably related to the administration or direction of the NMF Account and its marketing programs.

3. It is anticipated that the NMF Account contributions will be expended for programs during the fiscal year in which such contributions to it are made. If excess amounts remain at the end of such fiscal year, all expenditures in the following fiscal year(s) will be made first out of such excess amounts, including any interest or other earnings on the NMF Account, and next out of current contributions. We may, in our sole discretion, spend in any fiscal year an amount greater or less than the amount in the NMF Account in that year, and we may lend money to cover any deficits.

4. Each Tropical Smoothie Café® store operated by us or our affiliates will contribute National Marketing Fees at the same rate as Tropical Smoothie Café® franchisees.

5. An accounting of the NMF Account will be prepared annually and will be made available to you upon request. We retain the right to have the collections and expenditures of amounts in the NMF Account audited, at the expense of the NMF Account, by an independent certified public accountant we select.

6. We assume no fiduciary duty in administering the NMF Account.

7. We have no obligation to ensure that expenditures from the NMF Account are or will be proportionate or equivalent to contributions of National Marketing Fees by Tropical Smoothie Café® stores operating in any geographic area or that any Tropical Smoothie Café® store will benefit directly or in proportion to the amount of National Marketing Fees it has paid.

**D. Local Advertising Cooperative Contribution.** You must participate with other franchisees in your designated market area (as determined by us) in an advertising cooperative. You shall comply with the policies and procedures established by the advertising cooperative and must contribute 2% of Gross Sales each week to the advertising cooperative. We (or our designee) will administer these funds in accordance with the direction of the cooperative members, provided that our prior written approval must be obtained for all expenditures of the cooperative and before the use of any advertising and promotional materials developed by the cooperative. We may contract with an independent accounting firm to administer such funds. We may require cooperative members to adhere to governing documents that we develop. We may require you to submit monthly financial statements for the cooperative. We may require a cooperative to be changed, dissolved or merged. Activities of the cooperative will generally be determined by its members, except that we reserve the right to exercise sole decision-making power over the cooperative funds if we determine, in our sole discretion, that the cooperative is not functioning properly either due to a lack of participation or an impasse among the members. Company-owned locations may participate in the cooperatives and, if they do so, they will be subject to the same fees and voting powers as franchisee members.

## 12. INSURANCE

**A. Procurement.** You shall procure, prior to the commencement of any operations under this Agreement, and thereafter maintain in full force and effect, at your sole expense, listing us and your Area Developer (if any) each as an additional insured: (i) an insurance policy or policies protecting you, the Area Developer (if any), and us, and each of our officers, directors, partners and employees, against any loss, liability, personal injury, death, property damage or expense whatsoever from fire, lightning, theft, vandalism, malicious mischief and the perils included in the extended coverage endorsement, arising out of or occurring upon or in connection with the Franchised Business or the construction of or leasehold improvements made to the Franchised Business, or by reason of the operation or occupancy of the Franchised Business; (ii) as well as such other insurance applicable to such other special risks, if any, as we may reasonably require for our own and your protection; and (iii) you shall be obligated to procure such insurance and to submit copies of such policies to us 15 days prior to the opening to the public of the Franchised Business.

**B. Minimum Coverage.** Such policy or policies shall be written by an insurance company satisfactory to us in accordance with the standards and specifications set forth in the Manuals or otherwise in writing, and shall include, at a minimum (except as additional coverage and higher policy limits may reasonably be specified from time to time by us in the Manuals or otherwise in writing) the following:

1. Comprehensive general liability insurance, including contractual liability, broad form property damage, personal injury, advertising injury, product liability, employee

liability, completed operations and independent contractors coverage, and fire damage coverage in the amount of \$1,000,000 per occurrence, with \$2,000,000 aggregate coverage, or such higher amount as required by the lease, and naming us as an additional insured in each such policy or policies;

2. Worker's compensation and employer's liability insurance as well as such other insurance as may be required by statute or rule of the state in which the Franchised Business is located and operated;

3. Fire, vandalism and extended coverage insurance with primary and excess limits of not less than the full replacement value of the Franchised Business and its furniture, fixtures and equipment;

4. Business interruption and extra expense insurance for a minimum of six months to cover net profits and continuing expenses, including Royalty Fees; and

5. Employment practices liability insurance.

**C. Construction Coverage.** In connection with any construction, leasehold improvements, renovation, refurbishment or remodeling of the premises of the Franchised Business, you shall cause the general contractor to maintain with a reputable insurer comprehensive general liability insurance (with comprehensive automobile liability coverage for both owned and non-owned vehicles, builder's risk, product liability and independent contractors coverage) in at least the amount of \$1,000,000 with us named as an additional insured, and worker's compensation and employer's liability insurance as required by state law.

**D. Certificates.** At least 15 days prior to the opening of the Franchised Business and on each policy renewal date thereafter, you shall submit to us, original or duplicate copies of all policies and policy amendments. The evidence of insurance shall include a statement by the insurer that the policy or policies will not be canceled or materially altered without at least 30 days prior written notice to us.

**E. Independence of Coverage Requirements.** Your obligation to obtain and maintain the foregoing policy or policies in the amounts specified shall not be limited in any way by reason of any insurance which may be maintained by us, and your performance of that obligation shall not relieve you of liability under the indemnity provision set forth in Section 19 of this Agreement. Any and all policies must provide that your failure to comply with the Franchise Agreement or any other conduct, will not void or otherwise affect the protection afforded to us.

**F. Third Parties.** You shall ensure that all third parties with which you conduct business, are properly insured.

**G. Proceeds.** You agree to look solely to the proceeds of such insurance policies as required herein for reimbursement of any loss, and neither you nor any insurance carrier may recover damages against us as franchisor.

### 13. TRANSFERS; OPERATION BY US

**A. By Us.** We may transfer or assign this Agreement, or any our rights or obligations under this Agreement, to any person or entity, and we may undergo a change in ownership and/or control, without your consent.

**B. By You.** You acknowledge that the rights and duties set forth in this Agreement are personal to you (and your owners, if you are an entity) and that we entered into this Agreement in reliance on your business skill, financial capacity, personal character, experience, and business ability. Accordingly, you shall not conduct or undergo a Transfer without providing us at least 60 days prior notice of the proposed Transfer, and without obtaining our consent. We will not unreasonably withhold our consent. In granting any such consent, we may impose conditions, including, without limitation, the following:

1. on or before the sale, we receive a transfer fee from you equal to the greater of (A) \$10,000 or (B) 5% of the sale price paid by the buyer;
2. the proposed buyer and its owners has completed our franchise application processes and meet our then-applicable standards and requirements for a new franchisee;
3. the proposed buyer is not, or does not own or operate, a Competitor;
4. the proposed buyer executes our then-current form of franchise agreement, which may contain materially different provisions than this Agreement, and which will have a new 15-year term;
5. you have paid all monetary obligations to us in full, and you are not otherwise in default or breach of this Agreement;
6. you have paid all suppliers and vendors in full;
7. the proposed buyer and its owners and employees undergo such training as we may require;
8. you, your owners, and the buyer and its owners execute a general release of us and our affiliates, and our respective officers and employees, in a form satisfactory to us;
9. the Franchised Business fully complies with all of our then-current System requirements; and
10. if required by us, you Remodel the Franchised Business (or we may require the buyer to do so within a time period we specify).

**C. Transfer for Convenience of Ownership.** You may Transfer this Agreement to a corporation or limited liability company formed solely for the convenience of ownership, so long as: (i) you own and control 100% of the ownership interests of the corporation or limited liability company, (ii) you notify us at least 30 days prior to the Transfer, and (iii) you comply

with Section 1.F and Section 1.G. You agree to remain personally liable under this Agreement as if the transfer to the corporation or limited liability company did not occur.

**D. Our Right of First Refusal.** Any party who holds an interest in you or in the Franchised Business and who desires to accept any bona fide offer from a third party for a Transfer shall notify us in writing of each offer and, except as otherwise provided in this Agreement, we shall have the right and option, exercisable within 30 days after receipt of such written notification, to purchase the seller's interest on the same terms and conditions offered by the third party by sending written notice to the seller that we intend to do so. If the consideration, terms and/or conditions offered by a third party are such that we cannot reasonably furnish the same consideration, terms and/or conditions, then we may purchase the Franchised Business proposed to be sold for the reasonable equivalent in cash. Any material change in the terms of any offer prior to closing shall constitute a new offer subject to the same right of first refusal by us as in the case of an initial offer. If we elect to purchase the seller's interest, closing on such purchase must occur by the later of: (a) the closing date specified in the third party offer; or (b) within 30 days from the date of notice to the seller of our election to purchase. Our right to exercise the option afforded by this Section 13.D, shall not constitute a waiver of any other provision of this Agreement, including all of the requirements of this Section 13 with respect to a proposed Transfer.

**E. Transfer Upon Death or Incapacity.** If you (or, if the Franchised Business is owned by an entity, the person with a majority interest in the entity) die or become incapacitated, your executor, administrator, or personal representative of that person must Transfer the Franchised Business to a third party approved by us within nine months. If the transferee is a family member of yours, then (i) the Transfer will be approved by us so long as the transferee meets our then-current standards for new franchisees and completes such training as we require, and (ii) the Transfer will not be subject to our right of first refusal in Section 13.D.

**F. Operation of the Franchised Business by Us.** If (i) you (or, if you are an entity, the person with a majority interest in you) dies or becomes incapacitated, (ii) this Agreement is terminated or expires and we elect to purchase assets of the Franchised Business as provided in Section 15.G, or (iii) you operate the Franchised Business in a manner which, in our reasonable opinion, constitutes a danger to the health or safety of any person, then we (or our designee, including an Area Developer) may (but are not obligated to) enter your Site and operate and manage the Franchised Business for your account until this Agreement is terminated, the Franchised Business is transferred, the Franchised Business is purchased by us, or we return the Franchised Business to you. Our operation and management will not continue for more than 90 days without your consent. We will account to you for all net income from the Franchised Business during the period in which we operate the Franchised Business. We may collect a temporary management fee equal to 10% of Gross Sales for the period in which we operate the Franchised Business.

## **14. DEFAULT AND TERMINATION**

**A. Termination After 30-Day Cure Period.** We may terminate this Agreement if you violate this Agreement (including violation of any requirement in a Corporate Policy



Directive or the Manuals) in any manner not described in Section 14.B or Section 14.C, and fail to cure such breach to our reasonable satisfaction within 30 days we notify you thereof.

**B. Termination After 10-Day Cure Period.** We may terminate this Agreement if any of the following violations of this Agreement occur, and you fail to cure such violation to our reasonable satisfaction within 10 days after we notify you thereof:

1. If you fail to make a payment when due (or if you do not have sufficient funds in your account when we attempt an electronic funds withdrawal) to us (or our affiliate) under this Agreement or any other agreement between you (or your affiliate) and us (or our affiliate), and you fail to cure such non-payment; or

2. If you fail to comply with our product and quality control standards and specifications, fail to have any suppliers approved by us as required by this Agreement, fail to offer all menu items as required by us, or offer any unapproved menu items.

**C. Termination With No Opportunity To Cure.** We may terminate this Agreement, without giving you an opportunity to cure, if any of the following occur:

1. If you (or any of your owners) made any material misrepresentation or omission when applying to a be franchisee, or if by entering this Agreement you violated any non-competition agreement by which you are bound;

2. If you become insolvent or make a general assignment for the benefit of creditors, or if a petition in bankruptcy is filed by you or such a petition is filed against and consented to by you or not dismissed within 30 days, or if you are adjudicated as bankrupt, or if a court appoints a receiver of or other custodian of your business or assets, or if a final judgment remains unsatisfied or of record for 30 days or longer (unless supersedeas bond is filed), or if execution is levied against the Franchised Business, or suit to foreclose any lien or mortgage against the Franchised Business is instituted against you and not dismissed within 30 days, or if any substantial real or personal property of the Franchised Business shall be sold after levy thereon;

3. If you fail to acquire your Site or open the Franchised Business for business by the deadlines specified in Section 5.C and Section 5.F, respectively;

4. If the Franchised Business ceases operation for three consecutive days without our prior approval;

5. If you lose possession of the Site;

6. If you relocate the Franchise Business without our prior written consent;

7. If you (or any of your owners) engage in any violent or threatening act towards an employee, customer or any other person;

8. If a threat, danger or injury to health or safety of any person results from any act or failure to act by you (or any of your owners), or from the construction, maintenance or operation of the Franchised Business;

9. If you (or any of your owners) are or have been convicted by a trial court of, or plead no contest or guilty to, a crime or offense that we reasonably believe is likely to have an adverse effect on the System or the Marks, or a felony;

10. If you (or any of your owners) commits a material violation of Section 6.C (Compliance With Laws) or Section 9 (Confidentiality Information), violates Section 13 (Transfers) or Section 16 (Covenants), or violates any other provision of this Agreement which by its nature cannot be cured;

11. If you knowingly maintain false books or records, or knowingly submit any false statements or information to us, or underreport Gross Sales by more than 5% for any week;

12. If you fail to make payment when due on any loan to (or secured by) the Franchised Business, and do not cure such non-payment within any applicable grace period;

13. If we terminate any other agreement between you (or your affiliate) and us (or our affiliate) for your default thereunder; or

14. If you violate this Agreement after you have received two or more notices of default under this Agreement, all in the same 24-month period.

**D. Our Right to Cure.** If you breach or default under any provision of this Agreement, we may (but have no obligation to) take any action to cure the default on your behalf, without any liability to you. You shall reimburse us for our costs and expenses (including the allocation of any internal costs) for such action, plus 10% as an administrative fee.

**E. Temporary Public Safety Closure.** If we discover or become aware of any aspect of the Franchised Business which, in our opinion, constitutes an imminent danger to the health or safety of any person, then upon our verbal or written instruction, you must immediately suspend operations of the Franchised Business and remedy the dangerous condition. We shall have no liability to you or any other person for our action or failure to act with respect to a dangerous condition. Our right to require an immediate suspension of operations is in addition to all other rights and remedies we have.

## 15. OBLIGATIONS UPON TERMINATION

Upon termination or expiration of this Agreement:

**A. Cease Operating.** You shall immediately cease operating the Franchised Business and cease using any of the Marks.

**B. Modify The Premises.** If we do not exercise our option to acquire your lease or sublease pursuant to Section 15.G, you shall make such modifications to the premises of the

Franchised Business immediately upon termination or expiration of this Agreement as may be necessary to distinguish the appearance of the premises from that of other Tropical Smoothie Café® stores, and you shall make such specific additional modifications as we may reasonably request for that purpose. If you fail or refuse to comply with the requirements of this Section 15, we shall have the right to enter upon the premises of the Franchised Business without being guilty of trespass or any other tort to make such modifications, at your expense, which you shall pay upon demand.

**C. Immediate Payment.** You shall immediately pay all sums owing to us and our affiliates and suppliers.

**D. Liquidated Damages.** If we terminate this Agreement under Section 14 or if you terminate this Agreement without the contractual right to do so, we shall be entitled, as stipulated damages and not as a penalty and solely to compensate us for damages solely due to your failure to continue operating the Franchised Business for the remainder of the term of this Agreement, to a sum equal to the average Royalty Fees owed by you (even if not paid) per month over the 12-month period preceding the date of termination (or, if the Franchised Business was not open throughout such 12-period, then the average Royalty Fees earned per month for the period in which the Franchised Business was open), multiplied by the lesser of: (i) 18, or (ii) the number of months remaining in the term of this Agreement. This liquidated damages provision will not limit our rights to injunctive relief for violations of Sections 9, 13, 15, 16 or 17, nor for any damages available to us arising out of such violations.

**E. Return of Materials.** You shall promptly return to us all copies of the Manual, Confidential Information and any and all other materials provided by us to you or created by a third party for you relating to the operation of the Franchised Business, and all items containing any Marks.

**F. Assignment of Telephone and Internet Listings.** You shall promptly notify any applicable telephone, Internet, email, electronic network, directory, and listing entities of the termination or expiration of your right to use any numbers, addresses, domain names, locators, directories and listings associated with any of the Marks, and authorize their transfer to us or any new franchisee as may be directed by us. You hereby irrevocably appoint us, with full power of substitution, as your true and lawful attorney-in-fact, which appointment is coupled with an interest; to execute such directions and authorizations as may be necessary or appropriate to accomplish the foregoing.

**G. Option to Purchase.** Upon expiration or termination of this Agreement, we shall have the right (but not the obligation) to purchase any or all of the furnishings, equipment, signs, fixtures, supplies, materials and other assets related to the operation of the Franchised Business, at your cost or fair market value, whichever is less, and/or to require you to assign your lease or sublease to us. If the parties cannot agree on fair market value within a reasonable time, the fair market value will be determined by three independent appraisers who collectively will conduct one appraisal. We will appoint one appraiser, you will appoint one appraiser and the two party-appointed appraisers will appoint the third appraiser. You and we agree to select our respective appraisers within 15 days after we notify you that we are exercising our option to purchase the assets of the Franchised Business, and the two appraisers so chosen are obligated to appoint the

third appraiser within 15 days after the date on which the last of the two party-appointed appraisers was appointed. You and we will bear the cost of our own appraisers and share equally the fees and expenses of the third appraiser chosen by the two party-appointed appraisers. The appraisers will be obligated to complete their appraisal within 30 days after the third appraiser's appointment. With respect to our option under this Section, we shall purchase assets only and shall assume no liabilities. Our election to purchase the assets must be exercised by written notice to you within 30 days after termination or expiration of this Agreement. If we elect to exercise any such option, we shall have the right to set off from the purchase price: (a) all amounts due from you to us or any of our affiliates; (b) your portion of the cost of any appraisal conducted hereunder; (c) any sums necessary to acquire clear title to the lease or sublease. We may assign this option to any other party, without your consent.

## 16. COVENANTS

**A. In-Term Restrictive Covenants.** You and your owners specifically acknowledge that you and they will receive access to valuable specialized training and Confidential Information, and that such specialized training and Confidential Information provide a competitive advantage to the System. During the term of this Agreement, neither you nor any of your owners shall, directly or indirectly, for yourself or themselves or through, on behalf of or in conjunction with any other person or entity:

1. Divert or attempt to divert any customer of Tropical Smoothie Café® stores to any other business;
2. Employ or seek to employ any person who is at that time employed by us or by any other franchisee or area developer of ours, or otherwise directly or indirectly induce such person to leave the employ of said party;
3. Solicit other franchisees or area developers, nor use available lists of franchisees or area developers, for any commercial purpose other than purposes directly related to the operation of the Franchised Business; or
4. Have any ownership interest in, or be engaged or employed by, any Competitor.

**B. Post-Term Restrictive Covenants.** You and your owners covenant that, with respect to you, for a continuous uninterrupted period commencing upon the expiration or termination of this Agreement for any reason or, with respect to each of the owners, commencing on the earlier of: (i) the expiration or termination of this Agreement for any reason, or (ii) the time such person ceases to be an owner of the Franchised Business, and continuing for two years thereafter, except as otherwise approved in writing by us, neither you nor any of your owners shall, directly or indirectly, for themselves or through, on behalf of or in conjunction with any other person or entity:

1. Divert or attempt to divert any customer of Tropical Smoothie Café® stores to any other business;

2. Employ or seek to employ any person who is at that time employed by us or by any other franchisee or area developer of ours, or otherwise directly or indirectly induce such person to leave his or her employment;

3. Solicit other franchisees or area developers, nor use available lists of franchisees or area developers, for any commercial purpose; or

4. Have any ownership interest in, or be engaged or employed by, any Competitor which is located within a 5-mile radius of the Site or the location of any Tropical Smoothie Café® store which is in existence on the date of expiration or termination of this Agreement.

**C. Interpretation.** You and your owners agree that the covenants set forth in this Section are reasonable and will not impose any undue hardship on you or them. You and your owners agree that each of the foregoing covenants is independent of any other covenant or provision of this Agreement. If all or any portion of the covenants in this Section is held to be unenforceable or unreasonable by any court, then parties intend that the court modify such restriction to extent reasonably necessary to protect our legitimate business interests. You and your owners agree that the existence of any claim you or they may have against us will not constitute a defense to the enforcement of the covenants of this Section. If a person fails to comply with the covenants in this Section, then the restrictive period will be extended for each day of noncompliance. We have the right to reduce the scope of any restrictive covenant set forth in this Section at any time, by giving notice to you.

**D. Publicly Held Corporations.** Sections 16.A. and 16.B. of this Agreement shall not apply to the ownership by you or your owners of less than a 5% interest in the outstanding equity securities of any publicly-held corporation.

**E. Execution of Covenants by Management.** If we request, you will obtain the execution of covenants similar to those set forth in Section 9 (regarding confidentiality) and Section 16 (regarding non-competition and non-solicitation), including covenants applicable upon the termination of a person's relationship with you, from your officers, directors, managers other personnel we specify.

## 17. INDEMNITY

We shall in no event assume liability for or be deemed liable under this Agreement as a result of any such action or by reason of any act or omission of you in your conduct of the Franchised Business or any claim or judgment arising therefrom against us. You shall defend at your own cost, and indemnify to the fullest extent permitted by law, us and our affiliates, and our respective owners, directors, officers, employees, agents, and representatives (collectively, "Indemnities") from all losses and expenses incurred in connection with any action, suit, proceeding, claim, demand, investigation, or formal or informal inquiry (regardless of whether same is reduced to judgment) or any settlement thereof which is related to any of the following: (i) your alleged violation or breach of any contract, law or regulation, or court order; (ii) libel, slander or any other form of defamation by you; (iii) your violation or breach of this Agreement; (iv) any acts, errors or omissions of you or your affiliates, or any of your respective owners,

agents, employees, contractors, or representatives; (v) any services or products provided by you at, from or related to the operation of the Franchised Business except in strict accordance with the System; (vi) any action by any customer of the Franchised Business; and (vii) any damage to the property of you or us, our agents or employees, or any third person or entity, unless arising from our gross negligence or willful misconduct.

## 18. DISPUTE RESOLUTION

**A. Mediation.** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (or another arbitration system mutually acceptable to the parties) at or near our headquarters, before resorting to arbitration, litigation, or some other dispute resolution procedure. The foregoing shall not apply to (i) any controversy or claim relating to ownership or use of our Marks or Confidential Information, (ii) any claim for an injunction or other equitable relief, (iii) any claim by us for unpaid Royalty Fees or other unpaid amounts owed to us.

**B. Notice and Opportunity to Cure.** As a mandatory condition precedent prior to your taking any legal or other action against us, whether for damages, injunctive, equitable or other relief (including, but not limited to, rescission), you shall first give us 90 days prior written notice and opportunity to cure such alleged act or omission, or to resolve such matter.

**C. Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Georgia (without regard to its choice-of-law rules).

**D. Jurisdiction and Venue.** You and we each consent and irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts of competent jurisdiction for the City of Atlanta, Georgia, and waive any objection to the jurisdiction and venue of such courts. This exclusive choice of jurisdiction and venue provision does not restrict the ability of the parties to confirm or enforce judgments or awards in any appropriate jurisdiction. **YOU AGREE THAT THIS SECTION 18.D APPLIES TO ALL AGREEMENTS BETWEEN YOU (OR YOUR AFFILIATES) AND US ENTERED INTO PRIOR TO THE EFFECTIVE DATE, AND SUPERSEDES ANY PROVISION REGARDING JURISDICTION AND VENUE IN ANY SUCH PRIOR AGREEMENT.**

**E. Waiver of Jury Trial.** You (and your owners) and we hereby irrevocably waive any right to a jury trial in any action between you (or your owners) and us or our affiliates.

**F. Limitation of Damages.** In any dispute arising out of or relating to this Agreement, you (and your owners) and we waive any right to punitive or other damages not measured by the prevailing party's actual damages, except for damages expressly authorized by statute.

**G. Time Limit on Claims.** Any legal action arising from or related to this Agreement must be instituted within two years from the date such party discovers the conduct or event that forms the basis of the legal action. The foregoing time limit does not apply to (i) by

one party related to non-payment under this Agreement by the other party, (ii) indemnity claims under Section 18, (iii) claims related to unauthorized use of Confidential Information or the Marks. This Section does not limit our right to terminate this Agreement in any way.

**H. Specific Performance/Injunctive Relief.** Nothing in this Agreement shall bar our right to obtain specific performance of the provisions of this Agreement (specifically including the covenants in Section 16) and injunctive relief against threatened conduct that will cause us loss or damage, under customary equity rules, including applicable rules for obtaining restraining orders and preliminary injunctions. You agree that we may apply for such injunctive relief, without bond, but upon due notice, in addition to such further and other relief as may be available at equity or law, and your sole remedy, in the event of the entry of such injunction, shall be the dissolution of such injunction, if warranted, upon hearing duly held (all claims for damages by reason of the wrongful issuance of any such injunction being expressly waived).

**I. Cumulative Rights and Remedies.** No right or remedy conferred upon or reserved to us or you by this Agreement is intended to be, nor shall be deemed, to be exclusive of any other right or remedy provided or permitted in this Agreement, by law or at equity, but each right or remedy shall be cumulative of every other right or remedy.

**J. Private Disputes.** Any dispute and any litigation will be conducted and resolved on an individual basis only and not a class-wide, multiple plaintiff or similar basis. Any such proceeding will not be consolidated with any other proceeding involving any other person, except for disputes involving affiliates of the parties to such litigation.

**K. Attorneys' Fees.** The party prevailing in any legal proceeding will be entitled to reimbursement of its costs and expenses, including reasonable accounting and attorneys' fees. "Prevailing party" means the party, if any, which prevailed upon the central litigated issues and obtained substantial relief. If O.C.G.A. 13-1-11 applies to any amount owed by you to us, then the attorney fees will be deemed to be 15% of the principal and interest owed by you.

## 19. NOTICES

Any and all notices required or permitted under this Agreement shall be in writing and shall be (i) personally delivered, (ii) mailed by certified U.S. mail, return receipt requested, (iii) dispatched by overnight delivery service, or (iv) sent via facsimile, to the respective parties at the following address (for us) or at the address specified in Exhibit A (for you) unless and until a different address has been designated by written notice to the other party:

Notices to Us:

Tropical Smoothie Café, LLC  
1117 Perimeter Center West, Suite W200  
Atlanta, Georgia 30338  
Attn: Mike Rotondo, CEO  
Facsimile: (770) 821-1895

Any notice shall be deemed to have been given at the date and time of mailing. You agree that our revisions to the Manual or issuance of Corporate Policy Directives are not considered “notices” under this Agreement, and that we may issuance such revisions or Corporate Policy Directives by any manner we choose, including, without limitation, e-mail.

## **20. RELEASE OF PRIOR CLAIMS**

By executing this Agreement, you, individually and on behalf of your heirs, legal representatives, successors and assigns, and each assignee of this Agreement by accepting assignment of the same, forever releases and discharges us and our affiliates, and our respective owners, directors, officers, employees, agents, and representatives, from any and all claims relating to or arising under any franchise agreement or any other agreement between the parties executed prior to the Effective Date including, but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, securities or antitrust laws of the United States or of any state or territory thereof.

## **21. MISCELLANEOUS**

**A. Relationship of the Parties.** The parties are independent contractors, and neither is the agent, partner, joint venturer, or employee of the other. We are not a fiduciary of you. We have no liability for your obligations to any third party whatsoever. We may engage in any activity that we are not expressly prohibited from taking under this Agreement.

**B. Severability.** Every part of this Agreement is severable. If for any reason any part of this Agreement is held to be invalid, that determination will not impair any other part, or the rest, of this Agreement; provided, however, that if we determine that such finding of invalidity or illegality adversely affects the basic consideration of this Agreement, we, at our option, may terminate this Agreement.

**C. Captions.** All captions in this Agreement are intended solely for the convenience of the parties, and shall not be given any legal effect.

**D. Time is of the Essence.** If you fail to satisfy a condition or comply with an obligation of this Agreement which has a specified time period, we are not required to give you any additional time past the expiration of the time period to satisfy such condition or comply with such obligation.

**E. No Third Party Beneficiaries.** Nothing in this Agreement is intended, nor shall be deemed, to confer any rights or remedies under or as a result of this Agreement upon any person or entity other than you, us, and our affiliates.

**F. No Waiver.** No failure by us to exercise any power reserved to us by this Agreement, or to insist upon strict compliance by you with any obligation or condition in this Agreement, and no custom or practice of the parties at variance with the terms of this Agreement, shall constitute a waiver of our right to demand exact compliance with any of the terms in this Agreement. Our waiver of any particular default by you shall not affect or impair our rights with respect to any subsequent default, nor shall any delay, forbearance or omission of ours to exercise any power or right arising out of any breach or default by you of this Agreement



affect or impair our right to exercise the same, nor shall such constitute a waiver by us of any right under this Agreement or the right to declare any subsequent breach or default and to terminate this Franchise Agreement prior to the expiration of its term. Subsequent acceptance by us of any payments due to us under this Agreement shall not be deemed to be a waiver by us of any preceding breach by you of any terms, covenants or conditions of this Agreement.

**G. Written Consent.** Whenever this Agreement requires our prior approval or consent, you shall make a timely written request to us and such approval or consent will not be effective unless made in writing.

**H. Survival.** Whenever performance by a party is contemplated to extend beyond the expiration or termination of this Agreement, such performance obligation shall survive the expiration or termination of this Agreement and continue in full force and effect. Examples include indemnification, payment, de-identification, post-term restrictive covenants, and dispute resolution proceedings.

**I. Joint Liability.** If two or more persons are at any time the “Franchisee” under this Agreement, whether as partners or joint venturers, their obligations and liabilities to us shall be joint and several.

**J. Entire Agreement; Modification.** This Agreement and all ancillary agreements executed contemporaneously with this Agreement constitute the entire agreement between the parties concerning the subject matter of this Agreement and supersede any and all prior negotiations, understandings, representations and agreements. Notwithstanding the foregoing, nothing in this Agreement shall disclaim, or require you to waive reliance on, any representation that we made in the most recent franchise disclosure document that we delivered to you. No amendment, change or variance from this Agreement shall be binding on the parties unless mutually agreed to by both parties and executed by themselves or their authorized officers or agents in writing.

**K. Agreement Effective Upon Execution by Franchisor.** This Agreement will not become effective unless and until signed by one of our authorized representatives. We may withdraw this Agreement at any time before it is signed by one of our authorized representatives, in which event this Agreement shall be null and void.

## 22. DEFINITIONS

“**Area Developer**” means a person or entity that has executed an Area Developer Agreement (or Area Sales Representative Agreement) with us, and who solicits and screens prospective franchisees for, and assists us in providing certain services to, Tropical Smoothie Café® franchisees within a defined geographic area.

“**Confidential Information**” means all non-public information of or about the System, Tropical Smoothie Café, LLC and its affiliates, and any Tropical Smoothie Café® store, including all non-public methods for developing and operating the Franchised Business, and all non-public plans, data, financial information, training programs, Manuals, processes, vendor pricing, supply systems, specifications, marketing systems, formulas, techniques, designs, layouts, operating procedures, customer data and market data, e-commerce data, information and know-how.

**“Competitor”** means a business which features smoothies as a primary menu item and/or where 50% or more of the menu items consist of the same or similar items as those typically offered by a Tropical Smoothie Café® store.

**“Corporate Policy Directive”** means any written statement from us setting forth a mandatory aspect of the System with which you must comply.

**“Gross Sales”** means all sales generated through the Franchised Business, whether for cash or credit, and income of every kind or nature related to the Franchised Business including barter, trade, and off-site catering. Gross Sales does not include (i) bona fide refunds to customers, (ii) sales taxes collected by you, (iii) sales of used equipment not in the ordinary course of business, or (iv) sales of prepaid cards or similar products (but the redemption of any such card or product will be included in Gross Sales).

**“Manual”** means our confidential Operating Manual(s), including any supplements, additions, or revisions from time to time, containing our specifications for certain mandatory aspects of the System (such as equipment, supplies, inventory, management and operation of the Franchised Business). The Manuals may consist of one or more separate manuals and other materials as designated by us and may any form or media.

**“Remodel”** means to refurbish and remodel the Franchised Business, at your expense, to conform to the then current Tropical Smoothie Café® store design and decor, fixtures, furnishings, equipment, trade dress, color scheme and presentation of Marks consistent with the design concepts then in effect for a new Tropical Smoothie Café® store, including, without limitation, such structural changes, remodeling, redecoration and other modifications to existing improvements as we reasonably deem necessary. Maintenance and repair is not, on its own, a Remodel, nor is your acquisition of new or additional equipment or signage due to new or improved specifications we may issue from time to time.

**“Transfer”** means for you (or any direct or indirect owner of the Franchised Business) to voluntarily or involuntarily transfer, sell, or dispose of, in any single or series of transactions, (i) substantially all of the assets of the Franchised Business, (ii) this Agreement, (iii) direct or indirect ownership interest of more than 25% of the Franchised Business, or (iv) control of the Franchised Business.

*[Remainder of Page Intentionally Left Blank]*

The Agreement is executed by:

**FRANCHISOR:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**FRANCHISEE:**

*[if an individual]*

\_\_\_\_\_  
Name: \_\_\_\_\_

Date: \_\_\_\_\_

*[if an entity]*

\_\_\_\_\_  
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*[Signature Page to Tropical Smoothie Café, LLC Franchise Agreement]*

**EXHIBIT A**  
**FRANCHISE INFORMATION**

1. Site (Section 1.A): The Site of the Franchised Business is: \_\_\_\_\_  
\_\_\_\_\_.

2. Designated Area (Section 5.A). If the location of the Franchised Business is not known and approved by us as of the Effective Date, you must locate the Franchised Business within the following Designated Area: \_\_\_\_\_.

Check if map is attached.

3. Your Address (Section 19). Your address for notices is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile: \_\_\_\_\_

**EXHIBIT B**  
**STATEMENT OF OWNERSHIP INTERESTS**

Franchisee Name: \_\_\_\_\_

Date: \_\_\_\_\_

**1. Form of Ownership.** Check one:

- Corporation
- Limited Liability Company
- Partnership
- Sole Proprietorship

**2. Business Entity.**

Date of formation: \_\_\_\_\_

State of formation: \_\_\_\_\_

**3. Control.** All people who have management rights and powers (e.g., officers, directors, managers, partners, etc.) and their positions:

Name	Position(s)

**4. Owners.** All people who have any direct or indirect ownership of the Franchised Business.

Name	Shares or Percentage of Ownership

**5. Operating Principal** (see Section 1.H): \_\_\_\_\_

**EXHIBIT B-1 TO THE DISCLOSURE DOCUMENT**

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**FORM OF MULTI-UNIT DEVELOPMENT ADDENDUM  
TO  
FRANCHISE AGREEMENT**

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**MULTI-UNIT DEVELOPMENT ADDENDUM  
TO FRANCHISE AGREEMENT**

This Addendum is entered into as of \_\_\_\_\_, 201\_\_ between Tropical Smoothie Café, LLC, a Georgia limited liability company (“we”, “us” or “our”) and \_\_\_\_\_ (“you” or “your”), and amends the Franchise Agreement (the “Franchise Agreement”) between the parties executed contemporaneously with this Addendum.

**1. Precedence and Defined Terms.** This Addendum is an integral part of, and is incorporated into, the Franchise Agreement. Nevertheless, this Addendum supersedes any inconsistent or conflicting provisions of the Franchise Agreement. Capitalized terms used but not defined in this Addendum have the meanings given in the Franchise Agreement.

**2. Multi-Unit Development.** We and you are simultaneously executing \_\_\_\_\_ Franchise Agreements. This Addendum is executed in connection with the [first] [replace with applicable number] such Franchise Agreement, and the Franchised Business to be developed thereunder is referred to as Café #\_\_\_\_ in this Addendum.

**3. Initial Franchise Fee and Opening Schedule.** Notwithstanding Section 4.A, Section 5.C, Section 5.F, or any other provision of the Franchise Agreement to the contrary, the initial franchisee fee for the Franchised Businesses and your opening schedule for these Franchised Businesses are as follows:

<b>Restaurant</b>	<b>Initial Franchise Fee</b>	<b>Site Acquisition Deadline (§ 5.C.)</b>	<b>Opening Deadline (§ 5.F.)</b>
Café #1	\$25,000	180 days from Effective Date	1st anniversary of the Effective Date
Café #2	\$15,000	180 days from opening of Café #1	2nd anniversary of the Effective Date
Café #3	\$15,000	180 days from opening of Café #2	3rd anniversary of the Effective Date
Café #4	\$15,000	180 days from opening of Café #3	4th anniversary of the Effective Date
Café #5	\$15,000	180 days from opening of Café #4	5th anniversary of the Effective Date

**4. Initial Term.** Section 2.A of the Franchise Agreement is replaced with the following:

**A. Initial Term.** The term of this Agreement will commence on the Effective Date and expire on the 15<sup>th</sup> anniversary of the opening date of the Franchised Business.

**5. Development Conditions.** In addition the other terms and conditions set forth in the Franchise Agreement, your right to develop and open each Franchised Business after Café #1, at any given time, is subject to the following:

- (i) you possess sufficient financial and organizational capacity to develop, open, operate, and manage an additional Franchised Business, in our reasonable judgment, and
- (ii) you are in full compliance with all brand requirements at your open Franchised Businesses, and you are not in default under any Franchise Agreement

**6. Training.** For your second and additional Franchised Businesses, we and you agree to waive the requirements of Section 3.A.5. of the Franchise Agreement regarding our providing and you completing our initial training program for new franchisees. Notwithstanding the foregoing, we may require your general manager(s) to attend and complete our training program.

**7. Transfers.** If we approve any Transfer by you or your owners (as described in Section 13.B of the Franchise Agreement) related to the Franchised Business to which this Addendum applies, we may require, as a condition of our approval, that any rights granted to you under this Addendum be of no further force or effect.

**8. Effect of Addendum.** Except as modified by this Addendum, the Franchise Agreement remains in full force and effect.

*[Signature Page Follows]*



This Addendum is hereby executed by the parties.

**TROPICAL SMOOTHIE CAFÉ, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*[Signature Page to First Addendum to Tropical Smoothie Café, LLC Franchise Agreement]*

**EXHIBIT C TO THE DISCLOSURE DOCUMENT**

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**INFORMATION ABOUT OUR AREA DEVELOPERS**

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**EXHIBIT C**

**INFORMATION ABOUT OUR AREA DEVELOPERS**

**AREA DEVELOPERS AS OF DECEMBER 29, 2013**

<b>ARIZONA</b>	
Eric Persson 2111 Bogart Court Las Vegas, NV 89147 702-465-9451	Scott Palmateer 10736 S. Indian Wells Drive Goodyear, AZ 85338 623-302-0269
<b>ARKANSAS</b>	
Chris Kramolis 14 Racquet Ct. Little Rock, AR 72227 (501) 352-0175	
<b>CALIFORNIA</b>	
Anthony Reed, George Geldin, Scott Weiss, Adam Carolla, Joseph Millin, Sal Iacono, Jacob Lentz, James Kimmel 16217 Kittridge St. Van Nuys, CA 91406 (818) 997-7712	Anthony DiGennaro 14 Monarch Bay Plaza#132 Monarch Bay, CA 92629 (702) 449-6806
Dina Mitchell 274 Casoria Avenue Las Vegas, NV 89123 (702) 914-6654	
<b>COLORADO</b>	
Michelle and Kriss Shriver 2505 Anthem Village Drive, #E632 Henderson, NV 89052 (702) 529-0852	
<b>CONNECTICUT</b>	
Mark Lukachko 410 Greenwich Avenue Greenwich, CT 06830 (917) 601-3340	
<b>DISTRICT OF COLUMBIA</b>	
Ron Holt Kathy Benzing Patrick McKiernan 909 Enfield Chase Virginia Beach, VA 23452 (571) 991-0279	
<b>FLORIDA</b>	
Sam Osborne 1415 Timberlane Rd, Unit 323 Tallahassee, FL 32312 (850) 509-9238 (3 Territories)	Jim Thompson 1825 SE Elrose St. Port St. Lucie, FL 34952 (772) 342-1049

<p>Quint &amp; Christina Noordstar  1109 Pinellas Bayway South, #402  Tierra Verde, FL 33715  (727) 458-1835</p>	<p>Jack Cleghorn  2155 S. Florida Avenue  Lakeland, FL 33803  (863) 559-3646</p>
<p>Kimberly Rego  2827 NE Cold Springs Drive  Jensen Beach, FL 34957  (407) 470-4273</p>	<p>Andrew &amp; Terri Jessen  1712 Sanctuary Point Ct.  Naples, FL 34110  (239) 877-1657  (2 Territories)</p>
<p>Richard &amp; Rebecca Torossian  3321 Summerhill Drive  Woodridge, IL 60517  (630) 810-1959  (3 Territories)</p>	
<b>ILLINOIS</b>	
<p>Brian Guinter  1029 Longaker Rd.  Northbrook, IL 60062  (847) 291-4465</p>	<p>Phillip Knippen  7788 Marquette Drive South  Tinley Park, IL 60477  (708) 945-7445</p>
<b>MARYLAND</b>	
<p>Ron Holt  Kathy Benzing  Patrick McKiernan  (See District of Columbia)</p>	
<b>MASSACHUSETTS</b>	
<p>Gilbert &amp; Ana DeSousa  14 Eliza Lane  N. Dartmouth, MA 02747  (508) 636-1424</p>	
<b>MICHIGAN</b>	
<p>Larry &amp; Deborah King  8199 Duffield  Gaines, MI 48436  (989) 271-8776</p> <p>Dianne &amp; Craig LeMieux  6081 Byram Lake Drive  Linden, MI 48451  (810) 691-9623</p>	
<b>NEVADA</b>	
<p>Dina Mitchell  274 Casoria Avenue  Las Vega, NV 89123  (702) 914-6654</p>	
<b>NEW JERSEY</b>	
<p>Alfred LaValle and Timothy Fung  9 Deerfield Trail  Monmouth Junction, NJ 08852  (908) 239-0260</p>	

04/15/2014

<b>NEW YORK</b>	
Walter & Laura Jankowski 34 Railroad St. Bayport, NY 11705 (631) 807-8358 (2 Territories)	
<b>OHIO</b>	
Dianne & Craig LeMieux 6081 Byram Lake Drive Linden, MI 48451 (810) 691-9623	
<b>OKLAHOMA</b>	
Glen Johnson and Wayne Covey 1117 S. Main Street Searcy, AR 72143 (501) 442-0089	
<b>PENNSYLVANIA</b>	
Matthew Shaffer 1513 Cobblestone Lane Lancaster, PA 17601 (717) 371-6731	
<b>UTAH</b>	
Cody Sommer 100 Corporate Park Drive Henderson, NV 89074 (702) 610-2639	
<b>VIRGINIA</b>	
Ron Holt Kathy Benzing Patrick McKiernan (See District of Columbia)	Gemini & Urvashi Patel 13401 Whispering Wood Drive Richmond, VA 23233 (804) 349-8100

## **AREA DEVELOPERS INFORMATION**

### **ITEM 2** **BUSINESS EXPERIENCE**

We have appointed Area Developers in certain geographic areas to refer prospective franchisees to us. We also delegate some of our duties and responsibilities to these Area Developers. The following is information about our Area Developers and certain of their personnel and management.

#### **ARIZONA**

##### **Eric Persson and Scott Palmateer – State of Arizona**

Eric Persson has been an Area Developer for the State of Arizona since December 2012.

Scott Palmateer has been an Area Developer for the State of Arizona since December 2012. Prior to becoming an Area Developer Mr. Palmateer was Regional Director of Operations-West for Tropical Smoothie Franchise Development Corporation.

#### **ARKANSAS**

##### **Tropical Development of Arkansas, Inc – State of Arkansas**

Tropical Development of Arkansas, Inc., an Arkansas corporation formed on March 23, 2006, with its principal place of business at 14 Racquet Ct., Little Rock, Arkansas 72227, has been our Area Developer for the State of Arkansas since January 2003.

##### **Chris Kramolis: President**

Mr. Kramolis has been President of Tropical Development of Arkansas, Inc. since its inception in March 2006. He has also been the franchisee of two Tropical Smoothie Cafés in Little Rock, Arkansas since January 2003. He has also been a member of KG Tropical Development, Inc., our Area Developer in Northeast Oklahoma, since its inception in May 2004. (See Oklahoma) From May 2000 to November 2003, he was in Advertising Sales for FASTLINE in Little Rock, Arkansas.

##### **Jason Alley: Director of Operations**

Mr. Alley has been the Director of Operations for the Area Developer Business for the State of Arkansas since June 2011. From March 2009 to May 2011, he was a DSL Customer Assistant/Service Lead for AT&T in Little Rock, Arkansas. From June 2004 to January 2009, he was Manager at Joe's Grocery and Deli in Little Rock, Arkansas.

## **CALIFORNIA**

### **Dina Mitchell and Anthony Reed – Los Angeles, Valencia and Ventura, California**

#### **Dina Mitchell (and State of Nevada)**

Ms. Mitchell has been our Area Developer for the Los Angeles, Valencia and Ventura, California areas since December 21, 2005. Ms. Mitchell has also been our Area Developer for the State of Nevada since November 28, 2000. She has owned and operated several Tropical Smoothie Cafés in Las Vegas, Nevada and Valencia, California since 2001. She has been a Member of Smoothie Times, LLC, in Los Angeles, California since its inception on November 14, 2005.

#### **Anthony (Tony) Reed**

Mr. Reed has been our Area Developer for the Los Angeles, Valencia and Ventura, California areas since December 21, 2005. Mr. Reed has been the President of Millennium Investment Services in Van Nuys, California, since July 1983. He has been a General Partner of Big Fat Gluttons, GP, a California general partnership, since its formation on December 7, 2005. Big Fat Gluttons is a Member of Smoothie Times, LLC, a California limited liability company.

### **Anthony DiGennero – Orange County, California**

Mr. DiGennero has been our Area Developer for the Orange County, California area since September 13, 2013. From July 2006 to May 2009, he was the Assistant Area Developer for The UPS Store in Las Vegas, Nevada. From May 2009 to July 2009, he was Sales Manager for Alexander BMW in Los Angeles, California. From August 2009 to February 2010, he was Sales Manager at Desert BMW in Las Vegas, Nevada. From April 2010 to April 2012, he was Dealer Principal for United Mitsubishi in Las Vegas, Nevada. From July 2012 to September 2013, he was Sales Manager at Planet Hyundai in Las Vegas, Nevada.

## **COLORADO**

### **Kriss and Michelle Shriver, State of Colorado**

#### **Kriss Shriver**

Mr. Shriver has been our Area Developer for Colorado since March 18, 2013. From 2010 to present, he has been the Managing Member and General Partner of MAK Horizon Investments, LLC, MAK Cheyenne Investments, LLC and MAK Simmons Investments, LLC, in Hendersonville, Nevada.

#### **Michelle Shriver**

Mrs. Shriver has been our Area Developer for Colorado since March 18, 2013. From 2010 to present, she has been the Managing Member and Limited Partner of MAK Horizon Investments, LLC, MAK Cheyenne Investments, LLC and MAK Simmons Investments, LLC, in Hendersonville, Nevada. From 2004 to present, she has been the Sr. Vice President of Operations for Ameristar Casinos, Inc., Las Vegas, Nevada.

**CONNECTICUT**

**Mark Lukachko, State of Connecticut**

Mr. Lukachko has been our Area Developer for the State of Connecticut since March 13, 2013. From 2003 to present he has been President of NYA Partners, Inc., a third-party administration company, in New York, New York. From 2006 to present, he has been a Partner and CFO of Perfect Benefits Group, an insurance brokerage company, in New York, New York.

**DISTRICT OF COLUMBIA**

**Venture One, LLC – District of Columbia, State of Maryland and Portions of Virginia**

Venture One, LLC, a Virginia limited liability company, formed on July 9, 2002, with its principal place of business at 909 Enfield Chase, Virginia Beach, Virginia 23452 and has been one of our Area Developers since August 15, 2002.

**Ronald T. Holt: Member**

Mr. Holt has been a member of Venture One, LLC since 2002. Since September 1969, he has been the President and COO of Land'or International, Inc. in Glen Allen, Virginia.

**James Patrick McKiernan: Development Operations Director**

Mr. McKiernan has been employed by Venture One, LLC since 2003.

**Kathleen Benzing: Development Sales Director**

Ms. Benzing has been employed by Venture One, LLC since April 1, 2013. Since November 2011, she was Senior Manager Franchise Sales for Checkers Drive In Restaurants. From January 2011 to November 2011 she was Franchise Sales Manager for FastSigns International, Inc. From October 2006 to December 2010 she was Franchise Sales Manager for Venture One, LLC.

**FLORIDA**

**Andrew and Terri Jessen – Lee, Collier, Charlotte, Manatee and Sarasota Counties, Florida**

**Andrew Jessen**

Mr. Jessen has been our Area Developer for Lee and Collier Counties, Florida since August 4, 2007. Mr. Jessen has been a Tropical Smoothie Café franchisee in Naples, Florida since 2004. Before that, he was a Project Manager for Prudential Insurance Company of America in Newark, New Jersey from July 1995 to January 2004.



**Terri Jessen**

Ms. Jessen has been our Area Developer for Lee and Collier Counties, Florida since August 4, 2007. Ms. Jessen was the Office Manager for Elizabeth Pediatric Group in Elizabeth, New Jersey from June 1994 to November 2003.

**Robert Q. and Christina M. Noordstar – Hillsborough & Pinellas Counties, Florida**

**Robert Q. Noordstar**

Mr. Noordstar has been our Area Developer for Hillsborough & Pinellas Counties since August 15, 2007. Since August 2007, Mr. Noordstar has been the President of Tropical Communities in St. Petersburg, Florida. From February 2004 to present, he has been the Vice President of Noordstar Enterprises I and Manager of a Tropical Smoothie Café in St. Petersburg, Florida. From June 2000 to August 2006, he was a Project Manager for The Whiting Turner Contracting Company in Tampa, Florida.

**Christina M. Noordstar**

Ms. Noordstar has been our Area Developer for Hillsborough & Pinellas Counties since August 15, 2007. Ms. Noordstar has been the Vice President of Tropical Communities in St. Petersburg, Florida since August 2007. From February 2004 to present she has been the President of Noordstar Enterprises I and the Manager of a Tropical Smoothie Café in St. Petersburg, Florida. From August 2000 to February 2004, she was a computer programmer for Bausch & Lomb.

**Kimberly Rachelle Rego – St Lucie and Indian River Counties, Florida**

**Kimberly Rego**

Ms. Rego has been our Area Developer for the St Lucie and Indian River Counties in Florida since 2004. From January 2003 to February 2007, Ms. Rego was a franchisee and owner/operator of a Tropical Smoothie Café, doing business under the name Rego-Gonzalez, Inc. in Port St. Lucie, Florida. From October 1988 to present, she has been the Service Coordinator for the Little People's College in Bedford, Massachusetts.

**Greg Watkins**

Mr. Watkins has been operations director for one of our Area Developers, Kimberly Rego, for St. Lucie and Indian River Counties, Florida since January 2005.

**Thomas (Jack) Cleghorn, Jr. – Polk County, Florida**

Mr. Cleghorn has been our Area Developer for the Polk County, Florida area since June 28, 2004. From 1988 to present, he has been the President of Florida Pizza Management, Inc. in Lakeland, Florida. From June 2004 to present, he has also served as the Managing Member of Smoothie Girls, LLC, in Lakeland, Florida.

**James K. Thompson – Brevard, Sumter, Martin and Okeechobee Counties, Florida**

Mr. Thompson has been our Area Developer for Brevard, Sumter, Martin and Okeechobee Counties in Florida since January 2000. He has been our Area Developer for Manatee and Charlotte Counties since October 2008.

**Richard and Rebecca Torossian – Sumter County, Florida**

**Richard Torossian**

Mr. Torossian has been our Area Developer for Sumter County, Florida since January 27, 2007. From 1980 to present, Mr. Torossian has been a Technical Operations Manager for the Federal Aviation Authority in Chicago, Illinois.

**Rebecca Torossian**

Ms. Torossian has been our Area Developer for Sumter County, Florida since January 27, 2007. From October 2004 until December 2007, she was the United State Sales Manager for Sunstart Bakery Products in Woodridge, Illinois. Before that, from January 2004 until June 2004, she was employed as US Sales Manager for Cossama International Corporation based in Woodridge, Illinois. From January 2003 until December 2003, she was employed as US Sales Manager for LB Direct, Inc. and LB Licensing based in Woodridge, Illinois.

**Samuel L. Osborne – Alachua, Lake, Leon, Orange & Seminole Counties in Florida**

Mr. Osborne has been one of our Area Developers since 1998. He became our Area Developer for Orange & Seminole Counties on November 5, 1998; Lake & Alachua Counties on November 18, 2003; and Leon County on May 31, 2005. From 1998 to present, he has been the President of Tropical Smoothie Area Development Corporation in Tallahassee, Florida. From 1998 to present, he has been the President of Tropical Smoothie Ventures, Inc. of Tallahassee, Florida.

**David Miller: Director of Restaurant Operations**

Mr. Miller has been Director of Restaurant Operations for the Area Developer Business for Alachua, Lake, Leon, Orange and Seminole, Florida counties since June 2011. From May 2007 to June 2011, he was the Manager for Tropical Smoothie Ventures, which owns and operates a Tropical Smoothie Café Store in Tallahassee, Florida.

**ILLINOIS**

**Brian Guinter – Barrington, Illinois**

Mr. Guinter has been our Area Developer for the Barrington, Illinois area since December 26, 2006. He has been the President of Oceans 4 Shore Inc., which owns a Tropical Smoothie Café franchise in Barrington, Illinois, since 2006. In 2005, he was self employed while in pursuit of business opportunities. From March 2004 to January 2005, he was in Sales and Marketing for Full Package Athletics in Highland Park and Lake Forest, Illinois. From November 2000 to December 2003, he worked with Winward Sports in Chicago, Illinois.

**Phil Knippen – Southeast Chicago, Illinois**

04/15/2014

Mr. Knippen has been our Area Developer for the Southeast Chicago, Illinois area since December 31, 2010. Since 1995, he has also been a multi-unit operator of Brown's Chicken franchises in the greater Chicago, Illinois metropolitan area.

### **MARYLAND**

#### **Venture One, LLC – District of Columbia, State of Maryland & Portions of Virginia**

See "District of Columbia" for information regarding this Area Developer.

### **MASSACHUSETTS**

#### **Gilbert and Ana DeSousa – Bristol County, Massachusetts**

##### **Gilbert DeSousa**

Mr. DeSousa has been our Area Developer for Bristol County, Massachusetts since July 27, 2007. Mr. DeSousa has been a Salesman for Lesco Distributing in Dartmouth, Massachusetts since November 1994.

##### **Ana DeSousa**

Ms. DeSousa has been our Area Developer for Bristol County, Massachusetts since July 27, 2007. Ms. DeSousa has been the Chief of Internal Fiscal Operations for L.P. College, Inc. in Dartmouth, Massachusetts since August 1985.

### **MICHIGAN**

#### **LeMieux Development Corporation – Genesee, Ingham and Oakland Counties, Michigan**

LeMieux Development Corporation, a Michigan corporation, was formed on October 29, 2003, with its principal place of business at 6081 Byram Lake Drive, Linden, Michigan 48451 and has been one of our Area Developers since January 12, 2004.

##### **Craig Lawrence LeMieux: Co-Owner**

Mr. LeMieux has been a Co-Owner of LeMieux Development Corporation since its inception. Since November 2005, he has been the President and Co-Owner of Michigan Franchise Development Corporation in Holly, Michigan. From September 2003 to present, Mr. LeMieux has been the President and Co-Owner of LeMieux Ventures, Inc., which operates a Tropical Smoothie Café in Grand Blanc, Michigan. From 1992 to present, Mr. LeMieux has been the President and CEO of Fraternal Enterprises, Inc. and American Bingo Co. in Holly, Michigan. In July 2008, Mr. LeMieux became our Area Developer for multiple counties in Ohio. (See Ohio).

##### **Diane Helen LeMieux: Co-Owner**

Ms. LeMieux has been a Co-Owner of LeMieux Development Corporation since its inception. From September 2003 to present, she has been Co-Owner of LeMieux

Ventures, Inc., which operates a Tropical Smoothie Café in Grand Blanc, Michigan. From 2002 to 2003, she was Vice President of Finance of Wilshire Development Group LLC in Clarkston, Michigan. In July 2008, Ms. LeMieux became our Area Developer for multiple counties in Ohio. (See Ohio).

**Michigan Franchise Development Corporation – State of Michigan, excluding Genesee, Ingham and Oakland Counties**

Michigan Franchise Development Corporation, a Michigan corporation, was formed on November 10, 2005, with its principal place of business at 4100 Baldwin Road, Holly, Michigan 48442 and has been one of our Area Developers since its inception.

**Craig Lawrence LeMieux: President and Co-Owner**

Since November 2005, he has been the President and Co-Owner of Michigan Franchise Development Corporation in Holly, Michigan. Mr. LeMieux is also Co-Owner of LeMieux Development Corporation. From September 2003 to present, Mr. LeMieux has been the President and Co-Owner of LeMieux Ventures, Inc., which operates a Tropical Smoothie Café in Grand Blanc, Michigan. From 1992 to present, Mr. LeMieux has been the President and CEO of Fraternal Enterprises, Inc. and American Bingo Co. in Holly, Michigan.

**Deborah L. LeMieux-King: Vice President and Co-Owner**

Since November 2005, Ms. LeMieux-King has been Vice President and Co-Owner of Michigan Franchise Development Corporation in Holly, Michigan. From July 1997 to present, she has been the Vice President of Fraternal Enterprises, Inc. and American Bingo Co. in Holly, Michigan.

**Larry Dale King: Co-Owner**

Since November 2005, Mr. King has been Co-Owner of Michigan Franchise Development Corporation in Holly, Michigan. From July 1986 to present, he has been a Mail Processing Clerk for the United States Postal Service in Flint, Michigan.

**NEVADA**

**Dina Mitchell – State of Nevada & Los Angeles, Valencia and Ventura, California**

Dina Mitchell has been our Area Developer for the State of Nevada since November 28, 2000. She is also one of our Area Developers for the Los Angeles, Valencia and Ventura, California areas. (See California).

**NEW JERSEY**

**Alfred LaValle and Timothy Fung - Monmouth, Mercer and Middlesex Counties in New Jersey**

**Alfred LaValle**

Mr. LaValle has been our Area Developer for the three noted counties in New Jersey since February 2012. From November 2001 to December 2011, Mr. LaValle owned and operated

a franchise of The Goddard School for Early Childhood Development located in Cherry Hill, New Jersey.

**Timothy Fung**

Mr. Fung has been our Area Developer for the three noted counties in New Jersey since February 2012. From July 1983 to December 2009, Mr. Fung was an area operator and staff manager for Verizon Incorporated, located in New York, New York.

**NEW YORK**

**Walter and Laura Jankowski – Nassau and Suffolk Counties, New York**

**Walter Jankowski**

Mr. Jankowski has been our Area Developer for the Suffolk County, New York area since June 28, 2004. From June 2006 to present, Mr. Jankowski has been the owner/operator of Tropical Smoothie Café doing business under the name W.L. Janko in Bayport, New York. From May 1999 to May 2006, he was a Parts Salesman for Competition BMW of Smithtown in Smithton, New York.

**Laura Jankowski**

Ms. Jankowski has been our Area Developer for the Suffolk County, New York area since June 28, 2004. Since 2003, she has been a School Social Worker for the Three Village Central School District in East Setauket, New York. From 1999 to 2004, Ms. Jankowski was the Assistant House Manager for Mercy Center Ministries in Patchogue, New York.

**OHIO**

**Craig and Diane LeMieux – Allen, Ashland, Ashtabula, Auglaize, Carroll, Columbiana, Coshocton, Crawford, Cuyahoga, Defiance, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Holmes, Huron, Jefferson, Know, Lake, Lorain, Lucas, Mahoning, Marion, Medina, Morrow, Ottawa, Paulding, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Wan Wert, Wayne, Williams, Wood, Wyandot Counties, Ohio**

**Craig Lawrence LeMieux**

Mr. LeMieux has been our Area Developer for multiple counties in Ohio since July 2008. He is also one of our Area Developers for Michigan. See “Michigan” for information regarding this Area Developer.

**Diane Helen LeMieux**

Ms. LeMieux has been our Area Developer for multiple counties in Ohio since July 2008. She is also one of our Area Developers for Michigan. See “Michigan” for information regarding this Area Developer.

## **OKLAHOMA**

### **Oklahoma AD, LLC – State of Oklahoma**

Oklahoma AD, LLC, an Arkansas limited liability company, formed December 10, 2013, with its principal place of business at 1117 South Main Street, Searcy, AR 72143, has been our Area Developer for the state of Oklahoma since December 29, 2013.

#### **Glen Johnson**

Mr. Johnson has been our Area Developer for the state of Oklahoma area since December 29, 2013. From March 2011 to present, Mr. Johnson has been President of Tropical Tango, LLC and Blue Flame Minerals, LLC. Prior to that, he was Principal Broker for Crescent Commercial Searcy, Alabama, from January 2009 to March 2011.

#### **Wayne Covey**

Mr. Covey has been our Area Developer for the state of Oklahoma area since December 29, 2013. From March 2013 to present, Mr. Covey has been the Director of Operations for Tropical Tango, LLC. Prior to that, he was Director of Operations for Olive Garden in Little Rock, Arkansas, from January 1997 to March 2013.

## **PENNSYLVANIA**

### **Matthew Shaffer – Lancaster, Dauphin and Chester Counties in Pennsylvania**

Mr. Shaffer has been our Area Developer for Lancaster, Dauphin and Chester Counties in Pennsylvania since April, 2009. In addition, he has been a Tropical Smoothie® franchisee since July 2006. He operates a Tropical Smoothie store in Lititz, Pennsylvania. From January 2007 to present, he has been Vice President of Shaffer Tropics, Inc. in Lancaster, Pennsylvania. Prior to that, he was Superintendent of K&R Contractors in Lancaster, Pennsylvania from January 2005 to November 2006. From March 2004 to December 2004, he was self-employed in construction Lancaster, Pennsylvania.

## **UTAH**

### **TSUTAD, LLC – State of Utah**

TSUTAD, LLC, a Nevada limited liability company, formed May 10, 2013, with its principal place of business at 100 Corporate Park Drive, Henderson, NV 89074, has been our Area Developer for the state of Utah since July 25, 2013.

#### **Cody Sommer**

Mr. Sommer has been our Area Developer for the state of Utah area since May 17, 2013. From 2002 to present, Mr. Sommer has been President of Syntech, Inc. in Henderson, Nevada.

**VIRGINIA**

**Venture One, LLC – District of Columbia, State of Maryland & Portions of Virginia**

See “District of Columbia” for information regarding this Area Developer.

**Gemini and Urvashi Patel – Richmond, Virginia Area**

**Gemini Patel**

Ms. Patel has been our Area Developer for the State of New Jersey since December 1, 2003. In addition, she has been one of our Area Developers for the Richmond, Virginia area since September 1, 2003. From 1990 to 2003, she was a Manager for Subway in Richmond, Virginia.

**Urvashi Patel**

Ms. Patel has been our Area Developer for the State of New Jersey since December 1, 2003. In addition, she has been one of our Area Developers for the Richmond, Virginia area since September 1, 2003. From 1992 to 2002, she was a Manager for Subway in Chester, Virginia.

**ITEM 3  
LITIGATION**

No litigation is required to be disclosed in this Item for these Area Developers.

**ITEM 4  
BANKRUPTCY**

No bankruptcy is required to be disclosed in this Item.

**EXHIBIT D TO THE DISCLOSURE DOCUMENT**

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**PRE-AUTHORIZED BANK FORM**

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**ELECTRONIC FUNDS TRANSFER (EFT) AUTHORIZATION**

**Franchisee Information:**

Franchisee Name	Store No.
Franchisee Mailing Address (street)	Franchisee Phone No.
Franchise Mailing Address (city, state, zip)	
Contact Name, Address and Phone number (if different than above)	
Franchisee Fax No.	Franchisee E-mail Address

**Bank Account Information:**

Bank Name	Bank Account No.
Bank Mailing Address (street)	Bank Routing No. [:            :] (9 characters)
Bank Mailing Address (city, state, zip)	Bank Phone No.

**Payee Information:** Tropical Smoothie Café, LLC

**Authorization:** The Franchisee hereby authorizes the Bank to honor and charge the Bank Account for electronic funds transfers or drafts drawn on the Bank Account and payable to the Payees. The amount of such charge shall be set forth in a notice from the Payees presented to the Bank on Wednesday of each week. The Franchisee agrees to execute such additional documents as may be reasonably requested by the Payees or the Bank to evidence the interest of this EFT Authorization. This authority shall remain in full force and effect until the Payees have received written notification from the Franchisee in such time and manner as to afford the Payees and the Bank to act on such notice. The Franchisee understands that the termination of this authorization does not relieve the Franchisee of its obligations to make payments to the Payees.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**INDEMNIFICATION OF BANK**

In consideration of the Bank's compliance with the foregoing request and authorization, the Payees agree with respect to any action by the Bank in compliance with the foregoing request and authorization to indemnify the Bank and hold the Bank harmless for, from and against any loss the Bank may suffer as a consequence of the Bank's actions from or in connection with the execution and issuance of any electronic fund transfer or draft, whether or not genuine, purporting to be executed by the Payees and received by the Bank in the regular course of business for the purpose of payment, except to the extent such loss caused by the negligence or willful misconduct of the Bank.

**NOTE: FRANCHISEE MUST ATTACH A VOIDED CHECK RELATING TO THE BANK ACCOUNT.**

Return via Fax to Tropical Smoothie Café, LLC. **Fax (770) 821-1895**  
1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338  
Phone (770) 821-1900

**EXHIBIT E TO THE DISCLOSURE DOCUMENT**

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**EXCLUSIVE REAL ESTATE SERVICES  
REPRESENTATION AGREEMENTS**

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## WINDSOR EXCLUSIVE REPRESENTATION AGREEMENT

This Exclusive Representation Agreement (“Agreement”) is made and entered into as of the \_\_\_day of \_\_\_\_\_, 201\_\_\_ by and between The Windsor Realty Group, L.L.C. (“Windsor”) and \_\_\_\_\_ (“Tenant”).

WHEREAS, Windsor has been retained by Tenant to represent Tenant in a leasing transaction to take place in \_\_\_\_\_ (the “Assignment,” as more clearly defined on Exhibit A).

WHEREAS, Windsor has been retained by Tenant to provide the specific services for a period of up to twelve (12) months as outlined and agreed upon in Exhibit B, unless extended as state below.

NOW THEREFORE, for and in consideration of \$1.00 and the mutual promise and covenants contained herein, the parties hereby agree to the following:

- 1) **Responsibilities of Tenant** – Tenant shall be an approved Area Developer or Franchisee by Tropical Smoothie Café before entering into an agreement with Windsor. Tenant shall use its best efforts to supply Windsor with any information Tenant may have ascertained during the Agreement. All such Commission/Fees shall be requested by Windsor to be paid by Lessor/Seller and Tenant agrees to use its best efforts to ensure that Lessor/Seller pays such Commission. Lessors/Sellers shall consider such Commission in all offers or proposals to lease/sell property to Tenant. If such Commission/Fee is not fully paid by Lessor/Seller then Tenant agrees to pay to Windsor the difference between the Commission and what was paid to Windsor by Lessor/Seller within thirty (30) days upon receipt of invoice from Windsor. Tenant agrees to keep all information, including but not limited to demographics or other information specific to Tropical Smoothie Café’s processes and proprietary data as may be transmitted between all parties during the transaction, strictly confidential and shall not provide it to competitors of Tropical Smoothie Café nor use it for any purpose other than completion of the Assignment.
- 2) **Responsibilities of Windsor** – In addition to those responsibilities described in Exhibit B, Windsor shall diligently keep Tenant, Area Developer, and Tropical Smoothie Café up to date of the status of the Assignment. Windsor also agrees to use its best efforts work with other brokers engaged in the transaction.
- 3) **Additional Brokers** – Any additional Broker introduced into the Assignment by Tenant shall be the sole responsibility of Tenant to compensate, which shall be in addition to the Commission/Fees outlined in Exhibit A.
- 4) **Representations** – Windsor represents and warrants that it is solely representing Tenant on this transaction and is not representing any Landlord’s.
- 5) **Hold Harmless** – Windsor and Tenant agree to defend and hold harmless each other in the event of any claims which may be made against them or any of their agents in connection with this Assignment.
- 6) **Expiration of Agreement** – This Agreement shall expire the earlier of twelve (12) months after the execution of this Agreement or upon the completion of the Assignment. Notwithstanding, the Agreement shall survive the expiration until all such earned Commission/Fee’s for services rendered are paid in full.

- 7) **Duration** – If Tenant requests the Assignment to specifically be The Windsor Process as outlined in Exhibit B for the geographic parameters as agreed upon in Exhibit A and a lease is not fully executed within twelve (12) months of execution of this Agreement, Tenant shall pay Windsor \$5,000.00 for such Assignment. If a lease is executed within twelve (12) months of this Agreement per the Assignment outlined in Exhibit A, then the compensation shall be as outlined for the Windsor Process in Exhibit A. Furthermore, if a lease is being actively pursued at the expiration of this Agreement by Tenant per this agreement, then this Agreement shall be extended until such time as the lease is fully executed, or Tenant no longer actively pursues such lease.
- 8) **Non Performance** – If Tenant is actively pursuing a leasing transaction and Windsor is not reasonably representing Tenant in such leasing transaction as outlined in this Agreement (“Non Performance”), then Tenant shall have the option to give written notice to Windsor of such specific Non Performance. Upon receipt of written notice of such specific Non Performance, Windsor shall have thirty (30) days to cure such specific Non Performance and this Agreement shall remain in full force and effect. If Windsor does not cure such specific Non Performance within thirty (30) days of written notice, then Tenant may terminate this Agreement upon final written notice to Windsor of Tenant’s intent to terminate this Agreement.

If Tenant is not actively pursuing a leasing transaction as outlined in this Agreement (“Tenant Non Performance”) for more than sixty (60) days, then Windsor shall have the option to terminate this Agreement upon written notice to Tenant of such Tenant Non Performance. Upon termination of this Agreement Tenant shall be responsible for the full amount of this Agreement as outlined in Section 7 – Duration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal this day and year first above written.

**TENANT**

**THE WINDSOR REALTY GROUP, LLC**

Name: d/b/a Tropical Smoothie Café

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**WINDSOR EXCLUSIVE REPRESENTATION AGREEMENT**  
**EXHIBIT A**

**The Assignment**

Date: \_\_\_\_\_

**The Windsor Realty Group:**

**Contact:** Adrienne Rice or Dan Wirtz **Phone:** (404) 841-9383

**Tenant Name:** d/b/a Tropical Smoothie Café

**Contact Name:** \_\_\_\_\_ **Phone:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**Email:** \_\_\_\_\_ **Address:** \_\_\_\_\_

**d/b/a:** Tropical Smoothie Café **City/State:** \_\_\_\_\_

**Geographic Parameters:** \_\_\_\_\_

(attached as Exhibit C)

**Type of Transaction:** Retail lease **Size (SF):** Approx. 1,200sf – 2,000sf

**Size (Acres):** \_\_\_\_\_ **Estimated Completion Date:** \_\_\_\_\_

**Notes:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Commissions/Fees**

<b>Services to be provided by Windsor:</b>	<b>Total Commissions / Fees Due Windsor</b>	<b>Amount Paid to Windsor by Landlord</b>	<b>Difference to be paid by Tenant to Windsor</b>
<b>Windsor Process – New Locations Relocations:</b>	<b>\$5,000.00</b>	\$	\$
<b>Site Evaluation, Negotiation and Documentation:</b>	<b>\$3,000.00</b>	\$	\$
<b>Site Evaluation and Documentation:</b>	<b>\$500.00</b>	\$	\$
<b>Lease Renewal with Windsor Process:</b>	<b>\$3,000.00</b>	\$	\$
<b>Lease Renewal or Renegotiation (without Windsor Process):</b>	<b>\$1,500.00</b>	\$	\$

**WINDSOR EXCLUSIVE REPRESENTATION AGREEMENT**

**EXHIBIT B**

**Windsor Services**

Please mark the corresponding  which Windsor Service will be utilized.

**Windsor  
Services**

**The Windsor Process – New Locations / Relocations**

**Tenant Initials**

- 1) **Review with Tenant prepared market information (as available via the Simms Online system) which may include but not be limited to mutually agreed upon maps and reports (i.e. market overview, demographics, competitors, etc.).**
- 2) **Windsor shall travel to proposed geographic market (as warranted) and identify all potential commercial real estate sites within the mutually agreed upon search area.**
- 3) **Prepare an up-to-date customized “Initial Site Selection” study to include mutually agreed upon survey and map for the defined market area, including:**
  - a) **Location of the defined market area (located on map)**
  - b) **Size of Building/Center**
  - c) **Building/Center Type**
  - d) **Vacant Space Available**
  - e) **Quoted Rent**
  - f) **Additional Expenses (CAM, Taxes and Insurance, etc.)**
  - g) **Current Build-Out and/or proposed Build-Out**
  - h) **Accessibility**
  - i) **Parking**
  - j) **Visibility**
  - k) **Signage**
  - l) **Co-Tenancy**
  - m) **Comments regarding the center**
  - n) **Picture of the building**
  - o) **Site Plans (if available)**
  - p) **Aerial (if available)**
  - q) **Overview Map of all the Available and Unavailable Spaces**
  - r) **List of all buildings which fit the building criteria, but do not have available space, and the reason why the available space is not available**
- 4) **Arrange tours for prospective sites.**
- 5) **Preparation of Requests for Proposals (RFP), if applicable.**
- 6) **Analysis and summary of proposals, if applicable.**
- 7) **Preparation and negotiation of Letter of Intent (LOI).**
- 8) **Analysis and summary of finalized Letter of Intent.**
- 9) **Review with and facilitate Tropical Smoothie Café corporate review and approval**
- 10) **Review and assist in negotiation of lease agreement with Tenant’s attorney.**
- 11) **Provide on-going client contact.**
- 12) **At all times to act on behalf of and in the best interests of the Tenant.**

Windsor  
Services

**Site Evaluation, Negotiation and Documentation**

Tenant Initials

- 1) Review Comparable Buildings within the Geographic Market.
- 2) Preparation of Requests for Proposals (RFP), if applicable.
- 3) Analysis and summary of proposals.
- 4) Preparation and negotiation of Letter of Intent (LOI).
- 5) Analysis and summary of finalized Letter of Intent.
- 6) Review with and facilitate Tropical Smoothie Café corporate review and approval
- 7) Review and assist in negotiation of lease agreement with Tenant's attorney.
- 8) Provide on-going client contact.
- 9) At all times to act on behalf of and in the best interests of the Tenant.

Windsor  
Services

**Site Evaluation and Documentation**

Tenant Initials

- 1) Review Comparable Buildings within the Geographic Market
- 2) Analysis and summary of finalized Letter of Intent (LOI).
- 3) Review with and facilitate Tropical Smoothie Café corporate review and approval
- 4) Provide on-going client contact.
- 5) At all times to act on behalf of and in the best interests of the Tenant.

Windsor  
Services

**\*Lease Renewal with Windsor Process**

Tenant Initials

- 1) Review with Tenant prepared market information (as available via the Simms Online system) which may include but not be limited to mutually agreed upon maps and reports (i.e. market overview, demographics, competitors, etc.).
- 2) Windsor shall travel to proposed geographic market (as warranted) and identify all potential commercial real estate sites within the mutually agreed upon search area.
- 3) Prepare an up-to-date customized "Initial Site Selection" study to include mutually agreed upon survey and map for the defined market area, including:
  - a) Location of the defined market area (located on map)
  - b) Size of Building/Center
  - c) Building/Center Type
  - d) Vacant Space Available
  - e) Quoted Rent
  - f) Additional Expenses (CAM, Taxes and Insurance, etc.)
  - g) Current Build-Out and/or proposed Build-Out
  - h) Accessibility
  - i) Parking
  - j) Visibility
  - k) Signage
  - l) Co-Tenancy
  - m) Comments regarding the center
  - n) Picture of the building
  - o) Site Plans (if available)

- p) Aerial (if available)
- q) Overview Map of all the Available and Unavailable Spaces
- r) List of all buildings which fit the building criteria, but do not have available space, and the reason why the available space is not available
- 4) Arrange tours for prospective sites.
- 5) Preparation of Requests for Proposals (RFP)
- 6) Analysis and summary of proposals.
- 7) Negotiation of Letter of Intent (LOI).
- 8) Analysis and summary of finalized Letter of Intent
- 9) Review with and facilitate Tropical Smoothie Café corporate review and approval
- 10) Review and assist in negotiation of lease agreement.
- 11) Provide on-going client contact.
- 12) At all times to act on behalf of and in the best interests of the Tenant.

Windsor Services

Lease Renewal without Windsor Process

Tenant Initials
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- 1) Review Comparable Buildings within the Geographic Market
- 2) Negotiation of Letter of Intent (LOI).
- 3) Analysis and summary of finalized Letter of Intent.
- 4) Review with and facilitate Tropical Smoothie Café corporate review and approval.
- 5) Review and assist in negotiation of lease agreement with Tenant’s attorney.
- 6) Provide on-going client contact.
- 7) At all times to act on behalf of and in the best interests of the Tenant.

**\* If Tenant has an existing store location, elects to have an “Initial Site Selection” Study completed, and relocates to a new site, then the Assignment completed shall be The Windsor Process – New Locations / Relocations. However, if Tenant requests a full “Initial Site Selection” Study and then elects to renew the existing lease in place, the completed transaction is deemed to be Lease Renewal with Windsor Process.**



**WINDSOR EXCLUSIVE REPRESENTATION AGREEMENT**  
**EXHIBIT C**

**Geographic Parameters for Site Search**

**JAVELIN SOLUTIONS, LLC**  
**FRANCHISEE SERVICE AGREEMENT**

This SERVICE AGREEMENT (“Agreement”) is entered into by and between JAVELIN SOLUTIONS, LLC, a Colorado limited liability company (“Javelin”), with its principal place of business located at 3981 Nassau Circle West, Englewood, CO 80113, and Franchisee with its principal office addresses at Street, City, State, Zip (“Franchisee”). This Agreement is effective on the date it is signed by the last signatory. Javelin and the Franchisee are referred to in this Agreement together as the “Parties,” “we,” “our” or “us,” or individually as a “Party.”

**RECITALS**

*Whereas*, Franchisee has signed a franchise agreement with Franchisor (“Tropical Smoothie Café”), and seeks to open a Franchise.

*Whereas*, Franchisee desires to retain the services of Javelin in the area of real estate site selection according to the terms and conditions set forth below in order to commence its franchise operation.

*Whereas* Franchisee and Javelin acknowledge that this Agreement does not bind Franchisor, or any parent or affiliate company including any successors or assigns (collectively referred to as Franchisor).

*Whereas* Franchisee and Javelin agree and acknowledge that any changes to this Agreement are by and between the Parties to this Agreement and have not been reviewed, endorsed, acknowledged or otherwise approved by Franchisor.

*Therefore*, in consideration of the Parties’ rights and obligations set below, the Parties agree as follows:

**AGREEMENT**

1. **Engagement.** Franchisee agrees to retain Javelin to perform real estate site selection services, as more fully described herein, and Javelin agrees to perform such services subject to the terms and conditions of this Agreement. Javelin shall act as an independent contractor performing services for the Franchisee according to this Agreement. Each site selection that results in a signed lease agreement will be considered one project (“Project”). Javelin and its agents are NOT attorneys nor do they replace the need for attorney representation concerning this transaction.
2. **Term.** The term of the Agreement will be the commercially reasonable time necessary to secure a site location (as evidenced by a signed lease or purchase agreement).
3. **Javelin’s Rights and Duties.** Javelin will provide the services set forth in *Attachment A* (the “Services”) in order to facilitate site selection for Franchisee with respect to each Project for which Javelin’s services are retained. Such services will commence subsequent to Franchisee executing a Franchise agreement with Franchisor.
4. **No Guarantee of Success.** Franchisee agrees that Javelin’s assistance in no way constitutes a representation or warranty with respect to the success or viability of a property or a lease. Franchisee acknowledges that Javelin’s recommendation of a site indicates only that Javelin believes that the site falls within acceptable criteria established by Franchisor. This Agreement in no way prevents Franchisee

from consulting with legal and accounting professionals and doing its own reasonable due diligence in connection with matters covered by this Service Agreement. After Javelin has completed the Services with respect to a specific site, and a lease agreement has been signed by the Franchisee, Javelin does not assume any continuing responsibility to advise Franchisee on matters affecting issues other than the work it performed unless Javelin specifically agrees in writing to provide additional services.

5. Compensation and Payment. Javelin shall charge the Franchisee the amount of Four Thousand and 00/100 Dollars (\$4,000) per site selection to be received in two payments:

- (i) First Payment: Payment in the amount of \$2,000 per project for which Javelin provides the Services. Payment shall be due upon signing of the Franchise Services Agreement.
- (ii) Second Payment: Payment in the amount of \$2,000 within 10 days of lease execution by Franchisee. Should Franchisee fail to remit payment in full within 10 days of lease execution, a 10% late fee will be assessed.
- (iii) Javelin Solutions will also collect a referral fee from the local broker engaged in the project.

6. Limits on Javelin's Liability; Indemnification. Javelin is not liable to Franchisor or Franchisee for any failure by a third party to perform any services under this Agreement. Furthermore, Javelin is not liable for any losses, including deadlines missed, caused by the Franchisor's or Franchisee's delay in approving time-critical milestones including, but not limited to, review of screened properties, response to Letters of Intent and execution of leases. Javelin agrees to indemnify, defend, and hold Franchisor harmless from any and all costs, losses, damages, expenses, or other economic harm caused to Franchisor or Franchisee as the result of Javelin's provision of the Services in accordance with the terms of this Agreement.

7. Insurance. Javelin currently holds and agrees to maintain during the term of this agreement commercial liability insurance and errors and omissions insurance with commercially reasonable levels of coverage.

8. Resolution of Disputes. To the maximum extent permitted by law, each Party has the option to arbitrate any dispute, including whether all or some of the clauses in the agreement shall be resolved through binding arbitration before a single arbitrator mutually agreed upon by the parties or from a list provided to the parties by the American Arbitration Association ("AAA"). The arbitration shall be governed by the Commercial Arbitration Rules of the AAA and shall be heard either via telephonic conference or in person in Denver. Each party shall pay one half of the up-front arbitration fees and costs. Except for actions seeking injunctive relief, if one Party files a lawsuit against, or naming, the other Party, the named defendant shall have the option to exercise its right to seek resolution via arbitration so long as notice is given to the other party before any answer is due.

9. Attorney's Fees; Experts' Fees; Costs and Arbitration Fees. Notwithstanding anything to the contrary set forth in this Agreement, in any litigation or arbitration of any dispute, in addition to any relief, order or award, the prevailing Party will be awarded reasonable attorney's fees, expert witness fees and costs including reimbursement for any up-front arbitration and litigation costs.

10. Notices. Any notice this Agreement requires must be in writing and will be effective if hand-delivered, sent by certified U.S. mail, return receipt requested, facsimile, electronic mail, or some other recognized courier or overnight delivery service with tracking abilities to the Party entitled to receive the notice at the Party's address first stated above or at such other address as that Party may later give notice to the other Party. Notices shall be provided to the Parties as follows:

04/15/2014

To (Franchisee):  
NAME  
ADDRESS  
CITY, ST  
PHONE

To Javelin:  
Ryan Cunningham  
3981 Nassau Circle West  
Englewood, CO 80113

11. Entire Agreement; Amendment; Enforceability; Interpretation. This Agreement expresses our entire understanding about its subject matter and is the only agreement, promise or understanding on which we are relying in performing the duties this Agreement describes. The only way this Agreement may be amended, changed or waived will be through a written document both Parties sign. This Agreement is enforceable by and against each Party and anyone else who has or who obtains rights under this Agreement from either Party. This Agreement will be interpreted and enforced under Colorado law. No part of this Agreement should be construed against either Party on the basis of authorship. Any unenforceable provision of this Agreement will be modified to the extent necessary to make it enforceable or, if that is not possible, will be severed from this Agreement, and the remainder of this Agreement will be enforced to the fullest extent possible.

12. Counterparts. This Agreement may be executed in several counterparts and all of such counterparts shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Facsimile transmission of any signed original document and the retransmission of any signed facsimile transmission shall be the same as delivery of the original signed document.

IN WITNESS OF OUR AGREEMENTS, Javelin and the Franchisor have executed this FRANCHISOR SERVICES AGREEMENT on the date(s) indicated below.

**JAVELIN SOLUTIONS, LLC:**

**Franchisee:**

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**JAVELIN SOLUTIONS, LLC**

**“Attachment A”**

- Project Kick Off Call
- Establish Search Parameters
- Establish Weekly Status Call
- Market Survey Review
- Approve RFP's
- Review Site Matrix
- Run Demographic Analysis
- Submit LOI
- Negotiate Final Business Terms
- Review the Lease
- Assemble & Submit Final Lease Revisions
- Coordinate Construction Transition

## **BIALOW REAL ESTATE LLC**

### **FRANCHISEE REAL ESTATE CONSULTING AGREEMENT**

This REAL ESTATE CONSULTING AGREEMENT ("Agreement") is entered into by and between Bialow Real Estate, a Massachusetts limited liability company ("Bialow"), with its principal place of business located at 200 Highland Avenue, Suite 401, Needham, MA 02494, and Franchisee with its principal office addresses at Street, City, State, Zip ("Franchisee"). This Agreement is effective on the date it is signed by the last signatory. Bialow and the Franchisee are referred to in this Agreement together as the "Parties," "we," "our" or "us," or individually as a "Party."

### **RECITALS**

Whereas, Franchisee has signed a franchise agreement with Franchisor ("Tropical Smoothie Café"), and seeks to open a Franchise.

Whereas, Franchisee desires to retain the services of Bialow in the area of real estate site selection according to the terms and conditions set forth below in order to commence its franchise operation.

Whereas Franchisee and Bialow acknowledge that this Agreement does not bind Franchisor, or any parent or affiliate company including any successors or assigns (collectively referred to as Franchisor).

Whereas Franchisee and Bialow agree and acknowledge that any changes to this Agreement are by and between the Parties to this Agreement and have not been reviewed, endorsed, acknowledged or otherwise approved by Franchisor.

Therefore, in consideration of the Parties' rights and obligations set below, the Parties agree as follows:

### **AGREEMENT**

1. **Engagement.** Franchisee agrees to retain Bialow EXCLUSIVELY to perform real estate site selection services, as more fully described herein, and Bialow agrees to perform such services subject to the terms and conditions of this Agreement. Bialow shall act as an independent contractor performing services for the Franchisee according to this Agreement. Each site selection that results in a signed lease agreement will be considered one project ("Project"). Bialow and its agents are NOT attorneys nor do they replace the need for attorney representation concerning this transaction.
2. **Term.** The term of the Agreement will be the commercially reasonable time necessary to secure a site location (as evidenced by a signed lease or purchase agreement) and may be terminated by either party upon 60 days prior written notice. In the event of termination by either party, Bialow shall provide a list of any sites that they may have presented during the contract period which shall be defined as the "Protected List" upon which Bialow or Bialow's Local Broker would be recognized as the Broker or Record should a deal be consummated.
3. **Bialow's Rights and Duties.** Bialow will provide the services set forth in Attachment A (the "Services") in order to facilitate site selection for Franchisee with respect to each Project for which Bialow's services are retained. Such services will commence subsequent to Franchisee executing a Franchise agreement with Franchisor.

4. No Guarantee of Success. Franchisee agrees that Bialow's assistance in no way constitutes a representation or warranty with respect to the success or viability of a property or a lease. Franchisee acknowledges that Bialow's recommendation of a site indicates only that Bialow believes that the site falls within acceptable criteria established by Franchisor. This Agreement in no way prevents Franchisee from consulting with legal and accounting professionals and doing its own reasonable due diligence in connection with matters covered by this Service Agreement. After Bialow has completed the Services with respect to a specific site, and a lease agreement has been signed by the Franchisee, Bialow does not assume any continuing responsibility to advise Franchisee on matters affecting issues other than the work it performed unless Bialow specifically agrees in writing to provide additional services.

5. Compensation and Payment: The Franchisee shall have no obligation for any payment to Bialow. Bialow shall receive compensation in the form of a commercially reasonable brokerage commission which shall be paid by the Landlord. Should Bialow retain the services of any local brokers during the site selection process, such local brokers will share in the commission pursuant to a separate agreement between Bialow and the local brokers. Franchisee shall not be responsible for any monetary payment to Bialow or any local broker in association with this consulting agreement provided there is no Default of the agreement by Franchisee. Franchisee must recognize Bialow or Bialow's local broker as the Broker of Record should any deal get executed for any site presented during the terms of this agreement. Should Franchisee enter into a lease agreement during the terms of this agreement regardless of who presented the site, without recognizing Bialow, this shall constitute a Default upon which Franchisee would then be responsible for payment to Bialow in an amount equal to a commercially reasonable brokerage commission.

6. Limits on Bialow's Liability; Indemnification. Bialow is not liable to Franchisor or Franchisee for any failure by a third party to perform any services under this Agreement. Furthermore, Bialow is not liable for any losses, including deadlines missed, caused by the Franchisor's or Franchisee's delay in approving time-critical milestones including, but not limited to, review of screened properties, response to Letters of Intent and execution of leases. Bialow agrees to indemnify, defend, and hold Franchisor harmless from any and all costs, losses, damages, expenses, or other economic harm caused to Franchisor or Franchisee as the result of Bialow's provision of the Services in accordance with the terms of this Agreement.

7. Insurance. Bialow currently holds and agrees to maintain during the term of this agreement commercial liability insurance and errors and omissions insurance with commercially reasonable levels of coverage.

8. Resolution of Disputes. To the maximum extent permitted by law, each Party has the option to arbitrate any dispute, including whether all or some of the clauses in the agreement shall be resolved through binding arbitration before a single arbitrator mutually agreed upon by the parties or from a list provided to the parties by the American Arbitration Association ("AAA"). The arbitration shall be governed by the Commercial Arbitration Rules of the AAA and shall be heard either via telephonic conference or in person in Massachusetts. Each party shall pay one half of the up-front arbitration fees and costs. Except for actions seeking injunctive relief, if one Party files a lawsuit against, or naming, the other Party, the named defendant shall have the option to exercise its right to seek resolution via arbitration as long as notice is given to the other party before any answer is due.

9. Attorney's Fees; Experts' Fees; Costs and Arbitration Fees. Notwithstanding anything to the contrary set forth in this Agreement, in any litigation or arbitration of any dispute, in addition to any relief, order

04/15/2014

or award, the prevailing Party will be awarded reasonable attorney's fees, expert witness fees and costs including reimbursement for any up-front arbitration and litigation costs.

10. Notices. Any notice this Agreement requires must be in writing and will be effective if hand delivered, sent by certified U.S. mail, return receipt requested, electronic mail, or some other recognized courier or overnight delivery service with tracking abilities to the Party entitled to receive the notice at the Party's address first stated above or at such other address as that Party may later give notice to the other Party. Notices shall be provided to the Parties as follows:

To (Franchisee): ` NAME ADDRESS CITY, ST PHONE

To Bialow: Corey Bialow 200 Highland Avenue, Suite 401 Needham, MA 02494

11. Entire Agreement; Amendment; Enforceability; Interpretation. This Agreement expresses our entire understanding about its subject matter and is the only agreement, promise or understanding on which we are relying in performing the duties this Agreement describes. The only way this Agreement may be amended, changed or waived will be through a written document both Parties sign. This Agreement is enforceable by and against each Party and anyone else who has or who obtains rights Under this Agreement from either Party. This Agreement will be interpreted and enforced under Massachusetts Law. No part of this Agreement should be construed against either Party on the basis of authorship. Any unenforceable provision of this Agreement will be modified to the extent necessary to make it enforceable or, if that is not possible, will be severed from this Agreement, and the remainder of this Agreement will be enforced to the fullest extent possible.

12. Counterparts. This Agreement may be executed in several counterparts and all of such counterparts shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Electronic transmission of any signed original document and the retransmission of any signed electronic transmission shall be the same as delivery of the original signed document.

IN WITNESS OF OUR AGREEMENTS, Bialow and the Franchisee have executed this REAL ESTATE CONSULTING AGREEMENT on the date(s) indicated below.

**BIALOW REAL ESTATE, LLC:**

**Franchisee:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

04/15/2014



**BIALOW REAL ESTATE, LLC**

**“Attachment A”**

- Introductory Phone Interview
- Establish Geographic Parameters and Target Trade Areas
- Initiate Weekly Update Reports
- Present Market Survey
- Review Specific Availabilities Inclusive of Site Plans, Retail Maps, Aerials, Photos, etc.
- Provide Demographic Reports, Traffic Count Maps
- Submit LOI
- Negotiation and Finalization of LOI
- Work with Franchisee’s Attorney to Review Lease Comments
- Review Final Lease Document and Exhibit in Preparation for Execution
- Act as Liaison between Landlord and Franchise on through to Store Opening

**EXHIBIT F TO THE DISCLOSURE DOCUMENT**

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**ADDENDUM TO LEASE AGREEMENT/  
CONDITIONAL ASSIGNMENT OF LEASE**

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**ADDENDUM TO LEASE AGREEMENT/  
CONDITIONAL ASSIGNMENT OF LEASE**

**Landlord/Lessor:** \_\_\_\_\_ **Tenant/Lessee:** \_\_\_\_\_

Notice Address: \_\_\_\_\_ Notice Address: \_\_\_\_\_

**Franchisor:** Tropical Smoothie Café, LLC

Notice Address: 1117 Perimeter Center West, Suite W200  
Atlanta, Georgia 30338

Date: Effective as of the Date of the Lease Between Landlord and Tenant (the “**Lease**”)

Leased Premises/Location of Leased Site: (Center Name/Address): \_\_\_\_\_

Landlord, Franchisor, and Tenant agree to this addendum (“**Addendum**”) as follows:

1. Tenant is a TROPICAL SMOOTHIE CAFÉ® franchisee. The Leased Premises shall be used solely for the operation of a smoothie beverage/sandwiches/gourmet wraps/salads/soups/coffee drinks restaurant, offering for sale a wide range of smoothie drinks and other products, at retail, and related products or services approved by the Franchisor under the trade name **TROPICAL SMOOTHIE®, TROPICAL SMOOTHIE CAFÉ®,** or any name authorized by the Franchisor, pursuant to Tenant’s franchise agreement (the “**Franchise Agreement**”) with Franchisor. The Landlord acknowledges that such use shall not violate any existing exclusives granted to any other existing tenant of the Landlord.

2. Landlord shall provide to Franchisor, at Franchisor’s then current Notice Address, copies of any written Notice of Default (“**Default**”) given to Tenant under the Lease, concurrently with giving such notices to Tenant. Landlord grants to Franchisor, at Franchisor’s option, the right (but not the obligation) to cure any Default under the Lease (should Tenant fail to do so) within 15 days after the expiration of the period in which Tenant may cure the Default.

3. In the event of a Default of the Lease by Tenant, a default of the Franchise Agreement by Tenant, a default by Tenant under any loan agreement or any related loan documents with Franchisor or its affiliate, or expiration or termination of the Franchise Agreement, and upon written notice to Landlord by Franchisor to accept written assignment of the Lease to Franchisor as replacement tenant (“**Agreement Notice**”), Franchisor (or its designee acceptable to Landlord) shall become Tenant of the Leased Premises and shall become liable for all obligations under the Lease arising after the date of the Assignment Notice.

4. The Lease shall not be modified or canceled with regard to Franchisor’s rights under this Addendum without the prior written approval of Franchisor.

5. No amendment or variation of the terms of this Addendum shall be valid unless made in writing and signed by the parties.

6. All notices given pursuant to this Addendum must be sent by registered or certified mail, postage prepaid, to the party's address set forth above. Any party may change its address for receiving notices by giving the other parties written notice of the new address.

**Landlord/Lessor**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Tenant/Lessee/Franchisee**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TROPICAL SMOOTHIE CAFÉ, LLC / FRANCHISOR**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT G TO THE DISCLOSURE DOCUMENT**

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# Operations Manual

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**EXHIBIT H TO THE DISCLOSURE DOCUMENT**

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**NONDISCLOSURE AND NONCOMPETITION AGREEMENT**

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## NONDISCLOSURE AND NONCOMPETITION AGREEMENT

This **NONDISCLOSURE AND NONCOMPETITION AGREEMENT** (the “**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, by and between \_\_\_\_\_, residing at \_\_\_\_\_, who presently is a manager, assistant manager or employee of a Tropical Smoothie Café® restaurant, or a director, manager or officer of a Tropical Smoothie Café® franchisee (the “**Employee**”) and \_\_\_\_\_, a \_\_\_\_\_, and its successors and assigns (the “**Employer**”).

### RECITALS:

A. Employer is a company engaged in the business of owning and operating a Tropical Smoothie Café® franchise under a license granted by Tropical Smoothie Café, LLC (the “**Franchisor**”).

B. Employer is desirous of protecting its rights and interests in and to the Tropical Smoothie Café® franchise that Franchisor has granted to Employer, including operating systems, sales and marketing programs and ideas, and all information and documents relating thereto.

C. Employee is being retained by Employer to provide services as the \_\_\_\_\_ for Employer.

D. Employer will provide substantial opportunities to the Employee in the conduct of Employee’s position including, but not limited to, present and future earnings, access to potential and existing customers and clients, and Employer’s and Franchisor’s confidential and proprietary information. Employee further acknowledges that Employer would not employ or continue to employ Employee without Employee’s agreeing to be bound by the restrictions contained in this Agreement.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the premises, which Employee agrees is good and valuable consideration, the receipt of which hereby is acknowledged, Employee represents and warrants to Employer and covenants and agrees with Employer as follows:

1. Recitals. The statements made in the Recitals above are true and accurate and are incorporated herein.

2. Specialized Knowledge and Training. Employee acknowledges and agrees that:

(a) the knowledge and experience that Employee will acquire while associated with and/or employed by Employer is of a special, unique, and extraordinary character and that Employee’s position with Employer places Employee in a position of a confidence and trust with the customers, clients, sales agents, contacts, account executives, investors, accounts, associates and employees of Employer and allow Employee access to Confidential Information (as that term is defined in *Section 6* below), which access Employee would not have but for Employee’s relationship with Employer; and

(b) Employer will make substantial investments of time and capital in the development of Employee’s goodwill, education and expertise, from which Employee will receive a substantial and direct economic benefit.



3. Operating System and Trademarks. Employee acknowledges and agrees that:

(a) Franchisor is the creator and owner of the trade secrets, products, concept, style, confidential information, format and operating system (collectively, the “**Operating System**”) and the logotypes, service marks and trademarks now or hereafter involved in the operation of a Tropical Smoothie Café® store using the style, trademark, service mark, and trade name TROPICAL SMOOTHIE CAFÉ® (collectively, the “**Trademarks**”), and the good will associated therewith, and has granted to Employer the right and license to operate a Tropical Smoothie Café® store using the Operating System and the Trademarks subject to the continuing control by Franchisor of the dissemination and use of the Operating System and the Trademarks;

(b) Employee has obtained or will obtain knowledge of the Operating System in connection with its association with or employment by either Franchisor and/or Employer, which knowledge obtained or to be obtained by Employee was unknown to it prior to said employment and/or the execution of this Agreement, and which knowledge is a prerequisite for Employee’s employment; and

(c) Because the protection of the Operating System and the Trademarks is vital to the continued success of Franchisor and franchisees of Franchisor, Franchisor is unwilling to permit Employer to disclose to Employee the Operating System except upon the terms set forth in this Agreement, including the requirements of confidentiality, nondisclosure and noncompetition as set forth in this Agreement.

4. Ownership of Operating System and Trademarks. Employee acknowledges and agrees that Franchisor is the sole and exclusive owner of all right, title and interest in and to the Operating System and the Trademarks, and that the Operating System and the Trademarks shall be used by Employee only in accordance with the terms hereof. Employee shall acquire no right, title or interest in or to the Operating System and/or the Trademarks. Employee shall not, directly or indirectly, at any time during or after the term of Employee’s employment by or association with Employer’s Tropical Smoothie Café® store, do or cause to be done any act or thing disputing, attacking, or in any way impairing or intending to impair Franchisor’s right, title, or interest in or to the Operating System or the Trademarks. Employee shall immediately notify Employer of all infringements of the Operating System or the Trademarks by others that come to Employee’s attention and of all challenges to or limitations on Franchisor’s use of the Operating System or any of the Trademarks.

5. Nondisclosure of Confidential Information. The parties hereto acknowledge that during the period in which the Employee is employed by or associated with Employer (the “**Employment Period**”), the Employee shall use, receive, conceive or develop Confidential Information (as that term is defined in *Section 6* below). Employee covenants and agrees that during the Employment Period and at all times thereafter, Employee shall not, except with the prior written consent of Employer or Franchisor, which consent shall be granted or denied at the Employer’s or Franchisor’s sole and absolute discretion, or except if acting solely for the benefit of Employer in connection with Employer’s business and in accordance with the Employer’s business practices and policies, at any time disclose, divulge, report, transfer or use, for any purposes whatsoever, any of such Confidential Information which has been used, received, conceived or developed by Employee. Employee also recognizes that such Confidential Information represents a valuable asset of the Employer and Franchisor and is required to ensure the effective and successful conduct of their respective businesses.

6. Confidential Information. For purposes of this Agreement, the term “**Confidential Information**” shall mean all of the following materials and information that Employee uses, receives, conceives or develops or has used, received, conceived or developed, in whole or in part, in connection with Employee’s employment by or association with Employer:

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(a) The Operating System and Trademarks;

(b) The contents of any manuals or other written materials of Franchisor, Employer, or any of Franchisor's subsidiaries or affiliates;

(c) The names and information relating to customers and prospective customers of Employer, or other persons, firms, corporations or other entities with whom the Employee has contact with on behalf of Employer or to whom any other employee of Employer has provided goods or services at any time;

(d) The terms of various agreements between Employer and any third parties, including without limitation, the terms of customer agreements, vendor or supplier agreements, lease agreements, advertising agreements and the like;

(e) Any data or database, or other information compiled by Employer, including, but not limited to, customer lists, customer information, information concerning Employer, or any business in which Employer is engaged or contemplates becoming engaged, any company that Employer engages in business, any customer, prospective customer or other person, firm or corporation to whom or which Employer has provided goods or services or to whom or which any employee of Employer has provided goods or services on behalf of Employer, or any compilation, analysis, evaluation or report concerning or deriving from any data or database, or any other information;

(f) All policies, procedures, strategies and techniques regarding the services performed by Franchisor, training, marketing and sales of Franchisor, specifically including but not limited to the Operating System and Trademarks, either oral or written, and assorted lists containing information pertaining to customers and prospective customers; and

(g) Any other information, data, know-how or knowledge of a confidential or proprietary nature observed, used, received, conceived or developed by Employee in connection with Employee's employment by Employer.

7. Use and Return of Confidential Information.

(a) The Employee agrees that under no circumstance and at no time shall any of the Confidential Information be taken from Employer's premises and that under no circumstances and at no time shall any of the Confidential Information be duplicated, in whole or in part, without the express written permission of Employer, which permission may be granted or denied in its sole and absolute discretion.

(b) The Employee agrees that, upon termination of employment with Employer, Employee shall return to Employer all such Confidential Information, which is in Employee's possession regardless of the form in which any such materials are kept.

(c) The Employee covenants and agrees that all right, title and interest in any Confidential Information shall be and shall remain the exclusive property of Employer and/or Franchisor. Employee agrees to promptly disclose to Employer all Confidential Information developed in whole or in part by Employee within the scope of this Agreement and to assign to Employer and/or Franchisor any right, title or interest Employee may have in such Confidential Information. Employee agrees to turn over to the Employer all physical manifestations of the Confidential Information in Employee's possession or under Employee's control at the request of Employer.

8. In-Term Non-Solicitation and Non-Competition. In order to protect the goodwill of the Operating System and Trademarks, during the term of Employee's employment by or association with Employer, Employee shall not, directly or indirectly:

(a) Directly or indirectly divert, or attempt to divert, any business opportunity or customer of Employer, Franchisor or any Tropical Smoothie Café® store to any competitor, or do or perform, directly or indirectly, any act injurious or prejudicial to the goodwill associated with the Operating System and the Trademarks;

(b) Employ or seek to employ any person who is at that time employed by Employer, Franchisor, or any Tropical Smoothie Café® franchisee or area developer, or otherwise directly or indirectly induce such person to leave the employ of said party;

(c) Develop, own, manage, operate, be employed by or have any interest in any business or facility (other than a licensed Tropical Smoothie Café® store), which is the same as or substantially similar to a Tropical Smoothie Café® store (including, without limitation, any restaurant or food service facility owning, operating or managing, or granting franchises or licenses to others to do so, any business that features smoothies as a primary menu item and/or where fifty percent (50%) or more of the menu items consist of the same or similar items as those typically offered by a Tropical Smoothie Café® store), wherever located.

9. Post-Term Non-Solicitation and Non-Competition. In order to protect the goodwill of the Operating System and Trademarks, for a period of two (2) years following the termination of Employer's employment by or association with Employer, for any reason, Employee shall not, directly or indirectly:

(a) Directly or indirectly divert, or attempt to divert, any business opportunity or customer of Employer, Franchisor or any Tropical Smoothie Café® store to any competitor, or do or perform, directly or indirectly, any act injurious or prejudicial to the goodwill associated with the Operating System and the Trademarks;

(b) Employ or seek to employ any person who is at that time employed by Employer, Franchisor, or any Tropical Smoothie Café® franchisee or area developer, or otherwise directly or indirectly induce such person to leave the employ of said party;

(c) Develop, own, manage, operate, be employed by or have any interest in any business or facility (other than a licensed Tropical Smoothie Café® store) which is the same as or substantially similar to a Tropical Smoothie Café® store (including, without limitation, any restaurant or food service facility owning, operating or managing, or granting franchises or licenses to others to do so, any business that features smoothies as a primary menu item and/or where fifty percent (50%) or more of the menu items consist of the same or similar items as those typically offered by a Tropical Smoothie Café® store), and which is located within a radius of five (5) miles of the Employer's Tropical Smoothie Café® store or any other Tropical Smoothie Café® store (whether company-owned or franchised).

At no time during or after the term of Employee's employment by or association with Employer shall Employee use or duplicate the Operating System or the Trademarks, except pursuant to a valid license from Franchisor. Employee expressly agrees that the restrictive covenants contained in *Sections 8 and 9*: (i) are reasonable as to time and geographical area; (ii) do not place an unreasonable burden on Employee; and (iii) are supported by adequate consideration to Employee.

10. At-Will Employment. The mere entering into this Agreement by Employee shall not operate so as to require Employer to continue to employ Employee, and Employee hereby represents and

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warrants to Employer that Employee has not received any promises or guarantees, implied or express, of such continued employment by or association with Employer. Employee agrees that this Agreement shall be applicable to Employee regardless of whether the termination of its employment by or association with Employer occurs at the instance of Employee or Employer and, if at the instance of Employer, regardless of whether the termination was for cause. Employee further agrees that Employee's breach of this Agreement shall be grounds for the termination of Employee's employment.

11. Enforcement and Remedies. Employee agrees that a breach or default of the terms of this Agreement will cause irreparable harm to Employer and/or Franchisor and, therefore, in the event of any such breach or default, Employer and/or Franchisor shall be entitled to injunctive relief, specific performance, or other equitable relief. Employer and/or Franchisor shall be entitled to a restraining order or injunction without bond and without specific proof of irreparable harm and without specific proof of an inadequate remedy at law. Any specific right or remedy set forth in this Agreement shall not be exclusive, but shall be cumulative to other remedies available to Employer and/or Franchisor under this Agreement or at law or in equity, including injunctive relief, specific performance and recovery of money damages. The failure of Employer and/or Franchisor to enforce any of the provisions of this Agreement shall not constitute a waiver thereof or otherwise operate to limit any of Employer's and/or Franchisor's rights hereunder. The existence of any claim, defense or cause of action that Employee may have against Employer and/or Franchisor, regardless of cause or origin, shall not constitute a defense against the enforcement of this Agreement by Employer and/or Franchisor against Employee.

12. Toll Period. In the event Employee shall violate any provision of this Agreement as to which there is a specific time period during which Employee is prohibited from taking certain actions or from engaging in certain activities, as set forth in such provision, then, such violation shall toll the running of such time period from the date of such violation until such violation shall cease.

13. Successors and Assigns. This Agreement shall be binding upon Employee and his or her heirs, personal representatives, successors and assigns, and shall inure to the benefit of Employer and Franchisor (Franchisor being an intended third-party beneficiary hereof, with independent rights to enforce this Agreement) and their respective heirs, personal representatives, successors and assigns. Employee expressly agrees that this Agreement shall be assignable by Employer to a successor to the business of Employer and Employee hereby expressly consents to such assignment. Franchisor's rights under this Agreement are fully assignable and transferable and shall inure to the benefit of Franchisor's affiliates, successors and assigns.

14. Miscellaneous:

(a) Time is of the essence of this Agreement and of every term, covenant and condition hereof.

(b) The headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement or in any way defining, limiting or amplifying the provisions hereof.

(c) If Employer or Franchisor retains an attorney or institutes a suit against Employee in any way connected with this Agreement or its enforcement, or to utilize remedies for its breach, they (if prevailing) shall be entitled to recover from Employee reasonable attorneys' fees (not to exceed actual attorneys' fees incurred) and all costs in connection with said enforcement or suit, whether or not suit is filed or, if filed, is prosecuted to judgment.

(d) This Agreement shall be governed by, construed and enforced under the laws of the State of \_\_\_\_\_ whose courts shall have jurisdiction over any legal proceedings arising out of

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this Agreement, and \_\_\_\_\_ County, \_\_\_\_\_ shall be the place of venue for any such action or proceedings. *[Insert State and County where Employer's Franchised Business is located]*

(e) The invalidity or unenforceability of any covenant, term or condition of this Agreement, or any portion of any covenant, term or condition of this Agreement, shall not affect any other covenant, term or condition or portion thereof and this Agreement shall remain in effect as if such invalid or unenforceable covenant, term or condition (or portion thereof) were not contained herein; provided that the invalidity of any such provision does not materially and adversely affect the expected benefits accruing to any party hereunder.

(f) This Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous understandings, representations, warranties, and agreements. This Agreement shall not be amended or modified, except in writing signed by all parties hereto.

**15. WAIVER OF JURY TRIAL. EMPLOYEE HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EMPLOYEE MAY HAVE TO A TRIAL BY JURY OF, UNDER, OR IN CONNECTION WITH EMPLOYEE'S EMPLOYMENT WITH EMPLOYER, THIS AGREEMENT, OR ANY AGREEMENT OR DOCUMENT EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO.**

16. Acknowledgment. Employee acknowledges that Employee understands the terms and conditions set forth in this Agreement and has had adequate time to consider whether to agree to them and to consult a lawyer, if Employee wished to do so.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

**EMPLOYER:**

**EMPLOYEE:**

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_ [Print Name]

\_\_\_\_\_ [Print Name and Title]

**EXHIBIT I TO THE DISCLOSURE DOCUMENT**

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**OWNERS' GUARANTY**

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## OWNERS' GUARANTY

This Owners' Guaranty (the "**Guaranty**") is given this \_\_\_\_\_ day of 20\_\_, by the undersigned in connection with the execution of the Franchise Agreement dated \_\_\_\_\_, 20\_\_ (the "**Franchise Agreement**") between TROPICAL SMOOTHIE CAFÉ, LLC ("**Franchisor**") and \_\_\_\_\_ ("**Franchisee**").

In consideration of, and as an inducement to, Franchisor's execution of the Franchise Agreement, each of the undersigned and any other parties who sign counterparts of this Guaranty (individually, a "**Guarantor**" and collectively, the "**Guarantors**") hereby personally and unconditionally guarantee to Franchisor and its successors and assigns, that Franchisee will punctually perform all of its obligations and pay all amounts due under the Franchise Agreement (including, without limitation, amounts due for initial franchise fees, royalties, advertising fund contributions, and purchases of equipment, materials, and supplies) or otherwise owing by Franchisee to Franchisor or its affiliates.

Each Guarantor has read the terms and conditions of the Franchise Agreement and acknowledges that the execution of this Guaranty and the undertakings of Franchisee in the Franchise Agreement are in partial consideration for, and a condition to, Franchisor's willingness to enter into the Franchise Agreement, and that Franchisor would not have entered into the Franchise Agreement without the execution of this Guaranty and such undertakings by each Guarantor.

Each Guarantor waives:

- (i) acceptance and notice of acceptance by Franchisor of the foregoing undertakings; and
- (ii) notice of demand for payment of any indebtedness or nonperformance of any obligations hereby guaranteed; and
- (iii) protest and notice of default to any party with respect to the indebtedness or nonperformance of any obligations hereby guaranteed; and
- (iv) any right he or she may have to require that an action be brought against Franchisee or any other person as a condition of liability; and
- (v) all rights to payments and claims for reimbursement or subrogation which he or she may have against Franchisee arising as a result of his or her execution of and performance under this Guaranty (including by way of counterparts); and
- (vi) any and all other notices and legal or equitable defenses to which he or she may be entitled.

Each Guarantor consents and agrees that:

- (i) his or her direct and immediate liability under this Guaranty will be joint and several not only with Franchisee, but also among the Guarantors; and
- (ii) he or she will render any payment or performance required under the Franchise Agreement upon demand if Franchisee fails or refuses punctually to do so; and
- (iii) such liability will not be contingent or conditioned upon pursuit by Franchisor of any remedies against Franchisee or any other person; and
- (iv) such liability will not be diminished, relieved or otherwise affected by any subsequent rider or amendment to the Franchise Agreement or by any extension of time, credit or other indulgence that Franchisor may from time to time grant to Franchisee or to any other person, including, without limitation, the acceptance of any partial payment or performance, or the compromise or

release of any claims, none of which will in any way modify or amend this Guaranty, which will be continuing and irrevocable throughout the term of the Franchise Agreement and for so long thereafter as there are any monies or obligations owing by Franchisee to Franchisor or its affiliate under the terms of the Franchise Agreement; and

- (v) Franchisee’s written acknowledgment, accepted in writing by Franchisor, or the judgment of any court or arbitration panel of competent jurisdiction establishing the amount due from Franchisee will be conclusive and binding on the undersigned as Guarantors.

Each Guarantor individually, jointly and severally, also makes all of the covenants, representations, warranties and agreements Franchisee set forth in the Franchise Agreement and is obligated to perform thereunder, including, without limitation, under Sections 1, 9, 13, 15, 16, 17, 18 and 20 (which include, among other things, the MEDIATION OF DISPUTES and WAIVERS OF JURY TRIAL RIGHTS AND PUNITIVE DAMAGES).

If Franchisor is required to enforce this Guaranty in an administrative, judicial or arbitration proceeding, and prevails in such proceeding, Franchisor will be entitled to reimbursement of its costs and expenses, including, but not limited to, legal and accounting fees and costs, administrative, arbitrators’ and expert witness fees, costs of investigation and proof of facts, court costs, other expenses of an administrative, judicial or arbitration proceeding and travel and living expenses, whether incurred prior to, in preparation for or in contemplation of the filing of any such proceeding. If Franchisor is required to engage legal counsel in connection with any failure by the undersigned to comply with this Guaranty, the Guarantors will reimburse Franchisor for any of the above-listed costs and expenses incurred by it.

**IN WITNESS WHEREOF**, each Guarantor now signs and delivers this Guaranty effective as of the date of the Franchise Agreement, regardless of the actual date of signature.

**GUARANTORS**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_



**EXHIBIT J TO THE DISCLOSURE DOCUMENT**

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**STATE SPECIFIC ADDENDA AND RIDERS**

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04/15/2014

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**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF CALIFORNIA**

The following paragraphs are added to the Disclosure Document:

OUR WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT. ANY COMPLAINTS CONCERNING THE CONTENT OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT at [www.dbo.ca.gov](http://www.dbo.ca.gov).

THE CALIFORNIA FRANCHISE INVESTMENT LAW REQUIRES THAT A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE BE DELIVERED TOGETHER WITH THE DISCLOSURE DOCUMENT.

Item 5 is amended by adding the following:

The State of California has imposed a deferral condition on us; therefore, no fees are payable by you to us until all of our pre-opening obligations are completed and your business has opened.

The following paragraphs are added at the end of Item 17 of the Disclosure Document pursuant to regulations promulgated under the California Franchise Investment Law:

**California Law Regarding Termination and Nonrenewal.** California Business and Professions Code Sections 20000 through 20043 provide rights to franchisees concerning termination or nonrenewal of a franchise. If the Franchise Agreement contains a provision that is inconsistent with the law, the law will control.

**Termination Upon Bankruptcy.** The Franchise Agreement provides for termination upon bankruptcy. This provision may not be enforceable under federal bankruptcy law (11 U.S.C.A. Sec. 101 et. seq.).

**Post-Termination Noncompetition Covenants.** The Franchise Agreement contains a covenant not to compete which extends beyond the termination of the respective agreement. These provisions may not be enforceable under California law.

**Applicable Law.** The Franchise Agreement requires application of the laws of the State of Georgia with certain exceptions. These provisions may not be enforceable under California law.

**Liquidated Damages.** The Franchise Agreement contains a liquidated damages clause. Under California Civil Code Section 1671, certain liquidated damages clauses are unenforceable.

**CALIFORNIA RIDER TO THE  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2.     **Initial Franchise Fee.** The payment of the initial franchise fee is deferred until all of our pre-opening obligations to you are completed and your business has opened.

3.     **Effective Date.** This Rider is effective on the Agreement Date regardless of the actual date of signature.

Intending to be bound, the parties sign and deliver this Rider to each other as shown below.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF HAWAII**

**THIS ADDENDUM** (the “**Addendum**”) amends the Franchise Disclosure Document of **TROPICAL SMOOTHIE CAFÉ, LLC** for its **Tropical Smoothie Café®** Franchise.

The following is added to Items 5 and 21 of the Franchise Disclosure Document:

The State of Hawaii has imposed a deferral condition on us; therefore, no fees are payable by you to us until all of our pre-opening obligations are completed and your business has opened.

**HAWAII RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2.     **Initial Franchise Fee.** The payment of the initial franchise fee is deferred until all of our pre-opening obligations to you are completed and your business has opened.

3.     **Effective Date.** This Rider is effective on the Agreement Date regardless of the actual date of signature.

Intending to be bound, the parties sign and deliver this Rider to each other as shown below:

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF ILLINOIS**

The following is added to Item 5:

The payment to us of all initial fees is placed in escrow with U.S. Bank until we have provided all of our pre-opening obligations to you and your TROPICAL SMOOTHIE® Store is open for business. The initial franchise fee is made payable to U.S. Bank N.A. as escrowee. The escrow requirement has been imposed by the Illinois Attorney General's Office based on our financial condition. See a copy of the escrow agreement attached to this Addendum as Exhibit "A."

The following is added to Item 17:

The conditions under which you can be terminated and your rights on non-renewal may be affected by Illinois law, 815 ILCS 705/1-44.

The Illinois Franchise Disclosure Act will govern any franchise agreement if: (a) it applies to a franchise located in Illinois; or (b) a franchisee who resides in Illinois.

Any condition of the franchise agreement that designates litigation, jurisdiction or venue in a forum outside of Illinois is void as to any cause of action that otherwise is enforceable in Illinois provided the franchise agreement may provide for arbitration in a forum outside of Illinois.

Be advised that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of Illinois is void. No person may be prevented from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of the Illinois Franchise Disclosure Act, nor shall arbitration of any claim pursuant to the provisions of Title 9 of the United States Code be prevented.

**EXHIBIT A TO ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF ILLINOIS**

**ESCROW AGREEMENT  
Appendix C-Illustration**

Agreement, made this 26<sup>th</sup> day of February, 2013, by **TROPICAL SMOOTHIE CAFÉ, LLC**, a limited liability company, organized under the laws of the State of Georgia (hereinafter referred to as "**Franchisor**"), and **U.S. BANK NATIONAL ASSOCIATION** hereinafter referred to as "**BANK**," as Escrowee for the franchisees of Franchisor;

**WHEREAS**, Franchisor is desirous of establishing franchises in the State of Illinois; and

**WHEREAS**, it is in the discretion of the Illinois Attorney General as Administrator of the Illinois Franchise Disclosure Act, to require an escrow of the franchise fees; and

**WHEREAS**, in order to conform to the procedures for arranging an escrow account, Franchisor desires to enter into an escrow agreement with BANK, pursuant to which initial franchise fees are to be held in escrow until Franchisor has met its initial obligations to its franchisees.

**NOW THEREFORE**, with the foregoing recitals hereinafter incorporated by reference and made a part hereof, it is agreed as follows:

1. Franchisor shall deposit with BANK initial franchise fees received from franchisees that are required to be escrowed under the order of the Administrator, but BANK shall not be responsible for insuring that any part or all moneys received by Franchisor from each or any one franchisee are deposited with BANK.

2. Franchisor will supply BANK with the name and address of each franchisee, together with the amount of the deposit which represents moneys paid by each franchisee and BANK will maintain records containing the same information.

3. All moneys received by BANK from Franchisor shall be held by BANK as escrowee for the exclusive purpose herein described and will be placed in a single segregated account designated substantially as follows: **U.S. BANK NATIONAL ASSOCIATION, AS ESCROWEE FOR FRANCHISES OF TROPICAL SMOOTHIE CAFÉ, LLC** (hereinafter referred to as "**Escrow Account.**")

4. BANK shall accept such funds as Franchisor shall deliver to BANK, as escrowee, and BANK shall acknowledge the receipt of funds from Franchisor; however, BANK shall not be responsible for the accuracy of the information provided to it by Franchisor.

5. Any funds deposited hereunder in the Escrow Account shall be invested and kept invested by BANK, at the option of the Franchisor, in instruments of its choosing, until they are to be disbursed as provided in paragraph 6 hereof. All interest received and any increment thereon shall be added to the funds so deposited in the Escrow Account and shall be distributed as provided in paragraph 6.



**Illinois**

6. BANK shall pay out funds, plus interest, if any, from the Escrow Account upon the occurrence of one of the following conditions:

(a) Upon receipt of a letter from an officer of Franchisor directing BANK to pay out such funds to Franchisor, accompanied by a written notice from the Administrator stating that he takes no exception (hereinafter referred to as "**No Exception Notice**") to the release, BANK shall pay part or all of the moneys held in escrow for the benefit of a specified franchisee, plus interest, if any, to Franchisor.

(b) Upon written notice from the Administrator, BANK shall return part or all of the deposited franchise fee and other funds, plus interest, if any, to a specified franchisee.

(c) BANK shall pay funds into court or disburse or deliver them in accordance with any final order of any court of competent jurisdiction.

BANK shall not be personally liable for any act taken or omitted by it in good faith and in the exercise of its own best judgment. BANK shall also be fully protected in relying upon any written notice, demand, certificate or document which it in good faith believes to be genuine.

7. BANK is authorized, in its sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions by the Administrator as are hereinafter provided for and orders of process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case of any court order affecting such property or any part thereof, then and in any of such events BANK is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; if it complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

8. Written consent of BANK to act in the capacity of escrowee shall be manifested upon the duly authorized execution of this Agreement. The Administrator may, at any time, inspect the records of BANK, insofar as they relate to this Escrow Agreement. At the Administrator's discretion, statements indicating status of the escrow shall be furnished by BANK to the Administrator. An executed duplicate original of this Agreement shall be filed with the Administrator at Illinois Attorney General, Franchise Division, 500 South Second Street, Springfield, Illinois 62706.

9. BANK shall be paid by Franchisor for any expenses incurred by it and reasonable compensation for its services hereunder. Funds held by BANK pursuant to this Agreement shall not be subject to any liens or charges by BANK.

10. If BANK believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection with this Agreement, or in the event BANK retains

**Illinois**

counsel upon becoming involved in litigation on account of any deposit or of this Agreement, Franchisor shall reimburse BANK for and indemnify and hold BANK harmless against any and all costs, attorney's fees, charges, disbursements and expenses in connection with such consultation or litigation.

11. Franchisor unconditionally guarantees that, in the event BANK misapplies, dissipates, converts or is otherwise responsible for a deficiency in the funds deposited in the Escrow Account through the exercise of less than a fiduciary standard of care, Franchisor shall reimburse each and every franchisee to the extent of such deficiency if such amounts deposited are required to be returned to such franchisee under paragraph 6(a) through (c) hereof.

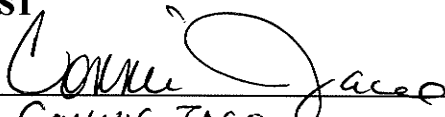
12. Franchisor shall give each franchisee a copy of this Agreement prior to collecting any moneys from such franchisee.

13. BANK's duties as escrowee shall terminate upon final distribution of all moneys received under this Agreement.

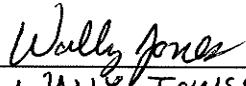
14. The terms and conditions of that certain Master Escrow Agreement dated \_\_\_\_\_, 2013, by and between US BANK NATIONAL ASSOCIATION, a national banking association, as Escrow Agent hereunder, are incorporated herein by reference. In the event of any conflict between the provisions of the said Master Escrow Agreement and of this Agreement, this Agreement shall prevail.

**IN WITNESS WHEREOF**, this Agreement has been duly executed, the parties intending to be legally bound hereby.

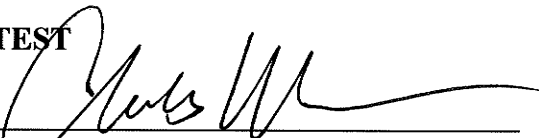
**ATTEST**

By:   
Name: CONNIE JACO  
Its: AVP

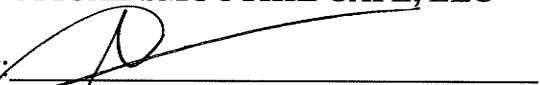
**"BANK"**  
**US BANK NATIONAL ASSOCIATION**

By:   
Name: WALLY JONES  
Its: VP

**ATTEST**

By:   
Name: Charles Watson  
Its: VP, Franchise Development

**"FRANCHISOR"**  
**TROPICAL SMOOTHIE CAFÉ, LLC**

By:   
Name: Mike Rotondo  
Its: CEO

**RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT  
FOR USE IN ILLINOIS**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2.     **Initial Franchise Fee.** Payment of the Initial Franchise Fee is placed in escrow with U.S. Bank until we have provided you with all of our pre-opening obligations and your TROPICAL SMOOTHIE® Store is open for business. The escrow requirement has been imposed by the Illinois Attorney General’s Office based on our financial condition.

3.     **Termination.** The following is added to Section 14 of the Agreement:

The conditions under which this franchise can be terminated and the parties’ rights on termination may be affected by Illinois law, 815 ILCS 705/1-44.

4.     **Release of Prior Claims.** Section 20 of the Agreement is deleted in its entirety.

5.     **Entire Agreement.** Section 21.J. of the Agreement is amended by adding the following:

Nothing contained in the Agreement waives any of the Franchisee’s right to rely on the disclosure made by the Franchisor in its Franchise Disclosure Document or any corresponding rights the Franchisee has under the Illinois Act.

6.     **Limitation of Claims.** The following is added to Section 18.G. of the Agreement:

No action can be maintained to enforce any liability created by the Illinois Franchise Disclosure Law (the “**Illinois Act**”) unless brought before the earlier of (i) the expiration of 3 years from the act or transaction constituting the violation upon which such action is based; (ii) the expiration of 1 year after you become aware of facts or circumstances reasonably indicating that you may have a claim for relief in respect to conduct governed by the Illinois Act; or (iii) 90 days after delivery to you of a written notice disclosing the violation.

7.     **Governing Law and Jurisdiction.** Sections 18.C. and 18.D. of the Agreement are amended by adding the following:

All matters coming under the Illinois Act will be governed by the Illinois Act. The parties irrevocably submit to the jurisdiction and venue of the federal and state courts in Illinois for all matters coming under the Illinois Act.

8.     **Waiver of Jury Trial.** Section 18.E. of the Agreement is deleted in its entirety.

9. **Enforcement.** Add Section L to Section 18 of the Agreement to read as follows:

Any condition, stipulation, or provision contained in the Agreement purporting to waive compliance with any provision of the Illinois Act or any other Illinois law is void.

10. Be advised that any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of the Illinois Franchise Disclosure Act or any other law of Illinois is void. No person may be prevented from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of the Illinois Franchise Disclosure Act, nor shall arbitration of any claim pursuant to the provisions of Title 9 of the United States Code be prevented.

Intending to be bound, the parties sign and deliver this Rider in 2 counterparts effective on the Agreement Date, regardless of the actual date of signature.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF MARYLAND**

**THIS ADDENDUM** (the “**Addendum**”) amends the Franchise Disclosure Document of **TROPICAL SMOOTHIE CAFÉ, LLC** for its Tropical Smoothie Café® Franchise.

The following is added to Item 5 of the Franchise Disclosure Document:

The State of Maryland requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with Eagle Bancorp, Inc. See a copy of the escrow agreement attached to this Addendum as Exhibit “A.” The contact information for this Escrow Account is: Thomas D. Murphy, President, Retail Banking, Eagle Bancorp, Inc., 7815 Woodmont Avenue, Bethesda, Maryland 20814 and his telephone number is 240.497.2042.

Sections (c) and (m) of Item 17 are amended by adding the following language:

Pursuant to COMAR 02.02.08.16L, the general release required as a condition of renewal, sale, and/or assignment or transfer will not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

Our Standard form of Release is attached to this Addendum as Exhibit “B.”

Item 17 is amended by adding the following language after the table:

You may sue in Maryland for claims arising under the Maryland Franchise Registration and Disclosure Law. Any claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise.

The provision in the franchise agreement which provides for termination upon bankruptcy of the franchisee may not be enforceable under Federal Bankruptcy Law (11 U.S.C. Section 1010 et seq.)

**EXHIBIT A TO  
MARYLAND ADDENDUM  
EAGLE BANCORP ESCROW AGREEMENT  
WITH TROPICAL SMOOTHIE FRANCHISE CAFÉ, LLC**

## ESCROW AGREEMENT

This Escrow Agreement, made this 15<sup>th</sup> day of March, 2013, by Tropical Smoothie Café, LLC, a limited liability company organized under the laws of the State of Georgia, (hereinafter referred to as "Franchisor") and Eagle Bancorp, Inc., incorporated under the general corporation laws of the State of Maryland (hereinafter referred to as "Bank").

WHEREAS, the Franchisor desires to offer and sell franchises in the State of Maryland, and

WHEREAS, it is the discretion of the Securities Commissioner of the State of Maryland as Administrator of the Maryland Franchise Registration and Disclosure Law, to require an escrow of franchise fees, and

WHEREAS, in order to conform to the procedures for arranging an escrow account, the Franchisor desires to enter into an Escrow Agreement with the Bank, pursuant to which franchise fees are to be held in escrow for the purpose of complying with the Maryland Franchise Registration and Disclosure Law.

NOW, THEREFORE, with the foregoing recitals hereinafter incorporated by reference and made a part hereof, it is agreed as follows:

1. The Franchisor shall, until release of escrowed funds as hereinafter provided, deposit with the Bank, all monies obtained from each franchisee who either is a resident of the State of Maryland or contracts to operate the franchised business within the State of Maryland.

2. All funds delivered by the Franchisor to the Bank will be placed in a separate account maintained by the Bank in the State of Maryland designated substantially as follows:

Bank:	EagleBank
Bank Routing No.	055003298
Account Name:	EagleBank as Escrow Agent for Tropical Smoothie Café, LLC MD
Account Number:	0200153633
Address of Branch of Bank Maintaining Account:	7815 Woodmont Avenue, Bethesda, MD 20814

3. The Bank shall pay out funds from the Escrow Account only upon the occurrence of one of the following conditions:

a. A letter from the President or Secretary of the Franchisor directing the Bank to pay out such funds to \_\_\_\_\_

accompanied with a written notice from the Securities Commissioner stating that he or she takes no exception to the release of such funds to \_\_\_\_\_.

b. Upon written notice from the Securities Commissioner, the Bank shall return the deposited franchise fee to a specific franchisee.

c. The Bank shall pay funds into court or disburse or deliver them in accordance with any order of any court of competent jurisdiction.

4. The Franchisor will supply the Bank with the name and address of each franchisee, together with the amount of the deposit that represents each franchisee's franchise fee, and the Bank will retain records containing the same information.

5. Any funds deposited in the Escrow Account pursuant to this Escrow Agreement shall not be invested by the Bank, but shall remain in the Escrow Account without interest accruing until such funds are to be disbursed as provided in Paragraph 3 hereof.

6. The Securities Commissioner may inspect the records of the Bank, insofar as they relate to this Escrow Agreement, for the purpose of determining compliance with and conformance to the provisions of this Escrow Agreement. At the Securities Commissioner's discretion, statements indicating status of escrow shall be furnished by the Bank to the Securities Commissioner.

7. The Franchisor shall pay to the Bank reasonable compensation for expenses incurred and services rendered by the Bank under this Escrow Agreement.

8. The Bank shall have no duty to determine the propriety of any deposit or disbursement of funds. Additionally, the Bank shall have no duty to the Franchisor, the Securities Commissioner, any franchisee or any other party except as expressly stated in this Escrow Agreement. The Franchisor does hereby indemnify the Bank from any and all costs, claims and expenses, including attorneys' fees, which may be incurred by or which may accrue to the Bank relating to the opening or maintenance of any account established under this Escrow Agreement.

9. All proceeds deposited pursuant to this Escrow Agreement shall not be subject to any liens or charges by the Bank, or judgments or creditor's claims against the Franchisor.

10. The Franchisor shall give each franchisee a copy of this Escrow Agreement prior to collecting any funds from that franchisee.

11. The Bank's duties under this Escrow Agreement shall terminate upon final distribution of all monies deposited as provided hereunder.

12. This Escrow Agreement is governed by the Laws of the State of Maryland




IN WITNESS WHEREOF, each party has caused this Escrow Agreement to be signed and executed, and its corporate seal hereto affixed, in its name by its proper and fully authorized officer or officers on the day and year first above written.

TROPICAL SMOOTHIE CAFÉ, LLC  
[FRANCHISOR]

WITNESS:

  
\_\_\_\_\_

By:

  
\_\_\_\_\_  
Mike Rotondo, Chief Executive Officer

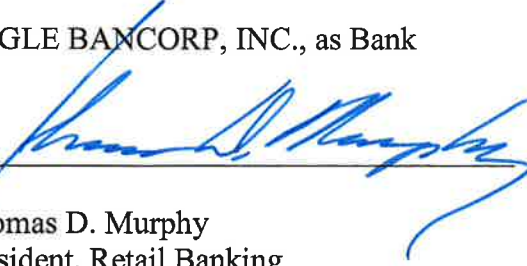
1117 Perimeter Center West  
Atlanta, GA 30338  
1-770-821-1900 (Business Phone)

EAGLE BANCORP, INC., as Bank

ATTEST:

  
\_\_\_\_\_

By:

  
\_\_\_\_\_  
Thomas D. Murphy  
President, Retail Banking  
7815 Woodmont Ave, Bethesda, MD 20814  
240-497-2042

**EXHIBIT B TO  
MARYLAND ADDENDUM  
FORM OF RELEASE**

The following is our current general release form that we expect to include in a release that a franchisee, developer, and/or transferor may sign as part of a renewal or an approved transfer. We may, in our sole discretion, periodically modify the release.

**THIS RELEASE** is given by \_\_\_\_\_ and their predecessors, agents, affiliates, legal representatives, agents, successors, assigns, heirs, beneficiaries, executors and administrators (collectively, the "**Franchisee**"), to **TROPICAL SMOOTHIE CAFE, LLC** and all of its predecessors, affiliates, owners, officers, employees, legal representatives and agents, directors, successors and assigns, and their heirs, beneficiaries, executors and administrators (collectively, the "**Franchisor**").

Effective on the date of this Release, the Franchisee forever releases and discharges the Franchisor from any and all claims, causes of action, suits, debts, agreements, promises, demands, liabilities, contractual rights and/or obligations, of whatever nature or kind, in law or in equity, which the Franchisee now has or ever had against the Franchisor, including without limitation, anything arising out of that certain Franchise Agreement dated \_\_\_\_\_ (the "**Franchise Agreement**"), the franchise relationship between the Franchisee and the Franchisor, and any other relationships between the Franchisee and the Franchisor; except the Franchisor's obligations under the \_\_\_\_\_ Agreement dated effective \_\_\_\_\_. This Release is effective for: (a) any and all claims and obligations, including those of which the Franchisee is not now aware; and (b) all claims the Franchisee has from anything which has happened up to now.

The Franchisee is bound by this Release. The Franchisee freely and voluntarily gives this Release to the Franchisor for good and valuable consideration and the Franchisee acknowledges its receipt and sufficiency.

The Franchisee represents and warrants to the Franchisor that the Franchisee has not assigned or transferred to any other person any claim or right the Franchisee had or now has relating to or against the Franchisor.

In this Release, each pronoun includes the singular and plural as the context may require.

This Release is governed by Georgia law.

This Release is effective \_\_\_\_\_, notwithstanding the actual date of signatures.

**IN WITNESS WHEREOF**, the undersigned execute this Release:

\_\_\_\_\_  
Date: \_\_\_\_\_

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Signature of Notary  
My Commission Expires: \_\_\_\_\_

**MARYLAND RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1. **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2. **Initial Franchise Fee.** The State of Maryland requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with Eagle Bancorp, Inc. for this purpose.

3. **General Release.** Pursuant to COMAR 02.02.08.16L, the general release otherwise required by the Agreement as a condition of renewal, sale and/or assignment/transfer does not apply to any liability under the Maryland Franchise Registration and Disclosure Law.

4. **Release of Prior Claims.** The following sentence is added at the end of Section 20:

Provided, however, that nothing in this Section applies to any liability under the Maryland Franchise Registration and Disclosure Law.

5. **Limitation of Claims.** Any limitations of claims provisions will not act to reduce the 3 year statute of limitations afforded you for bringing a claim arising under Maryland Franchise Registration and Disclosure Law. All claims arising under the Maryland Franchise Registration and Disclosure Law must be brought within 3 years after the grant of the franchise to you.

6. **Jurisdiction and Venue.** You may bring a lawsuit against us in Maryland for any claims arising under the Maryland Franchise Registration and Disclosure Law.

7. **No Waiver.** Nothing in this Agreement is intended to nor will it act as a release, estoppel or waiver of any liability incurred under the Maryland Franchise Registration and Disclosure Law, including, but not limited to, any acknowledgments or representations made by you which disclaim the occurrence and/or acknowledge the non-occurrence of acts that would constitute a violation of the Maryland Franchise Registration and Disclosure Law.

8. **Effective Date.** This Rider is effective on the Agreement Date regardless of the actual date of signature.

Intending to be bound, the parties sign and deliver this Rider to each other as shown below:

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

04/15/2014

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**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF MINNESOTA**

Additional Disclosures:

1. MINNESOTA LAW PROVIDES YOU WITH CERTAIN TERMINATION AND NON-RENEWAL RIGHTS. MINN. STAT. §80C.14 SUBD. 3, 4 AND 5 REQUIRE, EXCEPT IN CERTAIN CASE, THAT YOU BE GIVEN 90 DAYS' NOTICE OF TERMINATION (WITH 60 DAYS TO CURE) AND 180 DAYS' NOTICE FOR NONRENEWAL OF THE FRANCHISE AGREEMENT.
2. MINN. STAT. §80C.21 AND MINN. RULE 2860.4400J PROHIBIT US FROM REQUIRING LITIGATION TO BE CONDUCTED OUTSIDE MINNESOTA. IN ADDITION, NOTHING IN THE DISCLOSURE DOCUMENT OR AGREEMENT CAN ABROGATE OR REDUCE ANY OF YOUR RIGHTS AS PROVIDED FOR IN MINNESOTA STATUTES, CHAPTER 80C, OR YOUR RIGHTS TO ANY PROCEDURE, FORUM, OR REMEDIES PROVIDED FOR BY THE LAWS OF THE JURISDICTION.
3. Items 5 and 7 are amended by adding the following:

The State of Minnesota requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with U.S. Bank, National Association. See a copy of the escrow agreement attached to this Addendum as Exhibit "A."

4. Item 13 is amended to state that we will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.
5. Item 17 is amended by adding the following:

You and your owners must execute general releases, in form and substance satisfactory to us, of any and all claims against us, and our affiliates, officers, directors, employees, agents, successors and assigns, except for matters coming under the Minnesota Franchise law.
6. Item 17, summary column for (f) is amended to add the following:

With respect to franchises governed by Minnesota law, we will comply with Minn. Stat. Sec. 80C.14, subs. 3, 4 and 5 which require, except in certain specified cases, that you be given 90 days' notice of termination (with 60 days to cure) and 180 days' notice for nonrenewal of the Franchise Agreement and that consent to transfer of the franchise will not be unreasonably withheld.
7. Item 17, summary column for (m) is amended to add the following:

Any release signed as a condition of transfer will not apply to any claims you may have under the Minnesota Franchise Act.

8. Item 17, summary columns for (v) and (w) are amended to add the following:

Minn. Stat. Sec. 80C.21 and Minn. Rule 2860.4400J prohibit us from requiring litigation to be conducted outside Minnesota. In addition, nothing in this Disclosure Document or agreement can abrogate or reduce any of your rights as provided for in Minnesota Statutes, Chapter 80C, or your rights to any procedure, forum, or remedies provided for by the laws of the jurisdiction.

**EXHIBIT A TO ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF MINNESOTA**

IMPOUNDMENT AGREEMENT

THIS IMPOUNDMENT AGREEMENT made and entered into this 10<sup>th</sup> day of February, 2013, by and between TROPICAL SMOOTHIE CAFÉ, LLC (hereinafter called the "Franchisor"), and US BANK NATIONAL ASSOCIATION, a national banking association located at St. Paul, Minnesota 55107 (hereinafter called the "Impoundment Agent").

WITNESS THAT:

WHEREAS, Franchisor has applied to the Commissioner of Commerce for the State of Minnesota (hereinafter called the Commissioner) for registration of TROPICAL SMOOTHIE CAFÉ franchise for offer to the residents of the State of Minnesota; and

WHEREAS, as a condition of registration of such offering under the Franchise Act of the State of Minnesota the Commissioner requires that the Franchisor provide for the impoundment of the proceeds to be received from such offering of franchises; and

WHEREAS, the Franchisor and the Impoundment Agent desire to enter into an agreement with respect to the said impoundment of proceeds;

NOW THEREFORE, in consideration of the promises and agreements set forth herein, the parties hereto agree as follows:

1. **PROCEEDS TO BE PLACED IN ESCROW:** All proceeds received from the sale of the franchises subject to this Impoundment Agreement on or after the date hereof shall be paid to the Impoundment Agent within two business days from the date of sale and deposited by Impoundment Agent in an escrow account. During the term of this Impoundment Agreement, the Franchisor shall cause all checks received by it in payment for such franchises to be either payable to the Impoundment Agent or endorsed forthwith to the Impoundment Agent.

2. **IDENTITY OF FRANCHISEES:** The Franchisor shall cause to be delivered to the Impoundment Agent two signed counterparts of each Franchise Purchase Receipt which shall contain, among other things, the name and address of each franchisee thereto, the date and price of franchise, and the amount paid, or, in the alternative, shall furnish to the Impoundment Agent with each deposit of funds in the impoundment a list of the persons who have paid the money, showing the name, address, date and price of franchise and amount of money paid. All proceeds so deposited shall remain the property of the franchisee and shall not be subject to any liens or charges by the Impoundment Agent, or judgments or creditors' claims against the Franchisor until released to the Franchisor as hereinafter provided.

3. **DISBURSEMENT OF FUNDS:** Upon the receipt by Impoundment Agent of written authorization from the Commissioner, then said Impoundment Agent, on demand of the Franchisor, shall pay over to the Franchisor all impoundment funds as so authorized. If the conditions of the impoundment have not been satisfied, upon written authorization of the Commissioner} the Impoundment Agent shall within a reasonable time, but not more than thirty (30) days after the last day of the term of impoundment, refund to each franchisee at the address appearing on the Franchise Purchase Agreement or list of franchisees, or at such other address as shall be furnished the Impoundment Agent by the franchisee in writing, all sums paid by the franchisee pursuant to the franchise, and shall then notify the Commissioner in writing of such refund.

## Minnesota

4. **TERM OF IMPOUNDMENT:** This impoundment shall terminate upon written authorization of the Commissioner. Upon termination hereof the Impoundment Agent shall disburse the funds in the impoundment account in the manner and upon the terms directed in paragraph three hereof. The Franchisor may abandon the sale of franchises at any time. Upon the receipt of a copy of the Resolution authorizing said abandonment, duly attested to by the Secretary of the Franchisor, accompanied by the written consent of the Commissioner, Impoundment Agent shall be authorized to refund the monies received from the franchisees.

5. **TERMINATION BY REVOCATION OR SUSPENSION:** If at any time prior to the termination under paragraph four of this impoundment, said Impoundment Agent is advised by the Commissioner that the registration of the franchises has been revoked, said Impoundment Agent shall thereupon return all funds to the respective franchisees.

6. **CONSENT OF COMMISSIONER TO RELEASE FUNDS:** No funds shall be released to the Franchisor hereunder except under the express written authorization of the Commissioner. If the Commissioner finds that any conditions of this Agreement have not been satisfied, or that any provisions of the Minnesota Franchise Act or regulations have not been complied with, then the Commissioner may withhold such authorization for release of funds by the Impoundment Agent to the Franchisor and may direct the Impoundment Agent to return the funds to the franchisees. In making a determination hereunder, the Commissioner may require from the Franchisor a statement of all expenses and/or all amounts paid into the escrow, certified by an independent certified public accountant and any further financial or other information as the Commissioner may deem appropriate or helpful in making such determination.

7. **INSPECTION OF RECORDS:** The Commissioner may, at any time, inspect the records of the Impoundment Agent, insofar as they relate to this Impoundment Agreement, for the purposes of determining compliance with and conformance to the provisions of this Impoundment Agreement.

8. **DUTY AND LIABILITY OF THE IMPOUNDMENT AGENT:** The sole duty of the Impoundment Agent, other than as herein specified, shall be to receive said funds and hold them subject to release, in accordance with the written instructions of the Commissioner, and the Impoundment Agent shall be under no duty to determine whether the Franchisor is complying with requirements of the Commissioner in tendering to the Impoundment Agent said proceeds of the sale of said franchises.

The Impoundment Agent may conclusively rely upon and shall be protected in acting upon any statement, certificate, notice, request, *consent* order or other document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Impoundment Agent shall have no duty or liability to verify such statement, certificate, notice, request, consent, order or other document and its sole responsibility shall be to act only as expressly set forth in this Impoundment Agreement. The Impoundment Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Impoundment Agreement unless first indemnified to its satisfaction. The Impoundment Agent may consult counsel in respect of any question arising under this Impoundment Agreement and the Impoundment Agent shall not be liable for any action taken or omitted in good faith upon advice of such counsel. All funds held by Impoundment Agent pursuant to this Impoundment Agreement shall constitute trust property for the purposes for which they are held and the Impoundment Agent shall not be liable for any interest thereon.

9. **IMPOUNDMENT AGENT'S FEE:** The Impoundment Agent shall be entitled to reasonable compensation for its services. The fee agreed upon for services rendered hereunder is intended



**Minnesota**

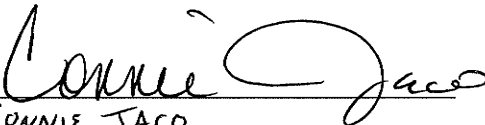
as full compensation for the Impoundment Agents services as contemplated by this Agreement provided, however, in the event that the conditions of this Impoundment Agreement are not fulfilled or the Impoundment Agent renders any material service not contemplated in this Agreement, or there is any assignment of interest in the subject matter of this Impoundment Agreement, or any material modification hereof or if any material controversy arises hereunder, or the Impoundment Agent is made a party to or justifiably intervenes in any litigation pertaining to this Impoundment Agreement, or the subject matter hereof, the Impoundment Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation, or event, and the same may be recoverable from the Franchisor only.

**10. BINDING AGREEMENT AND SUBSTITUTION OF IMPOUNDMENT AGENT:**

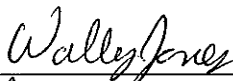
The terms and conditions of this Agreement shall be binding on the heirs, executors and assigns, creditors or transferees, or successors in interest, whether by operation of law or otherwise, of the parties hereto. If, for any reason, the Impoundment Agent named herein should be unable or unwilling to continue as such Impoundment Agent, then the other parties to this Agreement may substitute, with the consent of the Commissioner, another Impoundment Agent. Any apportionment of the fees provided for in paragraph nine will be subject to agreements of the other parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Impoundment Agreement on the date first above written.

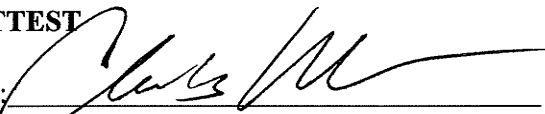
**ATTEST**

By:   
Name: CONNIE JACO  
Its: AVP


**"IMPOUNDMENT AGENT"  
US BANK NATIONAL ASSOCIATION**

By:   
Name: WALLY JONES  
Its: VP

**ATTEST**

By:   
Name: Charles Watson  
Its: VP, Franchise Development

**"FRANCHISOR"  
TROPICAL SMOOTHIE CAFÉ, LLC**

By:   
Name: Mike Rotondo  
Its: CEO

Accepted for filing:

\_\_\_\_\_  
Steven E. Carlson  
Deputy Commissioner  
Minnesota Department of Commerce

**MINNESOTA RIDER TO THE  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Background.** You and we are parties to that certain Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Franchise Agreement**”) that has been signed concurrently with the signature of this Rider. This Rider is annexed to and forms part of the Franchise Agreement. This Rider is being signed because the \_\_\_\_\_ Business to be operated by you pursuant to the Franchise Agreement will be located in the State of Minnesota and/or because you are a resident of the State of Minnesota.

2.     **Initial Franchise Fee.** Payment of the Initial Franchise Fee is placed in escrow with U.S. Bank until we have provided you with all of our pre-opening obligations and your TROPICAL SMOOTHIE® Store is open for business.

3.     **Renewal Term.** Paragraph 2.B.5. is amended to read as follows:

You and each owner of your Franchised Business executes a general release (on our then-standard form) of any and all claims against us, our affiliates, and our respective owners, officers, directors, agents and employees, except for matters coming under the Minnesota Franchise law.

4.     **Trademarks.** We will protect your right to use the trademarks, service marks, trade names, logotypes or other commercial symbols or indemnify you from any loss, costs or expenses arising out of any claim, suit or demand regarding the use of the name.

5.     **Default and Termination.** The following is added at the beginning of Section 14:

Minnesota Law provides you with certain termination and non-renewal rights. Minn. Stat. §80C.14 Subd. 3, 4 and 5 require, except in certain case, that you be given 90 days’ notice of termination (with 60 days to cure) and 180 days’ notice for nonrenewal of the Franchise Agreement.

6.     **Governing Law.** The following sentence is added at the end of Section 18.C.

MINN. STAT. §80C.21 AND MINN. RULE 2860.4400J PROHIBIT US FROM REQUIRING LITIGATION TO BE CONDUCTED OUTSIDE MINNESOTA. IN ADDITION, NOTHING IN THE DISCLOSURE DOCUMENT OR AGREEMENT CAN ABROGATE OR REDUCE ANY OF YOUR RIGHTS AS PROVIDED FOR IN MINNESOTA STATUTES, CHAPTER 80C, OR YOUR RIGHTS TO ANY PROCEDURE, FORUM, OR REMEDIES PROVIDED FOR BY THE LAWS OF THE JURISDICTION.

7.     **Injunctive Relief.** Nothing in the Franchise Agreement is construed to mean that you are consenting to our obtaining injunctive relief. We may, however, seek injunctive relief. The court will determine if a bond is required.

8.     **Limitation of Claims.** Section 18.F. is deleted in its entirety.

9. **Waiver of Jury Trial.** Section 18.E. is deleted in its entirety.

Intending to be bound, the parties sign and deliver this Rider to each other as shown below:

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF NEW YORK**

1. Item 3 is amended by added the following at the beginning of the Item.

Other than those actions listed below, neither the franchisor, its predecessor, a person identified in item 2, or an affiliate offering franchises under the franchisor's principal trademark:

A. Has an administrative, criminal or civil action pending against that person alleging: a felony, a violation of a franchise, antitrust or securities law, fraud, embezzlement, fraudulent conversion, misappropriation of property, unfair or deceptive practices or comparable civil or misdemeanor allegations or pending actions, other than routine litigation incidental to the business, which are significant in the context of the number of franchisees and the size, nature or financial condition of the franchise system or its business operations.

B Has been convicted of a felony or pleaded nolo contendere to a felony charge or, within the ten-year period immediately preceding the application for registration, has been convicted of or pleaded nolo contendere to a misdemeanor charge or has been the subject of a civil action alleging: violation of a franchise, antifraud or securities law, fraud, embezzlement, fraudulent conversion or misappropriation of property, or unfair or deceptive practices or comparable allegations.

C. Is subject to a currently effective injunctive or restrictive order or decree relating to the franchise, or under a Federal, State or Canadian franchise, securities, antitrust, trade regulation or trade practice law, resulting from a concluded or pending action or proceeding brought by a public agency, or is subject to any currently effective order of any national securities association or national securities exchange, as defined in the Securities and Exchange Act of 1934, suspending or expelling such person from membership in such association or exchange; or is subject to a currently effective injunctive or restrictive order relating to any other business activity as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license as a real estate broker or sales agent.

2. Item 4 is amended in entirety to state the following:

Neither the franchisor, its affiliate, its predecessor, officers, or general partner during the 10-year period immediately before the date of the offering circular:

A. Filed as debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code;

B. Obtained a discharge of its debts under the bankruptcy code; or

C. Was a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition to start an action under the U.S. Bankruptcy Code or that obtained a discharge of its debts under the U.S. Bankruptcy Code during or within 1 year after the officer or general partner of the franchisor held this position in the company or partnership.

3. Item 17(d) is amended to add the following sentence: The franchisee may terminate the agreement on any grounds available by law.

4. Item 17 (j) is amended to add the following sentence: "However, no assignment will be made except to an assignee who, in good faith and judgment of the franchisor, is willing and financially able to assume the franchisor's obligations under the franchise agreement."

5. Item 17(w) is amended to add the following sentence: The forgoing choice of law should not be considered a waiver of any right conferred upon the franchisor or upon the franchisee by Article 33 of the General Business law of the state of New York.

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF NORTH DAKOTA**

1. The following is added to Item 5 of the Franchise Disclosure Document:

The State of North Dakota requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with U.S. Bank, National Association. See a copy of the escrow agreement attached to this Addendum as Exhibit "A."

2. The Summary column of Item 17 paragraph (c) of this Disclosure Document is modified to read as follows:

"Give us at least 90 days notice of your intention to renew, sign our current form of Franchise Agreement and ancillary agreements, sign a release (except for matters coming under the North Dakota Franchise Investment Law (the "**ND Law**")."

3. The Summary column of Item 17 paragraph (r) of this Disclosure Document is modified by adding the following at the end of the sentence:

"Covenants not to compete such as those mentioned above are generally considered unenforceable in the State of North Dakota."

4. The Summary column of Item 17 paragraph (u) of this Disclosure Document is amended by adding the following at the end of the paragraph:

"except that matters coming under the ND Law will be submitted to arbitration to be held in a mutually agreeable location."

5. The Summary column of Item 17 paragraph (v) of this Disclosure Document is amended to read as follows:

Except for matters coming under the ND Law, litigation must be in Fulton County, Georgia.

6. The Summary column of Item 17 paragraph (w) of this Disclosure Document is amended to read as follows:

The law of North Dakota governs.

7. Section 51-19-09 of the North Dakota Franchise Investment Law provides that any requirement that you consent to liquidated damages is unfair, unjust and inequitable.

**EXHIBIT A TO ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF NORTH DAKOTA**

**ESCROW AGREEMENT**

Agreement, made this 26<sup>th</sup> day of January, 2013, by **TROPICAL SMOOTHIE CAFÉ, LLC**, a limited liability company organized under the laws of the State of Georgia, and **US BANK NATIONAL ASSOCIATION**, Fargo, North Dakota, hereinafter referred to as "**BANK**", a banking association organized under the laws of the State of North Dakota as Escrowee for the franchisees of **TROPICAL SMOOTHIE CAFÉ, LLC**.

**WHEREAS, TROPICAL SMOOTHIE CAFÉ, LLC** is desirous of establishing franchises in the State of North Dakota; and

**WHEREAS**, it is in the discretion of the Securities Commissioner, as administrator of the North Dakota Franchise Investment Law, to require an escrow of franchise fees; and

**WHEREAS**, in order to conform to the procedures for arranging an escrow account, **TROPICAL SMOOTHIE CAFÉ, LLC** desires to enter into an escrow agreement with **BANK**, pursuant to which franchise fees are to be held in escrow for the purpose of complying with the North Dakota Franchise Investment Law.

**NOW, THEREFORE**, with the foregoing recitals hereinafter incorporated by reference and made a part thereof, it is agreed as follows:

1. **TROPICAL SMOOTHIE CAFÉ, LLC** shall deposit with **BANK** payments received from franchisees that are required to be escrowed under the order to the Commissioner, but **BANK** shall not be responsible for insuring that all monies received from each or any one franchisee are deposited with **BANK**.
2. **TROPICAL SMOOTHIE CAFÉ, LLC** will supply **BANK** with the name and address of each franchisee, together with the amount of the deposit, which represents moneys paid by each franchisee, and **BANK** will maintain records containing the same information.
3. All monies received by **BANK** from **TROPICAL SMOOTHIE CAFÉ, LLC** shall be held by **BANK** as escrowee for the exclusive purpose herein described and will be placed in a single segregated account substantially as follows:

**US BANK NATIONAL ASSOCIATION, AS ESCROWEE FOR FRANCHISEES OF TROPICAL SMOOTHIE CAFÉ, LLC** (hereinafter referred to as "**Escrow Account**").

4. **BANK** shall accept such funds as **TROPICAL SMOOTHIE CAFÉ, LLC**: shall deliver to **BANK**, as escrowee, and **BANK** shall acknowledge the receipt of funds from **TROPICAL SMOOTHIE CAFÉ, LLC**; however **BANK** shall be responsible only for funds actually deposited with it and shall not be responsible for the accuracy of the information provided to it by **TROPICAL SMOOTHIE CAFÉ, LLC**
5. Any funds deposited hereunder in the Escrow Account shall be invested and kept invested by **BANK**, at the option of **TROPICAL SMOOTHIE CAFÉ, LLC**. in obligations of the United States, money market mutual funds with assets in excess of one billion dollars, or savings



## North Dakota

accounts or certificates of deposits of BANK, until they are to be disbursed as provided in paragraph 6 hereof. All interest received and any increment thereon shall be added to the funds so deposited in the Escrow Account and shall be distributed as provided in paragraph 6.

6. BANK shall pay out funds, plus interest, if any, from the Escrow Account upon the occurrence of one of the following conditions:

(a) Upon receipt of a letter from an officer of **TROPICAL SMOOTHIE CAFÉ, LLC** directing BANK to pay out such funds to **TROPICAL SMOOTHIE CAFÉ, LLC**, accompanied by a written notice from the Commissioner stating that he takes no exception (hereinafter referred to as "No Exception Notice") to the release, BANK shall pay apart of all the moneys held in escrow for the benefit of a specified franchise, plus interest, if any, to **TROPICAL SMOOTHIE CAFÉ, LLC**

(b) Upon written notice from the Commissioner BANK shall return part of all of the deposited franchise fee and other funds, plus interest, if any, to a specified franchisee.

(c) BANK shall pay funds into court or disperse or deliver them in accordance with any final order of any court of competent jurisdiction.

BANK shall not be personally liable for any act taken or omitted hereunder if taken or omitted by it in good faith and in the exercise of its own best judgment. BANK shall also be fully protected in relying upon any written notice, demand, certificate or document, which it in good faith believes to be genuine.

7. BANK is authorized, in its sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions by the Commissioner as are hereinafter provided or any orders or process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case of any court order affecting such property or any part thereof, then and in any of such events BANK is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; if it complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

8. Written consent of BANK to act in the capacity of escrowee shall be manifested upon the duly authorized execution of this Agreement. The Commissioner may, at any time, inspect the records of BANK, insofar as they relate to this Escrow Agreement. At the Commissioner's discretion, statements indicating status of escrow shall be furnished by BANK to the Commissioner. An executed duplicate original of the Agreement shall be filed with the Securities Commissioner, State Capitol 5th Floor, 600 East Boulevard Avenue, Bismarck, North Dakota, 58505.

9. BANK shall be paid by **TROPICAL SMOOTHIE CAFÉ, LLC** for any expenses incurred by it and reasonable compensation for its services hereunder. Funds held by BANK pursuant to this Agreement shall not be subject to liens or charges by BANK.

**North Dakota**

10. If BANK believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection with this escrow, or in the event BANK retains counsel upon becoming involved in litigation on account of any deposit or of this Agreement, **TROPICAL SMOOTHIE CAFÉ, LLC** shall reimburse BANK for and indemnify and hold BANK harmless against any and all costs, attorneys' fees, charges, disbursements and expenses in connection with such consultation or litigation.

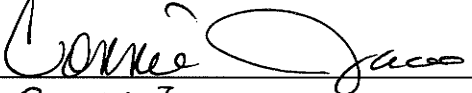
11. **TROPICAL SMOOTHIE CAFÉ, LLC** unconditionally guarantees that, in the event BANK misapplies, dissipates, converts or is otherwise responsible for a deficiency in the funds deposited in the Escrow Account, **TROPICAL SMOOTHIE CAFÉ, LLC** shall reimburse each and every franchisee to the extent of such deficiency if such amounts deposited are required to be returned to such franchisee under paragraph 6 hereof.

12. **TROPICAL SMOOTHIE CAFÉ, LLC** shall give each franchisee a copy of this agreement prior to collecting any monies from such franchisee.

13. BANK'S duties as escrowee shall terminate upon final distribution of all moneys received under this Agreement.

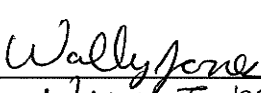
**IN WITNESS WHEREOF**, this Agreement has been duly executed, the parties intending to be legally bound hereby.

**ATTEST**

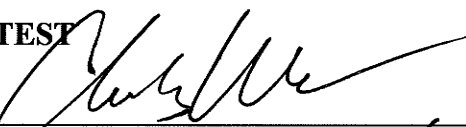
By:   
Name: CONNIE JACO  
Its: AVP

**"BANK"**

**US BANK NATIONAL ASSOCIATION**

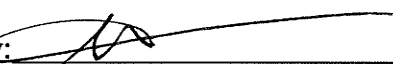
By:   
Name: WALLY JONES  
Its: VP

**ATTEST**

By:   
Name: Charles L. Watson  
Its: VP, Franchise Development

**"FRANCHISOR"**

**TROPICAL SMOOTHIE CAFÉ, LLC**

By:   
Name: MIKE ROTONDO  
Its: CEO

**NORTH DAKOTA RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2.     **Initial Franchise Fee.** Payment of the Initial Franchise Fee is placed in escrow with U.S. Bank until we have provided you with all of our pre-opening obligations and your TROPICAL SMOOTHIE® Store is open for business. The escrow requirement has been imposed by the North Dakota Securities Department based on our financial condition.

3.     **Terms and Conditions for Successor Franchise.** You are not required to sign a general release as to any matters coming under the North Dakota Franchise Investment Law (the “**ND Law**”).

4.     **Competitive Restrictions.** Covenants not to compete, such as those mentioned in this section, are generally unenforceable in the State of North Dakota.

5.     **Jurisdiction.** All matters coming under the ND Law may be brought in the courts of North Dakota.

6.     **Waiver of Punitive Damages.** Section 18.F. of the Franchise Agreement is deleted in its entirety.

7.     **Waiver of Jury Trial.** Section 18.E. of the Franchise Agreement is deleted in its entirety.

8.     **Limitation of Claims.** The statute of limitations under ND Law applies to all matters coming under ND Law.

9.     **Governing Law.** This Agreement will be governed by North Dakota law.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF RHODE ISLAND**

Item 17, summary columns for (v) and (w) are amended to add the following:

Any provision in the Franchise Agreement restricting jurisdiction or venue to a forum outside Rhode Island or requiring the application of the laws of a state other than Rhode Island is void as to a claim otherwise enforceable under the Rhode Island Franchise Investment Act.

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF SOUTH DAKOTA**

1. The summary statement of provision (q) of Item 17, is deleted in its entirety and the following substituted in its place:

The Franchise Agreement provides that you cannot compete anywhere for 2 years after termination or expiration. However, covenants not to compete upon termination or expiration of a Franchise Agreement are generally unenforceable in the State of South Dakota, except in certain instances as provided by law.

2. Any provision that provides that the parties' waive their right to claim punitive, exemplary, incidental, indirect, special or consequential damages may not be enforceable under South Dakota Law. If any of the provisions in this Disclosure Document or the Franchise Agreement are inconsistent with this paragraph, the terms of this paragraph will prevail with regard to any franchise sold in South Dakota.

**SOUTH DAKOTA RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1.     **Precedence And Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2.     **Termination.** The following is added to Section 14:

You will have 30 days written notice with an opportunity to cure prior to termination for the following: breach of the Franchise Agreement, failure to meet performance and quality standards and failure to make royalty payments.

3.     **Covenants Not to Complete.** Covenants not to compete on termination or expiration of a Franchise Agreement are generally unenforceable in the state of South Dakota, except in certain instances as provided by law. This statement is given for informational purposes only.

4.     **Jurisdiction and Venue.** Any provision which designates jurisdiction or venue or requires you to agree to jurisdiction or venue in a forum outside South Dakota is void with respect to any cause of action which is otherwise enforceable in South Dakota.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF VIRGINIA**

In recognition of the restrictions contained in Section 13.1-564 of the Virginia Retail Franchising Act (the “Act”), the Franchise Disclosure Document for TROPICAL SMOOTHIE CAFÉ, LLC for use in the Commonwealth of Virginia is amended as follows:

Pursuant to Section 13.1-564 of the Act, it is unlawful for a franchisor to cancel a franchise without reasonable cause. If any ground for default or termination stated in the franchise agreement does not constitute “reasonable cause,” as that term may be defined in the Act or the Laws of Virginia, that provision may not be enforceable.

The following is added to Item 5 of the FDD:

The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with U.S. Bank National Association for this purpose. See a copy of the escrow agreement attached to this Addendum as Exhibit “A.”

**EXHIBIT A TO ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF VIRGINIA**



**EXHIBIT 1**  
**State of Virginia Escrow Agreement**  
**ESCROW AGREEMENT**

This Escrow Agreement, made this 16<sup>th</sup> day of February, 2013, by **TROPICAL SMOOTHIE CAFÉ, LLC**, a limited liability company organized under the laws of the State of Georgia (hereinafter referred to as “**Franchisor**”) and **US BANK NATIONAL ASSOCIATION**, a national banking association (hereinafter referred to as “**Bank**”).

**WHEREAS**, the Franchisor desires to offer and sell franchises in the Commonwealth of Virginia, and

**WHEREAS**, it is the discretion of the Virginia State Corporation Commission (the “**Commission**”) as Administrator of the Virginia Retail Franchising Act, to require an escrow of franchise fees and other fees paid by the franchisee to the Franchisor, and

**WHEREAS**, in order to conform to the procedures for arranging an escrow account, the Franchisor desires to enter into an Escrow Agreement with the Bank, pursuant to which franchise fees and other fees are to be held in escrow for the purpose of complying with the Virginia Retail Franchising Act.

**NOW, THEREFORE**, with the foregoing recitals hereinafter incorporated by reference and made a part hereof, it is agreed as follows:

1. The Franchisor shall, until release of escrowed funds as hereinafter provided, deposit with the Bank, all monies obtained from each franchisee that contracts to operate the franchised business within the Commonwealth of Virginia.

2. All funds delivered by the Franchisor to the Bank will be placed in a separate account designated substantially as follows: \_\_\_\_\_

3. The Bank shall pay out funds, plus interest if any, from the Escrow Account only upon the occurrence of one of the following conditions:

(a) A letter from the President or Secretary of the Franchisor directing the Bank to pay out such funds to \_\_\_\_\_ accompanied with a written notice from \_\_\_\_\_

(b) The Bank shall pay funds into court or disburse or deliver them in accordance with any order of any court of competent jurisdiction.

4. The Franchisor will supply the Bank with the name and address of each franchisee, together with the amount of the deposit that represents each franchisee's franchise fees and other fees, and the Bank will retain records containing the same information.

5. Any funds deposited in the Escrow Account pursuant to this Escrow Agreement shall be invested and kept invested by the Bank in obligations of the United States, or a savings account or savings accounts of the Bank, or money market funds of or available to the Bank and to which the Bank or an affiliate is investment advisor or provides other services and receives reasonable compensation for such services, provided the money market funds are rated AAA by Standard and Poor's and AAA by Moody's Investor Services, or U.S. Treasury Bills, Notes or Bonds until such funds are to be disbursed as provided in Paragraph 3 hereof. All interest received and any increment shall be added to the funds so deposited in the Escrow Account and shall be distributed as provided in Paragraph 3 hereof.

6. The Commission may inspect the records of the Bank, insofar as they relate to this Escrow Agreement, for the purpose of determining compliance with and conformance to the provisions of this Escrow Agreement. At the Commission's discretion, statements indicating the status of escrow shall be furnished by the Bank to the Commission.

7. The Franchisor shall pay to the Bank reasonable compensation for expenses incurred and services rendered by the Bank under this Escrow Agreement.

8. The Bank shall have no duty to determine the propriety of any deposit or disbursement of funds. Additionally, the Bank shall have no duty to the Franchisor, the Commission, any franchisee or any other party except as expressly stated in this Escrow Agreement. The Franchisor does hereby indemnify the Bank from any and all costs, claims and expenses, including attorneys' fees, which may be incurred by or which may accrue to the Bank relating to the opening or maintenance of any account established under this Escrow Agreement.

9. All proceeds deposited pursuant to this Escrow Agreement shall not be subject to any liens or charges by the Bank, or judgments or creditor's claims against the Franchisor.

10. The Franchisor shall give each franchisee a copy of this Escrow Agreement prior to collecting any funds from that franchisee.

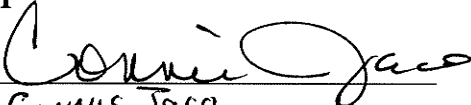
11. The Bank's duties under this Escrow Agreement shall terminate upon final distribution of all monies deposited as provided hereunder.

12. This Escrow Agreement is governed by the laws of the Commonwealth of Virginia.

13. The terms and conditions of that certain Master Escrow Agreement of even date herewith, by and between the Franchisor and U.S. Bank National Association, a national banking association, as Escrow Agent hereunder, are incorporated herein by reference. In the event of any conflict between the provisions of the said Master Escrow Agreement and of this Agreement, this Agreement shall prevail.

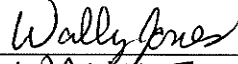
**IN WITNESS WHEREOF**, each party has caused this Escrow Agreement to be signed and executed, and its corporate seal hereto affixed, in its name by its proper and fully authorized officer or officers on the day and year first above written.

**ATTEST**

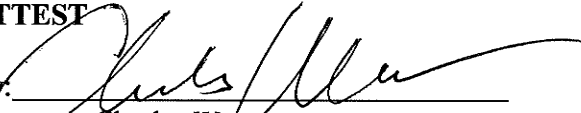
By:   
Name: CONNIE JACO  
Its: AVP

**"BANK"**

**US BANK NATIONAL ASSOCIATION**


By:   
Name: WALLY JONES  
Its: VP

**ATTEST**

By:   
Name: Charles Watson  
Its: VP, Franchise Development

**"FRANCHISOR"**

**TROPICAL SMOOTHIE CAFÉ, LLC**

By:   
Name: Mike Rotondo  
Its: CEO

**VIRGINIA RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1. **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2. **Initial Fees and Payments.** The Virginia State Corporation Commission’s Division of Securities and Retail Franchising requires us to hold payment of the initial franchise fee and other initial payments owed by franchisees to the franchisor in escrow until the franchisor has completed its pre-opening obligations under the franchise agreement. The Franchisor has established an Escrow Account with U.S. Bank National Association for this purpose.

Intending to be bound, you and we sign and deliver this Rider in 2 counterparts effective on the Agreement Date, regardless of the actual date of signature.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ADDENDUM  
TO FRANCHISE DISCLOSURE DOCUMENT FOR  
TROPICAL SMOOTHIE CAFÉ, LLC  
STATE OF WASHINGTON**

In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act (the "Act"), Chapter 19.100 RCW, prevails.

Section RCW 19.100.180 of the Act, may supersede the Franchise Agreement in your relationship with us, including the area of termination and renewal of your franchise. There may also be court decisions which may supersede the Franchise Agreement in your relationship with us including the area of termination and renewal of your franchise.

In any arbitration involving a franchise purchased in Washington, the arbitration site will either be in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

A release or waiver of rights signed by you will not include rights under the Act except when signed pursuant to a negotiated settlement after the agreement(s) are in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

Transfer fees may be collected to the extent that they reflect our reasonable estimated or actual costs in effectuating a transfer.

The State of Washington has imposed a deferral condition on us; therefore, no fees are payable by you to us until all of our pre-opening obligations are completed and your business has opened.

**WASHINGTON RIDER TO  
TROPICAL SMOOTHIE CAFÉ, LLC  
FRANCHISE AGREEMENT**

**THIS RIDER** (the “**Rider**”) is effective as of \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement Date**”), and amends the Franchise Agreement dated \_\_\_\_\_, 20\_\_\_\_ (the “**Agreement**”), between **TROPICAL SMOOTHIE CAFÉ, LLC** (“**we,**” “**us,**” “**our**” or the “**Franchisor**”) and \_\_\_\_\_ (“**you,**” “**your**” or the “**Franchisee**”).

1. **Precedence and Defined Terms.** This Rider is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Rider supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Rider have the meanings as defined in the Agreement.

2. **Initial Franchise Fee.** The payment of the initial franchise fee is deferred until all of our pre-opening obligations to you are completed and your business has opened.

3. **Washington Franchise Investment Protection Act.** In the event of a conflict of laws, the provisions of the Washington Franchise Investment Protection Act (the “**Act**”), Chapter 19.100 RCW, prevail

4. **Relationship.** Section RCW 19.100.180 of the Act may supersede this Agreement in your relationship with us, including the area of termination and renewal of your franchise. There may also be court decisions which may supersede this Agreement in your relationship with us including the area of termination and renewal of your franchise.

5. **Arbitration.** In any arbitration involving a franchise purchased in Washington, the arbitration site will either be in the State of Washington, or in a place mutually agreed upon at the time of the arbitration, or as determined by the arbitrator.

6. **Waiver of Rights.** A release or waiver of rights signed by you will not include rights under the Act except when signed pursuant to a negotiated settlement after the agreement(s) are in effect and where the parties are represented by independent counsel. Provisions such as those which unreasonably restrict or limit the statute of limitations period for claims under the Act, rights or remedies under the Act such as a right to a jury trial may not be enforceable.

7. **Transfer Fees.** Transfer fees may be collected to the extent that they reflect our reasonable estimated or actual costs in effectuating a transfer.

Intending to be bound, you and we sign and deliver this Rider in 2 counterparts effective on the Agreement Date, regardless of the actual date of signature.

**Us:**

**You:**

**TROPICAL SMOOTHIE CAFÉ, LLC**

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K TO THE DISCLOSURE DOCUMENT**

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**ROSTER OF CURRENT AND FORMER FRANCHISEES**

**AS OF DECEMBER 29, 2013**

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**ROSTER OF CURRENT FRANCHISEES AS OF DECEMBER 29, 2013**

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Lori & Rhett	Enzor	411 West Bypass	Andalusia	AL	36420	(334) 343-1947
Nazmi	Ozokur	200 West Glenn Avenue #100	Auburn	AL	36830	(334) 821-6555
John Michael	Tate	1350 Inverness Corners	Birmingham	AL	35242	(205) 834-8309
Karen	Purvis	1640 Ross Clark Circle	Dothan	AL	36301	(334) 792-7928
Karen	Purvis	3230 Ross Clark Circle	Dothan	AL	36301	(334) 673-5652
Gordon	Saunders	3049 John Hawkins Parkway, Suite 100	Hoover	AL	35226	(205) 444-0612
Nazmi	Ozokur	570 Schillinger Road South	Mobile	AL	36695	(251) 634-3454
Nazmi	Ozokur	9 Du Rhu Drive	Mobile	AL	36608	(251) 378-5648
Linda	Morgan	6542 Atlanta Hwy	Montgomery	AL	36117	(334) 213-2999
Linda	Morgan	2790 Legends Parkway	Prattville	AL	36066	(334) 285-4545
Gordon	Saunders	1800 McFarland Blvd., #306	Tuscaloosa	AL	35404	(205) 365-3177
Josh Inmon &	Bradley Newcomb	17328 Interstate 30	Benton	AR	72105	(501) 408-4616
Glen Johnson	Lucas Anderson	Unit Not Open	Cabot	AR		(501) 442-0089
Darrell & Rene	Hill	705 Club Lane #109	Conway	AR	72034	(501) 764-4800
Wesley & Melody	Couch	3878 Crossover Rd., Suite 10	Fayetteville	AR	72703	(479) 582-4444
Glen	Johnson	Unit Not Open	Fort Smith	AR		(501) 442-0089
Glen	Johnson	Unit Not Open	Hot Springs	AR		(501) 442-0089
Glen Johnson	Lucas Anderson	140 John Hardin Drive #29	Jacksonville	AR	72076	(501) 442-0089
Lindley	Smith	2007 E. Nettleton Ave.	Jonesboro	AR	72401	(870) 935-5421
Lindley	Smith	3410 E Johnson Ave, Suite Q	Jonesboro	AR	72401	(870) 932-8767
Glen Johnson &	Lucas Anderson	10221 N. Rodney Parham Rd.	Little Rock	AR	72227	(501) 224-2233
Josh Inmon &	Bradley Newcomb	11900 Kanis Rd. Suite D3	Little Rock	AR	72211	(501) 221-6773
Jigna	Patel	12911 Cantrell Rd. #19	Little Rock	AR	72223	(501) 224-1113
Jigna	Patel	410 S. University Avenue - Suite 140	Little Rock	AR	72205	(501) 280-9988
Josh Inmon &	Bradley Newcomb	524 S. Broadway	Little Rock	AR	77201	(501) 246-3145
Glen	Johnson	308 Bancario Road	Marion	AR	73264	(501) 422-0089
Jim Clark &	Rita White	12007 Maumelle Blvd.	North Little Rock	AR	72113	(501) 851-9555
Glen Johnson, Lucas Anderson,	Mark Watson and Todd Howe	5504 JFK Blvd	North Little Rock	AR	72116	(501) 753-8500
Wesley & Melody	Couch	3351 Pinnacle Hills Parkway	Rogers	AR	72758	(479) 273-2000
Glen	Johnson	Unit Not Open	Russellville	AR		(501) 442-0089
Glen	Johnson	310 E. BeeBe Capps Expressway	Searcy	AR	72143	(501) 442-0089
Wes & Melody	Crouch	7022 West Sunset Avenue, Suite 1	Springdale	AR	47936-9999	(479) 466-3034



<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Karleen	Gardner	2080 E. Williams Field Road, #103	Gilbert	AZ	85295	(480) 813-2926
Eric	Persson	13375 W Mcdowell Road Suite 110	Goodyear	AZ	85395	(623) 414-4064
Eric Persson	Scott Palmateer	2832 North Power Road Suite 102	Mesa	AZ	85215	(623) 302-0269
Bradford	Kelly	6614 E. Baseline Rd. Suite 110	Mesa	AZ	85206	(480) 325-7680
Eric Persson	Scott Palmateer	1640 E. Camelback Road, Suite 150	Phoenix	AZ	85016	(602) 274-2000
Eric Persson	Scott Palmateer	2815 W Peoria Avenue, Suite 116	Phoenix	AZ	85029	(623) 302-0269
Eric Persson	Scott Palmateer	Unit Not Open	Scottsdale	AZ		(702) 465-9451
Eric	Persson	Unit Not Open	Surprise	AZ		(702) 465-9451
Karleen	Gardner	8707 S. Priest Drive, Suite # 108	Tempe	AZ	85284	(480) 496-4200
Anthony	DiGennaro	Unit Not Open	Aliso Viejo	CA		(702) 449-6806
Kriss & Michelle	Shriver	6955 South York Street, Suite 120	Centennial	CO	80122	(702) 529-0852
Kriss & Michelle	Shriver	Unit Not Open	Centennial	CO		(303) 506-7529
Kriss & Michelle	Shriver	5332 DTC Blvd.	Greenwood Village	CO	80111	(303) 506-7529
Mark	Lukachko	Unit Not Open	Greenwich	CT		(917) 601-3340
Mark	Lukachko	Unit Not Open	Stamford	CT		(917) 601-3340
Arman	Marukyan	851 South SR, Suite 424 Unit 1000	Altamonte Springs	FL	32714	(407) 294-0098
Ralph	Judy	Unit Not Open	Altamonte Springs	FL	-	(727) 415-0402
Lieu Thi Nguyen, Melvin Cron	Phong Thai Ho	5072 Annunciation Circle, Ste. 101	Ave Maria	FL	34142	(239) 867-4492
Jack	Cleghorn	1490 N. Broadway Ave.	Bartow	FL	33830	(863) 519-9111
Cornel & Delrose	Marriot	1025 Gateway Blvd. #305	Boynton Beach	FL	33426	(561) 733-0059
Quint & Christina	Noordstar	11011 Causeway Blvd.	Brandon	FL	33511	(813) 817-6019
Quint & Christina	Noordstar	2330 W. Brandon Blvd.	Brandon	FL	33511	(813) 817-6019
Raymond	Howell	Unit Not Open	Cape Coral	FL		(804) 815-6718
Keith	Sabiel	2543 Countryside Blvd., Suite 4	Clearwater	FL	33764	(727) 799-2288
Keith	Sabiel	2695 Roosevelt Blvd.	Clearwater	FL	33761	(727) 536-1800
Keith	Sabiel	27001 US 19 North	Clearwater	FL	33761	(727) 400-6905
Rob & Lisa Morrison	Jim Thompson	4360 North Atlantic Avenue	Cocoa Beach	FL	32931	(321) 868-7891
Linda Morgan &	Russell Rissman	3802 S. Ferndon Blvd., Suite C	Crestview	FL	32536	(334) 312-0860
Sandra Ramirez &	Jim Welzer	5780 S University Dr #160	Davie	FL	33328	(954) 880-0840
Donnise	Desouza	Unit Not Open	Davie	FL	-	(786) 348-3011
Ahmed	Eldeeb	1500 Belleville Road, # 702	Daytona Beach	FL	32114	(201) 436-5545
Linda Morgan &	Russell Rissman	4307 Legendary Drive Space D 134	Destin	FL	32541	(850) 269-0494
Chad Brown &	Arnold Rush	66A Harbor Blvd.	Destin	FL	32541	(850) 424-3617
Michael, Christa and Striker	Burks	10011 Estero Town Commons Pl. Unit 104A	Estero	FL	33928	(239) 992-2008
Dave & Loretta	Whiting	5000 US Hwy 17, Suite 7	Fleming Island	FL	32003	(772) 336-3294

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Raymond & Joy	Howell	6611 Orion Drive, #101	Fort Myers	FL	33912	(757) 968-5289
Richard	Darder	9377 Six Mile Cypress Pkwy, Ste 100	Fort Myers	FL	33966	(941) 706-1464
Raymond	Howell	Unit Not Open	Fort Myers	FL		(804) 815-6718
Raymond	Howell	Unit Not Open	Fort Myers	FL		(804) 815-6718
Linda	Morgan	312 NW Racetrack Rd	Fort Walton Bch	FL	32547	(850) 864-4991
Pamela Clark &	Jeffery Pappas	1000 Mar Walt Drive	Fort Walton Beach	FL	32547	(850) 581-3848
Linda	Morgan	21 S. Eglin Parkway	Fort Walton Beach	FL	32548	(850) 796-2388
Neil & Carol Hooker &	Catherine Catanese	415 C Mary Esther Blvd., Unit C	Fort Walton Beach	FL	32548	(850) 244-3688
Karina Caballero, Jesus Caballero &	Cesar Batista	1851 Cordova Road	Ft. Lauderdale	FL	33316	(954) 523-2268
Michael	Fletcher	5212-A Okeechobee Road	Ft. Pierce	FL	34947	(772) 429-1944
Brandy	Heinlein	3345 SW 34 Street Ste 5	Gainesville	FL	32608	(352) 379-9988
Gary & Patricia	Corbitt	10111 San Jose Blvd.	Jacksonville	FL	32257	(904) 880-5161
Irwin Witt &	Josh Witt	11900 Atlantic Blvd. Suite 228	Jacksonville	FL	32225	(904) 564-4784
Ronald	Penna	1808 Hendricks Avenue	Jacksonville	FL	32207	(904) 399-1514
Nicholas	Crouch	2245 COUNTY ROAD 210 W	Jacksonville	FL	32259	(904) 829-9292
Nicholas	Crouch	7159 Phillips Hwy, Unit #5	Jacksonville	FL	32256	(573) 489-9890
Irwin	Witt	8221 Southside Blvd.	Jacksonville	FL	32256	(904) 646-9727
John Dunlap, Sr. &	John Dunlap, Jr.	9610 Applecross Road, Suite 110	Jacksonville	FL	32222	(904) 777-8216
Nicholas	Crouch	Unit Not Open	Jacksonville	FL		(904) 429-7460
Mark	Steele	1230 Beach Blvd.	Jacksonville Beach	FL	32250	(904) 242-4940
Nick	Gannascoli	2491 S. Federal Hwy. - Pineapple Plaza	Jensen Beach	FL	34957	(772) 692-8088
Nick	Gannascoli	3174 Federal Hwy	Jensen Beach	FL	34957	(772) 232-9010
Jeff Leishman &	Rick Price	5440 Military Trail, Suite #5	Jupiter	FL	33458	(561) 624-8775
Karina Caballero &	Cesar Batista	6671 W. Indianatown Rd Suite 2	Jupiter	FL	33458	(407) 733-5860
Yolanda	Montoya	2677 W. Osceola Pkwy.	Kissimmee	FL	34741	(407) 201-3982
Steven	Ira	3785 Lake Emma Road	Lake Mary	FL	32746	(407) 942-0050
Jack	Cleghorn	116 S. Tennessee Avenue	Lakeland	FL	33801	(863) 686-9474
Paul & Ming-Ting Chung &	Jacqueline Li	4270 N Hwy 98	Lakeland	FL	33809	(863) 859-5116
Joe	Mormino	1001 West Bay Drive, Unit 102	Largo	FL	33770	(727) 216-3329
Greg	Williams	504 West Hwy 390	Lynn Haven	FL	32444	(850) 271-2120
Ming-Ting	Chung	1520 S. Babcock St., Suite A	Melbourne	FL	32907	(321) 952-5575
Ming-Ting	Chung	1700 W. New Haven Avenue	Melbourne	FL	32904	(863) 529-7961
Christopher	Albers	Melbourne Village Plaza 1270 N. Wickham Rd. #1	Melbourne	FL	32935	(321) 751-3330
Ming-Ting	Chung	700 2 E. Merritt Island Causeway	Merritt Island	FL	32952	(863) 529-7961
Donnise	Desouza	100 S. Biscayne Blvd, Ste 101	Miami	FL	33131	(786) 425-2051

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Fernando & Giancarlo	Capote	11290 SW 13 St., RC 101 (FIU)	Miami	FL	33199	(305) 348-7534
Clyde & Marie	Shellen	13550 SW 120th St. #452	Miami	FL	33186	(305) 251-7570
Phillip	Woodhouse	13585 Tamiami Trail North Unit #19	Naples	FL	34110	(239) 591-2241
Michael	Burks	5016 Airport Pulling Rd. N.	Naples	FL	34105	(239) 262-3600
Thomas & Lana	Hudson	570 Ninth Street North	Naples	FL	34102	(239) 793-5700
Amy	Reynolds	Unit Not Open	Naples	FL		(239) 440-6333
Linda Morgan &	Russell Rissman	8646 Navarre Parkway	Navarre	FL	32566	(334) 285-5066
Bill Wyrrough	John Tondello	703 John Sims Pkwy.	Niceville	FL	32578	(850) 729-8060
Irwin & Joshua	Witt	Unit Not Open	Orange Park	FL		(904) 527-3596
Barry & Vicki	Curran	10501 J. Blanchard Trail	Orlando	FL	32817	(407) 658-1610
Steven D.	Ira	12201 Research Pkwy #199	Orlando	FL	32826	(407) 601-4220
Steven	Ira	12789 Waterford Lakes Pkwy. Ste 9	Orlando	FL	32828	(407) 704-8209
Anna, Jacqueline & Esteban	Perez	2104 Edgewater Drive	Orlando	FL	32804	(407) 422-1112
Raymond and Andrew	Howell	3120 S. Kirkman Road, Suite 5E	Orlando	FL	32811	(804) 815-6718
Cindy	Pantalone	433 N. Mills Avenue	Orlando	FL	32803	(407) 896-4999
Barry	Curran	4960 E. Colonial Drive	Orlando	FL	32803	(407) 897-8585
Cindy	Pantalone	63 West Washington Street	Orlando	FL	32801	(407) 839-0830
Levon & Hovnan	Movsisyan	7561 West Sandlake Rd	Orlando	FL	32819	(407) 248-0707
Ilhan	Irmak	Unit Not Open	Orlando	FL	-	(407) 437-9335
Kaushika	Patel	Unit Not Open	Orlando	FL		(407) 399-9987
Steven Ira &	Nicholas Parker	8155 Red Bug Lake Rd Suite 109	Oviedo	FL	32765	(407) 971-9494
David & Vickie	Shumate	4700 Babcock St., Unit # 9	Palm Bay	FL	32905	(321) 725-6535
Karina Caballero &	Cesar Batista	2508 PGA Blvd.	Palm Beach Gardens	FL	33410	(407) 733-5860
Frank & Angela	Barba	4276 Northlake Blvd.	Palm Beach Gardens	FL	33410	(561) 624-4513
Kristy	Reed	3019 SW Martindowns Blvd.	Palm City	FL	34990	(772) 223-8856
Joyce Braider &	Nicholas Mellini	5234 Highway 100 E. Suite #107	Palm Coast	FL	32164	(386) 586-0085
Hung	Nguyen	Unit Not Open	Palm Coast	FL	-	(386) 216-5864
Terri	Gruber	2239 Martin Luther King Blvd.	Panama City	FL	32405	(850) 522-0750
Royal & Jacquelyn	Stephens III	652 West 23rd Street	Panama City	FL	32405	(850) 913-9336
Pamela	Clark	11260 Panama City Beach Pkwy, Unit 101	Panama City Beach	FL	32407	(850) 588-8470
Pamela	Clark	5147 Bayou Blvd., Ste. C	Pensacola	FL	32503	(850) 332-6601
John	Strickler	Unit Not Open	Pensacola	FL	-	(850) 554-1804
Brian & Emily Killingworth &	Robert & Steve Szasz	Unit Not Open	Pinellas County	FL	-	(813) 789-9060
Keith	Sabiel	Unit Not Open	Pinellas County	FL	-	(727) 458-2227
Jim	Mabry	830 A1A North, Suite 1	Ponte Vedra Beach	FL	32082	(904) 280-4044

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Doug	Dixon	1441 Tamiami Trail, Suite 599	Port Charlotte	FL	33948	(239) 913-7437
Mukesh	Patel	314 Port St. Lucie Blvd.	Port St Lucie	FL	34984	(772) 873-0247
Daniel & Elizabeth	Grund	10628 SW Village Parkway	Port St. Lucie	FL	34987	(772) 344-6960
Bryan & Sara	Arruda	1707 NW St. Lucie West Blvd., Suite 122	Port St. Lucie	FL	34986	(772) 621-4504
Charles	Roberts	9182 S. Federal Hwy	Port St. Lucie	FL	34952	(772) 380-9494
Kimberly	Rego	Unit Not Open	Port St. Lucie	FL		(508) 971-0787
Robb & Lisa	Morrison	602 Barnes Boulevard	Rockledge	FL	32955	(321) 305-4910
Oliver & Lindsey	Brama	1900 Main Street, Suite 102	Sarasota	FL	34236	(941) 365-8423
Keith	Sabiel	10720 Park Blvd.	Seminole	FL	33772	(727) 392-5400
Linda	Morgan	1191 North Eglin Pkwy Suite F	Shalimar	FL	32579	(850) 651-1910
Joseph & Dawn	Rogers	6134 S. Federal Hwy	South Stuart	FL	34997	(772) 283-7377
Amitbhai	Patel	112 Seagrove Main St., Suite 114`	St. Augustine	FL	32080	(904) 461-9090
Nicholas	Crouch	124 Tuscan Way, Suite 101	St. Augustine	FL	32092	(904) 829-9292
Jim Mabry	Clark Balley	104 Bartram Oaks Walk, Suite 106	St. Johns	FL	32259	(904) 230-6360
Andy	Boggini	625 6th Ave. S #150	St. Peterburg	FL	33701	(727) 894-0405
Quint	Noordstar	1201 4th St. N.	St. Petersburg	FL	33701	(727) 821-3100
Robert, Steve & Bonnie	Szasz	150 Fountain Pkwy N., Suite B	St. Petersburg	FL	33716	(727) 573-1425
Quint & Christina	Noordstar	2137 66th Street North	St. Petersburg	FL	33710	(727) 345-8947
Nick	Gannascoli	1989 SE Federal Hwy	Stuart	FL	34994	(772) 220-2995
Sam	Osborne	1415 Timberlane Rd. Unit 323	Tallahassee	FL	32312	(850) 894-4980
Benny & Christa	Chastaine	1500 Apalachee Pkwy. # 1255	Tallahassee	FL	32301	(850) 907-1758
Metz Culinary Management, Inc.		1510 Wahnish Way	Tallahassee	FL	32307	(850) 412-7191
Benny & Christa	Chastain	209 N. Magnolia Suite 1	Tallahassee	FL	32301	(850) 412-9100
Dennis	Carpenter	2415 North Monroe St. Space # 249	Tallahassee	FL	32303	(850) 878-8944
Chris	George	3111 Mahan Drive, #23	Tallahassee	FL	32308	(850) 878-3777
Benny & Christa	Chastain	3521 Mcclay Blvd. Inside Premier Health & Fitness	Tallahassee	FL	32312	(850) 907-1758
Adam	Pope	3839 N. Monroe Street	Tallahassee	FL	32303	(850) 562-5733
Garth	Brown	679 B W. Tennessee Street	Tallahassee	FL	32304	(850) 561-8888
Garth	Brown	800 Ocala Road, Suite 330	Tallahassee	FL	32304	(850) 576-4300
Dennis	Carpenter	904 Thomasville Rd.	Tallahassee	FL	32303	(850) 224-3600
Robert & Steve	Szasz	200 N. Tampa Street, Suite G-120	Tampa	FL	33602	(813) 225-1550
Ralph	Judy	250 Westshore Plaza, Suite KC1	Tampa	FL	33609	(727) 415-0402
Magda Boff &	Rhanery Chaves	2928 E. Fowler Avenue	Tampa	FL	33612	(925) 339-2647
Leon	Roubekas	3810 Neptune St., Suite B4	Tampa	FL	33629	(813) 374-2245
Kimberly	Rego	1555 S. U.S. Highway 1, Suite 102	Vero Beach	FL	32960	(772) 226-9988

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Po-Hao "Paul" & Ming-Ting Chung	Jacqueline Li	301 W. Central Avenue	Winter Haven	FL	33681	(863) 295-7988
Grant	Leibell	400 Park Avenue South, Suite 165	Winterpark	FL	32789	(407) 628-5521
Linda	Morgan	5555 Whittlesey Blvd., Suite 2960	Columbus	GA	31909	(334) 312-0860
Kevin & Keisha	David	Unit Not Open	Conyers	GA		(404) 394-7983
Padmavati Koganti &	Vijaykumar Paturi	909 Eagle's Landing Pkwy, Ste 140	Stockbridge	GA	30281	(678) 289-5454
Stephanie	Motley	1525 Baytree, Suite C	Valdosta	GA	31601	(229) 247-5599
Melissa	Booker	Unit Not Open	Warner Robins	GA		(478) 338-3446
Rick & Annette	Sanquist	2813 1/2 Fifth Avenue South	Fort Dodge	IA	50501	(515) 573-1199
Chandra	Wojno	309 S. Madison St. (Inside Live Well Wellness Center)	Iowa City	IA	52242	(319) 384-3427
Angie	Frost	Unit Not Open	Boise	ID	-	(208) 366-2666
Tim & Charmaine M.	Lowe	315 East Rand Road	Arlington Heights	IL	60004	(847) 749-3554
David & Kimberly	Knapp	2882 East 3 <sup>rd</sup> Street	Bloomington	IL	47401	(815) 717-8095
Patrick Bode &	Kevin Bartlett	1603 W. Taylor Street U.I.C.	Chicago	IL	60517	(312) 413-5343
Kevin Bartlett &	Patrick Bode	737 S. Halsted Street	Chicago	IL	60607	(312) 996-8170
Roger Mitchell &	Stephen Williams	Unit Not Open	Evanston	IL		(808) 639-7295
Mike	Ward	12162 S II Route 47	Huntley	IL	60142	(847) 669-3803
Phillip	Knippen	1872 E. Lincoln Hwy.	New Lenox	IL	60457	(815) 717-8095
David & Kimberly	Knapp	3135 25th St.	Columbus	IN	47203	(812) 375-1100
David & Kimberly	Knapp	2882 East 3 <sup>rd</sup> Street	Bloomington	IN	47401	(812) 375-1100
Jeffery & Richard	Derrickson	3181 Beaumont Centre Circle Suite 112	Lexington	KY	40513	(859) 608-2449
J. Mike	Guiler	Unit Not Open	Lexington	KY	-	(859) 338-5452
Michael	Kowal	13200 Airline Hwy. (inside Price Leblanc Toyota)	Baton Rouge	LA	70817	(225) 279-1616
Claire Foret	BJ Crist	458 Heymann Blvd. Suite B	Lafayette	LA	70503	(337) 456-3933
Paul & Aimee	Arcemont	6402 Hwy 182 East	Morgan City	LA	70380	(985) 385-1300
Ana & Gilbert Desousa &	Connie & Gilberto Medeiros	Unit Not Open	Cape Cod	MA		(508) 858-8529
Karyn Ferriera &	John Martin, Jr.	29 Alden Road	Fairhaven	MA	02719	(774) 274-0521
Gilbert & Ana	DeSousa	85A Faunce Corner Mall Road	N. Dartmouth	MA	02747	(508) 858-5456
Gulshan	Moudgill	Unit Not Open	Bethesda	MD		(571) 216-6551
Kwang-Woo Choi &	Paula Ifurung	6455 Dobbin Road, Suite 35	Columbia	MD	21045	(301) 830-9408
Hakim	Burgess	Unit Not Open	Waldorf	MD		(540) 455-0845
Mike & Crystal	Turpin	154 ½ Pleasant Street	Brunswick	ME	04011	(603) 822-2330
Mike & Crystal	Turpin	45 Western Ave	South Portland	ME	04106	(207) 871-9991
Hani	Halloun	607 Liberty Street	Ann Arbor	MI	48104	(734) 585-0266
Hani	Halloun	Unit Not Open	Ann Arbor	MI	-	(810) 397-1891
Han	Halloun	Unit Not Open	Ann Arbor	MI	-	(810) 397-1892

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Hani	Halloun	Unit Not Open	Ann Arbor	MI	-	(810) 397-1893
Ryan & Jeffrey	Kaleto	Unit Not Open	Bay City	MI	-	(989) 317-4800
Jeffrey	Lulek	Unit Not Open	Canton	MI		(841) 488-4907
Brent St. Clair &	Dianne LeMieux	6459 Dixie Highway	Clarkston	MI	48346	(810) 919-7878
Dianne	LeMieux	7150 Sashabaw Rd.	Clarkston	MI	48347	(248) 620-8005
LeMieux	Craig	1569 N. Main Street, Ste. A	Clawson	MI	48017	(248) 629-7041
Craig & Dianne	Lemieux	5105 W. Vienna Rd.	Clio	MI	48420	(810) 564-9993
Daxa	Patel	703 South States Stree	Davison	MI	48423	(810) 233-0988
David	Buko	1201 E. Grand River Ave.	East Lansing	MI	48823	(517) 708-8565
Harold	Bowen	4009 Owen Road	Fenton	MI	48430	(810) 714-4888
Joseph	Dorsch	Unit Not Open	Fenton	MI	-	(248) 303-1229
Harold Bowen &	Trent Farnsworth	2103 S. Linden Rd	Flint Township	MI	48532	(810) 733-2100
Larry King &	Debbie LeMieux-King	2383 E. Hill Road, Suite 1	Grand Blanc	MI	48439	(810) 953-2233
Libby	McDonald	5088 28th Street SE	Grand Rapids	MI	49512	(616) 617-8784
Harold	Bowen	Unit Not Open	Grand Rapids	MI		(810) 525-7568
Michelle MacDonald &	Ala Fakhouri	30971 5 Mile Road, Suite B104	Livonia	MI	48154	(734) 427-5500
Mark	Yeager	6805 Eastman Avenue	Midland	MI	48642	(989) 529-4248
Ryan & Jeffrey	Kaleto	985 S. Saginaw Rd.	Midland	MI	48858	(989) 835-2533
Jeffrey Lee & Ryan Scott	Kaleto	2332 South Mission Street	Mt. Pleasant	MI	48858	(989) 317-4800
Craig	LeMieux	Unit Not Open	Okland County	MI		(810) 691-9623
Joseph & Tamara	Dorsch	2913 Crooks Road	Rochester	MI	48309	(248) 303-1229
Mark	Yeager	5815 Bay Road, Suite 700	Saginaw	MI	48604	(989) 249-0499
David	Buko	Unit Not Open	Saginaw	MI	-	(989) 781-7818
Avinash Kotian	Prakash Tamhaney	7354 Haggerty Rd.	West Bloomfield	MI	48322	(248) 788-3500
Thomas	Tran	8330 Egan Dr.	Savage	MN	55378	(952) 226-1633
Damon	Holland	3811 S. Campbell Ave., Suite A	Springfield	MO	65807	(417) 887-6600
Brent	Waters	6129 US Hwy 98	Hattiesburg	MS	39402	(601) 336-5356
Lisa Murray, Zack Lee &	Mac Devin	7164 Hacks Cross Rd.	Olive Branch	MS	38654	(662) 890-5060
John	Agori	Unit Not Open	Burlington	NC		(919) 524-2852
Sherman	Dye	Unit Not Open	Cary	NC		(919) 599-3593
Everette	Brown	1111 Metropolitan Avenue, Suite 110	Charlotte	NC	28204	(252) 292-2002
Howard & Erica	Raphael	5311 South Miami Boulevard, Ste. F	Durham	NC	27703	(919) 474-2233
Victor	Archie	2130-Q New Garden Road	Greensboro	NC	27410	(336) 763-2367
Devang	Desai	1856 West Arlington Blvd.	Greenville	NC	27858	(252) 215-2204
Lisa & Darel	Crumpler	2236 South Croatan Hwy Unit #2	Nags Head	NC	27959	(252) 441-3500

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Joe	Goetschius, Jr.	7100 South Croatan Hiwy, Suite 82	Nags Head	NC	27959	(203) 910-1422
Howard & Erica	Raphael	1028 Oberlin Drive, Suite 232	Raleigh	NC	27605	(919) 755-2222
Eric & Gail	Farinella	8111 Creedmoor Rd., Suite 157	Raleigh	NC	27613	(919) 803-5991
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Sherman	Dye	Unit Not Open	Raleigh	NC		(919) 599-3593
Lisa & Darel	Crumpler	5385 S. Virginia Dare Trail #1	Southern Shores	NC	27948	(252) 441-9996
John	Kablik	1671-1A North Howe Street	Southport	NC	28461	(910) 470-3473
Brandon	Korman	Unit Not Open	Wilmington	NC		(516) 586-8147
Brandon	Korman	Unit Not Open	Wilmington	NC		(516) 586-8147
Steve	Scroggin	216 West 4th Street	Winston-Salem	NC	27101	(336) 722-1300
Kaye	Wentz	7902 Towne Center Parkway #109	Papillion	NE	68046	(402) 614-9050
Michael	Turpin	160 Washington St.	Rochester	NH	03839	(603) 509-3000
Tim Fung &	Al LaValle	2222 Route 33 Store G	Hamilton	NJ	08690	(609) 981-7012
Kaushika Joshi &	Guniyal Patel	Unit Not Open	Princeton	NJ		(908) 720-7969
Eric	Persson	10612 S. Eastern Ave, Suite C	Henderson	NV	89052	(702) 616-1931
Eric	Persson	2300 Paso Verde Parkway	Henderson	NV	89052	(702) 822-1931
Michelle & Kriss	Shriver	76 W. Horizon Ridge Parkway Suite # 120	Henderson	NV	89015	(702) 992-0570
Eric	Persson	Unit Not Open	Henderson	NV		(702) 465-9451
Eric	Persson	Unit Not Open	Henderson	NV		(702) 465-9451
Eric Persson &	Ann Chung	10260 Charleston Blvd.	Las Vegas	NV	89135	(702) 869-0603
Eric	Persson	10670 Southern Highlands Pkwy #100	Las Vegas	NV	89141	(702) 257-8813
Johnny	Sanchez Losada	11011 W. Charleston Blvd (Red Rock Casino)	Las Vegas	NV	89135	(702) 388-1931
Eric	Persson	2000 Las Vegas Blvd. S., Suite B6 (Stratosphere)	Las Vegas	NV	89104	(702) 465-9451
Michelle & Kriss	Shriver`	3390 Novat Street #110	Las Vegas	NV	89128	(702) 531-1931
Eric	Persson	4001 Decatur Blvd. Suite 28	Las Vegas	NV	89103	(702) 873-7289
Eric	Persson	4155 S. Grand Canyon Parkway # 106	Las Vegas	NV	89147	(702) 242-1931
Eric	Persson	4262 Blue Diamond Rd. #103	Las Vegas	NV	89139	(702) 629-3692
Eric	Persson	5035 W. Fort Apache Rd. #105	Las Vegas	NV	89148	(702) 834-4999

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Bharti Sharma &	Ramesh Piplani	6350 W. Charleston Blvd, Suite 130	Las Vegas	NV	89146	(702) 304-1931
Brian	Cupery	6555 S. Jones Blvd. #110	Las Vegas	NV	89118	(702) 247-6208
Eric	Persson	7291 S. Eastern Ave Ste 1K	Las Vegas	NV	89119	(702) 450-1931
Jason	Horwitz	7375 South Durango Dr. #107	Las Vegas	NV	89113	(702) 262-5515
Debra	Mele-Blanchard	7580 S. Las Vegas Blvd. Suite # 100	Las Vegas	NV	89123	(702) 257-1931
Hae Kyeong	Han	7660 W Cheyenne Ave Suite 121	Las Vegas	NV	89129	(702) 365-1931
Eric	Persson	9440 W. Sahara Blvd Suite 105	Las Vegas	NV	89117	(702) 207-1931
Wm. Lincoln	Spoor	Excalibur Hotel & Casino 3850 S. Las Vegas Blvd Unit #204	Las Vegas	NV	89109	1-702-987-8422
Mark	Lukachko	Unit Not Open	Las Vegas	NV	-	(212) 228-8726
Eric	Persson	Unit Not Open	Las Vegas	NV		(702) 465-9451
Kriss & Michelle	Shriver	445 W. Craig Road/#103	North Las Vegas	NV	89032	1-702-459-8000
Henry	Neth	1541 E. Hwy 372	Pahrump	NV	89048-4640	(775) 727-4444
Patricia O'Brien	Thomas Diamond	567B East Main Street	Bay Shore	NY	11706	(631) 969-5636
Don Rettaliata, Jr. ESQ. &	Ajay Shah	137 Centereach Mall	Centereach	NY	11720	(631) 981-8767
Richard & Linda	Orofino	532 Larkfield Rd	East Northport	NY	11731	(631) 486-4455
Susanne	Wanser	Unit Not Open	Hauppauge	NY		(631) 767-5966
Kwonoh Hoon &	Yongsung Kim	285 S Broadway, Unit 9	Hicksville	NY	11801	(631) 889-0228
Susanne	Wanser	Unit Not Open	Holbrook	NY		(631) 767-5966
Jeffrey	Hartman	326 Walt Whitman Road	Huntington Station	NY	11746	(631) 427-5100
Rajul	Shah	61 Wall Street	Huntington Village	NY	11743	(516) 826-1095
David	Halloran	3519B Hempstead Tpke	Levittown	NY	11756	(516) 731-0399
Patricia	O'Brien	Unit Not Open	Long Island	NY		(631) 428-4519
Don	Retalliata, Jr.	Unit Not Open	Massapequna	NY		(631) 872-2130
Susanne Wanser &	Tiffany Wirth	499-83 Sunrise Highway	Patchogue	NY	11772	(631) 569-4020
Dana	Bush	5120 Nesconset Highway	Port Jefferson Station	NY	11776	(631) 509-5800
Jennifer	Bazdaric	2507 South Rd., Ste. 102	Poughkeepsie	NY	12601	(845) 462-0505
Don	Retalliata, Jr.	Unit Not Open	Rocky Point	NY		(631) 872-2130
Stephen Brojer &	Brian Levine	267 Middle Country Rd.	Selden	NY	11784	(631) 696-4780
Dana	Bush	32 E. Main St	Smithtown	NY	11787	(631) 509-5800
Michael	Emanuele	Unit Not Open	Suffolk	NY	-	(631) 750-3083
Laura & Walter	Jankowski	Unit Not Open	Syosset	NY		(631) 807-8358
Vinay	Kapur	Unit Not Open	Syosset	NY		(631) 338-1463
Doug	Ruggles	3195 Dayton-Xenia Road, Suite 770	Beavercreek	OH	45434	(937) 426-8767
Greg & Ellen	Chicoine	6241 Far Hills Avenue	Centerville	OH	45459	(937) 434-8699



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Chet	Hakanson	988 Miamisburg Centerville	Centerville	OH	45459	(937) 291-9250
Nitesh	Patel	11322 Euclid Ave	Cleveland	OH	44106	(216) 421-2233
Christopher	Becker	2307 Far Hills Ave.	Dayton	OH	45419	(937) 395-3525
Doug	Ruggles	2642 Colonel Glenn Hwy.	Fairborn	OH	45324	(937) 429-1519
Suresh	Gupta	6455 Old Troy Pike Parkway	Huber Heights	OH	45424	(937) 235-8630
Gregory	deBrow	24389 Cedar Rd.	Lyndhurst	OH	44124	(216) 382-5488
William & Julie	Munson	1385 Conant St., Ste. E	Maumee	OH	43537	(419) 893-2100
Shaun, William, Julie, Eric & Kevin	Munson	10090 Old U.S. 20	Rossford	OH	43460	(419) 874-1800
Tim	Poulos	233 E. Home Road	Springfield	OH	45503	(937) 232-3332
Julie	Munson	Unit Not Open	Westgate	OH		(419) 360-2995
Joe & Tasha	Stefantos	3131 West Memorial Road, Suite A	Oklahoma City	OK	73134	(405) 753-5454
Timothy & Nicole	Smallwood	1717 N. Peoria Avenue	Tulsa	OK	74106	(918) 814-8080
TBJ Food Services LLC	Scott Dunitz	4808 South 109th East Avenue	Tulsa	OK	74146	(918) 236-4650
Timothy & Nicole	Smallwood	4925 E. 21 <sup>st</sup> Street	Tulsa	OK	74114	(918) 814-8080
Timothy & Nicole	Smallwood	7460 S. Olympia Ave.	Tulsa	OK	74132	(918) 938-7747
Sandip	Patel	3601 Market Street	Camp Hill	PA	17011	(201) 286-9208
Zhibo	Wu	Keystone Plaza 1810 Wilmington Pike - Unit #5	Glen Mills	PA	19342	(484) 574-8151
Nimisha	Shah	235 Strawberry Square	Harrisburg	PA	17101	(201) 783-9571
Nimisha Shah &	Sangita Doshi	4635 High Pointe Blvd.	Harrisburg	PA	17111	(717) 561-1077
Matt And Daryl Herr	Shaffer	15 East King St.	Lancaster	PA	17601	(717) 397-1827
Shaffer Tropics, Inc.	Cynthia Macha & Cody Shaffer	235 Bloomfield Dr., Suite 105	Lititz	PA	17543	(717) 560-1490
Jill & John	Zajac	Unit Not Open	Providence	RI	-	(508) 400-7230
Leslie	Duffy	150B Harbison Boulevard Suite 20	Columbia	SC	29212	(803) 217-3112
Rodney	Taquino	201 Graduate Road - Unit 103	Conway	SC	29525	(843) 234-5670
Vipul	Patel	Unit Not Open	Florence	SC		(843) 229-6840
Dave & Leslie	Duffy	5166 Sunset Blvd, Suite H	Lexington	SC	29072	(803) 708-8115
Alex & Lori	Torzsa	2435 West Hwy. 160, Suite 104	Tega Cay	SC	29708	(904) 657-7412
Axay	Rana	8008 Kingston Pike	Knoxville	TN	37919	(865) 690-5505
Jigna	Patel	1779 Kirby Parkway, Ste. 3	Memphis	TN	38138	(501) 240-6554
Michael & Fuaillelaji	Wynn	12901 North IH 35 Service Rd. Suite # 1850	Austin	TX	78727	(512) 251-1800
Michael & Fuaillelaji	Wynn	14900 Avery Ranch Blvd., Ste. B 400	Austin	TX	78717	(512) 388-9925
Alonzo Soliz, Sr.	Alonzo Soliz Jr.	1465 E. Whitestone Blvd.	Cedar Park	TX	78613	(512) 259-5472
Jignesh	Patel	5620 Grand Parkway South, Suite A	Richmond	TX	77406	(832) 875-9315
Cody	Sommer	1090 Sage Drive	Cedar City	UT	84720	(702) 453-2225
Cody	Sommer	1010 East Red Hill Pkwy	St. George	UT	84770	(702) 453-2225

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Woo Choi Dienzo &	Agapito Dienzo	1556 Potomac Greens Dr.	Alexandria	VA	22314	(703) 299-8315
Mohammed & Katherine	Hasan	6424 Landsdowne Centre, Suite 23	Alexandria	VA	22315	(703) 291-5097
William & Sean Kelly &	David & Johnathon Kolodzinski	6552-A Little River Turnpike	Alexandria	VA	22312	(703) 354-0940
Manish	Singh	3811 North Fairfax Drive - Unit B	Arlington	VA	22203	(703) 243-2933
Peter Pack &	Jong S. Choi	43670 Greenway Corporate Drive Suite # 126	Ashburn	VA	20147	(571) 291-9089
Marshall & Donna Trudell &	Jae Nam Yi	13609 Carrollton Blvd., Ste. 1	Carrollton	VA	23314	(757) 745-7700
Dong Jun &	Hae Chung	14220- B Centreville Square	Centreville	VA	20121	(703) 678-5227
Steven & Emily	Harwit-Whewell	1954 Rio Hill Center	Charlottesville	VA	22901	(540) 748-9469
Vimal	Patel	1320 Kempsville Road, Ste. 111	Chesapeake	VA	23320	(757) 547-3570
Daniel	Cintron	1412 Greenbrier Pkwy., Suite 135	Chesapeake	VA	23320	(757) 413-5400
Henry	Truong	1434 Sam's Drive Suite 101	Chesapeake	VA	23320	(757) 410-9543
Jannifer	Boyd	1464 Mount Pleasant Road Suite #30	Chesapeake	VA	23322	(757) 546-7070
Sanjay	Patel	237 South Battlefield Blvd, Ste 7	Chesapeake	VA	23322	(757) 410-5558
Payal	Shah	4105 Chesapeake Sq. Blvd., #103	Chesapeake	VA	23321	(757) 488-2060
Payal	Shah	648 Grassfield Parkway, #9	Chesapeake	VA	23323	(757) 312-0001
Gemini & Urvashi	Patel	12802 Jefferson Davis Hwy.	Chester	VA	23831	(804) 751-0090
Gemini & Urvashi	Patel	6925 Commons Plaza	Chesterfield	VA	23832	(804) 717-9060
Joanne	Bennett	190 Southgate Square	Colonial Heights	VA	23834	(804) 524-9876
Emily & Steve	Harwitt-Whewell	15315 Creativity Drive	Culpeper	VA	22701	(540) 825-8417
Mohammed & Katherine	Hasan	3978 Fettler Park Drive, Building A	Dumfries	VA	22025	(703) 291-5097
Shikeba	Ramin	Unit Not Open	Falls Church	VA		(989) 980-3216
Ibrahim	Razeq	10159 Southpoint Parkway	Fredericksburg	VA	22407	(540) 287-7448
Mohammed	Hasan	1460 Central Park Blvd.	Fredericksburg	VA	22401	(703) 899-6896
Mohammed & Katherine	Hasan	15 South Gateway Dr., Ste. 113	Fredericksburg	VA	22406	(540) 656-2167
Kai Li Diane	Brunnda	50 Riverton Commons Plaza, Suite 20	Front Royal	VA	22630	(540) 635-3965
Dennis & Nicole	Drake	8069 Stonewall Shops Sq.	Gainesville	VA	20155	(571) 213-7464
Ashokkumar & Falguniben	Patel	11321 C Nuckols Rd.	Glen Allen	VA	23059	(804) 346-5101
Sanjay	Patel	1040 Settlers Landing Rd., Ste. E/F	Hampton	VA	23663	(757) 722-6290
Shrey & Deepal	Trivedi	106 Coliseum Crossing	Hampton	VA	23666	(510) 298-7454
Alan	Batcheller	2465 Centreville Rd., Ste. J-23	Herndon	VA	20171	(703) 793-0116
Jigneshbhai	Patel	506-A East Market Street	Leesburg	VA	20176	(703) 777-1100
Jon	Cash	Unit Not Open	Lynchburg	VA		(757) 286-7177
Nuatu	Tseggai	12697 Galveston Ct.	Manassas	VA	20112	(703) 763-1430
Joseph Carroll	Nuatu Tseggai	9971 Sowder Village Sq.	Manassas	VA	20109	(703) 330-1399
Lisa Michanco &	Stephen Finch	Unit Not Open	Manassas	VA	-	(540) 439-9752

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Shailen	Patel	7152 Mechanicsville Tpke.	Mechanicsville	VA	23111	(804) 569-9707
Gemini & Urvashi	Patel	9363 Atlee Road, Suite 2101	Mechanicsville	VA	23116	(804) 730-1764
George "Roger" & Rebecca	Nicholson	15521 Westchester Commons Way	Midlothian	VA	23113	(804) 364-0281
Brant	Druhot	4501 Commonwealth Centre Parkway	Midlothian	VA	23112	(804) 763-2900
Vimal	Patel	12300 Jefferson Ave., Ste. 738	Newport News	VA	23602	(757) 369-5533
Vimal	Patel	12368 Warwick Blvd. A 109	Newport News	VA	23606	(757) 240-5458
John & Hyang	Boyd	12551 Jefferson Ave, Suite 211	Newport News	VA	23602	(757) 833-6256
Ernest	Jones	4191 William Styron Square	Newport News	VA	23606	(757) 595-0600
Nayna Modi &	Jayshri Patel	1153 N. Military Hwy	Norfolk	VA	23502	(757) 455-5694
Roy & Debbie	Perez	265 Granby Street	Norfolk	VA	23510	(757) 624-9400
Richard	Studebaker	3841 East Little Creek Rd Ste A	Norfolk	VA	23518	(757) 965-5237
Jatin Trivedi &	Shrey Trivedi	4316 Monarch Way Old Dominion University Campus	Norfolk	VA	23508	(757) 440-7580
Warren	Thompson	700 Park Avenue, Norfolk State University	Norfolk	VA	23504	(757) 823-8342
Roy & Debbie	Perez	742 West 21st Street, Unit #B	Norfolk	VA	23517	(757) 622-2002
Jatin Trivedi &	Shrey Trivedi	7862 Tidewater Drive, Suite 111	Norfolk	VA	23505	(757) 531-4950
Fardin	Golzar	2918 Chain Bridge Road	Oakton	VA	22124	(703) 496-5535
Rajesh	Kaushal	477 B Wythe Creek Road	Poquoson	VA	23662	(757) 620-6657
Bhavin	Patel	4032 Unit B Victory Blvd.	Portsmouth	VA	23701	(757) 465-8944
Jigneshbhabi	Patel	609 E. Main St., Suite BB	Purcellville	VA	20132	(757) 575-0922
Jawad & Nida Ahmad and	Sohail Afridi	11684 Plaza America Drive	Reston	VA	20190	(703) 796-2233
Brant	Druhot	11513 Busy St.	Richmond	VA	23236	(804) 377-7320
George "Roger"	Nicholson	11736 W. Broad St., Ste. 101	Richmond	VA	23112	(804) 364-0281
Brant	Druhot	1601 Willow Lawn Dr.	Richmond	VA	23230	(804) 658-5431
Jigar & Reema	Patel	45001 South Laburnum Ave., Suite 150	Richmond	VA	23231	(804) 236-1100
Gemini & Urvashi	Patel	8207 West Broad Street	Richmond	VA	23294	(804) 527-2060
Marion & Anna Lynn	Cabble	929 W. Broad St.	Richmond	VA	23220	(804) 353-3533
Mohammed & Katherine	Hasan	1465 Stafford Marketplace, Ste. 115	Stafford	VA	22554	(540) 659-2200
Ibrahim	Razeq	Unit Not Open	Stafford	VA		(540) 287-7448
Stuart	McDaniel	Unit Not Open	Staunton	VA		(540) 470-8120
Vimal	Patel	1201 N. Main St., Suite 300	Suffolk	VA	23434	(757) 539-7774
Sanjay & Ruma	Patel	5860 Harbour View Blvd, Ste A1 A	Suffolk	VA	23435	(757) 484-7548
Scott & Linda	Menkes	1255 Fordham Dr, Suite 107	Virginia Beach	VA	23464	(757) 313-7230
Nicole Rivera &	Susan Shorter	211 25th Street	Virginia Beach	VA	23451	(757) 422-3970
Herb	Schriefer	2165 General Booth Blvd. Suite 158	Virginia Beach	VA	23454	(757) 430-0144
Leonardo & Mary	Agagas	2476 Nimmo Parkway, Ste. 117	Virginia Beach	VA	23456	(757) 430-4433

<u>First Name</u>	<u>Last Name</u>	<u>Store Address</u>	<u>City</u>	<u>State</u>	<u>PC</u>	<u>Phone</u>
Jatin	Trivedi	2728 N. Mall Drive #113	Virginia Beach	VA	23452	(757) 333-6700
Robyn	Lyon	2865 Lynnhaven Drive, Suite B-1	Virginia Beach	VA	23451	(757) 965-6965
Joshua & Jennifer	Moore	3813 Princess Anne Road, Suite 125	Virginia Beach	VA	23456	(757) 965-2522
Harsha	Amin	4001 Virginia Beach Blvd Suite 115	Virginia Beach	VA	23452	(757) 200-0500
Patrick Finn	Roy & Debbie Perez	401 North Great Neck Rd Suite 101	Virginia Beach	VA	23454	(757) 313-7350
Leonardo & Mary	Agagas	4312 Holland Rd, Ste 105	Virginia Beach	VA	23452	(757) 747-1941
Tony	Torres	4515 Haygood Road	Virginia Beach	VA	23455	(757) 460-7878
Baldev	Gill	4701 Shore Drive, Suite 101	Virginia Beach	VA	23455	(757) 460-3350
Christine	Alvir	251 West Lee Hwy	Warrenton	VA	20186	(540) 428-1818
Bipin Vyas, Jignesh Patel,	Tarun & Rupal Shah	4920 / 8 A Monticello Ave	Williamsburg	VA	23188	(757) 229-0600
Bipin Vyas, Jignesh Patel,	Tarun & Rupal Shah	6618/C Mooretown Road	Williamsburg	VA	23188	(757) 258-0007
Stephen & Jessica	Seminaro	152 Market St	Winchester	VA	22603	(540) 667-0002
Stephen & Jessica	Seminaro	Unit Not Open	Winchester	VA	-	(540) 579-4464
Nuatu Tseggai &	Joseph Carroll	2966 Prince William Pkwy.	Woodbridge	VA	22192	(703) 910-7188
Heayoung	Yi	2643 George Washington Memorial Hwy, Ste. 1	Yorktown	VA	23693	(757) 867-9004
Tyler	Dewey	1905 SE 192nd Ave., Ste. 113	Vancouver	WA	98607	(360) 817-1800
Dalton, Starr & Joseph	Ruesch	10 College Avenue	Appleton	WI	54911	(920) 733-3288
Dalton & Joseph	Ruesch	1960 Main Street	Green Bay	WI	54302	(920) 468-4116
Shane & Michaela	Ruesch	503 East Ives Street, Suite 401	Marshfield	WI	54449	(715) 996-1770
Shane & Michaela	Ruesch	555 West Grand Avenue	Wisconsin Rapids	WI	54495	(715) 424-2229
Stephen & Jessica	Seminaro	171 Retail Commons Pkwy, Suite 9	Martinsburg	WV	25403	(304) 264-4445

**LIST OF 47 FRANCHISEES WHO HAD AN OUTLET TERMINATED, CANCELLED, NOT RENEWED OR OTHERWISE CEASED TO DO BUSINESS DURING THE YEAR ENDED DECEMBER 29, 2013 OR WHO HAVE NOT COMMUNICATED WITH US WITHIN 10 WEEKS OF THE DATE OF THIS DISCLOSURE DOCUMENT.**

STATE	NAME(S)		CITY AND STATE	TELEPHONE NO.	TRANSFER	CLOSED	CEASED OPERATIONS - OTHER REASON
AR	Dallan	Buchanan	Unit Not Open	(501) 295-2332	1		
AR	Dallan Buchanan	Tina Moore	Jacksonville, AR	(501) 295-2332	1		
AZ	Bradford	Kelly	Mesa, AZ	(480) 2118-1820	1		
CA	Katsuire & Ayushka	Gharib	Fullerton, CA	(562) 860-9977		1	
FL	Quint & Christina	Noordstar	Boca Raton, FL	(561) 620-0888			1*
FL	Steve & Sheri	Grossberg	Brandon, FL	(813) 991-7191	1		
FL	Steve & Sheri	Grossberg	Brandon, FL	(813) 991-7191	1		
FL	Andrew & Terri	Jessen	Ft. Myers, FL	(239) 877-1657	1		
FL	Andrew & Terri	Jessen	Ft. Myers, FL	(239) 877-1657	1		
FL	Luna Antonio, Alex Juarez &	Edgar Zamudio	Jacksonville, FL	Unknown	1		
FL	Greg	Maracotte	Jupiter, FL	(321) 543-6606	1		
FL	Donnise	DeSouza	Miami, FL	(305) 255-3725			1*
FL	David & Jennifer Hill	David & Tonya Wiley	Navarre, FL	(850) 939-8956	1		
FL	Greg	Marcotte	Palm Beach Gardens, FL	(321) 543-6606	1		
FL	Michael	Burks	Port Charlotte, FL	(772) 216-0241	1		
FL	Daniel & Elizabeth	Grund	Port St. Lucie, FL	(772) 398-0282	1		
FL	Sodexo Operations, LLC		Tallahassee, FL	unknown	1		
FL	Chris	George	Tallahassee, FL	(850) 869-0302	1		
FL	Zeeshan	Tarig	Tampa, FL	(813) 514-5800	1		
IL	Brian	Guinter	Barrington, IL	(847) 277-7590			1*
IL	Dave	Fiorenza	Lincolnshire, IL	(847) 477-3465			1*
IL	Kevin Bartlett &	Patrick Bode	New Lenox, IL	(630) 927-8715	1		
KY	Mike	Guiler	Lexington, KY	(859) 321-8143		1	

STATE	NAME(S)		CITY AND STATE	TELEPHONE NO.	TRANSFER	CLOSED	CEASED OPERATIONS - OTHER REASON
LA	Shane & Kara	Castille	Baton Rouge, LA	(225) 772-3255	1		
MD	Hiral Hely	Patel	Columbia, MD	Unknown	1		
MN	William	Goude	Eagan, MN	(651) 688-0373			1*
MT	Rod & Ellen	Wirshing	Missoula, MT	(406) 543-1141			1*
NV	Mark	Lukachko	Las Vegas, NV	(917) 601-3340	1		
NV	Mark	Lukachko	Las Vegas, NV	(917) 601-3340	1		
NV	Eric	Persson	Las Vegas, NV	(702) 431-6899			1*
NY	William	Nestor	Huntington Village, NY	(613) 424-3475	1		
OH	Jeffrey	Glassmeyer	Westchester, OH	Unknown		1	
TN	Burger Buster of TN, LLC		Cordova, TN	Unknown		1	
TN	Burger Buster of TN, LLC		Memphis, TN	Unknown	1		
TN	Burger Buster of TN, LLC		Memphis, TN	Unknown		1	
VA	Kwang-Woo Choi &	Joselito Chua	Centreville, VA	(301) 830-4908	1		
VA	Christopher	Daschbach	Charlottesville, VA	(434) 996-9800	1		
VA	Ron	Holt	Fredericksburg, VA	(804) 560-0152	1		
VA	Ron	Holt	Fredericksburg, VA	(804) 627-8902	1		
VA	Kai Li	Brunda	Front Royal, VA	(540) 931-2207	1		
VA	Dennis & Nicole	Drake	Gainesville, VA	(571) 213-7464	1		
VA	Alexander	Kim	Hampton, VA	(213) 700-3257	1		
VA	Brant	Druhot	Midlothian, VA	(804) 739-8974	1		
VA	Sanjay & Ruma	Patel	Poquoson, VA	(757) 483-4094	1		
VA	Melissa Lea Dickinson &	Doreen Zentveld	Purcellville, VA	(703) 507-8171	1		
VA	Fardin	Golzar	Sterling, VA	(703) 627-8902	1		
VA	Pheng Khov &	Jan Rafael Aguilar	Sterling, VA	(570) 991-6884			1*

\* Outlet temporarily closed.

**If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.**

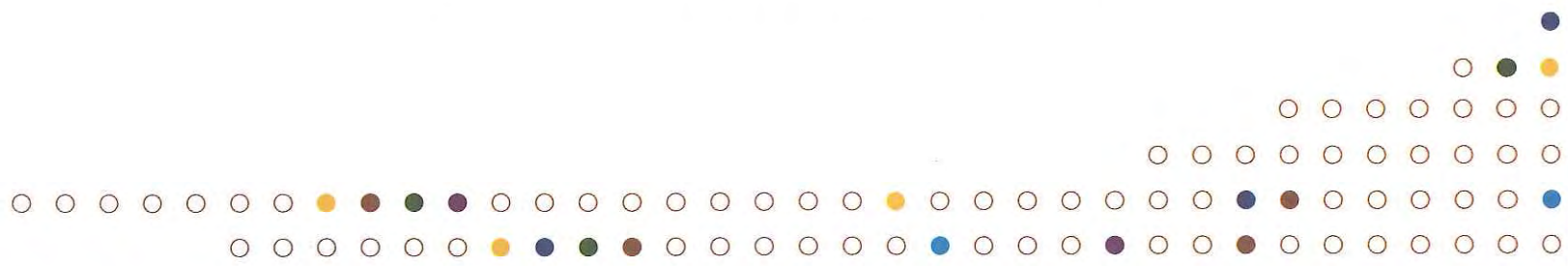
**EXHIBIT L TO THE DISCLOSURE DOCUMENT**

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**FINANCIAL STATEMENTS**

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# Tropical Smoothie Café, LLC and Subsidiary



## Consolidated Financial Statements

December 29, 2013



BETTER TOGETHER™



# Tropical Smoothie Café, LLC and Subsidiary

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## Independent Auditor's Report

To the Board of Directors of  
Tropical Smoothie Café, LLC and Subsidiary

We have audited the accompanying consolidated financial statements of Tropical Smoothie Café, LLC and Subsidiary (collectively, the Company), which comprise the consolidated balance sheet as of December 29, 2013 and the related consolidated statements of operations, members' deficit, and cash flows for the fiscal year then ended and the related notes to the consolidated financial statements.

### Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Opinion

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of Tropical Smoothie Café, LLC and Subsidiary as of December 29, 2013 and the results of their operations and their cash flows for the fiscal year then ended in accordance with accounting principles generally accepted in the United States of America.

*Bennett Thrasher LLP*

March 20, 2014

A LIMITED LIABILITY PARTNERSHIP OF CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

One Overton Park 3625 Cumberland Boulevard Suite 1000 Atlanta, Georgia 30339 phone 770.396.2200 fax 770.390.0394 www.btcpa.net

# Tropical Smoothie Cafe, LLC and Subsidiary

## Consolidated Balance Sheet

December 29, 2013

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### Assets

#### Current assets:

Cash	\$ 1,352,201
Restricted cash	1,164,203
Accounts receivable	919,598
Inventory	24,156
Prepaid expenses	<u>167,854</u>

Total current assets 3,628,012

Property and equipment, net 335,033

#### Other assets:

Intangible assets, net	3,239,716
Other, net	<u>205,260</u>

Total other assets 3,444,976

Total assets \$ 7,408,021

### Liabilities and members' deficit

#### Current liabilities:

Accounts payable and accrued liabilities	\$ 2,037,911
Local advertising program	1,292,961
Current portion of notes payable	146,217
Notes payable, related party	800,000
Current portion of deferred franchise fees	<u>559,878</u>

Total current liabilities 4,836,967

Notes payable, related party 9,000,000

Notes payable, net of current portion 242,037

Deferred franchise fees, noncurrent 211,500

Total liabilities 14,290,504

#### Commitments and contingencies

Members' deficit (6,882,483)

Total liabilities and members' deficit \$ 7,408,021

*See accompanying notes to the consolidated financial statements.*

# Tropical Smoothie Cafe, LLC and Subsidiary

## Consolidated Statement of Operations For the Fiscal Year Ended December 29, 2013

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### Revenues:

Royalties	\$ 10,309,962
National advertising royalties	1,719,363
Rebates	1,433,404
Franchise fees	1,402,092
Food and beverage sales, net	6,259
Miscellaneous	<u>398,452</u>
Total revenues	15,269,532
Costs of revenues	<u>3,382,514</u>
Gross profit	<u>11,887,018</u>

### Operating expenses:

Operating expenses	8,143,936
Depreciation and amortization	<u>293,197</u>
Total operating expenses	<u>8,437,133</u>
Income from operations	<u>3,449,885</u>

### Other expense:

Interest expense	(41,673)
Interest expense, related party	<u>(2,113,204)</u>
Total other expense	<u>(2,154,877)</u>
Net income	<u>\$ 1,295,008</u>

*See accompanying notes to the consolidated financial statements.*

## Tropical Smoothie Cafe, LLC and Subsidiary

### Consolidated Statement of Members' Deficit For the Fiscal Year Ended December 29, 2013

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Balance at December 30, 2012	\$ (6,978,450)
Capital contributions	4,000,000
Redemption of member units	(4,800,000)
Distributions	(446,586)
Equity-based compensation expense	47,545
Net income	<u>1,295,008</u>
Balance at December 29, 2013	<u>\$ (6,882,483)</u>

*See accompanying notes to the consolidated financial statements.*

## Tropical Smoothie Cafe, LLC and Subsidiary

### Consolidated Statement of Cash Flows For the Fiscal Year Ended December 29, 2013

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Cash flows from operating activities:		
Net income	\$ 1,295,008	
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	293,197	
Non-cash interest expense, related party	740,911	
Equity-based compensation expense	47,545	
Change in operating assets and liabilities:		
Deposits into restricted cash	(603,987)	
Accounts receivable	(573,863)	
Inventory	(24,156)	
Prepaid expenses	(167,854)	
Accounts payable and accrued expenses	336,803	
Local advertising program	323,115	
Deferred franchise fees	309,877	
Other assets	(81,106)	
	<hr/>	
Cash provided by operating activities	1,895,490	
Cash flows from investing activities:		
Acquisition of property and equipment	(322,228)	
Re-acquired area development rights	(450,000)	
	<hr/>	
Cash used in investing activities	(772,228)	
Cash flows from financing activities:		
Principal payments on notes payable	(356,599)	
Proceeds from note payable, related party	500,000	
Deferred loan costs, related party	(124,500)	
Redemption of member units	(4,000,000)	
Capital contributions	4,000,000	
Distributions	(446,586)	
	<hr/>	
Cash used in financing activities	(427,685)	
Net increase in cash		695,577
Cash and cash equivalents at beginning of year		656,624
Cash and cash equivalents at end of year		<u>\$ 1,352,201</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the period for:		
Interest	\$ 41,673	
Interest, related party	1,371,390	
	<hr/>	
Total interest paid	<u>\$ 1,413,063</u>	
Non-cash redemption of member units	<u>\$ 800,000</u>	

See accompanying notes to the consolidated financial statements.

# **Tropical Smoothie Café, LLC and Subsidiary**

## **Notes to Consolidated Financial Statements**

**December 29, 2013**

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### **Note 1: Description of Business and Summary of Significant Accounting Policies**

#### **Nature of Operations**

Tropical Smoothie Café, LLC develops and franchises a system of both traditional and non-traditional fast casual restaurant units primarily under the trade name “Tropical Smoothie Café”. Traditional restaurants feature dine-in and carry-out service. Non-traditional units include express units, which have a more limited menu and operate in non-traditional locations, such as college campuses. The system features proprietary menu items and emphasizes the preparation of food and drinks (smoothies) with high quality ingredients.

In 2013, Tropical Smoothie Café, LLC formed a wholly owned subsidiary, TSC-GA, LLC, to operate a unit of the type being franchised, which opened in December.

As of December 29, 2013 there were 360 stores in operation by franchisees throughout the United States and one corporate owned location, with a concentration in the southeastern region.

#### **Basis of Accounting**

The consolidated financial statements include the accounts of Tropical Smoothie Café, LLC and its wholly owned subsidiary (collectively, the Company). All intercompany accounts and transactions have been eliminated in consolidation.

#### **Reporting Entity and Fiscal Year**

Prior to August 16, 2012, the business was organized as Tropical Smoothie Franchise Development Corporation (TSFDC). On August 16, 2012 the Company underwent a capital transaction that resulted in a change of reporting entity.

The Company reports on a 52-53 week year basis which ends on the last Sunday in December. The fiscal year ended December 29, 2013 contained 52 weeks.

#### **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

## **Franchise Operations**

The Company enters into Franchise Agreements with franchisees who build and operate restaurants using the Tropical Smoothie brand within a defined geographical area. The Company believes that franchising is an effective and efficient means to expand the Tropical Smoothie brand. The franchisee is required to operate its restaurants in compliance with a Franchise Agreement that includes adherence to operating and quality control procedures established by the Company. If a franchisee becomes financially distressed, the Company generally does not provide any financial assistance. If financial distress leads to a franchisee's noncompliance with the Franchise Agreement and the Company elects to terminate the Franchise Agreement, the Company has the right but not the obligation to acquire the assets of the franchisee at fair value as determined by an independent appraiser. The Company has financial exposure for the collection of the royalty payments. Franchisees generally remit royalty payments weekly for the prior week's sales, which substantially minimizes the Company's financial exposure or at least enables the Company to quickly identify any troubled franchisees.

The Company sells certain territories (areas) within the United States to area developers. The area developers are required to meet mandatory development schedules for their specified territory. The Company splits franchise fees, transfer fees, and continuing royalty fees with area developers for stores opened in their territories.

## **Revenue Recognition**

The principal sources of revenue for the Company are franchise fees, territory sales and weekly royalty payments. The franchise agreements require the franchisee to pay an initial, non-refundable fee. Initial franchise fees are \$25,000 for the franchisee's first franchise location and \$15,000 for each additional location. Territory sales are based on the territory purchased, the territory's size and population and other factors and are included in franchise fees in the accompanying consolidated statement of operations.

Royalties are 9% of net sales and are collected on a weekly basis. In corporate territories, the 9% draw is split as follows: royalty revenue 6% - recognized by the Company in accordance with the franchise agreements; national advertising 1% - these amounts are recognized as revenue by the Company and are deposited in an account to be used in connection with national advertising for the Tropical Smoothie Café Brand; local advertising (co-ops) 2% - these amounts are recorded as liabilities and are deposited in an account to be used in connection with local area advertising. In area developer territories, 3% of the Company's royalty is paid to the area developer.

When an individual franchise is sold, the Company agrees to provide certain services to the franchisee. Generally, these services include restaurant design and assistance with site location, confidential operating manuals and initial training. Franchise fee revenue is recognized in the accompanying consolidated financial statements once substantial performance of these services is completed, which is generally upon the opening of a store. At December 29, 2013, there was \$771,378 in unearned revenue relating to franchises sold, for which the Company must provide future services. The Company recognizes continuing royalty fees as earned.

Territory sales are recognized when the territory is sold through contractual agreement. The Company considers substantial performance of their obligation under this agreement satisfied at the designation of a geographical area, which serves as the exclusive designated territory of the area developer. Area developers receive 50% of the initial franchise fee for the first franchisee store, 50% for each additional franchisee store, and 50% of the weekly royalty fees of franchises in their territories. Developer fees are initially deferred and recognized with the related revenue. Deferred developer fees totaled \$84,503 at December 29, 2013 and are recognized as a component of prepaid expenses in the accompanying consolidated balance sheet.

The Company recognizes a transfer fee of the greater of 5% of the total sales price of a franchised store or \$10,000 when the franchised store is sold or otherwise transferred to an unrelated third-party. Area developers receive one-half of the transfer fee for transfers occurring within their territory.



The Company sells gift cards with no expiration dates. The franchisees recognize income on gift cards when they are redeemed by the customer. The gift card proceeds are pooled and administered by the Company. Funds are transferred to or withdrawn from franchisee bank accounts on a monthly basis by the third-party gift card processor.

The Company negotiates with suppliers and manufacturers to receive discounts or rebates on certain items franchisees must purchase. The rebate programs vary depending on the supplier and the nature of the product. The Company recognizes rebate revenue in the period in which it is earned.

### **Cash and Cash Equivalents**

Cash and cash equivalents consist of highly liquid investments with a maturity of three months or less at the date of purchase. These investments are carried at cost, which approximates fair value. At times, cash and cash equivalent balances may exceed federally insured amounts. The Company mitigates its risks by depositing cash and investing in cash equivalents with major financial institutions.

### **Restricted Cash**

Restricted cash consists primarily of cash held on behalf of franchisees for local advertising and for escrow franchise fee deposits as required by certain states. The restricted cash balance at December 29, 2013 was \$1,164,203.

### **Accounts Receivable**

Accounts receivable consist primarily of amounts due from vendors for rebates and from franchisees for royalty sales pursuant to franchise agreements. The Company regularly analyzes its accounts receivable to determine whether any allowance is necessary based on the Company's collection history. The Company considers accounts receivable to be fully collectible; accordingly, no allowance for doubtful accounts has been recorded. If amounts become uncollectible, they will be charged to operations at that time.

### **Inventory**

Inventory is stated at the lower of cost or market. Cost is determined by the first-in, first-out (FIFO) method.

### **Property and Equipment**

Property and equipment are stated at cost less accumulated depreciation. Depreciation of property and equipment is calculated using the straight-line method over the estimated useful lives of the assets. Expenditures for maintenance and repairs are charged against operations when incurred. Estimated useful lives of property and equipment for purposes of computing depreciation are as follows:

Computers and software	5 years
Furniture and fixtures	5 years
Leasehold improvements	Lesser of estimated useful life or life of the lease
Machinery and equipment	5 years

## **Long-Lived Assets**

Long-lived assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. When indicators of impairment are present, the Company evaluates the carrying amount of such assets in relation to the operating performance and future estimated undiscounted net cash flows expected to be generated by the assets or underlying businesses. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. The assessment of the recoverability of assets will be impacted if estimated future operating cash flows are not achieved. In the opinion of management, no long-lived assets were impaired as of December 29, 2013.

## **Intangible Assets**

Intangible assets are recorded at cost and consist of trademarks and other marketing-related property and reacquired franchise rights. Trademarks and marketing-related property are amortized over the legal life of the trademark, 15 years. Reacquired franchise rights are amortized over the remaining life of the related franchise agreement.

## **Other Assets**

Deferred loan costs are included as a component of other assets in the accompanying consolidated balance sheet and totaled \$120,279 at December 29, 2013. Deferred loan costs relate to the financing of the notes payable and are being amortized on a straight-line basis over the life of the notes. In October 2013, the Company refinanced its related party debt. As a result, amortization of the existing deferred costs was accelerated to fully amortize the remaining balance in 2013. Amortization expense of deferred loan costs totaled \$740,911 for the fiscal year ended December 29, 2013 and is included as a component of interest expense, related party in the accompanying consolidated statement of operations.

## **Deferred Revenue**

Deferred revenue consists primarily of initial franchise fees received for which the Company has not substantially performed or satisfied all material services or conditions related to the sale of the franchise.

## **Advertising**

In accordance with the Franchise Agreement and as noted in the revenue recognition policy above, franchisees must pay a national advertising fee of 1% of net sales. The national advertising fee is used for developing and conducting marketing and advertising for the Tropical Smoothie Café system. The Company incurred expenses of \$1,740,678 for national advertising during the fiscal year ending December 29, 2013.

The Company's total advertising expenses, including national advertising expenses, totaled \$2,038,132 for the fiscal year ending December 29, 2013. Advertising costs are expensed as incurred.

## Equity-Based Compensation

The Company accounts for the issuance of equity instruments to employees in accordance with accounting standards for share-based payments which require companies to recognize in the statement of operations the fair value of stock awards issued over the requisite service period. Management estimates the fair value of the equity issued on the date of grant.

The fair value of the stock awards is determined on the grant date using the Black-Scholes option pricing model. Expected volatility is based on the average historical volatility of similarly structured restaurant companies. The expected term of the options granted represents the period of time that the options are expected to be outstanding. The Company used the simplified method to estimate the expected term of the options. The risk-free rate is based on U.S. Treasury yields in effect at the time of the grant for the expected term of the options.

Assumptions for the grants are as follows:

Risk-free interest rate	1.66%
Volatility factor	50%
Dividend yield	0%
Expected life (years)	6

## Income Taxes

Under the provisions of the Internal Revenue Code and applicable state laws, the Company is not directly subject to income taxes since the Company's profits and losses are allocated to, and are reported on, the individual members' tax returns. Therefore, no provision for income tax expense has been included in the accompanying consolidated financial statements.

The Company applies a recognition threshold to all income tax benefits arising from uncertain income tax positions such that a tax benefit arising from an uncertain tax position can only be recognized for financial reporting purposes if, and to the extent that, the position is more likely than not to be sustained in an audit by the applicable taxing authority. The Company had no uncertain tax positions for the fiscal year ending December 29, 2013.

## Subsequent Events

Effective January 1, 2014, the Company increased the national advertising fund contribution to 2% for all franchisees.

The Company evaluated subsequent events between the consolidated balance sheet date and report date, the date the consolidated financial statements were available for issuance, and has concluded that all subsequent events requiring recognition or disclosure have been incorporated into these consolidated financial statements.

## Note 2: Property and Equipment

Property and equipment consist of the following as of December 29, 2013:

Leasehold improvements	\$	107,682
Machinery and equipment		98,847
Furniture and fixtures		88,550
Computers and software		<u>80,607</u>
		375,686
Accumulated depreciation		<u>(40,653)</u>
	\$	<u>335,033</u>

Depreciation expense for the year ended December 29, 2013 totaled \$33,587.

## Note 3: Intangible Assets

Intangible assets consist of the following as of December 29, 2013:

	Estimated life	Weighted Average of Remaining Useful Life	Amount
Trademarks and other marketing- related property	15 years	2.00	\$ 135,000
Reacquired franchise rights	Various	12.61	4,166,925
Accumulated amortization			<u>(1,062,209)</u>
			<u>\$ 3,239,716</u>

Amortization expense related to intangible assets was \$259,611 for the fiscal year ended December 29, 2013.

Estimated future amortization expense is as follows:

Fiscal year	
2014	\$ 283,151
2015	276,401
2016	274,151
2017	274,151
2018	274,151
Thereafter	<u>1,857,711</u>
	<u>\$ 3,239,716</u>

## Note 4: Debt

### Notes Payable

A summary of notes payable as of December 29, 2013 is as follows:

Note payable to former area developer. The note provides for monthly principal and interest payments of \$7,918 and bears a fixed rate of interest of 8.25%. The note matures on November 10, 2014 and is unsecured.	\$ 83,510
Note payable to former area developer. The note provides for monthly principal and interest payments of \$7,068 and bears a fixed rate of interest of 8%. The note matures on March 15, 2018 and is unsecured.	<u>304,744</u>
Total notes payable	388,254
Less current maturities	<u>146,217</u>
Notes payable, net of current portion	<u>\$ 242,037</u>

Aggregate future principal payments are as follows at December 29, 2013:

Fiscal year	
2014	\$ 146,217
2015	67,911
2016	73,548
2017	79,652
2018	<u>20,926</u>
	<u>\$ 388,254</u>

### Related Party Notes Payable

Included in related party notes payable are two separate member notes totaling \$9,000,000 and \$800,000 at December 29, 2013.

As of December 30, 2012, the Company had a senior note payable due to a related party totaling \$8,500,000. The senior note bore interest at 12% per annum and had a maturity date of October 31, 2016. On October 28, 2013, the Company refinanced the senior note payable, extending the aggregate principal amount to \$9,000,000. The note bears interest at 8.5% per annum and has a maturity date of October 28, 2018. The Company is required to make interest-only payments until December 2015 at which time the Company is required to make monthly principal payments ranging from \$166,667 to \$333,333. The senior note payable is collateralized by substantially all assets of the Company.

The \$800,000 note payable to related party resulted from the Company's purchase of Series A Common Units in January 2013 (Note 6). The note bears interest at 6% and matures in November 2014. The note payable is subordinate to the Company's senior note payable.

Aggregate future principal payments are as follows at December 29, 2013:

Fiscal year	
2014	\$ 800,000
2015	166,667
2016	2,083,333
2017	3,083,333
2018	<u>3,666,667</u>
	<u>\$ 9,800,000</u>

## Note 5: Commitments and Contingencies

### Litigation

The Company from time to time may be involved in various legal claims, actions, and complaints, generally arising out of the normal course of business. Although it is difficult to predict the ultimate outcome of any potential or threatened litigation, management believes that any ultimate liability will not materially affect the financial positions or results of operations of the Company.

### Operating Leases

The Company leases office and restaurant space under non-cancelable agreements accounted for as operating leases. The leases generally require the Company pay taxes, maintenance and insurance.

Future minimum rental payments under non-cancelable operating leases (with initial or remaining lease terms in excess of one year) were as follows as of December 29, 2013:

Fiscal year	
2014	\$ 297,829
2015	210,743
2016	217,082
2017	223,592
2018	<u>213,422</u>
	<u>\$ 1,162,668</u>

The Company recognizes rent expense on a straight-line basis over the expected lease term. Differences between amounts paid and amounts expensed are recorded as deferred rent. Deferred rent totaled \$23,449 at December 29, 2013.

Rent expense totaled \$380,751 for the fiscal year ended December 29, 2013.

### Guarantees of Indebtedness

During 2013, the related party lender began offering a Franchise Finance Program to area developers and franchisees for which the Company provides a conditional guarantee. The contingent obligations are “last loss” guarantees requiring the related party lender to exhaust all remedies against (i) the applicable borrower, (ii) all collateral securing the loan and (iii) any other guarantor of the loan, including the applicable area developer. At December 29, 2013, the Company has not pledged any conditional guarantees under this arrangement.

## Note 6: Members' Equity

At December 29, 2013, the authorized equity capital of the Company consisted of 12,000,000 Common A Units and 2,000,000 Common B Units of which 10,000,000 Common A Units are issued and outstanding. The units have a stated value equal to the amount originally contributed. Common A Unit members shall be entitled to a number of votes equal to their respective percentage interest with respect to all matters on which members are entitled to vote, as defined. The units have transfer restrictions limiting their sale or transfer. Profit and losses are allocated in accordance with respective unit ownership percentages. Cash distributions are allocated in accordance with the requirements for the allocation of profits subject to certain limitations, as defined.

In January 2013, the Company issued 2,000,000 Common A Units for \$4,000,000 and simultaneously redeemed 2,000,000 Common A Units for \$4,000,000 and a \$800,000 promissory note payable.

## Note 7: Equity-Based Compensation

In May 2013, the Company established an incentive compensation plan (the 2013 Equity Incentive Plan or the Plan). The Plan provides for the grant of options to certain employees, Board members, advisors and other service providers of the Company who are selected by the Committee to be the recipient of such grants. The Board authorized 1,000,000 Series B Common Unit options for issuance under the Plan. The terms of any such grant of an equity incentive shall be determined on a case by case basis by the Board pursuant to any plan adopted by the Board.

The following table summarizes equity-based compensation activity for the fiscal year ended December 29, 2013:

	<b>Options</b>	<b>Weighted Average Exercise Price per Share</b>
Oustanding, December 30, 2012	-	\$ -
Granted	632,500	1.85
Exercised	-	-
Forfeited/canceled	-	-
	<hr/>	<hr/>
Oustanding, December 29, 2013	<u>632,500</u>	<u>\$ 1.85</u>

Options outstanding on December 31, 2013 have a weighted average remaining contractual life of 9.54 years.

The fair value of options granted during the year ended December 29, 2013 was \$334,970. The Company recorded equity-based compensation expense of \$47,545 related to such options for the year ended December 29, 2013. As of December 29, 2013, there was \$287,425 of total unrecognized compensation costs related to such options. The costs are expected to be recognized over a weighted average period of 2.79 years. At December 29, 2013, there were 123,438 vested options pursuant to the Company's equity based compensation arrangement.

## **Note 8: Related Party Transactions**

On August 16, 2012, the Company entered into a five year management agreement with a related party with an initial fee of \$200,000, a fee of \$250,000 for years 1 to 3, and a fee of \$150,000 for years 4 to 5. The agreement will renew on an annual basis after the expiration of the initial term at \$150,000 per year. For the fiscal year ended December 29, 2013 management fees related to this agreement were \$250,000.

On August 16, 2012, the Company entered into an annual consulting agreement with a related party with a fee of \$350,000 for years 1 to 2 and a fee of \$50,000 per year for each year following. The agreement is renewable annually. For the fiscal year ended December 29, 2013, consulting fees related to this agreement were \$350,000.

On August 16, 2012, the Company entered into an annual consulting agreement with a related party with a fee of \$50,000 per year. The agreement is renewable annually. For the fiscal year ended December 29, 2013, consulting fees related to this agreement were \$50,000.

On August 16, 2012, the Company assumed an annual consulting agreement with a related party with a fee of \$10,000 per month. The agreement is renewable annually. For the fiscal year ended December 29, 2013, consulting fees related to this agreement were \$120,000.

Included in the Company's operating leases is the lease of office space from a related party expiring August 2014 with monthly payments of \$15,979. The Company also pays sales tax, estimated CAM, janitorial services and utility costs for this office space. Rent expense under this agreement totaled \$244,532 for the fiscal year ended December 29, 2013. At December 29, 2013, future minimum lease payments under this operating lease were \$127,832 in 2014.

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**TROPICAL SMOOTHIE CAFE, LLC**

**FINANCIAL STATEMENTS**

**DECEMBER 30, 2012**

TROPICAL SMOOTHIE CAFE, LLC

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## INDEPENDENT AUDITORS' REPORT

To the Board of Directors of  
Tropical Smoothie Cafe, LLC

We have audited the accompanying financial statements of Tropical Smoothie Cafe, LLC (a Georgia limited-liability company), which comprise the balance sheet as of December 30, 2012, and the related statements of loss, members' deficit, and cash flows for the period August 16, 2012 (date of the unit purchase and contribution agreement) to December 30, 2012, and the related notes to the financial statements.

### **Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Tropical Smoothie Cafe, LLC as of December 30, 2012, and the results of its operations and its cash flows for the period from August 16, 2012 (unit purchase and contribution agreement) to December 30, 2012 in accordance with accounting principles generally accepted in the United States of America.

## Report on Supplementary Information

Our audit was conducted for the purpose of forming an opinion on the financial statements as a whole. The information included in the schedule of operating expenses is presented for purposes of additional analysis and is not a required part of the financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the financial statements as a whole.

A handwritten signature in black ink, reading "Halley, Anagata & Partners LLP". The signature is written in a cursive, flowing style.

Atlanta, Georgia

April 12, 2013

TROPICAL SMOOTHIE CAFE, LLC  
BALANCE SHEET  
DECEMBER 30, 2012

ASSETS

Current assets

Cash	\$ 656,624
Restricted cash	560,216
Accounts receivable	335,735
Due from franchisees	<u>10,000</u>
Total current assets	<u>1,562,575</u>

<u>Property and equipment, net</u>	46,392
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Other assets

Intangible assets, net	3,786,016
Deposits	<u>3,875</u>
Total other assets	<u>3,789,891</u>
Total assets	<u>\$ 5,398,858</u>

LIABILITIES AND MEMBERS' DEFICIT

Current liabilities

Accounts payable	\$ 193,847
Accrued expenses and other liabilities	726,344
Accrued interest, related party	102,472
Gift card program	620,150
Local advertising program	969,846
Current portion of long-term debt	356,599
Current portion of deferred franchise fees	371,001
Due to related party	<u>58,295</u>
Total current liabilities	<u>3,398,554</u>

Long-term liabilities

Note payable, related party	8,500,000
Long-term debt, net of current portion	388,254
Deferred franchise fees, noncurrent	<u>90,500</u>
Total long-term liabilities	<u>8,978,754</u>

<u>Members' deficit</u>	<u>(6,978,450)</u>
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Total liabilities and members' deficit	<u>\$ 5,398,858</u>
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See auditors' report and accompanying notes

TROPICAL SMOOTHIE CAFE, LLC  
STATEMENT OF LOSS  
FOR THE PERIOD AUGUST 16, 2012 TO DECEMBER 30, 2012

<u>Revenues</u>		
Royalties	\$	2,941,374
National advertising royalties		490,303
Franchise fees		16,000
Rebates		474,273
Transfer fees		55,750
Miscellaneous		<u>101,448</u>
Total revenues		<u>4,079,148</u>
<u>Cost of revenues</u>		<u>1,005,628</u>
Gross profit		<u>3,073,520</u>
<u>Operating expenses</u>		
Depreciation and amortization		175,123
Operating expenses		<u>3,342,627</u>
Total operating expenses		<u>3,517,750</u>
Loss from operations		(444,230)
<u>Other expense</u>		
Interest expense		(21,445)
Interest expense, related party		<u>(505,750)</u>
Total other expense		<u>(527,195)</u>
Net loss	\$	<u><u>(971,425)</u></u>

See auditors' report and accompanying notes

TROPICAL SMOOTHIE CAFE, LLC  
STATEMENT OF MEMBERS' DEFICIT  
FOR THE PERIOD AUGUST 16, 2012 TO DECEMBER 30, 2012

Balance at August 16, 2012	\$ -
Contributed deficit (See Note A)	(6,929,710)
Capital contributions	10,200,000
Distributions	(9,277,315)
Net loss	<u>(971,425)</u>
Balance at December 30, 2012	<u>\$ (6,978,450)</u>

See auditors' report and accompanying notes

TROPICAL SMOOTHIE CAFE, LLC  
STATEMENT OF CASH FLOWS  
FOR THE PERIOD AUGUST 16, 2012 TO DECEMBER 30, 2012

<u>Cash flows from operating activities</u>	
Net loss	\$ (971,425)
Adjustments to reconcile net loss to net cash used by operating activities:	
Depreciation and amortization	175,123
Bad debt	122,888
Change in operating assets and liabilities:	
Deposits into restricted cash	(560,216)
Accounts receivable	286,664
Due from franchisees	(5,000)
Deposits	(3,875)
Accounts payable	95,763
Accrued expenses and other liabilities	411,816
Accrued interest	102,472
Gift card program	173,422
Local advertising program	(159,337)
Deferred revenue	209,000
Due to related party	58,295
Total adjustments	<u>907,015</u>
Cash used by operating activities	<u>(64,410)</u>
 <u>Cash flows from investing activities</u>	
Payments received on note receivable	<u>10,961</u>
Cash provided by investing activities	<u>10,961</u>
 <u>Cash flows from financing activities</u>	
Principal payments on long-term debt	(212,612)
Capital contributions	10,200,000
Distributions	<u>(9,277,315)</u>
Cash provided by financing activities	<u>710,073</u>
Net increase in cash	656,624
Cash, beginning of the year	<u>-</u>
Cash, end of year	<u>\$ 656,624</u>

See auditors' report and accompanying notes



TROPICAL SMOOTHIE CAFE, LLC  
STATEMENT OF CASH FLOWS  
FOR THE PERIOD AUGUST 16, 2012 TO DECEMBER 30, 2012

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION

Cash paid during the period for:

Interest	\$ 21,445
Interest, related party	<u>403,278</u>
Total interest paid	<u>\$ 424,723</u>

SUPPLEMENTAL DISCLOSURE OF NON-CASH TRANSACTIONS

Tropical Smoothie Franchise Development Corporation contributed \$4,768,780 in operating assets and \$11,698,490 in liabilities in exchange for \$9,277,315 in cash and 4,500,000 of Common units of Tropical Smoothie, Cafe, LLC resulting in a contributed deficit of \$6,929,710. (See Note A)

See auditors' report and accompanying notes

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**

**Summary of Significant Accounting Policies**

The accounting and reporting policies of Tropical Smoothie Cafe, LLC (the "Company") conform to accounting principles generally accepted in the United States of America. The following is a description of the more significant of those policies:

Reporting Entity and Period

Prior to August 16, 2012, the business was organized as Tropical Smoothie Franchise Development Corporation ("TSFDC"). The business was recapitalized and the operating assets and liabilities were transferred to the Company on August 16, 2012.

The Company's fiscal year ends on the Sunday closest to December 31st and, accordingly, the Company's 2012 fiscal year ended on December 30, 2012. These financial statements present the financial position of the Company as of December 30, 2012 and for the period from August 16, 2012 through December 30, 2012.

Recapitalization and Change in Reporting Entity

On August 16, 2012, the business was recapitalized and a change in reporting entity occurred as described below.

The Company was formed on June 25, 2012 and issued 5,500,000 common units in exchange for \$10,200,000. The number of units issued to the BIP Funds and the proceeds from issuance are presented below:

	<u>Common Units</u>	<u>Contributed Capital</u>
BIP Opportunities I, L.P.	700,980	\$ 1,300,000
BIP Opportunities II, L.P.	509,020	944,000
BIP Opportunities Fund II - QP, L.P.	569,412	1,056,000
BIP - TSC Equity, LLC	<u>3,720,588</u>	<u>6,900,000</u>
	<u>5,500,000</u>	<u>\$ 10,200,000</u>

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

On August 16, 2012, the Company acquired the following assets and assumed the following liabilities from TSFDC in exchange for a cash payment of \$9,277,315 and issuance by the Company of 4,500,000 common units

	Amount
Accounts receivable	\$ 622,400
Due from franchisees	5,000
Notes receivable	133,849
Property and equipment	53,458
Intangible assets, net of accumulated amortization of \$829,608	3,954,073
Total assets acquired	4,768,780
Less:	
Accounts payable	98,085
Accrued expenses and other liabilities	314,528
Local advertising program	1,129,183
Gift card program	446,728
Notes payable	957,465
Deferred franchise fees	252,501
Note payable, related party	8,500,000
Total liabilities assumed	(11,698,490)
Net liabilities assumed	\$ (6,929,710)

In connection with the transaction, the Company assumed any liabilities arising from the pending litigation discussed in Note H and any liabilities arising from audits or adjustments to income tax returns filed by TSFDC prior to the transaction date that remain subject to audit by the applicable taxing authority.

Following the recapitalization, the BIP Funds held 55% of the issued and outstanding common units of the Company and the sellers held the remaining 45% ownership interest. It was determined that a change in control had occurred and the BIP Funds were deemed to be the acquirer in accordance with the applicable authoritative accounting guidance.

Management determined that the Company was not the acquirer of the business because it lacked sufficient stand-alone economic substance to consummate the transaction. Since the Company was not the acquirer, it was not required to apply the acquisition accounting provisions of Financial Accounting Standards Board Accounting Standards Codification Topic 805 Business Combinations.

Management elected not to push-down the acquisition accounting adjustments to the financial statements of the Company and record the assets acquired and liabilities assumed at fair value at the date of the transaction described above. The assets acquired and liabilities assumed were recorded by the Company at the carrying amounts previously determined by TSFDC.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

The Company recorded the amount of the net liabilities received from TSFDC as a contributed deficit. The payment of \$9,277,315 in cash to the sellers was recorded as a distribution.

Nature of Operations:

The operations of the Company include the development and franchising of a system of both traditional and non-traditional quick service restaurant units. Traditional restaurants feature dine-in and carry-out service. Non-traditional units include express units, which have a more limited menu and operate in non-traditional locations such as college campuses where a full-scale traditional outlet would not be practical or efficient. The system features proprietary menu items and emphasizes the preparation of food and drinks (smoothies) with high quality ingredients.

At December 30, 2012 there were 329 stores in operation by franchisees throughout the United States and no corporate stores owned, with a concentration in the southeastern region of the United States. The Company also sells certain territories (areas) within the United States to area developers. The area developers are required to meet mandatory development schedules for their specified territory. The Company splits franchise fees, transfer fees, and continuing royalty fees with area developers for stores opened in their territories.

Revenue Recognition:

The principal sources of revenue for the Company are franchise fees, territory sales, and weekly royalty payments. The franchise agreements require the franchisee to pay an initial, non-refundable fee. Initial franchise fees are \$25,000 for the first franchisee store and \$15,000 for each additional franchisee store. Territory sales are based on the territory purchased, size, population and other factors.

Royalties are 9% of net sales and are collected on a weekly basis. In corporate territories the 9% draw is split as follows: Royalty revenue 6% - recognized by the company in accordance with the franchise agreements. National Advertising 1% - these amounts are recognized as revenue by the company and are deposited in an account to be used in connection with national advertising for the Tropical Smoothie Café Brand. Local advertising (co-ops) 2% - these amounts are recorded as liabilities and are deposited in an account to be used in connection with local area advertising. In area developer territories, the 6% royalty is split 50/50, with 3% retained by the Company, and 3% paid to the area developer.

When an individual franchise is sold, the Company agrees to provide certain services to the franchisee. Generally, these services include restaurant design and assistance with site location, confidential operating manuals and initial training. Franchise fee revenue is recognized in the accompanying financial statements, once substantial performance of these services is completed, which is generally upon the opening of a store. At December 30, 2012, there was \$461,501 in unearned revenue relating to franchises sold, for which the Company must provide future services. There were 13 franchises sold during the period ending December 30, 2012. The Company recognizes continuing (royalty) fees as earned.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

Territory sales are recognized when the territory is sold through contractual agreement. The Company considers substantial performance of their obligation under this agreement satisfied at the designation of a geographical area, which serves as the exclusive designated territory of the area developer. Area developers receive 50% of initial franchise fees for the first franchisee store, 50% for each additional franchisee store, and 50% of the weekly royalty fees of franchises in their territories. Developer fees are charged to cost of revenues as incurred.

The Company recognizes a transfer fee of 5% or \$10,000 (whichever is greater) of the total sales price of a franchised store when the franchised store is sold or otherwise transferred to an unrelated third-party. Area developers receive one-half of the transfer fee for transfers occurring within their territory.

The Company sells gift cards with no expiration dates. The franchisees recognize income on gift cards when they are redeemed by the customer. The gift card proceeds are pooled and maintained by the Company. Funds are transferred to or withdrawn from franchisee bank accounts on a monthly basis by the third-party gift card processor. The Company recognizes income on unredeemed gift cards when it can be determined that the likelihood of the gift card being redeemed is remote and that there is no legal obligation to remit the unredeemed gift cards to relevant jurisdictions (gift card breakage). The Company determines the gift card breakage rate based on historical customer usage data. The Company recorded a gift card breakage expense of \$147,009 for the period ending December 30, 2012.

The Company negotiates with suppliers and manufacturers to receive discounts or rebates on certain items franchisees must purchase. The rebate programs vary depending on the supplier and the nature of the product. The Company recognizes rebate revenue in the period it is earned.

Miscellaneous revenue earned during the period ending December 30, 2012 primarily represent fees collected from franchisees attending the 2012 Road Show and the sale of souvenir items.

Use of Estimates:

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statement. Estimates are used for, but not limited to, the accounting for doubtful accounts, gift card breakage, and contingencies. Actual results could differ from these estimates.

Accounts Receivable and Due From Franchisees:

Accounts receivable consist primarily of amounts due from vendors for rebates. Due from franchisees represent amounts due from franchisees related to franchise agreements. Terms for repayment vary by franchisee. The Company asserts that all accounts receivables and due from franchisees are fully collectible. This determination is based on management's assessment of the collectibility for the specific accounts. At December 30, 2012, no allowance for doubtful accounts had been recorded.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

Property and Equipment:

Property and equipment are stated at cost. Depreciation of property and equipment is calculated using the straight-line method over the estimated useful lives of the assets. Expenditures for maintenance and repairs are charged against operations when incurred. Estimated useful lives of property and equipment for purposes of computing depreciation is as follows.

Computers and software	5 years
Furniture and fixtures	5 years
Leasehold improvements	Lesser of estimated useful life or life of the lease
Machinery and equipment	5 years

Depreciation expense for the period ended December 30, 2012 totaled \$7,066.

Impairment of Long-Lived Assets and Intangible Assets:

Long-lived assets and intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to their fair value, which is normally determined through analysis of the future net cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount that the carrying amount of the assets exceeds the fair value of the assets.

The Company did not recognize an impairment charge during the period ending December 30, 2012.

Intangible Assets:

Intangible assets are recorded at cost and consist of trademarks and other marketing related property and reacquired franchise rights. The trademarks and marketing related property are amortized over the legal life of the trademark, which is 15 years. The reacquired franchise rights are amortized over the remaining life of the related franchise agreement. Loan costs are amortized over the term of the loan.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note A**  
**Summary of Significant Accounting Policies (Continued)**

Advertising:

In accordance with the franchise agreement and as noted in the revenue recognition policy above, franchisees must pay a national advertising fee of 1% of net sales. The national advertising fee is used to design and create advertising materials and other promotional items as the Company deems appropriate. The Company incurred expenses of \$551,044 for national advertising during the period ending December 30, 2012.

The Company's total advertising expenses, including national advertising expenses, totaled \$563,101 for the period ending December 30, 2012. Advertising costs are expensed as incurred.

The local advertising program that was assumed by the Company was under funded by \$1,129,183 at the time of purchase. At December 30, 2012, this under funding had been reduced to \$409,630.

Income Taxes:

Under the provisions of the Internal Revenue Code and applicable state laws, the Company is not directly subject to income taxes since the Company's profits and losses are allocated to, and are reported on, the individual members' tax returns. Therefore, no provision for income tax expense has been included in the accompanying consolidated financial statements.

The Company applies a recognition threshold to all income tax benefits arising from uncertain income tax positions such that a tax benefit arising from an uncertain tax position can only be recognized for financial reporting purposes if, and to the extent that, the position is more likely than not to be sustained in an audit by the applicable taxing authority. The Company had no uncertain tax positions for the period ending December 30, 2012.

**Note B**  
**Restricted Cash**

Restricted cash consists of cash held on behalf of the franchisees for local advertising. The restricted cash balance at December 30, 2012 was \$560,216.

**Note C**  
**Accounts Receivable**

Accounts receivable consists of the following at December 30, 2012:

	<u>Amount</u>
Rebates receivable	\$ 311,889
Trade receivables	11,557
Other receivables	<u>12,289</u>
	<u>\$ 335,735</u>

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note D**  
**Note Receivable**

The Company financed part of the sale of a certain territory rights to an area developer. The note accrues interest at 8% per annum and has a maturity date of March 31, 2014. At December 30, 2012, the Company determined that the note receivable was no longer collectible and has recorded a bad debt expense for the period ending December 30, 2012 of \$122,888. At December 30, 2012, the note receivable balance was \$0.

**Note E**  
**Property and Equipment**

Property and equipment at December 30, 2012 is summarized as follows:

	Amount
Computers and software	\$ 19,128
Furniture and fixtures	9,990
Machinery and equipment	20,343
Leasehold improvements	3,997
	53,458
Accumulated depreciation	(7,066)
	\$ 46,392

**Note F**  
**Intangible Assets**

Intangible assets were comprised of the following at December 30, 2012:

	Estimated life	Weighted Average of Useful Life	Amount
Trademarks and other marketing related property	15 years	5.41	\$ 135,000
Loan costs	5 years	3.83	960,900
Reacquired franchise rights	various	8.45	3,687,781
Accumulated amortization			(997,665)
			\$ 3,786,016

Amortization expense related to the trademarks and other marketing property and loan fees was \$75,807 for the period ending December 30, 2012. Amortization expense related to reacquired franchise rights for the period ending December 30, 2012 was \$92,250.



TROPICAL SMOOTHIE CAFE, LLC  
 NOTES TO FINANCIAL STATEMENTS  
 DECEMBER 30, 2012

**Note F**  
**Intangible Assets (Continued)**

Estimated future amortization expense is as follows:

<u>Year Ending December 30,</u>	<u>Amount</u>
2013	\$ 447,179
2014	447,179
2015	440,430
2016	406,151
2017	246,000
Thereafter	<u>1,799,077</u>
	<u>\$ 3,786,016</u>

**Note G**  
**Long-Term Debt**

Long-term debt comprised the following at December 30, 2012:

	<u>Amount</u>
Note payable to James and Suzanne Gonisor, former area developer. The note provides for monthly principal and interest payments of \$37,464 and bears a fixed rate of interest of 5% per annum. The note matures on April 15, 2013. The note is unsecured.	\$ 148,307
Note payable to Ralph Proctor, former area developer. The note provides for monthly principal and interest payments of \$7,918 and bears a fixed rate of interest of 8.25%. The note matures on November 10, 2014. The note is unsecured.	174,197
Note payable to Smoothie Adventures I, Inc., former area developer. The note provides for monthly principal and interest payments of \$7,068 and bears a fixed rate of interest of 8%. The note matures on March 15, 2018. The note is unsecured.	362,645
Note payable to Paul Golden, former area developer. The note provides for monthly principal and interest payments of \$7,689 and bears a fixed rate of interest of 8% per annum. The note matures on August 15, 2013. The note is unsecured.	<u>59,704</u>
Total notes payable	744,853
Less current maturities	<u>356,599</u>
Notes payable, net of current portion	<u>\$ 388,254</u>

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note G**  
Long-Term Debt (Continued)

Aggregate future principal payments are as follows at December 30, 2012:

<u>Year Ending December 30,</u>	<u>Amount</u>
2013	\$ 356,599
2014	146,217
2015	67,911
2016	73,548
2017	79,652
Thereafter	<u>20,926</u>
	<u>\$ 744,853</u>

Note Payable, Related Party:

The Company has a note payable due to a related party in the amount of \$8,500,000. The note carries an interest rate of 12% per annum and has a maturity date of October 31, 2016. The Company is required to make interest-only payments until June 2014 at which time the Company is required to make monthly principal payments ranging from \$83,333 to \$166,667. The note payable is collateralized by substantially all assets of the Company.

Aggregate future principal payments are as follows at December 30, 2012:

<u>Year Ending December 30,</u>	<u>Amount</u>
2013	\$ -
2014	750,000
2015	1,583,333
2016	<u>6,166,667</u>
	<u>\$ 8,500,000</u>

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note H**  
**Commitments and Contingencies**

Litigation:

The Company has legal proceedings arising from the normal course of business. The following summarized litigation was assumed by the Company in connection with the business combination described in Note B. Accrued expenses as of period end December 30, 2012 include \$156,250 related to lawsuit settlements brought against the Company by former area developers. The Company believes that the ultimate outcome of the proceedings will not have a material adverse impact on the Company's financial position, results of operations, or cash flows.

The Company has a pending lawsuit for an alleged breach of contract, breach of the implied covenant of good faith and fair dealing, fraud, promissory estoppel, conversion and unjust enrichment and constructive trust. The lawsuit resulted from actions taken by Tropical Smoothie Franchise Development Corporation to terminate the area developer agreement for the Atlanta, Georgia territory. At December 30, 2012, the Company estimates that its exposure related to this lawsuit are between \$100,000 and \$400,000, with \$100,000 accrued at year end.

During the period ending December 30, 2012, the Company settled a lawsuit related to an alleged violation of the implied covenant of good faith and fair dealing for \$75,000. The lawsuit resulted from actions taken by Tropical Smoothie Franchise Development Corporation to terminate the area developer agreement for the Bronx, New York, Queens and Richmond territory in the State of New York. At December 30, 2012, the Company has \$56,250 remaining of the settled amount recorded as a liability.

Operating Leases:

The Company leases an office space under an agreement that expires in February 2013. The lease converts to a month to month lease following the expiration. At December 30, 2012, future minimum lease payments under this operating lease is \$23,250. Rent expense under this agreement totaled \$15,500 for the period ended December 30, 2012

**Note I**  
**Concentrations**

Significant Vendor:

A significant vendor is defined as one from which the company receives at least 10% its total purchases. For the period ended December 30, 2012, the Company had purchases from one supplier totaling approximately \$247,000, which comprised approximately 15% of the Company's annual purchases. The accounts payable balance included approximately \$18,000 to this vendor at December 30, 2012.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note J**

**Related Party Transactions**

On August 16, 2012, the Company entered into a five year management agreement with a related party with an initial fee of \$200,000, a fee of \$250,000 for years 1 to 3, and a fee of \$150,000 for years 4 to 5. The agreement will renew on an annual basis after the expiration of the initial term at \$150,000 per year. For the period ended December 30, 2012 management fees related to this agreement were \$329,539.

On August 16, 2012, the Company entered into an annual consulting agreement with a related party with a fee of \$350,000 for years 1 to 2 and a fee of \$50,000 per year for each year following. The agreement is renewable annually. For the period ended December 30, 2012, consulting fees related to this agreement were \$132,556.

On August 16, 2012, the Company entered into an annual consulting agreement with a related party with a fee of \$50,000 per year. The agreement is renewable annually. For the period ended December 30, 2012, consulting fees related to this agreement were \$18,683.

On August 16, 2012, the Company assumed an annual consulting agreement with a related party with a fee of \$10,000 per month. The agreement is renewable annually. For the period ended December 30, 2012, consulting fees related to this agreement were \$50,000.

The Company leases an office space from a related party expiring August 2014 with monthly payments of \$15,979. The Company also pays sales tax, estimated CAM, janitorial services and utility costs for this office space. Rent expense under this agreement totaled \$101,848 for the period ended December 30, 2012. At December 30, 2012, future minimum lease payments under this operating lease were \$191,748 in 2013 and \$127,832 in 2014.

Amounts due to related party represent expenses paid on behalf of the the Company. Interest accrues on the amounts at 4.5% per annum.

TROPICAL SMOOTHIE CAFE, LLC  
NOTES TO FINANCIAL STATEMENTS  
DECEMBER 30, 2012

**Note K**  
**Subsequent Events**

The Company evaluated subsequent events through April 12, 2013, when these financial statements were available to be issued.

Ownership Change:

On January 28, 2013, the Company repurchased 15% and 5% ownership from Tropical Smoothie Development Corporation and David Walker, respectively, in exchange for \$4,000,000 and the issuance of a \$800,000 promissory note to David Walker. Simultaneously, BIP Opportunities Fund II, LP and BIP Opportunities Fund II - QP, LP acquired an additional 9.7451% and 10.2549% ownership interest from the Company for \$4,000,000.

Management is not aware of any other significant events that occurred subsequent to the balance sheet date but prior to the issuance of this report that would have a material impact on the consolidated financial statements.

## SUPPLEMENTARY INFORMATION

TROPICAL SMOOTHIE CAFE, LLC  
SCHEDULE OF OPERATING EXPENSES  
FOR THE PERIOD AUGUST 16, 2012 TO DECEMBER 30, 2012

	Amount
<u>National advertising</u>	
Creative production, development and other	\$ <u>551,044</u>
<u>Operations</u>	
Travel	86,736
Training	18,761
Employee expenses	5,444
Franchise assistance	2,310
Salaries, wages and payroll taxes	260,854
Creative development	17,000
Conventions	92,172
Other	<u>15,515</u>
Total operations	<u>498,792</u>
<u>Franchise development</u>	
Advertising	12,057
General and administrative	10,752
Salaries, wages and payroll taxes	138,506
Web	1,500
Other	<u>2,554</u>
Total franchise development	<u>165,369</u>
<u>General and administrative expenses</u>	
Accounting department - salaries, wages and payroll taxes	71,063
Administrative - salaries, wages and payroll taxes	171,050
Bad debt	122,888
Computer supplies	3,339
Construction	12,107
Dues and subscriptions	15,749
Employee expenses	2,680
General salaries, wages and payroll taxes	121,205
General Insurance	28,122
Gift card breakage	147,009
Health and dental insurance	77,223
Information Technology salaries, wages and payroll taxes	67,218
Legal and professional fees	797,867
Marketing salaries, wages, and payroll taxes	168,040
Office supplies	15,977
Postage and delivery	23,322
Recruitment and relocation	1,200
Rent	117,348
Repairs and maintenance	13,919
Settlement payments	75,000
Software	23,372
Severance payments	30,082
Travel	5,136
Utilities	10,813
Other	<u>5,693</u>
Total general and administrative	<u>2,127,422</u>
	<u>\$ 3,342,627</u>

**THESE FINANCIAL STATEMENTS ARE PREPARED WITHOUT AN AUDIT.  
PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED  
THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR  
EXPRESSED HIS/HER OPINION WITH REGARD TO THE CONTENT OR FORM.**



**Tropical Smoothie Café, LLC**  
**Balance Sheet**  
**As of June 29, 2014**  
**(Unaudited)**

Assets

Current Assets

Cash	\$2,885,129
Restricted cash	\$2,730,884
Accounts receivable	\$806,706
Inventory	\$24,046
Prepaid expenses	\$114,316
Total current assets	\$6,561,081

Property and Equipment, net \$157,068

Other Assets

Intangible assets	\$3,240,970
Other, net	\$531,109
Total other assets	\$3,772,079

Total Assets \$10,490,228

Liabilities and Members Deficit

Current Liabilities

Accounts Payable and accrued liabilities	\$2,899,728
Local advertising program	\$1,988,472
Current portion of notes payable	\$70,459
Notes payable, related party	\$0
Current portion of deferred franchise fees	\$751,628

Total Current Liabilities \$5,710,287

Notes payable, related party	\$9,800,000
Notes payable, net of current portion	\$242,038
Deferred franchise fees, noncurrent	\$195,749

Total liabilities \$15,948,074

Commitments and contingence

Members deficit -\$5,457,846

Total liabilities and members deficit \$10,490,228

**Tropical Smoothie Café, LLC**  
**Statement of Income**  
**For the Period January through June 2014**  
**(Unaudited)**

<u>Revenues</u>	
Royalties	\$6,237,246
National Advertising Fees	\$2,062,016
Franchise Fees	\$220,760
Rebates	\$879,263
Transfer fees	\$82,302
Miscellaneous	\$103,231
Total Revenues	\$9,584,818
<u>Cost of Revenues</u>	\$1,994,112
Gross Profit	\$7,590,706
<u>Operating expenses</u>	
Depreciation & Amortization	\$177,882
Operating Expenses	\$5,398,357
Total operating expenses	\$5,576,239
Gain/(Loss) from operations	\$2,014,467
<u>Other Expense</u>	
Interest expense	-\$14,530
Interest expense related party	-\$495,125
Total other expense	-\$509,655
Net income/(loss)	\$1,504,812

**EXHIBIT M TO THE DISCLOSURE DOCUMENT**

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**TRUSTWAVE AGREEMENT**

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APPENDIX A: FRANCHISEE PARTICIPATION AGREEMENT



Program Sponsor: Tropical Smoothie Café, LLC

Franchisee Legal Name (“Participant”):

Effective Date:

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The services provided by Trustwave to Participant outlined in the Franchise Compliance Program Statement of Work, (hereinafter, the “Agreement”) shall be governed by the terms and conditions of the Master Agreement between Trustwave and Tropical Smoothie Café dated \_\_\_\_\_. Participant hereby purchases the following services for three years.

Trustwave Services	3-Year Term	Quantity	Total Price
Standard : Distributed Compliance Program PCI Wizard for easy completion of online SAQ TrustKeeper Agent (up to 10 systems) External Vulnerability Scanning (10 IPs) with unlimited rescans Card data scanning via TrustKeeper Agent – Data Loss Prevention (DLP) (1 subscription software license) On-Demand Security Awareness Education (SAE) Windows Log Monitoring (Daily) File Integrity Monitoring (FIM) UTM                         o Managed Firewall o Intrusion Prevention Solution (IPS) o Gateway Anti-virus o Web Content Filtering o Internal Vulnerability Scanning (IVS) o Virtual Private Network (VPN) o NAC on UTM with rogue device detection \$100,000 Breach Protection	\$22.84 paid weekly to Program Sponsor  \$99/month per location  Total/ \$3,564		

<b>Wireless Hotspot Option :</b> <b>Distributed Compliance Program</b> PCI Wizard for easy completion of online SAQ TrustKeeper Agent (up to 10 systems) External Vulnerability Scanning (10 IPs) with unlimited rescans Card data scanning via TrustKeeper Agent – Data Loss Prevention (DLP) (1 subscription software license) On-Demand Security Awareness Education (SAE) Windows Log Monitoring (Daily) File Integrity Monitoring (FIM) UTM <ul style="list-style-type: none"> <li>o Managed Firewall</li> <li>o Intrusion Prevention Solution (IPS)</li> <li>o Gateway Anti-virus</li> <li>o Web Content Filtering</li> <li>o Internal Vulnerability Scanning (IVS)</li> </ul>	\$25.15 paid weekly to Program Sponsor \$109/month per location Total/ \$3,924		
<ul style="list-style-type: none"> <li>o Virtual Private Network (VPN)</li> <li>o NAC on UTM with rogue device detection</li> </ul> \$100,000 Breach Protection Guest Wireless Hotspot			
DCP Setup Fee ( Included with either option )	\$100 Per Location (paid to Trustwave directly)		
Initial Desired Program and State Total Quantity & Price			

MSS Setup Fee. Participant shall pay the MSS Setup Fee directly to Trustwave within thirty days of the execution hereof.

Reporting: Participant hereby authorizes Trustwave to disclose the reports generated from the services to Tropical Smoothie Café.

Shipping: All Products shipped in the United States will be shipped by supplier F.O.B. (Shipping Point, Freight Prepaid and Added). Tropical Smoothie Café is responsible and will pay for freight, shipping, handling, insurance and other transportation charges, including, but not limited to all applicable import and export fees, customs, duties and surcharges. Title and risk of loss or damage to the purchased products, if any, will pass to Tropical Smoothie Café upon shipment.

Purchase Order: Tropical Smoothie Café agrees to issue a purchase order or sign Trustwave's purchase order exception form the total value of this Work Authorization upon the execution hereof.

In Witness whereof, the parties have affixed their signatures, and the Agreement and Work Authorization is considered effective on the date shown above:

Participant Name

Trustwave Holdings, Inc.

\_\_\_\_\_

\_\_\_\_\_

Authorized Signature

Authorized Signature

\_\_\_\_\_

\_\_\_\_\_

Title

Title

\_\_\_\_\_

\_\_\_\_\_

Date

Date

CONFIGURATION INFORMATION: Participant's primary point-of-contact (POC) as identified below, or a designee, must be available to Trustwave during the entire installation process. The representative must have sufficient authority to

schedule testing and address any issues that may arise. The following information is required to be completed by customer prior to being enrolled in the Managed UTM/PCI Validation Service:

Required Info.	Response	Notes
Store/ Franchisee #		
Customer Contact Name*		
Customer Contact Address* (where device will be shipped)		
Customer Contact Phone Number*		
Customer Contact email (where TK Registration will be sent)*		



### Purchase Order Exception

NOTE TO OUR CUSTOMER: We value your business and want to give you quality service. To ensure that your products and invoices are delivered to the correct locations we normally process your order after receipt of a purchase order. When your purchase order is not available we ask you to complete this form to provide us with the information we need to process your order correctly. Thank you.

Legal Customer Name:

To: Trustwave – FAX:888.822.8426

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Sales Rep:

<u>ShippingAddress</u>			<u>BillingAddress</u>		
Contact Name:			Contact		Name:
Contact Phone:			Contact		Phone:
Contact Email:			Contact		Email:
Address 1:			Address		1:
Address 2:			Address		2:
City, State/Province, Postal Code:			City, State/Province, Postal Code:		
<u>ReferenceNumbers</u>			<u>Tax Status</u>		
Purchase	Order	Number:	D	Taxable	
Quote		Number:	D	Tax Exempt (Tax Cert Attached)	
Requisition Number:					

Order Value Hardware/Software: Services: Maintenance/Support: Total                      Contact                      Value: Currency:	Payment Terms: Bill Total Up Front Invoice Terms: Net 30
<p>I cannot provide a purchase order for the above referenced purchase because my company does not issue purchase orders. If a purchase order number is not listed above, Trustwave will reference this form on the invoice (PO Exception).</p> <p>The information I have provided in this form is accurate and I have complied with my company's business practices in making this purchase. This form affirms my company's commitment to pay for the products and services I have ordered.</p>	

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**EXHIBIT N-1 TO THE DISCLOSURE DOCUMENT**

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**FINANCING PROGRAM DOCUMENTS**

**FORM OF LOAN AGREEMENT**

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between **[Franchisee]**, a \_\_\_\_\_ ("Borrower") and BIP Franchise Finance, LLC, a Delaware limited liability company, and its successors and assigns ("Lender").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement agree as follows:

### **1. Loan Terms.**

(a) Amount of Loan. Subject to (i) the terms and conditions set forth in this Agreement, (ii) the execution and delivery of a Franchise Agreement between Borrower and Franchisor in connection with the Tropical Smoothie franchise located at the Property, a true and correct copy of which has been delivered to Lender, and (iii) approval by Franchisor and Area Developer (if applicable) of the Loan to be made by Lender to Borrower hereunder, Lender shall make a loan to Borrower in the maximum principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (the "Loan"), the proceeds of which shall be disbursed by Lender to Borrower as set forth in Section 1(b) below. Borrower's obligation to repay the Loan shall be evidenced by a promissory note substantially in the form attached hereto as Exhibit A (the "Note"), with a maturity date of sixty (60) months after the date of the first required payment in accordance with Section 1(c) below (the "Maturity Date").

(b) Disbursements. The proceeds of the Loan shall be advanced by Lender to Borrower in a maximum of three (3) disbursements (each, a "Disbursement"), with the first Disbursement to be advanced on the Closing Date and the final Disbursement to be advanced no later than one hundred eighty (180) days after the Closing Date.

(c) Payments. Borrower shall pay to Lender by means of an automated clearing house ("ACH") system monthly principal and interest payments in the amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_), based upon a \_\_\_\_\_ (\_\_\_\_) month amortization of the Loan, payable on or before the first day of the second calendar month following the month during which the Tropical Smoothie franchise located at the Property opens for business, and continuing on the first day of each month thereafter, with the outstanding principal sum and all accrued and unpaid interest on the Loan to be paid in full on or before the Maturity Date; provided, that from the date that the first Disbursement is made on the Closing Date until such time as the first payment of principal and interest is due and payable in accordance with this Section 1(c), Borrower shall pay to Lender, on the first day of each calendar month, an amount equal to all interest accrued on the outstanding principal amount of all Disbursements at the Interest Rate set forth herein.

At all times, any payment on a promissory note between Borrower and Guarantor or any Affiliate shall be subordinate to Borrower's payment in full of the Loan.

(d) Interest.

(i) The principal sum outstanding on the Loan shall bear interest at a rate of nine and three-quarters percent (9.75%) per annum, compounded annually (the "Interest

Rate"). All computations of interest shall be computed upon the basis of the actual number of days elapsed in a year consisting of 360 days.

(ii) Upon the occurrence of an Event of Default and while such Event of Default is continuing, the Interest Rate on the Loan shall increase by two percent (2.0%) per annum over the existing Interest Rate, compounded annually (the "Default Rate"), except that the Default Rate will not exceed the maximum rate of interest allowed by law.

(iii) Notwithstanding any provision to the contrary in this Agreement, in no event shall the Interest Rate charged on the Loan exceed the maximum rate of interest permitted under applicable state and/or federal usury law. Any payment of interest that would be deemed unlawful under applicable law for any reason shall be deemed received on account of, and will automatically be applied to reduce, the principal sum outstanding on the Loan and any other sums (other than interest) due and payable to Lender under this Agreement, and the provisions of this Agreement shall be deemed amended to provide for the highest rate of interest permitted under applicable law.

(e) **Security.** The payment of the Loan and any other amounts advanced under this Agreement is secured by, among other things: (a) a Security Agreement of even date herewith executed by Borrower in favor of Lender; (b) a Guaranty of even date herewith executed by Guarantor in favor of Lender ("Guaranty"); and (c) the Collateral. In addition, at the option of Lender, Borrower shall obtain and deliver to Lender executed deposit account control agreements from all financial institutions in which Borrower maintains deposit accounts as additional security for the Loan. All of the terms, agreements, conditions, covenants, warranties, representations, provisions and stipulations made by or imposed upon Borrower in any of the foregoing instruments are hereby made a part of this Agreement to the same extent, and with the same force and effect, as if they were fully recited herein.

(f) **Use of Proceeds.** Borrower shall use the proceeds of the Loan to finance the development of a Tropical Smoothie franchise located at the Property; provided, that the principal amount of the Loan shall not exceed an amount equal to eighty percent (80%) of all development costs approved by Lender in its sole discretion and Borrower shall provide Lender with written evidence, approved by Lender in its sole discretion, that the remaining twenty percent (20%) of all development costs has been contributed as Borrower equity on or prior to the Closing Date. No portion of the Loan may be used for (i) the purpose of purchasing or carrying any "margin security" or "margin stock" as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 C.F.R. 221 and 224, or (ii) primarily personal, family or household purposes.

(g) **Transaction Costs.** On the Closing Date, Borrower shall pay Lender (i) an amount equal to all of Lender's transaction related expenses, including usual and customary legal fees, transaction related travel and evaluation costs and any and all other due diligence costs, and (ii) an origination fee equal to one and one-half percent (1.5%) of the Loan ("Origination Fee"). At Borrower's option, the Origination Fee can be deducted from the proceeds of the Loan to be disbursed by Lender to Borrower on the Closing Date. In addition, Borrower shall pay all reasonable expenses, including reasonable legal fees and expenses incurred by Lender in collecting any sum due under this Agreement and all other Loan Documents.

**2. Prepayment.** Borrower may prepay the Note in whole or in part at any time, without penalty. Mandatory prepayments will be made from one hundred percent (100%) of the net

proceeds of permitted asset sales and from casualty loss insurance recoveries to the extent the affected assets are not replaced.

**3. Representations and Warranties.** Each of Borrower and Guarantor hereby warrants and represents to Lender the following:

(a) Organization and Qualification. Borrower is duly organized, validly existing and in good standing under the laws of the State in which it was organized, has the power and authority to carry on its business and to enter into and perform all documents relating to this transaction, and is qualified and licensed to do business in each jurisdiction in which such qualification or licensing is required. All information provided to Lender with respect to Borrower and its operations is true and correct. The Organizational Documents of Borrower, as certified by the Governing Authority of the state in which Borrower was organized or by an authorized officer of Borrower, have not been amended or modified since the date copies were provided to Lender, and are in full force and effect, and no proceedings for the amendment, modification or rescission of any such Organizational Documents are pending or contemplated.

(b) Due Authorization. The execution, delivery and performance by Borrower and Guarantor of the Loan Documents (i) has been duly authorized by all necessary company action, (ii) does not contravene any law or any governmental rule or order binding on Borrower, (iii) does not contravene any provision of the Organizational Documents of Borrower, (iv) does not violate any agreement or instrument by which Borrower is bound, and (v) will not result in the creation of a Lien on any assets of Borrower except the Lien granted to Lender pursuant to this Agreement and the Security Agreement. Borrower and Guarantor have duly executed and delivered to Lender the Loan Documents to which they are a party and they are valid and binding obligations of Borrower and Guarantor enforceable according to their respective terms, except as limited by equitable principles and by bankruptcy, insolvency or similar laws affecting the rights of creditors generally. No notice to, or consent by, any governmental body is needed in connection with this transaction.

(c) Litigation. Except as set forth on Schedule 3(c), there is no claim, litigation, proceeding, investigation or inquiry, administrative or judicial, pending or threatened against or affecting Borrower or its members, shareholders, officers, properties or assets that is an uninsured claim.

(d) Business. Borrower is not a party to or subject to any agreement or restriction that may have a Material Adverse Effect on the financial condition or the prospects of Borrower, or the Business.

(e) Licenses, etc. Borrower has obtained any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its property and the conduct of its Business. Borrower possesses adequate licenses, patents, patent applications, copyrights, trademarks, trademark applications, and trade names to continue to conduct its business as heretofore conducted by it, without any conflict with the rights of any other person or entity. All of the foregoing is in full force and effect and none of the foregoing are in known conflict with the rights of others.

(f) Laws and Taxes. Borrower is in material compliance with all laws, regulations, rulings, orders, injunctions, decrees, conditions or other requirements applicable to or imposed upon Borrower by any law or by any Governmental Authority, court or agency. Borrower has filed all required tax returns and reports that are now required to be filed by it in connection with

any federal, state and local tax, duty or charge levied, assessed or imposed upon Borrower or its assets, including unemployment, social security, and real estate taxes. Borrower has paid all taxes which are now due and payable. No taxing authority has asserted or assessed any additional tax liabilities against Borrower which are outstanding on this date, and Borrower has not filed for any extension of time for the payment of any tax or the filing of any tax return or report.

(g) Title. Borrower has good and marketable title to the assets reflected on the most recent balance sheet submitted to Lender prior to the Closing Date and to the Collateral, free and clear from all liens and encumbrances of any kind, except for (collectively, the "Permitted Liens"): (a) current taxes and assessments not yet due and payable, (b) liens and encumbrances, if any, reflected or noted on such balance sheet submitted to Lender prior to the Closing Date or notes thereto, (c) assets disposed of in the ordinary course of business, (d) any security interests, pledges, assignments or mortgages granted to Lender to secure the repayment or performance of the Obligations; (e) purchase money Liens relating to the acquisition of machinery and equipment of Borrower; (f) pledges and deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding liens under ERISA); (g) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which Borrower is a party as lessee made in the ordinary course of business; (h) inchoate and unperfected workers, mechanics' or similar Liens arising in the ordinary course of business; (i) any other liens of Borrower in favor of Lender; and (j) the liens and encumbrances listed on Schedule 3(g).

(h) Subsidiaries and Partnerships. Borrower has no Subsidiaries and is not a party to any partnership agreement or joint venture agreement.

(i) Defaults. Borrower is in compliance with all material agreements applicable to it and there does not now exist any default or violation of or under any of the terms, conditions or obligations of (a) its Organizational Documents, or (b) any indenture, mortgage, deed of trust, franchise, lease, permit, contract, agreement or other instrument to which Borrower is a party or by which it is bound, and the consummation of the transactions contemplated hereunder will not result in such default or violation.

(j) ERISA. Borrower and all individuals or entities who along with Borrower would be treated as a single employer under ERISA or the Internal Revenue Code of 1986, as amended (an "ERISA Affiliate"), are in compliance with all of their obligations to contribute to any "employee benefit plan" as that term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, and any regulations promulgated thereunder from time to time ("ERISA"). Borrower and each of its ERISA Affiliates are in full compliance with ERISA, and there exists no event described in Section 4043(b) thereof ("Reportable Event").

(k) Insurance. Borrower has obtained and shall maintain or cause to be maintained at all times, insurance for Borrower, the Property, the Business and the Collateral as set forth in Section 4(b) of this Agreement.

(l) Environmental Laws. To the best of Borrower's knowledge, Borrower, its business operations (including, but not limited to, the Business and franchises) and its assets (including, but not limited to the Collateral, the Business and the Property) are and shall be in compliance with all laws concerning environmental protection and hazardous substances.

(m) Financial Statements. Borrower represents that all financial statements provided to Lender, either prior to or contemporaneously herewith, are true, correct and complete in all material respects, and that there has been no material adverse change in the financial condition or prospects of Borrower, Guarantor or the Business since the date of such financial statements. Borrower shall provide to Lender any and all additional financial information and materials as Lender may request concerning Borrower, Guarantor, the Collateral, the Property or the Business, all of which shall be in form and substance reasonably satisfactory to Lender in all respects. All of the financial statements and other information and materials delivered or caused to be delivered by Borrower to Lender have been and shall be prepared in accordance with GAAP and shall be accurate and complete in all respects.

(n) Persons with Disabilities; Accessibility. The Collateral and the Property presently do, and the Collateral and the Property at all times shall, strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, as amended, all state and local laws and ordinances related to accessibility for persons with disabilities and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Property, Borrower shall not alter the Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. The foregoing shall apply to tenant improvements constructed by Borrower or by any of its tenants. Lender may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer or other person acceptable to Lender. Further, Borrower agrees to give prompt written notice to Lender of the receipt by Borrower of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(o) Lease Agreements and Franchise Agreements. Each Lease Agreement and Franchise Agreement have an initial term, without exercised options, greater than or equal to the term of the Loan. Borrower agrees to seek the prior consent of Lender prior to choosing not to exercise an available option to extend a Lease Agreement or Franchise Agreement.

The representations and warranties contained in this Section 3 are, to the best of Borrower's knowledge, true, correct and complete in all material respects, and do not contain any untrue statement of a material fact or omit to state any material fact necessary to make such representation or warranty not misleading.

**4. Affirmative Covenants**. Borrower covenants with, and represents and warrants to, Lender that, from and after the execution date of this Agreement until the Obligations are paid and satisfied in full:

(a) Financial Statements.

(i) Borrower will maintain a standard and modern system for accounting in accordance with GAAP or in accordance with other methods acceptable to Lender in its sole discretion and will furnish to Lender:

(1) within ninety (90) days after each fiscal year end, consolidated and consolidating, reviewed year-end financial statements (which shall include a balance sheet, statement of income and retained earnings, and a statement of

cash flow) for Borrower and any Affiliates prepared by an independent certified public accountant in accordance with GAAP (subject to standard exceptions) in the United States, consistently applied, in form and substance reasonably satisfactory to Lender, together with unit-level operating statements and a schedule setting forth in reasonable detail all debt (including all capital lease obligations) of Borrower as of such fiscal year end;

(2) within forty-five (45) days after each quarter end, financial statements which shall include (i) a consolidated statement of income and retained earnings and statement of cash flow (current quarter and year-to-date) on both an entity and unit-level basis, (ii) a consolidated balance sheet as of the end of such fiscal quarter, and (iii) a schedule setting forth in reasonable detail all debt (including all capital lease obligations) of Borrower as of such quarter end, all prepared in accordance with GAAP (subject to standard exceptions) in the United States, consistently applied, together with a compliance statement, the form of which is attached hereto as Exhibit B;

(3) within fifteen (15) days after filing, copies of federal tax returns for Borrower and Guarantor, together with all schedules and any requests for filing extensions;

(4) within fifteen (15) days after the filing of Guarantor's tax return, a personal financial statement of Guarantor which has been certified by Guarantor; and

(5) such other financial information regarding Borrower, Guarantor or any of their Affiliates as Lender may reasonably request.

(ii) Borrower shall give representatives of Lender access to its books and records at all reasonable times, including permission to examine, copy and make abstracts from any such books and records and such other information which might be helpful to Lender in evaluating the status of the Loan as it may reasonably request from time to time.

(iii) If at any time Borrower has any subsidiaries which have financial statements that could be consolidated with those of Borrower under GAAP, the financial statements required above shall be the financial statements of Borrower and all such subsidiaries prepared on a consolidated and consolidating basis.

(b) Insurance. At its own expense, Borrower shall obtain and maintain:

(i) insurance against (a) loss, destruction or damage to its property and Business of the kinds included within the classification "All Risks of Physical Loss" and such insurance shall be maintained in an amount which, after the application of any deductible, shall be equal to the full insurable value of such property and the tangible Collateral. The term "full insurable value" shall mean the actual replacement cost of the property and the Collateral (without taking into account any depreciation, and exclusive of excavations, footings and foundations, landscaping and paving) determined annually by an insurer, a recognized independent insurance broker or an independent appraiser selected by Lender and paid by Borrower. Such All Risks of Physical Loss insurance shall also include business interruption coverage for a minimum twelve (12) months' loss

of income, including coverage for all amounts due under the Note with Lender named as a loss payee with respect to those payments, (b) Commercial General Liability insurance covering bodily injury, death, property damage, products liability and liability from the sale of liquor, beer or wine (if applicable) in such amounts as are generally available at commercially reasonable premiums and are generally required by institutional lenders for businesses and assets comparable to the Business and Collateral but in any event for a combined single limit of at least \$1,000,000.00 per occurrence, and \$3,000,000.00 in the aggregate, (c) statutory workers' compensation insurance with respect to any work in connection with the Business or on or about the Collateral and the Property, (d) if any property is in an area identified by the Federal Emergency Management Agency as having special flood hazards, flood insurance in an amount equal to the full insurable value or the maximum limit of coverage available for the Collateral and the Property under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each may be amended from time to time, and (e) if any property is in an area subject to earthquakes, earthquake insurance equal to the full insurable value of such property. All such policies shall (i) be issued by financially sound and reputable insurers with a rating of at least "A" or better by both Standard & Poor's Ratings Service and Moody's Investors Service (or such other credit rating agencies as may be designated by Lender) or a general policy rating of "A" or better and a financial class of VIII or better by A.M. Best Company, Inc., (ii) if required, name Lender as a "lender loss payee", "additional insured" or "mortgagee", as applicable, and (iii) shall provide for thirty (30) days prior written notice to Lender before such policy is altered, canceled or terminated. All of the insurance policies required hereby shall be evidenced by one or more Certificates of Insurance delivered to Lender by Borrower on or before the Closing Date and at such other times as Lender may request from time to time.

(ii) any and all other insurance required under any of Borrower's Franchise Agreements or Lease Agreements.

(c) Taxes. Borrower shall pay when due all taxes, assessments and other governmental charges imposed upon it or its assets, franchises, business, income or profits before any penalty or interest accrues thereon, and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums which by law might be a Lien or charge upon any of its assets, provided that (unless any material item or property would be lost, forfeited or materially damaged as a result thereof) no such charge or claim need be paid if it is being diligently contested in good faith, if Lender is notified in advance of such contest and if Borrower establishes an adequate reserve or other appropriate provision required by GAAP and deposits with Lender cash or bond in an amount acceptable to Lender.

(d) Compliance with Laws. Borrower shall comply with all federal, state and local laws, regulations and orders applicable to Borrower, the Business or Borrower's assets including but not limited to all environmental laws, in all respects material to Borrower's Business, assets or prospects and shall immediately notify Lender of any violation of any rule, regulation, statute, ordinance, order or law relating to the public health or the environment and of any complaint or notifications received by Borrower regarding any environmental or safety and health rule, regulation, statute, ordinance or law. Borrower shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its property and the conduct of its Business and as may be required from time to time by applicable law.

(e) Other Amounts Deemed Loans. If Borrower fails to pay any tax, assessment, governmental charge or levy or to maintain insurance within the time permitted or required by this Agreement, or to discharge any Lien prohibited hereby, or to comply with any other obligation, Lender may, but shall not be obligated to, pay, satisfy, discharge or bond the same for the account of Borrower. To the extent permitted by law and at the option of Lender, all monies so paid by Lender on behalf of Borrower shall be deemed Obligations and Borrower's payments under this Agreement may be increased to provide for payment of such Obligations plus interest thereon.

(f) Inspection Rights. Upon reasonable notice during customary business hours, Lender or its duly authorized representative shall have the right to visit all the facilities of Borrower, meet with managers and inspect all records and files relevant to the operation of the Business, and the costs of such inspection shall be borne equally between Borrower and Lender.

(g) Death or Permanent Disability of Operator. Upon the death or permanent disability of Guarantor, Lender shall have the option to require Borrower to accelerate the Note and Obligations due Lender under this Agreement.

(h) Further Assurances. Borrower shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other action, as shall be reasonably necessary from time to time to give full effect to the Loan Documents and the transactions contemplated thereby. In connection with any assignment or transfer of all or any portion of the Obligations or Collateral by Lender to any other person or entity, and such other person or entity shall thereupon become vested with all the rights in respect of such Obligations or Collateral, Borrower agrees to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all other agreements, documents or instruments requested by Lender and/or its assignee or transferee.

**5. Negative Covenants.** Borrower covenants with, and represents and warrants to, Lender that, from and after the execution date of this Agreement until the Obligations are paid and satisfied in full:

(a) Limitation on Liens. Borrower will not create or suffer to exist any Lien in respect of any property of any character of Borrower (whether owned on the date hereof or hereafter acquired) except for Permitted Liens.

(b) Limitation on Transactions with Affiliates. Except with respect to any such existing loans which have been disclosed to Lender, Borrower will not enter into any transaction with any of Borrower's members, shareholders, officers, or management employees or any Affiliate of any such person, unless and until Lender has consented to the repayment terms associated therewith.

(c) Limitation on Borrower's Consolidation, Merger and Sales. Borrower will not sell, lease, assign, or transfer all, substantially all or any material portion of the assets of Borrower, or enter into or approve any liquidation, dissolution, combination, consolidation or merger involving Borrower, or any reclassification or recapitalization of Borrower.

(d) Limitation on Disposition of Assets. Borrower will not sell or otherwise dispose of any assets (other than the sale of inventory in the ordinary course of business and the



disposition of obsolete or inoperable equipment) of Borrower unless the following conditions are satisfied: (i) the assets are sold at fair value, (ii) the assets are obsolete or are not necessary to operate the Business, (iii) the proceeds from the sale or disposition are one hundred percent (100%) in cash, and (iv) the proceeds are, within ten (10) days of receipt, applied, with Lender's written approval, to permanently reduce the amount outstanding on the Note or are reinvested in assets used in the Business.

(e) Change in the Business. Except for store-wide changes mandated by Franchisor under Borrower's Franchise Agreements of which Lender is provided notice, Borrower will not authorize, approve or otherwise change in any substantive way the Business of Borrower; change the brand or business name under which it markets or is known to the public; change the size or location of Borrower's property; materially change the products offered by Borrower; or materially change Borrower's method of marketing and selling products to customers.

(f) Limitation on Distributions. Borrower shall not distribute any Excess Cash to the members or shareholders of Borrower, as members or shareholders, if:

(i) any Event of Default has occurred and is continuing;

(ii) any due and payable payment required to be made by Borrower to Lender under this Agreement is outstanding;

(iii) there were two (2) or more overdue payments required to be made by Borrower to Lender within the twelve (12) month period immediately preceding the proposed date of distribution;

(iv) Borrower is not in material compliance with all obligations and covenants contained in this Agreement;

(v) Borrower is not in material compliance with all Franchise Agreements, Lease Agreements and other material agreements affecting Borrower, the Business and/or the Property; or

(vi) the distribution would reduce Borrower's liquidity to an extent that could be reasonably expected to materially damage the day-to-day operations of Borrower.

(g) Limitations on Development. Neither Borrower, Guarantor nor any Affiliate of Borrower or Guarantor shall develop any other franchise location (signing a lease or acquiring the property on which a Tropical Smoothie will be operated) if:

(i) any Event of Default has occurred and is continuing;

(ii) any due and payable payment required to be made by Borrower to Lender under this Agreement has not been paid;

(iii) there were two (2) or more overdue payments required to be made by Borrower to Lender within the twelve (12) month period immediately preceding the proposed date of distribution;

(iv) Borrower is not in material compliance with all obligations and covenants contained in this Agreement; or

(v) Borrower is not in material compliance with all Franchise Agreements, Lease Agreements and other material agreements affecting Borrower, the Business and/or the Property.

(h) Limitation on Payment of Management Expenses. Borrower shall not pay any Management Expenses in connection with the Business located at the Property unless (a) the Business located at the Property is open for business to the general public and (b) Borrower is current on all Obligations due to Lender.

(i) Limitation on Indebtedness. Borrower will not create, assume, incur, or suffer to exist any Indebtedness other than:

(i) the Loan; and

(ii) customary operating accounts and liabilities incurred by Borrower with respect to the Business or Property in the ordinary course of its business which are not unpaid more than ninety (90) days beyond the date incurred.

(j) Change in Ownership. Without Lender's prior written consent, Borrower shall not either issue any additional equity units or any options or other convertible security, or modify the rights or preferences of the units, or repurchase or redeem any of the units of Borrower.

(k) Margin Securities. No amount advanced to Borrower under the Note shall be used for the purpose of purchasing or carrying any "margin stock" or "margin security," as such terms are used in Regulations U and X of the Board of Governors of the Federal Reserve System, 12 CFR 221 and 224.

**6. Events of Default.** The occurrence of any one of the following events shall be deemed an "Event of Default" under this Agreement and each other Loan Document, whether or not such Event of Default has been cured by the Franchisor or any other guarantor:

(a) Any failure to make any payment when due of principal or accrued interest under this Agreement, the Note or any other Obligation and such nonpayment remains uncured for a period of five (5) days thereafter;

(b) Any representation or warranty of Borrower or Guarantor set forth in this Agreement, the Loan Documents or in any agreement, instrument, document, certificate or financial statement evidencing, guarantying, securing or otherwise related to, this Agreement or any other Obligation is materially inaccurate or misleading;

(c) Borrower fails to observe or perform any other term or condition of this Agreement, the Loan Documents or any other term or condition set forth in any agreement, instrument, document, certificate or financial statement evidencing, guarantying or otherwise related to this Agreement, the Loan Documents or any other Obligation, or Borrower otherwise defaults in the observance or performance of any covenant or agreement set forth in any of the foregoing and such failure or default remains uncured for a period of thirty (30) days thereafter;

(d) An Event of Default occurs under the Security Agreement, the Guaranty or any other Loan Document;

(e) The occurrence of a default or an event of default under any Franchise Agreement or Lease Agreement or any other material agreement to which Borrower is a party;

(f) The death, permanent disability, legal incompetence or dissolution of Borrower or Guarantor, or the lease, sale or other conveyance of a material part of the assets or business of Borrower to a third party outside the ordinary course of its business, or the lease, purchase or other acquisition of a material part of the assets or business of a third party by Borrower;

(g) The creation of any Lien (except a lien to Lender and the Permitted Liens) on, the institution of any garnishment proceedings by attachment, levy or otherwise against, the entry of a judgment against, or the seizure of, any of the property of Borrower or Guarantor including, without limitation, any property deposited with Lender;

(h) A commencement by Borrower of a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect; or the entry of a decree or order for relief in respect of Borrower in a case under any such law or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of Borrower or for any substantial part of the property of Borrower, or ordering the wind-up or liquidation of the affairs of Borrower, or the filing of a petition initiating an involuntary case in which Borrower is the debtor under any such bankruptcy, insolvency or similar law; or the making by Borrower of any general assignment for the benefit of creditors; or the failure of Borrower generally to pay its debts as such debts become due; or the taking of action by Borrower in furtherance of any of the foregoing;

(i) Any sale, conveyance or transfer of any rights in the Collateral securing the Obligations, or any destruction, loss or damage of or to any material portion of the Collateral unless such loss or damage is covered by insurance, the proceeds of which shall be used to replace or restore such Collateral.

(j) The occurrence of any Event of Default beyond any applicable grace or cure period under any loan documents evidencing and/or securing any other obligation owed by Borrower, Guarantor, or an Affiliate of Borrower or Guarantor to Lender.

(k) The entry of any judgment in an amount greater than Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or any other material order or decree against Borrower which remains unsatisfied or undischarged and in effect for five (5) Business Days after such entry without a stay of enforcement or execution.

(l) Any fact, event or circumstance that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition (i) has or is reasonably expected to have a material adverse effect on the Business, assets, operations, condition (financial or otherwise), or prospects of Borrower or Guarantor, (ii) materially impairs or is reasonably expected to materially impair the ability of Borrower or Guarantor to pay and perform their Obligations under the Loan Documents to which they are a party, (iii) materially impairs or is reasonably expected to materially impair the ability of Lender to enforce its rights and remedies under any Loan Document, or (iv) has or is reasonably expected to have any material adverse effect on the Collateral, the Lien of Lender in such Collateral or the priority of such Lien.

**7. Remedies.** In addition to any other remedy permitted by law, Lender may at any time after the occurrence and during the continuance of an Event of Default, apply the Collateral to the Note or such other Obligations, whether due or not, and Lender may, at its option, proceed

to enforce and protect its rights by an action at law or in equity or by any other appropriate proceedings; provided that the Note and the Obligations shall be accelerated automatically and immediately if the Event of Default arises under Section 6(h) above. Borrower shall pay all costs of collection incurred by Lender, including its reasonable attorney's fees, if this Agreement is referred to an attorney for collection, whether or not payment is obtained before entry of judgment, which costs and fees are Obligations secured by the Collateral.

Without limiting the generality of the foregoing, Borrower acknowledges and agrees that Lender may at any time after the occurrence and during the continuance of an Event of Default, take any and all actions that Lender deems necessary or appropriate to maintain or continue the operation of the Tropical Smoothie franchise located at the Property, including but not limited to, (i) operating the franchise itself or through Franchisor or any affiliate, area developer, franchisee or other operator approved by Franchisor (each, a "Designee"), and/or (ii) transferring all assets, including the Franchise Agreement, used in connection with such franchise located at the Property to Franchisor or any Designee of Franchisor, and Borrower hereby consents to any such actions taken by Lender. Upon the occurrence of an Event of Default, Lender will consult with Franchisor and Area Developer (if applicable) to determine what actions are deemed necessary or appropriate to maintain or continue the operation of the Tropical Smoothie franchise located at the Property.

Lender's rights and remedies hereunder are cumulative, and may be exercised together, separately, and in any order. No delay on the part of Lender in the exercise of any such right or remedy shall operate as a waiver. No single or partial exercise by Lender of any right or remedy shall preclude any other further exercise of it or the exercise of any other right or remedy. No waiver or indulgence by Lender of any Event of Default is effective unless in writing and signed by Lender, nor shall a waiver on one occasion be construed as a waiver of any other occurrence in the future.

## 8. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between Lender and Borrower, and supersedes all prior agreements and understandings relating to the subject matter hereof.

(b) **Severability.** The declaration of invalidity of any provision of this Agreement shall not affect any part of the remainder of the provisions.

(c) **Assignment.** Lender may assign some or all of its rights and remedies described in this Agreement and may act as agent for any such assignee without notice to, or prior consent from, Borrower. Borrower may not assign any of its rights, remedies or obligations described in this Agreement unless:

(i) Borrower has obtained the prior written consent of Lender to such assignment, which consent may be withheld in Lender's sole discretion;

(ii) Borrower has obtained the prior written consent of Franchisor to such assignment, which consent may be withheld in Franchisor's sole discretion;

(iii) Borrower has executed and delivered all documents and taken all other actions required by Lender and Franchisor in connection with such assignment, including without limitation the execution and delivery of a Reaffirmation of Master

Guaranty agreeing to continue to guarantee payment and performance of all obligations of the assignee under this Agreement, the Note and all other Loan Documents;

(iv) The assignee has executed and delivered all documents and taken all other actions required by Lender and Franchisor in connection with such assignment; and

(v) Borrower has paid to Lender an assignment fee in an amount equal to three percent (3%) of the then outstanding principal balance of the Loan.

(d) Waiver of Borrower. Borrower and Guarantor hereby (i) waive demand, presentment, protest and notice of dishonor, notice of protest and notice of default except as otherwise specified in this Agreement, and (ii) waive all suretyship defenses, including but not limited to, all defenses based upon impairment of collateral and all suretyship defenses described in Section 3-605 of the Uniform Commercial Code (the "UCC"). Such waiver is entered to the full extent permitted by Section 3-605 (i) of the UCC.

(e) Waiver; Amendments.

(i) No failure or delay by Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Lender under the Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any Loan Document or consent to any departure by Borrower or Guarantor therefrom shall in any event be effective unless the same shall be permitted by Section 8(e)(ii) of this Agreement, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given.

(ii) No Loan Document, this Agreement or provision thereof may be waived, amended or modified except, in the case of this Agreement, by an agreement or agreements in writing entered into by Borrower and Lender or, in the case of any other Loan Document, by an agreement or agreements in writing entered into by the parties thereto with the consent of Lender.

(f) Jury Waiver. BORROWER AND GUARANTOR WAIVE THE RIGHT TO A TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT, ANY OTHER LOAN DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(g) Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS AND SHALL BE DEEMED TO HAVE BEEN EXECUTED IN THE STATE OF GEORGIA. BORROWER AND GUARANTOR HEREBY AGREE TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN FULTON COUNTY, GEORGIA. BORROWER AND GUARANTOR CONSENT THAT ALL SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL OR HAND DELIVERY DIRECTED TO BORROWER OR GUARANTOR AND LENDER AT THEIR ADDRESSES SET FORTH IN SECTION 8(h) HEREOF AND ON THE SIGNATURE PAGES TO THE LOAN DOCUMENTS, RESPECTIVELY, AND SERVICE SO MADE SHALL BE

DEEMED TO BE COMPLETED THREE (3) BUSINESS DAYS AFTER THE SAME SHALL HAVE BEEN DEPOSITED IN THE U.S. CERTIFIED MAIL, POSTAGE PREPAID. BORROWER AND GUARANTOR WAIVE ANY OBJECTION TO JURISDICTION OVER THE PERSON OR, TO THE EXTENT OF COMPLIANCE WITH THE IMMEDIATELY PRECEDING SENTENCE, SUFFICIENCY OF PROCESS OR SERVICE UPON BORROWER OR GUARANTOR.

(h) Notices. Except as otherwise specifically provided herein, all notices, requests, consents, and other communications hereunder must be in writing and delivered (i) if to Lender, \_\_\_\_\_, Attn: \_\_\_\_\_, and (ii) if to Borrower, to the address set forth on the signature page of this Agreement. All communications hereunder shall be in writing and shall be deemed given upon the earlier of receipt, one (1) Business Day after being sent by facsimile transmission or by reputable overnight courier, or three (3) Business Days after being sent by certified mail. Each party, by notice so given, may specify a different notice address. Any notice of change of address shall be effective only upon receipt.

(i) Successors and Assigns. This Agreement shall inure to the benefit of and shall bind the parties hereto, their heirs, legal representatives, successors and permitted assigns.

(j) Counterparts; Facsimile or Scanned Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. The parties hereto agree that the delivery of this Agreement by facsimile or emailed pdf files of scanned copies bearing their respective signatures shall be sufficient and binding upon them as if this Agreement were delivered with original signatures.

(k) Lender Discussions with Franchisor. Borrower hereby authorizes Lender to discuss with Franchisor Borrower's financial condition, operations and any other matters relating to Borrower, the Business or the Property. Borrower further (i) consents to the release to Lender by Franchisor of any information relating to the foregoing matters, and (ii) instructs Franchisor to release any information relating to the foregoing matters upon the request of Lender.

(l) Grammatical Interpretation; Construction. The headings of sections and subsections and divisions in this Agreement and the other Loan Documents are only for convenience of reference and will not govern the interpretation of any of the provisions of this Agreement or the other Loan Documents. All grammatical changes shall be made to this Agreement and the other Loan Documents to maximize the rights and benefits belonging to Lender, including, without limitation, so that the singular shall include the plural and the masculine the feminine and vice versa.

(m) Time is of the Essence. Time is of the essence with respect to this Agreement and the other Loan Documents.

(n) Joint and Several Liability. In the event that Borrower consists of more than one Person or if more than one Person is liable for any Indebtedness and Obligations to Lender described in this Loan Agreement or the other Loan Documents or grants Lender a Lien against their assets (x) their liability shall be joint and several in nature and affect their jointly and/or severally-owned assets, and (y) except as prohibited by applicable state law, each Person waives (a) any right to require Lender to: (i) proceed against any other Person, (ii) proceed

against or exhaust any security received from any other Person, or (iii) pursue any other remedy whatsoever; (b) any defense arising by reason of the application by any other Person of the proceeds of any borrowing; (c) any defense resulting from the absence, impairment or loss of any right of reimbursement, subrogation, contribution or other right or remedy of any Person against any other Person, or any security, whether resulting from an election by Lender to foreclose upon security by non-judicial sale, or otherwise; (d) any setoff or counterclaim of any other Person or any defense which results from any disability or other defense of any other Person or the cessation or stay of enforcement from any cause whatsoever of the liability of any other Person (including, without limitation, the lack of validity or enforceability of any Loan Document); (e) any right to exoneration of sureties which would otherwise be applicable; (f) any right of subrogation or reimbursement and, if there are any guarantors of the Obligations, any right of contribution, and right to enforce any remedy which Lender now has or may hereafter have against any other Person and any benefit of, and any right to participate in, any security now or hereafter received by Lender; (g) all presentments, diligence, demands for performance, notices of non-performance, notices delivered under this Agreement or any other Loan Document, protests, notice of dishonor, and notices of acceptance of the Note and of the existence, creation or incurring of new or additional Liabilities and notices of any public or private foreclosure sale; (h) the benefit of any statute of limitations to the extent permitted by law; (i) any appraisal, valuation, stay, extension, moratorium, redemption or similar law or similar rights for marshaling; (j) any right to be informed by Lender of the financial condition of any other Person or any change therein or any other circumstances bearing upon the risk of nonpayment or nonperformance of the Obligations; and (k) the benefit of all principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement or any other Loan Document, and agrees that the Obligations of each Person shall not be affected by any circumstances, whether or not referred to in this Agreement or any other Loan Document, which might otherwise constitute a legal or equitable discharge of any Person. Each Person has the ability and assumes the responsibility for keeping informed of the financial condition of any other Person and of other circumstances affecting such nonpayment and nonperformance risks.

(o) Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen (a "**Lost Note**"), promptly deliver to Lender, upon receipt from Lender of an affidavit in a form reasonably acceptable to Lender and Borrower stipulating that such Note has been mutilated, destroyed, lost or stolen, in substitution therefor, a new promissory note containing the same terms and conditions as such Lost Note with a notation thereon of the unpaid principal and accrued and unpaid interest. Borrower shall provide fifteen (15) days' prior notice to Lender before making any payments to third parties in connection with a Lost Note.

(p) Cross-Collateral. All Loans and advances by Lender to Borrower or an Affiliate under this Agreement or any other loan agreement between such parties constitute one transaction, and all Indebtedness and the Obligations of Borrower or an Affiliate to Lender under this Agreement or any other loan agreement, present and future, constitute one obligation secured by the Collateral of the Loan or the Collateral of an Affiliate loan and security held and to be held by Lender hereunder and by virtue of all other assignments and security agreements between Borrower and Lender now and hereafter existing, as may be amended, restated, supplemented, extended or renewed.

(q) Costs and Expenses. Whether or not the Loan is closed, all costs and expenses incurred by Lender in connection with the Loan, including but not limited to attorneys' fees, appraisals, legal due diligence and any and all other expenses, shall be paid by Borrower upon

demand by Lender. Such costs and expenses shall be in addition to, and shall not be offset against, the Origination Fee or any other fee due and owing to Lender.

(r) **Indemnification.** Borrower shall indemnify, defend and hold Lender, Franchisor, Area Developer and any of their respective affiliates and their directors, officers, employees, agents and attorneys (each an "Indemnitee") harmless of and from any claim brought or threatened against any Indemnitee by Borrower or Guarantor, or any other person (as well as from reasonable attorneys' fees and expenses in connection therewith) on account of Lender's relationship with Borrower or Guarantor (each of which may be defended, compromised, settled or pursued by Lender with counsel of Lender's election, but at the expense of Borrower), except for any claim arising out of the gross negligence or willful misconduct of Lender. This indemnification shall survive payment of the Obligations, and/or any termination, release or discharge executed by Lender in favor of Borrower. Franchisor and Area Developer are intended third party beneficiaries of this Section.

9. **Definitions.** All financial terms used herein but not defined on the exhibits, in the Security Agreement or in any other Loan Document have the meanings given to them by GAAP. All other undefined terms have the meanings given to them in the Uniform Commercial Code as adopted in the state whose law governs this instrument. The following definitions are used herein:

"**Access Laws**" has the meaning set forth in Section 3(n) of this Agreement.

"**Affiliate**" means, as to Borrower, (a) any Subsidiary, (b) any person or entity which, directly or indirectly, is in control of, is controlled by or is under common control with, Borrower, or (c) any person who is a director, officer or employee (i) of Borrower or (ii) of any person described in the preceding clause (a).

"**Area Developer**" means \_\_\_\_\_ and its legal successor and assigns.

"**Borrower**" has the meaning given to such term in the Introduction to this Agreement.

"**Business**" shall mean the ownership, acquisition, sale or operation of Tropical Smoothie franchise locations.

"**Business Day**" means any day which is neither a Saturday or Sunday nor a legal holiday on which commercial banks are authorized or required to be closed in Atlanta, Georgia.

"**Closing Date**" means the date of this Agreement.

"**Collateral**" means all property of Borrower or an Affiliate in which Lender has a first priority Lien, security interest or collateral assignment pursuant to the terms of this Agreement or any other Loan Document.

"**Default Rate**" has the meaning set forth in Section 1(d) of this Agreement.

"**Disbursement**" has the meaning set forth in Section 1(b) of this Agreement.

"**ERISA**" has the meaning set forth in Section 3(j) of this Agreement.

"**ERISA Affiliate**" has the meaning set forth in Section 3(j) of this Agreement.



“Event of Default” has the meaning set forth in Section 6 of this Agreement.

“Excess Cash” means Borrower’s net income under GAAP less (a) all payments to lenders, (b) reserves for capital improvements, replacements and contingencies, and (c) any other amounts reasonably necessary to be retained by Borrower for the effective maintenance of the Business as determined in good faith by Operator.

“Franchise Agreement” means those certain Franchise Agreements by and between Borrower and Franchisor.

“Franchisor” means Tropical Smoothie Café, LLC and its legal successors and assigns.

“GAAP” means generally accepted accounting principles as in effect from time to time.

“Governmental Authority” means any nation, sovereign or government; any state or other political subdivision thereof; any agency, authority or instrumentality thereof or of any such state or political subdivision; and any entity or authority exercising executive, legislative, taxing, judicial, regulatory or administrative functions of or pertaining to government, including any central bank, stock exchange, regulatory body, arbitrator, public sector entity, supra-national entity and any self-regulatory organization.

“Guarantor” means, jointly and severally, \_\_\_\_\_ and \_\_\_\_\_.

“Guaranty” has the meaning set forth in Section 1(e) of this Agreement.

“Indebtedness” means the total of all Obligations, whether current or long-term, which in accordance with GAAP would be included as liabilities upon Borrower’s balance sheet at the date as of which Indebtedness is to be determined, and shall also include guaranties, endorsements (other than for collection in the ordinary course of business) or other arrangements whereby responsibility is assumed for the obligations of others, whether by agreement to purchase or otherwise acquire the obligations of others, including any agreement, contingent or otherwise, to furnish funds through the purchase of goods, supplies or services for the purpose of payment of the obligations of others.

“Indemnitee” has the meaning set forth in Section 8(r) of this Agreement.

“Interest Rate” has the meaning set forth in Section 1(d) of this Agreement.

“Lease Agreements” means the Lease Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, as landlord (“Landlord”), and Borrower, as Tenant, with respect to the Property, together with the Addendum to Lease Agreement Conditional Assignment of Lease dated \_\_\_\_\_, 20\_\_\_\_, by and among Landlord, Borrower and Franchisor, and all other lease agreements entered into by Borrower in connection with the Business.

“Lender” has the meaning given to such term in the Introduction to this Agreement.

“Lien” means any security interest, mortgage, pledge, assignment, lien or other encumbrance of any kind, including interests of vendors or lessors under conditional sale contracts or capital leases.

“Loan” has the meaning set forth in Section 1(a) of this Agreement and includes all amounts outstanding under the Note and/or advanced pursuant to this Agreement.

“Loan Documents” means each and every document or agreement executed by any party evidencing, guarantying or securing any of the Obligations, including, but not limited to, this Agreement, the Note, the Security Agreement and the Guaranty; “Loan Document” means any one of the Loan Documents.

“Lost Note” has the meaning set forth in Section 8(o) of this Agreement.

“Management Expenses” means any and all expenses not directly attributable to a particular franchised store, including salaries, bonuses or other compensation to non-store level personnel.

“Material Adverse Effect” means a change which (a) materially impairs or is reasonably expected to impair the ability of Borrower or Guarantor to pay and perform its obligations under the Loan Documents to which it is a party; or (b) materially impairs or is reasonably expected to materially impair the ability of Lender to enforce its rights and remedies under any Loan Document; or (c) has or is reasonably expected to have any material adverse effect on the Collateral, the lien of Lender in such Collateral or the priority of such lien; or (d) is prejudicial to any business, operations or financial condition of Borrower or Guarantor.

“Maturity Date” has the meaning set forth in Section 1(a) of this Agreement.

“Note” has the meaning set forth in Section 1(a) of this Agreement.

“Obligation(s)” means all loans, advances, indebtedness and each and every other obligation or liability of Borrower owed to Lender, however created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, whether or not secured by additional collateral, whether originated with Lender or owed to others and acquired by Lender by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and each and every obligation or liability arising under this Agreement or any other Loan Documents, all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying, securing or otherwise executed in connection with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys’ fees incurred by Lender hereunder or any other document, instrument or agreement related to any of the foregoing.

“Organizational Documents” means any articles, bylaws, certificates, operating agreements, limited liability company agreements or similar organizational documents of Borrower.

“Origination Fee” has the meaning set forth in Section 1(g) of this Agreement.

“Permitted Liens” has the meaning set forth in Section 3(g) of this Agreement.

“Person” means any individual, partnership, corporation, joint stock company, estate, association, firm, enterprise, trust, limited liability company, unincorporated association, joint venture and any other entity.

“Property” means the Tropical Smoothie franchised location located at

\_\_\_\_\_.

“Reportable Event” has the meaning set forth in Section 3(j) of this Agreement.

“Security Agreement” means that certain Security Agreement executed by Borrower in favor of Lender of even date herewith, as the same may be amended or restated from time to time.

“Subsidiary” means any corporation, limited liability company or other entity in which Borrower owns a majority of the voting equity interests or has the ability to control or direct management of the business of such entity.

“UCC” has the meaning set forth in Section 8(d) of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Loan Agreement on the date first written above.

**LENDER:**

**BIP FRANCHISE FINANCE, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ADDRESS FOR NOTICE:**

\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**GUARANTOR:**

\_\_\_\_\_

**ADDRESS FOR NOTICE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit A  
FORM OF NOTE

\$ \_\_\_\_\_, 20\_\_\_\_

FOR VALUE RECEIVED, \_\_\_\_\_, a \_\_\_\_\_ (“Borrower”), promises to pay to the order of BIP Franchise Finance, LLC, a Delaware limited liability company, and its successors and assigns (“Lender”), the principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) pursuant to the terms and conditions set forth in the Loan Agreement (as hereinafter defined), in immediately available funds at the office of Lender, \_\_\_\_\_, together with interest on the unpaid principal amount hereof at the rates and on the dates set forth in the Loan Agreement.

Lender is hereby authorized to record based on the loan payment schedule to be provided by Lender on the Closing Date, or to otherwise record in accordance with its usual practice (including, without limitation in Lender’s electronic data processing system), the date and amount of each interest and principal payment hereunder.

This Note is issued pursuant to, and is entitled to the benefits of, the Loan Agreement dated of even date herewith (which, as it may be amended or modified and in effect from time to time, is herein called the “Loan Agreement”), between Borrower and Lender, to which Loan Agreement reference is hereby made for a statement of the terms and conditions governing this Note, including the terms and conditions under which this Note may be prepaid or its maturity date accelerated. Capitalized terms used herein and not otherwise defined herein are used with the meanings attributed to them in the Loan Agreement.

\_\_\_\_\_,  
a(n) \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Exhibit B  
FORM OF COVENANT COMPLIANCE CERTIFICATE

I, \_\_\_\_\_ of \_\_\_\_\_, pursuant to the Loan Agreement dated \_\_\_\_\_, 20\_\_ (as may be amended from time to time) by and between \_\_\_\_\_ (“Borrower”) and BIP Franchise Finance, LLC (“Lender”) (the “Agreement”), certify that, as of the last day of the fiscal quarter of Borrower for the quarter ended \_\_\_\_\_:

- (a) All representations and warranties of Borrower in the Loan Documents are true and correct in all material respects.
- (b) Borrower is in compliance in all material respects with all of its obligations, duties and covenants under the Loan Documents.
- (c) No event has occurred which, with the passage of time and/or the giving of notice, would constitute an Event of Default under the Loan Documents.
- (d) Since the Closing Date, no event has occurred that has had or could reasonably be expected to have a Material Adverse Effect on Borrower, the Collateral or the Property.

\_\_\_\_\_,  
a(n) \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SCHEDULE 3(c)  
Litigation

SCHEDULE 3(g)  
Permitted Liens



**EXHIBIT N-2 TO THE DISCLOSURE DOCUMENT**

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**FINANCING PROGRAM DOCUMENTS**

**FORM OF SECURITY AGREEMENT**

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## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the "Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between **[Franchisee]**, a \_\_\_\_\_ (the "Debtor") and BIP Franchise Finance, LLC, a Delaware limited liability company (the "Secured Party").

### Recitals:

A. This Agreement is made pursuant to that certain Loan Agreement, of even date herewith, by and between the Secured Party and the Debtor (the "Loan Agreement").

B. The Debtor has executed and delivered to the Secured Party that certain Note of even date herewith in the face amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (the "Note").

C. The Note evidences the Debtor's indebtedness to the Secured Party for a loan in the original principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (the "Loan").

D. In connection with the Note, and as a condition to the Secured Party's advance of the Loan, the Debtor has agreed to execute and deliver this Agreement.

### Agreements:

NOW THEREFORE, in order to induce the Secured Party to advance the Loan, and in consideration of the benefits expected to accrue to the Debtor by reason thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Debtor hereby represents and warrants to, and agrees with the Secured Party as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used in this Agreement have the meanings given to such terms in the UCC, the Note or the Loan Agreement.

2. Grant of Security Interest.

(a) The Debtor hereby grants to the Secured Party a first priority continuing security interest in and to, and a pledge of, all assets of the Debtor (the "Collateral"), whether now owned or existing or hereafter acquired or arising and wheresoever located (including but not limited to the locations described on Schedule 6 attached hereto), including, without limitation: (i) all Accounts, (ii) all Chattel Paper, (iii) all Commercial Tort Claims, (iv) all Deposit Accounts, (v) all Equipment, (vi) all General Intangibles, (vii) all Instruments, (viii) all Inventory, (ix) all Investment Property, (x) all Letter-of-Credit Rights, (xi) all Payment Intangibles, (xii) all leases on the Properties, and (xiii) all accessions to, all substitutions for, and all replacements of, and to the extent not otherwise included in the foregoing, all cash and non-cash Proceeds and products of the above-described property of the Debtor described in this Section 2(a), including, but not limited to, proceeds of insurance policies constituting or insuring such property.

(b) As used in this Agreement, the following terms have the following meanings:

“Accounts” means “accounts” (as defined in the UCC) including, without limitation, all present and future rights to payment for goods sold or leased or for services rendered or for policies of insurance issued or to be issued, and whether or not they have been earned by performance, and shall include all security pledged or granted to the Debtor, all of the Debtor’s rights and interest in goods which gave rise to same, all indemnities in respect thereof and all guaranties thereof.

“Account Debtor” means “account debtor” (as defined in the UCC), including, without limitation, any Person who is or becomes obligated to the Debtor under, with respect to, or on account of an Account, Chattel Paper or General Intangible.

“Chattel Paper” means “chattel paper” (as defined in the UCC), including, without limitation, a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods.

“Commercial Tort Claims” means “commercial tort claims” (as defined in the UCC), including, without limitation, a claim arising in tort with respect to which (a) the claimant is an organization or (b) the claimant is an individual and the claim (i) arose in the course of the claimant’s business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

“Deposit Accounts” means each and every “deposit account” (as defined in the UCC), including, without limitation, demand deposit, checking, savings, money market and other deposit accounts owned or maintained by the Borrower at a financial institution.

“Equipment” means “equipment” (as defined in the UCC) and fixtures (as defined in the UCC), including, without limitation, all machinery, equipment, furniture, furnishings, fixtures, and parts, supplies, and motor vehicles (titled and untitled) of every kind and description, now or hereafter owned by the Debtor, or in which the Debtor may have or may hereafter acquire any interest, wheresoever located.

“General Intangibles” means all “general intangibles” (as defined in the UCC) including, without limitation, contract rights, choses in action, causes of action and all other personal property of every kind and nature, now or hereafter arising, all Company or other business records (including, without limitation, all information, reports and other records relating to the Collateral); all intellectual property, trade secrets, good will, registrations, licenses, permits, customer lists, tax refunds, tax refund claims, rights and claims against carriers and shippers, and rights to indemnification.

“Instruments” means “instruments” (as defined in the UCC) including, without limitation, negotiable instruments or any other writing that evidences a right to the payment of a monetary obligation, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

“Inventory” means all “inventory” (as defined in the UCC), including, without limitation, all goods, merchandise, work-in-process, raw materials, finished goods, and inventory held for sale or lease to other Persons, all other materials, supplies, and tangible personal property of any kind, nature, or description held for sale or lease or for display or demonstration, or furnished or to be furnished under contracts of service, or which are or which might be used or consumed in connection with the manufacturing, packing, shipping, advertising, selling, leasing, or furnishing of such goods, merchandise, or other personal property, all documents of title or other documents pertaining thereto, and all Proceeds of the foregoing.

“Investment Property” means “investment property” (as defined in the UCC), including, without limitation, all securities, whether certificated or uncertificated, all security entitlements, all securities accounts, all commodity contracts and all commodity accounts.

“Letter of Credit Rights” means “letter of credit rights” (as defined in the UCC), including, without limitation, a right to payment or performance under a letter of credit.

“Payment Intangibles” means “payment intangibles” (as defined in the UCC), including, without limitation, a present or future general intangible under which the Account Debtor’s principal obligation is a monetary obligation.

“Proceeds” means all “proceeds” (as defined in the UCC), including, without limitation, proceeds from the sale of any franchise rights and proceeds of any and all of the Collateral made or due and payable to the Debtor from time to time including, without limitation, all proceeds in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any Person acting under color of governmental authority) and, to the extent not otherwise included, all payments under insurance (whether or not the Secured Party is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the Collateral.

“UCC” means the Uniform Commercial Code in effect in the State of \_\_\_\_\_ and any other state in which the Collateral is located.

3. Obligations Secured. The security interest herein granted secures any and all of the Indebtedness and other obligations of the Debtor under and pursuant to the Loan Documents and this Agreement of whatsoever nature, fixed or contingent, whether now existing or hereafter arising, including without limitation the principal of and interest on the Loan (collectively, the “Secured Obligations”).

4. Grant of License; Accounts. Except as may be prohibited by any written agreement between the Debtor and Tropical Smoothie Café, LLC (the “Franchisor”), the Debtor hereby grants to the Secured Party (and its agents, representatives or assigns), a non-exclusive, fully-paid, royalty-free, worldwide right and license to, upon the occurrence and during the continuance of an Event of Default (unless appropriately waived in writing in accordance with this Agreement), (a) use, or sell or otherwise transfer, any and all of the Debtor’s Inventory which may bear or utilize any of the Debtor’s intellectual property; (b) use or sell any such work-in-process or completed or finished products; and (c) accept any and all

orders or shipments of products ordered by the Debtor and use or sell any such products bearing or utilizing any of the Debtor's intellectual property. With respect to the Debtor's Accounts, the Debtor hereby grants to the Secured Party all of the rights, remedies and powers of attorney relating thereto and to collections and other Proceeds as are granted by the Debtor to the Secured Party in this Agreement.

5. Perfection; Further Actions.

(a) The Debtor authorizes the Secured Party to file such financing statements deemed by the Secured Party to be necessary or appropriate under applicable law, and otherwise take such other action and execute such assignments or other instruments or documents, in each case as the Secured Party may reasonably request, to evidence, perfect, or record the Secured Party's security interest in the Collateral or to enable the Secured Party to exercise and enforce its rights and remedies with respect to any Collateral. The Debtor hereby authorizes the Secured Party to file any such financing statements, amendments or continuation statements on the Debtor's behalf which may be reasonably required by the Secured Party. The Debtor represents that its exact legal name as shown on its Organizational Documents and state of formation or organization are as set forth in the first paragraph of this Agreement. The Debtor agrees that, notwithstanding any provision in the UCC to the contrary, the Debtor shall not file a termination statement on any financing statement filed by the Secured Party in connection with any security interest granted under this Agreement if the Secured Party reasonably objects to the filing of such termination statement. The parties acknowledge that any reproduction of this Agreement shall be sufficient as a financing statement to the extent permitted by law. The Debtor shall bear all of the cost and expense in connection with its incurrence and receipt of the Loan, the issuance of the Note, the granting of security interests in the Collateral, and the filing of financing statements and other actions in connection with the perfection of the security interests herein granted.

(b) If the Debtor owns or acquires any Chattel Paper or Instrument constituting a portion of the Collateral, the Debtor will within ten (10) days notify the Secured Party thereof, and upon request by the Secured Party promptly deliver such Chattel Paper or Instrument to the Secured Party appropriately assigned or endorsed to the order of the Secured Party as further security hereunder.

(c) The Debtor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its Inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in the UCC).

(d) The Debtor will, at its own expense, make, execute, endorse, acknowledge, file and/or deliver to the Secured Party from time to time such lists, descriptions and designations of its Collateral, warehouse receipts, receipts in the nature of warehouse receipts, bills of lading, documents of title, vouchers, invoices, schedules, confirmatory assignments, conveyances, transfer endorsements, powers of attorney, certificates, reports and other assurances or instruments and take such further steps relating to the Collateral and other property or rights covered by the security interest hereby granted, which the Secured Party reasonably deems appropriate or advisable to perfect, preserve or protect its security interest in the Collateral.

(e) The Debtor shall from time to time deliver to the Secured Party, within fifteen (15) days following the Secured Party's request therefor, landlord's or bailee's waivers or agreements, in form and substance reasonably satisfactory to the Secured Party, in respect of any location at which Collateral is stored and which is not owned by the Debtor in fee simple; provided that, as to any such location of Collateral on the date hereof, the Debtor's failure to deliver such waiver or agreement shall not constitute a default under this Section 5(e) so long as the Debtor has made diligent and good faith efforts to obtain same.

(f) The Debtor shall advise the Secured Party in writing of any "commodity account" (as such term is defined in the UCC) or other Investment Property now or hereafter owned by the Debtor (other than shares or membership interests in Subsidiaries, if any, excluded from Collateral hereunder) and, if so requested by the Secured Party at any time while the Note is outstanding, shall take such steps as the Secured Party may from time to time reasonably request for the purpose of causing the Secured Party to have "control" (as defined in the UCC) thereof and its security interest hereunder to be first in priority (subject to Liens permitted under the Note and the Loan Agreement).

(g) If, at any time, the Debtor acquires a "commercial tort claim" (as such term is defined in the UCC), the Debtor shall promptly notify the Secured Party thereof in writing (which writing shall describe such commercial tort claim with sufficient specificity to grant to the Secured Party a security interest therein pursuant to the UCC), and upon delivery thereof to the Secured Party, the Debtor shall be deemed to thereby grant to the Secured Party (and the Debtor hereby grants to the Secured Party) a security interest and Lien in and to such commercial tort claim and all Proceeds thereof, all upon the terms of and governed by this Agreement.

## 6. Representations and Agreements.

(a) The Debtor's chief executive office is located at the address set forth on Schedule 6 attached hereto and the Debtor's U.S. Federal Tax I.D. Number is as set forth on such Schedule 6. The Debtor will not move its chief executive office except to such new location as the Debtor may establish in accordance with the last sentence of this Section 6(a). The originals of all documents evidencing all or a portion of the Collateral and the only original books of account and records of the Debtor relating thereto are, and will continue to be, kept at such chief executive office, or at such new location(s) as the Debtor may establish in accordance with the last sentence of this Section 6(a). All Collateral is, and will continue to be, maintained at, and controlled and directed (including, without limitation, for general accounting purposes) from, the locations described in Schedule 6 or at such new location(s) as the Debtor may establish in accordance with the last sentence of this Section 6(a). The Debtor shall not establish any new location for such chief executive office until (i) it has given to the Secured Party at least ten (10) days' prior written notice of its intention to do so, clearly describing such new location and providing such other information in connection therewith as the Secured Party may reasonably request, and (ii) with respect to such new location, it shall have taken all action, reasonably satisfactory to the Secured Party, to maintain the security interest of the Secured Party in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

(b) The only locations at which is located any Inventory (other than Inventory sold or leased to the Debtor's customers in the ordinary course of the Debtor's business) or Equipment of the Debtor (including, without limitation, the location of any warehouse, bailee or consignee at which Collateral is located) are set forth on Schedule 6 hereto, and the Debtor agrees that all Equipment and Inventory shall at all times hereafter be kept at one of such locations set forth on Schedule 6, unless the Debtor complies with the following sentence, or, as to Inventory, is temporarily off-site for work or treatment in the ordinary course of the Debtor's business. The Debtor shall not establish any new location for Inventory or Equipment until (i) it has given to the Secured Party at least ten (10) days' prior written notice of its intention to do so, clearly describing such new location and providing such other information in connection therewith as the Secured Party may reasonably request, and (ii) with respect to such new location, it shall have taken all action, reasonably satisfactory to the Secured Party, to maintain the security interest of the Secured Party in the Collateral intended to be granted hereby at all times fully perfected and in full force and effect.

(c) The Debtor has not used or conducted business under any other trade name, assumed name, fictitious name and other name at any time during the five (5) years before the date hereof, except Tropical Smoothie.

(d) The Debtor has not merged with, or acquired substantially all of the assets of, any other entity at any time during the five (5) years before the date hereof.

7. Title to Collateral; Liens; Transfers. The Debtor has good and indefeasible title to and ownership of the Collateral, free and clear of all Liens, except as permitted under the Loan Agreement. Except as permitted in the Loan Agreement and upon the prior consent of the Secured Party, the Debtor shall not encumber, pledge, mortgage, grant a security interest in, assign, sell, lease or otherwise dispose of or transfer, whether by sale, merger, consolidation, liquidation, dissolution or otherwise, any of the Collateral.

8. Other Changes Affecting Perfection. The Debtor shall not, without giving the Secured Party ten (10) days prior written notice thereof and taking such steps, reasonably satisfactory to the Secured Party, as may be necessary or appropriate to maintain the perfection in full force and effect of the Lien in the Collateral: (a) add any new places of business or close any of its existing places of business, (b) make any change in the Debtor's name or adopt or operate under any trade name, assumed name or fictitious name or otherwise add any name under which the Debtor does business, or (c) make any other change (other than sales and leases of Inventory in the ordinary course of business) which might affect the perfection or priority of the Secured Party's Lien in the Collateral. Notwithstanding the foregoing, the Debtor may from time to time replace furniture, fixtures and equipment at the end of their useful life without the requirement of the Secured Party consent provided that any such replacements be and remain subject to the Lien in the Collateral as set forth herein.

9. Maintenance of Insurance. The Debtor shall at all times maintain the insurance policies required by the Secured Party and in the amounts described in the Loan Agreement. So long as no Event of Default exists, upon the Debtor's request, the Secured Party shall disburse to the Debtor insurance Proceeds received by the Secured Party, which shall be used by the Debtor solely for the purpose of repair and restoration of the property giving rise to such Proceeds; provided that the Debtor shall deliver to the Secured Party a certificate in form and

substance reasonably satisfactory to the Secured Party confirming the absence of any Event of Default at the time of each such disbursement.

10. Power of Attorney for Insurance. The Debtor shall at all times maintain insurance on the Collateral and shall promptly deliver to the Secured Party true copies of all reports made to insurance companies. The Debtor hereby irrevocably makes, constitutes, and appoints the Secured Party (and all officers, employees, or agents designated by the Secured Party), upon and during the continuance of an Event of Default, but subject to Section 23, below, as its true and lawful attorney-in-fact and agent, with full power of substitution, such that the Secured Party shall have the right and authority, to make and adjust claims under such policies of insurance, receive and endorse the name of the Debtor on, any check, draft, instrument or other item of payment for the Proceeds of such policies of insurance and make all determinations and decisions with respect to such policies of insurance. The Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable. Without waiving or releasing any of the Debtor's obligations under this Agreement, the Secured Party may (but shall not be required to) at any time or times upon and during the continuance of an Event of Default take such actions with respect thereto as the Secured Party deems advisable. All sums disbursed by the Secured Party in connection therewith (including, but not limited to, reasonable attorneys' and paralegals' fees and disbursements, court costs, expenses and other charges relating thereto) shall be payable on demand, and until paid by the Debtor to the Secured Party, with interest thereon at the rate of interest then accruing under the Note, shall be additional Secured Obligations under this Agreement secured by the Collateral.

11. Maintenance of Records and Equipment.

(a) The Debtor will keep and maintain at its own cost and expense satisfactory and complete records of its Collateral, including, but not limited to, the originals of all documentation (including each contract) with respect thereto, records of all payments received, all credits granted thereon, and all other dealings therewith. The Debtor shall, if requested by the Secured Party, deliver to the Secured Party copies of all documents evidencing its Collateral and copies of such other documents relating thereto as the Secured Party may reasonably request. If the Secured Party so directs after the occurrence and during the continuance of an Event of Default, the Debtor shall legend, in form and manner reasonably satisfactory to the Secured Party, any Collateral, as well as books, records and documents of the Debtor evidencing or pertaining to the Collateral with an appropriate reference to the fact that the Collateral has been assigned to the Secured Party and that the Secured Party has a security interest therein.

(b) The Debtor shall keep and maintain each item of Equipment in good operating condition, ordinary wear and tear excepted, and the Debtor shall provide all maintenance and service and all repairs, necessary for such purpose.

12. Limitations on Dispositions of Inventory and Equipment. The Debtor shall not sell, transfer, lease or otherwise dispose of any of the Inventory or Equipment, or attempt, offer or contract to do so, except for (a) dispositions of Inventory in the ordinary course of business, (b) so long as no Event of Default has occurred, the disposition of obsolete or worn out Equipment in the ordinary course of business, and (c) dispositions otherwise permitted under the Note or the Loan Agreement.



13. Protection of Collateral; Reimbursement. All insurance expenses and all expenses of protecting, storing, warehousing, insuring, handling, maintaining, and shipping any Collateral, any and all excise, property, sales, use, or other taxes imposed by any state, federal, or local authority on any of the Collateral, or in respect of the sale thereof, or otherwise in respect of the Debtor's business operations which, if unpaid, could result in the imposition of any Lien upon the Collateral, shall be borne and paid by the Debtor. If, after notice to the Debtor, the Debtor fails to promptly pay any portion thereof when due, except as may otherwise be permitted under this Agreement or under any of the other Loan Documents, the Secured Party, at its option, may, but shall not be required to, pay the same. All sums so paid or incurred by the Secured Party for any of the foregoing and any and all other sums for which the Debtor may become liable under this Agreement and all costs and expenses (including reasonable attorneys' fees, legal expenses, and court costs, expenses and other charges related thereto) which the Secured Party may incur in enforcing or protecting its Liens on or rights and interests in the Collateral or any of its rights or remedies under this Agreement or the Note or in respect of any of the transactions to be had under this Agreement shall be repayable on demand and, until paid by the Debtor to the Secured Party with interest thereon at the rate of interest then accruing under the Note, shall be additional Secured Obligations under this Agreement secured by the Collateral. Unless otherwise provided by law, the Secured Party shall not be liable or responsible in any way for the safekeeping of any of the Collateral or for any loss or damage thereto or for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency, or other Person whomsoever.

14. Inspection; Verification. During regular business hours and after reasonable notice to the Debtor, the Secured Party (by any of its officers, employees, agents, representatives, or designees) shall have the right to inspect the Collateral and to inspect all books, records, journals, orders, receipts, or other correspondence related thereto (and to make extracts or copies thereof as the Secured Party may desire) and to inspect the premises upon which any of the Collateral is located for the purpose of verifying the amount, quality, quantity, value, and condition of, or any other matter relating to, the Collateral.

15. Status of Collateral. The Debtor agrees to advise the Secured Party promptly, in sufficient detail, of any event which could have a Material Adverse Effect on the value of the Collateral or on the security interests granted to the Secured Party herein.

16. Secured Party Not Liable; Waivers.

(a) The powers conferred on the Secured Party hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Secured Party shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to the Debtor for any act or failure to act, except for its own gross negligence or willful misconduct.

(b) Except as otherwise provided in this Agreement, THE DEBTOR HEREBY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW:

(i) all damages occasioned by such taking of possession except any damages which are the direct result of the Secured Party's gross negligence or willful misconduct;

(ii) all other requirements as to the time, place and terms of sale or other requirements with respect to the enforcement of the Secured Party's rights hereunder; and

(iii) all rights of redemption, appraisalment, valuation, stay, extension or moratorium now or hereafter in force under any applicable law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof, and the Debtor for itself and all who may claim under it, insofar as it or they now or hereafter lawfully may, hereby waives the benefit of all such laws.

Any sale of, or the grant of options to purchase, or any other realization upon, any Collateral shall operate to divest all right, title, interest, claim and demand, either at law or in equity, of the Debtor therein and thereto, and shall be a perpetual bar both at law and in equity against the Debtor and against any and all persons claiming or attempting to claim the Collateral so sold, optioned or realized upon, or any part thereof, from, through and under the Debtor.

17. Authority to Execute Transfers. Without limitation of any authorization granted to the Secured Party hereunder, the Debtor also hereby authorizes the Secured Party, upon the occurrence and continuance of an Event of Default beyond any applicable grace or cure period, to execute, in connection with the exercise by the Secured Party of its remedies hereunder, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

18. Performance by Secured Party of the Debtor's Obligations. If the Debtor fails to perform or comply with any of its agreements contained herein and the Secured Party shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Secured Party and any guarantor incurred in connection with such performance or compliance, together with interest thereon at the rate of interest then accruing under the Note, shall be payable by the Debtor to the Secured Party or the guarantor, as applicable, on demand and shall constitute Secured Obligations secured hereby. The Secured Party will notify the Debtor as soon as it is practicable of any action taken by it of the nature referred to herein.

19. Reinstatement. The provisions of this Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against the Debtor for liquidation or reorganization, should the Debtor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Debtor's assets or should any other financial impairment occur, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. If any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

20. Termination of Security Interest; Release of Collateral. Upon the payment in full of all Secured Obligations: (a) the security interests and licenses granted to the Secured Party under this Agreement shall terminate, (b) all rights to the Collateral shall revert to the Debtor, (c) the Secured Party will, at the Debtor's expense, execute and deliver to the Debtor such

documents as the Debtor may reasonably request to evidence the termination of such security interests and the release of such Collateral, and (d) this Agreement shall be terminated, and the Debtor shall have no further liabilities or obligations thereunder (except any liabilities and/or obligations which under the terms of this Agreement survive termination of such agreements). Upon the written request of the Debtor, the Secured Party shall also release from the security interest hereof Equipment sold pursuant to the provisions of Section 12 above.

21. Events of Default. Any of the following is an Event of Default under this Agreement:

(a) the occurrence of an Event of Default beyond any applicable cure or grace period under the Loan Agreement or the Loan Documents; or

(b) the occurrence of any Event of Default under any loan documents evidencing and/or securing any other obligation owed by Borrower, an Affiliate or any Guarantor to Lender.

22. Remedies. Upon and during the continuance of an Event of Default, the Secured Party has all the rights and remedies set forth in this Agreement and any additional rights to which a secured party is entitled under the UCC (including, without limitation, foreclosure and secured party sale), at law or in equity. Without limiting the generality of the foregoing, upon the occurrence of an Event of Default (unless appropriately waived in writing in accordance with this Agreement), the Secured Party may, in the Debtor's or the Secured Party's name: (a) demand payment on any Collateral, (b) enforce payment on any Collateral, by legal proceedings or otherwise, (c) exercise all of the Debtor's rights and remedies with respect to the Collateral and the collection on any Collateral, (d) settle, adjust, compromise, extend, or renew any Collateral, (e) settle, adjust, or compromise any legal proceedings brought to collect on any Collateral, (f) if permitted by applicable law, sell or assign any Collateral upon such terms, for such amounts, and at such time or times as the Secured Party deems advisable, (g) discharge and release any Collateral, (h) take control, in any manner, of any Collateral and any item of payment or Proceeds relating to any Collateral, (i) prepare, file, and sign the Debtor's name on a proof of claim in bankruptcy or similar document against any Account Debtor, or (j) endorse the name of the Debtor upon any Collateral and upon any of the items of payment or Proceeds relating to any Collateral and deposit the same to the account of the Secured Party on account of the Secured Obligations. Without limiting the generality of the foregoing, the Secured Party may:

(a) personally, or by agents or attorneys, immediately retake possession of the Collateral or any part thereof, from the Debtor or any other person who then has possession of any part thereof with or without notice or process of law, and for that purpose may enter upon the Debtor's premises where any of the Collateral is located and remove the same and use in connection with such removal any and all services, supplies, aids and other facilities of the Debtor;

(b) instruct the obligor or obligors on any agreement, instrument or other obligation (including, without limitation, the Accounts) constituting the Collateral to make any payment required by the terms of such instrument or agreement directly to the Secured Party;

(c) sell, assign or otherwise liquidate, or direct the Debtor to sell, assign or otherwise liquidate, any or all of the Collateral or any part thereof, and take possession of the proceeds of any such sale or liquidation;

(d) withdraw any or all monies, securities and/or instruments from any Collateral for application to the Secured Obligations;

(e) instruct (or, as defined and used in the UCC, give instructions to) any issuer, obligor, broker, custodian, depository, securities or other intermediary or bailee in respect of any Collateral to, as determined by the Secured Party, sell, convert, exchange, make any payment on, or otherwise deal with such Collateral and to deliver, disburse, deliver control or otherwise transfer such Collateral or the Proceeds thereof to the Secured Party; and

(f) take possession of the Collateral or any part thereof, by directing the Debtor in writing to deliver the same to the Secured Party at any place or places reasonably designated by the Secured Party, in which event the Debtor shall at its own expense:

(i) forthwith cause the same to be moved to the place or places so reasonably designated by the Secured Party and there delivered to the Secured Party,

(ii) store and keep any Collateral so delivered to the Secured Party at such place or places pending further action by the Secured Party, and

(iii) while the Collateral shall be so stored and kept, provide such guards and maintenance services as shall be necessary to protect the same and to preserve and maintain them in good condition;

it being understood that the Debtor's obligation so to deliver the Collateral is of the essence of this Agreement and that, accordingly, upon application to a court of equity having jurisdiction, the Secured Party shall be entitled to a decree requiring specific performance by the Debtor of said obligation.

23. Additional Remedies. Upon the occurrence and during the continuance of an Event of Default beyond any applicable grace or cure period, to the extent permitted by applicable law and in addition to any other right or remedy provided for in this Agreement, the Secured Party shall have each of the following rights and remedies:

(a) General Rights and Remedies. The Secured Party shall have all of the rights and remedies of a secured party under the UCC or under other applicable law, and the Secured Party shall have all other legal and equitable rights to which the Secured Party may be entitled, all of which rights and remedies shall be cumulative, and none of which shall be exclusive, to the extent permitted by law, in addition to any other rights or remedies contained in this Agreement or in the Loan Agreement.

(b) Possession of Collateral. The Secured Party shall have the right to take immediate possession of the Collateral and all Proceeds relating to such Collateral and:  
(i) require the Debtor, at the Debtor's expense, to assemble the Collateral and make it

available to the Secured Party at the Debtor's principal place of business or at such other location(s) designated by the Secured Party or (ii) enter any of the premises of the Debtor or wherever any Collateral shall be located and to keep and store the same on such premises until sold. If the premises on which the Collateral is located is owned or leased by the Debtor, then the Debtor shall not charge the Secured Party for storage of such Collateral on such premises for a period of at least thirty (30) days after the date on which the Secured Party enters onto such premises and takes possession of the Collateral.

(c) Foreclosure of Liens. The Secured Party shall have the right to foreclose the Liens created under this Agreement or under any other agreement relating to the Collateral.

(d) Disposition of Collateral. The Secured Party shall have the right to sell or to otherwise dispose of all or any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale or sales, wholesale dispositions, or sales pursuant to one or more contracts, with such notice as may be required by law, in lots or in bulk, for cash or on credit, all as the Secured Party, in its discretion, may deem advisable. The Debtor acknowledges and covenants that ten (10) days' written notice to the Debtor of any public or private sale or other disposition of Collateral shall be reasonable notice thereof, and such sale shall be at the Debtor's premises or at such other locations where the Collateral then is located, or as otherwise determined by the Secured Party. The Secured Party shall have the right to conduct such sales on the Debtor's premises, without charge therefor, and such sales may be adjourned from time to time in accordance with applicable law without further requirement of notice to the Debtor, and the Debtor shall permit the Secured Party to conduct a sale or sales from such premises at any time and from time to time and permit purchasers and prospective purchasers access to such premises and the Collateral for the purposes of inspecting, bidding, removal of Collateral and other activities incident to such sale. The Secured Party shall have the right to bid or credit bid at any such sale on its own behalf.

(e) Notification of Account Debtors. The Secured Party shall have the right to notify Account Debtors and other Persons indebted to the Debtor of the Secured Party's interest in any such amounts payable to the Debtor, to instruct such Account Debtors and other Persons to remit such amounts directly to the Secured Party, and, upon collection of the same, to apply same to the Secured Obligations.

Without limiting the generality of any remedies of the Secured Party set forth herein or in the Loan Agreement or in any other agreement between the Debtor and the Secured Party, the Debtor acknowledges and agrees that the Secured Party may at any time after the occurrence and during the continuance of an Event of Default, take any and all actions that the Secured Party deems necessary or appropriate to maintain or continue the operation of the Tropical Smoothie franchise located at the Property (as defined in the Loan Agreement), including but not limited to (i) operating the franchise itself or through Franchisor or any affiliate, area developer, franchisee or other operator approved by Franchisor (each, a "Designee"), and/or (ii) transferring all assets, including the Franchise Agreement, used in connection with such franchise located at the Property to Franchisor or any Designee of Franchisor, and the Debtor hereby consents to any such actions taken by Lender. Upon the occurrence of an Event of Default, the Secured

Party will consult with Franchisor and any other guarantor of the Loan to determine what actions are deemed necessary or appropriate to maintain or continue the operation of the Tropical Smoothie franchise located at the Property.

24. Cross-Collateral. All Loans by the Secured Party to the Debtor or an Affiliate under the Loan Agreement or any other loan agreement between such parties constitute one transaction, and all Indebtedness and the Obligations of the Debtor or an Affiliate to the Secured Party under this Agreement, the Loan Agreement, the Loan Documents or any other loan agreement, present and future, constitute one obligation secured by the Collateral and by any other security held and to be held by the Secured Party hereunder and by virtue of all other assignments and security agreements between the Debtor and the Secured Party now and hereafter existing, as may be amended, restated, supplemented, extended or removed.

25. Binding Effect; Assignment. This Agreement shall become effective when it has been executed by the Debtor and by the Secured Party and thereafter shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective successors and assigns.

26. Governing Law; Consent to Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS AND SHALL BE DEEMED TO HAVE BEEN EXECUTED IN THE STATE OF GEORGIA; PROVIDED THAT THE LAWS OF ANY OTHER STATE IN WHICH COLLATERAL IS LOCATED SHALL GOVERN THE PERFECTION OF THE SECURITY INTEREST THEREIN CREATED HEREBY. DEBTOR HEREBY AGREES TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN FULTON COUNTY, GEORGIA. DEBTOR CONSENTS THAT ALL SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL OR HAND DELIVERY DIRECTED TO DEBTOR AND SECURED PARTY AT THEIR ADDRESSES SET FORTH IN THE LOAN AGREEMENT AND ON THE SIGNATURE PAGES TO THE LOAN DOCUMENTS, RESPECTIVELY, AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED THREE (3) BUSINESS DAYS AFTER THE SAME SHALL HAVE BEEN DEPOSITED IN THE U.S. CERTIFIED MAIL, POSTAGE PREPAID. DEBTOR WAIVES ANY OBJECTION TO JURISDICTION OVER THE PERSON OR, TO THE EXTENT OF COMPLIANCE WITH THE IMMEDIATELY PRECEDING SENTENCE, SUFFICIENCY OF PROCESS OR SERVICE UPON DEBTOR.

27. Severability of Provisions; Captions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. The several captions to sections and subsections herein are inserted for convenience only and shall be ignored in interpreting the provisions of this Agreement.

28. Entire Agreement. This Agreement, the Loan Agreement and the Loan Documents referred to in or otherwise contemplated by this Agreement set forth the entire agreement of the parties as to the transactions contemplated by this Agreement.

29. JURY TRIAL WAIVER. THE DEBTOR AND THE SECURED PARTY HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS

AGREEMENT OR THE NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR THE NOTE AND THE RELATIONSHIPS THEREBY ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including, without limitation, contract claims, tort claims, breach of duty claims, and all other statutory and common law claims. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS AGREEMENT. In the event of litigation, this provision may be filed as a written consent to a trial by the court.

30. Further Assurances. In connection with any assignment or transfer of all or any portion of the Obligations or Collateral by the Secured Party to any other person or entity, and such other person or entity shall thereupon become vested with all the rights in respect of such Obligations or Collateral, the Debtor agrees to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all other agreements, documents or instruments requested by the Secured Party and/or its assignee or transferee.

31. Counterparts; Facsimile or Scanned Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. The parties hereto agree that the delivery of this Agreement by facsimile or emailed pdf files of scanned copies bearing their respective signatures shall be sufficient and binding upon them as if this Agreement were delivered with original signatures.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Security Agreement to be executed by their respective officers and agents thereunto duly authorized, as of the date first above written.

SECURED PARTY:

**BIP FRANCHISE FINANCE, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DEBTOR:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



SCHEDULE 6

**Location of Debtor's Chief Executive Office:**

**Debtor's U.S. Federal Tax I.D. Number:**

**Collateral Locations:**

[chief executive office]

[list stores]

**EXHIBIT N-3 TO THE DISCLOSURE DOCUMENT**

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**FINANCING PROGRAM DOCUMENTS**

**FORM OF GUARANTY**

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## GUARANTY

THIS GUARANTY ("Guaranty"), dated as of \_\_\_\_\_, 20\_\_, is made by \_\_\_\_\_ (the "Guarantor"), in favor of BIP Franchise Finance, LLC, a Delaware limited liability company, and its successors and assigns ("Lender").

WHEREAS, Guarantor owns \_\_\_\_\_ percent (\_\_\_\_%) of the issued and outstanding common membership interests/shares of \_\_\_\_\_, a \_\_\_\_\_ ("Borrower");

WHEREAS, Lender has made a loan to Borrower in the original principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) (the "Loan"), as evidenced by a Promissory Note issued by Borrower and payable to the order of Lender, dated as of \_\_\_\_\_, 20\_\_ (the "Note"); and

WHEREAS, in consideration of Lender making the Loan to Borrower, Lender requires that Guarantor guarantee the Obligations (as defined below) of Borrower under the Note in accordance with the terms of this Guaranty.

NOW, THEREFORE, in consideration of the foregoing promises and in order to induce Lender to make the Loan, Guarantor hereby agrees as follows:

SECTION 1. Guaranty. Guarantor hereby guarantees the full and prompt payment and performance when due, whether upon the occurrence of an Event of Default or earlier by reason of acceleration or otherwise, and at all times thereafter of (i) all Indebtedness, liabilities and obligations of every kind and nature of Borrower to Lender, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, joint or several, now or hereafter existing, or due or to become due, and howsoever owed, held, or acquired by Lender, (ii) all of Borrower's indebtedness, liabilities and obligations under any of the documents listed in **Exhibit A** (collectively, the "Agreements"), and (iii) all expenses (including reasonable attorneys' fees) incurred by Lender in enforcing any rights under this Guaranty (all such indebtedness, liabilities, obligations and expenses collectively referred to herein as the "Obligations").

SECTION 2. Guaranty Absolute. Guarantor guarantees that the Obligations will be paid and performed strictly in accordance with the terms of the Agreements, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any such terms or the rights of Lender with respect thereto. The liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

- (i) Any lack of validity or enforceability of any of the Agreements, or any other agreement or instrument evidencing all or any part of the Obligations;
- (ii) the absence of any attempt to collect the Obligations from Borrower or Guarantor or other action to enforce the same;
- (iii) the waiver or consent by Lender with respect to any provision of any document evidencing the Obligations, or any part thereof, or any other agreement now or hereafter executed by Borrower and delivered to Lender and any modification thereof;

- (iv) failure by Lender to take any steps to perfect and maintain its security interest in, or preserve its rights to, any security or collateral for the Obligations;
- (v) Lender's election in any proceedings instituted under Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et seq.) (the "Bankruptcy Code"), or the application of Section 1111(b)(2) of the Bankruptcy Code; or
- (vi) any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code.

SECTION 3. Waiver; Guaranty of Collection. Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of Borrower, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that this Guaranty will not be discharged, except by complete performance of the Obligations contained herein or as otherwise provided herein. Lender shall have the exclusive right to determine the application of payments and credits, if any, from the Guarantor, Borrower or from any other person on account of the Obligations or of any other liability of Guarantor to Lender.

SECTION 4. Subrogation. Until irrevocable payment in full of the Obligations (i) Guarantor shall not have any right of subrogation and hereby waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower or any endorser or any other guarantor of all or any part of the Obligations, and (ii) Guarantor hereby waives any benefit of, and any right to participate in, any security or collateral given to Lender to secure payment of the Obligations or any other liability of Borrower to Lender. Guarantor further agrees that any and all claims of Guarantor against Borrower or any endorser or any other guarantor of all or any part of the Obligations, or against any of their respective properties, arising by reason of any payment by any of the Guarantors to Lender pursuant to the provisions hereof, shall be subordinate and subject in right of payment to the prior payment, in full, of all principal and interest, all costs of collection (including reasonable attorneys' fees) and any other liabilities or obligations owing to Lender by Borrower which may arise either with respect to or on any note, instrument, document, item, agreement or other writing heretofore, now or hereafter delivered to Lender. Guarantor also waives all setoffs and counterclaims (other than compulsory counterclaims or defenses that have not been waived) and all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty. Guarantor further waives all notices of the existence, creation or incurring of new or additional indebtedness, arising either from additional equity investments in or loans extended to Borrower or otherwise, and also waives all notices that the principal amount, or any portion thereof, and/or any interest on any instrument or document evidencing all or any part of the Obligations is due, notices of any and all proceedings to collect from the maker, any endorser or any other guarantor of all or any part of the Obligations, or from anyone else, and, to the extent permitted by law, notices of exchange, sale, surrender or other handling of any security or collateral given to Lender to secure payment of the Obligations.

SECTION 5. Financial Condition of Borrower. Guarantor hereby assumes responsibility for keeping informed of the financial condition of Borrower and of all circumstances bearing upon the risk of nonpayment of the Obligations or any part thereof that diligent inquiry would reveal, and Guarantor hereby agrees that Lender shall not have any duty to advise Guarantor of information known to Lender regarding such condition or any such circumstances. If Lender, in its sole discretion, undertakes at any time or from time to time to provide any such information to

Guarantor, Lender shall not be under any obligation (i) to undertake any investigation not a part of its regular business routine, (ii) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, Lender wishes to maintain confidential or (iii) to make any other or future disclosures of such information or any other information to Guarantor.

SECTION 6. Marshaling of Assets. Guarantor consents and agrees that Lender shall not be under any obligation to marshal any assets in favor of Guarantor or against or in payment of any or all of the Obligations. Guarantor further agrees that, to the extent that Borrower makes payments to Lender, or Lender receives any proceeds of Collateral, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to Borrower, their estates, trustees, receivers or any other party, including, without limitation, Guarantor, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the Obligations or part thereof which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred.

SECTION 7. Amendments, Etc. No amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by Lender and Guarantor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 8. Addresses for Notices. All notices and other communications provided for hereunder must be in writing and delivered (i) if to Guarantor, to the address set forth on the signature page of this Guaranty, and (ii) if to Lender, \_\_\_\_\_, Attn:\_\_\_\_\_. All communications hereunder shall be in writing and shall be deemed given upon the earlier of receipt, one (1) Business Day after being sent by facsimile transmission or by reputable overnight courier, or three (3) Business Days after being sent by certified mail. Each party, by notice so given, may specify a different notice address. Any notice of change of address shall be effective only upon receipt.

SECTION 9. No Waiver; Remedies. No failure on the part of Lender to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise by Lender of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right; nor shall any modification or, waiver of any of the provisions of this Guaranty be binding upon Lender, except as expressly set forth in a writing duly signed and delivered by an authorized officer or agent of Lender on behalf of Lender. Lender's failure at any time or times hereafter to require strict performance by Borrower or Guarantor of any of the provisions, warranties, terms and conditions contained in any promissory note, security agreement, agreement, guaranty, instrument or document now or at any time or times hereafter executed by Borrower or Guarantor and delivered to Lender shall not waive, affect or diminish any right of Lender at any time or times hereafter to demand strict performance thereof and such right shall not be deemed to have been waived by any act or knowledge of Lender, its agents, officers or employees, unless such waiver is contained in an instrument in writing signed by an officer or agent of Lender and directed to Borrower specifying such waiver. No waiver by Lender of any default or Event of Default shall operate as a waiver of any other default or the same default or Event of Default on a future occasion, and no action by Lender permitted hereunder shall in any way affect or impair Lender's rights or the obligations of Guarantor under this Guaranty. Any determination by a court of competent jurisdiction of the amount of any principal and/or interest owing by Borrower to Lender shall be

conclusive and binding on Guarantor irrespective of whether the undersigned was a party to the suit or action in which such determination was made. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

SECTION 10. Continuing Guaranty. This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until payment in full of the Obligations and all other amounts payable under the Agreements and this Guaranty, (ii) be binding upon Guarantor, his/her respective successors and assigns, and (iii) inure to the benefit of and be enforceable by Lender and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), Lender may, subject to the provisions of the Agreements, assign or otherwise transfer all or any portion of Borrower's Obligations to Lender held by it to any other person or entity, and such other person or entity shall thereupon become vested with all the rights in respect of such Obligations granted to Lender herein or otherwise, whereupon this Guaranty shall continue to guaranty all of the Obligations to both Lender and such transferee.

SECTION 11. Financial Statements. Each Guarantor shall deliver to Lender within fifteen (15) days after the filing thereof, Guarantor's federal income tax return, along with a personal financial statement, in form and detail reasonably satisfactory to Lender.

SECTION 12. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Georgia, without regard to principles of conflict of laws and shall be deemed to have been executed in the State of Georgia.

SECTION 13. WAIVER OF JURISDICTION. GUARANTOR HEREBY AGREES TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN FULTON COUNTY, GEORGIA. GUARANTOR CONSENTS THAT ALL SERVICE OF PROCESS MAY BE MADE BY CERTIFIED MAIL OR HAND DELIVERY DIRECTED TO GUARANTOR AND LENDER AT THEIR ADDRESSES SET FORTH IN SECTION 8 HEREOF AND ON THE SIGNATURE PAGES TO THE AGREEMENTS, RESPECTIVELY, AND SERVICE SO MADE SHALL BE DEEMED TO BE COMPLETED THREE (3) BUSINESS DAYS AFTER THE SAME SHALL HAVE BEEN DEPOSITED IN THE U.S. CERTIFIED MAIL, POSTAGE PREPAID. GUARANTOR WAIVES ANY OBJECTION TO JURISDICTION OVER THE PERSON OR, TO THE EXTENT OF COMPLIANCE WITH THE IMMEDIATELY PRECEDING SENTENCE, SUFFICIENCY OF PROCESS OR SERVICE UPON GUARANTOR.

SECTION 14. Severability. If any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Guarantor and Lender under the remainder of this Guaranty shall continue in full force and effect.

SECTION 15. Defined Terms. Any capitalized term used in this Guaranty and not specifically defined herein shall have the meaning given to such term in the Agreements.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the date first above written.

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

Address for Notice:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**  
**AGREEMENTS**

1. Loan Agreement dated \_\_\_\_\_, 20\_\_\_\_, between Borrower and Lender.
2. Promissory Note dated \_\_\_\_\_, 20\_\_\_\_, in the principal amount of \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) from Borrower to Lender.
3. Security Agreement dated \_\_\_\_\_, 20\_\_\_\_, from Borrower to Lender.
4. All other agreements, instruments and documents now existing or hereafter entered into between Borrower and Lender.



**EXHIBIT O TO THE DISCLOSURE DOCUMENT**

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**FRANCHISEE DISCLOSURE QUESTIONNAIRE**

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**TROPICAL SMOOTHIE CAFÉ, LLC**  
**FRANCHISEE DISCLOSURE QUESTIONNAIRE**

As you know TROPICAL SMOOTHIE CAFÉ, LLC (“we” or “us”), and you are preparing to enter into a Franchise Agreement for the operation of a Tropical Smoothie Café® franchise. The purpose of this Questionnaire is to determine whether any statements or promises were made to you that we have not authorized or that may be untrue, inaccurate or misleading, to be certain that you have been properly represented in this transaction, and to be certain that you understand the limitations on claims you may make by reason of the purchase and operation of your franchise. **You cannot sign or date this Questionnaire the same day as the Receipt for the Franchise Disclosure Document but you must sign and date it the same day you sign the Franchise Agreement and pay your franchise fee.** Please review each of the following questions carefully and provide honest responses to each question. If you answer “No” to any of the questions below, please explain your answer on the back of this sheet.

- Yes\_\_No\_\_ 1. You had your first face to face meeting with us on: \_\_\_\_\_, 20\_\_.
- Yes\_\_No\_\_ 2. Have you received and personally reviewed the Franchise Agreement and each exhibit or schedule attached to it?
- Yes\_\_No\_\_ 3. Did you receive the Franchise Agreement and each related agreement, containing all material terms, at least 7 calendar days before signing any binding agreement with us or an affiliate? (Note: This does not include changes to any agreement arising out of negotiations you initiated with us.)
- Yes\_\_No\_\_ 4. Have you received and personally reviewed the Franchise Disclosure Document we provided?
- Yes\_\_No\_\_ 5. Did you receive the Franchise Disclosure Document at least 14 calendar days before signing the Franchise Agreement or any related agreement, or before paying any funds to us or an affiliate?
- Yes\_\_No\_\_ 6. Did you sign a receipt for the Franchise Disclosure Document indicating the date you received it?
- Yes\_\_No\_\_ 7. Do you understand all the information contained in the Franchise Disclosure Document and Franchise Agreement?
- Yes\_\_No\_\_ 8. Have you reviewed the Franchise Disclosure Document and Franchise Agreement with a lawyer, accountant or other professional advisor?
- Yes\_\_No\_\_ 9. Do you acknowledge and understand that no parent or affiliate of ours promises to back us financially or otherwise guarantees our performance or commits to perform post-sale obligations for us?
- Yes\_\_No\_\_ 10. Have you discussed the benefits and risks of developing and operating a Tropical Smoothie Café® franchise with an existing Tropical Smoothie Café® franchisee?
- Yes\_\_No\_\_ 11. Do you understand the risks of developing and operating a Tropical Smoothie Café® franchise?
- Yes\_\_No\_\_ 12. Do you understand the success or failure of your franchise will depend in large part upon your skills, abilities and efforts and those of the persons you employ, as well as many factors beyond your control such as weather, competition, interest rates, the economy, inflation, labor and supply costs, lease terms and the marketplace?
- Yes\_\_No\_\_ 13. Do you understand we and our affiliates retain the exclusive unrestricted right to engage, directly or through others, in the production, distribution and sale of products and services under the Tropical Smoothie Café® name or other mark, through alternative channels of distribution, which may compete with your unit and adversely affect its sales?
- Yes\_\_No\_\_ 14. Do you understand that, except where prohibited by the laws of your state, all disputes or claims you may have arising out of or relating to the Franchise Agreement must be litigated in Georgia, if not resolved informally or by mediation?
- Yes\_\_No\_\_ 15. Do you understand that you and your manager must satisfactorily complete the initial training course before we will allow the Tropical Smoothie Café® to open? (See Sections 3A.5. and 5.H. of the Franchise Agreement.)

- Yes\_\_No\_\_ 16. Is it true no employee or other person speaking on our behalf made any statement or promise or agreement, other than those matters addressed in your Franchise Agreement, concerning advertising, marketing, media support, marketing penetration, training, support service or assistance that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
- Yes\_\_ No\_\_ 17. Is it true no employee or other person speaking on our behalf made any statement or promise regarding the actual, average or projected profits or earnings, the likelihood of success, the amount of money you may earn, or the total amount of revenue a Tropical Smoothie Café® franchise will generate, that is not contained in the Franchise Disclosure Document or that is contrary to, or different from, the information contained in the Franchise Disclosure Document?
- Yes\_\_ No\_\_ 18. Do you understand that the Franchise Agreement contains the entire agreement between us and you concerning the franchise for the Tropical Smoothie Café® meaning any prior oral or written statements not set out in the Franchise Agreement will not be binding?\*
- Yes\_\_No\_\_ 19. Do you acknowledge and understand that the Franchise Agreement and related agreements are not effective until signed by us?

**YOU UNDERSTAND THAT YOUR ANSWERS ARE IMPORTANT TO US AND THAT WE WILL RELY ON THEM. BY SIGNING THIS QUESTIONNAIRE, YOU ARE REPRESENTING THAT YOU HAVE CONSIDERED EACH QUESTION CAREFULLY AND RESPONDED TRUTHFULLY TO THE ABOVE QUESTIONS.**

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Dated \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Signature of Franchise Applicant

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Dated \_\_\_\_\_

Dated \_\_\_\_\_

**EXPLANATION OF ANY NEGATIVE RESPONSES [REFER TO QUESTION NUMBER]:**

\_\_\_\_\_  
\* Nothing contained in this Questionnaire is intended to disclaim the representations we made in the Franchise Disclosure Document.

**EXHIBIT P TO THE DISCLOSURE DOCUMENT**

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**RECEIPTS**

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## RECEIPT

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If TROPICAL SMOOTHIE CAFÉ, LLC offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale. New York and Rhode Island require that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of any binding franchise or other agreement, or payment of any consideration that relates to the franchise relationship. Michigan requires that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement, or payment of any consideration, whichever occurs first.

If TROPICAL SMOOTHIE CAFÉ, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and any applicable state agency (as listed in Exhibit "A" to this disclosure document).

The franchisor is Tropical Smoothie Café, LLC, located at 1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338. Its telephone number is (770) 821-1900.

We authorize the respective state agencies identified on Exhibit "A" to receive service of process for us if we are registered in the particular state.

Issuance Date: April 15, 2014

The name, principal business address, and telephone number of the franchise sellers offering the franchise are:

<b>Name</b>	<b>Principal Business Address</b>	<b>Telephone Number</b>
Scott Pressly, Charles Watson, Mike Rotondo, Troy Godbee, Philip Watson, Robert Fischer, Dana Lockyear, Gregg Kocenko, Chris Schaeffer	1117 Perimeter Center West, Suite W200, Atlanta, GA 30338	(770) 821-1900
See Exhibit "C" for information on Area Developers (if any) in your area.	See Exhibit "C" for information on Area Developers (if any) in your area.	See Exhibit "C" for information on Area Developers (if any) in your area.

I received a Disclosure Document dated April 15, 2014. (See the state effective date summary page for state effective dates.) The Disclosure Document included the following Exhibits:

- |  |  |
|--|--|
| A State Agencies and Administrators/Agents for Service of Process  | H Nondisclosure and Noncompetition Agreement   |
| B Form of Franchise Agreement                                      | I Owners' Guaranty   |
| B-1 Form of Multi-Unit Development Addendum to Franchise Agreement | J State Specific Addenda and Riders  |
| C Information About Our Area Developers                            | K Roster of Current and Former Franchisees   |
| D Pre-Authorized Bank Form   | L Financial Statements   |
| E Exclusive Real Estate Services Representation Agreements         | M TrustWave Agreement  |
| F Addendum to Lease Agreement/Conditional Assignment of Lease      | N Form of Financing Program Documents<br>N-1 - Loan Agreement<br>N-2 - Security Agreement<br>N-3 - Personal Guaranty |
| G Operating Manual Table of Contents                               | O Franchisee Disclosure Questionnaire  |
|  | P Receipts   |

**KEEP THIS COPY FOR YOUR RECORDS.**

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date



## RECEIPT

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If TROPICAL SMOOTHIE CAFÉ, LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and any applicable state agency (as listed in Exhibit "A" to this disclosure document).

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| C Information About Our Area Developers                            | K Roster of Current and Former Franchisees   |
| D Pre-Authorized Bank Form   | L Financial Statements   |
| E Exclusive Real Estate Services Representation Agreements         | M TrustWave Agreement  |
| F Addendum to Lease Agreement/Conditional Assignment of Lease      | N Form of Financing Program Documents<br>N-1 - Loan Agreement<br>N-2 - Security Agreement<br>N-3 - Personal Guaranty |
| G Operating Manual Table of Contents                               | O Franchisee Disclosure Questionnaire  |
|  | P Receipts   |

**RETURN THIS RECEIPT TO US AT:**

TROPICAL SMOOTHIE CAFÉ, LLC  
1117 Perimeter Center West, Suite W200, Atlanta, Georgia 30338  
Tel: 770-821-1900 / Fax: 770-821-1895  
E-mail: info@tropicalsmoothie.com

\_\_\_\_\_  
Signature  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Date